Juridical Analysis Of Crime Against Money Laundering On Illegal Levies In Temporary Storehouse (Study Of Verdict No. 821 K / Pid.Sus / 2018)

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Abstract

This study aims to find out the elements of money laundering crime and the basic considerations of Judges Council in case No. 821 K/Pid.Sus/2018. This study using normative research with a statutory approach. Secondary data including primary legal materials, secondary legal materials and tertiary legal materials are used as data sources. In the second chapter of this thesis study discusses the elements of money laundering crime in the collection of a temporary piling place in case No. 821 K/Pid.Sus/2018. Then in chapter three of this thesis study discusses the basis for judges’ judgment in dropping decision No. 821 K/Pid.Sus/2018. In chapter four contains the conclusions and suggestions of the author. Then in chapter four the authors also concluding the actions of the two defendants did not fulfill the elements of money laundering crimes as in the second indictment which was indicted against the two defendants. But actually, on author’s opinion, two defendants have fulfilled the elements of the criminal act of extortion as the first charge which was indicted against the two defendants and the two defendants should be subject to criminal sanctions in accordance with first indictment namey in Article 368 paragraph (1) of the Indonesian Criminal Code.

Keywords : Illegal Levies, Money Laundering Crime

I. Introduction

Economic development of a nation is strongly supported by the number of companies that are increasingly developing by running various business fields. The company produces products or services to be known to the public which can then be used or used by the community. The process of moving goods from the company (producers) to the public (consumers) is an inseparable part of the trading system. Need for transportation as a support.

Based on general conditions in Indonesia, the modes of transportation can be classified into three modes of transportation which include land transportation (transportation by road and rail), sea transportation and air transportation.

In Surabaya, the Port of Tanjung Perak (PT. Pelabuhan Indonesia III) is a port that serves as the backbone of economic development in Indonesia, especially in East Java Province. Therefore, making Tanjung Perak Harbor as a gateway for container ships originating from domestic and abroad. This was apparently inseparable from problems involving certain elements in making a profit by suppressing the profits of companies using sea

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transportation services. One of the problems that occur at Tanjung Perak port is illegal levies or often abbreviated extortion or extortion in the process of loading and unloading of goods from ships at the port, until the goods are transported out of the port or better known as dwelling time. Dwelling time is a measure of the time it takes for imported containers, since the containers are unloaded from the ship (berthing) to exit the port area (gate out).\(^1\) Dwelling time can also be interpreted as the time calculated from a container (container) unloaded and lifted (unloading) from the ship until the container leaves the terminal through the main door.\(^2\) Then, the profits from illegal levies will usually be disguised or their origin removed by transferring, placing, exchanging with an asset, and as such with the aim that the profits are no longer visible from the proceeds of a criminal offense. Illegal levies are included in the category of office crimes wherein the concept of office crimes it is stated that the official in favor of himself or someone else, abuses his power to force someone to give something, to pay or accept payment, or to do something for himself.\(^3\) These acts are classified as Money Laundering. There is no uniform and comprehensive definition of money laundering or money laundering. Each country has a resolution regarding money laundering by the terminology of crime according to the country’s laws. Prosecutors and crime investigation institutions, business people and companies, developed countries and developed countries and countries from the third world, each have their resolutions according to different priorities and perspectives. But all countries oppose, the eradication of money laundering is very important for acts of terrorism, drug business, robbery through corruption.

Money laundering. In general, the definition or resolution is not much different from each other. Black’s Law Dictionary provides the meaning of money laundering as a term used to describe investments or other transfers of money flowing from racketeering, drug transactions, and other illegal sources to legitimate channels so that sources cannot be traced (legal fields through legitimate channels, producing this money cannot be known

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anymore from his proposal). Money laundering is the process of removing traces of the origin of money resulting from illegal or criminal activities through a series of investment activities or transfers that are carried out over and over again to obtain legal status for money invested or destroyed in the financial system. In the crime of money laundering, there are elements that can be classified, the elements of this money laundering are contained in Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

II. Method

The research used by the author is Normative or Juridical-Normative, with a statutory approach. Normative research is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The materials are compiled then reviewed and drawn conclusions about the relationship with the problem under study.

III. Main Heading of the Analysis or Results

A. Case

Around 2013 Djarwo Surjanto (Defendant I) who at that time served as President Director of PT. Pelindo III met Ferdiat Firman as Operations and Engineering Manager of PT. Pelindo Energi Logistik in Tanjung Perak and Benoa Port in Bali. At the meeting, Ferdiat Firman conveyed the offer of quarantine inspection cooperation at the Port of Tanjung Perak. Djarwo Surjanto (Defendant I) advised Ferdiat Firman to meet Rahmat Satria as the President Director of PT. Surabaya Container Terminal to coordinate with PT. Surabaya Container Terminal and PT. Akara Multi Karya regarding cooperation and the quarantine inspection proposal at the Port of Tanjung Perak. Ferdiat Firman met Rahmat Satria and at that time Rahmat Satria said that he needed to learn the concept of the offer of cooperation.

In December 2013 Rahmat Satria asked Ferdiat Firman to meet with David Hutapea at Rahmat Satria’s office. At that time Rahmat Satria said, ‘if you want to implement the concept, please cooperate with David Hutapea’ at that time David Hutapea also

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proposed the same concept to Rahmat Satria. Furthermore, when David Hutapea also offered cooperation in managing the quarantine inspection facility at the Port of Tanjung Perak, it was agreed that Ferdiat Firman played a role in facilitating PT. Akara Multi Karya with PT. Surabaya Container Terminal which is a subsidiary of Pelindo III is to convince the President Director of PT. Pelindo III which at that time was the President Director of PT. Pelindo III is Djarwo Surjanto (Defendant I) and Rahmat Satria as President Director of PT. Surabaya Container Terminal. Then an agreement is made for profit sharing with the following details:

a. Djarwo Surjanto (President Director of PT. Pelindo III) by 25%

b. Ferdiat Word by 25%

c. Rahmat Satria (President Director of PT. Terminal Petikemas Surabaya) by 25%

d. PT. Akara Multi Karya by 25%

At a different time, Firdiat Firman met with Maike Yolanda Fiancisca (Defendant II) who was the wife of Djarwo Surjanto (Defendant I). Firdiat Firman informed Maike Yolanda Fiancisca (Defendant II), that there was a construction of quarantine inspection facilities in Surabaya Container Terminal and informed that Djarwo Surjanto (Defendant I) got part of the project.

On January 2, 2014, Rahmat Satria as Director of PT. Surabaya Container Terminal received a letter from Augusto Hutapea as Director of PT. Akara Multi Karya Number: 11 / PR-IJN / TPS / 1 / 2014 the contents of which request to be given a place permit at the location of PT. Surabaya Container Terminal area of approximately 6000 (six thousand) square meters to become an inspection facility for imported goods by the Surabaya Quarantine Center. Then on January 9, 2014, Augusto Hutapea through PT. Akara Multi Karya once again sent a letter Number: 12 / PR-SPH / TPS / 2014 which contained a price quote for the cooperation price of the Plant Quarantine Installation (IKT) and Animal Quarantine (IKH) installation at the location of PT. Surabaya Container Terminal. On January 10, 2014, Rahmat Satria agreed to the request for cooperation by sending a letter to PT. Akara Multi Karya Number: UM.5.02 / 1/8 / TPS-2014.

On May 16, 2014, a joint agreement was signed and signed no. 05 / KSO.UT.4.09 / TPS-2014 between PT. Surabaya Container Terminal, represented by Rahmat Satria as President Director and Sanjay Mehta as Deputy President Director with PT. Akara Multi
Karya, represented by Augusto Hutapea as the President Director, whose contents were about the collaboration of the management of the agricultural quarantine installation depot in the area of PT. Surabaya Container Terminal which is valid for a period of 5 (five) years starting from May 16, 2014 to May 15, 2019.

On July 25, 2014, an agreement letter was made: FA.040 / 2/5 / TPS-2014 which is valid for 12 months from August 1, 2014 to July 31, 2015, and can be extended according to the agreement between PT. Surabaya Container Terminal, represented by Rahmat Satria as the President Director with PT. Akara Multi Karya, represented by Augusto Hutapea as the President Director whose contents are about the amount of examination package rates at the Integrated Physical Examination Place (TPFT), namely:

a. 20 feet container of Rp. 216,750 / box
b. A 40 feet container of Rp. 325,250 / box
c. Electric 20 feet container for Rp. 151,000 / box / shift
d. 40 feet electric container of Rp. 190,000 / box / shift.

hen PT. Akara Multi Karya started to do activities in the Surabaya Container Terminal area, namely checking service users or importers by charging tariffs in the form of:

a. Handling tariff, in the form of a 20 feet container, Rp. 350,000.00 (three hundred fifty thousand rupiah) and a 40 feet container size of Rp. 500,000.00 (five hundred thousand rupiah)
b. Tariffs on chassis, in the form of a 20 feet container, Rp. 200,000.00 (two hundred thousand rupiah) and a 40 feet container size of Rp 250,000.00 (two hundred fifty-thousand rupiah)
c. Plugging and monitoring rates, in the form of a 20-foot container Rp. 190,000.00 (one hundred ninety thousand rupiahs) per shift for 8 hours and a 40 feet container size of Rp. 230,000.00 (two hundred thirty thousand rupiah) per shift for 8 hours.
d. Stacking tariff, in the form of a 20 feet container, Rp. 12,300.00 (twelve thousand three hundred rupiah) and a 40 feet container size of Rp. 24,600.00 (twenty-four thousand six hundred thousand rupiah). This fee will be charged to service users at the time of the 4th (four) days.
e. Stripping tariff, in the form of 20 feet container size Rp. 450,000.00 (four hundred and fifty thousand rupiah) and a 40-foot container of Rp. 750,000.00 (seven hundred fifty thousand rupiah).

By following this stipulation, those who do not pay, goods belonging to port service users cannot leave the Surabaya Container Terminal area, whereas based on Permenhub Number PM. 6 of 2013 concerning Types of Structures and Tariffs for Port Services as amended by Permenhub Number PM. 15 of 2014, that port service user tariffs are set or approved by PT. Pelindo III as a port business entity is a concession holder, so PT. Akara Multi Karya has no right to collect or determine the tariff because of PT. Akara Multi Karya is not a port business entity or a partner appointed by PT. Pelindo III as a port business entity that received a concession, but from 2014 to 2016 PT. Akara Multi Karya has collected the users of port services or importers as follows:

a. On October 9, 2014, PT. Lestari has paid the dry handling and on-chassis costs to PT. Akara Multi Karya as stated in the invoice Number: 1148 / AMK / KRT / X / 14 dated 9 October 2014.

b. On October 20, 2016, around 3:00 p.m. PT. Akara Multi Karya charges a fee in the form of dry handling fees for 3 containers which contains wet salted bovine pieces (raw salt skin) owned by CV. Chelsea Pratama, where 2 containers have to pay Rp.500,000.00 (five hundred thousand rupiahs) each, even though only the local seal is opened, while 1 container still in Singapore is charged a chassis fee of Rp.250,000.00 (two hundred fifty thousand rupiah). In addition to paying dry handling and on-chassis costs, CV. Chelsea Pratama is required to pay additional fees in the form of taxes plus a local stamp and seal with proof of payment Invoice Number: 15098 / AMK / KRT / X / 16 dated 20 October 2016 on behalf of CV. Chelsea Pratama valued at Rp1,381,000.00 (one million three hundred eighty-one thousand rupiah). That CV. Chelsea Pratama made a dry handling and on-chassis payment to PT. Akara Multi Karya since 2014 if CV. Chelsea Pratama does not make payments then the goods belonging to CV. Chelsea Pratama cannot get out of the Surabaya Container Terminal area.

c. On October 14, 2016, around 2:30 p.m. PT. Akara Multi Karya charges a tariff in the form of dry handling of 2 containers owned by CV. Cherry Fruit Rp. 1,000,000.00 (one million rupiahs), each container is charged a fee even though only the local seal is opened and 1 container still in Singapore is also charged on chassis fee of Rp. 250,000.00 (two
hundred and fifty thousand rupiah) with proof of payment Invoice Number: 15389 / AMK / KRT / X / 16 dated October 14, 2016, on behalf of CV. Cherry Fruit worth Rp. 1,931,000.00 (one million nine hundred thirty-one thousand rupiah) if the CV. Cherry Fruit does not make payments then the goods belonging to CV. Cherry Fruit cannot leave the Surabaya Container Terminal area.

Then the proceeds from the examination profits were based on a 25% profit sharing agreement, each of which Djarwo Surjanto (Defendant I) was also included transferred to the two defendants through Maike Yolanda Fiancisca (Defendant II) who had received a Bank BCA ATM from Augusto Hutapea. If the total profits obtained by the two defendants were Rp. 1,500,500,000.00 (one billion five hundred million five hundred thousand rupiah). Where the money has been partly used by Maike Yolanda Fiancisca for beauty salon payments as well as several other payments in accordance with evidence in the form of slips and invoices for BCA Debit payments.

Based on the description of the case, the Public Prosecutor from the Tanjung Perak Prosecutor’s Office charged Djarwo Surjanto (Defendant I) with the first charge, Article 368 paragraph (1) of the Jo Criminal Law Code. Article 55 paragraph (1) to 1 Jo. Article 64 paragraph (1) of the Criminal Code Act and the second indictment of Article 3 of the Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes Jo. Article 55 paragraph (1) to 1 Jo. Article 65 paragraph (1) of the Indonesian Criminal Code and Maike Yolanda Fiancisca (Defendant II) with the indictment of Article 3 of the Republic of Indonesia Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Jo. Article 55 paragraph (1) to 1 Jo. Article 65 paragraph (1) of the Indonesian Criminal Code.

Panel of Judges at the Surabaya District Court through decision No. 787 / Pid.B / 2017 / PN.Sby has a different assessment from the Public Prosecutor. Where in principle, the verdict stated Djarwo Surjanto (Defendant I) was not proven legally and convincingly guilty of committing the crime of ‘Extortion with violence’ and ‘Crime of money laundering’ as the first and second charges of the Public Prosecutor, Freeing Djarwo Surjanto (Defendant I) of all the Public Prosecutor’s Indictments (Vrijspraat), and declared Maike Yolanda Fiancisca (Defendant II), proven to have committed the act of ‘Transferring and spending on wealth’ but the act was not a criminal offense, releasing Maike Yolanda Fiancisca (Defendant II), from being proven to have committed the act of
'Transferring and spending on assets’ but the act was not a criminal offense, releasing Maike Yolanda Fiancisca (Defendant II) (onslag van alle rechtsvervolging).

Subsequently, the Public Prosecutor filed a cassation remedy which later the Supreme Court tried the case through Decision No. 821 K / Pid. Sus / 2018. In its consideration, the Panel of Judges considered that Djarwo Surjanto (Defendant I) only suggested to coordinate with PT. Surabaya Container Terminal and PT. Akara Multi Karya. The Panel of Judges thinks believes that according to law the words 'suggest' to coordinate with PT. Surabaya Container Terminal and PT. Akara Multi Karya is only an opinion and is not a decision of Djarwo Surjanto (Defendant I). From these considerations, the Panel of Judges of the Supreme Court considered that Djarwo Surjanto (Defendant I) was not proven to have committed a crime as charged by the Public Prosecutor.

Therefore Djarwo Surjanto (Defendant I) was not proven to have committed a criminal offense in the first charge namely Article 368 paragraph (1) of the Jo Criminal Law. Article 55 paragraph (1) to 1 Jo. Article 64 paragraph (1) of the Criminal Code, Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) by themselves were not proven to have committed criminal acts in the second indictment of Article 3 of the Republic of Indonesia Number 8 of 2010 concerning Money Laundering Prevention and Eradication Jo. Article 55 paragraph (1) to 1 Jo. Article 65 paragraph (1) of the Indonesian Criminal Code, with the consideration, that Article 368 paragraph (1) of the Indonesian Criminal Code is a criminal offense from Article 3 of the Republic of Indonesia Law No. 8 of 2010 concerning Prevention and Eradication of Acts Criminal Money Laundering.

Based on these considerations the Panel of Judges of the Supreme Court through Decision No. 821 K / Pid.Sus / 2018 decided, rejected the appeal of the Tanjung Perak Prosecutor General Prosecutor’s appeal.

B. Elements of crime against money laundering on illegal levies in temporary storehouse (Study of Verdict No. 821K/ PID.SUS/ 2018)

The writer will elaborate on the elements of money laundering in case Number 821 K / Pid. Sus / 2018 as in the second indictment, namely article 3 of the Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of Joins. Article 55 paragraph (1) to 1 Jo. Article 65 paragraph (1) of the Indonesian Criminal Code. When connected with No. No. 821 K / Pid.Sus / 2018 then, the author can describe it as follows:
1. Everyone

What is meant by this element is every person or legal entity who is a legal subject as a supporter of rights and obligations which in this case by the Public Prosecutor has confronted the two defendants in court with all their identities in accordance with the indictment, and both defendants have claimed to be named Djarwo Surjanto (Terakwa I) and Maike Yolanda Fiancisca (defendant II) and have recognized their complete identities so that everyone’s elements have been fulfilled.

2. Those who place, transfer, transfer, spend, pay, grant, entrust, bring out of the country, change forms, exchange with currency or securities or other acts of assets that they know or deserve are the result of criminal acts as intended in article 2 paragraph (1) by hiding or disguising the origin of assets

That the elements above are alternative, so if one of the elements has been proven, then the element is considered to have been proven. In case No. 821 K / Pid.Sus / 2018, a benefit-sharing agreement was found with the details namely Djarwo Surjanto (Defendant I) who at that time served as President Director of PT. Pelindo III obtained a share of 25%, Ferdiat Firman by 25%, Rahmat Satria (President Director of PT. Terminal Petikemas Surabaya) by 25%, and PT. Akara Multi Karya accounts for 25% of the results of the management of the quarantine inspection facility. Whereas the benefits obtained from tariff collection activities against port service users or importers include profits from illegal activities. Because the imposition of such tariffs is based on the agreement of tariff determination between PT. Surabaya Petiekmas Terminal and PT. Akara Multi Karya where the tariff setting agreement is contrary to Article 147 paragraph (2) Government Regulation Number 61 Year 2009 and Article 13 paragraph (5) Permenhub Number PM. 6 of 2013 states that the determination of the tariff is the authority of the BUP or the Port Business Entity in this case is PT. Pelindo III is based on a concession granted by the Tanjung Perak Port Authority. Consequently, the tariff collection activities for port service users or importers include illegal activities or illegal fees. Illegal levies themselves in the Criminal Code Act can be categorized as a form of extortion crime contained in article 368 paragraph (1) of the Criminal Law Code.

In the case, it was proven that the proceeds from the quarantine inspection profits were transferred to the two defendants through Maike Yolanda Fiancisca (Defendant II), one
of whom had received an ATM of Bank BCA from Augusto Hutapea. If it is nominalized, the profit obtained by both defendants is Rp. 1,500,500,000.00 (one billion five hundred million five hundred thousand rupiah). Where the money was partly used for the benefit of Maike Yolanda Fiancisca (Defendant II).

From the description, the writer is of the opinion that both the actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) were not seen by the two defendants carrying out acts intended to conceal or disguise the origin of the profits obtained from the imposition of illegal tariffs or illegal fees. The profits obtained are only included in the personal pockets of the two defendants without any act of concealing or disguising the profits obtained from the imposition of illegal tariffs or illegal fees. The author is of the opinion that the actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) did not fulfill the formula in this element. Thus this element is not fulfilled.

Because the above elements were not fulfilled, the actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) could not be categorized as a form of money laundering. However, the author is of the opinion that the actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) fulfill the formulation of every element of extortion as stated in the first charge namely Article 368 paragraph (1) of the Jo Criminal Code. Article 55 paragraph (1) to 1 Jo. Article 64 paragraph (1) of the Indonesian Criminal Code. From the description of the elements of the first indictment when connected with the Root No. 821 K / Pid.Sus / 2018 then, the author can describe it as follows:

1. Whosoever

According to the book implementation guidelines and administration book II 1997 revised edition page 209 of the Supreme Court of the Republic of Indonesia and Decision of the Supreme Court of the Republic of Indonesia No. 1398K / PID / 1994 dated 30 June 1995 the word ‘everyone’ or ‘Hij’ is equated to the meaning of ‘whoever’ is every person or anyone who is the subject of law as a supporter of rights and obligations and can be held directly accountable in all actions. In this case, the Public Prosecutor has presented
the two defendants in court with all their identities following the indictment, and the two defendants have claimed to be named Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) and have acknowledged their full identities so that the elements of each defendant are named Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) people have been fulfilled.

2. To benefit oneself or others unlawfully

In case No. 821 K / Pid. Sus / 2018 was found to share profits of 25% each, which Djarwo Surjanto (Terakwa I) was also included. Then the money from the quarantine inspection profits was transferred to the two defendants through Maike Yolanda Fiancisca (Defendant II) who had received an ATM of Bank BCA from Augusto Hutapea. If it is nominalized, the profit obtained by both defendants is Rp. 1,500,500,000.00 (one billion five hundred million five hundred thousand rupiah). The element against the law here is that the imposition of tariffs on service users based on tariff determination agreements between PT. Surabaya Petiemas Terminal and PT. Akara Multi Karya is illegal or against the law. Because based on Article 147 paragraph (2) Government Regulation Number 61 Year 2009 and Article 13 paragraph 5 Permenhub No. PM. 6 of 2013 which states that the determination of the tariff is the authority of the Port Business Entity. While PT. Surabaya Container Terminal and PT. Akara Multi Karya is not a Port Business Entity based on a concession given by the Port Authority, but what is meant by the Port Business Entity, in this case, is PT. Pelindo III.

Based on the description, the elements to benefit oneself or others unlawfully have been fulfilled.

3. Forcing someone with violence or threat of violence to give something

The meaning of ‘force‘ in this element is to put pressure on the person in such a way that the person wants to do something against his own will.\(^8\) In case No. 821 K / Pid. Sus / 2018, the element of forcing someone with violence or the threat of violence to provide something here is when the user of the importing service has to pay a tariff to get out of the Quarantine area of the Surabaya Container Terminal in the form of handling, on-chassis, plugging rates and monitoring, stacking, stripping. So for the services of importers who do not make payments, goods belonging to the services of importers

\(^8\) Sugandhi, *KUHP dan Penjelasannya*, Usaha Nasional, Surabaya, hal. 387.
cannot get out of the Surabaya Container Terminal area. Recorded from 2014 to 2016 through PT. Akara Multi Karya has collected fees from port service users or importers including PT. Lestari, CV. Chelsea Pratama and CV. Cherry Fruit.

Based on the description, the element of forcing someone with violence or threat of violence to give something is fulfilled.

4. All or part of it belongs to that person or another person or to make a debt or write off a debt

That the aforementioned elements are alternative, so that if one of the elements has been proven then the element is deemed fulfilled. From 2014 to 2016 through PT Akara Multi Karya, has received a sum of money from the imposition of quarantine inspection rates of around Rp. 84,000,000,000.00 (eighty-four billion rupiah) to Rp. 141,600,000,000.00 (one hundred forty-one billion six hundred million rupiahs) which all belong to other people, including PT. Lestari, CV. Chelsea Pratama and CV. Cherry Fruit.

Based on the description, the elements wholly or partly belong to that person or others or to make debts or write off receivables have been fulfilled.

5. Those who do, who order to do and who participate in doing some deeds

In case No. 821 K / Pid. Sus / 2018 was found to share profits of 25% each, which Djarwo Surjanto (Terakwa 1) was also included. Whereas the benefits obtained from tariff collection activities against port service users or importers include profits from illegal activities. Because the imposition of such tariffs is based on the tariff determination agreement between PT. Surabaya Petiekmas Terminal and PT. Akara Multi Karya where the tariff setting agreement is contrary to Article 147 paragraph (2) Government Regulation Number 61 Year 2009 and Article 13 paragraph (5) Permenhub Number PM. 6 of 2013 states that the determination of the tariff is the authority of the BUP or the Port Business Entity, in this case, is PT. Pelindo III is based on a concession granted by the Tanjung Perak Port Authority. Consequently, the tariff collection activities for port service users or importers include illegal activities or illegal fees. Illegal levies themselves in the Criminal Code Act can be categorized as a form of extortion crime contained in article 368 paragraph (1) of the Criminal Law Code.
In the case, it was found that the proceeds from the quarantine inspection profits were transferred to the two defendants through Maike Yolanda Fancialsca (Defendant II), one of whom had received an ATM of Bank BCA from Augusto Hutapea. If it is nominalized, the profit obtained by both defendants is Rp. 1,500,500,000.00 (one billion five hundred million five hundred thousand rupiah). Where the money was also partly used for the interests of Maike Yolanda Fancialsca (Defendant II).

Therefore Djarwo Surjanto (Defendant I) and Maike Yolanda Fancialsca (Defendant II) have fulfilled the element of participating in committing extortion crimes.

6. Although each of them is a crime or an offense, there is a relationship in such a way that is seen as a continuing act.

What is meant by these elements is that some actions are related to one another and can be considered as an ongoing act. In the case of the short story, it is known that there is a sequence of actions from the proposed quarantine inspection plan, the existence of a cooperation agreement and profit-sharing, the agreement of tariff determination between PT. Surabaya Container Terminal and PT. Akara Multi Karya, to the imposition of tariffs on service users that are carried out illegally. Because the imposition of tariffs is based on illegal agreements or against the law which is contrary to Article 147 paragraph (2) PP No. 61 Year 2009 and Article 13 paragraph 5 Ministerial Regulation No. PM. 6 of 2013 which states, that the tariff determination is the authority of the Port Business Entity. While PT. Surabaya Container Terminal and PT. Akara Multi Karya is not a Port Business Entity based on a concession given by the Port Authority, but what is meant by the Port Business Entity, in this case, is PT. Pelindo III. Then the collaboration between PT. Surabaya Container Terminal and PT. Akara Multi Karya regarding the determination of tariffs conflicts with applicable regulations and also does not meet the legal requirements of the agreement stipulated in article 1320 of the fourth point Civil Code, that is, reasons that are either wrong or not contrary to the law. Consequently, the tariff collection activities for port service users or importers include illegal activities or illegal fees. Because the imposition of such tariffs is not based on clear rules. Illegal levies...
themselves in the Criminal Code Act can be categorized as a form of extortion crime contained in article 368 paragraph (1) of the Criminal Law Code.

Based on the description, thus the elements, although each is a crime or violation, are related in such a way that they are seen as a continuing act that has been fulfilled.

**C. Judge Consideration In Dropping Decision NO. 821 K / PID. SUS / 2018**

However, the Panel of Judges at the Supreme Court has a different decision in this case. In this ruling, there are dissenting opinions expressed by the Chairperson of the Assembly, Prof. Dr. Surya Jaya, S.H., M.Hum. Based on dissenting opinions in the Majlis Hakim, there are 2 (two) points which are the main points of the dissenting opinion in the decision, namely:

1. Whether Djarwo Sujanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) are proven to have carried out the actions as charged or not.

2. Is the collaboration between PT. Surabaya Container Terminal, PT Akara Multi Karya funds regarding cost pricing according to applicable laws or not.

In case No. 821 K / Pid. Sus / 2018 thus found that there was a share of profits of 25% each while Djarwo Sujanto (Defendant I) was also included. The profits were transferred to the two defendants through Maike Yolanda Fiancisca (Defendant II) who had received one of the BCA ATMs from Augusto Hutapea. If it is numbered, the profit obtained by the two defendants is Rp. 1,500,500,000.00 (one billion five hundred million five hundred thousand rupiah). Where this profit was largely used for the benefit of Maike Yolanda Fiancisca (Defendant II). Previously Maike Yolanda Fiancisca (Defendant II) had also been approved by Ferdiat. The word is the construction of a quarantine inspection facility in the Surabaya Container Terminal and told Djarwo Sujanto (Defendant I) to get part of the project.

Then based on Article 147 paragraph (2) Government Regulation Number 61 Year 2009 amended by Government Regulation Number 64 Year 2015, which reads:

‘The port service tariffs that are pursued by the Port Business Entity are determined by the Port Business Entity based on the type, structure, and class of tariffs determined by the Minister and constitute the revenue of the Port Business Entity.’
Article 13 paragraph (5) Permenhub PM Number. 6 of 2013 amended by Article 15 Permenhub No. PM. 15 of 2014, which reads:

'Determination of the amount of port service tariffs at terminals whose services are managed by the BUP determined by the BUP based on the type, structure, and class of tariffs regulated in this Minister of Transportation Regulation.'

From the sound of the article in question, the determination of the tariff is the authority of the BUP or the Port Business Entity in this case PT. Pelindo III is based on a concession granted by the Tanjung Perak Port Authority. While PT. Surabaya Container Terminal itself is a subsidiary or working partner of PT. Pelindo III and not a Port Business Entity determined based on the concessions granted by the Tanjung Perak Port Authority.

Then, PT. Akara Multi Karya itself is also not registered as a subsidiary or working partner of PT. Pelindo III and not a Port Business Entity determined based on the concessions granted by the Tanjung Perak Port Authority. Furthermore, based on Article 15 Permenhub No. PM. 15 of 2014 concerning amendments to Permenhub No. PM. 6 of 2013 which determines pricing in predetermined procedures. Where the concept of issuing the amount of costs incurred previously between the Port Business Entity, in this case, is PT. Pelindo III with Associations Associated, then obtained poured in a Minutes Obtained by the Port Authority which is then submitted to the Minister to get direction and consideration. After that, the Business Entity can set the tariff rate to be submitted to the Minister.

Based on these provisions, the tariff determination between PT. Surabaya Container Terminal and PT. Akara Multi Karya conflicts with Article 15 of the Ministry of Transportation Regulation No. PM. 15 of 2014 concerning amendments to Permenhub No. PM. 6 of 2013. Because both PT. Surabaya Container Terminal and PT. Akara Multi Karya is not a Port Business Entity granted by the Port Authority, given by the Port Business Entity in this case PT. Pelindo III.

Furthermore I Wayan Sosiawan said, as long as an agreement had fulfilled the legal requirements of the agreement in accordance with article 1320 of the Civil Code, the actions based on the agreement were legal or legal. But in the case of the tariff-setting cooperation agreement between PT. Surabaya Container Terminal and PT. Akara Multi
Karya has contradicted article 1320 KUHPerdata fourth point which is a halal cause. What is meant by halal reason is that the contents of the contract do not conflict with statutory regulations. From the description above, the writer thinks that the actions of Djarwo Sujanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) are included in the form of extortion as the first offense. The involvement of Djarwo Sujanto (Defendant I) in the crime of extortion was seen when there was a profit-sharing agreement between Djarwo Sujanto (Defendant I), Ferdiat Firman, Rahmat Satria (PT. Terminal Petiekmas Surabaya), and PT. Akara Multi Karya. Apart from the term suggested as considered by the Panel of Judges, Djarwo Sujanto (Defendant I) has also received the proceeds from the illegal tariff collection.

Then the involvement of Maike Yolanda Fiancisca (Defendant II) in this crime of extortion when the profits from the imposition of illegal tariffs / illegal levies were transferred to the two defendants through Maike Yolanda Fiancisca (Defendant II) who had received a Bank BCA ATM from Augusto Hutapea. If it is nominalized, the profit obtained by both defendants is Rp. 1,500,500,000.00 (one billion five hundred million five hundred thousand rupiah). This advantage was partly used for the benefit of Maike Yolanda Fiancisca (Defendant II).

The author believes that Djarwo Sujanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) should be subject to criminal sanctions per Article 368 paragraph (1) of the Indonesian Criminal Code Jo. Article 55 paragraph (1) to 1 Jo. Article 64 paragraph (1) of the Criminal Code as referred to in the first charge on the basis that the actions of Djarwo Sujanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) have fulfilled the formulation of each element in the first charge as described by the author in the previous chapter.

IV. Conclusion

Based on the description of the author above, the writer can draw the following conclusions:

1. The actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) did not fulfill every element of money laundering as stated in the second indictment,
namely Article 3 of the Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Criminal Act of Money Laundering Jo. Article 55 paragraph (1) to 1 Jo. Article 65 paragraph (1) of the Criminal Code because both Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) do not see the two defendants committing acts intended to conceal or disguise the origin of the benefits obtained from the imposition of tariffs illegal or illegal fees as an element in the second indictment. But the authors argue that the actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) can be categorized as forms of extortion crime on the basis that the actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) can be categorized as forms of extortion crime on the basis that the actions of Djarwo Surjanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) can be categorized as forms of extortion. the first is article Article 368 paragraph (1) of the Indonesian Criminal Code Jo. Article 55 paragraph (1) to 1 Jo. Article 64 paragraph (1) of the Criminal Law Act as described by the previous author.

2. Indecision No. 821 K / Pid.Sus / 2018 The Panel of Judges has decided to reject the appeal of the Public Prosecutor. In its consideration, the Panel of Judges considered that Djarwo Surjanto (Defendant I) only suggested to coordinate with PT. Surabaya Container Terminal and PT. Akara Multi Karya. The Panel of Judges thinks that according to law the words 'suggest' to coordinate with PT. Surabaya Container Terminal and PT. Akara Multi Karya is only an opinion and is not a decision of Djarwo Surjanto (Defendant I). But apart from the term suggest, Djarwo Sujanto (Defendant I) has also received profit from the illegal tariff collection based on the 25% profit-sharing agreement in which Djarwo Surjanto (Defendant I) is also included. The profits were transferred to the two defendants through Maike Yolanda Fiancisca (Defendant II). Some of the profits from the illegal tariff / illegal levies have been used for the benefit of Maike Yolanda Fiancisca (Defendant II). Based on the description of the previous writer Djarwo Sujanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) had participated in the extortion crime as in the first charge namely Article 368 paragraph (1) of the Jo Criminal Code. Article 55 paragraph (1) to 1 Jo. Article 64 paragraph (1) of the Indonesian Criminal Code. Therefore the author believes that Djarwo Sujanto (Defendant I) and Maike Yolanda Fiancisca (Defendant II) can be subject to criminal sanctions under the aforementioned charges.
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