

The Juridical Analysis of Court Decisions on Money Laundering Deliches Committed by A Notary in Criminal Cases

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Abstract. *The purpose of this study is to determine the qualifications of money laundering offenses committed by notaries regulated in legislation and to understand the legal consequences of court decisions regarding money laundering offenses committed by notaries. This type of research is normative law research using a case study of the decision of the West Jakarta District Court Number 250/Pid.B/2022/PN JKBRT dated 16 August 2022 concerning money laundering in order to find out the progress of the judge's decision and the reasons used by the judge in decide the case. The results showed first, that the qualifications for money laundering offenses committed by notaries are regulated in Act No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes where the main offense is to hide or disguise the origin of sources, assets which he knows or reasonably suspects are proceeds of crime. The qualification for the offense of concealing or disguising the origins of the decision is not clearly described in the decision so that the Notary should not be entangled in the second money laundering case.*

Keywords: Forgery; Laundering; Notary.

1. Introduction

Notaries are public officials appointed by the Government to assist the general public in making agreements that exist or arise in the community. The need for these written agreements to be made before a notary is to ensure legal certainty for the parties making the agreement. Agreements are used in various business relationships, activities in the fields of banking, land, social activities, and others, the need for written evidence in the form of authentic deeds is increasing along with the increasing demand for legal certainty in various economic and social

relations, both at the national and international levels, national, regional and global. The notary's final product is an authentic deed.¹

As a public official who makes an authentic deed, the notary is responsible for the deed he made if in the future there is a dispute related to the deed. The responsibility of a notary in proving a criminal case at trial can occur when the deed becomes a problem so that it requires the notary to provide information and testimony relating to the formal and material aspects of the deed.²In notary practice, it is found that notaries are often caught in criminal cases. The cases can be interpreted as problems or issues that require resolution.³If there is a notarial deed that is disputed by the parties or other parties, then the notary is often withdrawn as a party that participated in committing or assisting in committing a crime, namely making or providing false information in a notary deed. This also creates confusion, is it possible that the notary intentionally (*culpa*) or made a mistake (*alpa*) together with the appearers/parties to make a deed that was intended from the start to commit a crime?⁴

Involvement of a Notary in a Criminal Act as stated in the decision of the West Jakarta District Court Number 250/Pid.B/2022/PN JKBRT dated 16 August 2022 stated that the Notary who became the accused was found guilty of jointly committing the crime of forging letters and money laundering with charges of Article 264 paragraph (1) of the Criminal Code Jo Article 55 paragraph (1) 1st of the Criminal Code and Article 3 of RI Law No. 8 of 2010 concerning the Crime of Money Laundering Jo. Article 55 paragraph (1) 1st Jo Article 5 paragraph 1 of the Criminal Code.

The analysis of the juridical considerations of the panel of judges in deciding whether money laundering by a notary is proven is interesting to study. Especially regarding the extent of the notary's involvement in money laundering committed by the appearers and whether the material actions of the notary fulfill the elements of the crime of money laundering.

¹Widyantoro, Lita Ardita Putri & Hafidz, Jawade, (2022), Juridical Analysis of the position of the notary deed that does not meet the subjective Elements as a condition for the validity of the agreement, 2022, Sultan Agung Islamic University Notary Law review, Vol . 4 no.3.<http://jurnal.unissula.ac.id/index.php/SANLaR/issue/view/715>. accessed on February 7, 2022 at 12.16.

²Gayo, Ahyar Ari, (2020), Notary (Supervision, Education and Criminal Action Perspective), Jakarta: Balitbangkumham Press. p. 6.

³Ambarwati, Dewi Lestuti, Differences in Civil Cases and Criminal Cases,<https://www.djkn.kemenkeu.go.id/kanwil-sumseljambibabel/baca-artikel/14057/Different-Perkara-Perdata-dengan-Perkara-Pidana>, accessed on February 11, 2023 at 17.40.

⁴Adjie, Habib, (2008), Indonesian Notary Law Thematic Interpretation of Law No. 30 of 2004 concerning the position of Notary, Bandung :PT. Aditama Refika. p.108.

From the problems mentioned above, the authors are interested in knowing the qualifications of money laundering offenses committed by notaries regulated in legislation and understanding the legal consequences of court decisions regarding money laundering offenses committed by notaries.

2. Research Methods

This type of research is normative law research using normative case studies in the form of legal behavior products. So that normative legal research focuses on an inventory of positive law, legal principles and doctrine, research that focuses on examining the decision of the West Jakarta District Court Number 250/Pid.B/2022/PN JKBRT dated 16 August 2022⁵ regarding money laundering in order to find out the progress of the judge's decision and the reasons used by the judge in deciding the case decide cases involving notaries in money laundering.

3. Results and Discussion

3.1. The qualifications of money laundering offenses committed by a notary are regulated in legislation

The position of Notary is held or his presence is desired by the rule of law with the intention of helping and serving the public who need authentic written evidence regarding circumstances, events or legal actions. However, at this time, authentic deed made by a notary often indicates a criminal act because in the process of making it, the notary does not carry out the precautionary principle in the process of making an authentic deed whether it contains elements of crime or not. This causes the notary to often be involved in criminal acts committed by his client because the notary does not apply the precautionary principle in further examining the subject and object documents brought by the parties in the process of making the deed.⁶

The qualifications for money laundering offenses committed by a notary are related to the duties and functions of a notary in Indonesia. Notaries in carrying out their duties are required to understand and understand the law in Indonesia completely and thoroughly and comply with the limitations set forth in the laws and regulations and the notary's code of ethics, as notaries are required to be honest, independent and impartial.⁷

⁵Kadir, Abdul, (2004), Law and Legal Research, Bandung: PT. Image Aditya Bakti. p. 52.

⁶Rasta, Grace Novika, (2015), "Legal Protection for Notaries to Maintain the Confidentiality of the Contents of the Deeds Made in Criminal Cases (Studies in Pematangsiantar)," Premise Law Journal Vol 7.

⁷Notodosoerjo, R.Soegondo, (1993), Notary Law in Indonesia An Explanation, Cet.2, Jakarta: Raja Grafindo Persada. p. 42.

In Court Decision Number: 250/Pid.B/2022/PN JKBRT on behalf of the convict Dr. Erwin Riduan, S.Sos., SH, M.Kn, the public prosecutor made an indictment in the form of a cumulative subsidiary charge, namely the first primary article 264 paragraph (1) of the Criminal Code in conjunction with 55 paragraph (1) to (1) of the Criminal Code, the first subsidiary article 263 paragraph (1) Jo Article 55 paragraph (1) 1st of the Criminal Code and Article 3 of Law RI 8 no.2010 concerning the Crime of Money Laundering Jo article 55 paragraph (1) 1st Jo Article 56 paragraph (1) of the Criminal Code. In the indictment it can be seen that the Public Prosecutor used the Article cumulatively against Notaries, namely participating in the crime of counterfeiting and participating in the crime of money laundering. The Public Prosecutor's indictment contains the inclusion offense which is combined between Article 55 and Article 56 of the Criminal Code.

According to Kelsen, law is a system of norms. Norms are statements that emphasize the "should" or *das sollen* aspects, by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain rules of a general nature serve as guidelines for individuals to behave in society, both in relationships with fellow individuals and in relations with society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.⁸According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules make individuals know what actions may or may not be carried out, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules individuals can know what the State may charge or do to individuals⁹.

Facts in court, the appearers in making the sale and purchase deed were not present before the notary, the notary also did not read the deed he had made before the parties and the signing of the parties was not carried out before the notary so that later the fact was revealed that those who signed the deed were not in accordance with the identity in the deed of sale and purchase, so that the construction of the indictment by the public prosecutor who charged the notary with the forgery article is correct.

The Public Prosecutor charged the Notary with money laundering based on the fact that the Notary had received IDR 2,500,000.- (two million five hundred thousand rupiah) from the plaintiff (Riri Khasmita) who was caught in the crime of counterfeiting and money laundering. The money is a notary's honorarium for

⁸Marzuki, Peter Mahmud Marzuki, (2008), Introduction to Law, Jakarta: Kencana. p. 158.

⁹Syahrani, Riduan, (1999), Summary of the Essence of Law, Bandung: Publisher Citra Aditya Bakti. p. 23.

the Sale and Purchase Deed he has made. Based on the Notary's honorarium rules, money worth IDR 2,500,000.- (two million five hundred thousand rupiah) is in compliance and does not violate the rules as stated in the Notary Office Act in Article 36 governing Honorarium.

The public prosecutor's demands were read out on August 2, 2022, in which in essence the public prosecutor had proven the notary's mistake in committing the crime of participating in counterfeiting and participating in money laundering. The charges do not describe in full or in detail the actions of the notary in the crime of money laundering, whether as the main actor, participating or assisting. This can be seen from the fact that the honorarium received was used as a basis for suing a Notary for money laundering. This is contrary to the rules or elements in money laundering that ensnare a Notary, namely Article 3 of Act No. 8 of 2010 concerning Money Laundering Crimes.

From these elements, it can be seen that the subjective element is every person or corporation and is "reasonably suspected" (which is the result of money laundering crimes). The objective element is placing, transferring, diverting, spending, paying, granting, depositing, bringing abroad, changing forms, exchanging with currency or securities or other actions on assets.¹⁰The subjective element in the form of "what he knows" in Article 3 of the Money Laundering Act indicates a form of error in the form of "intentional (dolus)" while the other subjective element in the form of "reasonably suspected" in Article 3 indicates a form of error in the form of "unintentional" or "negligent".¹¹

Based on the Elements of Delict Article 3 of the Money Laundering Crime Act, the actions of a Notary who only received an honorarium in making the deed and there were no facts in the trial which illustrated that the Notary knew that the money came from the criminal act of money laundering, then the demands of the public prosecutor demanding money laundering are not appropriate. This is in accordance with the opinion of Dr. Ahmad Sofian, SH, MA,¹²stating that the Notary who received a reasonable honorarium in this case the defendant received IDR 2,500,000.- (two million five hundred thousand rupiah) then it is not appropriate for the Notary to be charged with money laundering because the element of "reasonable suspicion" is not fulfilled.

Next Dr. Ahmad Sofian, SH, MA, revealed that the interpretation of what should be suspected of Article 3 is the lowest level of intentional which is commonly

¹⁰Sofian, Ahmad and Nadine, Jesica, (2022), Comparison of Indonesian and Malaysian Money Laundering Crimes, Jakarta: Kencana. p. 111.

¹¹Ibid

¹²Permanent lecturer at BINUS University Jury of Business Law, member of the expert panel of the Global Initiative Against Transnational Organized Crime. Interview 15 February 2022.

referred to as *Dolus eventualis*, namely intentional with possibility. The facts at trial did not show that the material actions of the defendant deliberately took part in or assisted the main actor, Riri Khasmita, in money laundering. The notary's material actions are only reflected in the crime of forging Authentic Deeds.

According to Yenti Garnasih, someone who is prosecuted for money laundering must disclose material actions in an attempt to hide or disguise the results of a predicate crime. In this case, there is no description of the actions of the notary disguising the results of the falsification of the deed of sale and purchase.

Fulfillment The element of offense which is commonly referred to as a crime or *Strafbaarfeit* means a crime committed on his own actions. Fulfillment of the elements of the offense is to create legal certainty as one of the goals of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and law enforcement of an action regardless of who is doing it. With legal certainty, everyone can estimate what will happen if they take legal action, certainty is needed to bring about justice. Certainty is one of the characteristics that cannot be separated from law, especially for written legal norms. Law without certainty value will lose meaning because it cannot be used as a guideline for behavior for everyone.¹³

Roeslan Saleh in his book entitled *Criminal Acts and Criminal Liability* states: "That criminal responsibility is something that is criminally accountable to someone who commits a criminal act or a criminal act."¹⁴ Habib Adjie in his book entitled *Jurnal Renvoi* states: "Criminal law is public law which prioritizes pressure from the public interest on society. According to the doctrine of the existence of a criminal liability, the conditions must be fulfilled, namely by looking at the existence of an act that can be punished by explicitly mentioning its elements based on the law which regulates that the act is contrary to the law which gave rise to a criminal crime, where one must be held accountable for causation rather than the deed."¹⁵

From the description above, the fulfillment of the elements or qualifications of a money laundering offense must be based on the elements of the crime of money laundering in the form of subjective and objective elements and the intention of the money laundering law makers, namely to hide or disguise the proceeds of the crime. In this case, the fulfillment of the elements of Article 3 of the Money Laundering Law involving a notary either as the main actor, participating or

¹³Kansil, Cst, (2009), *Dictionary of Legal Terms*, Jakarta: Gramedia Pustaka. p. 270.

¹⁴Saleh, Roeslan, (1990), *Criminal Acts and Criminal Liability*, Jakarta: New Script. p.80.

¹⁵Adjie, Habib, (2009), *Journal of Renvoi*, Bandung: CV. Mandar Maju. p. 31.

assisting must show the active material actions of the notary in disguising or hiding the proceeds of the crime of money laundering.

3.2. Legal consequences of court decisions regarding money laundering offenses committed by a notary

Based on the results of research on the decision of the West Jakarta District Court Number 250/Pid.B/2022/PN.Jkt.Br, an overview of the verdict is obtained as follows:

1. Stating that the defendant DR. ERWIN RIDUAN, S.Sos, SH.MKn, has been legally and convincingly proven guilty of committing the crime of "collectively participating in the forgery of authentic documents and money laundering";
2. Sentenced a sentence against the defendant DR. ERWIN RIDUAN, S.Sos, SH.MKn, therefore with imprisonment for 2 (two) years, a fine of IDR 1,000,000,000 (one billion rupiah) but if the fine is not paid then it is replaced with imprisonment for 1 (one billion rupiah). one month ;

Based on this decision, in the consideration of the Judge's decision it appears that the Panel of Judges did not explain the facts that strengthen the "reasonable suspicion" element of the Notary's actions when receiving IDR 2,500,000.- (two million and five hundred thousand rupiah) whether originating from the criminal act of money laundering by Riri Khasmita's appearer or from other sources.

The Panel of Judges proved the Notary defendant with Article 3 of the Money Laundering Crime Act where the qualification of the offense was the act of an active perpetrator of the crime of money laundering so that the role or material actions of the Notary in terms of being a perpetrator, participating in or assisting money laundering could not be described in the consideration of the decision.

This results in ambiguous or unclear criteria for a Notary who is ensnared in the Crime of Money Laundering. So far, perpetrators who receive money from the proceeds of crime, as long as the elements of "reasonably suspected" or "worth knowing" are met, fall into the criteria of passive perpetrators as stipulated in Article 5 of the Money Laundering Act.

According to Neil Jensen, as adapted by NHT Siahaan, money laundering is defined as the process of converting profits from illegal activities into financial assets and looks as if they were obtained from legal sources.¹⁶

¹⁶Sofian, Ahmad and Nadine, Jesica, (2022), Op.Cit., p.70.

According to money laundering law expert, Yenti Garnasih, the crime of money laundering consists of predicate offenses where the results of the predicate crime are carried out 'any act, such as being transferred, spending, gifting, exchanging and so on', which where this action is called money laundering. These two things are the main principles of money laundering, which consist of predicate offenses and acts of enjoying (using) the proceeds of crime.¹⁷

There are two types of perpetrators in money laundering crimes, namely:¹⁸

a. Active Perpetrators are for anyone who distributes the proceeds of crime such as a person who transfers spending, sending, changing forms, exchanging or doing anything for assets originating from crime and that person knows or at least should suspect that these assets originate from crime as regulated in Article 3 and Article 4.

b. Passive perpetrators are perpetrators who receive transfers, receive payments, receive gifts and others where he knows, or he should suspect or should suspect that what is received and others originate from the proceeds of crime. The actions of passive actors as referred to in Article 5 and for passive actors are only subject to one or a single threat, namely anti-money laundering provisions without predicate crime, but the person concerned knows or should reasonably suspect that the recipient or passive action is the proceeds of crime.

The legal consequences of a Notary who is prosecuted or proven to have committed a criminal act of money laundering is that a process of blocking, confiscation, confiscation of assets can be carried out and the notary is obliged to explain the origin of his assets, whether related to the case or not. As it is known that criminal sanctions for money laundering are imprisonment and fines, regarding unpaid fines, Article 8 of the Laundering Law regulates:

"In the event that the convict's assets are insufficient to pay the fine as referred to in Article 3, Article 4 and Article 5, the fine shall be replaced by imprisonment for a maximum of 1 (one) year and 4 (four) months."

The legal implications of a notary who is proven to have committed money laundering and did not pay a fine are then replaced with a long prison sentence based on the judge's decision, in this case the notary defendant Dr. Erwin Riduan was sentenced to a fine of IDR 1 billion in lieu of imprisonment for 1 month.

¹⁷Garnasih, Yenti, (2016), Law Enforcement of Anti-Money Laundering and its Problems in Indonesia, Jakarta: PT.Rajagrafindo. p.16.

¹⁸Ibid, p.35

Blocking of assets can also be carried out, which is regulated in Article 71 (1) Investigators, public prosecutors, or judges have the authority to order the Reporting Party to block assets. The blocking as referred to is carried out no later than 30 (thirty) working days and the blocked assets must remain with the relevant Reporting Party. However, in this case, assets are not blocked.

Suspects or defendants of money laundering are also required to provide information regarding the origin of their assets as stipulated in Article 72 of the Law on Laundering where the provisions of the laws and regulations governing bank secrecy and secrecy of other financial transactions do not apply. This is also regulated in Article 77 of the Money Laundering Law which regulates "For the purposes of an examination at a court hearing, the accused is required to prove that his assets are not the proceeds of a crime. Assets related to the case must also be proven by the defendant that these assets are not the proceeds of a crime as stipulated in Article 78 of the Money Laundering Law. In this case the defendant did not prove the acquisition of his assets because the Notary was only related to money in the amount of IDR 2,500.

Another legal consequence if a notary is charged with money laundering is that if there is property that has not been confiscated, the judge can order the prosecutor to confiscate it, as stipulated in Article 81 of the money laundering law, but in this case the confiscation was not carried out.

Not confiscating, blocking and disclosing information about the origin of the defendant's assets even though the defendant was prosecuted and sentenced under Article 3 which constitutes an active crime of laundering further shows that the decision regarding the money laundering delict was not correct.

The consequence of a decision against a Notary involved in money laundering is a decision that will create ambiguity or confusion which will make legal implications that are not light for a notary. In court, the judge's job is to maintain the legal order, to determine what is determined by law in a case. Thus, the main task is to receive, examine and adjudicate and resolve cases. The Judge's Decision is the "crown" as well as the "peak" reflecting the values of justice; ultimate truth; human rights; mastery of law or facts in an established, competent and factual manner, as well as a reflection of the ethics, mentality and morality of the judge concerned.¹⁹

4. Conclusion

¹⁹Mulyadi, Lilik, (2010), The Faces of a Judge's Decision in Indonesian Criminal Procedure Code, Bandung: PT Citra Aditya Bakti. p. 129.

The qualification of money laundering offenses committed by a notary is regulated in Act No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes where the main offense is aimed at hiding or disguising the origins of sources, assets which he knows or reasonably suspects are the proceeds of crime. The qualification for the offense of concealing or disguising the origins in the decision is not clearly described in the decision so that the Notary should not be entangled in the second money laundering case. The legal consequence of a notary who is prosecuted or proven to have committed a crime of money laundering is that a process of blocking, confiscation, confiscation of assets can be carried out and the notary is obliged to explain the origin of his assets, whether related to the case or not.

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