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Application of Criminal Law to Corporations in Money Laundering Cases

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Abstract. *The increasing phenomenon of money laundering cases involving corporations is a challenge for the law enforcement system in Indonesia. Corporations are often used as a tool to disguise the proceeds of criminal acts, especially those originating from corruption crimes. To overcome this, it is necessary to apply effective criminal law to corporations as legal subjects that can be punished. This study aims to analyze the application of criminal law to corporations in money laundering cases, including the accountability mechanism based on regulations in force in Indonesia. This study uses a normative juridical method with descriptive-analytical specifications. The data sources used are secondary data that are analyzed qualitatively with reference to the Theory of Law Enforcement and the Theory of Legal Certainty. The results of the study show that Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes has expanded the legal subjects that can be held criminally accountable, including corporations. Based on the Theory of Law Enforcement, the effectiveness of taking action against corporations is highly dependent on the commitment of law enforcement officers in implementing existing regulations. Meanwhile, the Theory of Legal Certainty emphasizes that the existence of Supreme Court Regulation (Perma) No. 13 of 2016 has clarified the mechanism of criminal liability for corporations, thus creating justice and legal certainty in judicial practice. With strong regulations and consistent implementation, it is hoped that law enforcement against corporations in money laundering crimes can provide a deterrent effect and prevent similar criminal practices in the future.*

Keywords: *Corporations; Criminal; Enforcement; Laundering.*

1. Introduction

Indonesia, as a country that adheres to a legal system, requires all aspects of people's lives to be based on law, both written in the form of laws and unwritten and applicable in society. All authority in the implementation and enforcement of

law is regulated by the government. As stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD-RI), it is the main basis for legal norms in Indonesia. This is in line with the noble goals of the nation as reflected in the fifth principle of Pancasila, namely "social justice for all Indonesian people." Law itself is understood as a set of rules that are legally established by the government and which can be enforced by authorized law enforcement officers on each individual. Therefore, all aspects of people's lives should be in line with existing regulations, in order to realize justice and provide protection to all components of the nation.

Criminal Law is part of the legal system in force in Indonesia, which regulates permissible and prohibited acts, and determines sanctions for such violations. The main purpose of Criminal Law is to limit the government's authority in enforcing the law, especially against perpetrators of criminal acts, and to determine appropriate punishments. Criminal Law is divided into two types: Material Law, which regulates permissible and prohibited acts along with their criminal sanctions, and Formal Law, which regulates the procedures for implementing the law and imposing punishments on perpetrators of crimes in accordance with applicable provisions. In addition to Criminal Law, there are also various other branches of law in Indonesia, such as Civil Law, Agrarian Law, Constitutional Law, State Administrative Law, and others. One form of criminal act in Criminal Law is corruption, which is classified as a special crime or extraordinary crime because of its detrimental impact on state finances and violation of social rights in general. Criminal Law is present to limit the government's authority in enforcing the law, especially against perpetrators of criminal acts, and in determining appropriate sanctions. Criminal Law consists of two parts: Material Law, which regulates permitted and prohibited acts along with their criminal sanctions, and Formal Law, which regulates how the legal process is carried out and how criminals are punished according to existing provisions.

As society develops, criminal law also develops to respond to emerging legal violations, one of which is related to economic changes and the modernization of financial transactions. One of the crimes that emerged as a result of this development is the Crime of Money Laundering, which is classified as a special crime and is regulated separately from the Criminal Code (KUHP), including its procedural rules which are also regulated in different criminal procedural laws.

Criminals usually try to put the wealth they obtain into the financial system. In this way, it is hoped that the origin of the wealth cannot be traced by law enforcement officers. The act of hiding or disguising the origin of wealth derived from this crime is called money laundering. The crime of money laundering is not only very detrimental to society, but also to the state, because it can threaten or damage the stability of the national economy and state finances, as well as encourage an increase in other crimes such as corruption. Therefore, efforts to prevent and eradicate money laundering practices are now the focus of international

attention. Each country has taken various steps to address this problem, including by building international cooperation through bilateral and multilateral forums.

Hans G. Nilson stated that the crime of money laundering has become an important issue that worries the world community, especially the Council of Europe, which is the first international organization to warn of the dangers posed by this practice. Efforts to prevent, supervise, and eradicate will not be successful if only carried out by each country separately. Therefore, an international approach is needed. Cooperation between countries is very important, both in terms of exchanging information and in law enforcement through bilateral and multilateral agreements.(Rahayu et al., 2021).

Money laundering practices in Indonesia are often closely related to corruption as a predicate crime. Corruption is an inseparable part of money laundering crimes, and is often the main focus in various media reports every day. Corruption seems to have become a culture that is carried out openly by state officials who have no sense of responsibility. This action reflects that our government system is still trapped in the problem of corruption carried out by those who should be guarding the state's mandate.

The impact of money laundering on the financial system and economy is believed to have a significant negative impact on the global economy. Sharp fluctuations in exchange rates and interest rates are one of the negative consequences of money laundering practices. With these various negative impacts, it is understandable that money laundering has the potential to disrupt the stability of the world economy. By making money laundering a criminal offense, law enforcement will find it easier to confiscate the proceeds of crime that are sometimes difficult to trace, such as assets that are hard to find or that have been transferred to third parties.

The problem of money laundering has attracted international attention because of its impact across national borders. As a criminal phenomenon that falls into the category of "organized crime", there are certain parties who unknowingly enjoy the benefits of money laundering activities, even though they are not aware of the losses caused. This is closely related to the banking sector, which on the one hand operates based on consumer trust, but on the other hand, can be misused as a means to facilitate money laundering. This problem is closely related to criminal law, especially in terms of eradicating such crimes.(Adrian Sutedi, 2023)Organized crime in money laundering is a complex and large-scale criminal activity, carried out by structured groups, either with tight or looser organizations, to increase participation and financing for their members. This activity is often carried out without regard to the law, even involving personal violations, and is closely related to money laundering and political interests.

Corporations that are basically established to make a profit must have a legal entity status, namely a business entity formed specifically for business activities

with capital and management involved. Over time, the role of corporations as business institutions has become stronger, with various companies, both local and international, developing into main pillars that support a country's economy. Corporations, which are increasingly developing as important pillars of a country's economy, sometimes take advantage of opportunities in the business world, such as participating in tenders held by the government, to make a profit. However, behind this opportunity, there is the potential for some corporations to carry out actions that can harm the public interest, known as corporate crime. The crime that requires special treatment is the crime of money laundering. Therefore, a legal product was enacted in the form of Law No. 8 of 2010 concerning the Crime of Money Laundering (UU TPPU). Thus, the term used is "money laundering" and not "money laundering". Money laundering always involves assets derived from criminal acts, so there is no money laundering if no crime occurs (no crime, no money laundering).

Money laundering generally refers to a series of actions taken to move or use the proceeds of crime, with the aim of hiding or obscuring the origin of the money. This is done by organized criminal groups so that the money obtained from the crime can be used as if it came from a legitimate source and is not detected by law enforcement. In Black's Law Dictionary, money laundering is defined as "the process of investing or transferring money sourced from criminal activities, such as drug trafficking or other organized crime, into legitimate channels, so that its origin cannot be traced." In Indonesia, this money laundering crime is regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering (UU TPPU). Money Laundering is a special type of crime that has a distinctive characteristic, namely the existence of a predicate crime that is the basis for its actions. This predicate crime is clearly regulated in Article 2 of the Money Laundering Law (UU TPPU).

The 1993 UN report revealed that the laundering of criminal proceeds, which also includes organized and transnational crime, has the main characteristics of being global, flexible and constantly changing in its operations. This activity utilizes advanced technology, professional personnel, the expertise of the perpetrators and large financial resources to move illegal money between countries. In addition, one aspect that is rarely considered is the continuous monitoring of the profits obtained and the expansion into new territories to continue criminal activities.

Money launderers often use certain companies to mix illegal money with legitimate money, in order to hide and obscure the proceeds of their crimes. These companies usually manage large amounts of funds that are used to support goods and/or services that are sold at prices below market value. In fact, these companies can offer goods at prices lower than the cost of production. This gives these companies a competitive advantage over other companies that operate legitimately. As a result, legitimate companies can lose out, even causing their

bankruptcy or closure. Money laundering activities can also damage the integrity of financial markets. The liquidity of financial institutions, such as banks, can be disrupted if their operations depend on funds from criminal activity. For example, if a large amount of money from laundering is suddenly placed in a bank and then withdrawn without prior notice, the bank can face serious liquidity problems (liquidity risk).

In an effort to prevent and eradicate money laundering crimes, which are also included in the category of transnational crimes, in 1988 an international convention was held, namely the UN Convention on the Prevention of Trafficking in Narcotic Drugs and Psychotropic Substances, better known as the UN Narcotics Convention. To follow up on this convention, in July 1989 in Paris a special task force was formed to handle money laundering, which was named The Financial Action Task Force (FATF). The regulation on money laundering prevention in Indonesia is closely related to the FATF decision on June 22, 2001. In the decision, Indonesia is one of 15 countries considered uncooperative or non-cooperative countries and territories (NCCTS) in efforts to prevent and eradicate money laundering crimes.

Based on the explanation above, this crime is not a single crime but a double crime. The predicate crime of money laundering is the proceeds of a crime in the form of assets obtained from a crime as stated in Article 2 Paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, namely:

a. Corruption;
b. bribery;
c. narcotics;
d. psychotropic;
e. labor smuggling;
f. immigrant smuggling;
g. in the banking sector;
h. in the capital market sector;
i. in the insurance sector;
j. customs;
k. excise;
l. human trafficking;

m. illicit trade;

n. terrorism;

o. kidnapping;

p. theft;

q. embezzlement;

r. fraud;

s. forestry fraud;

t. gambling;

u. prostitution;

v. taxation sector;

w. forestry sector;

x. environmental sector;

y. marine sector; or

(b) other criminal acts that are punishable by imprisonment for 4 (four) years or more, which are committed in the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia and these criminal acts are also criminal acts according to Indonesian law.

In money laundering crimes, there are two types of perpetrators, namely active perpetrators and passive perpetrators. Active perpetrators are parties who usually need help from other parties to carry out their actions, with the aim of hiding the proceeds of crime. Meanwhile, passive perpetrators are those who receive and use money or assets originating from active perpetrators.

2. Research Methods

This research is a normative legal research, therefore the type of data used by the author is secondary data, namely data obtained or collected by researchers from available sources, by examining theories, concepts, and legal principles and regulations in the Law related to this writing. This research utilizes text and library research studies, including using sources of books, journals, media, scientific works, and documents related to the main issues discussed. Based on the formulation of the problem that has been explained, the approach method uses the normative legal method. The normative legal approach is research conducted by collecting data from research through document studies or library studies used to solve research problems.47

According to Soerjono Soekanto, the normative legal approach is legal research conducted by examining library materials or secondary data as basic materials for research by conducting searches for regulations and literature related to the problems being studied.

3. Results and Discussion

3.1. Analysis of Criminal Responsibility for Corporations Committing Money Laundering Crimes Originating from Corruption Crimes

In English, criminal responsibility is called responsibility, or criminal liability. The concept of criminal responsibility is actually not only related to the law but also to the moral values or general morality adopted by a society or groups in society, this is done so that criminal responsibility is achieved with full justice.116 Responsibility is an act that is reprehensible by society and is accounted for by the perpetrator. For there to be criminal responsibility, it must first be clear who can be held accountable, this means that it must first be ascertained who is declared as the perpetrator of a crime.117 According to Roeslan Saleh, criminal responsibility is something that is criminally accountable to someone who commits a criminal act or crime.118 In criminal responsibility there is a principle, namely a criminal act if there is no fault (Green sraf zonder schuld: Actus non facit reum nisi mens sir rea). It can be interpreted that a person will be held accountable for these actions, if the action is against the law and there is no justification or elimination of the unlawful nature of the crime he committed. And seen from the perspective of the ability to be responsible, only a person who is able to be responsible can be held accountable for his actions.

In terms of being punished for someone who commits an act against the law, it depends on whether in committing the act he has a mistake and if the person who commits the act is indeed against the law, then he will be punished. Therefore, it can be concluded that a person can be sentenced to a criminal offense, if he meets the requirements for criminal responsibility, namely

1) A person has committed a criminal act;

2) Viewed as being responsible for a person who has committed a criminal act;

3) The existence of a form of error, either intentional or negligent in a criminal act;

4) There is no justification or excuse that eliminates criminal responsibility for the perpetrator of a criminal act.

In the ability to be responsible, first the reason factor is seen, namely whether the perpetrator can distinguish between actions that are permitted and those that are not. Then the feeling or will factor of the perpetrator is also seen, namely whether he can adjust his behavior with the awareness of what is permitted and what is not. Therefore, if a perpetrator of a criminal act commits a criminal act and is unable to determine his will according to the awareness of the good and bad of his actions, then the perpetrator is considered to have no fault and cannot be held criminally responsible.

Historically, the issue of corporate crime only emerged in 1990, as stated by Henry N. Pontell and Gilbert Geis in their writing entitled "International Handbook of White-Collar and Corporate Crime" that "Corporate crime is hardly new". In the 20th century, debates regarding differences of opinion regarding corporate criminal liability occurred, according to Anca Iulia Pop in her writing entitled "Criminal Liability of Corporations- Comparative Jurisprudence", especially in the 1990s the United States and Europe experienced a number of major crimes related to the Environment, anti-competition (antitrust), fraud, food and drugs, bribery, violations of law enforcement (obstacle of justice), and crimes in the financial sector (financial crime). 89 These crimes caused many very large losses, including corruption. The direct consequences of these crimes on society are financial losses, loss of jobs, and even loss of life due to the crisis. While

long-term consequences such as damage to the environment, health and welfare are certainly issues that must be prioritized.

Corporate issues that arise in America and Europe eventually also occur in other parts of the world, including Indonesia. Over time, legal issues in the world, especially in Indonesia, are very complex, so that this becomes a test for legal science which can prove that it is dynamic, which can always continue to develop following civilization and human development, including not humans naturally and naturally who are included as subjects of criminal law, but also in the form of legal entities or corporations. In the Criminal Code (KUHP) does not recognize Corporations as legal subjects, because in the Criminal Code recognizes the principle of "actus reus facit reum, nisi mens sit rea" which means "no crime without fault". So the consequence of this principle is that those who can be held criminally responsible are humans who have a heart, while legal entities or corporations are referred to as something that does not have a heart, so it cannot be subject to criminal law.

As time goes by and the law develops, corporations can be subject to criminal liability. One of the factors in this case is inseparable from the many cases of corporations that are also involved in committing criminal acts, especially corruption which is an extra ordinary crime. For corruption, there are regulations that regulate it separately, namely in Law No. 31 of 1999

concerning

Eradication of Corruption and Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption. Seeing the potential for state losses from a number of corruption data that have occurred so far, it is one of the things that is very concerning. Because every year the data on potential state losses increases very significantly. In 2018, the potential state loss was IDR 9.29 trillion. In 2021, the potential state loss due to corruption cases is estimated to reach IDR 26.8 trillion.90 Types of corruption are grouped into several groups, including those that cause state financial losses. Articles in Law No. 31 of 1999 in conjunction with No. 20 of 2001 related to corruption crimes causing state losses are Articles 2 and 3.91 Money laundering from corruption is certainly very detrimental to the state and is not only a national crime, but has become a transnational crime.

In 2010, considering the importance of eradicating the crime of money laundering which can cause huge state losses, one of which comes from corruption, Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering was enacted, which includes corporations as legal subjects.

In the criminal liability of corporations that commit money laundering, this is based on Law No. 8 of 2010 Article 2 paragraph (1) letters a to z, which explains that the crime of money laundering is a derivative crime that results in wealth obtained illegally or in violation through several processes such as placement, layering, integration. One of those listed in the article is the predicate crime of corruption. So in this case, especially in cases of corporate money laundering, it is usually used as a means to bridge money laundering. Or in a crime known as a passive perpetrator. In addition, the government recently issued regulations regarding corporate liability through the issuance of Law No. 1 of 2023 concerning the Criminal Code.

In corporate criminal liability itself, there are 5 fairly general criminal liability doctrines consisting of:

1) Strict Liability Theory (absolute liability)

As one of the doctrines used as a basis for justifying the imposition of criminal liability on corporations. According to this theory, criminal liability can be imposed on the perpetrator of a crime without having to prove any fault (intentional or negligent) on the part of the perpetrator. This teaching is an exception to the validity of

the principle of “no crime without fault” (actus nonfacit reum, nisi mens sit rea). That the perpetrator of a crime can only be subject to criminal liability if in carrying out the actus reus (behavior) as stipulated in the formulation of

the crime, only if the actus reus carried out by the perpetrator is driven or based on the mens rea (attitude of guilty heart, whether intentionally or unintentionally) of the perpetrator. According to this theory, the public prosecutor is only obliged to prove the actus reus regarding the causal relationship between the actus reus and the resulting consequences.

In the author's opinion, the application of the doctrine of "strict liability" and "vicarious liability" should only be applied to types of violations that are minor in nature, such as traffic violations. Then the doctrine is also aimed at corporate criminal liability, especially those concerning legislation on public/community interests, for example protection in the fields of food, beverages and environmental health. Based on this doctrine, the fact that is of a suffering nature to the victim is used as a basis for demanding accountability from the perpetrator/victim in accordance with the adage "res ipsa loquitur".

2) Vicarious Liability Theory

This teaching is a criminal responsibility that is carried out by a person to another person. For example, a criminal act that is carried out

managers or corporate management, then the corporation itself is also charged with responsibility. In this doctrine, the public prosecutor is required to be able to prove mens rea as the basis for the perpetrator to commit actus reus. Actually, this doctrine or teaching is a teaching in civil law. However, it was later adopted by criminal law to be able to impose criminal responsibility on the corporation. This doctrine is usually applied in civil law on unlawful acts (the law of torts) based on the doctrine of respondeat superior.94 According to the principle of respondent superior, there is a relationship between master and servant, or someone who acts through another person is considered to have committed the act himself. In other words, a corporation as an employer to employees is responsible for the mistakes made by its employees.

3) Doctrine of Delegation Theory

It is one of the bases that justifies the existence of criminal liability carried out by corporate employees. According to this doctrine, the reason why criminal liability can be imposed on a corporation is because of the delegation (transfer) of authority that it has. A person who receives a delegation or transfer by the leadership of the corporate board of directors to be able to carry out acts on behalf of and in the interests of the corporation, then if a criminal act is found by the recipient, the corporation as the grantor of authority is obliged

responsible for that. This delegation of delegation is essentially the granting of power or the granting of a mandate where, according to law, the actions of the recipient of the power of attorney are binding on the person giving the power of

attorney as long as they do not exceed their duties or powers.

4) Identification Theory

Identification theory is a teaching on the justification of corporate criminal liability, that in order to impose corporate criminal liability, the public prosecutor must be able to identify that the person who committed the actus reus was the controlling mind of the corporation. This teaching was first developed in England and then spread to the United States. Then it was widely adopted by various countries in the world to impose criminal liability on corporations. In essence, this theory originates from the civil law theory regarding legal entities which determines that the management is an organ of the organization. However, there are limitations to this principle that can apply if:

a. In carrying out these actions, the management does not deviate from the intent and purpose of the corporation as determined in its Articles of Association.

b. Actions carried out by the management must be in accordance with or within the limits of the management's authority as determined in the Corporation's Articles of Association. In this case, the action is

classified as intra vires (within power) not ultra vires (beyond control) .

5) Corporate Organs Theory

It is a theory that refers to people who exercise authority and control in a legal entity, in other words, people who direct and are responsible for all actions of the legal entity, people who determine corporate policies, and people who are the brains of the corporation which is an important organ of the corporation so that they can be held criminally responsible.

There are three conditions that must be met for corporate liability, namely; the agent commits a crime; the crime committed is still within the scope of his work; and is carried out with the aim of benefiting the corporation.95 From the existence of Law No. 8 of 2010 concerning the crime of money laundering, it can provide certainty in the existence of corporate liability as the perpetrator of the crime.

Meanwhile, Prof. Dr. Sutan Remy Sjahdeini, SH has an opinion regarding the concept of corporate criminal liability doctrine compiled from various doctrines which he then called “Combined Doctrine”. Criminal liability can be imposed on corporations if it meets certain elements, which include:96

1) The behavior must constitute a criminal act, either a crime of commission or omission;

2) *Actu Reus*(the error) of the crime was probably committed alone or ordered by the controlling mind;

3) *Mens rea*of the criminal acts are in the hands of corporate control personnel;

4) The crime must provide benefits to the corporation;

5) The crime was committed by exploiting the corporation, namely by involving the use of elements that are specifically related to the corporation, or are only owned by the corporation;

6) The crime is intra vires, that is, it is carried out within the framework of the corporation's aims and objectives as regulated in the corporation's Articles of Association;

7) Criminal acts committed by corporate controlling personnel must be carried out in the context of the duties and authority of the controlling personnel's legitimate position according to corporate regulations or letter of appointment;

8) If the actus reus (error) of the criminal act is not carried out by the corporate controlling personnel themselves but is carried out by another person, the act must be based on an order or authorization from the corporate controlling personnel or approved by the corporate controlling personnel;

9) The act must be an unlawful act;

10) For criminal acts that require the presence of both elements of mens rea and actus reus, it does not necessarily need to be present in just one person but can be present in several separate persons.

According to Mardjono Reksodipuro, there are at least three corporate criminalization systems, namely:

The corporate management as the creator and administrator is responsible.

1) Corporations as creators and managers are responsible.

2) Corporations as makers and also as responsible.

In the expansion of the criminal liability of legal subjects, Law No. 8 of 2010 regulates the criminal liability of perpetrators of money laundering. And the Regulation on the expansion of the criminal liability of people or legal subjects is regulated in Article 6 which reads as follows:

Article 6

(1) In the event that the crime of money laundering as referred to in Article 3, Article 4, and Article 5 is committed by a corporation, the penalty shall be imposed on the corporation and/or the corporation's controlling personnel.

(2) Criminal penalties are imposed on corporations if the crime of money laundering:

a) Carried out or ordered by corporate control personnel,

b) Carried out in order to fulfill the corporate aims and objectives,

c) Carried out in accordance with the duties and functions of the perpetrator or person giving the order and,

d) Done with the intention of providing benefits to the corporation.

Observing this, it is clear that in Article 3, 4 and Article 5 carried out by a corporation, then the corporation and/or corporate controlling personnel can be subject to criminal penalties. The criminal acts in Article 3, 4 and 5 are as follows:

Article 3

Any person who places, transfers, diverts, spends, pays, grants, deposits, takes abroad, changes the form, exchanges for currency or securities or other acts regarding assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the assets shall be punished for the crime of money laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

Article 4

Any person who hides or disguises the origin, source, location, designation, transfer of rights or actual ownership of assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) shall be punished for the crime of money laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

Article 5

(1) Any person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange or use of assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah);

(2) The provisions referred to in paragraph (1) no longer apply to reporting parties who carry out reporting obligations as regulated in this Law.

This means that there is an expansion of the criminalization of legal subjects, because if it is only based on the legal subjects as referred to in Article 3, Article 4, and Article 5, then only the legal subjects who can be punished are people in the sense that this means humans. Against active and passive perpetrators, especially in Article 3, 4 and can be seen to emphasize more on the imposition of criminal

sanctions for:

a) Money launderers are also perpetrators of predicate crimes; and

b) Money launderers who know and reasonably suspect that the assets originate from the proceeds of crime.

Meanwhile, passive TPPU as stated in Article 5 places more emphasis on imposing criminal sanctions on perpetrators who enjoy the benefits of the proceeds of crime and perpetrators who participate in hiding or disguising the origin of their assets.

However, with the formulation of Article 6 paragraph (1), it is clearly regulated that corporate legal subjects can also be punished. Related to the formulation of corporate legal subjects in Article 6 paragraph (1). In its explanation, it is stated that:

"Corporations also include organized groups, namely structured groups consisting of 3 (three) or more people, whose extension is for a certain period of time, and acting with the aim of committing one or more criminal acts regulated in the Law with the aim of obtaining financial gain either directly or indirectly". By paying attention to the explanation of Article 6 paragraph (1), it can be seen that this explanation expands the definition of a corporation as referred to in the definition of a corporation in the definition of a corporation as referred to in Article 1 number 10, namely as a group of people and/or wealth that is organized, whether it is a legal entity or not a legal entity.

In terms of legal subjects between corporations and corporate controlling personnel, they are different subjects, although sometimes between corporations and their controlling personnel as the same legal subjects. Meanwhile, regarding the requirements for corporate criminal responsibility, it can be imposed on corporate legal subjects if they fulfill several requirements as regulated in Article 6 paragraph (2) of Law No. 8 of 2010, including:

a) Carried out on the orders of corporate control personnel;

b) Carried out in order to fulfill the corporate aims and objectives;

c) Carried out in accordance with the duties and functions of the perpetrator or person giving the order and,

d) Done with the intention of providing benefits to the corporation.

The formulation in Article 6 paragraph (2) of the TPPU Law has the potential to cause problems in the practice of law enforcement, because in the

explanation there is no explanation regarding whether these requirements must be met simultaneously or not. It must be admitted that by observing the four requirements as referred to in Article 6 paragraph (2). For example, by fulfilling Article 6 paragraph (2) letter (a), namely "carried out or ordered by corporate control personnel", this means that the criminal incident occurred because it was ordered by corporate control personnel, which can be interpreted as an official action from the corporation.

Likewise, an example of fulfilling the requirements of Article 6 paragraph (2) letter (b), namely "carried out in order to fulfill the intent and purpose of the corporation", meaning that a criminal incident is the fulfillment of the intent and purpose of the corporation, not the fulfillment of the intent of the individual who carried out the act.

In the case of fulfilling the requirements in Article 6 paragraph (2) letter c, namely "carried out in accordance with the duties and functions of the perpetrator or person giving the order". This means that the criminal incident or act occurred in accordance with the duties and functions.

the perpetrator and the person giving the order in the corporation, this means that the occurrence of the criminal act was carried out with the intention of providing benefits to the corporation, this means that the benefits arising from the act are not for the personal benefit of the perpetrator but are for the benefit of the corporation.

Likewise in Article 6 paragraph (2) letter (d) namely "carried out with the intention of providing benefits to the corporation" means that a criminal event is carried out with the intention of providing benefits to the corporation. This confirms that in relation to this matter, the interests of the corporation are the goal, not the interests of individuals. So it is clear that if one of the requirements in Article 6 paragraph (2) is fulfilled, it is sufficient to describe that the criminal event or criminal act is a representation of the actions of the corporation and therefore can be subject to criminal responsibility with the subject of corporate law.

The consequence of a criminal act is the existence of sanctions, where the sanctions for a criminal act of money laundering are of various types, including:

a. Types of criminal sanctions that can be imposed

Law No. 8 of 2010 concerning the Eradication of Money Laundering Crimes apparently provides strict limitations on the types of criminal sanctions that can be imposed on corporations, this is certainly a step forward in the perspective of national criminal law politics, because in other cases, corporate criminal liability can also be in the form of criminal sanctions. This means that

in line with developments in criminal law, especially the money laundering legal regime, it seems that the type of criminal sanctions in the form of imprisonment against corporations can be considered less relevant to the purpose of punishment related to efforts to save assets.

The type of principal criminal sanction that can be imposed on corporate legal subjects for TPPU is in the form of a fine with a maximum amount of IDR 100,000,000,000.00 (one hundred billion rupiah). In addition to the principal penalty in the form of a fine, corporations can also be subject to additional penalties in the form of:

a) announcement of the judge's decision,

b) partial or complete freezing of corporate business activities,

c) revocation of business license,

d) dissolution and/or prohibition of corporations,

e) confiscation of corporate assets for the state, and/or

f) state takeover of a corporation.

If we look closely at the types of additional criminal sanctions against corporate legal subjects that are so diverse, they actually provide enough alternatives for law enforcers, in this case for public prosecutors, to prosecute perpetrators of corporate crimes, in addition to the main criminal sanctions in the form of fines, the amount of which is also very large, reaching one hundred billion rupiah.

The regulations regarding the types of sanctions that can be imposed on corporations are as regulated in Article 7 of the TPPU, namely:

Article 7

1) The principal penalty imposed on corporations is a maximum fine of IDR 100,000,000.00 (one hundred billion rupiah).

2) In addition to the criminal fines as referred to in paragraph (1), corporations may also be subject to additional criminal penalties in the form of:

a) Announcement of the judge's decision;

b) Freezing of part or all of the Corporation's business activities;

c) Revocation of business license;

d) Dissolution and/or prohibition of the Corporation;

e) Confiscation of Corporate assets for the state; and/or

f) State takeover of corporations.

The drafting of the law also provides an alternative for public prosecutors to charge perpetrators of corporate crimes with imprisonment if the convict does not have sufficient funds to pay the fine, namely with a maximum imprisonment of 1 (one) year and 4 (four) months, as regulated in Article 8 as follows:

Article 8

If the convict's assets are not sufficient to pay the fine as referred to in Article 3, Article 4, and Article 5, the fine shall be a maximum imprisonment of 1 (one) year and 4 (four) months.

b. Confiscation of Property

That it is true that Article 8 has regulated the terms of imprisonment in lieu of fines in assets insufficient to pay the fine, this means that before the application of imprisonment in lieu of fines, there is still a previous stage as regulated in Article 9, namely in the event that the corporation is unable to pay the principal penalty in the form of a fine, then the fine is replaced by the confiscation of assets owned by the corporation or the controlling personnel of the corporation with a value equal to the fine imposed. Only then if the sale of assets owned by the corporation that are confiscated is insufficient, then the imprisonment in lieu of fines as referred to in Article 8 is applied to the controlling personnel of the corporation by taking into account the fine that has been paid. Provisions regarding this are regulated in Article 9 as follows:

Article 9

(1) In the event that a corporation is unable to pay the criminal fine as referred to in Article 7 paragraph (1), the criminal fine shall be replaced by the confiscation of assets belonging to the corporation or the corporation's controlling personnel with a value equal to the criminal fine imposed.

(2) In the event that the sale of confiscated corporate assets as referred to in paragraph (1) is insufficient, a prison sentence in lieu of a fine shall be imposed on the corporation's controlling personnel by calculating the fine that has been paid.

One of the interesting crucial points of the formulation of Article 9 paragraph (1) related to the confiscation of corporate assets with a value equal to the criminal fine imposed, is related to the technical implementation, namely whether the confiscation of assets is carried out after the court decision or long before the court decision, meaning that since the investigation, efforts

have been made to confiscate assets worth the fine that will be imposed. Thus, in order to save assets or return assets, efforts to confiscate assets during the investigation stage to anticipate fines are very important to carry out. Thus, the reasons used in the stage of confiscating assets during the investigation stage to anticipate criminal fines are very important to carry out. Thus, conventional reasons related to criminal acts only, but confiscation is carried out to anticipate the fulfillment of criminal fines and anticipate asset transfers and other efforts to hide assets whose whereabouts cannot always be traced.

In addition, matters regarding corporate crimes, corruption, and money laundering are also listed in Law Number 1 of 2023 concerning the Criminal Code. Regarding corporate liability, it has been accommodated in Articles 45 to 50, which regulate corporations as subjects of criminal law, the definition of corporate crimes themselves, the requirements and provisions for corporations to be held accountable, and who should be held accountable. Here are some of the words

articles contained in the new Criminal Code:

Article 45

(1) Corporations are subjects of criminal acts

(2) Corporations as referred to in paragraph (1) include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regional-owned enterprises, or those that are equivalent to these, as well as associations, whether incorporated or not incorporated, business entities in the form of limited partnerships, limited partnerships, or those that are equivalent to these in accordance with the provisions of statutory regulations.

Article 46

Criminal Acts by Corporations are Criminal Acts committed by managers who have a functional position in the organizational structure of the Corporation or people who, based on employment relationships or other relationships, act for and on behalf of the Corporation or act in the interests of the Corporation, within the scope of the Corporation's business or activities, either individually or jointly.

Article 47

In addition to the provisions referred to in Article 46, Criminal Acts by Corporations may be committed by the person giving the order, the person holding control, or the beneficial owner of the Corporation who is outside the organizational structure, but can control the Corporation.

Article 48

Criminal acts by corporations as referred to in Article 46 and Article 47 can be accounted for if:

a. included in the scope of business or activities as determined in the articles of association or other provisions applicable to the Corporation;

b. unlawfully benefiting the Corporation;

c. accepted as Corporate policy;

d. The corporation does not take the necessary steps to carry out prevention, prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts; and/or

e. Corporations allow criminal acts to occur.

Article 49

Liability for Criminal Acts by Corporations as referred to in Article 48 shall be imposed on the Corporation, managers who have functional positions, those who give orders, those who control, and/or those who benefit from the Corporation. Article 50 Justifying reasons and excusing reasons that may be submitted by managers who have functional positions, those who give orders, those who control, and/or those who benefit from the Corporation may also be submitted by the Corporation as long as such reasons are directly related to the Criminal Acts charged against the Corporation.

Articles 603 to 606 regulate in detail what is not included in criminal corruption, who the legal subjects are, and the criminal threats that can be imposed for such acts. The following is the editorial

the contents of these articles:

Article 6O3

Any person who unlawfully commits an act of enriching himself, another person, or a corporation to the detriment of state finances or the state economy, shall be punished with life imprisonment or a minimum of 2 (two) years and a maximum of 20 (twenty) years imprisonment and a fine of at least category II and at most category VI.

Article 604

Any person who, with the aim of benefiting himself, another person, or a corporation, abuses the authority, opportunity, or means available to him due to his position or position which is detrimental to state finances or the state economy, shall be punished with life imprisonment or imprisonment for a

minimum of 2 (two) years and a maximum of 20 (twenty) years and a fine of at least category II and at most category VI.

Article 605

(1) Punishable by imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a fine of at least category III and at most category V, any person who:

a. giving or promising something to a civil servant or state administrator with the intention that the civil servant or state administrator will do or not do something his position, which is contrary to his obligations; or

b. giving something to a civil servant or state administrator because of or in connection with something that is contrary to obligations, which is carried out or not carried out in his position.

(2) Civil servants or state administrators who accept gifts or promises as referred to in paragraph (I) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and a fine of at least category III and at most category V.

Article 606

(1) Any person who gives a gift or promise to a civil servant or state administrator considering the power or authority attached to his or her position or position, or by the giver of the gift or promise being deemed to be attached to that position or position, shall be punished by imprisonment for a maximum of 3 (three) years and a fine of up to category IV.

(2) Civil servants or state administrators who accept gifts or promises as referred to in paragraph (1) shall be punished with a maximum prison sentence of 4 (four) years and a maximum fine of category IV.

Then the last one regarding the provisions on money laundering crimes, is stated in Article 607 which contains the subject of the crime and the results of the crime that can be classified including the results of wealth obtained from criminal acts (predicate crime). As well as Article 608 which reads "The provisions as referred to in Article 607 paragraph (1) letter c does not apply to reporting parties who carry out reporting obligations as regulated in the Law on the Prevention and Eradication of Money Laundering Crimes.

3.2. Mechanism for Handling Cases of Corporations Committing Money Laundering Crimes Originating from Corruption Crimes According to Applicable Regulations

In simple terms, criminal law consists of material criminal law and formal criminal law.102 Material criminal law is the content or material of the

criminal law itself. While formal criminal law is real or concrete, here formal criminal law is the process or method taken to implement or enforce the material criminal law itself.

With the existence of modern law, it has opened the door to problems that previously did not exist, namely legal certainty itself. Legal certainty is something new, but the values of justice and benefits have traditionally existed long before the era of modern law.

Gustav Radbruch said that legal certainty is "Scherkeit des Rechts selbst" (legal certainty about the law itself). There are four things that are related to the meaning of legal certainty, including:

6) That the law is positive, which means that the law is legislation (gesetzliches Recht).

7) Law is based on facts (Tatsachen), not based on a formulation of an assessment that will be made by a judge, such as good will and politeness.

8) That the facts must be formulated clearly to avoid errors in interpretation, and also easy to implement.

9) Positive law cannot be changed frequently

The existence of legal certainty in a country also causes efforts to regulate its laws which are manifested in legislation made by the government. The legislation is a legal system that applies, namely one that is not based on momentary decisions. The principle of legal certainty is a concept to ensure that the law has been implemented properly so as not to cause any harm to anyone, the law must protect and protect society from various crimes or harassment of individuals or groups and must be used as a guideline for life for everyone.

One of the forms is in the mechanism for handling corporate cases. Of course, the law in Indonesia has accommodated this, as regulated in Perma No. 13 of 2016 concerning procedures for handling criminal acts by corporations, including corporations that commit money laundering crimes originating from criminal acts.

corruption. Here we can see that the urgency of eradicating criminal acts of corruption and money laundering can be traced and eradicated even though it is covered up by the existence of corporations in carrying out these actions.

In this Perma, it is stated in Article 1 paragraph (8) that criminal acts by corporations are not crimes for which corporations can be held criminally responsible in accordance with the laws governing corporations. Furthermore, Article 2 contains the intent and purpose of the formation of

this Perma, including:

a. To be a guideline for law enforcers in handling criminal cases involving corporate actors and/or administrators.

b. Filling the legal gap, especially in criminal procedure law, with corporate actors and/or administrators and,

c. Encourage the effectiveness and optimization of handling criminal cases with corporate actors and/or administrators.

In the case of resolving the handling of corporate cases, criminal responsibility can be requested in accordance with the provisions on corporate crimes in the law regulating corporations, this is clearly stated in Perma Article 4 paragraph (1), and in imposing criminal penalties on corporations, Article 4 paragraph (2) explains that judges can assess the corporation's mistakes as per paragraph (1) including:

(a) corporations can obtain profits or benefits from the criminal act carried out for the benefit of the corporation

(b) corporations allow criminal acts to occur or;

(c) The corporation did not take the necessary steps to carry out prevention, prevent greater impacts and ensure compliance with applicable legal provisions to avoid criminal acts.

In the event that one or more corporate administrators resign or die, this does not result in the loss of corporate responsibility as clearly regulated in Article 5.

This regulation not only regulates criminal liability carried out by corporations, but can also ensnare corporate groups, corporations in mergers, amalgamations, separations, and also in cases where corporations are in dissolution, criminal penalties are still imposed on corporations. Further corporate examinations are regulated in Article 9 in this case as follows:

(1) The summons to the corporation is addressed and delivered to the corporation at the address where the corporation is domiciled or the address where the corporation operates;

(2) In the event that the address as referred to in paragraph (1) is unknown, the summons shall be addressed to the corporation and delivered via the residential address of one of the directors;

(3) In the event that the place of residence or domicile of the administrator is unknown, the summons letter will be delivered through one of the print or

electronic mass media and posted at the announcement place in the court building that has the authority to try the case.

In the corporate summons letter, it contains at least in accordance with the provisions that have regulated it, namely in Article 10 of Perma No. 13 of 2013, where Article 11 states that the examination of a corporation as a suspect at the investigation level is represented by the management, investigators who conduct examinations of corporations represented by management, must have a valid summons letter, the management representing the corporation must be present in the examination of the corporation, but when in this case the corporation has been properly summoned and does not attend, refuses to attend or does not appoint another management to represent the corporation in the examination, then the investigator determines one of the management to represent the corporation by legally summoning him again accompanied by an order to the officer to take him by force. Article 12 states that the indictment is made in accordance with the Criminal Procedure Code (KUHAP) by referring to Article 143 paragraph (2) of the Criminal Procedure Code (KUHAP) by adjusting the indictment in Article 12 paragraph (2) of Perma No. 13 of 2016.

In the investigation process, the corporate administrator who represents the corporation is required to be present at the examination at the trial. If the appointed corporate administrator is not present due to temporary or permanent inability, the presiding judge will order the public prosecutor to present another administrator to represent the corporation as the defendant in the examination at the court hearing, when the person representing the corporation as the defendant has been summoned but cannot attend the examination without

clear reasons, then the chief judge of the trial will postpone and order the public prosecutor to bring back the representative corporate administrator, at the next trial, if the corporate administrator still does not attend the trial then the public prosecutor will force him to appear at the next trial.

Article 14 also explains that corporate information is a valid means of evidence where in the system of proof, criminal acts committed by corporations follow the Criminal Procedure Code (KUHAP) and the provisions of procedural law which are specifically regulated in other laws.

In terms of criminal and non-criminal decisions against corporations are made in accordance with the Criminal Procedure Code (KUHAP). Article 25 explains paragraph (1) that the judge imposes a criminal sentence on the corporation in the form of a principal sentence and/or additional sentences. (2) The principal sentence that can be imposed on the corporation as per paragraph (1) is a fine. And regarding additional sentences against the corporation, they can be imposed in accordance with the provisions of laws

and regulations. Regarding the corporation and its management being submitted together as defendants, the criminal and non-criminal decisions follow the provisions as per Article 24 and Article 25.

In terms of the implementation of the final decision carried out in accordance with the basis contained in Article 27 concerning the implementation of the decision, of course it must be accompanied by a court decision that has permanent legal force. Regarding the criminal fine imposed by the corporation, a period of 1 (one) month is given since the decision has permanent legal force to pay the fine and does not demand the possibility that if there is a strong reason, the period can be extended for 1 (one) month. However, if the convicted corporation cannot pay the fine in accordance with the intent of Article 27 paragraph (1) and (2), then the corporation's assets can be confiscated by the prosecutor and auctioned to pay the fine. Not much different for corporate administrators, a period of 1 (one) month is given since the decision has permanent legal force, if there is a strong reason for not being able to pay, it is extended for 1 (one) month, and if the fine is not paid in part or in full, then the administrator will be sentenced to imprisonment as a substitute for the fine which is calculated and considered in a balanced manner, and the substitute fine is carried out after the principal sentence ends.

4. Conclusion

Based on the analysis of the application of criminal law to corporations in money laundering cases, it can be concluded that Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes has expanded the scope of criminal liability. Initially, the provisions in Article 3, Article 4, and Article 5 only regulated sanctions for individuals, both as active and passive perpetrators in money laundering crimes. However, with Article 6 paragraph (1), the law also recognizes that corporations and their controllers can be subject to criminal sanctions. Sanctions that can be imposed on corporations in money laundering cases include a fine of up to IDR 100,000,000,000.00 and various additional penalties regulated in Article 7 paragraph (2), such as freezing of business, revocation of permits, and confiscation of assets for the state. On the other hand, for corporate controllers, the sanctions that can be imposed still refer to the provisions of Article 3, Article 4, and Article 5. In practice, corporations often act as passive perpetrators in money laundering, namely as recipients of funds from criminal acts, including corruption.

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