



Juridical Study on the Corporate Criminal Liabilities for Money Laundering
Criminal Action with the Defendant Labora Sitorus (A Study on the Decision on
Appeal Number: 1081 K/Pid.Sus/2014)

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Abstract

Corporate Crime nowadays is not only committed by people who are in the organization structure but also by people who are not listed in the organization. Based on the Decree no.1081K/PID. SUS/2014, Supreme Court provides an interpretation on the corporate director outside the organization' structure. Supreme court subjected punishment against LS since he was considered as the corporate controller, although he is not listed on the organizational structure. The problem with LS as the personnel of Corporate manager although he was not listed on the organization structure is by the evidence that all money from the selling and shipping transaction of illegal oil fuel comes in LS' bank account, and in fact, all the decision making of the corporation is authorized by LS. Whereas, by right, LS did not act as the manager of the corporation. This fact showed that the directing mind and will of that corporation is LS. The management of the corporation such as the boards of the directors are only the "puppets" to commit LS' criminal act.

Keywords: Punishment; Money Laundering; Corporation

Introduction

A criminal act can be committed by a person or a corporation. The punishment for corporate crime is subjected to the legal body (Company, Association, Institution, or Cooperative) and/ or the command giver to commit a crime or the one who acts as the leader in committing the crime.¹ The policy of corporate criminalization is the part of the attempts to prevent the corporate crime which had brought many harms for the people and the state. By the criminalization of a corporate as the subject of offense, it will be easier to determine who is responsible between among the corporation' managers or an environment of a corporation that is involved in criminal activity.

At least, there is one hundred legislation regulate a corporation as the subject of law, but all of those vary in regulating the corporation punishment. For instance, in determining the definition, the scope of responsibility, the type of sanction, and the corporate criminal law procedural code between a law is

¹ Handoko D. (2015). Hukum Positif Mengenai hak Kekayaan Intelektual di Indonesia. Jakarta, hal 107.

different from the other laws. It can be said that the integral of the punishment system against the corporation, within the legislation is less clear. The less clarity of regulation of corporation punishment becomes the gap exploited by the corporate criminals to evade the criminal responsibility.

In fact, within the practice of law enforcement, there is a person who is not listed in the organization, but he holds controls and commits corporate crimes. This is a new mode of operation that the corporate crimes can be committed not only by the person whose name is listed in the organization structure but also can be committed by the person whose name is not listed in the organization. Its logical consequence (in positivist), he could not be the subject of the corporate criminal liability. The legislation does not regulate whether or not the corporate manager who is outside the organization structure can be punished. The Supreme Court, through Decision number 1081 K/PID.SUS/2014 has interpreted the corporation manager outside the structure organization, or in other words, they act without authority from the corporate managers.

The basis of the cassation judge's legal consideration, in punishing LS for money laundering is because LS is the personnel of the corporation manager. It is stated that, although the defendant's name was not listed within the deed of incorporation of CV LBT, UD MR, and PT R, in fact, LS owns a significant authority and power in making the company's decision and policy. In making a decision or a policy, the company always coordinate and ask a guide from LS. LS determines every step and policy taken by the head of the company. The President director, the directors, and the commissioners are a mere formality. Through his control, these corporations perform various violations and crimes namely forestry crime, money laundering, and oil fuel smuggling.

Grounded in the background described above, How is the money laundering actor's criminal liability on the Decision on Appeal number 1081 K/PID.SUS/2014?

Methodology

The method used in this research is a normative research method. This was carried out by studying the literature material or the secondary data.² This research analyzed relevant norms of law by reviewing the law rejuvenation vision problem concerning the corporation punishment in the legal consideration listed on the court decision and is related to the law expert's view and the doctrine.³ The secondary data of this legal research is in the form of either primary or secondary legal material. The approach used in this research is case approach, statute approach.

Results

The system of corporate criminal liability on the money laundering could be divided into four criminal liability system as follow: First, the corporation as the criminal actor, so the corporation itself should be responsible for its actions. Second, the corporation as the criminal actor so the management personnel of the corporation shall bear criminal liability. Third, corporation, along with the personnel of managers of the corporation who acted as criminal should bear criminal liability. Fourth, the managers of the corporation as the actor of money laundering, so they should bear the criminal liability.

If the corporation manager acts not for and behalf of the corporation, the criminal liability is only be borne to the corporation manager himself. Then, if the corporation director (personnel of the corporation manager) act for and on behalf of the corporation (along with the corporation), the criminal

² Peter Mahmud Marzuki. (2010). *Penelitian Hukum*, Jakarta, Prenada Media Grup.

³ Pangabean, H.P. (2014). *Penerapan Teori Hukum dalam System Peradilan Indonesia*. Bandung, Hal 170.

liability can be born on the corporation and the director of that corporation.⁴ The corporation cannot be subjected to criminal liability if the directing mind and will of the corporation commit crimes against their corporation, and the corporation has carried out the prosecution against its directing mind and will.

The criminal act committed by such parties (including the personnel of the corporation manager) can be imposed to the corporation if their act benefits the corporation.⁵ Terminologically, the personnel of corporation manager, is the expansion regarding the corporate criminal liability. It is possible to stipulate and decide “a person” in the corporation to be the defendant if the corporation is involved in the money laundering. The public prosecutor thoroughly connects LS’ act in performing forestry and oil fuel crimes with the money laundering, so the punishment is subjected to the personnel of corporation manager as it is meant by Law no.8 of 2010.

The list of indictments to LS, cumulatively with the first and the second indictment is the predicate crimes, and the third and the fourth indictments are the money laundering, are very accurate. In detail, such indictments are the acts of:

1. Together with IM as a person who commits a crime by intentionally accepting, buying or selling, accepting changes, accepting a deposit, storing or possessing the forest products known or presumed from the forest which stolen.
2. Together with JL as the person who commits a crime by transporting without possessing business license on transportation.
3. Intentionally spending the wealth known or presumed as the result of criminal activity, either on behalf of his name or other parties, by the aim to hide or to disguise the origin of the wealth, so that it is as if a legal wealth.
4. Placing, transferring, moving, spending, granting, depositing, bringing to the overseas, changing the form, exchanging the currency of the wealth that is known or presumed as the result of criminal acts by the aim to hide or disguise the origin of wealth, as it is mentioned in the primary first, second, and third.

The cumulative indictments, as arranged above, perfectly ensnared criminal liability against LS by adding money laundering indictment. To date, one of the reasons for the failure in enforcing the law in the forestry mafia case is that the law enforcers merely used an ordinary method in snaring the forestry criminals. The Government merely snares the forestry mafia with Law of Forestry which possesses weaknesses that are proven by numerous criminals evade or are acquitted in court.

One of the alternatives in catching the forestry crimes is the multi-door approach. Besides the Law of Forestry, the instrument of Law of Oil and Gas and the Law of countermeasure and eradication of money laundering is the more effective method to catch the leading actor who is indirectly related to the criminal activity in the field level⁶ namely corporate control personnel.

The importance of connecting the predicate crime with the money laundering is to take back the crime result obtained by the criminals, and at the same time, punishing the criminals who are related to the predicate crime or the money laundering, anti-money laundering is the strategy to enforce the law, not only to punish the actors but also to seize all the crime result. Alternatively, in particular stages, it can be

⁴ Amalia, R. 2016. Pertanggung Jawaban Korporasi dalam Tindak Pidana Pencucian uang Menurut Hukum Islam. *Jurnal Al Jinayah*. Hal 399.

⁵ Sudirman, L & Feronica. 2011. Pembuktian Pertanggungjawaban Pidana Lingkungan & Korupsi Korporasi di Indonesia & Singapura. *Jurnal Hukum*. Hal 302.

⁶ Eddyono, S.W. 2017. Dari ‘lacak kayu Bulatnya,’ ke ‘Lacak Uangnya.’ Jakarta. Hal 3.

said that to reveal predicate crime, presumption of Law of Countermeasure and Eradication of Money Laundering, which is explored, and at the end, the initial evidence of the predicate crime is obtained, finally, it is said that by the regulation of anti-money laundering, revealing crimes is not started from the upstream, but it is tracked from the downstream.⁷ However, it is essential to keep using the various legislations which are suitable with the principle of criminal law in force, and the fact in the field.⁸ Such approach is called as multi-door.

Through multi-door approach, the law enforcers are given a simultaneous, structural and compelling roadmap of law enforcement by maximizing all potential of regulations, so it minimizes the failure of investigation and prosecution. Besides, the advantage of the multi-door approach is that it leads to the actors' deterrent effect, especially to those who are being the mind of the organized crime. The indictments on LS' case which combine the forestry and the Oil and Gas Crimes with the Money laundering is the Public Prosecutor right move. It was a right move because the indictment of the money laundering is not by alternative, yet it was integrated cumulatively.

Although there has been an Issuance from the Attorney general related to the indictment of predicate crime and money laundering shall be in the cumulative indictment arrangement, in fact, there are still indictments arranged in the alternative which lead to the failure of snaring the money laundering crime. At last, only the predicate crime which can be prosecuted, and the money laundering actor is acquitted. This problem is the logical effect of the due process model adhered by Indonesia in enforcing the law because the formal law is emphasized so that the criminal act is essential to be proven before performing investigation or prosecution against the money laundering.

It is because the money laundering is an advanced criminal act, although money laundering is a separated behavior and is not a kind of its predicate crime.⁹ The essence of money laundering is to enjoy the fruit of predicate crime. Hence, the arrange of indictment against LS was very accurate.

The Panel of judges on the first level acquit LS from money laundering and declare LS is legally and conclusively proven guilty by committing crime "acting together, intentionally buying the forest product known come from the forest which is taken illegally" and crime "Acting together, transporting the oil fuel without transportation business license" However, in the appellate and cassation level, LS is legally and conclusively proven guilty violating the law of forestry crime, oil and gas crime, and money laundering. Even, the panel of Cassation judges gives aggravation of punishment from eight years as it is convicted by the High Court of Jayapura to fifteen years since there is LS' role in controlling the corporation.

Decision number 1081 K/PID.SUS/2014 provides the legal definition that, although his name is not listed within the corporation deed, in fact, he possesses power and authority in making a corporate decision so it can be stated that he becomes the controller of the corporation. The basis of the panel of Cassation judges' legal consideration in subjecting money laundering criminal case against LS as the personnel of the corporation director is that, although the defendant' name is not listed on the company deed of CV LBT, UD MR, and PT R, in fact, LS owns a significant authority and power in making the company' decision and policy.

The witness, LI, stated that in making a decision or a policy, the company always coordinate and ask a guide from LS. LS determines every step and policy taken by the head of the company. It was right

⁷ Ganarsih, Y. (2016). *Penegakan Hukum anti pencucian uang dan permasalahannya di Indonesia*. Jakarta. Hal 198.

⁸ Manthovani, R. (2013). *Penuntutan korporasi sebagai pelaku tindak pidana dalam kejahatan di sektor kehutanan: Optimalisasi penggunaan Undang-Undang Pencucian Uang dalam pembuktian tindak pidana di sektor kehutanan di Indonesia yang dilakukan oleh korporasi*. Diakses dari <http://www.antikorupsi.org>.

⁹ Sabtini, H. (2010). *Implementasi Undang-Undang Tindak Pidana Pencucian Uang (TPPU) di Indonesia (Suatu gambaran tentang pengetahuan dana aplikasi aparat penyidik penuntut umum dan PPATK)*. *Jurnal Kriminologi Indonesia* Hal.229.

that legally, the names listed on the company deed are LI, LP, and SP, and there was no defendant' name, but in fact, the defendant became the controller of the company in fields.

It was explained further in the panel of Cassation judges' legal consideration that, the President Director, the directors, and the commissioners are merely a formality. The reason why the defendant did not list his name on the company deed as the shareholder is because his function as the member of Indonesian National Police disallow him to perform business directly. To evade this prohibition, the defendant took advantage by controlling the company informally. The defendant, in informally controlling CV LBT, UD MR, and PT R had performed various violation and crimes in the form of forestry crimes, money laundering, and oil fuel smuggling.

Based on the considerations above, the panel of Cassation judges identified LS as the controller of the corporation although his name was not listed on the structure of the organization. Normatively, the provision of personnel of corporation director is still structural definition. It means that the personnel of the corporate directors is included in a corridor of authority and capacity of the management as the phrase "authorization from their superior" in the definition of article 1 no. 14 states that: "Corporation Control Personnel means anyone who possesses the power and authority to determine the corporation's policy or the authority to implement the corporation's policy in question without requiring authorization from their superior."

From that formulation, there is no advanced explicit explanation regarding the criteria of the corporate director is not included in the organization structure of the corporation. The statement "without requiring authorization from their superior" showed that the corporation personnel' standing is still in the organization structure of corporation based on phrase "authority." The technical liability is regulated by article 6 paragraph (1) of Law on Counter Money Laundering Criminal Act which state that in the case of money laundering done by a corporation, the punishment is subjected to the corporation and/ or the personnel of the corporate director. In its elucidation, the corporation also covers organized groups namely structured groups comprising three or more people who exist for a particular time and act by the aim to commit one or more criminal act regulated in the legislation which is aimed at to obtain financial or non-financial benefits, either directly or indirectly. Explicitly stated that structured criminal liability against the corporate director.

Related to the corporation which is a legal body, which is structurally formed and posses clear structure of members. It becomes the difficulties to stipulate "person" within a corporation to be stipulated as the defendant on behalf of the corporation or is stipulated to be personnel of the corporate director.¹⁰ The personnel of the corporate director holds the highest authority based on the organization structure in a company, so for each act, it does not need to ask for permission from other parties, for example, the Majority Shareholder. The involvement of personnel of the corporate director in a corporation, either is involved in the legal act or non-legal act concerning with the corporation is always represented by a manager in a corporation. Law only constructs the criminal liability which nature is "structured" against the corporate director, while, the "non-listed" corporate director has not been explicitly identified or elucidated.

Supreme Court, in LS' case, has made a legal interpretation to subject the punishment decision against the corporate controller who is not listed in the organization. The problem with LS as the personnel of Corporate manager, although he was not listed on the organization structure, is by the evidence that all money from the selling and shipping transaction of illegal oil fuel comes in LS' bank account.

¹⁰ Heryndra, M. F. (2014). Kajian Yuridis Kriteria Tentang "Personel Pengendali Korporasi" Terkait Pertanggungjawaban Pidana Korporasi Berdasarkan Pasal 6 ayat (1) Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. Jurnal Mahasiswa Fakultas Hukum. Diakses dari <http://hukum.studentjournal.ub.ac.id> tanggal 23 April 2018.

By right, LS did not act as the financial director or manager whose duty is receiving money from the company management. On the other side, it explains factually that the directing mind and will of these corporations is LS, LS took essential roles not only on authority and power of corporate management but also on the financial transaction. It is right if the panel of Cassation judges stated that the management of the corporation such as the boards of the directors is only the “puppets” to commit LS’ criminal act.

Even, from that criminal act, LS also store and launder his money through these corporations. The mode of operation by establishing corporation and place peoples in the organization as the “puppet” begins to be rampant. This is known as the criminal corporation. It is a corporation that is intentionally established and directed to commit the crime. In this case, the corporation is used to facilitate crime, or as “mask” to disguise the real face of such criminal act. The leader of the corporation, in this case, only perform a job based on the task division determined by the criminals who establish that corporation.¹¹

Ironically, the position of personnel of corporate director who is “not listed” in the organization structure, has not been explicitly explained as a criterion of the corporate director by the existing legislation. Decision number 1081 K/PID.SUS/2014 is potential to be the legal precedent in stipulating punishment against the personnel of corporate director who is not listed in the structure of the corporation. Decision number 1081 K/PID.SUS/2014 is appropriate to be jurisprudence in term of the effectiveness of counter the corporate crime, mainly related to the standing of the personnel of director who is not listed on the corporate organization. It occurs since the directing mind of the corporation is not only possessed by people who own function formal juridically but also the people who carry out the corporate operationalization. Those people, formal juridically, do not have any authority in performing corporate management, however, these people who are doing the control over every action and decision taken by the people who are formal juridically carry out the corporate management.¹²

Besides the legal norms, the expansion of the corporation control personnel definition outside the corporation organizational structure, Decision number 1081 K/PID.SUS/2014 that states that LSS as the corporate controller can also be addressed by the law enforcer to proceed the corporation controlled by LS by using corporate crime indictment. It means that after the decision of punishment against LS owns permanent legal force, the suit and the criminal liability can be filed against the corporation.

Theoretically, the liability of the criminal act of the corporation controlled by LS can be based on the identification theory, according to this theory, to impose a criminal liability against a corporation, the actor of such crime shall be able to be identified by the public prosecutor. If that criminal act is committed by the directing mind of the corporation, the criminal action liability is burdened to the corporation. In other words, to be able to drag that company, it should be the directing mind of that company or in this case, the one who possesses authority to perform duty and obligation to fulfill the corporate interest.¹³

It is clearly stated by the panel of the cassation judges that LS is the person who controls the company and the board of corporate directors cannot disobey order or direction from LS. The Corporate manager merely takes a role as LS’ “puppet” in directing the organization to facilitate the crime. Thus, corporation controlled by LS can be suited for criminal liability.

Based on the description of elements of article 6 paragraph (2) and the perspective of identification theory above, the law enforcer shall immediately check and stipulate the corporations that take advantages and under LS’ control. If the punishment is only subjected to LS as the corporation control personnel and not to the corporation which nota bene also obtain the benefits, it means no justice for the state and the community who are nota bene have been harmed by the “evaporated” assets as the

¹¹ Hiariej, E. O. S. (2014). *Prinsip-Prinsip Hukum Pidana*. Yogyakarta. Hal 157.

¹² Alim, H. et al. (2013). *Pemidanaan Korporasi atas Tindak Pidana Korupsi di Indonesia*. Yogyakarta. Hal 63.

¹³ Andika, A. (2012). *Pertanggungjawaban pidana Korporasi pada Tindak Pidana Pencucian uang*. Tesis. Jakarta. Diakses 23 April 2018.

result of the laundered crime using those corporations. To return the state's loss, the corporation shall be asked for the criminal liability for the criminal action money laundering. Hence, it is relevant if after LS getting his punishment, the law enforcement proceeds the corporation to ask for the criminal liabilities.

Besides as an attempt to return the asset which has been registered on behalf of the corporation, it is done to prevent those company from doing criminal action and is as the reminder for the corporation that becomes the means of money laundering by its control personnel (who are not listed on the organizational structure). Since the aim of money laundering is to disguise or hide the result of a criminal action, it is essential to take action on the corporation controlled by LS as the effectiveness of the money laundering countermeasures.

Conclusion

Based on the Decree no.1081K/PID. SUS/2014, Supreme Court provides an interpretation on the corporate director outside the organization's structure. Supreme court subjected punishment against LS since he was considered as the corporate controller, although he is not listed on the organizational structure. The problem with LS as the personnel of Corporate manager although he was not listed on the organization structure is by the evidence that all money from the selling and shipping transaction of illegal oil fuel comes in LS's bank account, and in fact, all the decision making of the corporation is authorized by LS. Whereas, by right, LS did not act as the manager of the corporation. This fact showed that the directing mind and will of that corporation is LS. The management of the corporation such as the boards of the directors are only the "puppets" to commit LS's criminal act.

Suggestion

The law enforcer shall immediately inspect and stipulate the corporations that take benefits and are under the control if the case similar to LS is found. If the punishment is only subjected to LS as the corporation control personnel and not to the corporation which also obtains the benefits, it means no justice for the state and the community who have been harmed by the "evaporated" assets as the result of the laundered crime using those corporations. The law enforcers shall ask the corporation for the criminal liability so that the case like LS does not occur in the future.

References

- Alim, H. et al. (2013). *Pemidanaan Korporasi atas Tindak Pidana Korupsi di Indonesia*. Yogyakarta: Pusat Kajian Antikorupsi Fakultas Hukum Universitas Gadjah Mada.
- Andika, A. (2012). *Pertanggungjawaban Pidana Korporasi pada Tindak Pidana Pencucian Uang*. Tesis. Jakarta: Fakultas Hukum Program Pasca Sarjana Universitas Indonesia.
- Eddyono, S. W. (2017). *Dari 'Lacak Kayu Bulatnya' ke 'Lacak Uangnya'*. Jakarta: Institute for Criminal Justice Reform.
- Ganarsih, Y. (2016). *Penegakan Hukum anti Pencucian Uang dan Permasalahannya di Indonesia*. Jakarta: Rajawali Pers.
- Handoko, D. (2015). *Hukum Positif Mengenai hak Kekayaan Intelektual di Indonesia (Jilid II)*. Jakarta: Hawa & Ahwa.

- Hiariej, E. O. S. (2014). *Prinsip-Prinsip Hukum Pidana*. Yogyakarta: Cahaya Atma Pustaka.
- Manthovani, R. (2013). Penuntutan Korporasi Sebagai Pelaku Tindak Pidana dalam Kejahatan di Sektor Kehutanan: Optimalisasi Penggunaan Undang-Undang Pencucian Uang dalam Pembuktian Tindak Pidana di Sektor Kehutanan di Indonesia yang Dilakukan oleh Korporasi. Diakses dari <http://www.antikorupsi.org>.
- Panggabean, H. P. (2014). *Penerapan Teori Hukum Dalam Sistem Peradilan Indonesia*. Bandung: Alumni.
- Amalia, R. (2016). Desember. Pertanggungjawaban Korporasi dalam Tindak Pidana Pencucian Uang Menurut Hukum Islam. *Jurnal Al Jinayah*, 2(2): 388-407.
- Heryndra, M. F. (2014). Juni. Kajian Yuridis Kriteria Tentang “Personel Pengendali Korporasi” Terkait pertanggungjawaban pidana korporasi berdasarkan Pasal 6 ayat (1) Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. *Jurnal Mahasiswa Fakultas Hukum*. Diakses dari <http://hukum.studentjournal.ub.ac.id>.
- Sabatini, H. (2010). Desember. Implementasi Undang-Undang Tindak Pidana Pencucian Uang (TPPU) di Indonesia (Suatu gambaran tentang pengetahuan dana aplikasi aparat penyidik penuntut umum dan PPATK). *Jurnal Kriminologi Indonesia*, 6(III): 216-231.
- Sudirman, L., & Feronica. (2011, Juni). Pembuktian Pertanggungjawaban Pidana Lingkungan & Korupsi Korporasi di Indonesia & Singapura. *Jurnal Mimbar Hukum*, 23(2): 237-429.

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