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Eradication Strategy against the Crime of Money Laundering in Indonesia

Fanny Tanuwijaya[1], Echwan Irianto[2], I Wayan Yasa[3], Dodik Prihatin AN[4], Bhim Prakoso[5]

[1,2,3,4,5]*Faculty of Law, University of Jember*

fanny.tanuwijaya@unej.ac.id, echwaniriyanto62@yahoo.com, wayan.fh@unej.ac.id, dodik_page@yahoo.com, drbhimprakoso@gmail.com

Abstract

The crime of money laundering can tarnish the life of the nation and state because this crime can endanger the stability and security of the community. This study aims to examine strategies for eradicating the crime of money laundering. Because the crime of money laundering is an act that is continued or continued from the predicate crime where the person perpetrators process large sums of illegal money proceeds of crime into apparently clean or lawful funds, using sophisticated, creative and complex methods. From the results of the study there are two main things that can be concluded. First, the criminal law policy in criminal law reform in the field of money laundering crime which focuses on policies for formulating criminal acts, criminal liability, and criminal sanctions. formulated in a statutory regulation. Second, criminal law policies in the framework of overcoming the crime of money laundering can be formulated as an effort to make and shape criminal law regulations in the future effectively and efficiently.

Keywords

crime; money laundering; eradication strategy

I. Introduction

Money laundering in foreign terminology called money laundry, is an act with the mode of changing and hiding money in cash or assets obtained from a crime or often called illicit funds, which is made as if it came from a legitimate or legal source. Money laundering actions are increasingly being heard in Indonesia, which are later in the regulation of these actions linked to criminal acts of corruption.

It is necessary to understand that Indonesia is one of the countries that is quite open to being the target of money laundering, due to the potential factors that attract money laundering actors. This is inseparable from the combination of the weaknesses of the social system and the existence of legal loopholes in the financial system, including the free foreign exchange system, the lack of investigation into the origins of investments and the development of the capital market, foreign exchange traders and banking networks that have expanded overseas.

As a crime phenomenon that concerns primarily the world of crime called "organized crime", it turns out that there are certain parties who participate in enjoying the benefits of money laundering traffic without realizing the impact of the losses incurred. (Ramelan,2008, Fransiska Novita Eleanora, 2011). Seeing the magnitude of the impact it has on the country's economic stability, a number of countries have set quite strict rules to uncover money laundering (Financial Action Task Force on Money laundering, 2000).

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Money laundering is usually carried out by a criminal organization, because it cannot be done by someone with less education, such as theft crimes in general, so money laundering is usually an organized crime (Muhammad Rusdi, 2016). Computers play an important role in human life in today's technological era. Data processing speed is widely used in various vital fields such as health, education, military, economics, and finance because of the speed of data processing, the ability to store data, security, and intelligent systems that are entered into the computer (Mohammed Ahmad Naheem, 2016).

The concept of thinking about money laundering is very clear as an effort because it provides incentives and protection against illicit money. An act that is carried out for or alters the proceeds of a crime such as corruption, narcotics crime, gambling, smuggling and other acts on assets which are known or reasonably suspected to be the proceeds of a criminal act with the intention of hiding or disguising the origin of the assets so that they appear to be assets. legitimate (Ayumiati, 2012). The background is due to the high level of corruption in the New Order era and in the democratic transition period. An example of a recent case of E-KTP in 2011-2012 from the value of work amounting to Rp 5,841 trillion, corruption reached Rp 2,314 trillion. In addition, the factors that allow people to accept money from crime as a matter of course or compulsion (Priyono B. Sumbogo, 2020).

The initial purpose of money laundering is 1). to hide money or property obtained from crime. This is intended so that the money or wealth is not legally disputed and is not confiscated by the authorities or also so that it is not suspected by many people, 2). Avoid investigations and/or lawsuits. Criminals want to protect or avoid lawsuits by "keeping away" themselves from money or property, for example by keeping it in someone else's name, 3). Increase profits. Criminals may have several other legal businesses. Often, the proceeds of crime are included in the circulation of their legitimate businesses. As a result, the proceeds of crime can leach into legitimate businesses or businesses, become more difficult to detect as proceeds of crime, and can also increase the profits of those legitimate businesses.

Money Laundry as a crime has a characteristic that this crime is a double crime, not a single crime. The form of money laundering activities is characterized by the form of money laundering as a follow-up crime, while the original crime is referred to as a Predicate Offense/Core Crime or as an unlawful activity, namely an original crime that generates money which is then carried out in a laundering process (Joni Emerson, 2017).

Seeing the purpose of money laundering, it is clear that it is an activity that violates the law as if it originates from a legal activity, therefore, the case of money laundering must be complicated or prevented so that it requires an appropriate eradication strategy. One of the government's efforts is to issue a regulation, namely Law Number 15 of 2022 concerning the Crime of Money Laundering (TPPU) but a fundamental question arises whether it is enough just in the form of regulation alone.

Although the Anti-Money Laundering Law "has the power" in this regard in imposing imprisonment and the highest fine, this is in accordance with Article 2 Paragraph 1 with a maximum imprisonment of 20 years and a maximum fine of IDR 10 billion. Next is asset confiscation and reverse evidence, in investigating money laundering offenses investigators can confiscate assets even though it has not been proven to be a place for money laundering, reverse proof is that the defendant is obliged to prove that his assets are not the result of a criminal act, in accordance with Article 78 Paragraph 1 and Paragraph 2, If the defendant cannot prove that his assets are legal, then the state will definitively confiscate it. Then blocking suspicious transactions through PPATK (Financial Transaction Reports and Analysis)."

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Based on its development, Indonesia is currently the only member of the G-20 that is not yet a full member of the Financial Action Task Force on Money Laundering (FATF). Some time ago, Indonesia was tested by the FATF in order to become a full member of the FATF. The test is related to Indonesia's seriousness to be fully involved in the investigation and tracing of money laundering crimes in cooperation with other countries.

This shows the government's seriousness in eradicating the crime of money laundering, another step taken is that the Ministry of Finance has made an MoU agreement with PPATK. The agreement between the Ministry of Finance and PPATK to jointly become a pillar of money laundering. PPATK as a financial transaction letter, while the Ministry of Finance for financial transaction activities will involve the Ministry of Finance. This commitment is certainly a joint commitment to jointly support the policies of the Indonesian government.

However, it is necessary to take strategic steps that must be taken by the government, which is not just issuing regulations or commitments built in the ranks of departments or ministries, it is hoped that a strategy that depicts between das sein and das sollen has indeed been carried out. Based on the things that have been conveyed above, there are several legal issues that need to be studied that are strategic, namely:

1. What is the basis for eradicating non-criminal money laundering in Indonesia?
2. What are the government's efforts or strategies in eradicating non-money laundering crimes in Indonesia?

II. Review of Literature

2.1 The Concept of Money Laundering and Technology

Technological developments have encouraged an increase in various kinds of crimes, both committed by individuals and by corporations within the borders of a country or across the borders of other countries (Adrian, 2018: 18), including criminal acts of corruption, bribery, smuggling of goods, smuggling of labor. employment, immigrant smuggling, banking, illicit trafficking in narcotics and psychotropic substances, slave trade, women and children, illicit arms trade, kidnapping, terrorism, theft, embezzlement, fraud and various white-collar crimes (BPHN, 2012).

The crime of money laundering is an attempt to hide the origin of assets that are the proceeds of crime through various means and enter them into the financial system so that the assets resulting from these crimes appear legal. Therefore, so that the proceeds of crime can generate profits in the legal financial system and also maintain the reputation or social status of a person or group, the perpetrators commit money laundering crimes (FH UGM, 2016).

2.2 History of Money Laundering

The term, “money laundering” is a translation of “money launderin,” which as a proper term has not been used for a long time. The term money laundering has been known since 1930 in the United States. At that time this crime was carried out by a criminal organization "mafia" through the purchase of laundry companies which were then used by the organization as a place to launder money generated from illegal businesses such as gambling, prostitution, and the liquor trade. And since then it has been widely accepted and used throughout the world (Yunus Husein, 2005).

Meanwhile, in terms of understanding, as stated by Sutan Remy Syahdeini, there is actually no universal and comprehensive definition of what is meant by money laundering. Each party – such as the prosecution, investigators, business people, and developed

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countries and third world countries – each has its own definition based on different priorities and perspectives (Sutan Remy Syahdeini, 2004). However, in simple terms, money laundering can be interpreted as: a process carried out to change the proceeds of crime, so that the proceeds of crime become visible as the result of legitimate activities because their origins have been disguised or hidden.

2.3 Money Laundering Arrangements in Indonesia

There are several legal experts who define money laundering, one of which is Welling who defines money laundering as follows: "Money laundering is the process by which one counsels the existence, illegal source, or illegal application of income, and than disguises that income to make it appear legitimate. (Sarah N Welling, 1992). Another definition is made by Fraser which states that: "Money laundering is quite simple the process through with 'dirty' money proceeds of crime, is washed through 'clean' or legitimate sources and interprises so that the 'bad guys' may be more safe enjoy their ill gotten gains" (Lisanawati Go, 2017). Pamela H.Bucy explained the meaning of money laundering as: "Money Laundering is the concealment of the existence, nature of illegal source of illicit funds in such a manner that the funds will appear legitimate if discovered" (Pamela Bucy Pierson, 1992).

Money laundering is a series of behavior by individuals or groups towards illegal money, namely money obtained illegally, to hide or cover up the source of money from the government or authorized officials. In particular, by injecting money into the financial system, it can combat criminal activity and remove that money from the financial system as halal money. Money laundering generally includes three processes, namely placement, layering and integration. First, placement is the process of placing or injecting funds or other financial products resulting from criminal acts into the financial system, particularly banks or other financial institutions.

2.4 Money Laundering

In conducting money laundering, the perpetrator does not need to consider the results obtained, and the amount of money spent, because the main purpose is to disguise or eliminate the origin of the money. So that in the end it can be enjoyed or used safely. The purpose of criminalizing money laundering is to prevent all forms of disguised practices of wealth obtained from the proceeds of crime.

Money laundering crimes are punishable by criminal sanctions. Perpetrators can use the proceeds of their crime "safely" without being suspected by law enforcement officials, so that they desire to commit another crime, or to commit other organized crimes. Criminal elements related to money laundering include: (1) Act elements, (2) Knowledge elements, (3) Objective elements.

III. Research Method

The methodology used in this research is normative juridical which is carried out by analyzing various formal legal regulations that contain theoretical concepts and are associated with the issues discussed. The problem approach used in a legal study has the function of looking for various aspects that are being studied to solve problems in the legal issues discussed. A statute-approach approach, a conceptual approach, and a historical approach are used to assist the study of this research.

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IV. Result and Discussion

4.1 The Basis for the Eradication of Non-Criminal Money Laundering in Indonesia

Money laundering is the most dangerous organized crime and it is very important to launder the proceeds of their crime at first only the crime of illegal trafficking of narcotics and psychotropic substances. So the criminalization of money laundering was originally only directed at eradicating narcotics trafficking and the like as stated in the United Nation Convention Against Illegal Traffic In Narcotic Drugs and Psychotropic Substances of 1988 (The Vienna Convention).

The term money laundering in a legal sense was first used by the American Court in connection with a decision on the confiscation of the proceeds of narcotic crime committed by Columbia residents. International concerns about narcotics and money laundering gave birth to an agreement called the International Legal Regime to Combat Money Laundering and there is even a tendency that money laundering is carried out very complicated. Furthermore, money laundering is growing and not only comes from drug crimes but also various crimes including organized crime.

In Law no. 15 of 2002 concerning money laundering in Indonesia, there are still many weaknesses, so in the first amendment the definition which was previously not included, was later included in Article (1) of Law no. 25 of 2003 which contains the following: "Money laundering is placing, transferring, paying, spending, donating, entrusting, bringing abroad, exchanging or other actions on assets which are known or reasonably suspected to be the proceeds of a criminal act with the intention of concealing, or disguise the origin of wealth so that it seems to be a legitimate asset (Sopacua, Margie Gladies., Sakharina, 2018).

The purpose of criminalizing money laundering is to prevent all forms of disguised practices of wealth obtained from the proceeds of crime. Money laundering crimes are punishable by criminal sanctions. Perpetrators can use the proceeds of their crime "safely" without being suspected by law enforcement officers, so they want to commit another crime, or to commit other organized crimes (Deni Krisnawati, 2016). Criminal elements related to money laundering include: (1) Act elements, (2) Knowledge elements, (3) Objective elements. The three elements have been reduced in the formulation of Article 1 paragraph 1 and Article 3 paragraph 1 of Law no. 25 of 2003.

Based on the norms in the Money Laundering Law, the elements of money laundering crime can be formulated in the regulation. The criteria for the crime of money laundering can be distinguished into two criteria, namely: based on Article 3 and Article 6, while its relation to the Crime of Money Laundering as normalized in Article 8 and Article 9. Each of these articles is: Article 3: (1) Every a person who intentionally:

a. Placing assets that are known or reasonably suspected to be the proceeds of a crime into a financial service provider, either on their own behalf or on behalf of another party;
b. Transferring assets that he knows or reasonably suspects are the result of a criminal act from a financial service provider to another financial service provider either on his own behalf or on behalf of another party;
c. Pay or spend assets that are known or reasonably suspected to be the proceeds of a criminal act, whether the act is on his behalf or on behalf of another party;
d. Donate or donate assets that are known or reasonably suspected to be the proceeds of a criminal act either in his own name or on behalf of another party;
e. Entrusting assets that are known or reasonably suspected to be the proceeds of a criminal act either on their behalf or on behalf of other parties;

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f. Take out of the country assets that are known or reasonably suspected to be the proceeds of a criminal act; or
g. Exchange or other actions on assets which are known or reasonably suspected to be the proceeds of a criminal act with other currency or securities; with the intention of concealing or disguising the origin of assets which he knows or reasonably suspects are the proceeds of a criminal act, shall be punished for the crime of money laundering with a minimum imprisonment of 5 years and a maximum of 15 years and a minimum fine of Rp. 100 million and a maximum of rupiah 15.billion rupiah.

The objective element (actus reus) of Article 3 is very broad and constitutes the core of the offense and must be proven. The objective element consists of placing, transferring, paying or spending, donating or donating, entrusting, taking abroad, exchanging or other actions on assets (which are known or reasonably suspected of originating from crime). While the subjective element (mens rea) which is also the core of the offense is knowingly knowing or reasonably suspecting that the assets came from the proceeds of crime, with the intention of hiding or disguising the property (Neni Sri Imaniyati, 2017).

Penal policy is a science and art with the ultimate goal of improving the formulation of positive laws and providing direction to everyone, not only politicians. However, this also applies to courts that apply laws, administer and implement court decisions (Iskandar Wibawa, 2018). Money Laundering (hereinafter referred to as ML) is a new crime in Indonesia. Because Indonesia only criminalized and made it into law for the first time in 2002. In Indonesia, money laundering was only declared a crime when the ML Act was enacted in 2002.

There are at least 3 purposes of criminalizing money laundering. First, money laundering is a serious problem for the international community, so it must be criminalized. Second, anti-money laundering regulations are seen as the most effective way to find leaders of organize criminal enterprises. Third, that money launderers are easier to catch than to catch the main criminals (Predicate Offence).

PPATK is not an executive agency tasked with carrying out an inkracht court order. This provision actually creates injustice by placing investigators, prosecutors, and courts at a lower level than the PPATK. Because these three institutions are law enforcement officers, PPATK is only a support organization for them at this time (supporting institutions).

4.2. Government Strategy in Combating Non-Criminal Money Laundering in Indonesia

The crime of money laundering is referred to as a double and follow-up crime, because the crime of money laundering is an act that continues or is a continuation of the predicate crime where the perpetrator processes a large amount of illegal money resulting from a crime. funds that appear to be clean or lawful, using sophisticated, creative and complex methods. Or, the crime of money laundering as a process or act that aims to hide or disguise the origins of the crime through the activities of placing, transferring, diverting, spending, paying, granting, entrusting, bringing abroad, changing forms, exchanging currencies or securities obtained from the proceeds of a criminal act which are then converted into assets that seem to come from legitimate activities (Yunus Husein and Roberts K, 2018)

Money laundering crime cases are international in nature, for that we need a standard setting and perception that is the same and international in nature to be placed in a central regulation. In conducting criminalization, it is determined in advance which form of low on money laundering model will be adopted in Indonesia and of course adapted to the legal

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system and overall conditions in Indonesia. To see the factors that cause the law enforcement against anti-money laundering provisions in Indonesia to be not optimal, it is necessary to re-examine the understanding of why money laundering is criminalized or why money laundering practices must be eradicated.

Preventive efforts and the elimination of money laundering practices have attracted international attention. In order to prevent and eliminate money laundering practices, various countries have made many efforts, including establishing international cooperation through bilateral and multilateral organizations (Filep Wamafma et al, 2022). Despite the fact that Indonesia made anti-money laundering initially because of international pressure not because of the awareness of the importance of eradicating money laundering for Indonesia, the practice of money laundering is a way for perpetrators of economic crimes to freely enjoy and take advantage of the proceeds of their crimes.

In addition, the proceeds of crime are the pulse for organized crime in developing their criminal network, so preventing the perpetrators from enjoying the proceeds of crime is very important. Several types of Money Laundering in a criminal act use the ultimum remedium principle, because the ultimum remedium principle is the last resort that must be taken in the judicial process of the Money Laundering Crime. Because of the Ultimum remedium principle in the Crime of Money Laundering as a criminal determinant in the Act for a criminal act because law enforcement tools or Law Number 8 of 2010 are no longer compatible.

The process of Money Laundering by using the ultimate tool or the so-called Ultimum Remedium principle to be able to enforce criminal law and criminal determination in the law for certain actions must be in such a way, because law enforcement tools or other sanctions are not compatible, then the Ultimum Remedium Principle is applied for a Money Laundering Crime. The principle of ultimum remedium is a last resort in the court process. The application of the ultimum remedium principle in the Crime of Money Laundering because the principle in criminal matters is the ultimate tool to enforce the law.

It is necessary to know that criminal law is the Ultimum Remedium by considering the provisions for the formulation of provisions for criminal threats, the formation of laws in addition to having to question whether other parts of the law have provided sufficient protection for the interests in question, and whether a criminal sanction is indeed necessary for this (Sumadi, 2017). The approach taken by the FATF in combating money laundering practices is a punitive approach, meaning that countries deemed uncooperative in combating money laundering practices will be subject to retaliatory actions by FATF member countries in the form of barriers to banking transactions such as transfers, L/C, foreign loans, prohibitions on opening bank branch offices abroad or all transactions from that country are considered suspicious transactions (Yenti Garnasih, 2014).

To enforce the law against money laundering practices requires good cooperation from all elements of the Criminal Justice System (SPP), which in this case consists of the police, prosecutors, judges and also the Financial Transaction Reports and Analysis Center (PPATK). Each element of SPP and PPATK must be able to run well, coordinated and simultaneous. However, it seems that there are still problems in the enforcement of money laundering. For this reason, an investigative body was formed as the Financial Intelligence Unit (FIU). In Indonesia PPATK is an independent body, but its function is very limited, namely only as an administrative function. INTRAC is tasked with collecting and processing information relating to suspicions or indications of money laundering. PPATK functions as a driving force for analyzing suspicions of money laundering, especially through early detection of suspicious transaction flows.

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The Corruption Crime Law clearly has more weight in the formulation of its criminal articles than the money laundering law. With the formulation model as in the Anti-money laundering Law, it actually results in a very low sentence. Substitution of fines into imprisonment is very unbalanced. So that a convict will prefer imprisonment rather than being obliged to pay a fine. As a law that puts forward the punishment of imprisonment, if one considers the imprisonment as a substitute for a fine, it is far from appropriate.

Several provisions issued by Bank Indonesia which can directly or indirectly prevent, reduce or eradicate money laundering activities administratively. Specifically, the Bank Indonesia regulations issued to prevent money laundering activities in line with the recommendations from the Financial Action Task Force of Money Laundering (FATF) and the Basle Committee on Banking Supervision are the Know Your Customer Principles.

So the strategy taken by the government in eradicating the crime of money laundering according to regulations already exists, namely the Money Laundering Law, but there is a need for implementing regulations that provide rigid guidelines to make eradication steps not only rely on the existence of PPATK but also add a task force that supports and support PPATK and other law enforcers.

V. Conclusion

The punishment in Article 8 of the Money Laundering Law, which is meant by "convicts" is an individual convict and does not include a corporate convict who is sentenced to a fine in a money laundering crime case as referred to in Article 3, Article 4, and Article 5 of the Money Laundering Law, because what is regulated in Article 8 of the Money Laundering Law is regarding the implementation of imprisonment as a substitute for fines, even though corporations cannot be sentenced to imprisonment and in accordance with the provisions stipulated in Article 7 paragraph (1) of the Money Laundering Law, corporations can only be imposed with a fine. The law does not only regulate the crime of money laundering but also includes regulations on terrorism crimes due to the financing of terrorism crimes by the proceeds of money laundering crimes.

There is a need for a more appropriate criminal formulation to substitute fines in the Money Laundering Law, according to the author, it is more appropriate to apply the taking of assets or income from the convict, so that the application of this fine itself can be effective to be imposed. The assets taken can then be auctioned off to cover fines that are not paid by the convict. Taking property or income from the convict is better to implement than having to finance the convict who does not pay the criminal fine to carry out the imprisonment. And the policy for the formulation of the crime of money laundering in Article 8 of the Money Laundering Law regarding the substitution of fines needs to be added one paragraph, because there is no rule to determine the length of the penalty for replacing fines that have been paid by individuals or corporations in money laundering cases.

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