

The Relationship between Money Laundering Law and Criminal Act of Corruption

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Abstract: Lately, corruption has become hot topic, both in printed media, electronic and in seminars, workshops, discussions, and so on. The assets acquired from corruption crimes are usually not directly applicable due to fear or indication of money laundering activities. For that usually the perpetrators attempt to hide the origin of these assets by putting them into the banking system (financial system). The issues raised in this research are the relationship between corruption crime and money laundering and how the implementation of money laundering law influences the state losses from corruption in Supreme Court decision. 1605K / Pid.Sus / 2014. The results show that Corruption Crime with Money Laundering Act has a very close relationship. This can be clearly seen in Article 2 paragraph (1) of Law no. 8 of 2010. Money laundering law in eradicating corruption in Supreme Court Decision No: 1605 K / Pid.Sus / 2014 District Court judges is applied in Law no. 8 year 2010 to the corruption case, namely by imposing a sentence of 5 years in prison, a fine, paying a replacement money, and seizing assets owned by the defendant from the proceeds of a crime.

1 INTRODUCTION

Corruption has become a crime in society and state. State losses caused by corruption have been categorized as "harmful". Corruption in Indonesia is an emergency eating up the nation of Indonesia from time to time in a relatively long time span so that a special court of corruption is expected to help resolving a number of past corruption crimes in order to recover state's lost property (Kholis, 2010).

Corruption at the present time becomes the headline, both in printed media, electronic and in seminars, workshops, discussions, and so on. Corruption has become a serious problem for the nation of Indonesia, because it has systematically penetrated the whole line of community life, creating a negative stigma for the country and the nation of Indonesia in the international community. Various ways have been taken to eradicate corruption along with the increasingly sophisticated (Sophisticated) operandi mode of criminal corruption (Chaerudin, 2008).

Basically the practice of corruption takes place with the cooperation between two parties, namely the party who takes and the party who receives. Corruption, cannot happen if there is no party

actively becoming a giver, for example in the case of someone taking the state's money using his authority; if the person concerned takes the money for his own sake it is an act of corruption similar to ordinary theft; the difference is only in the operandi mode. However, if the corruption is committed by the abuse of authority of a person accepting bribes from other person/s related to his position, then there are two parties committing corruption, the party who accepts the bribe and the party who gives the bribe. (Djiwandonc, 2001).

The effort to eradicate corruption is inseparable from the predicate of Indonesia, such as the publication containing corruption state ratings issued by Indonesian International Transparency (TII) re-launching the results of corruption perception index (IPK). In 2009 the survey covered 180 countries, Indonesia ranked 145th from 180 countries with an index value of 2.3. In 2010 the survey covered 178 countries. Indonesia was ranked 110 with an index value of 2.8, and in 2011 rose to rank 100 of 182 countries with index value 3.0. For 2012 Indonesia's rank fell to the order of 118 out of 176 countries measured. This is in line with 2013 International Transparency report putting Indonesia as one of the most corruptive countries. Indonesia was ranked 118 out of 175 countries with a score of 2.3 of the total

score of 10 (0-10 index range with 0 perceived most corruption and 10 very clean) (www.nasionalnewsviva.co.id).

The regulation on money laundering in Indonesia was originally stipulated in Law No. 15 of 2002 concerning Money Laundering Act but this Act specifically regulating the crime of money laundering was not able to combat this crime. This law is subsequently amended by the issuance of Law Number 25 Year 2003 regarding Amendment to Law Number 15 of 2002 concerning Money Laundering Crime. Over time, the government and the legislature consider that eradication efforts alone are not sufficient to deal with these crime issues, therefore a preventative action is needed to prevent this crime from continuously happening. Law No. 8 of 2010 on Prevention and Eradication of Money Laundering Crime was issued from this thinking.

The crime of money laundering has increasingly received special attention from various circles. The handling efforts are done nationally, regionally and globally through inter-state cooperation. This movement is caused by the rampant money laundering, but not many countries make up the legal system to fight money laundering as a crime. Money laundering is basically an attempt to process the proceeds of crime with a legitimate business so that the money is clean or appears as *halal* money. Thus the origin of the money is covered (Darwin, 2012: 9).

Many parties agree that the Money Laundering Act (shortened as *TPPU* Law) is more effective for restoring state finances in terms of Asset Recovery when compared to the Corruption Act (shortened as *TICKS*). The reason is because the *TPPU* Law uses a new paradigm in the handling of criminal acts, that is by following the money approach to detect *TPPU* and other crimes (Nasution 2011: 4). Merging corruption cases with *TPPU* can be seen as having its own advantages in handling corruption cases. First, more actors are entangled including corporation; second, the maximum penalty; third, streamline of the return of state assets and fourth, impoverishment of the corruptors (www.hukumonline.com).

It should be noted that the crime results are "life blood of the crime" meaning the results of the crime are the "blood stream" that feeds the crime itself, which is also the weakest point of the crime chain so it is easily detected. Attempting to bypass this criminal chain by seizing and confiscating the proceeds of the crime, as well as being relatively easy to do will also remove the motivation of the perpetrator to recover the crime because the

criminals' intention to enjoy the proceeds of his crime will be hindered or difficult to do (Husein, 2007: 289).

The article discusses a case of corruption that was decided by applying the money laundering law in Medan which was decided by the Supreme Court by the case Number 1605 K / Pid.Sus / 2014. Chronology of the case at the end of 2012 in the city of Medan. The Special Criminal Investigation Director of North Sumatra Police conducted a search and seizure of documents either in *KOPKAR* office or at *Tirtanadi PDAM* including the workspace of *Dirut* Ir. Azzam Rizal, M.Eng. and also the residence of the Chairman of *KOPKAR* Br. H. Subdir Siregar. From Audit Result report in order to Calculate State Financial Losses on Alleged Criminal Acts of Corruption in Billing Activity of *PDAM* Tirtanadi Water Company of North Sumatera Province Year 2012 with number SR-77 / PW02 / 5/2013 by Head of Representative of Provincial Finance and Development Supervisory Board (*BPKP*) North Sumatra, showed the existence of irregularities causing the financial loss, up to Rp 5.277.714.368, - (five billion two hundred seventy seven million seven hundred fourteen thousand three hundred and sixty eight rupiahs) (www.delinewsindonesia.com).

Because of the crime in case Number 1605 K / Pid.Sus / 2014 involved a very large amount of money that can harm the state and affect the national economy and also to various aspects of community life, the crime was classified as extraordinary crime that needed to be prevented and eradicated.

Based on the things that have been described in the background, then some of the main issues related to the above problems are as follows:

1. What is the relationship between corruption and money laundering?
2. How is the implementation of money laundering law towards state losses from corruption (Study of Supreme Court Decision Number: 1605 K / Pid.Sus / 2014)?

2 METHOD

The method used in this research is the legal juridical normative research method. Normative legal research is an approach based on major legal material by examining theories, concepts of legal principles, norms, rules of legislation, court decisions, agreements and doctrines (Achmad, 2010). This kind of research is also called the doctrinal research term, i.e.a research that analyzes

the law, as it is written in the book. In this research the literature materials and document studies serve as the main material while the field data obtained will be used as supporting or complementary data.

3 DISCUSSION

3.1 The Relationship between Corruption and Money Laundering Crime

Money laundering crime and the Criminal Act of Corruption has a very close relationship. This can be clearly seen in Article 2 paragraph (1) of Law no. 8 of 2010 on Prevention and Eradication of Money Laundering Crime. Offense in the Law of *TPPU* and the provision of criminal offense formulation is provided for in Article 3, Article 4, and Article 5; whereas from the formulation of the aforementioned articles, it is seen that the crime of money laundering has special characteristics which are different from other criminal acts by the fact that money laundering act is a follow up crime, while the proceeds of money laundering crime are referred to as core crimes or predicate crime. So when viewed from the chronology of deeds it is not possible to launder money without producing crime (no money laundering without core crimes) first (Ginarsih, 2013: 6).

Predicate crime is a crime processed in money laundering, which in the Law of *TPPU* regulated in Article 2 consisting of 26 types of crime plus all crimes with 4 years and above criminal threats. In addition, it should also be understood that money laundering is a follow-up crime which occurs dependently on the existence of a crime of origin, although each of them is qualified as a separate crime so that it should be concurrently examined and made in a single file with a cumulative arrangement. This understanding will have direct implications on the evidence that both predicate and follow-up crime must be proven because it refers to the necessity of the cumulative indictment that must be combined in concourses realist approach. The necessity of combining the indictment also appears in the provisions of Article 74 and Article 75 of the *TPPU* Law.

From the provisions of the aforementioned article, the criminal act of corruption is one of the types of criminal acts originally related to the crime of money laundering. Crime origin (predicate crime) is a crime that triggers (source) the occurrence of money laundering crime (Yusuf, 2011).

3.2 Implementation of the Law on Money Laundering towards State Losses from Corruption Crime (Study of Supreme Court Decision Number: 1605 K / Pid.Sus / 2014)

The *TIRTANADI PDAM* of North Sumatera Province in 2002 has come into Collaboration Agreement on the Billing of Water Accounts between *TIRTANADI PDAM* of North Sumatera Province with *Kopkar Tirtanadi* Cooperation of North Sumatera Province as set forth in the Number 1: 06 / SPJN / KEU / 2002 Agreement, Party Number II: 37 / SPJN / KKT / 2002, dated September 27, 2002 then under that contract the Cooperation (*Kopkar Tirtanadi*) collects the customers' bill of *PDAM Tirtanadi*, North Sumatera Province. The defendant, Ir. Azzam Rizal, M. Eng, has enriched himself by Rp 5.004.637.000, and from a number of state financial losses of Rp. 5.277.714.368,00 as Audit Result conducted by *BPKP* Representative of North Sumatera Province in Medan with Report No. R-77 / PW.02 / 5/2013 dated July 2, 2013 regarding Audit Report Result in the Framework of State Financial Losses on Alleged Corruption Crime in Water Accounting Activity of *PDAM Tirtanadi*, North Sumatera Province, Fiscal Year 2012.

Based on the case, the indictment of the public prosecutor (*JPU*) is as follows:

First:

Primer: That the Defendant's conduct has violated the stipulated and criminalized provisions in Article 2 paragraph (1) of Article 18 of Law Number 31 Year 1999 concerning the Eradication of Corruption which has been amended into Law Number 20 Year 2001 concerning the Eradication of Jo Corruption Article 65 paragraph (1) of Jo Criminal Code. Article 55 paragraph (1) of the Criminal Code

Subsidiary: Whereas the actions of the Defendant have violated the stipulated and criminalized provisions in Article 3 Jo Article 18 of Law Number 31 Year 1999 concerning the Eradication of Corruption which has been amended into Law Number 20 Year 2001 concerning the Eradication of Corruption Jo Article 65 paragraph (1) Jo Criminal Code. Article 55 paragraph (1) of the Criminal Code

Second:

Primer: That the Defendant's conduct has violated the stipulated and criminal provisions in Article 3 Jo. Article 2 paragraph (1) Sub-Paragraph a of Law Number 8 Year 2010 concerning the Prevention and Eradication of Money Laundering Jo Article 65 paragraph (1) of Jo Criminal Code. Article 55 paragraph (1) of the Criminal Code

Subsidiary: Whereas the Defendant's conduct has violated the stipulated and criminal provisions in Article 4 Jo. Article 2 paragraph (1) Sub-Paragraph a of Law Number 8 Year 2010 concerning the Prevention and Eradication of Money Laundering Jo Article 65 paragraph (1) of Jo Criminal Code. Article 55 paragraph (1) of the Criminal Code

So the case, the demands of the public prosecutor (*JPU*) are as follows: the Defendant Ir. Azzam Rizal, M. Eng, is proven guilty and convincingly guilty of "jointly committing the act of enriching themselves or others or a corporation that could harm the state finances or the economies of the state of deeds which are mutually related to each other" in Jo Article 2 paragraph (1). Article 18 of RI Law. 31 of 1999 on the Eradication of Corruption as amended by RI Law no. 20 of 2001 on Amendment to Jo Law Number 31 Year 1999 concerning the Eradication of Corruption. Article 65 paragraph (1) of the Jo Criminal Code. Article 55 Paragraph (1) of the Criminal Code as in the First Indictment of Primair AND "jointly committing the crime of laundering which one act mutually related to each other" in Jo Article 3. Article 2 paragraph (1) sub-paragraph a of Jo Law no. 8 Year 2010 on the Prevention and Eradication of Money Laundering. Article 65 paragraph (1) of the Jo Criminal Code. Article 55 paragraph (1) of the Criminal Code.

Imposing a penalty on the defendant with imprisonment for 8 (eight) years and 6 (six) months minus as long as the defendant is in custody and pays a fine of Rp.200,000,000, - subsidiary 6 (six) months. Paying substitute money to the state through *PDAM Tirtanadi*, North Sumatra Province of Rp. 3.698.726.722, - if the defendant is unable to pay the replacement money within a period of 1 (one) month after the court's decision that has obtained permanent legal force, his or her possessions may be seized by the prosecutor and auctioned off to cover the replacement money, in case the defendant does not have sufficient property to pay replacement money, the defendant shall be subjected to imprisonment for 4 (four) years.

Evidence of 1 unit of Mitsubishi Pajero Sport 2.5 D Exceed BK 111 IU in 2011 under the name of Ir. Azzam Rizal. M.Eng, 1 unit of Toyota Camry Car, black color, BK 176 R, under the name of Siti Solehati Dalimunthe, 1 (one) exemplaar of rights certificate Number 673 on a plot of land with an area of 423 M2 under the name of Amransyah Marpaung, 1) receipt sheet signed by Frengky Manurung in December 2011 for the payment of a vacant plot of Marelan, Desa Terjun no. 673 is placed in Medan Sub-district Marelan Kel. Waterfall, the area of 423 M2 of money amounting to Rp.185,000,000, - received from Dongang Indar Muda and was seized for the state and the proceeds were returned to the cash of *PDAM Tirtanadi*, North Sumatra Province.

From that case, the District Court Judge declared the defendant Ir. Azzam Rizal, M.Eng. mentioned above has been proven legally and convincingly guilty of committing "joint corruption" and "Crime of Money Laundering":

1. Imposing the defendant with imprisonment for 5 (five) years and a fine of Rp. 200.000.000, - provided that the unpaid penalty must be replaced with imprisonment for 2 (two) months.
2. To charge the defendant to pay the replacement of Rp. 2,574,602,354, - and if the defendant fails to pay the replacement money for 1 (one) month after the court decision that has permanent legal force, then his or her possessions may be seized and auctioned off to cover the replacement money, and in the event the defendant has no property sufficient to pay the replacement money, then it will be replaced with additional imprisonment for 1 (one) year.
3. Evidence of 1 unit of Mitsubishi Pajero Sport 2.5 D Exceed BK 111 IU in 2011 under the name of Ir. Azzam Rizal. M.Eng, 1 unit of Toyota Camry Car, black color, BK 176 R, under the name of Siti Solehati Dalimunthe, 1 (one) exemplar of rights certificate Number 673 on a plot of land with an area of 423 M2 on behalf of Amransyah Marpaung, 1) receipt sheet signed by Frengky Manurung in December 2011 for the payment of a vacant plot of Marelan, Desa Terjun no. 673 placed in Medan Sub-district Marelan Kel. Waterfall Land area 423M2 money Rp. 185.000.000 received from Indar Muda Dongoran was seized for the state and the results of the auction were returned to the cash of *Tirtanadi PDAM* of North Sumatra Province.

At the High Court level, the Court of Appeal corrects the decision of the Corruption Crime Court at the Medan District Court of 18 February 2014

Number. 92 / Pidsus.K / 2013 / PN-Mdn requested appeal as long as the duration of imprisonment is imposed, so the contents of the verdicts are as follows:

1. Imposing the defendant with imprisonment for 6 (six) years and a fine of Rp. 200.000.000, - provided that the unpaid penalty must be replaced with imprisonment for 2 (two) months.
2. To charge the defendant to pay the replacement of Rp. 2,574,602,354, - and if the defendant fails to pay the replacement money for 1 (one) month after the court decision has permanent legal force, then his or her possessions may be seized and auctioned off to cover the replacement money, and in the event the defendant has no property sufficient to pay the replacement money, then it will be replaced with additional imprisonment for 1 (one) year.
3. Evidence of 1 unit of Mitsubishi Pajero Sport 2.5 D Exceed BK 111 IU in 2011 under the name of Ir. Azzam Rizal. M.Eng, 1 unit of Toyota Camry Car, black color, BK 176 R, under the name of Siti Solehati Dalimunthe, 1 (one) exemplaar of rights certificate Number 673 on a plot of land with an area of 423 M2 under the name of Amransyah Marpaung, 1) receipt sheet signed by Frengky Manurung in December 2011 for the payment of a vacant plot of Marelan, Desa Terjun no. 673 placed in Medan Sub-district Marelan Kel. Waterfall Land area 423M2, money Rp. 185.000.000 received from Indar Muda Dongoran was seized for the state and the results of the auction were returned to the cash of *Tirtanadi PDAM* of North Sumatra Province.

From the Supreme Court level, the Supreme Court rejected the appeal from the appeal of II / Defendant Ir. Azzam Rizal, M.Eng. Rejected appeal from the appeal of the cassation I: The Public Prosecutor at the Medan District Attorney, that is by improving the decision of the Medan High Court. 18 / Pid.Sus.K / 2014 / PT-Mdn. On 14 May 2014 that upheld the verdict on the decision of the Corruption Crime Court at the Medan District Court. 92 / Pid. Sus.k./2013/PN.Mdn. dated 18 February 2014 just about subsidiary substitute fines and replacement money so that the contents of the verdicts are as follows:

1. Imposing the defendant with imprisonment for 6 (six) years and a fine of Rp. 200.000.000, - provided that the unpaid penalty must be replaced with imprisonment for 2 (two) months.
2. To charge the defendant to pay the replacement of Rp. 2,574,602,354, - and if the defendant

fails to pay the replacement money for 1 (one) month after the court decision has permanent legal force, then his or her possessions may be seized and auctioned off to cover the replacement money, and in the event the defendant has no property sufficient to pay the replacement money, then it will be replaced with additional imprisonment for 1 (one) year.

3. Evidence of 1 unit of Mitsubishi Pajero Sport 2.5 D Exceed BK 111 IU in 2011 under the name of Ir. Azzam Rizal. M.Eng, 1 unit of Toyota Camry Car, black color, BK 176 R, under the name of Siti Solehati Dalimunthe, 1 (one) exemplar of rights certificate Number 673 on a plot of land with an area of 423 M2 under the name of Amransyah Marpaung, 1) receipt sheet signed by Frengky Manurung in December 2011 for the payment of a vacant plot of Marelan, Desa Terjun no. 673 placed in Medan Sub-district Marelan Kel. Waterfall Land area 423M2; money of Rp. 185.000.000 received from Indar Muda Dongoran was seized for the state and the results of the auction were returned to the cash of *Tirtanadi PDAM* of North Sumatra Province.

4 CONCLUSIONS

Corruption with Money laundering has a very close relationship. This can be clearly seen in Article 2 paragraph (1) of Law no. 8 of 2010 on Prevention and Eradication of Money Laundering Crime. Origin Crime (predicate crime) is a criminal act that triggers (source) the occurrence of money laundering crime, so the handling of money laundering criminal cases have significance for the return of state assets related to the eradication of corruption. The formulation of offense in the Law on *TPPU* and the proof of the origin crime is regulated in Article 3, Article 4, and Article 5. From the formulation of the Articles mentioned above it appears that money laundering crimes have special characteristics that are different from other criminalacts as money laundering crime is ,a follow-up crime, while the proceeds of money laundered crime are referred to as core crimes or predicate crime. When viewed from the deeds chronology then it is not possible to launder money without producing a crime first.

Implementation of money laundering law towards state losses from corruption in the Supreme Court decision No: 1605 K / Pid.Sus / 2014 the District Court judges is applied in Act no. 8 year

2010 to the corruption case, namely by imposing a sentence of 5 years in prison, a fine, paying a replacement money, and seizing assets owned by the defendant from the proceeds of a crime. At the High Court Level The judges only corrected the Medan District Court's decision which only raises the prison sentence to the defendant to 6 (six) years imprisonment and on appeal the judge only changed the imprisonment to 6 (six) months if the fine if was not paid by the defendant replacing the imprisonment for 2 (two) years if the defendant cannot pay the replacement money. Based on the result of case analysis on Supreme Court Decision No: 1605 K / Pid.Sus / 2014 on judge judgment element it is seen that the case can harm state finance or state economy based on calculation done by *BPKP* of North Sumatera Province and it can be stated that court judge criminal corruption terrain based on Law no. 17 of 2003 on State Finance, Law no. 1 of 2004 on state treasury, and Law no. 15 of 2004 on the Audit of State Financial Management and Accountability is clearly in line with the *BPK* in determining the financial loss of the country / region

There is a need to improve the quality of human resources involved in the prevention and eradication of money laundering crime. This quality improvement is very important, especially in significant institutions such as Justice Court, Public Prosecution Service, Police Department, *PPATK*, and Financial Service Provider.

Socialization is needed to the public to raise awareness of the dangers of money laundering. This is due to the crime of money laundering that does not harm a person directly, so that the danger is less realized by the community.

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