The Position of Banking Institutions in Preventing and Eradicating the Occurrence of Criminal Acts of Money Laundering in Banks

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Abstract. Over the last few years, an event that has attracted the attention of various groups of people is the trend of criminal acts of money laundering. The group of people at which the event has happened is not only the government but also the general public. Judging from the scale of the event, they have occurred both on a local, national, and international scale. Such an action has been committed individually and in groups, including corporations. Of course, such a crime belongs to individual, nation and state crime. The legal restrictions on money laundering in Indonesian financial institutions and the role of such institutions in combating the relevant crime are two topics that are clarified by the current study. The current study makes use of a conceptual method, a statute approach, and a normative legal research design to accomplish these objectives. Primary, secondary, and tertiary legal materials are the three categories of legal materials that are used as data sources. According to the study, illegal money transactions are influenced by laws, particularly those outlined in Law No. 8 of 2010 Concerning the Prevention and Eradication of Criminal Acts of Money Laundering and Bank Indonesia Regulation No. 14/27/PBI/2012 Concerning the Implementation of Anti-Money Laundering and Prevention of Terrorism Financing Programs for Commercial Banks. The position of banks is in the responsibility to implement the principle of "prudent banking" and the principle of "know your customer" in customer identification in an effort to eradicate criminal actions of money laundering.

Keywords: Law enforcement · Criminal acts · Money laundering · Banking · PPATK

1 Introduction

Having a foundation which is the 1945 Constitution with Pancasila as its philosophy, Indonesia is a state of law. All law enforcement agencies and actions are regulated and controlled by the government. In order to limit the government's authority in enforcing the law in society, especially for perpetrators of crimes and in sentencing, criminal law is present in the form of a set of regulations that aim to regulate and identify all permissible and prohibited acts and those that accompany them, with criminal sanctions or the so-called substantive law.

I. N. P. Budiartha et al. (Eds.): ICBLT 2022, ASSEHR 721, pp. 898–906, 2023.
https://doi.org/10.2991/978-2-494069-93-0_104

Law Number 10 of 1998 Concerning Amendments to Law Number 7 of 1992 specifies the type of bank. According to the legal regulations, a bank is regarded as a business entity. Banks are entrusted with dispersing income to the public in a variety of ways, including credit, in addition to taking money from the public in the form of savings. The bank's operations are aimed at raising the community's level of living. Banks are also a component of a nation's financial system and payment system, which is also a component of the global financial system, in addition to this definition. Therefore, the existence of a bank is not only guarded by the owners of the bank itself, but also by the global community. As is known, the law has developed very rapidly in the life of the people, which in turn gives birth to actions that violate the norms prevailing in society. One of these factors is the development of the community's economic needs with the modernization of financial transactions which gives birth to money laundering crimes.

In running bank activities related to managing people's money, a legal issue is known, that is to say, money laundering. Not only is the issue of interest to the public at the national level but it also attracts the attention of the public at the international level. This is due to the dimensions and implications that violate national boundaries. These criminal acts of money laundering involve certain parties who indirectly enjoy the benefits of money laundering traffic without realizing the impact. In the 1930s, in America, money laundering as a legal issue had begun to be recognized; more precisely, when a company was legally and officially bought by a mafia as one of its strategies. Long ago in America, there was one of the greatest criminals. His name was Al Capone. The form of crime he committed was laundering black money from a criminal enterprise. He took advantage of the genius Meyer Lansky, a Polish national. Through a laundry business, Lansky, who was an accountant, committed the crime of money laundering of Al Capone. Since that incident, the term money laundering began to be known.

Money laundering offenses include, in general, the act of concealing, transferring, and exploiting the proceeds of a criminal act, the operations of a criminal organization, economic crimes, corruption, drug trafficking, and other behaviors that form the behaviors or acts of criminal acts. Placement, stacking, and integration are the main components of these operations; they can be carried out independently, sequentially, or simultaneously. The crime of money laundering has global implications. It frequently occurs in numerous nations, including Indonesia. Due to the significant harm that may be done to a nation's economy, the interest and motivation of other nations and international organizations to seriously address the issue, particularly to prevent and remove money laundering activities, grows. The cause is that money laundering can have an impact on the economy both directly and indirectly.

Because money laundering actors practised "sterile investment" in money laundering practices, a large amount of potential funds were not used optimally; for example, in the form of investing in the property sector in countries that are considered safe even though by doing so, the results obtained are much lower compared to those with other ways. Developments in various sectors, such as the political, economic and socio-cultural sectors are triggered by developments in technology that are happening more rapidly. One that is also developing is crime. Unfortunately, the legal instruments need in preventing and eradicating crimes are inadequate and are still far behind. As a result, it is easy for individuals or groups to commit various crimes that lead to their wealth in large quantities.

Ironically, not only within the territory of the country the crime was committed but also outside it, in other countries. That is why it is often referred to as transnational crime or international crime. In the category of transnational crime, wealth obtained from the proceeds of crime is generally hidden, and then released so that it appears as if it came from a legitimate or legal source. If Indonesia and other countries do not deal with crime seriously, international organizations will impose sanctions with a more firm punitive approach. It is also possible to impose sanctions in the form of barriers to banking transactions such as transfers, Letters of Credit (L/C), foreign loans and various other foreign relations related to the economy.

The Government of Indonesia issued Law Number 15 of 2002 concerning the Crime of Money Laundering as a response to requests from numerous international issues linked to the elimination of the Crime of Money Laundering. Later, this law was amended to become Money Laundering Law No. 26 of 2003. In 2010, a further modification was adopted in response to the FATF's advice to enhance the prior law. Law Number 8 of 2010 regarding the Crime of Money Laundering was consequently passed. In order to strengthen and synergize various law enforcement agencies in terms of eradicating criminal acts of money laundering, provisions regarding the position of various institutions and law enforcement has also been regulated, which is in Law Number 8 of 2010. However, the obstacles faced by law enforcers are also increasingly complicated and complex due to overly complex provisions and too complicated bureaucracy which makes it difficult for them to identify or obtain data related to transactions that are suspected of being crimes of money laundering.

Motivated by the legal phenomenon described in the above description, the researcher tries to examine in more depth the phenomenon of money laundering. There are two issues that are the focus of this study, namely: legal arrangements of money laundering in banking institutions in Indonesia and efforts to prevent and eradicate the act.

2 Research Method

There are two categories of legal research: normative research and empirical, sociological, or other sorts of legal study. The current paper examines concerns related to money laundering by using normative legal research. Because it is based on secondary data, this style of research was selected. A study with an analysis that focuses on legal norms and employs legal norms as the research's object is called as this form of research by another label. The current study explores the rules governing the prevention and elimination of money laundering offences in banking institutions, as prescribed by Law Number 8 of 2010, using the normative legal research approach. The statute approach and the analytical and conceptual approaches are approaches followed in conducting this study.

3 Results and Discussion

3.1 Legal Arrangements of Money Laundering in Banking Institutions in Indonesia

Technology in the current era of globalization is developing very rapidly and provides benefits for every community who needs it. However, with the development of this technology, not a few people have used technology as a means to commit crimes. Technology

is also utilized to create new methods of committing crimes, such as those perpetrated using credit cards, according to Johannes Ibrahim Kosasih.

A money laundering procedure or action is one that aims to cover up or obscure the source of funds or assets derived from criminal activity's proceeds. The intent of obscuring the origin is to give the impression that the property was acquired through a legal process. Money laundering as a word was first used in the Watergate incident of 1973. The phrase was first used in the United States in 1982. Since then, it is used all over the world. The concepts of "crime in the streets" and "crime in the suits" were first developed by Willem Bonger. The declaration marked Sutherland's first mention to white-collar crime.

From the fact, it can be claimed that white-collar crime has brought a person to a fact, that is to say, that a crime is not interpreted as an action that is always committed by people with middle to lower economic status, but can refer to crimes committed by people with high socio-economic status.

Reflecting on the problems involved with money laundering crimes, currently money laundering has become a phenomenon that has appeared as a challenge in the international world. All countries in the world agree that money laundering is a crime that must be faced and eradicated. Grounded on a scale of varying priorities and perspectives, each of prosecutors and criminal investigation agencies, business people and companies, and developed countries and third world countries shares their own interpretation.

Indonesia already has a legislation that governs how to handle criminal proceedings that take place in the banking industry. The Law No. 8 of 2010 Concerning the Prevention and Eradication of the Crime of Money Laundering serves as a law that specifies the methods to be used in preventing and eradicating the crime of money laundering. The following things are governed by the law:

- Criminalization of criminal acts of money laundering;
- Obligations for service users, supervisory and regulatory agencies, and reporting parties;
- Arrangements for the establishment of a Financial Transaction Reports and Analysis Center;
- Aspects of law enforcement; and
- Cooperation.

Money laundering acts are of two categories as defined by law, specifically in Number 8 of the Law for the Prevention and Eradication of the Crime of Money Laundering in 2010:

- Criminal acts of active money laundering, which are actions taken by anyone who places, transfers, spends, pays, donates, entrusts, carries abroad, changes the form, exchanges for money or securities, or takes other actions with respect to Assets that are known or reasonably suspected to be the proceeds of a criminal act as mentioned in Article 2 paragraph (1) with the intention of hiding or disguising the origin of the Assets (Article 3 of Law No. 8 of 2010).
- Anyone who receives or manages the placement, transfer, payment, grant, donation, safekeeping and exchange, or makes use of Assets that they know or have a good

faith suspicion are the proceeds of criminal acts as described in Article 2 paragraph is subject to passive money laundering crimes (1). It is also regarded as being equivalent to the crime of money laundering. However, the Reporting Party who fulfills the requirements of this law's reporting requirements is given an exception (Article 5 of Law Number 8 of 2010).

The acts of anyone who takes advantage by concealing or faking the origin, source, location, designation, transfer of rights, or actual ownership of Assets that are known or reasonably suspected by the person concerned to be the result of a criminal act as referenced in Article 2 paragraph are also included in the category of money laundering crimes (1). According to Article 4 of Law Number 8 of 2010, such actions are likewise classified as offences that resemble money laundering.

"Sanctions for perpetrators of criminal acts of money laundering are quite severe, starting from a maximum imprisonment of 20 (twenty) years with a maximum fine of IDR 10,000,000,000 (Ten Billion Rupiah)," according to Article 3 of Law No. 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering.

According to the provisions of Article 2 of Law Number 8 of 2010, the proceeds of the crime of money laundering are as follows:

- "Proceeds of criminal acts refer to assets obtained from committing criminal acts of: a. corruption; b. bribery; c. narcotics; d. psychotropic; e. labour smuggling; f. migrant smuggling; g. in the banking sector. h. in the capital market; i. insurance; j. customs; k. excise; 1. Trafficking in persons; m. trade in illicit weapons; n. terrorism; o. kidnapping; p. theft; q. embezzlement; r. fraud; s. counterfeiting money; t. gambling; u. prostitution; v. in the taxation sector; w. in the forestry sector; x. in the environmental sector; y. in the marine and fishery sector; or z. those that are threatened with imprisonment of 4 (four) years or more, which are 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 criminal acts are also criminal acts under Indonesian law.
- Assets that are known or reasonably suspected to be used and/or used directly or indirectly for terrorist activities, terrorist organizations, or individual terrorists shall be equated with the proceeds of criminal acts as referred to in paragraph (1) letter n."

In general, the two components of money laundering are actus reus (the objective aspect) and mens rea (subjective element). An activity of placing, transferring, paying or spending, donating, entrusting, carrying abroad, exchanging, or other activities on assets is the target element (which are known or reasonably suspected of originating from crime). The subjective component, meantime, can be recognized by the behavior of anyone who intentionally or reasonably suspects that they are concealing or disguising riches derived from the proceeds of crime.

3.2 The Position of Banking Institutions in Eradicating Criminal Acts of Money Laundering in the Perspective of the Law of Criminal Acts of Money Laundering and Banking Laws

The media used to commit criminal acts of money laundering are financial service institutions, such as banks, insurance companies, securities and so on and can also be through media such as property companies, the entertainment industry, and so on. The bank is the institution that is determined to be most frequently used as a location for illegal money laundering, according to the institutions stated above. Money laundering offenses fall under the category of economics offenses. Economic crime, sometimes known as "white collar crime," is typically committed by people with middle- to upper-class social rank who behave and act intellectually.

Perpetrators of criminal acts of money laundering carry out their crimes by choosing a bank as a medium because the money they possess can be stored in a bank with a guarantee of confidentiality provided by the bank for their data and savings. Therefore, bank activities are very vulnerable to crimes, including criminal acts of money laundering. Banks are very vulnerable to reputation risk because they are the main target or vehicle for criminal activities that can be committed by customers.

The background of the occurrence of money laundering in Indonesia is based on 3 (three) reasons, namely:

- In Indonesia, applies the provisions that the origin of money kept in the form of time deposits is not investigated so it is automatically whitened and lawful;
- The Banking Law in force in Indonesia provides a great opportunity for banks to keep one's wealth secret;
- Indonesia adheres to a free foreign exchange system. In this system, everyone who goes abroad and enters Indonesia can freely carry an unlimited amount of money so it is possible for everyone to transfer their savings anywhere and can receive remittances from abroad in any amount.

In addition to using the "prudent banking" principle when conducting business, the bank must also apply the "know your customer" approach to every client who utilizes its services in an effort to stop or avoid banks being used as a platform for the practice of money laundering offences. The APU program, an anti-money laundering initiative, incorporates the "know your customer" tenet. The Financial Action Task Force on Money Laundering (FATF) has published international standards that are adopted by these principles.

Currently, the idea of "know your customer" is more commonly referred to as "customer due diligence" (CDD). To ensure that every transaction complies with the profile of the Prospective Customer, Walk in Customer (WIC), or Customer, CCD is based on Bank Indonesia Regulation No.14/27/PBI/2012 and entails identification, verification, and monitoring done by banks. The term "Enhanced Due Diligence" (EDD) is used in the regulation to describe the more thorough Customer Due Diligence procedures banks undertake when working with prospective customers, WIC, or customers identified as high risk, such as Politically Exposed Persons (PEP), who may be susceptible to money laundering and terrorism financing. An account is opened when a natural person or a

legal entity does so. Customer service asks potential customers to complete a Customer Identification File (CIF) form and attach their identification documents.

The process of money laundering committed by the perpetrators by placing the money referred to in the financial system of the banking sector is closely related to the procedure for accepting prospective bank customers. The placement process refers to the act of reintroducing demand deposits or cash obtained through criminal activity into the financial system, particularly the banking sector. The placement of the money is usually done by splitting a large amount of cash into small amounts. To prevent the money being injected into the financial system from standing out, this is done. Money may be introduced into this financial system by opening a bank account as a deposit or by being used to buy a variety of financial instruments that will be billed to and then deposited in a bank account at a different location. Placement refers to any attempt made by the offender to transfer the financial system with the proceeds of their crime.

The advantages of putting the Customer Due Diligence (CDD) principle into practice in banks are that banks are expected to be able to get detailed information about potential customers, know customers, understand transactions made by customers, identify abnormal or suspicious customer transactions, safeguard the reputation and integrity of the bank, make compliance with the rules easier, and protect banks from external threats, or from the act of using the bank.

Suspicious financial transactions require banks to update customer identity documents, analyse and monitor them on an ongoing basis to ensure synchronization between financial transactions made by customers and their profiles. These actions are taken to determine whether the suspicious transaction is a money-laundering-related financial transaction. Consequently, banks have a duty to file a report as a suspicious financial transaction report when a questionable financial transaction is made by a bank customer. This is governed by the terms of Bank Indonesia Regulation Number 14/27/PBI/2012's Article 48, Paragraph 1, regarding Bank Indonesia Regulation Number 14/27/PBI/2012. The aforementioned report is provided to the Financial Transaction Reports and Analysis Centre (PPATK), a freestanding organization formed by the President of the Republic of Indonesia to combat money laundering in the country. According to Article 51 of Bank Indonesia Regulation Number 14/27/PBI/2012 about the Implementation of Anti-Money Laundering and Prevention of Terrorism Financing Programs for Commercial Banks, banks are also required to establish collaboration with law enforcement and the relevant authorities.

Banks are expected to always be careful in accepting prospective customers as customers. There is a possibility that the prospective customer will commit money laundering by placing assets in the bank concerned. Therefore, CS and tellers play an essential role in the business relationship process between prospective customers/customers and the bank. CS plays the role of analyzing the initial profile of the customer to ascertain whether or not the customer has the potential to commit money laundering, while the teller plays the role of ensuring the suitability of the profile of a customer at time they are about to place a number of funds in the bank.

An information system must exist in banking. That is to enable monitoring of each customer's profile and transactions. It is also regulated in a circular letter issued by Bank

Indonesia, in particular Number 11/31/DPNP. With this information system, identification, analysis, monitoring and reporting can be effectively organized. These activities are carried out to determine the transaction characteristics of each customer. It needs to be made sure that the information system fully supports the process of tracing every transaction for internal purposes.

Supervision and guidance carried out by Bank Indonesia on commercial banks in preventing criminal acts of money laundering is to make provisions regarding Anti-Money Laundering and supervise them. Additionally, Bank Indonesia's more specialized responsibilities include establishing rules for the idea of knowing who is using which banking services and overseeing the anti-money laundering initiative. The banks in Indonesia have put into practice a number of laws, including the Banking Law, Law Number 8 of 2010 concerning the prevention and eradication of criminal acts involving money laundering, and Bank Indonesia Circular Letters to Bank Indonesia Regulations, which state the need to know customers and maintain bank secrecy. This is done with the aim of preventing criminal acts of money laundering which are currently rife in Indonesia.

4 Conclusion

In accordance with Law Number 8 of 2010 Concerning the Prevention and Eradication of Criminal Acts of Money Laundering, legal procedures pertaining to money laundering crimes are governed. In an effort to end and prevent criminal acts of money laundering, this law regulates a variety of issues, including the criminalization of such acts, obligations for service users, supervisory and regulatory agencies, and reporting parties, plans for the establishment of the Financial Transaction Reports and Analysis Centre, aspects of law enforcement, and cooperation. In connection with banking efforts to eradicate criminal acts of money laundering, the efforts are carried out by applying the prudential banking principle and the principle of 'know your customer'. In the context of criminal acts of money laundering, the prudent principle must be interpreted into that the bank must be careful in accepting funds deposited in the banking system, because these funds may be the result of criminal acts (dirty money). Therefore, the bank must prevent dirty money from being deposited into the banking system because it causes a mix of assets which makes it appear as if the asset is the fund obtained not from the proceeds of a crime.

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