Corporate Criminal Liability in the Form of Asset Forfeiture in Law Enforcement of Money Laundering in Indonesia

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Abstract. Money laundering is a crime in the economic field. Money laundering is a process of disguising the origin of money obtained from an unlawful activity making it appear as if it came from legal or legitimate activities. In its development, money laundering is not only carried out by individuals but is carried out through corporations systematically, government efforts in returning assets resulting from money laundering in the form of seizure of assets belonging to corporations or corporate controlling personnel which are then used as corporate liability measures are considered to have not been effective and not optimal. The research method uses Sociology research with an empirical approach. The purpose of this study is to find out how corporate criminal law is accountable for law enforcement of money laundering in Indonesia. The results showed that money laundering can lead to criminal liability. Criminal liability to corporations is regulated in Article 6 and can apply sanctions as stipulated in Article 7 to Article 9 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The seizure of corporate assets and corporate controlling personnel has not been effective, so there is a need for a legal concept that does not only look at legal documents but must pay attention to legal compliance, justice, and benefits for the community. Realizing the three elements of law enforcement requires a progressive law that contains moral, philosophical, sociological, and juridical content, namely through criminal law policy in the form of a Criminal Asset Forfeiture Bill through the process of asset confiscation in breaks, which is a legal action against assets (property) itself, not against individuals (in personal).

Keywords: Criminal Money Laundering, Asset Forfeiture and Corporation.

1 Introduction

Money laundering is an important link in trying to hide the origin of crime. Money laundering is a crime in the economic sector that threatens economic stability and the integrity of the financial system, and can also endanger the lives of the community, nation, and state, based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The emergence of money laundering began in the United States in 1830, at that time many people bought companies with money from crime (hot money) such as gambling, selling narcotics, illegal liquor, and prostitution. But the term money laundering only appeared when Al Capone, one of the other mafia committed acts of hiding the proceeds of crime (gambling, prostitution, extortion, and

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illicit sale of liquor). To fool the government, the mafia set up a laundry company (laundromat), to mix the proceeds of their crime so as not to be suspected of being involved. This is the beginning of the inspiration that eventually gave birth to the term money laundering.[1]

United Nations Convention Against Transnational Organized Crime in 2000 which is often named the Palermo Convention, Money Laundering is an international crime that agreed to be fought. The international movement to criminalize money laundering was carried out by the United Nations (UN) through the Vienna Convention (1988) born The International Convention Against Transnational Organized Crime popularly called the Palerno Convention to combat money laundering proceeds of crime. The Palermo Convention obliges every ratifying State to do the following: "criminalize money laundering and include all serious crimes as predicate crimes of money laundering, create regulatory bodies to prosecute and detect all forms of money laundering, establish cooperation and exchange of information among administrative, regulatory, law enforcement and other authorities and promote cooperation internationally."[2]

According to Ivan Yustiavandana, Arman Nephi and Adiwarman stated: "The resolution of The International Convention Against Transnational Organized Crime was made by the United Nations because it realizes the magnitude of the threat of danger to countries in the world. The essence of the substance of the Palermo Convention is to abolish all UN member states, and criminalise all crimes that constitute money laundering crimes". Money laundering is a crime in the economic sector, in its development, the perpetrators are not only carried out by individuals but also by legal entities or corporations involved in it.

Corporate issues as legal subjects in law enforcement traffic are considered new, so they will be complicated when associated with criminal acts. The inclusion of legal entities as legal subjects that can be held criminally liable has an impact on business behaviour patterns, not only for natives but also for foreign investors who invest in Indonesia.[3] The crime of money laundering committed by a corporation is a crime that involves the company as the perpetrator. It is organized, because the perpetrators are not alone, therefore it is necessary to take very serious handling. Crime by the corporation itself is a crime or criminal act committed by a corporation through its management intermediaries who act for and or on behalf of the corporation. The peculiarity of corporate crime is that it is committed by the corporation or its agents (managers, employees, or owners) against members of society, the environment, creditors, investors or rivals. The harm caused by corporate crime is greater than the harm in individual crime.[4]

The problem of law enforcement against money laundering (TPPU) is not a legal problem against criminal acts alone, but also a problem that is directly related and has an impact on national financial and banking problems, including national investor problems. Law enforcement of money laundering has a significant effect on the condition of the national economy in Indonesia which until now is unstable and fluctuating.[5] The government doing the prevention and eradication of the money laundering criminal act that has been done by corporations, based on Legislation Number 8 of 2010 about The Prevention and Eradication of Criminal Acts in Money Laundering. This legislation gives justice regarding legal subjects in criminal acts of money laundering as arranged in Article 1 Number 9 states that: "Every person whether individual or corporation".

The arrangement of Article 1 Number 9 above, a corporation is a legal subject that is considered equal to an individual. Corporation that does criminal acts in money laundering, can be accounted as arranged in Article 6 until 9 of Legislation Number 8 of 2010 about The Prevention and Eradication Criminal Acts in Money Laundering. The corporation's legal liability toward criminal acts in money laundering based on Article 6 verse (1), can be held accountable to Corporation and/or Corporation Control Personnel. Both administrator and corporation can be held accountable as legal subjects in criminal acts in money laundering, but the problem is that the legal liability execution, which is contained in Article 7 verse (1) of Legislation Number 8 of 2010 about The Precaution and Eradication Criminal of Acts in Money Laundering stated that: "The main punishment that imposed on Corporation is paying a fine for the amount of Rp. 100.000.000.000,00 (one-hundred billion rupiahs) in max".

Corporations as legal subjects regarding imposing of fine punishment are also arranged in Article 10 alphabet 'a', number 4 of Criminal Legal Legislation as main punishment, also can be imposed with extra punishment, for example, freezing the account and revoking permits. In determining the punishment, it is equal for the corporation and each of the individuals, then a single fine punishment for a corporation can be multiple up to three times to each of those individuals. The application of fine punishment in money laundering criminal act has been arranged if the corporation cannot pay the fine, then all of their or the corporation administrator's assets will be taken, as arranged in Article 7 verse (1), the corporation that cannot pay the punishment fine that has been given, then based on Article 9 of Legislations Number 8 of 2010 About The Prevention and Eradication criminal of acts in Money Laundering, stating that:

(1) In the term of a Corporation that cannot pay the punishment fine as stated in Article 7 verse, then the fine punishment is replaced with the confiscation of Assets that belong to the Corporation or Corporation Control Personnel whose value is equal to the punishment fine that has been given.

(2) In terms of Corporation assets confiscation refer to verse (1) that has been sold still not enough, then imprisonment punishment to substitute fine payment will be imposed on Corporation Control Personnel by calculating the fines that have been paid.

The policy of Article 9 verse (1) above, regarding the confiscation of corporation and/or personnel control corporation assets, if they cannot pay the primary fine, then it will be replaced with the confiscation of corporation or corporation control personnel assets. However, the application of the liability system of corporation crime over offence or punishment for crime toward the related corporation with the criminal of acts money laundry is still can be found in several problems. According to Eddy O.S, Hiariej, the several problems in proving the corporation's responsibilities are:[6]

1. Determining whether or not criminal acts done by a corporation cannot be analyzed with a regular perspective like criminal acts in general, because corporate crime is often part of white-collar crime
2. Determining the legal subject which is criminally responsible is related to the offence by the corporation.

3. Determining the offenses (schuld, mens rea) from the corporation is not easy, because there is a very complex connection in organized crime between the director board, executive, and manager on one side and primary corporation, corporation division, and company branch on the other side.

Those problems above, relate to the investigation and returning assets that got from money laundering become problematic in its execution. The unorganized implication of crime criteria is the responsibility of the corporation or corporation administrator itself toward law enforcement practice. According to Hanafi Amrani and Mahrus Ali, the absence of arrangement about those criteria implicated three things:[7]

1) The judges or public prosecutor can just make the corporation administrator suspect and criminally responsible which happens although legal facts which are revealed in the court show that the main actor of that crime is the corporation themselves.

2) Even the threat of serious crime which existed at the beginning of legislation creation aimed at corporations will not mean anything if the responsible correspondent suspect only be limited to the administrator.

3) The absence of those criteria can become a main criminogenic growing factor in the quantity and quality of corporation crimes. This means, with cost and benefit calculation (cost and benefit principle), the corporation may be committing crimes because in the future, the crimes will be reported by someone to legal enforcement, and the case processed, until the court day. Whereas the benefit that has been obtained by corporations on one side and the great loss that has been experienced by society and nation.

The crime responsibility toward the corporation or corporation administrator above relates to money laundering, it's still not quite effective, this is because there is a problem in the proof system that is still based on crime legal that needs to be proven first. The struggle of proof toward corporation or corporation control personnel to be submitted as a defendant in the court and checked, examined, and decided by a judge then executed by law enforcement authorities. The convicted corporation or the members of the corporation administrator if they cannot pay the fine, it's still cannot be punished or executed. There was a case that was free from assets confiscation of property that has been confiscated because the judge freed the defendant from all charges because they were no longer alive.

Those problems affected the money laundry crimes implementation by the corporation or corporation administrator. Therefore, the implementation cannot be optimally executed and the confiscation of assets from money laundry cannot be fully executed. This affected the realization of returning national assets from the Money Laundry Act to convicted corporations and corporation administrators. The construction of the legal system in Indonesia is still not being comprehensively arranged and details about the execution of confiscation of nation assets from money laundry toward corporation and corporation control personnel. This needs strong legal construction about the confiscation of money laundry assets to realize the return of national assets and to secure legal certainty, law enforcement optimization that always follows the values of justice by not violating individual rights and also the establishment of justice and prosperity for all people. Based on the introduction, the title of this thesis will be

"Corporate Criminal Liability in the Form of Asset Forfeiture in Law Enforcement of Money Laundering in Indonesia".

2 Method

This is sociological legal research, and uses a descriptive empirical approach.

3 Result and Discussion

3.1 Terminology and legal relevance of the crime of money laundering

The term criminal act is a translation from "strafbar feit", in the Criminal Legislation Code, it definition of straafbaar cannot be explained. Usually, crime is synonymized with the offence, which originally came from the Dutch language- Delict. In the Dutch-Indonesia dictionary, Delik means Delic't (offense).[8] According to Andi Hamzah, money laundry criminal acts are considered as delik in economic (economic crimes) but the scope is broader than economic delik in Legislation Number 7 (drt) of 1995 about Economic Crime. Delik in economic (economic crimes) involves such as "delik smuggling or smoke, delik in custom fraud, delik in banking crime, delik in commercial crime, delik in money laundering, delik capital market, delik financial service, delik in brand counterfeiting, delik environment, also delik in Fisheries Legislation, Indonesia Exclusive Economic Zone Legislation, Forestry Legislation, Plantation Legislation, etc".[9]

Money laundry crime is a criminal act in the economic field. Money laundry involves a very complex activity, which is done through three steps-placement, layering, and integration. This act is done by criminal perpetrators by using the corporation media including integration ways that use legitimate business conversion methods which can be considered as a money laundry crime, then for the perpetrators, their partners, and the corporation or corporation administrator or the place for them to do their activity which aim to hide the asset origin into business activity which will make legal money from their activity.

According to Sutan Remy Sjaahdeini stated that: "Pencucian uang or in English is called money laundering, etymologically, money laundering consists of words money and laundering. So, the meaning of money laundering in Indonesia in "pencucian uang".[10] The definition of money laundering based on Article 1 number 1 of Legislation Number 8 of 2010 About The Precaution and Eradication of Money Laundering Crimes, is "money laundering is a criminal act that based on this Legislation". The elements that consist of crime on legislation Number 8 of 2010 About The Prevention and Eradication of Criminal Acts Money Laundering, the elements are such as suspicious money transactions, violating authority by placing, transferring, distracting, spending, paying, giving, entrusting, taking to another country, form changing, exchange for currency or marketable securities or other acts over discovered or expected assets that is from a criminal act.

A money laundering crime can be responsible and criminally liable. It is shown in two things, such as objectively, the acts that are done by an individual or corporation, and subjectively, the person who doing those acts will be considered guilty. Then whether it is objectively on the act done by the corporation or administrator personnel that hide their crime or criminal act origin, the element of responsibility is being full, while from a subjective perspective based on

Legislation Number 8 of 2010 About The Precaution and Eradication of Money Laundry Crime, corporation as a legal subject considered as equal to every individual based on Article 6 and can apply sanction as it arranged in Article 7 until 9 of Legislation Number 8 of 2010 About The Precaution and Eradication of Money Laundry Act.

3.2 Asset Forfeiture in Law Enforcement of Money Laundering in Indonesia

According to Yunus Husein, asset confiscation or forfeiture asset is "taking assets or property by force that has been done by the government is believed to have a strong connection with the criminal act".[11] According to How Crime Pays referred to in Yunus Husein, there are methods of asset forfeiture that develop in common law nations, especially the United States of America, which is "criminal forfeiture, administrative forfeiture, and civil forfeiture.

Criminal forfeiture is an asset confiscation done through crime justice, so the asset confiscation has been done simultaneously with the proof that the defendant truly doing a criminal act. Administrative forfeiture is an asset confiscation mechanism that allows the nation to do an asset confiscation without involving a juridical institution. Civil forfeiture is asset confiscation that places a lawsuit to the asset but not on the perpetrator criminal, so it can be seized although the crime justice process toward the perpetrator has not yet finished. According to Sudarto, he stated that: "Civil forfeiture, if compared with criminal forfeiture, does not need a lot of requirements and because it's better on the application and gives benefit to the nation".[12] According to Mardjono Reksodiputro referred in David Fredrik Albert Porajow, the confiscation of assets can be done in three ways, such as:

a. The crime forfeiture. It is commonly known as a form of confiscation of certain assets and if those assets become tools used by the respondent to do a criminal act, then with a criminal verdict supported by permanent law, the assets will be seized for the nation.

b. The administrative forfeiture. This is contraband confiscation, in which is (the government) is given the right by legislation to immediately seize certain material without any trial. For example, the Customs Act and customs.

c. The civil forfeiture. In the past, it was known as unclaimed material confiscation because of war, as well as confiscation of material without the owner (weiskamer).

The confiscation of assets of corporations and corporation control personnel does not yet run effectively, causing a lack of effectiveness in returning national assets from money laundry crime, so it needs legal concept which not only from legislation texts but also paying attention to a certain law, justice, and benefit for society. To fulfil three elements of law enforcement, it needs a progressive law that contains morals, philosophy, sociology, and juridic such as through criminal law policy in the form of Legislation Draft for Asset Confiscation through confiscation the assets in rem is a legal act to fight the asset (property) itself, not the individual (in personam). The Non-Conviction Based Asset Forfeiture is a separate legal law in processing every crime and needs proof that a certain asset (property) has been corrupted by criminal acts. The fundamental connections with asset recovery such: determining what asset must be held accountable to do a confiscation and determining the basis of an asset confiscation. The process does not need much time to be finished or involve criminal court powered with permanent legal.

Polda Metro Jaya Reserve Directorate for Special Crime in doing law enforcement is bound with other parties in processing criminal acts of money laundering. The law enforcement in doing confiscation on corporation and personnel control corporation assets does not optimally go well, and one of the factors is from the legal itself, which is Legislation Number 8 of 2010 about Prevention of Eradication of the Crime of Money Laundering, Supreme Court Regulation Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling Assets in the Crime of Money Laundering or Other Crimes, and Court Regulations Agung Number 13 of 2016 about Procedures for Handling Criminal Cases by Corporations are still not effective, due to the confiscation of assets of corporation controlling personnel as perpetrators of money laundering crimes are still loose and the return of nation assets is not being fulfilled and there is no sense of justice for the law itself.

4 Conclusion

Money Laundering crime can cause criminal liability. It addressed the corporation and has already been arranged in Article 6 that sanction can be applied as it arranged in Article 7 until 9 of Legislation Number 8 of 2010 about Prevention and Eradication of Money Laundering Criminal Act. The corporation and corporation control personnel assets confiscation still does not go effectively so it needs a legal concept that only focuses on the legal document but also pays attention to legal certainty, justice, and benefit for society. To Fulfilling those three elements of law enforcement, progressive legal is needed that contains morals, philosophy, sociology, and juridic which is through legal crime policy in the form of Legal Draft for Criminal Assets Confiscation through seizing assets in rem, which is a legal act to oppose the assets itself, not aimed the individual (in personam).

References

[1] M. Fuady, *Hukum Perbankan Modern*. Bandung: Citra Aditya Bakti, 2001.

[2] I. Yustiavandana, A. Nefi, and Adiwarman, *Tindak Pidana Pencucian Uang di Pasar Modal*. Bogor: Ghalia Indonesia, 2010.

[3] Muntaha, *Kapita Selekta Perkembangan Hukum Pidana di Indonesia*. Jakarta: Prenada Media, 2018.

[4] M. Ali and B. A. Pramono, *Perdagangan Orang: Dimensi, Instrumen Internasional, dan Pengaturannya di Indonesia*. Bandung: Citra Aditya Bakti, 2011.

[5] R. Atmasasmita, *Sistem Peradilan Pidana kontemporer*. Jakarta: Kencana, 2010.

[6] E. O. S. Hiariej, *Prinsip-prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka, 2014.

[7] H. Amrani and M. Ali, *Sistem Pertanggungjawaban Pidana : Perkembangan dan Penerapan*. Jakarta: Rajawali Pers, 2015.

[8] S. Wojowasito, *Kamus Umum Belanda-Indonesia*. Jakarta: Ichtiar Baru Van Hoeve, 2003.

[9] A. Hamzah, *Kejahatan di Bidang Ekonomi Economic Crimes*. Jakarta: Sinar Grafika, 2017.

[10] Sutan Remy Sjahdeini, *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*. Jakarta: Pustaka Utama Grafiti, 2007.

[11] Y. Husein, "Penjelasan Hukum tentang Perampasan Aset Tanpa Pemidanaan dalam Perkara Tindak Pidana Korupsi," *Pus. Stud. Huk. dan Kebijak. Indones.*, pp. 1–104, 2019, [Online]. Available: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://pshk.or.id/wp-content/uploads/2019/04/Restatement_Perampasan-Aset-Tanpa-Pemidanaan_2019.pdf

[12] Sudarto, H. Purwadi, and Hartiwiningsih, "Mekanisme Perampasan Aset Dengan Menggunakan Non-Conviction Based Asset Forfeiture Sebagai Upaya Pengembalian Kerugian Negara Akibat

Tindak Pidana Korupsi," *J. Pasca Sarj. Huk. UNS*, vol. 5, no. 1, pp. 109–118, 2017, doi: 10.20961/hpe.v5i1.18352.