APPLICATION OF THE LAW ON THE CRIME OF MONEY LAUNDERING AGAINST PERPETRATORS OF CRIME OBTAINED FROM THE PROCEEDS OF CORRUPTION

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Abstract

The act of money laundering is very dangerous both at the national and international levels because money laundering is a means for criminals to legalize the proceeds of crime in order to eliminate traces. In addition, the nominal amount of money laundered is usually extraordinary, so it can affect national and even global financial balance sheets. The nature of the research used is normative legal research and the data collection method used in this research is secondary data obtained through library research, namely by conducting research on various literatures such as books, laws, which aim to find conceptions, or understandings related to the problem of applying the law of money laundering against criminals obtained from corruption. The crime of corruption is one part of special criminal law in addition to having certain specifications that are different from general criminal law, such as the existence of procedural law deviations and when viewed from the material regulated, the crime of corruption is directly or indirectly intended to minimize leakage and irregularities in the state's finances and economy. The application of the law on money laundering to the eradication of corruption aims to find out how to put the results of evidence on the case being examined, by what means the evidence is used and by what means the judge must form his belief before the court. In essence, in order to apply evidence or the law of evidence, the judge then starts from the evidentiary system with the aim of knowing how to put an evidentiary result on the case being tried.

Keywords: **Application of Law, Money Laundering, Corruption Crimes.**

INTRODUCTION

That the Republic of Indonesia is a state of law based on Pancasila and the 1945 Constitution, which upholds human rights and which guarantees the rights of citizens to be equal before the law and government, and must uphold the law and government with no exceptions. A State of law, according to Sri Soemantri, must fulfill several elements. (Soeparmono, 2003). Advances in information technology and financial globalization have led to the globalization of trade in goods and services and the financial flows that follow. This progress does not always have a positive impact on a country, because sometimes it becomes a "fertile" means for the development of crime, especially white collar crime. White-collar crime has developed to a trans-national level that no longer recognizes the territorial boundaries of the state. The form of crime is increasingly sophisticated and neatly organized, making it difficult to detect. Criminals always try to save the proceeds of crime through various ways, one of which is by committing money laundering (Money loundering). In this way they try to wash something that is obtained illegally into a form that looks legal. With this money laundering, criminals can hide the true origin of funds or money from crimes committed freely appearing as the result of a legal activity. Corruption is an integral part of the history of human development and is one of the oldest types of crime and is one of the diseases of society, similar to other types of crime such as theft that have existed since humans have been on this earth. The main problem is that corruption increases with prosperity and technological progress. Experience shows that the more advanced the development of a nation, the more the needs of life increase and one of the impacts can encourage people to commit crimes, including corruption.(Djoko Sumaryanto, 2009).

There are at least three motivations why criminals launder the proceeds of their crimes, namely the fear that the perpetrators will face tax officials, prosecution by law enforcement

officials, and the fear that the proceeds of crime will be confiscated. On a macro scale, money laundering crimes can create financial system instability, economic distortions, possible disruption of the control of the amount of money in circulation, and can lead to a decline in government stability. In general, money laundering crimes provide lubricating oil to the wheels of financial crime which in turn will harm the wider community. These crimes have galvanized policymakers at national, regional and global levels. They blame crime cartels, tax havens and money laundering techniques such as cyberlaundering. Governments of every country are urged to create anti-money laundering legislation. (Gabriel Mahal, 2004). In Indonesia, the proceeds of crime are mainly obtained from corruption, so it can be said that the dominant core crime in money laundering is corruption. This is because corruption is not a foreign crime that often occurs in Indonesia. As a result, the country's finances and economy suffer losses of up to tens of trillions of rupiah per year. One of the spirit of the enactment of Law No. 15 of 2002 as amended by Law No. 25 of 2003 on the Crime of Money Laundering is to make it more difficult for corruptors to hide the proceeds of their crimes. Thus, in the long run, it is hoped that the crime of corruption can be reduced to blame or not and about the imposition of certain penalties on him. (Djoko Prakoso, 2009)

METHOD

The nature of the research used is descriptive, which is to provide data that is as accurate as possible about humans, conditions or other symptoms which aims to obtain data about the relationship between one symptom and another. The type of research used is normative legal research, namely research that refers to legal norms contained in laws and regulations, literature, legal norms that exist in society and the data obtained is then analyzed to answer the problems in this study. The data collection method used in this research is secondary data obtained through library research, namely by conducting research on various literatures such as books, laws, scholars' opinions, lecture materials, as well as materials obtained through the internet, which aims to find conceptions, theories, or understandings related to legal issues regarding the application of the law of money laundering against criminals obtained from corruption.Jenis data yang di gunakan adalah data sekunder yaitu data yang diperoleh dari dokumen-dokumen resmi, buku-buku yang berhubungan dengan penerapan hukum tindak pidana pencucian uang terhadap pelaku kejahatan yang diperoleh dari hasil korupsi. Serta permasalahan-permasalahan yang menjadi objek peneliti, yang terdiri dari : Primary Legal Materials, Legal materials consisting of the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), the Criminal Procedure Code (KUHAP), Law Number 25 of 2003 concerning the Crime of Money Laundering, Law Number 31 of 1999 concerning the Eradication of Corruption, Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption, Law Number 30 of 2002, concerning the Corruption Eradication Commission, hereinafter the Corruption Eradication Commission. Secondary Legal Materials, Legal materials consisting of materials that provide explanations of primary legal materials, such as seminar results or consisting of books, scientific writings, internet and literature studies, even personal documents or opinions from legal experts as long as they are in accordance with the object of this research.

The primary and secondary data obtained are then analyzed qualitatively to answer this problem, namely by what is obtained from research to be described which is then studied thoroughly and thoroughly to obtain answers to problems so that it becomes a form of material that can be used in this study.

RESULTS AND DISCUSSION

A. Modus Operandi of Money Laundering Conducted to Conceal the Proceeds of Corruption

1. History of Money Lundering Crime

The act of money laundering is generally defined as a process carried out to change the results of crimes such as the results of corruption, narcotics crimes, gambling, smuggling, and other serious crimes, so that the results of these crimes appear to be the results of legitimate activities because their origins have been disguised or hidden. In principle, money

laundering is an act committed to disguise or hide the proceeds of crime so that they are not smelled by the authorities, and the proceeds of crime can be used safely as if they were sourced from legitimate activities.

The act of money laundering is very dangerous both at the national and international levels because money laundering is a means for criminals to legalize the proceeds of crime in order to eliminate traces. In addition, the nominal amount of money laundered is usually extraordinary, so that it can affect the national and even global financial balance, and this crime according to R. Bosworth Davies as quoted by AM. Mujahidin. (AM. Mujahidin, 2000). Money laundering is a category of crime, first recognized in the United States in the 1930s. The term "money laundering" was first applied to the actions of the mafia who used the proceeds of crime from extortion, illegal sale of liquor and gambling and prostitution, to buy laundromats. These purchases were aimed at mixing the proceeds of crime with clean business, to disguise them. Al Capone did this in the 1930s, which at the time was only considered tax evasion. It wasn't until 1986 in the US that money laundering became a criminal offense which was then followed by various countries.(Yenti Garnasih, 2006)

This law does not define what is meant by money laundering, only in the explanation it is stated that efforts to hide or disguise the origin of assets obtained from criminal acts as referred to in this law are known as money laundering. In contrast to Law No. 15 of 2002 concerning the Crime of Money Laundering, the amendment to this law which is regulated in Law No. 25 of 2003 concerning Amendments to Law No. 15 of 2002 concerning the Crime of Money Laundering provides a definition of money laundering, namely the act of placing, transferring, paying, spending, granting, donating, entrusting, bringing out of the country, exchanging or other actions on assets that are known or suspected to be the proceeds of criminal acts with the intention to hide, or disguise the origin of the assets so that they appear to be legitimate assets.

2. Regulation of Corruption Crime in Indonesia

The crime of corruption is one part of special criminal law in addition to having certain specifications that are different from general criminal law, such as the existence of procedural law deviations and when viewed from the material regulated, the crime of corruption is directly or indirectly intended to minimize leakage and irregularities in the state's finances and economy. With reference to this aspect, the regulations on corruption have undergone many changes, revoked and replaced with new regulations. This is understandable because on the one hand, the development of society is so fast and the modus operandi of corruption is increasingly sophisticated and varied, while on the other hand, the development of the law (law in book) is relatively lagging behind the development of society. According to Andi Hamzah, the history of Corruption Criminal Law in Indonesia is divided into: Corruption offenses in the Criminal Code, Regulation on the Eradication of Corruption of War Rulers (Army and Navy), Law Number 24 (PRP) 1960 concerning Corruption, Law Number 3 of 1971 concerning the Eradication of Corruption. (Andi Hamzah, 1991)

With the amendment of Law No. 31 of 1999 by Law No. 20 of 2001 which was then followed by Law No. 30 of 2002, it is hoped that it will be able to better meet and anticipate the development of the legal needs of society in order to prevent and effectively eradicate every form of criminal act of corruption which is very detrimental to state finances or the state economy in particular and society in general. (R. Wiyono, 2005)

B. Application of the Law on Money Laundering Against the Wealth of Criminals Obtained from the Proceeds of Corruption

1. Implementation of the Evidence System in Handling Money Laundering Crime in Crimes Obtained from the Proceeds of Corruption

The application of the burden system in proving punishment in corruption cases is broadly defined as a process of giving or imposing punishment by a judge, so it can be said

that the punishment system includes all statutory provisions that regulate how criminal law is enforced, or operationalized in concrete terms, so that someone is sentenced or punished.

The basis of corruption is systemic, organized, transnational and multidimensional in the sense that it correlates with systemic, juridical, sociological, cultural, economic aspects between countries and so on. Therefore, the crime of corruption can not only be seen from the perspective of criminal law, but can be studied from other dimensions, such as the perspective of legal policy (law making policy and law enforcement policy), human rights and state administrative law. At first glance, specifically from the perspective of State Administrative Law, there is a close correlation between the crime of corruption and legislation products that are Administrative Penal Law. In the context of Criminal Law, the term Administrative Penal Law is all legislative products in the form of legislation (within the scope) of State Administration that have criminal sanctions. Not all Administrative Penal Laws are corruption crimes, and to determine them as corruption crimes must refer to the provisions of Article 14 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes which stipulates "Every person who violates the provisions of the Law which expressly states that violation of the provisions of the Law is a corruption crime, the provisions stipulated in this law shall apply".

2. Problems arising from the implementation of the system for combating money laundering.

Legislation in Indonesia until now does not have a "national punishment system" which includes "punishment patterns" and "punishment guidelines". "Pattern of punishment", which is a reference/guideline for lawmakers in making/formulating laws and regulations that contain criminal sanctions. The term pattern of punishment is often also called "legislative guidelines" or "formulative guidelines". Meanwhile, "sentencing guidelines" are guidelines for the imposition/application of punishment for judges (judicial guidelines/applicative guidelines). There is already Law No. 10/2004 on the Formation of Laws and Regulations, but the substance of this law is more about the principles, process/procedure of preparation, discussion, technical preparation and enactment. This law does not mention "punishment" at all, at least matters relating to the type of punishment (strafsoort), the criteria for the minimum length of punishment (strafmaat) and the method of execution of punishment (strafmodus).

Although Indonesia does not yet have a "pattern of punishment" related to qualitative and quantitative criteria for determining special minimum punishment, if we realize that the effectiveness of law enforcement is based on the quality of legislative policy products, then looking at the development of criminal doctrine and/or conducting comparative studies on several criminal laws of other countries, which have regulated it, is one solution.

CLOSING

Conclusion

The modus operandi of money laundering carried out to hide the proceeds of corruption is often found to be misunderstood or even not understood by law enforcement officials, including judicial bodies as the final pillar of the law, namely the element of abuse of authority is assessed based on propriety through the principle of material wederrechtelijkheid which in principle is a very alarming mistake. The application of the law of money laundering against the wealth of criminals obtained from the proceeds of corruption needs to be imposed on the perpetrators of corruption as a legal policy in accordance with the provisions of the applicable law. So that the public understands and considers the verdict as fair as possible. Law is strictly separated from morals and justice is not based on good or bad. The principle of guilt is the principle applied in criminal liability, meaning that punishment is only imposed on those who have actually committed guilt in a criminal act.

To the government and all law enforcers in the territory of Indonesia, please act more firmly and optimize their authority in following up and eradicating perpetrators of corruption, which can damage various interests concerning human rights, state ideology, economy / state finances,

national morals. It is necessary to increase the number of law enforcers with broad legal insight, law enforcers who dare to clash with power. Law enforcers should not only be brave to perpetrators who are already weak in power, former officials, or businessmen who do not have strong power back up, so that it does not seem like selective corruption perpetrators are brought to justice. So that the perpetrators of corruption are sentenced to the severest punishment to the perpetrators of corruption in this beloved Unitary State of the Republic of Indonesia.

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