Journal of Social Research

JOSR: Journal of Social Research
November 2022, 1 (12), 689-697

p-ISSN: 2827-9832 e-ISSN: 2828-335x

Available online at http:// https://ijsr.internationaljournallabs.com/index.php/ijsr

Juridical Review of Money Laundering Crimes committed by the President Director of PT. Asabri

Sareng Purnomo, **Bernat Panjaitan, Nimrot Siahaan**
Faculty of Law, Labuhanbatu University
mailto:sarengpurnomo76@gmail.com bernat.pjt@gmail.com, nimrotsiahaan4@gmail.com

Received: November 20, 2022
Revised : November 22, 2022
Accepted: November 24, 2022

Abstract (Indonesia)

Latar Belakang: Negara hukum adalah negara yang menjunjung tinggi penegakan hukum dan keadilan, yang merupakan persyaratan mutlak untuk mencapai tujuan nasional. Tujuan nasional adalah mewujudkan sistem kehidupan bangsa, negara dan masyarakat yang adil dan makmur sesuai dengan nilai-nilai yang terkandung di dalamnya.

Tujuan: Penelitian ini bertujuan untuk mengetahui dan menganalisis tentang tinjauan yuridis tindak pidana pencucian uang serta mengetahui dan menganalisis tentang pertanggungjawaban dalam kasus tindak pidana pencucian uang yang dilakukan oleh direktur utama PT ASABRI.

Metode: Penelitian ini termasuk dalam jenis penelitian normatif. Sehingga dapat diketahui bahwa Dan unsur-unsur bukan tindak pidana pencucian uang adalah pelaku, perbuatan (transaksi keuangan atau keuangan) dengan maksud menyembunyikan atau menyamarkan asal kekayaan dari bentuknya yang haram (ilegal) seolah-olah itu adalah harta yang sah *(legal).*

Hasil: Pencucian Uang *sebagai* kejahatan memiliki karakteristik bahwa kejahatan ini bukanlah kejahatan tunggal tetapi kejahatan ganda. Intinya adalah tindak pidana pencucian uang adalah bentuk tindak pidana yang dilakukan baik oleh seseorang dan/atau korporasi dengan sengaja menempatkan, mentransfer, membelanjakan, membayar terjun, mempercayakan, membawa ke luar negeri, mengubah bentuk, menukar dengan mata uang atau surat berharga atau perbuatan harta benda lain yang diketahuinya atau patut dicurigai adalah hasil dari proses non-pidana.

Kesimpulan: Berdasarkan penjelasan di atas, dapat disimpulkan bahwa proses pencucian uang memiliki tiga tahap, yaitu *Tahap Penempatan* atau penempatan, yang kedua adalah Tahap Layering atau Pemisahan, dan yang

terakhir adalah Tahap Integrasi atau penggunaan kekayaan yang telah tampak sah.

Kata Kunci: Tindak Pidana, Pencucian Uang, Asabri.

Abstract (English)

Background: *This study aims to find out and analyze about the juridical review of money laundering crimes and find out and analyze about liability in cases of money laundering crimes committed by the president director of PT. ASABRI.*

Objective: *This study aims to find out and analyze the juridical review of money laundering crimes and find out and analyze about liability in cases of money laundering crimes committed by the president director of PT. ASABRI.*

Methods: *This research belongs to the normative type of research. So that it can be known that Dan the elements of not criminal money laundering are perpetrators, acts (financial or financial transactions) with the intention of hiding or disguising the origin of wealth from its illegitimate form (illegal) as if it were legal property.*

Results: Money *Laundering as a crime has the characteristic that this crime is not a single crime but a double crime. The point is that the criminal act of money laundering is a form of crime committed either by a person and/or corporation by deliberately placing, transferring, spending, paying for the plunge, entrusting, taking out of the country, changing the form, exchanging for currency or securities or other acts of property that he knows or reasonably suspects is the result of non-criminal proceedings.*

Conslusion: *Based on the explanation above, it can be concluded that the money laundering process has three stages, namely the Placement or placing Stage, the second is the Layering or Separating Stage, and the last is the Integration Stage or the use of wealth that has appeared legitimate.*

Keyword*s: Criminal Acts, Money Laundering, Asabri*

**Correspondent Author : Sareng Purnomo*
Email : mailto:sarengpurnomo76@gmail.com

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3), expressly states that the State of the Republic of Indonesia is a state of law.

A state of law is a country that upholds law enforcement and justice, which is an absolute requirement for achieving national goals.

The national goal is to realize a just and prosperous system of life of the nation, state and society in accordance with the values contained in Pancasila which has been the philosophy of the life goals of the Indonesian people from the past to the present.

Violations committed must be subject to sanctions in accordance with applicable rules as well. If the violation is public in nature then the violation falls into the category of criminal law and must be sanctioned by criminal law.

Criminal law is part of the entire law in force in a country, which regulates which acts can and cannot be done, prohibitions and imperatives that have been determined by the government and if these rules are violated, they will get sanctions that have been set by the government.

The characteristic of criminal law in real terms is the law that regulates the deeds of legal subjects. The act includes crimes and offenses. The evils of the present are more complex than the evils of the past.

In further developments, with the increasingly sophisticated various forms of crime that have an international network and use financial institutions, especially banks, as targets and means, examples can be put forward such as *white crime* or money *loundering*.

Then banks should be vigilant. In some countries, banks are required to have and implement policies and systems of know-your-customer principles.

The crime of money laundering, in addition to being very detrimental to society, is also very detrimental to the state, because it can affect or damage the stability of the national economy or the country's finances with the increase of various crimes.

In this context, after the enactment of Law of the Republic of Indonesia Number 15 of 2002 concerning the Crime of Money Laundering (hereinafter referred to as the TPPU Law).

Furthermore, it has been amended by Law of the Republic of Indonesia Number 25 of 2003 concerning the Crime of Money Laundering (hereinafter referred to as the TPPU Law).

And replaced by Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as the PP-TPPU Law), it is hoped that money laundering crimes can be prevented and eradicated.

The basic characteristic of money laundering is a crime motivated by the pursuit of the greatest profit, this is different from other conventional crimes that frighten society.

This crime has the nature of creating creativity in the development of new crimes of an international nature. Professionally organized using high technology and with the service of profitable business means.

Broadly speaking, what can be understood from the opinions of experts can be concluded that money laundering activities are a process of hiding or disguising wealth obtained from the proceeds of crime in order to avoid prosecution and or confiscation.

Indonesia is a "paradise" for criminals as a place to launder money from crimes, the money from the proceeds of these laundered crimes usually comes from *white coller crime.*

In Indonesia, the money from these crimes is mainly obtained from corruption crimes, so it can be said that the dominant crime in money laundering crimes is money from corruption crimes.

In Indonesia, corruption is familiar to the public, corruption has become an outbreak of a contagious disease in every state apparatus from the lowest level to the highest level.

Corruption is an *extra ordinary* crime as well as a crime that is difficult to find the perpetrator *(crime without offends),* because corruption is a very difficult area to penetrate (Rukmini, 2006).

Satjipto Rahardjo said that the prevention and eradication of corruption crimes should not be carried out in a conventional way that must be carried out outside the norms of countering other crimes (Rahardjo, 2006).

One of the investigations in the case of embezzlement of PT. ASABRI/BPKPP (Soldier Welfare and Housing Management Agency).

Initially, the investigation started from the Director II/Security and Transnational Police Headquarters. In the ongoing investigation process, the Police Headquarters determined that the investigation process for the embezzlement of PT. ASABRI was discontinued (SP3) due to lack of evidence.

With the dismissal of the investigation by the Police Headquarters, the case of embezzlement of PT. ASABRI, the Prosecutor's Office conducted an investigation into Subardja Midjaja as a suspect in the case of misuse of PT funds. ASABRI/BPKPP for the same case, related to the investigation process of embezzlement of PT. ASABRI above, situations like this are considered to cause a lack of legal certainty and are not in accordance with the principles of legal protection as part of the protection of human rights.

On Saturday, the 6th of Month 3 of 2021, the Head of the Attorney General's Office, Leonard Simanjuntak, in a press release said that based on the results of an *expose* with the Young Attorney General for Special Crimes (Jampidsus), the Investigating Prosecutor Team at the Directorate of Jampidsus Investigation of the Attorney General's Office again determined the Suspect of Money Laundering Crimes (TPPU).

From *the predicate crime* , the case of Corruption in Financial Management and Investment Funds in PT. Insurance of the Armed Forces of the Republic of Indonesia (ASABRI) which is suspected of causing state financial losses of approximately Rp 23 trillion.

The parties who were determined as Suspects in the TPPU Case this time were BTS and HH who had previously also been designated as Suspects in the Corruption Case of Financial Management and Investment Funds at PT. ASABRI (Persero).

Leonard Simanjuntak revealed that the case began in the period from 2012 to 2019.

PT. ASABRI (Persero) has placed investments in the form of purchasing shares and Mutual Fund products to certain parties through a number of nominees affiliated with BTS and HH without being accompanied by fundamental analysis and technical analysis and only made in formalities.

Meanwhile, the President Director, Investment and Finance Director, Head of Investment Division as the responsible officer at PT. ASABRI (Persero) actually collaborates with BTS and HH in the management and placement of PT. ASABRI (Persero).

Cooperation in the form of shares and Mutual Fund products that are not accompanied by fundamental analysis and technical analysis so that the investment violates the provisions of the Standard Operating Procedures (SOP) and Investment Placement Guidelines applicable to PT. ASABRI (Persero).

So on this basis, there are unlawful acts committed by the President Director, Director of Investment and Finance, Head of Investment Division who approves the investment placement of PT. ASABRI (Persero) does not go through fundamental analysis and technical analysis, and only based on the analysis of mutual fund placements made in formalities only.

Together with BTS as the Director of PT. Hanson International, HH as Director of PT. Trada Alam Minera and Director of PT. Maxima Integra, LP as Director of PT. Eureka

Prima Jakarta Tbk, SJS as Consultant, ES as nominee, RL as President Commissioner of PT.

Fundamental *Resourches* and *Beneficiary Owner* and B as the nominee of BTS SUGI shares through the ES nominee which resulted in irregularities in stock investment and PT Mutual Funds. ASABRI and resulted in a loss of Rp.23,739,936,916,742.58

Therefore, BTS and HH as parties manage and cause state losses in this case PT. ASABRI (Persero), designated as a TPPU Suspect by being subject to an article of suspicion of violating articles 3 and / or 4 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (https://pji.kejaksaan.go.id/index.php/home/berita/1435).

RESEARCH METHODS

The research method used in this study is a normative legal research method. Normative legal research is legal research carried out by examining library materials or secondary data (Soekanto, 2007).

According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues at hand (Marzuki, 2010)

In this type of legal research, often the law is conceptualized as what is written in legislation or the law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Asikin, 2004).

RESULTS AND DISCUSSION

1.1 Juridical Review of Money Laundering Crimes

Money *Laundering as* a crime has the characteristic that this crime is not a single crime but a double crime.

This is characterized by a form of money laundering as a *follow-up* crime or follow-up crime, while the crime or crime of origin is referred to as *predicate offence* or *core* crime or there is a state that formulates as *unlawful actifity*, which is the original crime that makes money which is then carried out the laundering process.

In the provisions of Article 1 number (1) of Law Number 8 of 2010, it is stated that money laundering is any act that meets the elements of a criminal act in accordance with the provisions of the law.

In a sense, these elements in question are elements of the perpetrator, elements of unlawful acts and elements are the result of criminal acts.

Meanwhile, the definition of money laundering crimes can be seen in the provisions in articles (3), (4) and (5) of Law Number 8 of 2010.

The point is that the criminal act of money laundering is a form of crime committed either by a person and/or corporation by deliberately placing, transferring, spending, paying for the plunge, entrusting, taking out of the country, changing the form, exchanging for currency or securities or other acts of property that he knows or reasonably suspects is the result of non-criminal proceedings.

With the aim of hiding or disguising the origin of the wealth, including those who receive and control it. Experts have classified the *money laundering* process into three stages, namely:

1. *Placement stage,* which is the stage where funds generated from a criminal activity are placed, for example by depositing the dirty money into the financial system.
2. *The Layering* Stage , which is what is meant by the layering stage, is the stage by layering. Various ways can be done through this stage whose purpose is to remove traces, both the original characteristics and the origin of the money. For example, transferring funds from several accounts to other locations or from one country to another and can be done many times, breaking down the amount of funds in a bank with the intention of obscuring its origin, transferring in the form of foreign exchange, buying shares, making derivative transactions, and others.
3. The Integration stage is the stage of reuniting the gross money after going through the *placement* or *layering* stages above, which for the money is then used in various legal activities. In this way it will appear that the activities carried out now are not related to the activities of the previous illegal activities, and it is in this stage that then the dirty money has been laundered.

From the explanation above, it can be concluded that the purpose of the perpetrator of money laundering is to hide or disguise the results of the predicate offence so that it is not tracked for further use.

So it is not for the purpose of concealing alone but changing the *performance* or origin of the proceeds of the crime for the next purpose and eliminating the direct connection with the crime of origin.

From the definition of the criminal act of money laundering as explained above, the criminal act of money laundering contains the following elements:

1. Perp
2. Acts (financial or *financial* transactions) with the intention of concealing or disguising the origin of wealth from its illegitimate form (illegal) as if it were legal property.
3. Is the result of a criminal act

The provisions in Law Number 8 of 2010 related to the formulation of money laundering crimes use the word "everyone" where in article 1 number (9) it is emphasized that Everyone is an individual or corporation.

Meanwhile, the definition of corporation is contained in article 1 number (10). In this article, it is stated that a Corporation is an organized collection of people and/or wealth whether it is a legal entity or not a legal entity.

Meanwhile, what is meant by a transaction according to the provisions of this Law is all activities that give rise to rights or obligations or cause the emergence of a legal relationship between two or more parties.

Financial transactions are defined as transactions to make or receive placements, deposits, withdrawals, book transfers, transfers, payments, grants, donations, deposits, and or other activities related to money.

Financial transactions that are elements of money laundering crimes are financial transactions that steal or are suspected of both transactions in cash and through the transfer / transfer process.

Suspicious Financial Transactions according to the provisions contained in article 1 number (5) of Law Number 8 of 2010 are financial transactions that deviate from the profile, characteristics, or habits of the transaction pattern of the customer concerned;

1. Financial transactions by financial service users that are reasonably suspected to be carried out with the aim of avoiding reporting the relevant transactions that must be carried out by Financial Service Providers in accordance with the provisions of this law;
2. Financial transactions carried out or canceled are carried out using assets that are suspected to be derived from the proceeds of criminal acts; or

3. Financial transactions requested by PPATK to be reported by the Reporting Party because they involve assets that are suspected to come from the proceeds of criminal acts.

Mentioning the criminal act of money laundering, one of which must meet the elements of an unlawful act as referred to in article 3 of Law Number 8 of 2010, where the unlawful act occurs because the perpetrator commits an act of managing property which is the result of a criminal act. The definition of the results of criminal acts is described in Article 2 of Law Number 8 of 2010.

In this article, assets that are qualified as assets resulting from criminal acts are assets derived from crimes such as: corruption, bribery, narcotics, psychotropics, labor smuggling, migrant smuggling, banking, capital market, insurance, customs, excise, trafficking in persons, illicit arms trade, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting of money, gambling, prostitution, taxation, environmental field, forestry, marine and fisheries and other criminal offences punishable by 4 years in prison.

It should be noted, that in proving the criminal act of money laundering, the proceeds of the criminal act are elements that must be proven. Proving whether or not the property is true is the result of a criminal act is to prove the existence of a criminal act that produced the property.

It is not to prove whether it is true that there has been a *predicate crime* that produces wealth. In the provisions as mentioned in article 3 of Law Number 8 of 2010, several actions that can be qualified into the form of money laundering crimes are identified.

Namely actions or actions that are intentional:

1. Placing property into a financial service provider either in one's own name or on behalf of another person, when it is known or reasonably suspected that the property was obtained through a criminal act.
2. Transferring assets that he knows or reasonably suspects to be the result of a criminal act of money laundering, from one financial service provider to another financial service provider, either in his own name or on behalf of another person.
3. Spending or using property that is known or reasonably suspected to be property obtained from a criminal act. Either in the name of himself or in the name of the other party.
4. Giving away or donating property that is known or reasonably suspected to be property obtained from the proceeds of a criminal act, either in his own name or on behalf of another party.
5. Entrusting property that is known or reasonably suspected to be property obtained based on a criminal act, either on its own behalf or on behalf of another party.
6. Bringing abroad property that is known or reasonably suspected to be property produced from a criminal act.
7. Exchanging or other acts of property that are known or reasonably suspected to be the proceeds of a criminal act with currency or other securities, with the aim of concealing/disguising the origin of the property (https://www.negarahukum.com/).

1.2 Liability in the Case of Money Laundering Crimes Committed by the President Director of PT. ASABRI

Geen straf zonder schuld or *keine strafe ohne should or actus non facit reum nisi mens sir rea* is a very important principle in criminal law (Moelyatno, 2008).

Criminal liability is defined by Simon as a psychiatric state in such a way, that the application of an attempted conviction, both in terms of the general perspective and from the perspective of the person can be justified (Hiariej, 2016).

In other words, a criminal offender is considered capable of being responsible only if his mental state is healthy, with the following characteristics:

1) have the ability to realize or know that what it is doing is contrary to the law and
2) has the ability to determine his own will according to his consciousness.

The second opinion comes from Van Hamel who gives a definition of responsible ability as a condition of psychiatric normality and maturity by providing three abilities, including:

1) understand the consequences or reality of his own actions.
2) such a person has realized that his deeds are forbidden by society, and
3) has the ability to determine his own will in doing.

To judge a person can be held criminally liable or not must pay attention to such conditions. The Criminal Code does not provide an understanding of a person's responsible ability.

Rather the Criminal Code only formulates the ability to be responsible for a person negatively and does not formulate it positively.

A person can only be held accountable if there is an error in the material sense / *verwijbaarheid*, which includes three elements, including:

1) Able to take responsibility,
2) There is an inner connection between the perpetrator and what he does (*dolus* or *culpa)* and the latter
3) There are no excuses for the removal of errors/excuses *of forgiveness (schuld uitsluitingsground)* (Jaya et al., 2016).

Perpetrators of money laundering crimes can only be convicted if they have met the elements mentioned above. To achieve the purpose of conviction, it is necessary to have a criminal conviction.

The three well-known theories of the purpose of punishment according to most scholars classify the reasons for punishment including: the theory of retribution *(retribution/absolute*), the theory of purpose (*utilitarian/doeltheorieen/relative),* and the combined theory *(verenigingstheorieen).*

Relating to criminal liability for perpetrators of money laundering crimes in accordance with those contained in Article 2 paragraph (1) of Law Number 31 of 1999 as amended and supplemented by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes jo. Article 55 paragraph (1) 1 of the Criminal Code.

CONCLUSION

Based on the explanation above, it can be concluded that the money laundering process has three stages, namely the *Placement* or placing Stage, the second is the Layering or Separating Stage, and the last is the Integration Stage or the use of assets that have appeared to be legitimate.

And the elements of not criminal money laundering are perpetrators, acts (financial or financial transactions) with the intention of hiding or disguising the origin of wealth from its illegitimate form (illegal) as if it were legal *property*

Furthermore, Money Laundering is a difficult problem to prove, money laundering is often carried out by utilizing the services or facilities provided by banks. If it is proven to have committed a criminal act of money laundering, it will be subject to Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

Suggestion

In enforcing material laws in the field of Money Laundering in Banking Transactions, it is necessary to play the role of various parties.

Like Lawrance M. Friedman's theory of the *Three Elements of Legal System* that there needs to be a role of substance, subject, legal culture in order for a law to be enforced.

As Dr. Yenti Garnasih, S.H, M.H said in the latest UUTPPU still has many loopholes so that many TPPU perpetrators can escape legal entanglement. Therefore, a more concrete uuppu update is needed.

BIBLIOGRAPHY

Asikin, Z. (2004). Amiruddin, Pengantar Metode Penelitian Hukum, Jakarta: PT. *Raja Grafindo Persada*.

Hiariej, E. O. S. (2016). *Prinsip-prinsip hukum pidana*. Cahaya Atma Pustaka.

Jaya, I., Darmadi, A., Hariyanto, D. R. S., Hartono, M. S., & Purnawan, K. W. (2016). *Klinik Hukum Pidana Komponen Persiapan dan Praktek*. Denpasar: Udayana University Press.

Marzuki, P. M. (2010). Penelitian Hukum, Kencana Prenada Group. *Jakarta. h*, *35*.

Moelyatno. (2008). *Asas-Asas Hukum Pidana*. Reineka Cipta.

Rahardjo, S. (2006). *Membedah hukum progresif*. Penerbit Buku Kompas.

Rukmini, M. (2006). *Aspek Hukum Pidana dan Kriminologi (sebuah bunga rampai)*.

Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.