

# The Correlation and Cohesion of Criminal Act of Money Laundering (TPPU) and Criminal Act of Human Trafficking (TPPO) Perceived from the Perspective of Criminal Law Reform in Indonesia

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**Abstract**—There are two criminal offenses that are interconnected, namely money laundering and human trafficking. Both are transnational crimes. Money laundering is a predicate crime from human trafficking. The problem in this research is how the cohesion and relation of money laundering and human trafficking. The results of the research prove that the proceed of crime is the blood of the crime meaning that the results of the crime are the blood that supports the crime itself as well as the weak point of the crime. Thus the effectiveness of the law will get a touchstone whether Law No. 8 of 2010 can be used as a tool to eradicate human trafficking.

**Keywords:** *money laundering, human trafficking, law enforcement*

## I. INTRODUCTION

The criminal act of money laundering and the criminal act of human trafficking. Both forms of crimes have several shared characteristics in common. The similarity is that both acts of crime belong to transnational crimes. Substantively, the regulation regarding both acts of crime is regulated outside the Criminal Code / KUHP (or in another words both acts or both crimes are the products of social development and technological progress, so that in terms of legal eradication, extra ordinary efforts are needed). Both of these crimes have very strong correlation. The criminal act of money laundering is a crime derived from predicate crime, one of those predicate crimes is a crime of human trafficking. Although in other instances, the criminal act of money laundering that become prominent lately is rooted from the wealth derived from the act of corruption. Regarding this issue, more in-depth research is needed, so the author will not discuss further about it. The author will merely focus on discussing the correlation and cohesion between the criminal act of money laundering and the criminal act of human trafficking.

One of many functions of the law is dealing with the protection of human interests. The effectiveness of law is closely related to the issue of legal compliance. Law becomes meaningful if human behavior is influenced by law and if

society uses the law as a controller of its behavior. The law is expected to be able to control people's behavior, especially when the development of technology is rapidly increasing now, because along with technological developments, on the other hand crime is also developing [1].

In the 21st Century, criminal acts have undergone their development towards transnational crimes [2]; and furthermore there has been a recognition of international law to the crimes which by their nature are "the enemies of humanity" or "hostis humanis generis", or have been recognized as international crimes [3]. The two terms about these crimes (transnational crime and international crime) must be distinguished although they cannot be separated. Each of them has some distinctive characters [3]. The development of crimes that has an impact on international law is one factor in the development of national law in each country, including Indonesia. The colonial legacy product is unable to answer the challenges of the times. That is why Prof. Sudarto always oversees the process of reforming criminal law in Indonesia by adhering to three reasons namely political reason, sociological reason and practical reason, which are then added by Prof. Muladi by conveying one more reason, namely adaptive reason. The criminal acts of money laundering and human trafficking are ones of the new crimes whose development should be watched out and eradicated with extraordinary efforts. One form of anticipation and vigilance of the state is by giving birth to legislation products in the form of laws that govern the crimes.

Efforts to reform criminal law (penal reform) in essence include the field of "penal policy" which is part and is closely related to "law enforcement policy", "criminal policy" and "social policy". This implies that the renewal of criminal law is part of the policy (rational effort) to renew the legal substance in order to make law enforcement more effective. Besides that, it is also part of the policy (rational effort) to eradicate / tackle crime in the context of protecting society. It is no less important than the meaning of criminal law reform, these efforts are also an inseparable part of policies (rational effort) to overcome social and humanitarian problems in order to

achieve / support national goals, namely social defense and social welfare [4] and, criminal law reform in response to the challenges of crime development, the driving force of these efforts rests on law enforcement.

Law enforcement is like an automatic machine that only needs to consume. There must be nothing new at all, because creating something new is the monopoly of the legislative. The mind builds a thick wall that separates the law from the community or creates a wide gap between the two. Society here is a symbol of social change and dynamics. The law has truly become an esoteric world. Another statement that appears is what is called as the limits set by the legislature. Where are the legal limits? The answer for this question can be really complicated (crucial), simply because the boundary is difficult to determine in absolute manner. Here the law deals with gray area. It will be more than black or white. Except for these shortcomings, law enforcement can also stop when it is bound by these boundaries [5].

As with other countries, Indonesia also pays attention to transnational organized crime such as money laundering. At the international level, efforts to fight money laundering are carried out with the establishment of the Financial Action Task Force (FATF) on Money Laundering by the G-7 during one of the FAFT was to determine the policies and steps needed in the form of recommendations to prevent and eradicate money laundering crime by issuing 40 (forty) recommendations for preventing and eradicating money laundering and 8 (eight) specific recommendations for combating terrorism financing.

According to Guy Stessen there are several reasons money laundering must be eradicated and declared a criminal offense, namely [6]: the effect of money laundering on the financial system and the economy is believed to have a negative impact on the world economy. For example, a lot of funds are sourced from illegal activities and can be detrimental to the community. Money can also affect public confidence in the international financial system because the impact of money laundering can reduce public trust [7].

Eradicating money laundering is a strategic step in combating major crimes, one of which is human trafficking. At the beginning of its development, human trafficking was not a crime, so no punishment was given to the traffickers. Then, during the independence era human trafficking was declared as an unlawful act. The Indonesian government criminalizes human trafficking with Article 297 of the Criminal Code (KUHP) which explicitly regulates human trafficking, in that article it is stated to trade women and trade men who are minors, sentenced to imprisonment for 6 (six) years. Articles which are often used as a legal basis to ensnare perpetrators of human trafficking are Article 285, Articles 287 - 298, Article 324, and Article 506 of the Criminal Code.

Human trafficking is a complex problem, both at national and international levels. Various efforts have been made to prevent the practice of human trafficking. Normatively, the rule of law has been created to prevent and overcome human trafficking. However, human trafficking still occurs. The Government and the House of Representatives of the Republic of Indonesia have passed Law Number 21 of 2007 on the

Eradication of the Criminal Act of Human Trafficking. The United Nations (UN) through the Office of the High Commissioner of Human Rights has issued Fact Sheet No. 14 with the title Contemporary Forms of Slavery. Behaviors included in the category of contemporary forms of slavery are:

- Child trafficking.
- Child prostitution.
- Child pornography.
- Exploitation of child labor.
- Sexual mutilation of girls.
- Involving children in armed conflict.
- Servitude.
- Human trafficking.
- Trading in human organs.
- Exploitation for prostitution, and
- A number of activities under the apartheid and colonial regimes.

Based on information published by the United States Department of Justice, it was obtained some data relating to human trafficking, among others:

- From 700 thousand (seven hundred thousand) to 4,000,000 (four million) people are traded annually (sold, sent, forced, and worked against their will) all over the world;
- Most of the trafficked people come from developing countries with low economic level, to be brought to developed countries;
- Most of the victims are women and children;
- Victims are generally promised a better life, attractive employment, by the traders;
- Generally, they are forced to work as prostitutes, forced labors, domestic helpers, even beggars;
- To control them, violence or threats of violence are usually used;
- More than two million women work in the sex industry against their will, and an estimated 40% (forty percent) are minors [8].

Helge Konrad stated that human trafficking is a problem caused by several impulses. He mentioned [9]:

*“The cause of trafficking is complex. While there are numerous contributing factors, which have to be analysed and taken into account in political decision making-the unequal economic development of different countries, mass unemployment in many countries of origin, but also inequality, discrimination and gender. Based violence in our societies, the prevailing market mechanisms; the patriarchal structures in the source and destination countries; the demand side including the promotion of sex tourism in many countries of the*

*world, the mindsets of men, etc.- the primary root cause is poverty, most particularly among women. The cause of trafficking is complex. While there are numerous contributing factors, which have to be analysed and taken into account in political decision making-the unequal economic development of different countries, mass unemployment in many countries of origin, but also inequality, discrimination and gender. Based violence in our societies, the prevailing market mechanisms; the patriarchal structures in the source and destination countries; the demand side including the promotion of sex tourism in many countries of the world, the mindsets of men, etc.- the primary root cause is poverty, most particularly among women”*

Human trafficking is a very dangerous crime and requires the state not to be careless. The proceeds of crime are developing from the criminal act of human trafficking into the capital for money laundering. The impact of the criminal act of money laundering will certainly affect the country's economic development.

Indonesia's economic development is very dependent on law enforcement [10]. This hope lies both in the professionalism of law enforcement officers and in the set of laws and regulations [10]. Therefore, law enforcement efforts in eradicating TPPU and TPPO must always be prioritized and set forward. Besides, the efforts to reform the criminal law cannot only be interpreted partially. The need for improvement and refinement of the TPPU law, while still referring to Pancasila as a national and state view of life, this means that Pancasila is the philosophical norm of the state and is a source of legal ideals. This fact is motivated that so far the law enforcement in the field of money laundering has not run optimally or as expected. The most dominant thing is that there are still weaknesses in the TPPU law, because there are multiple interpretations of the formulation of money laundering offenses, there are still many lack of clarity regarding the formulation of sanctions or threats of punishment which are believed to be one of the causes of the ineffective implementation and enforcement of legal measures towards the criminal act of money laundering.

The cause can come from the community as a user of financial services, from the providers of financial services, providers of goods / services, as well as law enforcement officials, as well as in terms of the set of legal regulations. The juridical basis of efforts to improve the Law on Money Laundering is the awareness that there are still weaknesses in the regulation and law enforcement against the Criminal Act of Money Laundering. Besides, it also triggered by the developments or changes in international standards in the field of prevention and eradication of TPPU that are recognized by the international community and is known as the FATF's *Revised 40+9 Recs (Financial Action Task Force on Money Laundering Revised 40 Recommendations and 9 Special Recommendations)*.

The facts that the criminal act of money laundering is very closely related to the criminal act of human trafficking cannot be denied anymore. There have been many studies conducted to prove this. A lot of these have been published with valid research sources. The main problem of eradicating crime is that

both TPPU and TPPO can be seen from the fact that there is a new paradigm in law enforcement which states that the proceeds of crime are "blood of the crime", meaning that the proceeds of crime are the blood that supports the crime itself as well as the weak point of the chain of evil. This means that the orientation of the eradication of criminal acts shifts from "cracking down on the culprit" towards confiscating "the proceeds of crime". This paradigm is adopted by the Law on the Prevention and Eradication of the Criminal Act of Money Laundering [11].

Thus the effectiveness of the law will be assessed by using a testing instrument, i.e. Law Number 8 of 2010 on the Prevention and Eradication of the Criminal Act of Money Laundering, which can be used as a tool to combat human trafficking.

As said earlier, human trafficking is the trade of human with the aim of sexual slavery, forced labor, or commercial sexual exploitation, and in subsequent developments it could also be with the aim of extraction of organs or tissues including for surrogacy and ova removal. Nevertheless, human trafficking is still considered as a crime against the person instead of a crime against the humanity. In human trafficking, three elements must be considered, namely the act (what is done), the means (how it is done) and the purpose (why it is done).

The element of what is done concerns with recruitment, transportation, transfer, etc. The element of how it is done is related to the use of violence, coercion, abduction, fraud, deception, abuse of power, or giving payment or benefit to someone in controlling the victim. And the ultimate goal is the exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labor, slavery or similar practices and the removal of organs.

By definition, money laundering is the term applied to taking money gotten illegally and then laundering it so it appears to have been gotten legally (a term that is applied to taking money obtained illegally and laundering so that it appears to be obtained legally. Then according to the doctrine, the process by which one conceals the existence, illegal sources, or illegal applications of income, and then disguises that income to make it appear legitimate (a process in which to hide the existence, illegal sources, or illegal means of income, and also disguising up income to be looks legitimate).

If it is related to money laundering, especially looking at the provisions of article 1 of the Law No. 8 of 2010 and observing what is meant by the results of predicate crime, it can be seen that money laundering can also originate from the criminal acts of labor smuggling, migrant smuggling, human trafficking, kidnapping, and prostitution. Thus the law on money laundering can also be applied to human trafficking.

Pursuant to articles 3,4,5,6,7,8,9 and 10 of Law number 8 of 2010 which are included in the elements of money laundering are first, every person, both individuals and corporations and corporate controlling personnel, secondly, placing, transferring, transferring, spending, paying, transferring, depositing, carrying money abroad, changing forms, exchanging with currency or securities or other acts of

assets that are known to or reasonably suspected are the result of criminal acts as determined.

Third, accepting or controlling the placement, transfer, payment, grants, donations, deposits, exchange or use of assets that are known to or reasonably suspected are the results of a criminal offense as determined. And fourth, aiming to conceal or disguise the origin of the proposal, source, location, designation, transfer of rights, or the actual ownership of the assets that are known to or reasonably suspected are the results of the crime as determined.

## II. IDENTIFICATION OF PROBLEMS

- How is the correlation between money laundering crime with human trafficking?
- How is the law enforcement and how it affects criminal law reform?

## III. METHODS

The approach used in this research was a normative juridical approach, the nature of this research was descriptive analytical. Data collection technique used documentation study techniques. The data analysis method used qualitative because it did not use formulas and numbers.

## IV. RESULTS AND DISCUSSION

From this formula it can be concluded that the criminal act of money laundering is not a single crime but a double crime. This is characterized by a form of money laundering as a crime that becomes the follow-up of another crime or a follow-up crime, whereas the main crime or predicate crime or core crime is called predicate offence which is formulated as an unlawful activity.

In fact, since April 2002 the new law enforcement system has been introduced as an alternative solution to the problem of anti-money laundering regimes, disclosure of criminal acts and perpetrators of crime more focused on tracking the flow of funds / illicit money (follow the money trail) or financial transactions. This approach is inseparable from the opinion that the proceeds of crime constitute the life blood of the crime, which means that the blood supports the crime as well as the weak point of the crime chain that is most easily detected.

Efforts to cut the chain of crime aside from being relatively easy to do will also eliminate the motivation of the perpetrators

to commit crimes because the intent of the perpetrators of the crime, i.e. to enjoy the results of their crime, is hindered or will be difficult to reach. In addition, other efforts can also be made such as cooperation with banks in order to monitor unauthorized or suspicious money circulation.

## V. CONCLUSION

The crime of money laundering is a follow-up crime of human trafficking, which has the characteristic of being difficult to detect because its actions are veiled within normal activities, difficult to prove and lack of professionalism of the apparatus.

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