

# Legal Protection for the Suspect's Wife in Handling Money Laundering Cases: Evidence from the Indonesian National Narcotics Agency

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## Abstract

Money laundering is a stand-alone crime, although money laundering is born from its original crime, such as corruption, but the anti-money laundering regime in almost all countries places money laundering as a crime independent of its original crime. In handling narcotics criminal cases, the suspect's wife is sometimes made a suspect in a money laundering crime. Seeing this, clear restrictions are needed in order to achieve legal certainty, legal protection and justice for wives who are determined to be perpetrators of money laundering crimes. This is qualitative research using a statutory approach, case and conceptual approaches. The primary legal materials resulted from relevant laws and legislation. The legal material collected is analysed prescriptively. The results show that there is a difference in treatment of the perpetrator's wife in almost the same narcotics criminal cases, indicating that investigators in money laundering criminal cases do not yet have standard procedures. Hence, the assessment is based on the investigator's subjectivity. As a special crime, the crime of money laundering requires formulating procedural law that is different from ordinary criminal procedural law.

**Keywords:** Legal Protection; Corruption; Drug; Suspect's Wife; Money Laundering.

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## 1. INTRODUCTION

Money laundering is a stand-alone crime, although money laundering is born from its original crime, such as corruption, but the anti-money laundering regime in almost all countries places money laundering as a crime independent of its original crime in the case of a money laundering probe [1]. At practical level, money laundering generally is defined as a process to change crime from corruption, drugs, gambling, smuggling, and other serious crime, so those crime results made visible and bright as a clean wealth because its origin has been concealed.

In 2023, the Indonesian Financial Transaction Reports and Analysis Center (PPATK) reported that the government and legislature were the professions most

involved in money laundering crimes. Corruption and narcotics are the types of high-risk criminal acts related to money laundering in Indonesia [2]. Apart from that, PPATK also reported that narcotics crimes occupied money laundering crimes until 2021, with the issuance of 143 judges' decisions (25.7%) of the total money laundering crimes.

Money laundering criminals have several trends in using methods to further their goals. One relatively common method for hiding money obtained from crime is by using a third party, family, or close associates of the perpetrator [3]. The method transfers money from the crime's perpetrator to several accounts of other parties, such as wives, girlfriends, and children. Husband and

<sup>1</sup>Wibowo, Muhtar Hadi. "Corporate Responsibility in Money Laundering Crime (Perspective Criminal Law Policy in Crime of Corruption in Indonesia)." *Journal of Indonesian Legal Studies* 3 (2018): 213.

<sup>2</sup>Isa, Sani Muhamad, and Johan Muliadi Kerta. "Money laundering in corruption cases in Indonesia." *Journal of Money Laundering Control* 27, no. 1 (2024): 127-138.

<sup>3</sup>Pamungkas, Djoko. "How police overcomes money laundering? Study analysis of role of central Java regional police department on money laundering case." *Journal of Law and Legal Reform* 1, no. 1 (2020): 25-34.

wife involvement increased by 200% in 2019 compared to 2018.

In handling money laundering cases whose origin is narcotics by the National Narcotics Agency (BNN), wives are sometimes made suspects in money laundering crimes by referring to Article 5 of Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, which states that Every A person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) shall be punished by imprisonment for a maximum of 5 (five) year and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). This article is what often ensnares the suspect's wife in money laundering crimes. If you look closely, this article is a passive money laundering crime article that can ensnare anyone. Clear restrictions are needed in order to achieve legal certainty, legal protection, and justice for wives who are determined to be perpetrators of the crime of money laundering, which can be formulated in the question: what is the authority of investigators in enforcing the law fairly for the wife of a suspect in the crime of money laundering?

The number of cases concerning money laundering crimes is also happening in the country of Indonesia. Positivism paradigm itself explains about how the money laundering crime itself and handling of money laundering criminal who more and more many do the crime. The rules in the law are clearly regulated in money laundering crime. Money laundering as an international dimension has a negative impact on the economy of a country.

## 2. METHOD

This is qualitative research using a statutory approach, comparative and conceptual approaches. The primary legal materials resulted from relevant laws and legislation [4]. Those legal material collected are analysed prescriptively.

## 3. LEGAL PROTECTION FOR THE SUSPECT'S WIFE IN HANDLING MONEY LAUNDERING CASES

In practice, the involvement of the perpetrator's wife as a passive perpetrator of money laundering crimes is often inconsistent. Where some of the perpetrators' wives were named suspects and some were not. This

practice raises legal questions and uncertainty [5]. An interview with one of the investigators at the National Narcotics Agency (BNN) illustrated that the wife who was not accused of the crime of money laundering was if the suspect's wife was not very active and her role was very small. She played this role when she was unable to refuse and only as a form of obedience to her husband.

In this case, investigators look at it from the perspective of justice and the principle of benefit. It was further said that in the investigation process, what must first be understood is that the crime of money laundering is a continuing crime. This is a continuation of a criminal act originating from narcotics so that when starting the investigation it is from narcotics, that is, there is a target (in this case the target profile) and there are assets that are suspected to be proceeds of crime or proceeds from criminal acts.

The family or wife, in this case, as the person closest to the perpetrator of a narcotics crime, is always the first person to be determined to be the perpetrator of a money laundering crime. This is psychologically and psychologically true. Where to disguise assets from criminal acts, usually criminals will disguise these assets by placing or entrusting their assets to those closest to them. Where the people closest to them are the people they trust most. A person can be said to be a passive actor if they fulfill the elements of knowing and reasonably suspecting that the funds come from the proceeds of crime or knowing about or intending to carry out transactions.

For this reason, what needs to be proven by the passive actor regarding the elements of reasonable suspicion and knowledge is similar to the evidence which explains the existence of the elements of '*proparte dolus and proparte culpoos*' (half intentional, half negligent). Thus, legal witnesses need to be provided primarily to prevent many parties from intentionally or carelessly receiving the proceeds of crime [6].

By simply following the principle of presumption of innocence, the process of investigating money laundering crimes can no longer be equated with other criminal acts. Where the suspect must be considered guilty first until the suspect can prove otherwise (reverse proof) [7]. This principle is called the presumption of guilt. Article 66 of the Criminal Procedure Code states that the suspect or defendant is not burdened with the burden of proof. These contradictory

<sup>4</sup>Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, p. 41-43.

<sup>5</sup>Wangga, Maria Silvya Elisabeth, Aditya Wirawan, and R. Bondan Agung Kardono. "Corruption and Money Laundering Perspective of Criminal Law and Criminology." *Research Horizon* 2, no. 2 (2022): 363-373.

<sup>6</sup>Japriyanto, Desia Rakhma Banjarani, and Risa Mahdewi. "Money Laundering as a Transnational Crime Problems and the Ideas of Legal Policy Reformation in Indonesia." *Corruptio* 3, no. 1 (2022): 21-32.

<sup>7</sup>Febriansyah, Artha, Eva Achjani Zulfa, Muhammad Yusuf, and Desia Banjarani. "Reversal Burden of Proof in Process of Proving Money Laundering Cases in Indonesia." *Indonesia Law Review* 13, no. 1 (2023): 1.

articles then become a long discourse and the victim is always the wife or the suspect of a money laundering crime. The reverse evidence process reduces the legal protection of the wife of a narcotics crime suspect before the court. Because the wife and family as the closest people will be witnesses and possibly become suspects. In fact, according to the provisions of Article 169 of the Criminal Procedure Code, the wife and family must obtain the defendant's permission first to be able to hear their statement. Requests for information from the wife and family by investigators, public prosecutors, and judges will make it difficult to obtain a legal basis if the original crime is not proven. Meanwhile, Article 69 of the Money Laundering Crime Law states that in order to carry out investigations, prosecutions, and examinations in court regarding money laundering crimes, it is not necessary to first prove the original crime.

The principle of '*lex specialis derogat lex generalis*', then the money laundering crime law is considered *specialis* while the Criminal Procedure Code is *lex generalis*. Where two laws are equivalent and regulate the same material, the specialist will eliminate the generalist rules. This cannot be applied to the crime of money laundering, because the reference for investigation in Article 74 of the Money Laundering Crime Law, for example, still refers to the provisions of procedural law and the provisions of statutory regulations. Likewise, valid evidence still refers to criminal procedural law as stated in Article 73. Therefore, it is necessary to regulate separately and specifically the process of investigation, prosecution, and examination in court for criminal money laundering which is separate from the Criminal Procedure Code.

According to Friedman, one element in a legal system is legal culture. In Indonesia, women are still positioned as second-class citizens because of patriarchal social construction. According to data from the Ministry of Women's Empowerment and Child Protection, the Human Development Index for women in 2019 was still below that of men, namely 69.18, while the HDI value for men was 75.96 [8]. With such social conditions, coupled with socio-religious values which also require women to follow their husband's wishes, this makes the wife's position in an unpleasant stand. This includes managing the assets of a husband who, without his knowledge, has committed a narcotics crime. Hans Kelsen defines law as a system of rules regarding human behavior. In essence, law does not refer to a single rule (rule), but a set of rules (rules) that have unity to be understood as a system [9]. Therefore, it is only possible to understand the law if you pay attention to one rule.

<sup>8</sup>Galvani, Selly, and Rusan Nasrudin. "The Role of Fiscal Policy in Reducing Gender Income Inequality." *Journal of Indonesian Applied Economics* 12, no. 1 (2024): 87-109.

<sup>9</sup>Mappatunru, Andi Munafri D. "The Pure Theory of Law Dan Pengaruhnya Terhadap Pembentukan Hukum

Social norms that require wives to follow their husbands' orders are also a legal device in society.

Finding out the origin of a narcotics husband's wealth takes work. This is certainly different from perpetrators of criminal acts of corruption, which state officials usually carry out. A wife can cross-check her husband's salary and income from his office. For example, the money laundering case was carried out by the former Head of the Indonesian National Police Traffic Corps, Djoko Susilo, who was named a suspect in a criminal case of corruption and money laundering related to the driving license exam simulator project. The family and wife should be able to find out the salary and income of a National Police officer because such information is scattered on the internet as a piece of public information. However, narcotics criminals usually do not have a permanent job with predictable income. Perpetrators usually claim to be businessmen and entrepreneurs. So, wives often need to learn about their husband's income and salary.

Looking at several courts related to the crime of narcotics money laundering, it can be seen that there are courts that indict the perpetrator's wife, and there are also those that do not place the perpetrator's wife as a defendant. For example, Banda Aceh High Court Decision No. 80/PID.SUS/2023/ PTBNA dated 27 March 2023 in the case of the defendant Naza M. Jafar Alias M. Nazar. In this decision, only the perpetrator himself was charged and sentenced without including the perpetrator's family and wife. In fact, in the indictment, there is a note that the defendant used banking services or accounts in the names of family members and his wife to carry out drug transactions and place money from the crime. The perpetrator also bought a plot of land in his wife's name.

Meanwhile, Bireun District Court Decision No. 222/Pid.Sus/2020/Pid Bir places Atika bint Ahmad Kasim, wife of Murtala Ilyas, convicted of a narcotics case, as the perpetrator of the crime of money laundering. Atika was charged with committing the crime of participating in aid or conspiracy to commit the crime of money laundering.

From the two money laundering criminal cases involving the perpetrator's wife above, we see that there are 2 different treatments for the same case. Where the wife of a narcotics criminal is involved in a money laundering crime. The two of them opened an account, which the husband then used to hold and carry out transactions involving money from narcotics crimes [10].

Indonesia." *Indonesian Journal of Criminal Law* 2, no. 2 (2020): 132-152.

<sup>10</sup>Pertasari, Dewi, Farliandi Farliandi, Lina Yuliana, Suparno Suparno, and Sufiarina Sufiarina. "Legal Study of Bureaucratic Reform in Improving the Quality of Public Services at the National Narcotics Agency of the

Both of them also obtained assets from their husband's efforts to commit narcotics crimes. Nevertheless, some wives were charged with money laundering, and some were not. This difference indicates that there is no standard procedure for determining passive perpetrators, thus making the wife of a narcotics criminal as a defendant in a money laundering crime very vulnerable to violating due process of law.

Applying the principle of due process of law is a set of procedures that require the law to have procedural standards that apply to countries that uphold the law. The due process focuses on procedures and the protection of individuals [11]. Every process in due process tests two things: first, has the public prosecutor eliminated the suspect's rights with procedures that are not regulated by law? Second, if it is under the procedure, is the procedure implemented by due process of law? When asking investigators at BNN about this, the involvement of the suspect's wife must be seen from several angles; in this case, the investigator looks at how active the suspect's wife is and whether the suspect's wife has the intention of facilitating the money laundering crime committed by her husband.

In criminal law, 'intent' is defined as a deliberate purpose that leads a person to commit a crime, is prohibited by law, and can result in unlawful results. The intention then becomes an integral part of the evidentiary process apart from the elements of the criminal act. When a person has intent, it is an element for imposing criminal responsibility and must be proven beyond a reasonable doubt.

#### 4. CONCLUSION

The wives of narcotics criminals are often charged with money laundering. Making the perpetrator's wife a defendant in the crime of money laundering is simply looking at administrative evidence where the wife's name is often used in using banking services to carry out criminal transactions and collect the proceeds of criminal acts. In fact, the wife's position is often only to obey her husband's orders as part of the patriarchal culture that grows and develops in society. The difference in treatment of the two perpetrators' wives in almost the same narcotics criminal cases indicates that investigators in money laundering criminal cases do not yet have standard procedures, so the assessment is based on the investigator's subjectivity.

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