

Law Enforcement Against Criminal Acts Participates In Continuous Money Laundering As A Continued Act (Study of Supreme Court Decision Number: 559 Pk/Pid.Sus/2022)

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Abstract

Money laundering is a serious crime that threatens the economic and social systems, often involving sophisticated methods and multiple parties. This study analyzes the application of law in the Supreme Court decision Number: 559 PK/Pid.Sus/2022, which addresses the crime of continuous money laundering involving participation. The defendant, Gulabray Naraindas Keswani, was found guilty of continuous money laundering and sentenced to prison and a fine. Through an analysis of the legal considerations and application of legal principles such as inclusion (*deelneming*) and continuing acts (*voortgezette handeling*), this study highlights the judiciary's commitment to eradicating money laundering and its implications for law enforcement. This case sets a significant precedent for combating similar crimes in Indonesia.

Keywords :

Money laundering, law enforcement, Supreme Court decision, criminal participation, continuous acts

I. Introduction

Money *laundering* is one of the white-collar crimes that is a serious concern in the law enforcement system in Indonesia and globally. This criminal act not only threatens the stability and integrity of the economic system and financial system, but can also endanger the joints of society, nation, and state life. As a crime phenomenon closely related to "*organized crime*", there are various parties who consciously or unconsciously enjoy the benefits of money laundering traffic without considering the impact of the losses caused (Ramelan, 2008).

In its development, the modus operandi of money laundering crimes is increasingly complex by utilizing increasingly sophisticated technology and financial systems. Perpetrators take advantage of loopholes in the financial system to disguise or conceal the origin of wealth that is the result of criminal acts in various ways. This complexity is increasing with the involvement of various parties who participate in a series of money laundering processes, either directly or indirectly.

Indonesia has shown a strong commitment to eradicating money laundering through various legal instruments. This is evidenced by the promulgation of Law Number 8 of 2010

concerning the Prevention and Eradication of Money Laundering Crimes, which provides a strong legal basis to eradicate money laundering crimes and other related criminal acts. This law also regulates the expansion of whistleblowers, the expansion of the definition of suspicious financial transactions, and the strengthening of the authority of investigators in investigating money laundering crimes.

In the context of law enforcement, one of the cases that attracted attention was the case of continuous money laundering as stated in the Supreme Court decision Number: 559 PK/Pid.Sus/2022. This case shows the complexity in handling money laundering crimes, especially those that are carried out continuously and involve elements of participation. The defendant, Gulabray Naraindas Keswani, has been legally and convincingly proven guilty of committing a criminal act: "Participating in continuous money laundering as a continued act."

The North Jakarta District Court in its decision dated March 23, 2021 has sentenced the defendant to 3 (three) years and 6 (six) months in prison and a fine of Rp 300,000,000 (three hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with a prison sentence for 6 (six) months. Although the defendant filed a legal remedy for Review to the Supreme Court on September 14, 2021, the Supreme Court in its decision dated July 5, 2022 still rejected the application.

This case is an important precedent in law enforcement against money laundering crimes in Indonesia, especially in the context of acts that are carried out continuously and involve elements of participation. This decision also affirms the commitment of the judiciary in eradicating money laundering crimes, as well as providing a deterrent effect for perpetrators and preventing similar crimes from occurring in the future.

Based on the above background, the author raised the title of this research, namely: "***Law Enforcement Against Criminal Acts Participates in Continuous Money Laundering as a Continued Act (Study of Supreme Court Decision Number: 559 Pk/Pid.Sus/2022)***".

a. Problem Formulation

Based on the background that has been described, there are several interesting legal issues that need to be studied in more depth. In this study, the formulation of the problem to be discussed is: "How does the application of the law to criminal acts participate in continuous money laundering in the Supreme Court decision Number: 559 PK/Pid.Sus/2022?"

The formulation of this problem was chosen with the consideration that money laundering cases involving elements of participation (*deelnemning*) and carried out continuously (*voortgezette handeling*) have their own complexity in the application of the law. In the context of criminal law, the concept of participation indicates the involvement of more than one person in committing a criminal act, where each participant has a different role and contribution in the implementation of the criminal act.

b. Research Objectives

Based on the formulation of the problem that has been described earlier, the purpose of this study is: "To analyze the application of the law to the crime of participating in continuous money laundering in the Supreme Court decision Number: 559 PK/Pid.Sus/2022."



The purpose of this research is important in the context of law enforcement and the development of criminal law in Indonesia. Through an in-depth analysis of the Supreme Court's decision, this study will examine how the panel of judges applies legal provisions related to the element of inclusion (*deelneming*) and continuing acts (*voortgezette handeling*) in the crime of money laundering. This includes an analysis of the legal considerations used by the panel of judges in examining and deciding cases, including how the court constructs the relationship between the acts committed continuously and the role and contribution of each party involved in the series of criminal acts.

II. LITERATURE REVIEW

a. Overview of Money Laundering

Money *laundering* is an attempt to hide or disguise the origin of money or wealth obtained from the proceeds of criminal acts which is then converted into wealth that seems to come from legitimate activities (Sjahdeni, 2014). In an international perspective, the *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* in 1988 defines money laundering as an effort to conceal or disguise the origin, source, location, designation, transfer of rights, or actual ownership of property obtained from criminal acts (Husein, 2010).

History records that the term money laundering was first used in the United States in the 1930s, which refers to the practice of mafia groups that obtain money from illegal activities such as gambling and prostitution, then "launder" the money through legitimate laundry businesses (Sutedi, 2015). In its development, the *modus operandi* of money laundering is increasingly complex by taking advantage of technological advances and the increasingly sophisticated global financial system (Garnasih, 2017).

b. Overview of Inclusion (*Deelneming*)

Participation (*deelneming*) in criminal law refers to the involvement or participation of two or more people in committing a criminal act. According to Moeljatno (2015), participation occurs when not only one person is involved in a criminal act, but several people. However, not every person involved in a criminal act can be said to have made a participation as referred to in Articles 55 and 56 of the Criminal Code.

Utrecht (2012) divides the forms of participation into two large groups, namely: first, which is called independent participation (*zelfstandige deelneming*), where the accountability of each participant is assessed individually; and second, non-independent participation (*onzelfstandige deelneming*), in which the accountability of one participant depends on the actions of the other participant.

c. An Overview of Continuing Deeds (*Voortgezette Handeling*)

Continuing acts (*voortgezette handeling*) are regulated in Article 64 of the Criminal Code, which requires the existence of several acts that, although each is a crime or offense, are related in such a way that they must be regarded as one continuing act. According to Lamintang (2013),



to be said to be a continuous act, three conditions must be met: (1) there must be a decision of the will, (2) each act must be of the same kind, and (3) the grace period between the acts is not too long.

Hazewinkel-Suringa in Remmelink (2014) explains that the concept of continuous deeds was developed to prevent the imposition of too severe punishment on someone who commits several acts that actually come from one evil will. In the context of money laundering crimes, the act often continues to occur due to the characteristics of this crime which is usually committed in several stages and involves a series of continuous financial transactions.

d. Overview of the Money Laundering Crime Proof System

The system of proof in money laundering crimes has special characteristics that are different from conventional crimes. Yusuf (2014) explained that in the TPPU Law, a limited and balanced system of reverse proof is applied, where the defendant is given the right to prove that his assets are not the result of a criminal act, while the public prosecutor is still obliged to prove his charges.

Reverse proof in the crime of money laundering is a deviation from the principle of proof in the Criminal Procedure Code which determines that the burden of proof is the obligation of the public prosecutor. This, according to Sjahdeini (2016), is necessary considering the complexity of the crime of money laundering and the difficulty of uncovering this crime with the conventional evidentiary system.

III. RESEARCH METHODS

a. Type of Research

This study uses a normative research method that is prescriptive. The type of normative legal research is a method or method used in legal research that is carried out by researching materials or cases. then describe it systematically in accordance with the research principles. The research is prescriptive because it is to answer the legal issues of the existing problems.

b. Problem Approach

The approach used is a *case approach*. The author approaches the case by examining cases related to the issues faced that have permanent legal force.

c. Source of Legal Materials

Primary legal materials consisting of laws and government regulations, court decisions that already have permanent legal force, other related regulations such as the Criminal Code, the Criminal Procedure Code, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Secondary legal materials are materials that provide explanations about primary legal materials such as research, proceedings related to research. Tertiary legal materials, namely materials that provide clues and explanations for primary and secondary legal materials such as dictionaries, encyclopedias (wikipedia) and tables related to the object of research.



IV. DISCUSSION RESULTS

The application of the law to criminal acts participated in continuing to commit money laundering in the Supreme Court decision Number 559 PK/Pid.Sus/2022 shows the complexity in law enforcement of money laundering crimes. In this case, the actions of the defendant Gulabray Naraindas Keswani have fulfilled the elements of a criminal act as stipulated in Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes in conjunction with Article 64 Paragraph (1) of the Criminal Code in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code.

In its legal considerations, the Supreme Court has emphasized the fact that the defendant has carried out a series of financial transactions in the period from September 30, 2019 to December 17, 2019. During this period, the defendant received a sum of money either directly or through transfer to his personal account at the request of his son Amar Kumar Keswani. The defendant's action of then transferring back, transferring, and exchanging the money for foreign currency several times without ever questioning the origin of the funds is a form of intentionality in helping to disguise the origin of the wealth.

The element of *deelneming* in this case is fulfilled through the role of the defendant who consciously assists in the money laundering process carried out by his son. Although the defendant argued that he only fulfilled his son's request, the fact that the defendant knew his son's status as a former convict in the fraud case (based on the South Jakarta District Court Decision Number 696/Pid.B/2011/PN Jkt Sel) should cause vigilance and caution in acting. Willful *blindness* about the origin of funds and the work of his children cannot be used as a justification for his involvement in a series of money laundering crimes.

The application of Article 64 Paragraph (1) of the Criminal Code regarding continuous acts (*voortgezette handeling*) in this case is based on a series of transactions that are carried out repeatedly within a certain period of time. The panel of judges considered that these acts were the execution of the same evil intention, namely an attempt to disguise or conceal the origin of the wealth resulting from the crime. The series of transactions carried out by the defendant, ranging from receiving funds to transferring and exchanging currency, shows the unity of will in committing the crime of money laundering.

In the context of proof, the Supreme Court strengthened the *judex facti* consideration that had legally and convincingly proven the defendant's guilt. The new evidence (*novum*) submitted by the defendant in the application for review is considered to be of no significant quality and is not decisive to eliminate the unlawful nature of his actions. This is in accordance with the provisions of Article 263 Paragraph (2) letter a of the Criminal Procedure Code which regulates the requirements for submitting a *novum* in review.

The imposition of imprisonment for 3 (three) years and a fine of Rp300,000,000.00 (three hundred million rupiah) by the North Jakarta District Court, which was later upheld by the Supreme Court, reflects the application of the principle of proportionality in criminalization. This sanction considers the role of the defendant as a party participating in the crime of money laundering, as well as the impact of his actions on the country's financial system and economy.



The rejection of the application for review by the Supreme Court shows that the legal considerations in the previous decision have been in accordance with the applicable legal provisions. The defendant's argument regarding the judge's error or obvious error cannot be proven, because the assessment of the legal facts has been carried out carefully and comprehensively by *judex facti*. This confirms that the verdict handed down has fulfilled the aspects of legal certainty and justice.

This decision also provides an important precedent in law enforcement of money laundering crimes, especially related to the application of the concept of participation and continued acts. The Supreme Court has provided a clear interpretation of how the two concepts of criminal law are applied in the context of money laundering crimes, which can be a reference for the handling of similar cases in the future.

V. COVER

The application of the law in the Supreme Court decision Number: 559 PK/Pid.Sus/2022 against the crime of participating in continuous money laundering has been carried out in accordance with the applicable legal provisions. The panel of judges has carefully considered the elements of the crime which include inclusion (*deelneming*) and continuing acts (*voortgezette handeling*) in the construction of the crime of money laundering. This is evidenced through a series of actions of the defendant Gulabray Naraindas Keswani who consciously helped disguise the origin of funds through various financial transactions at the request of his son in the period from September 30, 2019 to December 17, 2019, despite knowing his son's status as a former convict in a fraud case. The verdict that imposed a prison sentence of 3 years and a fine of Rp300,000,000.00 reflects the application of the principle of proportionality in criminal punishment and has fulfilled the aspects of legal certainty and justice.

There is a need to improve coordination and a stricter supervision system between financial institutions and law enforcement in detecting and preventing suspicious financial transactions, especially those involving parties with a history of criminal acts, so as to prevent the occurrence of money laundering crimes involving family members or the closest parties of the perpetrators.

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