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CRIMINAL LIABILITY OF BLACKMAILING AND MONEY LAUNDERING

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ABSTRACT:
Blackmail is a crime against property, which only occurs when the person against whom the violence was committed has lost control of the item. The main purpose of money laundering is to change the proceeds of illegal crimes become legal. The attempts are disguising or hide the origin of assets, hence they are not easily tracked by law enforcement officials. Explains the notion of blackmail, which is a criminal offense from the crime of money laundering as stated in Article 2 paragraph (1) letter z of Law No.8 of 2010 and the criminal liability. This study uses a normative law statute approach and conceptual approach. The material used for this paper is divided into primary material, which is taken form laws and regulations, and secondary material from books and literature. The collected legal materials are analyzed using judicial punishment to provide legal arguments. The responsibility for criminal acts of extortion and money laundering by individuals is regulated in Articles 3, 4 and 5 of the UU PPTPPU jo. Article 368 of the Criminal Code, and Article 29 jo. Article 45 paragraph (3) ITE Law. Whereas corporate actors are regulated in Article 7 paragraph (1) of the UU PPTPPU. The crime of blackmail followed by threats of violence constitutes a crime regulated in Article 368 and Article 369 of the Criminal Code. Criminal responsibility of the perpetrators of the crime of money laundering resulting from extortion of criminal sanctions if the culprit is a person may be subject to the provisions in Article 3 of the UU PPTPPU with a maximum imprisonment of 20 (twenty) years in prison and a maximum fine of Rp 10,000,000,000 (ten billion rupiahs). If the perpetrator is a corporation according to Article 7 paragraph (1) of the UU PPTPPU, the culprit may only be subject to a fine of up to a billion rupiahs and an additional penalty would be given.

Keywords: *blackmail, crime, money laundering*

INTRODUCTION

The crime rates in Indonesia began to increase when the economic crisis struck and unemployment rates were higher (Santoso, 2015; Pane, 2017; Rahman and Prasetyo, 2018; Kusuma, Hariyani and Hidayat, 2019; Trisnawati and Ismail, 2019). As a result, people began to look for ways to earn extra income and legalize all means to gain profits, one of them by blackmail. These caused by various issues such as economic, social, conflict and low legal awareness. On the other hand, trivial matters often trigger criminal acts. This also contributed to the increase in the number of crimes that occurred. Previously, blackmails were identical to people in a weak economic community, however, blackmails can be carried out by anyone, even children.

Blackmails' criminal offense often disguised their crime so that they will not arouse suspicion by officials, for instance by buying shares or property to disguised the dirty money as if it came from a legitimate business activity (Wignjowio, 1996). Such activities called money laundering. Money laundering and dirty money are related to each other. Dirty money, which is sometimes also referred to as "illicit money", is obtained by the perpetrators by unlawful means such as extortion, stealing, robbing, producing and selling drugs, cheating, corruption, and so on.

Money laundering is a very serious threat to every country in the world. The crime of money laundering can have adverse effects, including in the form of financial system instability, the country's economic system, and even the worldwide problem. Money laundering activities take the form, technique, and sophisticated mode. Even its activities are (*transnational crime*) and transcend national boundaries. Money laundering is an international crime that has a negative impact on a country's economy both nationally and globally (Uly and Tanya, 2009).

The existence of Law No. 15/2002 concerning Money Laundering does not immediately make Indonesia excluded from the *Non-Cooperative Countries and Territories* (NCCT) because the international community still considers the law to still be lacking in its application. Hence, Indonesia changed the Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning Money Laundering (Ariawan, 2008). To fulfill national interests and adjust international standards, Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Acts has been subsequently referred to as UU PPTPPU as a substitute for Law Number 15 of 2002 which explains about Money Laundering.

Regardless, the importance of money laundering activities must be eradicated. Although it does not directly incur losses for the victims, the crime of money laundering still has an indirect negative impact. Article 1 number 1 PPTPPU

explains money laundering is an action that meets the elements of criminal acts in accordance with the provisions of this Law. The crime of money laundering is regulated in Article 3, Article 4, Article 5. The provisions of these activities are to transfer money, pay, spend, grant, donate, entrust, bring abroad, exchange, or any other act of assets that are known to or reasonably suspected to be the result of a criminal act with the intention of concealing or disguising the origin of the assets so that they appear to be legitimate assets. Whereas Article 2 paragraph (1) of the Law on Prevention and Eradication of Money Laundering Regulates various predicate crime which constitutes a criminal offense from the origin of the crime of money laundering. According to paragraph (2), his assets used for terrorism activities are equated with predicate crime of criminal acts originating from terrorism. Based on the background above, it is important to conduct research blackmailing as a criminal offense from the origin of the crime of money laundering and criminal liability of the culprit. This research is a normative study, which is a study of legislation, analyze the relationship between regulations, explain problem areas and predict future development. This research is expected to provide an explanation of money laundering and its forms of responsibility.

RESEARCH METHODS

This study uses a normative law statute approach and a conceptual approach. Sources of legal materials used are primary and secondary sources. The material used for this paper is divided into primary material, which is taken form laws and regulations, and secondary material from books and literature. The collected legal materials are analyzed using judicial punishment to provide legal arguments. All legal materials that have been collected are processed by conducting a study of all these legal materials. The processed legal material then analyzed by means of interpretation as the application that the applicable law or regulation has been fully implemented or not, so that the solution could be provided (Marzuki, 2011).

RESULT AND DISCUSSIONS

Money Laundering and The Original Crimes

The definition of money laundering is not regulated in Law No.8 of 2010 concerning the Prevention and Eradication of Money Laundering, but it is regulated in the previous Act, namely Law No.15 of 2002 jo. Law No.25 of 2003 (UU TPPU). The definition of money laundering is regulated in Article 1 number 1 of the UU TPPU: "transfer money, pay, spend, grant, donate, entrust, bring abroad, exchange, or any other act of assets that are known to or reasonably suspected to be the result of a criminal act to conceal the origin of the assets so that they appear to be legitimate assets". Money laundering is an active crime. which stated in both the old law and the new law (Article 3 and Article 4 of the UU PPTPPU) and passive laundering (Article 5 of the UU PPTPPU).

It is called an active crime of money laundering if all acts committed are active. For instance, active money laundering crimes are the acts of placing,

transferring, transferring, spending, paying, granting, entrusting, bringing abroad, changing forms, exchanging with currency or securities or other acts of Assets that are known to or reasonably assumed are the results of criminal offenses, as stipulated in Article 2 paragraph (1). Acts regulated in Article 4, consisting of concealing or disguising the origin, source, location, designation, transfer of rights, or actual ownership of assets that are known to or reasonably suspected are the results of criminal acts in Article 2 paragraph (1).

The passive money laundering crime that is imposed on anyone who receives or controls placement, transfer, payment, grants, donations, safekeeping, exchange, or uses assets is considered as a criminal offense referred to in Article 2 paragraph (1). This is also considered the same as money laundering. However, it is excluded from reporting parties who carry out reporting obligations as regulated in this law. Prohibition of money laundering, due to the acquisition of assets sourced from assets originating from criminal offenses as stipulated in Article 2 of the UU PPTPPU: (1) Proceeds from crime are assets obtained from criminal acts: (a) corruption; (b) bribery; (c) narcotics; (d) psychotropic substances; (e) labor smuggling; (f) smuggling of migrants; (g) in banking; (h) in the capital market sector; (i) in the insurance field; (j) customs; (k) excise; (l) trafficking in persons; (m) trafficking in illicit weapons; (n) terrorism; (o) abduction; (p) theft; (q) embezzlement; (r) fraud; (s) counterfeiting money; (t) gambling; (u) prostitution; (v) in the taxation field; (w) in the forestry sector; (x) in the environmental field; (y) in the marine and fisheries sector; or (z) other crimes threatened with imprisonment of 4 (four) years or more, whether the deed is committed inside or outside the territory of Indonesia. Those crimes still in Indonesia's law jurisdiction.

Article 2 paragraph (1) regulates the origin of criminal acts (*core crime*) which are the origin of the money laundering which is explicitly stated that there are 25 items, in letters a through letter z. Therefore, Assets obtained from criminal offenses other than those mentioned in Article 2 paragraph (1) letter a up to letter y or those other than obtained from other criminal acts that are punishable by imprisonment for less than 4 (four) years are not included or not be the object of money laundering. The criminal offenses mentioned in Article 2 paragraph (1) must be carried out in the territory of Indonesia or if the criminal acts mentioned in Article 2 paragraph (1) are committed outside Indonesia's the territory, the crimes still in Indonesia's law jurisdiction (the principle of double criminality). The principle of double criminality explains that no matter if a crime not committed outside Indonesia's territory, it is still in Indonesia's law jurisdiction. For instance, if there is a criminal act of corruption according to the local state, according to Indonesian law it must also be a criminal act of corruption, but it is sufficient if the act is a criminal offense, regardless of the type of crime (Sjahdeini and Safrizar, 2004).

Based on the provisions of Article 2 paragraph (1) letter z, the proceeds of a criminal offense are assets that are obtained from a criminal offense:
"Other criminal offenses threatened with imprisonment of 4 (four) years or

more, which were committed inside or outside the territory of the Republic of Indonesia, the crime is also a crime according to Indonesia's law jurisdiction."

Although blackmail is not mentioned explicitly, it can be interpreted as another criminal offense threatened with imprisonment of 4 (four) years or more. This is because blackmail, as regulated in Article 368 and Article 369 of the Indonesian Criminal Code, described as a criminal offense that are punishable by imprisonment of 4 (four) years or more. Blackmail is a criminal act regulated in Article 368 of the Criminal Code which is commonly called *Afpersing*, included in one chapter (Chapter XXIII) along with a threat of criminal threats, which are regulated by Article 369 of the Criminal Code *afdreiging* or *chantage* (Soesilo, 1979).

Criminal Responsibility of The Perpretrators of Money Laundering Crimes Originated From Blackmailing

Crimes of blackmailing followed by threats of violence constitute crimes regulated in Article 368 and Article 369 of the Criminal Code. As a result of blackmail, it is possible for the offender to commit money laundering. Money laundering has the intention to legalize the proceeds of crime, while blackmail is a form of criminal activity that could be classified as the result of blackmailing, which could lead to money laundering. Money laundering is the act of placing, transferring, paying, spending, granting, donating, depositing, bringing the money out of the country, exchanging or other acts of assets with the intention to conceal or disguise the origin of assets so that they appear as a legitimate asset.

Criminal liability of blackmailing only aimed at individual perpetrators. However, if it is associated with the actors regulated in the UU PPTPPU in Article 2 paragraph (1) letter z, then the perpetrators of blackmailing could be the corporations, as well as being related to the ITE Law. Blackmailing is an act that refers to the nature of the threat and also coercion with the intention of the party threatened to provide benefits to the blackmailers. The results of blackmail can be used by the perpetrators whose purpose is to change the status of the assets that were initially illegal to become legal assets, related to criminal liability, the perpetrators would receive maximum imprisonment of 20 (twenty) years in prison and a maximum fine of Rp 10,000,000,000 (ten billion rupiahs). If the perpetrator is a corporation subject to Article 7 paragraph (1) of the UU PPTPPU, the culprit may only be sentenced to a maximum fine of a billion of rupiahs and would be given additional penalties: a. from the judge's decision; b. freezing some or all of the Corporation's business activities; c. revocation of business license; d. dissolution and / or prohibition of Corporations; e. confiscation of Corporate assets for the state; and / or f. Corporate takeovers by the state, as determined in Article 7 paragraph (2) of the UU PPTPPU.

CONCLUSION

The crime of blackmail followed by threats of violence constitutes a crime

regulated in Article 368 and Article 369 of the Criminal Code. Criminal responsibility of the perpetrators of the crime of money laundering resulting from extortion of criminal sanctions if the culprit is a person may be subject to the provisions in Article 3 of the UU PPTPPU with a maximum imprisonment of 20 (twenty) years in prison and a maximum fine of Rp 10,000,000,000 (ten billion rupiahs). If the perpetrator is a corporation according to Article 7 paragraph (1) of the UU PPTPPU, the culprit may only be subject to a fine of up to a billion rupiahs and an would be given additional penalty.

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