

Imposition of Criminal Sanctions on Corporations and/or Corporate Control Personnel Who Commit Money Laundering Crimes

Boy Nurdin, Dwi Asmoro

Universitas Borobudur, Indonesia

Email : drboynurdin_ppslaw@yahoo.com, dwias1996@gmail.com

KEYWORDS

corporation; corporate control personnel; money laundering crime

ABSTRACT

This research purpose is to describe law enforcement arrangements for corporations and/or corporate control personnel for money laundering crimes. The author uses a normative juridical approach, using primary and secondary data. Data analysis uses qualitative analysis. In Indonesia, legal regulations regarding the prevention and eradication of money laundering crimes were initially regulated in Law Number 15 of 2002 concerning the Crime of Money Laundering (UUTPPU) which was later revised into Law Number 25 of 2003 and subsequently revoked and replaced by Law- Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. The results show that perpetrators of money laundering crimes are subject to sanctions based on Articles 6, 7, 8, 9, and 10 of Law Number 8 of 2010 concerning Money Laundering Crimes. Apart from that, to anticipate the occurrence of money laundering criminal attempts in Indonesia by postponing transactions with assets suspected to originate from criminal acts. Blocking of assets known to originate from criminal acts, and Temporary suspension of transactions related to money laundering crimes.

Attribution-ShareAlike 4.0 International (CC BY-SA 4.0)



1. Introduction

Recently, the Indonesian people have felt angry with the findings from BNN regarding the crime of money laundering worth 15 billion Rupiah, originating from narcotics crimes and carried out by former narcotics convicts (Mahardhika, 2023). Not to mention other assets that were not reported to the state, as well as deposit boxes found in other people's names, allegedly to avoid government suspicion, with truly fantastic values, such as the case of Rafael Alun, and other criminal acts of money laundering such as those committed by the former Head of the Agency. National Land Agency (BPN) which often flexes a luxurious lifestyle in the city of Makassar (Lestari, 2023).

There are various formulations related to the meaning of money laundering or the crime of money laundering the formulation involves a process of laundering money obtained from crime and laundered through a financial institution (bank) or financial service provider so that the illicit money gets an appearance as legitimate or halal money.(Eleanora, 2011)

The crime of money laundering is an organized crime, which requires special efforts to overcome it, both at the national and international levels.[3] The consequences of the criminal practice of money laundering will damage the country's economic system and even have a negative impact on the country. For this reason, efforts to prevent and eradicate the crime of money laundering require a strong legal basis to guarantee legal certainty, especially during the pandemic and even after the COVID-19 pandemic. Efforts to restore the national economy by the government through serious planning may be hampered by perpetrators of money laundering crimes (Nelwan, 2023). This implementation can be carried out by mutually strengthening and collaborating between the anti-money laundering regimes that have been established.(Andrikasmi, 2022)

In Indonesia, legal regulations regarding the prevention and eradication of money laundering crimes were initially regulated in Law Number 15 of 2002 concerning the Crime of Money Laundering (UUTPPU) which was later revised into Law Number 25 of 2003 and subsequently revoked and replaced by Law- Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, which is anti-money laundering in Indonesia. In this law, there is an institution that acts as financial intelligence, namely the Financial Transaction Reports and Analysis Center (PPATK). The duties, functions, and authority of PPATK are contained in Article 39, namely that PPATK has the task of preventing and eradicating criminal acts of money laundering. Then in Article 40, it is explained that to carry out the tasks referred to in Article 39, PPATK has the following functions: a. prevention and eradication of money laundering crimes; b. management of data and information obtained by PPATK; c. supervision of the reporting party's compliance; and d. analysis or examination of financial transaction reports and information that indicate criminal acts of money laundering and/or other criminal acts as intended in Article 2 paragraph (Fadhli, 2018).

Nowadays, corporations play an increasingly important role in people's lives, especially in the economic sector. The doubts in the past about placing corporations as subjects of criminal law that could commit criminal acts and at the same time be held accountable in criminal cases have shifted. The doctrine that characterizes the 1886 Dutch WetVan Strafrecht (KUHP), namely "Universitas delinquere non potest" or "Societas delinquere non potest" (legal entities cannot commit criminal acts), has changed in connection with the acceptance of the concept of functional perpetrators (functional Daderschap).(Tambunan., 2016)

According to Rolling, "offenders include corporations in the Daderschap functioneel (functional actors) because corporations in the modern world have an important role in economic life which has many functions, namely as employers, producers, price setters, users of foreign exchange, etc." (Batubara, 2016) Because in practice it is not easy to determine whether there is or is not a fault in a corporation, it turns out that in its development, especially regarding corporate criminal liability, it is known that there is a new view, or let's say a slightly different view, that, especially in the responsibility of legal entities, the principle of fault does not apply. So, criminal liability which refers to the doctrine of strict liability (absolute/strict liability) and vicarious liability (liability imposed on another person/substitute liability) which in principle is a deviation from the principle of fault (mens rea), should be taken into consideration in the application of corporate responsibility in criminal law. However, in England, there is no abandonment of the principle of mens rea (fault) in corporate criminal liability, because in England there is a principle of identification. Based on this principle, corporations are held accountable the same as individuals.(Muladi dan Dwidja Priyatno, 2010)

The subject of the crime of money laundering can be seen from the provisions contained in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. The subjects of the crime of money laundering are individuals and corporations. Individuals as legal

subjects of money laundering crimes can be understood by looking at Article 1 Paragraph 9, Article 3, Article 4, Article 5, Article 10, and so on. From Article 1 paragraph 9 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, it is emphasized that every person consists of an individual or a corporation. Corporations as the subject of the crime of money laundering are also explained in Article 1 paragraph 9 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering and so on, where in Article 1 paragraph 9 it is said that each person is an individual or a corporation. Corporations in Article 1 paragraph 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering are organized groups of people and/or assets, whether they are legal entities or non-legal entities (Jayaningprang, 2023).

The problem in this paper is "How are criminal sanctions imposed on corporations and/or corporate control personnel who commit money laundering crimes?".

2. Materials and Methods

The method used in writing this applied paper is a descriptive-analytical method, namely by using data that clearly describes problems directly in the field, analysis is carried out and conclusions are drawn to solve a problem. The data collection method is through observation and literature study to obtain solutions to problems in preparing this paper.

3. Result and Discussion

Imposition of Criminal Sanctions on Corporations and/or Corporate Control Personnel Who Commit the Crime of Money Laundering

Corporations have contributed a lot to the development of a country, especially in the economic sector. However, corporations also often have negative impacts from activities such as environmental pollution, tax manipulation, exploitation of workers, fraud, and money laundering crimes. Therefore, this impact has made the law a regulator and protector of society, which must pay attention and regulate corporate activities. (Nasichin & Nofita, 2021).

Initially, lawmakers were of the view that only humans could be the subject of criminal acts. So, initially, a corporation cannot be the subject of a criminal act. We can see this in the history of the formulation of Article 59 of the Criminal Code, especially in the way the offense is formulated, which is always preceded by the phrase whoever. However, the facts show that we will not find an opportunity to sue corporations before a criminal court. Nevertheless, legislators in formulating offenses are often forced to take into account the fact that humans carry out actions within or through organizations that exist within civil law or outside it, appear as a single unit, and are therefore recognized and treated as legal entities/corporations. In the Criminal Code, lawmakers will refer to corporate managers or commissioners if they are faced with such a situation. (Nasichin & Nofita, 2021).

According to civil law, a corporation is a legal entity (legal person). However, in criminal law, the definition of corporation does not only include legal entities, such as limited liability companies, foundations, cooperatives, or associations that have been legalized as legal entities that are classified as corporations. According to criminal law, firms, limited liability companies CVs, and partnerships or matchups are included in corporations. Apart from that, what is also referred to as a corporation according to criminal law is a group of people who are organized and have leadership and carry out legal acts, such as entering into agreements in the context of business activities or social activities carried out by their management for and on behalf of that group of people.

The crime of money laundering is included in formal legal acts. The crime of money laundering is a crime that has a distinctive characteristic, this crime is not a single crime but a multiple crime. This crime is characterized by the form of money laundering, which is a crime that is a follow-up crime or continued crime, while the main crime or original crime is called a predicate offense or core crime

or some countries formulate it as an unlawful activity, namely an original crime that produces money which is then carried out in the laundering process.(Hanafi Amrani, 2015)

In the development of the criminal evidence system, something new was also introduced, namely the system of reversal of the burden of proof (Omkering van het bewijslast). The system of reversing the burden of proof, or what is better known to the public as reverse evidence is a system that places the burden of proof on the suspect. It means that generally when referring to the Criminal Procedure Code, the person who has the right to prove the defendant's guilt is the public prosecutor, but the defendant's reverse proof system (legal advisor) will prove otherwise that the defendant has not been legally and convincingly proven guilty of committing the crime charged.(O Hiariej, 2012)

Law enforcement aims to provide an atmosphere of calm in society, as well as a deterrent effect on other people so that they do not commit criminal acts. However, that does not mean there are no problems in law enforcement. Soerjono Soekanto views that law enforcement cannot be separated from the factors that influence it. These factors can influence the power of law to work effectively in society.

Talking about criminal acts and criminal responsibility, in principle, is an inseparable part of discussing the criminal law system. Mardjono Reksodiputro said that in the development of criminal law in Indonesia there are three systems of corporate responsibility as the subject of criminal acts, namely: Corporate managers as makers, responsible managers, corporations as makers, responsible managers, and corporations as responsible makers.(Mahrus Ali, 2015)

The first accountability system explains that accountability is characterized by efforts to limit the nature of criminal acts committed by corporations to individuals (natuurlijk person). So, if a criminal act occurs within a corporate environment, the criminal act is deemed to have been committed by the management of that corporation. In this first system, the drafters of the Criminal Code still accept the principle of "Universitas delinquere non potest" [legal entities (corporations) cannot be punished]. This principle applied in the last century to all Continental European countries. This is in line with individual criminal law opinions from the classical school that prevailed at that time and later the modern school in criminal law. In the Explanatory Memory of the Criminal Code which came into force on 1 September 1886, it can be read: a criminal act can only be committed by an individual (natuurlijk person). Fictional thinking about the nature of legal entities (recht person) does not apply to the field of criminal law. In this first system, managers who do not fulfill obligations that are corporate obligations can be declared responsible.

The second system of responsibility is characterized by the recognition that arises in the formulation of the law that a criminal act can be committed by a union or business entity (corporation), but responsibility for this falls on the management of the legal entity (corporation). Gradually, criminal responsibility shifts from the management members to those who order them or are prohibited from doing so if they neglect to truly lead the corporation. In this accountability system, corporations can be the perpetrators of criminal acts, but those responsible are the management members, as long as it is stated explicitly in the regulations.(Mahrus Ali, 2015)

The third accountability system is the beginning of direct responsibility from the corporation. In this system, the possibility of suing corporations and holding them accountable under criminal law is opened. The thing that can be used as a basis for justification and the reason that corporations are both creators and at the same time responsible is that in various economic and fiscal offenses, the profits obtained by corporations or the losses suffered by society can be so large, that it will not be possible to balance them if the punishment is only imposed on corporate managers. The reason was also put forward that by simply punishing the management there was no or no guarantee that the corporation would not repeat the offense. By punishing corporations with a type and severity that is appropriate to the nature of the corporation, it is hoped that corporations can be forced to comply with the relevant regulations.(Mahrus Ali, 2015)

Finding the basis for corporate responsibility is not easy. Because corporations as subjects of criminal acts do not have the same mental state as natural humans. However, this problem can be overcome if we accept the concept of functional behavior (functional *daderschap*). This means that a person cannot escape responsibility because the person concerned has delegated responsibility to another person even though the person concerned does not know what his subordinates have done.[9] In other words, a person who has delegated authority to his subordinates or proxies to act for and on his behalf must still be responsible for the actions carried out by the recipient of the delegation if the recipient of the delegation commits a criminal act, even if he does not know what his subordinates have done. So delegation cannot be used as an excuse for an employer to immediately assume criminal responsibility solely because the criminal act has been committed by his subordinates who have received a delegation of authority from him. Regarding the issue of intentionality and negligence in corporations, psychological issues and inner attitudes can be addressed by looking at whether the discrepancies in the actions of the management are covered by company politics or are within the real activities of a particular company.

The criminal sanctions against corporations and/or corporate control personnel who are perpetrators of money laundering crimes are subject to sanctions under Articles 6, 7, 8, 9, and 10 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, with a maximum threat of a prison sentence of 20 years and a fine of IDR 10 billion.

Article 6

- (1) If the criminal act of Money Laundering as intended 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 Control Personnel.
- (2) A penalty is imposed on a Corporation if the crime of Money Laundering: a. carried out or ordered by Corporate Control Personnel; b. carried out to fulfill the aims and objectives of the Corporation; c. carried out by the duties and functions of the perpetrator or giver of the order; and d. carried out to provide benefits to the Corporation.

Article 7

- (1) The principal penalty imposed on a Corporation is a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah).
- (2) In addition to the fine as intended in paragraph (1), additional penalties may also be imposed on Corporations 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.g. confiscation of Corporation assets for the state; and/or f. takeover of corporations by the state.

Article 8

If the convict's assets are insufficient to pay the fine as intended in Article 3, Article 4, and Article 5, the fine is replaced by a maximum imprisonment of 1 (one) year and 4 (four) months.

Article 9

- (1) If the Corporation is unable to pay the criminal fine as intended in Article 7 paragraph (1), the criminal fine is replaced by confiscation of assets belonging to the Corporation or Corporate Control Personnel whose value is the same as the criminal fine imposed.
- (2) If the sale of confiscated assets belonging to the Corporation as intended in paragraph (1) is insufficient, imprisonment instead of a fine is imposed on the Corporation Control Personnel taking into account the fine that has been paid.

Article 10

Every person within or outside the territory of the Unitary State of the Republic of Indonesia who participates in carrying out attempts, assistance, or criminal conspiracy to commit the crime of money laundering shall be punished with the same crime as intended in Article 3, Article 4, and Article 5.

Law Number 25 of 2003 concerning the Crime of Laundering, namely: Only a few articles have been changed, but those regulating corporations still apply Law Number 15 of 2002. Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Laundering Article 6, 7, 8 and 9. Article 7 regulates a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah), and additional penalties in the form of: a. Announcement of the judge's decision; b. Suspension 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. Corporate Takeover by the state.

Fair and humane law enforcement can be interpreted as meaning that the law does not move in a vacuum, or only looks at one side, on the contrary, the law always moves dynamically following the changes and developments of the times in the concept of criminal law reform, so that legal reform requires policies that according to conditions or needs at that time. Several efforts or innovations in law enforcement can be expressed in the form of policies that deal with law enforcement for money laundering crimes.

Placing the crime of money laundering as an independent crime or as a follow-up crime is not contradictory, but both understandings are correct if each is placed in the right context. This is considered correct, that the opinion regarding the crime of money laundering as a follow-up crime, is correct if placed in the context of the factual occurrence of the crime of money laundering. The opinion that the crime of money laundering is an independent crime is correct if placed in the context of part of the evidence for the money laundering offense. This conclusion can be built with the following arguments.[15] The perspective of the crime of money laundering as a follow-up crime captures the position of the crime of money laundering from the point of view of the factual occurrence of the offense. So, this point of view will see that in the event of a money laundering crime, there must be a result of the crime (proceed of crime) against which actions are taken that cause the proceeds of the crime to be hidden or disguised. (Direktorat Hukum PPATK, 2015)

The main criminal sanction against a corporation that commits a money laundering crime is a fine of 100,000,000,000.00 (one hundred billion rupiah). Additional criminal sanctions include the announcement of a judge's decision, freezing of part or all of a corporation's business activities, revocation of a business license, dissolution and/or prohibition of a corporation, confiscation of corporate assets for the state and/or takeover of a corporation by the state.

In Article 9 of Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, it is explained that a substitute crime is that a corporation that is unable to pay a fine is replaced by confiscation of corporate assets or Corporate Control Personnel whose value is the same as the fine imposed. In addition, if the sale of confiscated corporate assets is insufficient, imprisonment instead of a fine is imposed on the Corporate Control Personnel considering the fines that have been paid.

4. Conclusion

Money laundering is a method or process of changing money originating from illegal (haram) sources into money that appears to be halal. In Indonesia, the crime of money laundering is regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Meanwhile, corporations themselves are the subject of money laundering crimes regulated in Article 6 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Meanwhile, a corporation that commits a money laundering crime can be held criminally responsible if it has fulfilled the elements of punishment, namely the corporation's ability to take responsibility, the existence of an error, and no reason to remove the crime from the corporation.

Fair and humane law enforcement can be interpreted as meaning that the law does not move in a vacuum, or only looks at one side, on the contrary, the law always moves dynamically following the changes and developments of the times in the concept of criminal law reform, so that legal reform requires policies that according to conditions or needs at that time. Several efforts or innovations in law enforcement can be expressed in the form of policies that deal with law enforcement for money laundering crimes.

5. References

- O Hiariej, E. O. S. (2012). *Teori Dan Hukum Pembuktian*. Erlangga.
- Andrikasmi, S. (2022). Penegakan Hukum Tindak Pidana Pencucian Uang Dalam Pemulihan Ekonomi Pasca Pandemi Covid-19. *Riau Law Journal*, 6(2), 246–264. <https://doi.org/10.30652/rlj.v6i2.7945>
- Batubara, Y. J. (2016). *Pertanggungjawaban Pidana Korporasi Yang Melakukan Tindak Pidana Perpajakan (Studi Kasus Putusan: No. 1570/Pid. B/2015/PN. Sby.)*.
- Direktorat Hukum PPATK. (2015). *Modul Workshop Terpadu Penanganan Perkara Tindak Pidana Pencucian Uang*.
- Eleanora, F. N. (2011). Tindak Pidana Pencucian uang Oleh : Fransiska Novita Eleanora FH Universitas MPU Tantular Jakarta. *XXVI(2)*, 640–653.
- Fadhli, R. (2018). *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Kebakaran Hutan dan Lahan*. Universitas Islam Indonesia.
- Hanafi Amrani. (2015). *Hukum Pidana Pencucian Uang*. UII Press.
- Jayaningprang, H. (2023). *Analisis Pertanggungjawaban Pidana Korporasi Terhadap Tindak Pidana Pencucian Uang Yang Berasal Dari Tindak Pidana Korupsi*. Universitas Islam Sultan Agung (Indonesia).
- Lestari, S. I. (2023). Pertanggungjawaban Pidana Korporasi dan Pengurusnya dalam Penegakan Kerusakan Lingkungan Hidup akibat Limbah B3. *Syntax Idea*, 5(11), 2130–2145.
- Mahardhika, V. (2023). TINDAK PIDANA PENCUCIAN UANG KLASIFIKASI DAN BENTUK SANKSI PIDANA BAGI KORPORASI. *HUKMY: Jurnal Hukum*, 3(1), 247–262.
- Mahrus Ali. (2015). *Dasar-Dasar Hukum Pidana*. Sinar Grafika.
- Muladi dan Dwidja Priyatno. (2010). *Pertanggungjawaban Pidana Korporasi*. Kencana.
- Nasichin, M., & Nofita, N. P. (2021). Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Pencucian Uang. *Jurnal Pro Hukum : Jurnal Penelitian Bidang Hukum Universitas Gresik*, 10(1), 36–45. <https://doi.org/10.55129/jph.v10i1.1434>
- Nelwan, P. P. H. (2023). PENGENAAN SANKSI ADMINISTRATIF DI BIDANG KELAUTAN DAN PERIKANAN TERHADAP INDUSTRI PERIKANAN KOTA BITUNG. *LEX PRIVATUM*, 12(1).
- Tambunan., M. P. (2016). PERTANGGUNGJAWABAN PIDANA KORPORASI DALAM TINDAK PIDANA PENCUCIAN UANG. *Mimbar Keadilan*, 111–128.