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Legal Opinion Concerning Money Laundering Letter of Denim

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Abstract:

Noni Zahara (the defendant) was not involved in the Narcotics Act and was not involved in the Money Laundering Act (TPPU). It means that it is not involved in violating Article 5, Article 10 of the TPPU Law. In connection with the determination of a person to be a suspect / defendant, in this case there has been an error in persona. The terms Error in Persona and Error in Objecto are used in court at the exception stage of a lawsuit (if in civil) or indictment (if convicted). The exception based on the Error in Persona was filed by the Defendant / Defendant against the Lawsuit / Indictment of the Plaintiff / Public Prosecutor because the indictment / lawsuit was addressed to the wrong person.) or the event / act that was charged. Then the mistake of the object being disputed / charged is called the Error in Object. In this case it must be held firm that: It is better to free one hundred guilty people than to convict an innocent person. In this case Noni Zahara was not involved in violating Article 5 and Article 10 of Law No. 8 of 2010 concerning Money Laundering Crimes. This means that Noni Zahara does not commit the crime of money laundering by accepting, or mastering the placement, transfer, payment, grants, donations, safekeeping, exchange, or using assets that he knows or deserves to be a criminal offense (Article 5 of the TPPU Law). If Noni Zahara does not know each other and is not included in a group of perpetrators of a Money Laundering Crime, then Noni Zahara cannot be said to have participated in conducting experiments, assistance, or evil agreements to commit a Money Laundering Crime, because they do not know each other so that they do not engage in an evil consensus, so that there is no mutual assistance in conducting the Money Laundering Act as regulated in Article 10 of Law No. 8 of 2010 concerning Money Laundering Crimes.

Keywords: Legal opinion, crime, money laundering

1. Introduction

1.1. Definition of Money Laundering Crimes

The problem of money laundering or money laundering has been known since 1930 in the United States, namely when the mafia bought a legitimate and official company as one of its strategies. The biggest investment was a laundry company called Laundromat, which was then famous in the United States. The clothes washing business is progressing, and various proceeds of crime proceeds, such as from other business branches, are invested in these clothes washing business, such as money from illegal liquor, gambling proceeds and prostitution proceeds.

In the 1980s the proceeds of crime grew even more with the development of illicit businesses such as the narcotics and drug trade which reached billions of rupiah so that the term Narco dollar emerged, which came from illicit money from the narcotics trade. According to J.E Saetapy as quoted by Andrian Sutedi, Al Capone, the biggest criminal in America in the past, laundered black money from his crime efforts by capturing the genius Meyer Lansky, a Polish. Lansky, an accountant, laundered Al Capone's crime money through a laundry business. Thus, the origin of the name money laundering appears.

Then the term was popular in 1984, when Interpol investigated the bleaching of the United States mafia known as pizza connection, involving funds of around US \$ 600 million, which were transferred to a number of banks in Switzerland and Italy. The method of money laundering is done by using pizza restaurants located in the United States as a means of business to trick these sources of funds.

The method of money laundering or laundering is done by passing money obtained illegally through a series of complex financial transactions in order to make it difficult for various parties to know the origin of the money. Most people assume derivative transactions are the most preferred method because of their complexity and reach beyond the limits of jurisdiction. This complexity is then used by the roots of money laundering to carry out the process of money laundering. Money Laundering can be termed as money laundering, money bleaching, money smuggling or cleaning money from the proceeds of illicit (dirty) transactions. The word money laundering can be termed variously. There is a mention with dirty money, hot money, illegal money or illicit money.

Black's Law Dictionary the term Money Laundering is:

"Terms used describe investment or other transfers of money flowing from racketeering, drug transactions and other illegal sources into legitimate channels so that its original source cannot be traced". Money Laundering is a federal crime .18 USCA.1956.

The term money laundering is intended to describe the deposit / investment of money or other forms of transfer / transfer of money originating from extortion, narcotics transactions and other illegal sources through legal channels so that the source of origin of the money cannot be known / traced. Money Laundering is a federal crime.

From the terminology in the Black's Law Dictionary above, it can be seen that various forms and origins of dirty money come from deviant activities or transactions such as extortion money, tax evasion, gambling business, smuggling corruption, narcotics and illegal drug trafficking and other criminal activities.

Sutan Remy Sjahdeini gave the meaning of money laundering:

Money laundering is a series of activities that is a process carried out by a person or organization against illicit money, that is money that originates from a crime, with the intention to sound or disguise the origin of the money from the government or the competent authority to take action against criminal acts by forcing the money into the financial system so that the money can then be removed from the financial system as halal money.

Neil Jensen, as quoted by N.H.C siahaan, stated that money laundering is the process of transforming profits from legal activities into financial assets and looks as if they were obtained from illegal sources.

Money laundering is a process or act that uses money from proceeds of crime. With that action, money is hidden or obscured by the perpetrators of the origin so as if the money is legitimate or lawful. Thus, money laundering is a series of activities that constitute a process carried out by a person or organization against illicit money, that is, money originating from a criminal offense, with a view to concealing or disguising such originals from the government or the competent authority to take action against the act. criminal charges, especially by entering the money can be removed from the financial system as lawful money.

Article 1 number of Law Number 8 Year 2010 concerning Prevention and Eradication of Money Laundering Criminal Acts determines that Money Laundering is any act that fulfills the elements of criminal acts in accordance with the provisions in this Law. Article 3 of Law No. 8 of 2010 determines that the crime of money laundering is any person who places, transfers, transfers, spends, pays, grants, entrusts, brings abroad, changes forms, exchanges for currency or securities or other acts of assets known to him. or deserves to be the result of a criminal offense as referred to in Article 2 paragraph (1) with the aim of concealing or disguising the origin of the Assets being charged for Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp 10,000,000. 000.00 (ten billion rupiah).

The notion of money laundering has been widely expressed by legal experts. But it can be concluded that money laundering is "activities (in the form of a process) carried out by a person or organization of crimes against illicit money, that is money that originates from a crime, with the intention of concealing the origin of the money from the government or the competent authority to take action against criminal acts by primarily putting the money into the financial system (financial system) so that if the money is then removed from the financial system then the finance has turned into legitimate money. "Basically, it involves assets (income / wealth) disguised so that it can used without being detected that the assets originated from illegal activities.

In general, the elements (elements) of money laundering are:

- There is money (funds) which is the result of a criminal act.
- Dirty money (dirty money) is processed in certain ways through legitimate institutions.
- With the intention of eliminating traces between criminal acts and money generated from these criminal acts so that they can be legally owned or controlled.

In Article 2 of Law Number 8 Year 2010, 26 (twenty six) types of criminal acts have been divided which constitute an initial crime (predicate crime) in the ensuing Money Laundering Crime, namely: that the proceeds of the criminal act are Assets obtained from the act criminal: corruption; bribery; narcotics; psychotropic substances; labor smuggling; smuggling of migrants; in the banking sector; in the capital market sector; in the insurance field; customs; excise duty; human trafficking; illegal arms trade; terrorism; kidnapping; theft; embezzlement; fraud; counterfeiting money; gambling; prostitution; in the taxation field; in the forestry sector; in the environmental field; in the field of maritime affairs and fisheries; or other criminal offenses threatened with imprisonment of 4 (four) years or more, committed in the territory of the Unitary State of the Republic of Indonesia or outside the territory of the Unitary State of the Republic of Indonesia and the said offense is also a crime according to Indonesian law.

In Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering (TPPU Law), money laundering can be classified into 3 (three) articles, namely:

1.1.1. Money Laundering Acts That Are Accommodated in Article 3

Any person who places, transfers, transfers, spends, pays, grants, entrusts, carries abroad, changes forms, exchanges with currency or securities, or other acts of Assets that he knows or deserves to be a criminal offense (in accordance Article 2 paragraph (1) of this Law) with the aim of concealing or disguising the origin of Assets that are being punished for Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiah)

An example of the case is the Purchase of Garuda Indonesia National Airlines Shares by Muhammad Nazarudin, where the purchase of shares is only done by companies in the environment with a higher offer. Nazarudin does this to save his money in a safer system and oriented to get multiple benefits. This is said to be money laundering. Looking at Law Number 8 of 2010 TPPU Article 3, Nazarudi has placed, transferred, transferred, spoiled furniture, paid, granted,

entrusted, brought abroad, changed the form, exchanged with currency or securities, or other acts of Wealth which he knows or deserves to be the result of a criminal offense (in this case spending in the form of Garuda Indonesia airline shares) so that he may be subject to a maximum imprisonment of 20 years and a maximum fine of Rp10 billion.

1.1.2. Money Laundering Acts That Are Accommodated in Article 4

Any person who conceals or disguises the origin, source, location, designation, transfer of rights or actual ownership of the Asset that he knows or is reasonably suspected of is the result of a criminal offense (in accordance with Article 2 paragraph (1) of this Law) is convicted of a Money Laundering Act with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

For example, fund disguises carried out by X who is a Bank employee. In that case, X commits an act of embezzlement of his customer's funds by diverting customer funds to his savings and so on. Subsequently, the funds were transferred to several savings accounts of her sister, mother and husband. In addition, these funds are used to buy goods such as apartments and cars. For these actions, then X has disguised the origin of the embezzlement

1.1.3. Money Laundering Acts That Are Accommodated in Article 5

Every person who receives, or controls, placement, transfer, payment, grant, donation, safekeeping, exchange, or use Assets that he knows or deserves is a criminal offense (in accordance with article 2 paragraph (1) of this Law) is convicted of a Criminal Act Money Laundering with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 1 billion.

Continuing the case example from point 2 above, the sister, mother and her husband who received a transfer from X and enjoyed it by being used to buy things such as an apartment and car, can also be subject to Article 5 of this Law, because they have received money well known or should be suspected that the money is the proceeds of crime.

1.2. Operandi Mode in Money Laundering

According to Sarah N Welling as quoted by Andrian Sutedi, money laundering begins with the act of obtaining "Haram Money" or "dirty money" (dirty money). There are two modus operandi carried out to obtain dirty money, namely through tax evasion and through unlawful means. Tax evasion is getting money legally, but the amount reported to the government for tax purposes is less than what was actually obtained.

Money laundering through unlawful means is carried out with techniques such as the sale of illegal drugs or drug trafficking, illicit gambling, bribery, terrorism, prostitution, arms trafficking, smuggling of alcohol, tobacco and pornography (smuggling of contraband alcohol, tobacco, pornography), smuggling of illegal immigrants (illegal immigration rackets or people smuggling) and white-collar crime (white collar crime).

The modus operandi of money laundering is generally in several ways:

1.2.1. Through Capital Cooperation

Money from proceeds of crime in cash is taken abroad and re-entered in the form of a capital cooperation (joint venture project), the profits of which are invested again in various other businesses.

1.2.2. Through Credit Collateral

Cash is smuggled out of the country, then deposited in certain state banks whose banking procedures are soft, and from the bank transferred to Swiss banks in the form of deposits. Then lending to a bank in Europe with a deposit guarantee. The money from the credit is then invested back in the country of origin.

1.2.3. Via Foreign Travel

Cash is transferred abroad through a foreign bank in the country and then disbursed and brought back to the country of origin by a certain person, as if the money came from abroad.

1.2.4. Through Domestic Business Disguises

With this money a disguised company was established and there was no question whether the money was successful or not, but it seemed that the business had made "clean" money.

1.2.5. Through Disguising Documents

The money is physically not going anywhere, but its existence is supported by a variety of fake documents or documents that are fabricated, such as by making a double invoice in buying and selling / importing imports so that the money is impressed as a result of foreign activities.

1.2.6. Through Foreign Loans

Cash is taken abroad in various ways, then put back as foreign loans as if giving the impression of the perpetrators of obtaining foreign credit assistance.

1.2.7. Through Engineering Foreign Loans

Physical money is not going anywhere, but then made a document as if there is aid or foreign loans. In this case there really isn't a lender at all. There are only loan documents that are likely or predictably fake documents.

Money laundering through capital cooperation is usually done by bringing certain amount of proceeds of crime in cash abroad. The money is re-entered in the form of joint venture capital. The investment profits are re-invested in various other businesses. These other business benefits are enjoyed as clean money, because it appears to be legally processed and even taxed.

Money laundering is also often done through credit collateral, namely by smuggling cash out of the country, then deposited in certain state banks whose banking procedures are soft. From the bank transferred to another bank in the form of deposits, then lending to a bank in another country with a deposit guarantee. The money from the credit was reinvested in the country where the illegal money came from. Money laundering also often occurs with an overseas travel mode, namely by transferring cash abroad through a foreign bank in his country. Then the money is reclaimed and brought back to its home country by certain people, as if the money came from abroad.

Money launderers also often disguise domestic businesses to obscure the origin of funds obtained from proceeds of crime that is by establishing a disguise, no matter whether the business is successful or not, but the impression the business has generated "clean" money. Even they also often wash the money from the crime is disguised by gambling, that is by establishing a gambling business, it does not matter whether winning or losing but it will make an impression of "winning" so there is a reason for the origin of the money.

Disguising documents is also one of the modes carried out by money launderers to disguise the origin of the proceeds of crime. The money is physically not going anywhere, but its existence is supported by a variety of fake documents or fabricated documents such as making double invoices in buying and selling and import exports, so that the money is impressed as a result of foreign activities.

In addition, money launderers also often use foreign loans by bringing cash abroad in various ways, then the money is put back as foreign loans. This seemed to give the impression that the perpetrators received credit assistance from abroad. And through foreign loan engineering, namely by making a document as if foreign assistance or loans. In particular, there are no lenders at all, there is a high probability that the documents are fake. So, the modus operandi of laundering is very modern, and young offenders deceive law enforcement.

1.3. Stages of Money Laundering

Money laundering is a process or act that aims to hide or disguise the origin of money or assets obtained from criminal acts which are then converted into assets that appear to originate from legitimate activities. Even though there are various modes of money laundering operation, basically the money laundering process can be grouped into three stages of activity, namely the Placement, Layering and Integration stages.

The placement phase is an attempt to place or deposit funds (cash) originating from criminal acts or illicit money into the financial system (financial system), especially the banking system. At the placement stage, the form of money from proceeds of crime must be converted to conceal the origin of the illegitimate money then the money is deposited directly in a bank account or bank account or used to buy a number of monetary instruments (monetary instruments) such as cheque, money orders and etc. Then collect the money and deposit in a bank, it means that the money has entered the financial system of the country concerned, but also has entered into the global or international financial system.

So, placement is an effort to place funds generated from a criminal activity into the financial system, the form of this activity is as follows:

- Placing funds with the bank, sometimes this activity is followed by the submission of financing loans.
- Deposit money to banks or other financial service companies as credit payments to obscure the audit trail.
- Smuggling cash from one country to another.
- Financing a business that seems legitimate or hear related, a legitimate business in the form of credit / payment so that it converts cash into credit / payment.
- Buying valuable items of high value for personal use, buying gifts of high value as awards / prizes to other parties whose payments are made through banks or other financial service companies.

By "Placement" the Physical disposal of cash proceed is derived from illegal activities. In other words, the first phase of the process of illicit money laundering is to remove illicit money from the original source of the money obtained to avoid traces of it. Or more simply so that the source of the money is not known by law enforcement authorities.

After the money launderers successfully carry out the placement stage, the next stage is to carry out layering (heavy soaping). The layering stage is an attempt to transfer assets originating from criminal acts (dirty money) that are successfully placed in financial service providers (especially banks) as a result of the placement (placement) provision of other financial services. By doing the service it becomes difficult for law enforcement to be able to find out the origin of these assets. In this stage the money launderers try to decide the proceeds of crime from their source. This is done by transferring the money from one bank to another from another country up to several times, which is often carried out by splitting the amount, so that by splitting and transferring several times, the origin of the money may no longer be traceable by law enforcement. Money launderers do this by trying to get the funds away from their sources. In this activity there is a process of transferring funds from certain accounts or locations as a result of placements to other places through a series of complex transactions that are designed to disguise and eliminate the source of these funds.

The forms of activities include:

- Transfer funds from one bank to another and / or between regions / countries / accounts / locations.
- Use of cash deposits as collateral to support legitimate transactions.
- Transfer cash across national borders through a network of legitimate business activities or a shell company.

The third stage is integration (repatriation and integration or spin dry). At this stage the money that has been washed is brought back into circulation in the form of a clean income, even a taxable object (tax able) once the money has been successfully sought as halal money through layering, the next stage is to use clean money. for business activities or criminal operations of criminals or criminal organizations that control the money. Money launderers can choose their use by investing the funds. In real estate, luxury goods (luxury assets), or companies (business ventures) at the placement stage, for example the funds are usually processed near the activities that produce the funds carried out. At the layering stage, the relevant money laundering may choose an offshore financial center, a large regional business center (alarges center) or a world banking center (a word banking center), which is where it provides adequate financial or business infrastructure. At this stage the laundered funds may only transit in bank accounts in several places, which can be done without leaving a trace of the source or final destination of the funds. Finally, in integration, money launderers can choose to invest the funds in another location if the investment is very limited in that country.

The Money Laundering Law mentions 3 (three) stages (stages) of the money laundering process carried out by the perpetrators of criminal acts, namely through the following stages of the process:

1.3.1. Placement

Namely efforts to place cash originating from criminal acts into the financial system (financial system) or efforts to place demand deposits (checks, bank notes, certificates of deposit, etc.) back into the financial system, especially the banking system.

Placement of money / funds is an initial process in money laundering. This is indicated by the physical handover of money generated into the banking system. These placements are often done by creating as many accounts as possible from fictitious / pseudo-companies by utilizing aspects of bank secrecy and special relationships between bank customers.

1.3.2. Layering (Transfer)

Namely the effort to transfer Assets that come from criminal acts (dirty money) that have been successfully placed in Financial Service Providers (especially banks) as a result of placement efforts (placement) to other Financial Service Providers. Layering will make it difficult for law enforcers to be able to find out the origin of the assets.

Layering is the second step marked by sorting money through activities to disguise the money by conducting complex financial transactions through the purchase of financial products, with the aim of removing traces of audit tracking. Layering patterns are carried out by transferring proceeds from criminal offenses that are successfully placed in financial service providers or banks to other banks.

1.3.3. Integration (Integration / Use of Assets):

Namely efforts to use Assets that originate from criminal offenses that have successfully entered the financial system through placement or transfer so that it seems to be a halal Asset (clean money), for halal business activities or to refinance criminal activities.

The pattern of integration is carried out in a way that the perpetrators try to use the proceeds of crime that have been placed in the bank so that the funds appear to be legal.

2. Legal Discussion/Analysis

2.1. Letter of the Praise

2.1.1. First

That he was accused by NONI ZAHARA on Sunday June 10 2018 or at least at another time in June 2018 at his house on Jalan Medan Binjai KM. 12 (villa Palem Blok XP No. 20) Muliorejo Village, Sunggal District. Deli Serdang, or at least based on Article 84 paragraph (2) of the Criminal Procedure Code, the Medan District Court has the authority to examine and try cases because most of the witnesses who are summoned are closer to the Medan District Court than the place of domicile of the District Court within which the crime is committed or at least -at least in a place that belongs to the Medan District Court Law area, "intentionally placing, paying or spending, depositing, exchanging or concealing or disguising, investing, storing, giving away, bequeathing and or transferring money, property or assets both in shape tangible or intangible movable or immovable objects originating from narcotics and / or narcotics crime crimes ", which are carried out by the defendant in the following ways;

That on June 10, 2018 the defendant received a flow of funds in the amount of Rp 1,000,000 (one billion rupiah) in BRI account No. Account: 0404-04-000-448-561, for this amount the defendant sent back a number of bank accounts because the defendant worked for sending or receiving account money, at the request and intention of helping his brother-in-law on behalf of Ibnu Chatab an Indonesian citizen who live in Malaysia trade in Malaysian Ringgit foreign currency and Indonesian Rupiah and send it to Indonesia.

That the defendant did not know who sent the money into the account in his name, for the incoming money he admitted to report to Ibn Chatab and then sent the money to various accounts according to the accounts he gave by Ibnu Chatab via communication Cellphone

That on Monday, 34 September 2018, it will be around 17.00 WIB on Jalan Merdeka, Tanjung Tiram District. Batu Bara Prov. North Sumatra has committed a Narcotics crime through an agreement worth Rp 141,000,000, - by payment of

a total net weight of 298 (two hundred and ninety-eight) ngram committed by Irawan Als. Wan check (separate case file) with M. Toni Als. Uwak (separate case file) by involving Anis Yahya Als. Wak Nes and Taufik Als. Buyung.

That Irawan als. Cek Wan and M. Toni Als. Wak has been successful in conducting transactions before, for these transactions sending money through accounts 0404-01-000-699-560 as a collection account in Irawan's name for the payment of narcotics that have been sold. Besides M. Toni Als. Wak also noted that it was done by Sapanah with a delivery transaction through the account of her son Tiwi Adilla Suheri. Some of the incoming money transactions as of June 10, 2018, there were received funds in the amount of Rp 1,000,000,000 in BRI account No. account 0404-01-000-448-561 owned by the defendant is a transaction originating from the crime of narcotics drug trafficking committed by Irawan Als. Cek Wan through a holding account opened under the name of PT. Iryasta Jaya Group No. Account: 0043-01-002093-30-0. ----- Defendant acts as regulated and threatened by criminal Article 137 a and b of Law No. 35 of 2009 concerning Narcotics

2.1.2. Second

2.1.2.1. Primary

That he was NONI ZAHARA on Sunday June 10 2018 or at least at another time in June 2018 at his home in Medan Binjai street KM.12 (Villa Palem Kencana Blok XP No.20) Muliorejo Village, Kec. Sunggal Kab. Deli Serdang, or at least based on Article 84 paragraph 2 of the Criminal Code, the Medan District Court has the authority to examine and try the case because most of the witnesses who are summoned are closer to the Medan District Court than the place of domicile of the District Court in the area where the crime was committed or at least whether or not at a place included in the legal area of the Medan District Court, "intentionally placing transfer, transfer, spend, pay, grant, entrust, bring out of the country, change the form, exchange with currency or securities or other acts of assets that are he knew or supposed to be the result of a money laundering crime, "committed by the defendant in the following ways:

That on 10 June 2018 the defendant received a flow of funds in the amount of Rp 1,000,000,000 (one billion rupiah) in his BRI account No.Rek: 0404-01-000-448-561, for the money the defendant send back a number of bank accounts because the defendant worked for sending or receiving bank accounts, at the request and intention of helping his brother-in-law on behalf of Ibnu Chatab, an Indonesian citizen living in Malaysia, trading Malaysian ringgit and Indonesian Rupiah currency and sending it to Indonesia.

That the laughter did not know who sent the money that entered the account in his name, for the incoming money he admitted to report to Ibn Chatab and then sent money to various accounts according to the accounts given by Ibnu Chatab via communication handphone.

That on Monday, September 24, 2018, at around 17:00 West Indonesia Time on Jalan Merdeka Kec. Tanjung Tiram Regency Coal of North Sumatra Province. There has been a narcotic crime through an agreement for Rp. 141,000,000, - by payment after the goods run out of methamphetamine narcotics weighing 300 (three hundred) grams with a total net weight of 298 (duaratus Ninety-eight) grams carried out by Irawan Als. Cek Wan (having a separate case) with M. Toni Als. Uwak (separate case file) by involving Anis Yahya Als. Wak Nes dal Taufik Als. Buyung

That Iriawan als. Check Wan and M. Toni Als. Wak has succeeded in conducting transactions before, for these transactions sending money through account 0401-01-000-699-560 as a collection account in Iriawan's name for the payment of Narcotics that has been sold. Besides M. Toni Als. Wak also noted that it was done by Sapanah with a delivery transaction through the account of her son Tiwi Adilla Suheri. Some of the money transactions entered as of 10 June 2018, there received a flow of funds in the amount of Rp 1,000,000,000, - in BRI account No. account 0404-01-000-448-561 owned by the defendant is a transaction originating from the proceeds of crime of narcotics illicit trafficking conducted by Irawan Als. Wan checks through a holding account opened in the name of PT. Iriyasta Jaya Group No. Rek: 0043-01-002093-30-0.

Defendant acts as regulated and threatened with criminal Article 3 in conjunction with Article 10 of RI Law No.8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes

2.1.2.2. Subsidiary

That he was NONI ZAHARA on Sunday June 10 2018 or at least another time in June 2018 at his home in Medan Binjai street KM 12 (Villa Palem Kencana Blok XP No.20) Muliorejo Village Kec. Sunggal Kab. Deli Serdang, or at least according to Article 84 paragraph (2) of the Criminal Procedure Code, the Medan District Court has the authority to examine and try the case because most of the witnesses who are summoned are closer to the Medan District Court than the place of domicile of the District Court within the area where the criminal offenses were committed or at least in a place that is within the jurisdiction of the Medan District Court, "intentionally concealing or disguising the origin of the source of the designation, transferring rights, or actual ownership of the assets known to or allegedly constituting the result of a crime of money laundering. "Which the defendant did as follows:

That on 10 June 2018 the defendant received a flow of funds in the amount of Rp 1,000,000,000 (one billion rupiah) in his BRI account No.: 0404-01-000-448-561, for the money the defendant sent returned a number of bank accounts because the defendant worked on sending or receiving bank accounts, at the request and intention of helping his brother-in-law on behalf of Ibnu Chatab, an Indonesian citizen living in Malaysia, trading Malaysian Ringgit and Indonesian Rupiah currency.

That the defendant did not know who sent the money into the account under his name, over the incoming money he confessed to reporting to Ibnu Chatab and then sent money to various accounts according to the accounts he gave by Ibnu Chatab via communication Cellphone

That on Monday, September 24, 2018, at around 17:00 West Indonesia Time on Jalan Merdeka Kec. Tanjung Tiram Regency Batu Bara Prov. North Sumatra has committed a Narcotics crime through an agreement valued at Rp 141,000,000, - by way of payment after the goods run out on Narcotics types of methamphetamine weighing 300 (three hundred) grams with a total net weight of 298 (two hundred ninety-eight) grams carried out by Iriawan Als. Cek Wan (separate case file) with M. Toni Als Uwak (separate case file) by involving Anis Yahya Als. Wak Nes and Taufik Als. Buyung

That Iriawan Als. Cek Wan and M. Toni Als. Wak has succeeded in conducting transactions before, for these transactions sending money through account 0404-01-000-699-560 as a collection account in Irawan's name for the payment of Narcotics that has been sold. Besides M. Toni Als. Wak also noted that it was done by Sapnah with a delivery transaction through the account of her son Tiwi Adilla Suheri. Some of the money transactions entered as of June 10, 2018, there received a cash flow of Rp 1,000,000,000, - in BRI account No. account 0404-01-000-448-561 belonging to the defendant is a transaction originating from Narcotics illicit trafficking money committed by Irawan Als. Wan checks through a holding account opened in the name of PT. Iryasta Jaya Group No. Account: 0043-01-002093-30-0.

Defendant acts as regulated and threatened with criminal Article 4 in conjunction with Article 10 of RI Law No.8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes

2.1.2.3. More Subsidiary

That he is NONI ZAHARA on Sunday, June 10, 2018 or at least at another time in June 2018 at his home on Medan Binjai Road KM. 12 (Villa Palem Kencana Blok XP No. 20) muliorejo village Kec. Sunggal Kab.Deli Serdang, or at least according to Article 84 paragraph (2) of the Criminal Procedure Code, the Medan District Court has the authority to hear and examine the case because most of the witnesses who were summoned were closer to the Medan District Court than to the place of the District Court in their area of action. a crime committed or at least in a place that belongs to the jurisdiction of the Medan District Court "intentionally receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange or use of assets that it knows or deserves in the form of criminal offenses money laundering. "What the defendant did was as follows:

That on 10 June 2018 the defendant received a flow of funds in the amount of Rp 1,000,000,000 (one billion rupiah) in BRI account No. Account: 0404-01-000-448-561 of his, or the amount of money the defendant sent back a number of bank accounts because the defendant worked on sending or receiving account money, at the request and intention to help his brother-in-law on behalf of Ibnu chatab a citizen Indonesians living in Malaysia trade in Malaysian Ringgit foreign currency and Indonesian Rupiah and send it to Indonesia.

That the defendant did not know who sent the money that entered his account or his name was controlled, for the incoming money he admitted to report to Ibn Chatab and then sent money to various accounts according to the accounts given by Ibnu Chatab via mobile communication.

That on Monday, September 24, 2018, at around 17:00 WIB on the merdeka street, Tanjung Tiram District. Coal of North Sumatra Province has occurred narcotics crime through an agreement for Rp. 141,000,000, - by payment after the goods run out of methamphetamine narcotics weighing 300 (three hundred) grams with a total net weight of 298 (two hundred ninety-eight) grams made by Irawan Als.Cek Wan (separate case file) with M Toni Als. Uwak (separate case file) by involving Anis Yahya Als.Wak Nes and Taufik Als. Buyung.

That Iriawan als.Cek Wan and M.Toni Als. Wak has never succeeded in conducting transactions before, for these transactions sending money through accounts 0404-01-000-699-560 as a collection account in the name of Iriawan in the name of Narcotics payments that have been sold. Besides M. Toni Als. Wak also noted that it was done by Sapnah with a delivery transaction through the account of her son Tiwi Adilla Suheri. Several incoming cash transactions as of 10 June 2018, there received a cash flow of Rp 1,000,000,000, BRI account no. The defendant's 0404-01-000-448-561 account is a transaction originating from a narcotics crime money committed by Irawan Als. Wan checks through a holding account opened in the name of PT. Iryasta Jaya Group No. Account: 0043-01-002093-30-0.

Defendant acts as regulated and threatened with criminal Article 5 paragraph (1) jo Article 10 of RI Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes

2.2. Legal Analysis

Article 137 a and b of Law No. 35 of 2009 concerning Narcotics determines that:

Everyone who:

a. placing, paying or spending, entrusting, exchanging, hiding or disguising, investing, storing, granting, bequeathing, and / or transferring money, assets, and objects or assets in the form of movable or immovable, tangible or intangible objects originating from Narcotics crime and / or Narcotics Precursor crime, convicted with criminal conviction of 5 (five) years and a maximum of 15 (fifteen) years and a criminal fine of no less than Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp10. 000,000,000.00 (ten billion rupiah);

b. receive the placement, payment or expenditure, deposit, exchange, concealment or disguise of investments, deposits or transfers, grants, inheritance, assets or money, objects or assets in the form of movable or immovable, tangible or intangible objects which are known to originate from Narcotics criminal offenses and / or Narcotics Precursor crime, convicted with criminal conviction for a period of 3 (three) years and a maximum of 10 (ten) years and a criminal fine of at least Rp. 500,000,000.00 (five hundred million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiahs)).

The elements of Article 137 letter a are:

- Everyone
- placing, paying or spending, entrusting, exchanging, hiding or disguising, investing, storing, granting, bequeathing, and / or transferring money, property, and objects or assets in the form of movable or immovable, tangible or intangible objects
- originating from Narcotics crime and / or Narcotics Precursor crime
- Criminal:

Criminal sentence of 5 (five) years and a maximum of 15 (fifteen) years and a fine of no less than Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).

The elements of Article 137 letter b are:

- Everyone
- accept the placement, payment or expenditure, deposit, exchange, concealment or disguise of investments, deposits or transfers, grants, inheritance, assets or money, objects or assets in the form of movable or immovable, tangible or intangible objects
- he is known to have originated from Narcotics criminal acts and / or Narcotics Precursor crimes
- Criminal:

The prisoner period is 3 (three) years and the maximum is 10 (ten) years and a fine of at least Rp.500,000,000.00 (five hundred million rupiah) and a maximum of Rp.5,000,000,000.00 (five billion rupiah).

Article 3 of RI Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes determines:

Any person who places, transfers, transfers, spends, pays, grants, entrusts, carries abroad, changes forms, exchanges for currency or securities or other acts of Assets that he knows or deserves to be the result of a criminal offense as referred to in Article 2 paragraph (1) with the aim of concealing or disguising the origin of the assets is sentenced for money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiah).

The elements of Article 3 are:

- Everyone
- placing, transferring, transferring, spending, paying, granting, entrusting, bringing abroad, changing forms, exchanging with currency or securities or other acts of Assets
- he knows or he thinks is the result of a criminal offense
- with the aim of concealing or disguising the origin of Assets
- Criminal

Convicted of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000 (ten billion rupiah).

Article 4 RI Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes determines:

Any person who conceals or disguises the origin, source, location, designation, transfer of rights, or the actual ownership of the Asset he knows or reasonably suspects is the result of a criminal offense as referred to in Article 2 paragraph (1) convicted of a criminal offense Money with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 5,000,000,000 (five billion rupiah).

The elements are:

- Everyone
- conceal or disguise the origin, source, location, designation, transfer of rights, or the actual ownership of Assets
- he knows or he thinks is the result of a criminal offense
- Criminal:

Imprisonment of a maximum of 20 (twenty) years and a maximum fine of Rp 5,000,000,000 (five billion rupiah)

Article 5 Paragraph (1) RI Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes determines:

Every person who receives or controls placement, transfer, payment, grant, donation, safekeeping, exchange, or use Assets which he knows or deserves is a criminal offense as referred to in Article 2 paragraph (1) shall be liable to a maximum imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah).

The elements are:

- Everyone (in this case an individual or corporation is biased, Article 1 number 9 of Law No. 8 of 2010 concerning Money Laundering).
- Receive, or master placement, transfer, payment, grants, donations, deposits, exchange, or use of Assets.
- he knew or thought he was a criminal offense

Article 10 RI Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes determines:

Every person who is inside or outside the territory of the Unitary State of the Republic of Indonesia who participates in conducting trials, assistance, or criminal agreement to commit the crime of money laundering is convicted with the same crime as referred to in Article 3, Article 4, and Article 5.

The elements are:

- Everyone (in this case an individual or corporation is biased, Article 1 number 9 of Law No. 8 of 2010 concerning Money Laundering).
- Located within or outside the Territory of the Republic of Indonesia.
- Take part in conducting experiments, assistance, or evil agreements.
- Committing a Criminal Act of Money Laundering.

In view of the aforementioned charges, the following matters may be stated:

- Noni Zohara, where the defendant lives is Jalan Medan Binjai KM 12 (Villa Palem Kencana Blok X PNo. 20) Muliorejo Village, Kec. Sunggal Kab. Deli Serdang. On June 10, 2018 the defendant received a cash flow of Rp. 1,000,000,000 (one billion rupiah) in BRI Account No. Rek.: 0404-01-000-448-561 hers. The money is intended to be sent back to the account according to the accounts that have been determined.
- The defendant reported to Ibn Chatab and then sent money to various accounts according to the accounts provided by Ibn Chatab via mobile communication.
- The defendant worked for sending or receiving money through a colleague at the request and intention of helping his brother-in-law on behalf of Ibnu Chatab, an Indonesian citizen living in Malaysia who traded Malaysian Ringgit and Indonesian Rupiah foreign exchange money and sent him to Indonesia.
- Narcotics Crime, September 24, 2018 in Jalan Merdeka Kec. Tanjung Tiram Regency Batu Bara Prov. North Sumatra Consensus of Rp. 141,000,000, - weighing 298 (two hundred and ninety-eight) grams.
- Method of payment made by Irawan Als. Wan check (separate case file) with M. Toni Als. Uwak (separate case file) by involving Anis Yahya Als. Wak Nes and Taufik Als. Buyung when they are sold.
- That Irawan als. Cek Wan and M. Toni Als. Wak has been successful in conducting transactions before, for these transactions sending money through accounts 0404-01-000-699-560 as a collection account in Irawan's name for the payment of narcotics that have been sold.
- Sapnah by sending a transaction through his son's account Tiwi Adilla Suheri some money transactions that entered as of June 10 2018 there received a fund of Rp 1,000,000,000, in BRI account No. account 0404-01-000-448-561 owned by the defendant is a transaction originating from the crime of narcotics drug trafficking committed by Irawan Als. Cek Wan through a holding account opened under the name of PT. Iryasta Jaya Group No. Account: 0043-01-002093-30-0.

From the description above, I think that:

- The defendant was not involved at all in the Narcotics Act, which occurred on Monday, September 24, 2018, at approximately 17.00 WIB on Jalan Merdeka, Tanjung Tiram District. Batu Bara Prov. North Sumatra Involved were: Irawan Als. Cek Wan (separate case file), M. Toni Als. Uwak (separate case file), Anis Yahya Als. Wak Nes and Taufik Als. Buyung and Sapnah, and Tiwi Adilla Suheri.
- That the defendant NONI ZAHARA on June 10, 2018 received a flow of funds in the amount of Rp 1,000,000 (one billion rupiah) in BRI account No. Account: 0404-04-000-448-561. Not clearly and clearly stated from the account number of the sender and the owner. It can be emphasized that those involved in the Narcotics Act, namely: one of Irawan Als. Cek Wan (separate case file), M. Toni Als. Uwak (separate case file), Anis Yahya Als. Wak Nes and Taufik Als. Buyung
- It is highly doubtful that Sapnah and Tiwi Adilla Suheri learned that on 10 June 2018 the defendant received a fund of Rp 1,000,000,000 in BRI account No. account 0404-01-000-448-561 belonging to the defendant. Sapnah and Tiwi Adilla Suheri did not state expressly that the flow of funds was a transaction originating from narcotics crime trafficking money carried out by Irawan Als. Cek Wan through a holding account opened under the name of PT. Iryasta Jaya Group No. Account: 0043-01-002093-30-0. This is for the reason that the method of payment made by Irawan Als. Wan check (separate case file) with M. Toni Als. Uwak (separate case file) by involving Anis Yahya Als. Wak Nes and Taufik Als. Buyung.
- The flow of funds into the defendant's account is not the result of or related to Narcotics Crimes. This is for the reason that when the flow of funds into the account of the defendant is on June 10, 2018 while Narcotics Acts occur on September 24, 2018. So, it does not make sense to say that the amount of money entering the defendant's account is the result of or related to Criminal Acts Narcotics.
- Based on the description of numbers 1 to 4 above, it can be concluded that:

The defendant was not involved in the Narcotics Act and was not involved in the Money Laundering (TPPU). It means that it is not involved in violating Article 137 letter a and Article 137 letter b, Article 3, Article 4, Article 5, Article 10 of the TPPU Law.

The defendant is not guilty of TPPU as charged in Article 3, Article 4, Article 5, Article 10 of the TPPU Law.

Ad a. The defendant was not involved in the Narcotics Act and was not involved in the Money Laundering (TPPU).

Noni Zahara (the defendant) was not involved in the Narcotics Act and was not involved in the Money Laundering Act (TPPU). It means that it is not involved in violation of Article 5, Article 10 of the TPPU Law. With regard to the determination of a person as a suspect / defendant, in this case there has been an error in person. The terms Error in Persona and Error in Objecto are used in court at the exception stage of a lawsuit (if civil) or indictment (if criminal). The exception based on the Error in Persona was filed by the Defendant / Defendant of the Plaintiff's / Plaintiff's / Defendant's Indictment because the indictment / lawsuit was addressed to the wrong person. Regarding the term Error in Objecto, in principle, is a misconduct / indictment of the object in question (disputed) or the event / act being charged. Then the error over the object being disputed / charged is called the Error in Objecto.

In this case it must be upheld that: It is better to release one hundred guilty people than to convict one innocent person. In this case Noni Zahara was not involved in violating Article 5 and Article 10 of Law No. 8 of 2010 concerning Money Laundering Crimes. This means that Noni Zahara does not commit the crime of money laundering by accepting, or mastering the placement, transfer, payment, grants, donations, safekeeping, exchange, or using assets that he knows or deserves to be a criminal offense (Article 5 of the TPPU Law).

If Noni Zahara does not know each other and is not included in a group of perpetrators of a Money Laundering Crime, then Noni Zahara cannot be said to have participated in conducting experiments, assistance, or evil agreements to commit a Money Laundering Crime, because they do not know each other so that they do not engage in an evil consensus, so that there is no mutual assistance in conducting the Money Laundering Act as regulated in Article 10 of Law No. 8 of 2010 concerning Money Laundering Crimes.

Ad b. The defendant is not guilty of committing TPPU as charged in Article 5, Article 10 of the TPPU Law.

The nature of breaking the law is an objective assessment of the act, while error (criminal liability) is a matter that concerns the person (maker).

Prof. Muljatno, stated that there are subjective elements that are inherent in one's actions. This element is in what is called "Tendenzdelikte" or offenses that contain an element of intention (oogmerk). This intention element is inherent in his actions, and this is an element of unlawful subjectivity.

A person's conviction is not enough if that person has committed an act that is against the law or is against the law. For criminalization there is still a need for conditions, that the person who commits an act has a mistake or is guilty (subjective guilt). So, it must be accountable for his actions. Here applies the principle "NO CRIMINAL WITHOUT ERROR" (Keine Strafe ohne Schuld or Geen straf zonder schuld or NULA POENA SINE CULPA. "The existence of punishment must be made in advance on the master.

- Error in the broadest sense, which can be equated to the meaning of "criminal liability."
- Error in the sense of error (schuldvorm) in the form of:
- Deliberation (dolus, opzet, Vorsatz or intention) or
- Negligence (culpa, onachtzaamheid, nelatigheid, or negligence).

Error in the narrow sense, is negligence (culpa), like no. 2 b above.

The elements of error are:

- There is an ability to be responsible to the maker, meaning that the condition of the soul of the maker must be normal;
- The inner connection between the creator and his actions, which is intentional (dolus) or negligence (culpa); these are called forms of error;
- There is no reason to erase mistakes or there is no reason to forgive.

The element of error also includes the inner connection between the maker of the act alleged to the maker. This inner connection can be either intentional or negligent. According to Memorie van Toelechting (MvT); Intentional (opzet) is will and knowing (willens en wetens).

Associated with the inner state of people who do intentionally, can be called 2 (two) theories, namely:

- The theory of the will (wilstheori), the core of intent in this case is the will to realize the elements of offense in the formulation of offense.
- The theory of knowledge or imagining (voorstellings-theorie), intentionally means to imagine that it will result from his actions; people cannot want results, but can only imagine them. Emphasis on what is known or imagined by the creator is what will happen when he did.

In someone doing something intentionally, there can be distinguished 3 (three) inner patterns, namely:

- Intentional purpose (opzet als oogmerk), to achieve (near) goals; dolus directus.
- The act in the maker aims to have a prohibited effect. He wants the deed and its consequences. Also called purposefully.
- Deliberacy with conscious certainty (opzet met zekerheidsbewustzijn or noodzakelijkheidbewustzijn). Has a result, namely:
 - As a result of the intended creation. This is an offense or not;
 - Unintended consequences but it is a must to reach the goal.
- Intentionally conscious of the possibility (dolus eventualis atau voorwaardelijk opzet). In this case there are certain circumstances which at first might have happened and then it actually happened.

Relating to Helping to Do as determined in Article 10 of Law no. 8 of 2010 concerning Criminal Acts of Money Laundering, relating to Participating in and Conducting, Co-Administration, and Evil Consensus can be described as follows:

2.2.1. Participate in Mededader

Participating in a criminal act means that several people commit a criminal act together. The conditions that must be met so that several people can be called to participate in committing a crime are:

- Conducting jointly with their respective bodies / bodies.
- The existence of cooperation that is realized together

In general, there is a conviction of cooperation if the makers / principals hold an agreement before a crime is committed. However, realized cooperation can also occur without consensus, for example the A is stealing in two places (house), then the B passes and knows that the A is stealing there, and then the B becomes involved stealing in the same house. Here the participation of B in theft is not preceded by consensus. So those who take part in committing criminal

acts are those who jointly commit criminal acts or those who deliberately participate in committing crimes. What is important in participating in doing this is that 'there is close collaboration between them' and this is the essence of participating in doing.

To determine whether there is participation in taking action or not, it is not seen by the actions of each participant individually and independently of the other participants' actions. Noteworthy are the actions of each participant in the relationship and as a whole with the actions of the other participants.

According to van Hattum, opzet (intentional) of a mededader (participating in doing must be addressed to:

- The intention is to collaborate with other people to commit a crime.
- Fulfillment of all elements of the crime which are covered by opzet, which must be fulfilled by the culprit himself, in accordance with what is required by the formulation of the relevant criminal act.

Example A (the perpetrator) has the intention (opzet) to kill C, while B only intends to persecute C. What is the responsibility of each? then in this case, person A is responsible for the crime of murder) articles 338 - 340 - 351 (3) of the Criminal Code. Person B, is responsible for the Persecution (article 351 (3) of the Criminal Code), or can be aggravated if Person B knows what A.

What if a crime that can only be done by someone who has a status (status) as a "civil servant", whether the crime can be carried out together (trud and commit) with people who are not civil servants? In this case, there are several opinions as follows:

- Simons, argues that participants participating in doing things must have (fulfill) the requirements as an actor (dader). His opinion is based on article 55 (1) of the Criminal Code: "... those who do, who order to do and turt and do", are written in one sentence, which should be read in one breath. That is, that all of that must have conditions as a dader / maker. So, the participants have the conditions as makers. In connection with the question above, a person who is not a civil servant cannot be a person who participates.
- Noyon, linked Article 55 (1) of the Criminal Code to Article 284 of the Criminal Code (adultery), namely that as a perpetrator is a person who is bound in a marriage. The reason is that those who can commit adultery are those who are bound in legal marriages, while those who are not bound in legal marriages, as people who take part in carrying out acts of conduct, are not just 'facilitating / making greater' the adultery.
- Hoge Raad, based his opinion on Article 55 (1) of the Criminal Code: "Being convicted as a criminal ..." means that the criminal is the same as the person who committed the crime. So, not all participants must meet the requirements as a maker / doer. In connection with the question above, both civil servants and non-civil servants can be considered as committing criminal offenses. Thus, according to HR, there is an absolute element that must be present in participating in doing, namely intentional or willingness to participate and there is an element that is not absolutely necessary, namely status as a civil servant.

2.2.2. Help Do

In helping to do, there is someone who wants to commit a crime, but to carry out his (intention), he needs help from others. The question that arises then is: to what extent can the assistance be provided? This question will relate to participating in the conduct.

Article 56 of the Criminal Code is seen from various aspects, namely time, tools and methods. In terms of time, helping to do when or before the crime was committed. The tools used to provide assistance are opportunities, facilities and expertise. So, the tool can be in the form of material objects (facilities) as well as immaterial objects (means and information). The method used by the maid can be through 'passive deeds' and 'active' deeds. The assistance provided must be such that it does not reach Deelneming 'participating in'. In helping to do, the interest is 'animo sacii', which is interest for others, not for oneself, while in participating there is 'animo auctores', which is interest for one's own interests. To emphasize the differences between helping to do with participating, examples can be noted below:

- Person A knows that Person B needs a ladder to steal, then Person A gives a ladder to facilitate Person B's theft.
- In a theft, drain A digs the ground, while the one who enters the house and takes the goods is B.
- Husband and wife agree to steal, the husband just stands outside to keep watch or give a signal if someone else comes, while the wife goes into the house and takes the goods.
- Person A and person B want to pickpocket C. The person A rubs his body against the body of C, while the person who takes the jump (money) is B.
- The person A is going to steal and ask for a crowbar from B. On the way, the person is fighting with the C, then the A is hitting the crowbar he borrowed from B to C and the wound. Can Person A be blamed for helping to persecute C?

In Article 56 of the Criminal Code it is also necessary to note the word 'intentionally'. Assistance provided in the form of opportunities, facilities and information must be provided intentionally. If the opportunity, means and information are given because of an error, then there is no help doing. In addition, cooperation in helping to do less than (levels) cooperation in participating in doing. The role of the person who helped to do is not so important in the crime.

According to Simons. A person who assists in committing a crime (medeplichtige) can be convicted if he meets 2 elements, namely the objective and subjective elements. The act of a medeplichtige is said to have fulfilled an objective element if the act of the person who helped to do that has indeed been intended to facilitate or support the commission of a crime. The act of a medeplichtige is said to have fulfilled the subjective element, if the coverage made by medeplichtige has been intentionally done intentionally by the medeplichtige, knowing that his actions can be exacerbated or can support a crime committed by another person.

Helping to do is one form of delinquency that does not stand alone, because the action of the person who helps to do is always associated with the actions of the main maker (the person being helped).

Regarding the accountability of people who help to do there are 2 teachings, namely:

- Doctrine that limits the responsibilities of the helper, that is only responsible for his actions, which is only an act of assistance to the actions of the main maker.
- Teachings that expand the accountability of the maid, that is, the maid is responsible for all the consequences that may arise because of his actions.

From these two teachings. Which teachings are held by the Criminal Code? For this, connect with Article 57 (4) of the Indonesian Criminal Code: "In determining criminal sanctions for maids, only acts which are deliberately facilitated or facilitated by them, along with their consequences."

Thus, this paper is made, in the hope that all parties can understand so that actions do not arise that are not true, especially if those actions lead to criminal acts. I hope, this brief analysis can be useful for all of us. Thank you for your attention.

3. Conclusion

At present the existence of law as a lawyers' law, that is, law is identical to the law, the legal process must proceed according to the principles of rules and logic and the law is considered capable of disciplining the public. So that the law becomes an order, an order that is applied to and therefore humans must submit to the law. Since modern law has increasingly relied on the dimensions of the form that makes it formal and procedural, then since then also the difference between formal justice or justice according to the law in one party and substantial justice on the other hand. Fairness not only has a formal meaning, but also has a substantial meaning and the ability to judge, human consciousness not only postulates reciprocally in the formal sense, but instinctively it also provides judgments that determine a conception of justice.

The law should be able to capture the aspirations of people who are growing and developing, not only present and not just static norms that prioritize certainty and order, but also norms that must be able to dynamic thoughts and manipulate people's behavior in achieving their ideals (law as a toll of social engineering).

Law is also a renewal in society or a means of community renewal. The law used as a means of renewal can be in the form of laws or jurisprudence or a combination of both. However, for its implementation so that legislation that should aim as a means of renewal can run as it should, it must be formed in accordance with good law, namely the law that lives in society and reflects the values that live in society. On the principle that the law is for humans and not vice versa and the law does not exist for itself, but for something broader that is for human dignity, happiness, welfare, and human glory. So, there is no engineering or partiality in upholding the law. Because the purpose of law is to create justice and prosperity for all people. Basically, there has been a phenomenal change in law formulated with sentences from simple to complex and from fragmented into one unit.

4. References

- i. Hiariej, Eddy O.S., 2014, *Prinsip-prinsip Hukum Pidana*, Cahaya Atma Pusaka, Yogyakarta
- ii. Hujibers, Theo, 1988, *Filsafat Hukum Dalam Lintas Sejarah*, Kanisius, Cetakan Kelima, Yogyakarta.
- iii. -----, 1994, *Etika Politik*, Gramedia Pustaka Utama, Jakarta
- iv. Ginsberg, Morris, 2003, *Keadilan dalam Masyarakat*, Cetakan Pertama, Pondok Edukasi, Bantul
- v. Rahardjo, Satjipto, 2004, *Hukum Progresif (Penjelajahan Suatu Gagasan)*. Majalah Hukum Hukum Newsletter Nomor 59 Desember 2004. Yayasan Pusat Pengkajian Hukum. Jakarta.
- vi. -----, *Hukum Progresif sebagai Dasar Pembangunan Ilmu hukum Indonesia*. Makalah yang disampaikan seminar nasional Menggagas Ilmu Hukum (Progresif) Indonesia, di Semarang, tanggal 8 Desember 2004.
- vii. -----, *Tidak Hanya Memeriksa dan Mengadili*. Harian Kompas, Jumat, 2 November 2007.
- viii. -----, 2007, *Biarkan Hukum Mengalir* (catatan kritis tentang pergulatan manusia dan hukum), Penerbit Buku Kompas, Jakarta.
- ix. -----, 2007. *Membedah Hukum Progresif*, Kompas, Jakarta.
- x. Rifai, Ahmad, *Penemuan Hukum Oleh Hakim Dalam Prespektif Hukum Progresif*, 2010, Sinar Grafika, Jakarta.
- xi. Republik Indonesia, Undang-Undang Republik Indonesia No.35 Tahun 2009, Tentang *Narkotika*.
- xii. -----, Undang-Undang Republik Indonesia No.48 Tahun 2009, Tentang *Kekuasaan Kehakiman*.
- xiii. Soerjono Soekanto, 1998, *Metodologi Research*, Andi Offset, Yogyakarta ,
- xiv. Warlan Yusuf, Asep, *Memuliakan Hukum dalam Alam Demokrasi yang Berkeadilan*, Makalah disajikan dalam memperingati 70 v tahun Prof. Dr. B. Arief Sidharta, SH., Bandung.