



Analysis of judges' consideration in the verdict of money laundering crime case

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Abstract

Based on Law No. 8 of 2010 concerning the Crime of Money Laundering, the classification of Money Laundering is divided into two types, namely Active Money Laundering and Passive Money Laundering, in this study, the study of the review is the decision of the Banda Aceh District Court, there are 5 (five) decisions that are the focus of this research study, including Case Number 169/Pid.Sus/2023/PN Bna on behalf of the defendant Ika Melinda Binti Mansur Musa, Case Number 269/Pid.Sus/2021/PN Bna on behalf of the defendant Syafrizal Bin Razali, Case Number 268/Pid.Sus/2021/PN Bna on behalf of the defendant Siti Hilmi Amirulloh Binti Sukahar, Case Number 320/Pid.Sus/2015/PN Bna on behalf of the defendant Hamdani Alisa Ham Alias Dani Bin Razali, Case Number 319/Pid.Sus/2015/PN Bna on behalf of the defendant Abdullah bin Dulah Zakaria, for each case in sequence there are cases that are punished leniently, acquitted (*onslag*), and punished with the maximum penalty. This research aims to examine the form of sanctions applied by the judge to the defendants, the judge's consideration in the decision of the TPPU case, and the implications of the judge's decision on the enforcement of Indonesian law, considering that TPPU is a crime that has a predicate crime, so it is interesting to study whether the existence of the predicate crime aggravates the perpetrator or alleviates.

Keywords: Judges' considerations, judges' decisions, money laundering

Introduction

Money laundering is a criminal offence that is increasingly prevalent in Indonesia. This criminal offence not only harms the state, but also society in general. Therefore, the eradication of money laundering offences has become one of the top priorities for the Indonesian government ^[1].

In the process of handling a money laundering offence case, the judge plays a very important role in determining the final decision. The judge must be able to consider various aspects related to the case before deciding whether the defendant is guilty or not ^[2].

However, decisions in money laundering cases are often controversial and cause polemics in the community. This occurs due to a lack of understanding of the basis of the judge's consideration in making an acquittal decision in the case.

Judges have an important role in handling money laundering cases. Their authority and responsibility in making decisions is very large, because the decisions taken will affect justice and legal certainty. As part of the judiciary, judges have the duty to resolve disputes or cases submitted to them fairly and objectively. In the case of money laundering, the judge must be able to consider various aspects related to the case, such as the evidence presented by the prosecutor, the witnesses presented, and the testimony of the defendant ^[3].

The authority and responsibility of judges in handling money laundering cases is regulated by Law No. 8/2010 on the Prevention and Eradication of Money Laundering Crimes, hereinafter abbreviated as the Anti-Money Laundering Law. Based on the law, judges have the authority to assess the evidence presented, examine witnesses, and make decisions based on the law and facts revealed in the trial.

The responsibility of judges in making decisions also includes fulfilling legal principles, such as the principle of legal certainty, the principle of equality before the law, and

the principle of protecting human rights. Judges must also consider similar decisions that have been made by other courts in similar cases, as well as the legal consequences that may arise from the decision to be made.

In the process of handling money laundering cases, judges also have the responsibility to avoid mistakes in making decisions, such as errors in assessing evidence or errors in applying the law. Therefore, judges must have adequate competence and knowledge about criminal law, especially money laundering offences and efforts to prevent and eradicate money laundering offences ^[4].

Based on preliminary data obtained by researchers, there are several cases of Money Laundering Crime (TPPU), in several TPPU cases there are disparities in the application of sanctions against TPPU perpetrators, this phenomenon is strongly influenced by the judge's consideration based on the facts of the trial, such as the case of TPPU in case No. 169/Pid.Sus/2023/PN Bna on behalf of the defendant Ika Melinda Binti Mansur Musa, in this case the defendant was charged by the prosecutor with alternative charges, then at the prosecution stage the prosecutor charged the defendant with the first charge, namely the defendant's actions as regulated and punishable by Article 3 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering in conjunction with Article 10 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. The judge's decision in this case was that the defendant was not proven legally and convincingly guilty of committing the crime as charged in the first and second alternative charges, so the judge sentenced the defendant to 1 year and a fine of Rp. 100,000,000 (one hundred million rupiah).

Furthermore, case No. 269/Pid.Sus/2021/PN Bna on behalf of the defendant Syafrizal Bin Razali, in this case the

defendant was charged by the prosecutor with the second charge of committing the crime of TPPU, but the Panel of Judges who examined and tried the case acquitted the defendant from all charges (*Onslagh*) because the defendant's actions did not constitute criminal acts.

Furthermore, case Number 268/Pid.Sus/2021/PN Bna on behalf of the defendant Siti Hilmi Amirulloh Binti Sukahar, in this case the prosecutor also compiled cumulative charges with one of the charges being that the defendant had committed the crime of TPPU, but the panel of judges hearing the case decided to acquit (*Onslagh*) because the actions committed by the defendant did not constitute a criminal act which is the domain of criminal law but a civil relationship which is the domain of civil law.

Furthermore, case number 320/Pid.Sus/2015/PN Bna on behalf of the defendant Hamdani Alisa Ham Alias Dani Bin Razali, that the defendant was charged by the Public Prosecutor with alternative charges, namely First primair violating Article 137 letter a of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics subsidiar violating Article 137 letter b of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics or Second primair violating Article 3 of Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of Money Laundering subsidiar violating Article 4 of Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, In the aforementioned case, the Panel of Judges examining the case imposed a maximum sentence on the defendant of 5 years imprisonment and a fine of Rp. 5,000,000,000 (five billion rupiah).

Case Number 319/Pid.Sus/2015/PN Bna on behalf of the defendant Abdullah bin Dulah Zakaria The defendant was charged by the Public Prosecutor with alternative charges, namely First primair violating Article 137 letter a of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics, subsidiarily violating Article 137 letter b of Law of the Republic of Indonesia Number 35 of 2009 concerning Narcotics or Second primair violating Article 3 of Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of Money Laundering, subsidiarily violating Article 4 of Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. In this case, the Panel of Judges examining the case imposed the maximum penalty on the defendant with a prison sentence of 5 years and a fine of Rp. 5,000,000,000 (five billion rupiah).

Based on the preliminary data that the researchers described above based on the judge's decision, it can be seen that there is a disparity in the provision of sanctions and penalties, there are even several cases that based on the judge's consideration decided to acquit the defendant, so that based on the description and presentation of the preliminary data above, it is interesting to study how the judge's consideration in the settlement of TPPU cases.

Research Method

In conducting research, accurate data is needed, both primary data and secondary data. In order to obtain the data required for this writing that meets the requirements, both quality and quantity, certain research methods are used. The research method in this writing is a normative juridical method, where normative juridical research is legal research carried out by researching library materials or secondary

data ^[5]. Based on the background above, the problem formulation in this research focuses on Analysis of Judges' Consideration In The Verdict Of Money Laundering Crime Case.

Result and Discussion

Legal considerations are defined as a stage where the panel of judges considers the facts revealed during the trial, starting from the indictment, charges, exceptions from the defendant which are linked to evidence that fulfils the formal requirements and material requirements, which are presented in evidence, pledoi. In the legal considerations, the articles of the legal regulations that are used as the basis for the decision are also included ^[6].

Judge's consideration or *Ratio Decidendi* is an argument or reason used by the judge as a legal consideration that becomes the basis before deciding the case. According to Rusli Muhammad, there are two kinds of judge's consideration, namely juridical and non-juridical considerations ^[7]:

a. Juridical Considerations

Juridical considerations are considerations of judges based on juridical facts revealed in the trial and by law stipulated as matters that must be contained in the decision. The matters referred to include: Indictment of the public prosecutor, Criminal charges, Witness testimony, Statement of the defendant, Evidence, and Articles of Criminal Law.

b. Non-Juridical Considerations

Matters that need to be considered in non-juridical considerations are as follows: Background, consequences of the defendant's actions, and the defendant's personal condition,

Non-juridical considerations of judges are also called sociological. Sociological considerations of judges are regulated in Article 5 Paragraph (1) of Law No. 48 of 2009 Concerning Judicial Power which states that judges are obliged to explore, follow and understand the legal values and sense of justice that live in the community ^[8].

Based on this description, it is clear that the judge's consideration in a decision consists of juridical considerations and non-juridical considerations, then it is interesting to see how the judge's consideration of the perpetrators of the crime of money laundering is the focus of this research, in criminal law to prove a person's guilt or innocence of committing the crime of money laundering, what must be fulfilled are the elements of the crime of money laundering as stipulated in Law No. 8 of 2010 concerning TPPU, based on the description of the previous sub-chapter, all TPPU decisions ensnare the defendant with Article 5 of Law No.8 of 2010 concerning TPPU, the Article is an Article governing Passive TPPU, while the elements of the passive TPPU article are as follows This article is an article that regulates passive Money Laundering, the elements of the passive Money Laundering article are as follows ^[9]:

- a. The element of every person;
- b. The element of receiving or controlling the placement, transfer, payment, grant, donation, custody, exchange, or use;
- c. Wealth;

- d. Which he knows or reasonably suspects to be the proceeds of a criminal offence as referred to in Article 2 paragraph (1);

Based on the elements of TPPU Pasif that have been formulated in Article 5 Paragraph, we can equate it with the judge's consideration in case Number 169/Pid.Sus/2023/PN Bna, defendant

Ika Melinda Binti Mansur Musa

The decision of the Panel of Judges stated that the four elements were fulfilled because the defendant was the party who received and sent the money using accounts under his control, both accounts in the name of the defendant himself and accounts in the name of other people controlled by the defendant.

The Defendant committed the act of receiving and sending the money under the orders of Br. SAHUL HAMID, where every time there was a transfer transaction into the Defendant's account or into the accounts on behalf of Mansur Musa, Khairani, Humaira Fiani, Muhammad Subhan Ishlah and T. Maimun (which was controlled by the Defendant), previously the Defendant would receive a report from Br. SAHUL HAMID, then the Defendant would confirm it by opening the account mutation via the M-Banking application from the Defendant's mobile phone and then on the order of Br. SAHUL HAMID the Defendant would transfer out to the accounts sent by Br. SAHUL HAMID. That in addition to the Defendant's own use, several accounts belonging to the Defendant were also used and controlled directly by Br. SAHUL HAMID where previously Br. SAHUL HAMID had come to ACEH to meet the Defendant and the Defendant gave the Defendant's banking token and internet banking to Br. SAHUL HAMID while the ATM card was still in the possession of the Defendant.

In addition to juridical considerations, the panel of judges also included non-juridical considerations in it, including:

- a. The defendant has never been convicted
- b. The defendant is the mother of a young child, and the defendant was pregnant.

In terms of legal position, district court decisions are final and binding and have executorial power. District court decisions become jurisprudence for other judges, although in our legal system jurisprudence is not binding on judges but can be a reference and reference for subsequent judges in deciding cases, decisions of district court judges are one of the instruments of national legal development and enforcement of national criminal law, because very many decisions of district court judges contain values of justice and wisdom so that these values can become the framework and concept of judges in deciding cases according to their beliefs.

Conclusion

The judge's consideration in a decision is based on juridical considerations and non-juridical considerations, for some of the judge's considerations there are significant differences between one case and another, this phenomenon is the judge's effort to measure justice. Judicial power is an independent branch of power that is free from executive and legislative influence, the instruments used by judges in

deciding a case are norms, in this case the Anti-Money Laundering Law and the judge's belief. Because the process of the judiciary is an independent process and free from intervention, there is a principle that explains *Res Judicata Pro Veritate Hebetur*, meaning that the judge's decision must be considered correct, if the judge's decision is considered wrong and incorrect then the defendant cannot hold the judge criminally or civilly accountable, one of the legal steps that can be taken by the defendant if he feels that the decision is not correct is an appeal as stipulated in Article 233 of the Criminal Procedure Code.

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