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## The Crime Of Money Laundering (Tppu) According To Positive Law And Islamic Law And Its Implications For The Family (Study on the Analysis of Decision No. 86/Pid.B/2021/PN.Mnk of Manokwari District Court, West Papua Province)

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### ABSTRACT

Money laundering is a process carried out by a person or organization against illicit money, namely money originating from crime, to hide data and disguise the origin of the funds from the government or the competent authority. Money in the financial system, utilizing bank and non-bank services, includes stock exchanges, insurance, and foreign exchange trading so that this money can be issued from the economic system as halal money. The purpose of this study is first to examine more deeply the review of Islamic criminal law on corporate responsibility in money laundering according to Law No. Deeper into the impact and implications of money laundering crimes against families. The research method used by the author is qualitative, a normative juridical approach, which seeks to synchronize the legal provisions that apply in the legal protection of other legal norms or regulations with their relation to the application of these legal regulations in practice in the field. The type of research used is library research. The conclusions are as follows: First, Islamic law in money laundering is identified with embezzlement (ghulûl). Second, accountability for money laundering is regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (UU PP - TPPU). The predicate crimes of money laundering are regulated in Article 2 paragraph (1), namely: corruption, bribery, narcotics, psychotropics, labor smuggling, migrant smuggling in the banking sector, the capital market sector, the insurance sector, customs, excise, human trafficking, illegal arms trade, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting money, gambling, prostitution, in the fields of taxation, forestry, environment, maritime affairs and fisheries, and other crimes punishable by imprisonment for 4 (four) years or more. Third, the impact and implications of money laundering on families have many impacts, namely economic impacts, changes in children's behavior, impacts of a mother becoming the head of the household, and psychological effects.

**Keywords:** ML; Positive Law and Islamic Law; Family;

## I. INTRODUCTION

Money laundering is generally defined as a process undertaken to falsify the proceeds of criminal activity, such as corruption, drug offenses, gambling, smuggling, and other serious crimes. The proceeds of these crimes result from legitimate activities because their origins are unclear or hidden. Money laundering involves disguising and concealing the proceeds of crime so that the authorities cannot intercept them and use them safely as if they were obtained from legitimate activities.<sup>1</sup>

According to Sutan Remi Tjahreni, Money laundering is a series of activities that is a process carried out by a person or organization against illicit money, namely money originating from the proceeds of crime, to hide data and disguise the origin of the funds from the government or authorities authorized to commit criminal acts by inserting cash into the financial system, both utilizing bank and non-bank services; these institutions include the stock exchange, insurance, and foreign exchange trading so that the money can be removed from the financial system as halal money.<sup>2</sup>

The crime is included in the scope of organized crime in connection with the fact that Indonesia has criminalized money laundering as a criminal act adopted in the law. This crime harms the State, including financial system instability, economic distortion, and interference with the control of the money supply. Given the significant sources of funds exploited from money laundering activities and the organized and planned nature of the activities not reflected in statistical figures, there is difficulty in estimating the exact amount.<sup>3</sup>

In Indonesia, the prevention of money laundering is based on Law No.15 of 2002, Law No. 25 of 2003, and most recently, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering (PP-TPPU Law). The law is also the basis for establishing the Financial Transaction Reports and Analysis Center (PPATK). This independent institution is given duties and authorities in the context of eradicating money laundering in Indonesia. PPATK is authorized to request information and analyze financial transactions that are considered suspicious. The main task of PPATK is to detect money laundering crimes and assist law enforcement related to money laundering and predicate crimes. In its procedure, PPATK analyzes financial transactions and then makes a report on suspected money laundering to the police. This means that PPATK must cooperate with the police to eradicate money laundering.<sup>4</sup>

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<sup>1</sup> M. Arif Amrullah, *Money Laundering* (Malang: Bina Media, 2003).

<sup>2</sup> Sutan Remi Syahrani, *The Ins and Outs of Money Laundering and Terrorism Financing*, (Jakarta: Grafiti, 2004).

<sup>3</sup> Yati Gamasih, *Criminalization of Money Laundering* (Jakarta: UI Faculty of Law, 2003).

<sup>4</sup> A. Pratama, R. Zulyadi, and S. Pinem, "Juridical Analysis of the Crime of Money Laundering (Study of Decision No. 311/Pid. Sus/2018/Pn. Mdn)," *Journal of Education, Humanities and Social Sciences (JEHSS)* 4, no. 2 (2021): P. 974–81.

In Islamic law, the safety of property is paramount. Hence, the Qur'an strictly prohibits acts that can cause victims and harm the State because they can affect or damage the stability of the national economy or State finances, whether carried out by individuals or by corporations within the territorial limits of a State and also across the territorial borders of other States.<sup>5</sup>

Money laundering in Islamic law must be explained textually in the Qur'an or Sunnah. Still, the Qur'an reveals general principles to anticipate the times when new cases can be given their legal status, the classification of the jarimah, and the sanctions to be provided. In this case, Islam is very concerned about clarity regarding the acquisition of one's property.

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْخِلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ.

Meaning: "And let not some of you eat of the wealth of others among yourselves by unlawful means, and let not your property be brought before a judge, that you may eat of the wealth of others by way of sin, while you know" (Q.S. al-Baqarah: 188).<sup>6</sup>

Islamic law, since its birth, has recognized legal entities, where these legal entities have rights and can carry out legal actions. Still, Islamic law does not make these legal entities the Object of criminal liability because this responsibility is based on the existence of knowledge and choice. At the same time, both are not found in these legal entities. Legal entities can be punished if the punishment is imposed on their managers, such as dissolution, destruction, eviction, or confiscation.<sup>7</sup>

## II. RESEARCH METHODS

When viewed from the type of nature, this research is a descriptive review of the Crime of Money Laundering (TPPU) According to Positive Law and Islamic Law. This research is qualitative research, which is research whose data is expressed through words, norms, or rules; in other words, this research utilizes qualitative data.<sup>8</sup> This research uses a normative juridical approach that seeks to synchronize the provisions of the applicable law in legal protection against norms or other legal regulations concerning applying these legal regulations in practice in the field.<sup>9</sup> This approach produces phenomena that will be compared based on the applicable laws or regulations. The data source of the research "Money Laundering Crime (TPPU) According to Positive Law and Islamic Law" consists

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<sup>5</sup> Yusuf Qordawi, *Contemporary Fatwas (Translation)* (Jakarta: Gema Insani Press, 1996).

<sup>6</sup> Translator Team of the Ministry of Religious Affairs of the Republic of Indonesia, *Al-Quran and Its Translations* (Surabaya: Mekar Surabaya, 2004).

<sup>7</sup> Tsalisah Team, *Encyclopedia of Islamic Criminal Law* (Bogor: Kharisma Ilmu, n.d.).

<sup>8</sup> Lexi J. Moelang, *Qualitative Research*, 5th ed. (Bandung: Remaja Kosda Karya, 2005).

<sup>9</sup> Burhan Asofa, *Legal Research Methods* (Jakarta: Rineka Cipta, 2001).

of two data sources, namely the source of primary legal material derived from the Law, the Qur'an, hadith, and Secondary data sources, namely from books, journals articles and writings related to the problems that are the subject of discussion in this study. Secondary data regarding primary legal material in the form of books have to do with the problem under study.<sup>10</sup>

### III. RESULTS AND DISCUSSION

#### A. Definition of Money Laundering

The term *money laundering* comes from the English language, namely *money laundering*; *money* means money, and *laundering* means washing. *Money laundering* means money laundering or bleaching money from crime. In general, *money laundering* has a variety of definitions because both developed and developing countries each have their definition based on different perspectives and priorities. However, for Indonesian legal experts, the term *money laundering* is agreed with the term money laundering.

Money laundering is a process or action that aims to hide or disguise the origin of money or property obtained from the proceeds of a criminal offense. This money is then converted into property that seems to come from legitimate activities.<sup>11</sup> The term *money laundering* was recognized in 1930 in the United States, when the most significant criminal in America, Al Capone, laundered the money from his crimes with the help of a genius accountant, Mayer Lansky.<sup>12</sup>

David A. Chaikin, Director of Competitive Intelligence Consultants Sidney Australia, said money laundering has no general and comprehensive definition. According to him, public prosecutors and intelligence agencies, businessmen, and developed and developing countries each have a definition of the term *money laundering* based on different priorities and views.<sup>13</sup> The act of disguising, hiding, or obscuring is done so that the proceeds of crime obtained are considered legitimate money without being detected that the property comes from illegal activities.<sup>14</sup>

In Black's Law Dictionary, *money laundering* is the act of investing in illegal areas through legal channels so that the origin of the money can no longer be

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<sup>10</sup> Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurumetry* (Jakarta: Ghlm.ia Indonesia, 2009).

<sup>11</sup> Adrian Sutedi, *The Crime of Money Laundering* (Bandung: PT. Citra Aditya Bakti, 2008).

<sup>12</sup> Adrian Sutedi, *The Crime of Money Laundering, First Printing* (Bandung: Citra Aditya Bakti, 2008).

<sup>13</sup> Legal Affairs Bureau and Secretariat of Bank Indonesia, "Money Laundering Crime and Corruption Enforcement," *Al-Qisth* 2, no. 1 (2017): P. 57.

<sup>14</sup> Pathorang Halim, *Law Enforcement against Money Laundering Crimes in the Era of Globalization* (Yogyakarta: Total Media, 2013).

known. Some legal experts have also explained money laundering. As stated by Sutan Remy Sjahdeni:

*Money laundering is a series of activities that are a process carried out by a person or organization against illicit money, namely money originating from crime, to hide or disguise the origin of the funds from the government or authorities authorized to take action against criminal acts by primarily putting the money into the financial system (financial system) so that the funds can then be removed from the economic system as halal money.*<sup>15</sup>

Sarah N. Welling defines money laundering as “a process of concealing the existence of unauthorized sources or applications of unauthorized income so that the income becomes legitimate.”

In Indonesia, the definition of money laundering was initially explained in the Explanation of Law No. 15 of 2002 on the Crime of Money Laundering. (from now on referred to as Law No. 15 of 2002), which can be concluded that money laundering is an effort to hide or disguise the origin of assets obtained from criminal acts, as referred to in Law No. 15 of 2002. Then, Law No. 15 of 2002 was amended by Law No. 25 of 2003 concerning Amendments to Law No. 15 of 2002 concerning the Crime of Money Laundering (from now on referred to as Law No. 25 of 2003), in which the definition of money laundering is formulated explicitly in Article 1 number 1 of Law No. 25 of 2003, namely:

*“Money Laundering is the act of placing, transferring, paying, spending, granting, donating, entrusting, bringing abroad, exchanging, or other actions on Assets that are known or reasonably suspected to be the proceeds of a criminal offense to hide, or disguise the origin of the Assets so that they appear to be legitimate Assets.”*

However, there are differences in the Anti-Money Laundering Law that is currently in effect, namely Law No. 8/2010 on the Prevention and Eradication of the Crime of Money Laundering (from now on referred to as Law No. 8/2010), which provides a definition of money laundering in Article 1 paragraph (1), that “Money laundering is any act that fulfills the elements of a criminal offense by the provisions in this law.” The elements in question are the element of the perpetrator, the element of an unlawful act, and the element of the proceeds of a criminal offense. Things that are classified and included as the result of money laundering, as referred to, can be found in Article 2, paragraph (1) of Law No. 8/2010.

Based on some of these definitions, money *laundering* is generally a way or process to change money that comes from illegal sources so that it becomes money that seems halal.

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<sup>15</sup> Adrian Formen Tumiwa, “Money Laundering Crime in the Perspective of Law No. 8 Year 2010 on Prevention and Eradication of Money Laundering Crime,” *Lex Crimen* 2, no. 7 (2018): P. 75.

## B. Money Laundering Practices

One way is with the concept of criminalization of every act, which consists of 3 (three) stages, namely:<sup>16</sup>

### 1. *Placement*

At this stage, the owner of the money in the form of the proceeds of crime deposits the illicit cash into the financial system. Money has entered the banking system, and money has also entered the country's economic system. Furthermore, the funds can be transferred to other banks in the country concerned or to banks in different countries. Thus, the movement of illicit money occurs not only in a country but with the movement of funds from one country to another. Therefore, placement is an attempt to deposit cash or property from an activity that constitutes a criminal offense into the financial system.

The purpose of money launderers' *placement* is to avoid traces of money or property resulting from criminal acts from the source where the money was obtained so that law enforcement does not know it. The most crucial side of the *placement* stage itself is *smurfing*. Through this *smurfing*, the requirement to report cash transactions by applicable laws and regulations can be tricked or avoided. In this placement stage, the proceeds of crime are placed in certain banks that are considered safe.

Article 3 of Law No. 8/2010 states that:

*"Every person who places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges with currency or securities or other actions on assets that he knows or reasonably suspects are the proceeds of a criminal offense to hide or disguise the origin of the assets shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah)".*

Article 3 is the initial stage in money laundering, namely the placement process. The forms of this activity include:

- a. When placing funds with the bank, this activity is sometimes followed by a credit/payment application.
- b. She is smuggling cash from one country to another.
- c. Financing a business as if it were legitimate or related to a legitimate business in the form of credit/financing, thus converting cash into credit/financing.
- d. I buy high-value valuables for personal use and expensive gifts to reward others.

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<sup>16</sup> Sutedi, *The Crime of Money Laundering*.

Article 3 is formulated as a formal offense, meaning it only regulates prohibited acts, not the consequences caused. The offense formulation of this article integrates 11 (eleven) acts into one article: Every person is not permitted from placing, transferring, diverting, spending, paying, granting, entrusting, bringing abroad, changing the form, exchanging with currency or securities or other acts on assets that he knows or reasonably suspects are the proceeds of a criminal offense.

Not all acts in the offense formulation are similar acts; for example, the act of transferring is one type of banking transaction; of course, it is different from the act of paying because the act of paying is not always a form of banking transaction, as well as when compared to the act of granting, entrusting, bringing abroad, and others. Then, all actions in the offense formulation can be carried out directly or indirectly through a bank or non-bank media.

## 2. Layering

This process is also called the bleaching process. This is because, at this stage, the perpetrator of money laundering separates the proceeds of crime from its source through several stages of financial transactions to hide or disguise the origin of the funds. In this activity, there is a process of transferring funds from several accounts or specific locations due to *placement* to other places through a series of complex transactions designed to disguise and eliminate traces of the source of these funds.

Article 4 of Law No. 8/2010 states that:

*"Every person who conceals or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of assets that he knows or reasonably suspects are the proceeds of a criminal offense as referred to in Article 2 paragraph (1) shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah)".*

In addition to Article 3, Article 4 of Law No. 8/2010 is also called active money laundering. Article 4 emphasizes the layering stage of the money laundering process. In this activity, there is a process of transferring funds from several accounts or specific locations due to placement to other places through a series of complex transactions designed to disguise and eliminate traces of the source of these funds. The forms of this activity include:

- a. Transfer of funds from one bank to another or between regions/countries.
- b. Cash deposits can be used as collateral to support authorized transactions.
- c. We are moving cash across national borders through a network of legitimate business activities or *shell companies*.

Article 4 is also formulated as a formal offense, meaning it only regulates the prohibited acts and not the consequences. However, Article 4 only integrates various similar actions (formulated in Article 3). This is because the legislator places the elements of concealment and disguise in a comparable and parallel position to facilitate understanding. Then, the acts of concealment and disguise in Article 4 are formulated alternatively, meaning that the acts of concealment and disguise can replace each other and are options with the same quality. Thus, later in the proof, the Public Prosecutor can choose one according to the legal facts.

### 3. Integration

Integration or using wealth. Namely, efforts to use assets originating from criminal acts that have successfully entered the financial system through placement or transfer so that they appear to be halal assets (*clean money*) for halal business activities or to refinance criminal activities.

In its development, the prevention and eradication of money laundering does not only focus on active money laundering (as formulated in Article 3 and Article 4 of Law No. 8/2010) but also passive money laundering. Regarding passive money laundering, Law No. 8/2010 has been regulated in Article 5 paragraph (1), which states that:

*"Every person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange, or use of assets that he knows or reasonably suspects are the proceeds of a criminal offense as referred to in Article 2 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)".*

Article 5 emphasizes the integration stage, which is an effort to use wealth that has appeared legitimate, either for direct enjoyment, invested in various forms of material and financial wealth, used to finance legitimate business activities, or to refinance criminal activities.<sup>17</sup>

#### C. Case Analysis of Decision No. 86/Pid.B/2021/PN.Mnk of Manokwari District Court, West Papua Province

He was considering the judge handling case No. 86/Pid.B/2021/PN.Mnk that based on the facts of the trial, Defendant ZETH L. W alias ALEX was proven to have transferred, transferred, spent, and paid a sum of money or property that he knew was consciously obtained from a criminal act, namely by a series of tricks and lies to obtain a sum of money from the witness Dian D. L.

Based on these considerations, the judge decided that the actions of the Defendant were based on the elements of Article 3 of Law Number 8 of 2010 concerning the prevention and eradication of the crime of money laundering.

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<sup>17</sup> Sutedi.



Article 64 Paragraph (1) of the Criminal Code has been proven; the Defendant is declared legally and convincingly proven to have committed “*money laundering continuously.*” Then, the judge sentenced the defendant ZETH L. W to imprisonment for 10 (ten) years, deducted from the arrest and detention period the defendant served, and an Rp fine. 1,000,000,000, - (one billion rupiah), provided that if the fine is not paid, it will be replaced with imprisonment for 8 (eight) months.

However, based on the author’s analysis, the author has a different view from the judge’s decision, with several considerations, namely:

#### 1. Fact Analysis

The public prosecutor’s answer stated that based on the facts revealed in the trial, the defendant had spent or paid for the grand Livina car.

The fact that author knows that in the trial facts, there was not a single witness who testified about the grand Livina car, and the Defendant himself in the courtroom stated that the transaction was on:

- a. 17 February 2020, amounting to Rp. 5,550,000 (five million five hundred fifty thousand rupiah). The defendant indicated that it was for the purchase of an Innova car,
- b. On 20 March 2020, the amount of Rp. 6,540,000 (six million five hundred forty thousand rupiahs) the Defendant bought car tires for Innova,
- c. On 6 April 2020, the amount of Rp. 32,500,000 (thirty-two million five hundred thousand rupiahs) The Defendant bought a carpet at Ericson S.S Arobay that the carpet was for church use and was used at the church, not for car use,
- d. and 11 May 2020, amounting to Rp.85,000,0000 (eighty-five million rupiahs). The defendant stated that the entire transaction was used for Innova cars, not Grand Livina cars.

In addition, it is also based on letter evidence that the Grand Livina car was purchased in Malang long before the cooperation agreement with witness Dian D L, namely on 3 June 2019, at a place in Malang where the seller was DANY IRAWAN, ST and the buyer was Heny Sugiarti with proof that the STNK Owner in the name of Heny Sugiarty was issued in Surabaya on 12 August 2019 (*Exhibit Attached to the plea*) and BPKB in the name of Henry Sugiarti was issued on 12 August 2019 (evidence used in trial evidence). The receipt for the purchase of the Grand Livina car is indeed a photocopy because the original evidence has been lost. Still, it should be noted that the STNK of the Grand Livina car is original, and the BPKB, which has been used as evidence in the trial, is original. Based on Article 184 of the Criminal Procedure Code, the valid evidence is as follows;

- a. witness testimony
- b. expert testimony
- c. letters
- d. instructions
- e. , the testimony of the Defendant

Then, the photocopy of the 2015 Grand Livina purchase receipt is valid as a clue in support of the original car registration and the original BPKB evidence that has been used as evidence in the trial and has been by the testimony of the Defendant so that the argument of the Public Prosecutor on page 2 in his answer is baseless and should be rejected.

## 2. Juridical Analysis

In the opinion of the author, the indictment of the public prosecutor, namely the first charge of Article 378 of the Criminal Code Jo. Article 64 paragraph (1) of the Criminal Code. On this charge, the Public Prosecutor has charged the Defendant with violating the elements of the FIRST indictment. That the elements of Article 378 of the Criminal Code Jo. Article 64 paragraph (1) of the Criminal Code mentioned above, there were indeed acts committed by the Defendant that caused losses, but the actions of the Defendant were born from an oral agreement between the witness Dian D L and the Defendant where the witness provided funds for the Defendant to run his business and would share the profits as stated in the facts of the trial.

Based on the Public Prosecutor's answer on page 4, the Public Prosecutor clearly outlined the agreement between the Defendant and Witness Dian D L, namely, the Defendant contacted the witness via telephone by saying, "Mom, I am the success team for the new mayor of Malang and got a quota for the procurement of one hundred units of cars, can you not provide funds for DP to ASTRA and here get a profit." Then the witness, Dian D L, asked the Defendant, "How much is the DP?" The defendant replied, "The DP is Rp 1,100,000,000 (one billion one hundred million rupiahs). Then the witness said, "Okay." Then, the witness, Dian D L, asked the Defendant, "When is the return of capital and profit?" The defendant replied, "The end of March 2020 will be returned capital and profit of Rp 5,000,000,000 (five billion), and then the Witness Dian Daniella said, "Okay," Based on the information above, there has been an oral agreement between the Defendant and the witness, Dian D L.

According to Prof. Subekti, S.H., an agreement is an event where one person promises to another or two people promise each other to carry out a matter.

Based on Article 1338 of the Civil Code, paragraph (1) reads, “*All agreements made legally shall apply as laws for those who make them.*”

An agreement is a legal act that contains two based on an agreement that causes legal consequences.<sup>18</sup> Agreement is an event when a person promises to another person or promises each other to carry out a matter that gives rise to a legal relationship/obligation and is concrete.<sup>19</sup> An agreement is an action between at least two people (can be more than two people) and gives birth to an obligation between the parties to the promise.<sup>20</sup> According to Article 1313 of the Civil Code, the law defines an agreement: “An agreement is an act by which one or more people bind themselves to one or more people.”<sup>21</sup>

The conditions for the validity of an agreement are regulated in the 3rd book (III) of the Civil Code as the main instrument to test the validity of a contract, namely Article 1320 of the Civil Code, where 4 (four) conditions for the valid elements of an agreement, namely:

a. Agreement for those who bind themselves.

Based on the trial facts, the testimony of the witness Dian D L in the courtroom under oath, and the arguments of the Public Prosecutor’s Charges, explained that.

- 1) The defendant contacted the witness to meet in Surabaya
- 2) The defendant contacted the witness via telephone by saying, “Ma’am, I am the success team of the new mayor of Malang and can procure one hundred units of cars. Can you not provide funds for DP to ASTRA and here get a profit?”. Then the witness, Dian D L, asked the Defendant, “How much is the DP?” The defendant replied, “The DP is Rp. 1,100,000,000,- (one billion one hundred million rupiah). Then the witness answered, “Okay” then the witness Dian D L asked the Defendant “when is the return of capital and profit back” then the Defendant answered “the end of March 2020 will be returned capital and profit of Rp. 5,000,000,000,- (five billion) Witness Dian Daniella and Defendant agreed to the cooperation.
- 3) Based on the facts of the trial and in the arguments of the prosecutor’s indictment on page 46, it is true that the witness, Dian D L, and the defendant have agreed, and there is an oral agreement binding each party. Then, the elements of Article 1320 of the Civil Code are fulfilled as an agreement/act of default.

b. Capacity to enter into an agreement

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<sup>18</sup> Sudikno Mertokusumo, *Understanding Law* (Yogyakarta: Liberty, 1999).

<sup>19</sup> Lukman Santoso, *Law of Contract Agreement* (Yogyakarta: Cakrawala, 2012).

<sup>20</sup> Kartini Muljadi and Gunawan Widjaja, *Obligations Born of Agreement* (Jakarta: PT. Raja Grafindo Persada, 2003).

<sup>21</sup> M. Romli, “The Concept of Legal Terms of Akad in Islamic Law and Legal Terms of Agreement in Article 1320 of the Civil Code,” *TAHKIM* 17, no. 2 (2022): P. 173–88.

In the facts of the trial between witness Dian D L and the Defendant, they agreed to a state of consciousness and physical and mental health. There was no coercion from any party, and they decided to bind themselves in the engagement. Based on the trial facts, the author believes that the second element of Article 1320 of the Civil Code is fulfilled as a treaty agreement/act of default.

c. A certain thing

The witness, Dian Daniella, and the Defendant are binding themselves because of collaboration. Dian Daniella provided capital to Defendant for a project to procure 100 units of cars, procure civet fruit, and procure timber with the results of profit sharing, so this occurred reciprocally between Dian D L and Defendant. Based on the trial facts, the third element of Article 1320 of the Civil Code has been fulfilled as an agreement/act of default.

d. A cause that is not prohibited

There was an agreement between the witness, Dian Danilella Lyanita, and the defendant, namely the aim of cooperation by dividing the results. The third element of Article 1320 of the Civil Code has been fulfilled based on the trial facts. Therefore, Defendant has fulfilled the elements of a valid agreement based on Article 1320 of the Civil Code. Witness Dian D L and Defendant have bound themselves in a deal by Article 1338 of the Civil Code paragraph (1).

A debtor is said to have defaulted when the debtor commits one of the four (4) elements of the agreement, namely:

- 1) Not doing what was agreed upon;
- 2) Delivering what is promised but not as agreed;
- 3) Doing what was agreed but late or what can also be called late in fulfilling the performance;
- 4) Doing something that the agreement says should not be done;

According to Prof. Subekti, S.H., the debtor can be said to be in default if the debtor does not do what was promised, then it is said that he is in default, he is negligent or negligent or breaks the promise or also violates the agreement if he does or does something that should not be done.

So, based on all the facts of the trial, Defendant has fulfilled the elements or violated the aspects of the agreement so that Defendant has broken his promise and has Defaulted where Defendant only returned part of the funds amounting to Rp. 840,000,000, - (eight hundred and forty million rupiah) to witness Dian D L from a total of Rp. 3,775,000,000, - (three billion seven hundred seventy-five million rupiahs), and Defendant has also passed the time in returning the funds. So please ask the Honorable Metua and the Panel of Judges that case no. 86/Pid.B/2021/PN Mnk be declared as an act of Default, namely the domain of

TREASURY and not as the domain of the criminal offense of fraud and money laundering: 86/Pid.B/2021/PN Mnk be declared as an act of Default, which is the domain of TORT and not as the criminal domain of fraud and money laundering.

Based on the response of the public prosecutor to the first charge of Article 378 of the Indonesian Penal Code jo Article 64 paragraph (1) of the Indonesian Penal Code with the following elements:

- a. With the intent to benefit oneself against the law;
- b. To induce a person to give up something, give up a debt, or cancel a debt.
- c. By using one of the means or methods of fraud (using a false name, false dignity, deceit, or a series of lies);

Based on the above elements, the public prosecutor drew elements from point C as an offense of fraud. It should be noted that in the facts of the trial, the Defendant stated that he is the success team of the mayor of Malang and received a car procurement project. Still, due to the COVID-19 outbreak, the project was canceled, affecting almost all entrepreneurs in Indonesia. The Defendant stated that he owns a timber business. Based on the facts in the trial, it was shown in the courtroom that the Defendant had a photo of the timber business. Regarding the civet seed business, Defendant has been running the company with Defendant's wife for several years, where Defendant has a restaurant and catering business.

#### D. The Impact and Implications of Money Laundering Crime on the Family

Money laundering is identified with embezzlement (*ghulûl*) in Islamic law because the perpetrator of the crime of money laundering takes property that is not his right and hides it in his property.<sup>f</sup>

In the author's opinion, there are several impacts due to the husband or head of the family being caught in a criminal case, namely:

##### 1. Economic Impact

As long as the head of the household is fostered in a correctional institution, of course, it is a massive change in a household, especially with economic problems, where a husband should provide physical and mental sustenance to his family. This makes a mother more independent and able to work to meet her family's needs. Thus, the relationship in the household can always be maintained between father and mother and children. However, some mothers also experience difficulties earning a living once they get into debt to meet household needs, fundamental needs such as children's education costs, food costs, etc.

##### 2. Changes in Children's Behavior

The father's role, which does not work correctly, can cause changes in the child. The changes experienced by children since their fathers were fostered in

correctional institutions, namely being stubborn, unruly, and free in relationships. Thus, the role of a father is vital in a household, as it provides examples of polite behavior and other good behavior so that children become good individuals. So, it can be seen in this case that the dual role played by a mother is vital in fostering a child who has trauma or has a story that makes him even worse. Thus, the attention given by a mother plus relatives and the surrounding community is expected to be able to have a positive impact on a child who has trauma.

### 3. Mom Takes on Dad's Role

The existence of a mother is essential for maintaining household relationships, especially in terms of patience to deal with problems that occur when the father cannot carry out his responsibilities as head of the family. The mother here must carry out the role of the father, who is fostered in a correctional institution, to maintain a child's behavior, earn a living, and take care of any problems in the household. Thus, the wife plays a dual role as a husband and mother. It is indeed tough to make two parts into one, but that is the reality that occurs in this scope: children carry out several kinds of behavior, and a mother has a vital role in educating children, being the backbone of the family, and taking care of the household.

### 4. Psychological Impact

As a mother, providing support and reinforcement to a father caught in the law is a mother's function. The most challenging thing about being a mother is when the father cannot accompany her when facing family problems, and the head of the family is the foundation on which to lean. For a problematic start where the impact of the father's status as a prisoner makes the family embarrassed. Because of this, the mother overthinks about the environment's response and is more likely to be inactive in the community. Thus, a mother must be more resilient and robust to deal with the problems experienced by the actions caused by the father, who is a prisoner. Children's psychological impact is so profound that their sense of self-confidence decreases and even completely disappears, so all problems they face are viewed with a pessimistic view. This makes children more often daydream and cannot focus on doing activities, decreasing children's achievement in learning and so on.

#### IV. CONCLUSIONS

Money laundering is concealing or disguising the origin of money or property obtained from criminal activity so that it appears to be derived from legitimate activities. In Indonesia, this definition is regulated in several laws, including Law No. 8/2010 on the Prevention and Eradication of Money Laundering. The stages of money laundering are placement by inserting the proceeds of crime into the financial system to avoid detection. Furthermore, layering (separation) is conducting a series of complex financial transactions to hide the source of money. Moreover, integration involves using assets disguised as legitimate money for business activities or financing other illegal activities. Case Law Analysis: In case No. 86/Pid.B/2021/PN.Mnk, the defendant, was proven to have committed money laundering by transferring and using assets that originated from a criminal offense. Despite debates over the evidence and testimonies during the trial, the judge's decision resulted in a 10-year prison sentence and a fine.

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