CORPORATE LIABILITY IN CRIMINAL ACT OF MONEY LAUNDERING

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ABSTRACT

Criminal liability is due to the existence of objective criticism to the maker of a criminal act that meets the requirements for being subject to criminal acts for their actions. Furthermore, for its development in Indonesia, several criminal law regulations spreading outside the Criminal Code regulate corporations as perpetrators of crimes and are subject to punishment, for example Law No. 8 of 2010 on Eradication of Money Laundering Crimes discussed in this study. Based on the description of the background, the authors formulate the problem as follows: What is the policy regarding corporate liability in money laundering in the future? The research purposes is analyze appropriate policies regarding corporate liability in future money-laundering crimes. The reseach methode using juridical sociology is research that is reviewed through legal aspects, in this case the rules are correlated to the reality or practice occuring in the field or the surrounding community. The purpose of using the sociopolitical juridical approach in this study is to find out the form of corporate liability in the crime of money laundering with the perspective of criminal law policy in the handling of corporate criminal acts in Indonesia. Sociological/non-doctrinal legal research is based on reality in the field or by direct observation. Conclusion of the research is the formulation policy regarding corporate liability related to money laundering crimes must refer to the formulation policy with the latest draft Criminal Code. Criminalization of corporations must be in accordance with the integrative establishment of the purpose of punishment, which is in its function as a means of prevention (general and special) and protection of the community. Problems which then arise in the case of corporations becoming perpetrators in criminal acts are basically the same as corporations as perpetrators of crimes, which are those that must be categorized as corporate actions and corporate errors. As the problem of corporate criminal liability as a criminal offender can be solved by the theory of identification, then the issue of participation in this theory can be used. Corporations in committing criminal acts are always represented by corporate management, in this case acting as corporate controllers, considering that corporations are inanimate objects that have no state of mind and cannot be condemned criminally. Suggestion of the research is The government, in this case law enforcement officials, is expected to provide more references in the form of jurisprudence (court decisions) that punish corporations who have been proven to have committed crimes that in the future they can be used as legal sources and guidelines in imposing criminal sanctions on corporations.

A. Background

The principle of corporate liability was first regulated in 1951, which was regulated in the Law on Stockpiling Goods, and was more widely known in Law /71/Drt/1955 on Economic Crimes. In the latest development, in addition to being a perpetrator, the corporation can also be held accountable for a crime, Law No. 15 of 2002 on Money Laundering following this model. Other regulation that also adheres to this model includes Law No. 23 of 1997 on Environment, Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 in Corruption. Then in order to reach out and eradicate corporate crime related to the development of money laundering and its complexity, there were amendment to Law Number 15 of 2002 with the issuance of Law No. 25 of 2003 and then Law No. 8 of 2010.

As an example of corruption cases that punish corporations, which is corruption cases, committed by PT. Giri Jaladhi Wana in Banjarmasin District Court, in which there are parties who gain profits in cases of corruption and other corporate matters. In order to ensnare the suspected corporation in committing criminal act of corruption have resulted in a decision until the verdict has permanent legal force even though most of the panel of judges rejected it. The reason for the panel of judges was none other than that the corporation inquired for criminal liability was not the subject of the indictment.

In addition, money-laundering cases involving corporations are those cases by M. Nazarudin. The KPK announced that the former Treasurer of the Democratic Party was named as suspect in money laundering case. According to KPK Spokesperson Johan Budi, the determination of the suspect was an investigation into the case of the Athletes Wisma, in which Nazaruddin was accused. The owner of Permai Group allegedly bought shares in PT Garuda using funds from the proceeds of corruption at the Athletes Wisma project. For this reason, the KPK ensnared Nazaruddin with Article 12 letter a subsidiary of Article 5 and Article 11 of the Law on the Eradication of Corruption Crime as well as Article 3 or Article 4 in conjunction with Article 6 of Law No. 8 of 2010 on Prevention and Eradication of Money Laundering.

Legal entities or corporations are supporting elements of rights and obligations in which all things according to law can have rights and obligations just like human (Ali, 1991: 4). Now there are corporate activities that harm humans and open opportunities to be classified into acts against the law, as in the Civil Code of the Third Book Chapter VIII regulates

limited liability companies and Chapter XI regulates legal entities. Through the regulation, corporations recently are accepted as legal subjects and are treated the same as other legal subjects, which is humans (natural). Thus, the corporation can serve like human in general (Susanto, 1995: 15).

Starting from the legal standard of Law No. 8 of 2010, this is a concern that the practice of money laundering in Indonesia seemingly increasing, even though there was a polemic about the need to immediately commit criminalization. Motivation for money laundering from crime is at least because there are some concerns that the perpetrators will face tax officials or will be prosecuted by law enforcement or even the results of the crime will be confiscated.

Money laundering is a stand-alone crime, even though money laundering is born from its original crime, such as corruption, but the anti-money laundering regime in almost all countries places money laundering as a crime that does not depend on its original crime in the case of money laundering investigations. Thus if the original crime is not proven then this does not preclude the legal process of money laundering. Mardjono Reksodiputro gave an example of Article 480 of the Criminal Procedure Code concerning criminal penalties on fencing as an analogy of money laundering (Reksodiputro, 2017). In the event that a criminal offense occurs, the legal process for criminal offenses does not need to hold on the (*inkracht*) binding legal force decision of the theft case.

Corporate crime is one of the discourses arising with the progress of economic and technological activities. Corporate crime is not firsthand, but old ones that are constantly changing its packaging. None can deny that the era development and progress of civilization and technology are accompanied by the development of crime along with its complexity (Lubis, 2004). On the other hand, the provisions of the Criminal Law applicable in Indonesia have not been able to reach them and are always left behind to formulate them.

Corporations as the subject of criminal law are unknown for the Criminal Code; this is because the Criminal Code is a legacy of the Dutch colonial government, which adheres to the system of Continental European law (civil law). Continental European countries are somewhat behind in terms of regulating corporations as subjects of criminal law, when compared to Common law countries, where in Common Law countries such as the United Kingdom, the United States and Canada the development of corporate liability has begun since the industrial revolution.

The application of criminal liability in corporations often encounters difficulties in the principle of law, especially concerning the principle of non-crime without error (geen straf zonder schuld) (Marpaung, 2005: 9) because criminal acts do not stand alone, new criminal acts are meaningful if there is criminal liability (Abidin, 1995: 260-266). Criminal liability is due to the existence of objective criticism to the maker of a criminal act that meets the requirements for being subject to criminal acts for their actions. Furthermore, for its development in Indonesia, several criminal law regulations spreading outside the Criminal Code regulate corporations as perpetrators of crimes and are subject to punishment, for example Law No. 8 of 2010 on Eradication of Money Laundering Crimes discussed in this study.

Based on the background above, the interesting item to study is the issue of a haven of legal subject for corporates criminal liability and criminal sanctions imposed on corporations, with the title of "**CORPORATE LIABILITY IN CRIMINAL ACT OF MONEY LAUNDERING (PERSPECTIVE IUS CONSTITUENDUM INDONESIA)**

Formulation of the problem

Based on the description of the background, the authors formulate the problem as follows:
What is the policy regarding corporate liability in money laundering in the future?

Research purposes

The research is as follows:
Analyze appropriate policies regarding corporate liability in future money-laundering crimes.

B. RESEARCH METHODS

Research Approach

Using juridical sociology is research that is reviewed through legal aspects, in this case the rules are correlated to the reality or practice occuring in the field or the surrounding community. The purpose of using the sociopolitical juridical approach in this study is to find out the form of corporate liability in the crime of money laundering with the perspective of criminal law policy in the handling of corporate criminal acts in Indonesia.

Types of Legal Research

Sociological/non-doctrinal legal research is based on reality in the field or by direct observation. According to Soekanto in Mukti Fajar and Yulianto Achmad (2010: 153) sociological/non-doctrinal legal research covers research on (unwritten) legal identification and research on legal effectiveness. Sociological/non-doctrinal legal research would take

measurements of certain laws and regulations regarding their effectiveness, thus operational definitions can be taken from the laws and regulations. In sociological/non In doctrinal legal research, it does not always need hypotheses, except in explanatory research.

Research focus
Respondents can be interpreted as a source of information explored to uncover the facts in the field. The researcher determines the respondent based on the problems to study about Corporate Liability in Money Laundering (A Study of Criminal Law Policies in the Management of Corporate Crimes in Indonesia).

Research location
The research location chosen by the author was in the Semarang City of Central Java. The location of the research was focused on the Police and the Corruption Court in Semarang.

Data source
The data sources used in this study are:
1. Primary Data Sources
   Primary data is information or facts obtained directly through field research or at research sites. Primary data is data collected from a number of facts or information obtained directly through field research. Field research is research carried out by visiting a place as an object of research (Nazir, 2005: 65).
2. Secondary Data Sources
   Secondary data is data obtained or collected by people who carry out research from existing sources (Hasan, 2002: 58). This data is used to support primary information that has been obtained, which is from library materials, literature, previous research, books, and others. The data source is a place where and wherever data from a study is obtained. Secondary data sources used in this study are primary legal materials. Primary legal material is an authoritative legal material which means having authority (Marzuki, 2010: 141). Primary legal material consists of legislation, records or minutes in making legislation. In this study the primary legal material consists of:
   1) Primary Law Materials, in the form of laws, include:
      a) Criminal Code (KUHP) Article 56 and 59;
      b) Law of the Republic of Indonesia Number 8 of 2010 on Prevention and Eradication of TPPU Article 1, 3, 4, and 5 to 10;
      c) Draft of the 2015 Criminal Code Article (47 to 53 and 182)
   2) Secondary Legal Materials
      Secondary Legal Materials, which is materials closely related to primary legal materials and can help analyze and understand primary legal materials, in the form of books, research results and other library materials related to the research. In this study, secondary legal materials used in the form of books or literature relate or discuss corporate criminal law policies and money laundering crimes.
   3) Tertiary legal materials are legal materials that support primary legal materials and secondary legal materials by providing perceptiveness and understanding of other legal materials. The tertiary legal materials in this research are court decisions, literature bibliography, papers, journals and scientific bulletins containing corporate criminal law policies and money laundering crimes.

Data collection technique
Data collection tool in this study used in-depth interviews to explore in full and detail about the discussed topics (Hudelson, 1996). Interviews were conducted with several informants regarding corporate criminal law policies and money laundering crimes.

Data analysis technique
The results of analysis were able to express and find categories related to a discipline, but also developed from a given category and correlation with the obtained data. The results of data analysis can be treated inductively in conclusions, which is a way of thinking from the general things based on facts and symptoms to a special nature. In short, the stages of analysis in this study are as follows:
1. Data collection in which data analysis in qualitative research is carried out when data collection takes place.
2. Data reduction, interpreted as the process of selecting focus on simplifying, abstracting and transforming crude data obtained from notes in the field. The method to reduce is by summarizing, coding, searching for themes, creating clusters and making memos.
3. Data presentation, designed to combine information arranged in a form that is coherent and easily achieved, for example, expressed in various types of matrices, graphs, networks and charts. Data presentation is done by compiling a set of information that gives the possibility of drawing conclusions and taking action.
4. Drawing conclusions or verification is the activity of searching for meaning, writing the order, patterns, explanations, configurations, which may be the path of cause and effect, and propositions. Conclusions are also

verified, which is rethinking that crosses the mind of the analyzer during conclusions, reviews of field notes, exchange of ideas among peers or asking for responses/comments to respondents whom the data have been collected in order to read conclusions that the researchers have concluded for its strength and match.

C. RESEARCH RESULTS

Criminal Law Policy in the Prevention of Future Money Laundering by Indonesian Corporations

The policy on corporate liability related to money laundering crimes must refer to policies with the latest draft of Criminal Code. Criminalization of corporations must be in accordance with the integrative establishment of the purpose of punishment, which is in its function as a means of prevention (general and special) and protection of the community. Besides, even though the punishment is quite severe, there is a tendency to use more subsidiarity principles, that is the criminal law in place that final sanction (*ultimum remidium*), administrative and civil sanctions are applied. Thus it needs to be considered as an effort to provide a deterrent effect that can be achieved against corporate punishment, in order to put criminal law as main sanction ("*primum remedium*").

Tackling the crime of money laundering needs to be balanced by reforming and developing criminal law system as a whole in a form of legislative policy, known as formulation policy. As stated in the previous chapter that policy formulates and establishes criminal sanctions in legislation, it can also be referred to as the policy formulation stage. Formulation policy has exceptionally strategic position viewed from the overall policy of operationalizing criminal law. This view is in accordance with the opinion of Barda Nawawi Arief, which stated that: (Arief, 1994: 3)

> The legislative policy stage is the utmost strategic stage viewed from the process of operationalizing criminal sanctions. At this stage, a policy line for the criminal system and punishment is formulated as legislative basis for the next stages, which is the stage of criminal application by the judiciary and the stage of criminal implementation and by the criminal implementing apparatus.

Normatively the main problem in criminal law covers the first three issues, any actions should be punished (acts against the law/criminal act/*daad*); second, any conditions should be fulfilled to account for someone who commits the act (criminal liability/criminal responsibility/*dader*); and third, any sanctions/crimes should be imposed on the person who has committed the act (punishment/*straf*). (Arief, 1994: 16)

The current Criminal Code does not recognize corporations as subjects of criminal law. This is concluded from the provisions of article 59 of the Criminal Code. However, some special laws beyond the Criminal Code have regulated corporations as legal subjects who can be inquired for its criminal liability, of which the principle of *lex specialis derograt lexgeneralis* or special laws that override general laws is applicable. (Surastini, 2006: 179) As for the inclusion doctrines, as long as the special law outside the Criminal Code makes provisions regarding participation in corporations, the participation can be applied to the corporation.

One of the special laws beyond the Criminal Code, which explicitly regulates corporations as legal subjects of criminal acts is Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. This law also regulates inclusion and sanctions given to individuals and corporations who act as perpetrators and participate in carrying out trials, assistance or conspiracy in the crime of money laundering. This matter is regulated in article 6 paragraph 1 and article 10 of Law No. 8 of 2010 on Prevention and Eradication of Money Laundering Crimes.

Furthermore, the RKUHP also regulates the corporation as the subject of criminal law, which is regulated in Article 47 to Article 53 of the 2012 Criminal Procedure Code.

Problems which then arise in the case of corporations becoming perpetrators in criminal acts are basically the same as corporations as perpetrators of crimes, which are actions which must be categorized as corporate actions and corporate errors. As the problem of corporate criminal liability as a criminal offender can be solved by the theory of identification, then the issue of participation in this theory can be used. (Surastini, 2006: 180)

Peter Gilles points out three important things that must be considered when it comes to *the doctrine of complicity* in relation to the company and its employees. (Peter Gilles in Surastini Fitriasih, 2006)

1. First, the company can only commit criminal acts through human and to be accounted for, then the crime must be carried out by one of the employee served as the brainpower of the company. Thus it is evident that the identification theory hereby plays an important role.
2. Second, if a crime is committed by an employee whose actions can be considered to represent the company as well as his own actions; the company and its employees can be seen in their position as principal and accessory (additional) or as joint principals (common principles). It means that both company and employee can be accounted for.

3. Third, if a director does not take action to prevent criminal acts committed by other directors that the company commits a criminal act, then he can be accounted for as an accessory.

However, he is not an accessory in a criminal act committed by a company, but accessory as it does not prevent the crime from being committed. Hence the criminal liability is omission of offenses.

What stated by Gillies above is more in the form of participation in one corporation, which is between human and corporations, but according to Surastini it can be extended to between corporations. The basis for reference is that the theory of identification associated with the doctrines of inclusion both according to law, doctrine and jurisprudence. (Peter Gilles in Surastini Fitriasih, 2006)

As it is known, corporations in committing criminal acts are always represented by corporate managers in this case taking action as corporate controllers, considering that corporations are inanimate objects that have no state of mind and may not be blamed criminally. Nonetheles, with the birth of the doctrine of strict liability (the doctrine of strict liability), criminal liability can be charged to the concerned perpetrators of the criminal acts without proving the existence of errors (voluntary or default) on the perpetrators.

Furthermore, in order to attract criminal liability for corporations, it can be done with vicarious liability, that is, according to this doctrine, corporations must be responsible for actions that their employees committed (corporate management), their power, or their mandate, or anyone who responsible to the corporation.

In the development of modern law, this doctrine is aimed at the basis that corporations must pay losses caused by the actions of their employees, that corporations are expected to be more selective to appoint managers or employees who can take action in their operations (Twomey et. Al., 2001: 730). Corporate criminal liability in the development of modern law is actually regulated in the concept of the First Book of the Criminal Code Bill in 2015. The Criminal Code Bill stipulated that criminal acts are carried out by corporations if it is carried out by people who have functional positions in corporate organizational structures referred to as and on behalf of corporations or for the benefit of the corporation, based on work relations or based on other relationships, within the scope of the corporation's business, either individually or jointly (Article 49).

The context of the issue of corporate punishment decisions is without being indicted, thus it can be said that the judge inspires the strengthening of the *ius constituendum* that is the time for vicarious liability to be "generalized" to be used and applied in dealing with criminal cases of which criminal liability of the management is identified related functionally with corporate criminal liability which incidentally has benefited from criminal acts committed by its management.

In corporate criminal liability, the correlation between corporate and corporate administrators is incredibly close, thus it is rather difficult to identify which actions corporate managers carry out in order to achieve corporate objectives with which actions are carried out by the management in order for corporate management itself. While we can see in money laundering cases that the author discussed above, many involvement of corporate administrators who commit criminal acts are sometimes rather difficult to identify their actions in order to represent the corporation or in the interests of the corporation's management personally. This problem can be answered by identification theory, which according to this theory, can impose criminal liability on a corporation, whoever commits the crime must be identified by the public prosecutor. If the crime is carried out by the "directing mind" (brainpower) of the corporation, then the liability of the crime can only be imposed on the corporation. Which means, in order to attract corporations as those who are criminally responsible, a corporate administrator must be *directing mind* (brainpower) of the corporation or in this case has the authority to carry out duties and obligations in order to fulfill corporate interests.

We can view the involvement of corporate management in the example below which involves a Branch Head of the Bank, the following is the case – A money laundering case which involved one of the BII Senen Assistant to Branch Heads Ir. Wahyu Hartanto with the defendant Tony Ch. Martawinata.

Case Position:

The defendant was asked for help by Ade Suhidin, the owner of PT. Kharisma International Hotel to seek for loan funds. For the assistance of the defendant who had a connection at PT. PUSRI and Ir. Wahyu Hartanto as Head of BII Senen Branch Office, then Bunyamin Ibrahim as the Managing Director of Pusri Pension Fund (Dapensri) was willing to place a time deposit at BII KCP Senen Jakarta. Then, on September 4, 2003 Bunyamin Ibrahim sent a letter to the Head of Bank Mandiri KCP Pusri Palembang to transfer funds owned by Dapensri at Bank Mandiri KCP Pusri Palembang by Rp. 25,000,000,000.00 for placement of deposits at BII KCP Senen Jakarta, which was then held on September 8, 2005 through the

> RTGS facility with code No. 0160131. It turned out that the fund was not deposited by Ir. Wahyu Hartanto but was transferred again to the account of PT. Kharisma International Hotel. On September 15, another transfer of Dapensri funds was carried out in the amount of Rp. 6,000,000,000,000 to the bank account of PT. Kharisma International Hotel. For the implementation of the Dapensri fund placement, Ade Suhidin had submitted 3 checks worth of Rp. 1,500,000,000.00, Rp. 360,000,000.00, and Rp.800,000,000 respectively, as a commission to Tony Ch. Martawinata. (Decision of the South Jakarta District Court Number. No.956/Pid.B/2005/PN.Jak. Cell)

From the case above, it can be perceived that individual branch heads involved in committing money laundering crimes, but the corporation or bank where they work is not subject to criminal liability.

As it is known in Article 6 paragraph 2 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Criminal Acts states the criminal imposition requirements for corporations, as follows:
Article 6
(1) Crimes are imposed on Corporations if the Money Laundering crime:
   a. performed or ordered by Corporate Control Personnel;
   b. carried out in the context of fulfilling the purposes and objectives of the Corporation;
   c. conducted in accordance with the duties and functions of the perpetrator or the instructor; and
   d. administered with the intention of providing benefits to the Corporation.

In the above case, the corporation was not criminally liable, is it because the branch head was not a controlling person from the corporation? With regard to the above, in the interview session, Prof. Sutan Remy Sjahdeini suggested that:

"Corporate controlling personnel here are not only the board of directors, branch heads of a bank can also be classified as corporate controlling personnel as they receive authority and delegations from corporate leaders to take action in the context of carrying out the interests of corporate."

> The same thing Yunus Husein has also stated, in an interview session with the author, he stated that:
> "The law is not really rigid as appointing that corporate controlling personnel are only limited to their directors, but also those who are within the scope of corporation in which they have the duty and authority to take important policies in the interests of the corporation."

Based on the description above, it can be concluded that corporate managers can be stated to take action on behalf of the corporation if the corporate management:
- Constitute controlling personnel of the corporation or in this case has the authority to take important policies for the benefit of the corporation;
- Taking action in order to provide benefits to the corporation.
- Corporate management's actions are carried out in accordance with their functions and duties;
- Corporate management's actions are carried out in the context of fulfilling the aims and objectives for the corporation;

Hence, what distinguishes it from criminal acts carried out by corporate managers who take action on their own behalf without representing the corporation, in which criminal liability is only borne by corporate management in the case of:
- The act is carried out by ordinary corporate managers who are not corporate controlling personnel
- The act of corporate management do not benefit the corporation but only the individual
- The act of corporate management is carried out contrary to the intent and purpose of the corporation.
- The act of corporate management deviates from its functions and duties in a corporation.

With the acceptance of corporation as a legal subject and the possibility of a corporation to take the form of participation as stipulated in Article 10 of Law no. 8 of 2010 on the prevention and eradication of money laundering crimes, the forms of participation can be drawn in several forms:
a. People with People. This form is commonly found in cases in the court in which people or individuals who act as perpetrators and other individuals as perpetrators.
b. People with people (corporate management). In this form, the individual or person acts as a pleger and other individuals in this case the corporate management acts as an incumbent or vice versa.
c. People with Corporations. In this form, the person or individual acts as a pleger and the corporation, in this case represented by the corporate controlling personnel, acts as the incumbent or vice versa.

d. Corporation with Corporation. In this form, the corporation acts as a pleger (actor) and other corporations play a role as agents of inclusion. Certainly this corporation is represented by individuals within the corporation (corporate controlling personnel).

The movement of world civilization has never stopped, let alone lined up backwards. Along with that, forms of crime are always changing and "metamorphosed", wrapping up itself as sophisticated as the development of science and technology. Crime no longer uses conventional means and suggestions (Susanto in Masyhar 2008: 141) as ever before, but it has gone through such a change in form, even though the substance of his actions remains the same. It can take an example here, which is a crime of corruption, money laundering, cyber crime and others (which are generally categorized as *White Collar Crime*).

Regarding money laundering, Indonesia is suspected of being a heaven for money laundering, as there is no legal instrument to regulate it. In fact, the US Department of Foreign Affairs in its March 2002 report, included Indonesia in the major money laundering countries interpreted " *as one whose financial institutions engages in currency transactions involving significant amount of procceds from international narcotics trafficking* ". (Sumardji in Masyhar, 2008: 141).

However, since April 17, 2002, Law Number 15 of 2002 on the Criminal Procedure for Money Laundering has been promulgated (later amended by Law No. 25 of 2003, hereinafter referred to as the Money Laundering Law). The law was made with the aim of preventing and eradicating that the intensity of crimes that produce or involve large amounts of assets can be minimized that national economic stability and state security are maintained.

After Law Number 15 of 2002 concerning the Crime of Money Laundering was amended into Law No. 25 of 2003, which is referred to as the money laundering law, there are differences in the content and Article in the Act. The Money Laundering Act was formulated by the money laundering law, as follows:

(1) Those who intentionally:
   a. Placing the assets known or is reasonably expected to be the result of a criminal act in the Financial Services Provider, either on his own behalf or on behalf of another party.
   b. Transferring assets known or should be expected to be the result of a criminal act from a Financial Service Provider to another Financial Service Provider, either on his own behalf or on behalf of another party.
   c. Paying or spending assets known or is reasonably expected to be the result of a criminal act, whether the act is in his own name or on behalf of another party.
   d. Granting or donating assets known or should be expected to be the result of a criminal act, both in his own name and on behalf of another party.
   e. Entrust the assets known or should be expected to be the result of a crime, both in his own name and on behalf of another party.
   f. Bringing overseas assets known or supposed to be the result of a crime, or.
   g. Exchange or other acts over the assets known or should be expected to be the result of a crime with currency or other securities, with the intention of hiding or covering the origin of the assets known or is supposed to be the result of a crime. They are convicted of money laundering with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 15,000,000.00.00 (fifteen billion rupiah).

(2) Those who conducts an experiment, sedimentation, or conspiracy to commit a crime of money laundering shall be subject to the same criminal offense as referred to in paragraph (1).

In fact, at the beginning of its formulation (in Law No. 15 of 2002), Article 2 emphasized that the proceeds of crime were assets totaling Rp. 500.00, - or more, or equal value, obtained directly from crimes of corruption; bribery; supply of goods; labor absorption; immigrant trafficking; banking; narcotics; psychotropic; slaves, women and children trafficking; illegal arms trade; kidnapping; terrorism; theft; embezzlement; and fraud.

There are two main elements of the TPPU, as follows:

a. The laundered assets must amount to Rp. 500,000,000, or more or equivalent value.
b. Must know/should suspect that wealth is the result of crime/criminal offense (as determined in a limitative manner in Article 2 of the TPPU Law) (Arief, 2002: 3).

However, following the amendments (with Law No. 25 of 2003), the laundered amount/limit of assets was removed. This means that anyone who conducts money laundering in any amount can be imposed with the Money Laundering Law. In addition, amendments also added a number of predicate offenses with a number of criminal acts in the capital market sector, insurance, taxation, forestry, environment, marine sector, money forgery,

gambling, and prostitution. Not enough with the type of predicate offences that have been mentioned in detail, Law No. 25 of 2003 also included other criminal acts which are threatened with imprisonment of 4 (four) years or more.

As a pair of Article 3, the Money Laundering Law formulated Article 6, which threatens criminality as Article 3 for those who accept or control the placement, transfer, payment, grant, donation, safekeeping or exchange of assets that they know or should be considered as result of a crime. However, in Article 6 there are no provisions such as Article 3 paragraph (2), which is threatening the same criminality for those who conduct experiments, assistance, and evil consensus to commit criminal acts in Article 6.

D. CLOSING

Conclusion

From the formulation of the problem and the description of the results of the study as stated in the previous chapters, it can be concluded as follows:

The formulation policy regarding corporate liability related to money laundering crimes must refer to the formulation policy with the latest draft Criminal Code. Criminalization of corporations must be in accordance with the integrative establishment of the purpose of punishment, which is in its function as a means of prevention (general and special) and protection of the community. Problems which then arise in the case of corporations becoming perpetrators in criminal acts are basically the same as corporations as perpetrators of crimes, which are those that must be categorized as corporate actions and corporate errors. As the problem of corporate criminal liability as a criminal offender can be solved by the theory of identification, then the issue of participation in this theory can be used. Corporations in committing criminal acts are always represented by corporate management, in this case acting as corporate controllers, considering that corporations are inanimate objects that have no state of mind and cannot be condemned criminally. However, with the emerging doctrine of strict liability, that criminal liability can be charged to the concerned perpetrators of criminal acts, of which is unnecessary to prove the mistakes (voluntary or default) on the perpetrators. Besides that the crime is carried out by the "directing mind" (brain) of the corporation, then the liability for the crime can only be borne by the corporation.

Suggestion

1. The government, in this case the relevant administrators, is expected to optimize the function of supervision or full control of financial service providers (banks) in accepting all forms of funds of which sources are unclear, considering financial institutions are easy places or targets for money laundering. The government measures in establishing the OJK (financial services authority) are expected to be able to provide better supervision to financial institutions.
2. Reviewing the forms of participation carried out by corporations in this Law that they can produce clearer definitions and concepts, even to the form of multi-layererd participation such as participation in investments.
3. Given the widespread cases of money laundering through corporations, in order to eradicate crimes classified as criminal acts, it is recommended that law enforcement officials be given optimal knowledge and references that they can better understand the techniques of money laundering by corporations in a multi-layered manner.
4. The government, in this case law enforcement officials, is expected to provide more references in the form of jurisprudence (court decisions) that punish corporations who have been proven to have committed crimes that in the future they can be used as legal sources and guidelines in imposing criminal sanctions on corporations.

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