



Legal Reform for The Rights Of Money Laundering Victims through the Ultimum Remedium Concept

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Abstract- A framework that regulates the conduct of individuals and groups in the community, the law is a guide in establishing what is deemed fair and proper in social interactions. Using the principle of the ultimate medium, this study examines and identifies legal reforms to protect victims' rights in money laundering. This research constitutes a doctrinal inquiry. This research indicates that victims of money laundering would return losses rather than imprison the perpetrator; thus, the notion of ultimum remedium is essential in criminal settlements, as it maximizes the settlement amount before resorting to criminal proceedings.

Keywords- victims, ultimum remedium, money laundering

I. INTRODUCTION

Examine how society utilizes the law as an instrument or tool to accomplish its primary objective, justice. A framework that regulates the conduct of individuals and groups in the community, the law is a guide in establishing what is deemed fair and proper in social interactions. To reconcile the values of legal interests with those of justice [1], the law attempts to conform to the norms and values embraced by a specific society within a given framework. The rights and responsibilities of individuals are governed by the law, which also establishes procedures for resolving conflicts and disputes [2].

Additionally, in the position of the law, which strives for constant enforcement, the function of the law is predicated on safeguarding the community against criminal activity. According to John Rawls, Just justice principles should guide the drafting of laws to protect society against injustices that may result from illegal activity. This aligns with Joel Feinberg's viewpoint that the law's primary objective should be to mitigate social losses resulting from detrimental actions towards society[3].

The evolution of criminal activity and the shifting dynamics of law enforcement require us to reconsider the fundamental intent of criminal law. Because it is impossible to survive under the current status quo system, it will inflict severe harm on society. On a global scale, preserving societal order is the fundamental objective of criminal law. Specifically, the aim is to combat criminal behavior and deter future occurrences by enforcing stringent and absolute penalties that serve as safeguards against societal and state entities and individuals (including those regarding their dignity, life, property, and physical well-being)[4].

Recognizing that criminal law is the final recourse (ultimum remedium) is critical. In light of the provisions that impose criminal penalties, the development of the law must additionally contemplate whether alternative legal requirements have sufficiently safeguarded the interests at stake and whether the imposition of criminal sanctions is warranted in the given circumstances. Punishment should only be used as a last resort, according to the ultimum remedium principle. This means that the management of TPPU can follow this principle since it is the last step in the legal process for money laundering. The relevance of the final code that governs criminal

sanctions in money laundering has grown significantly. This is because the application of penalties by law enforcement officials by Law No. 8 of 2010 is no longer applicable. Nevertheless, exercising caution is crucial when applying the principle of *ultimum remedium* to address money laundering offenses, given that sanctions such as law enforcement personnel or other punitive measures may no longer be suitable. Hence, implementing the final principle that must be adhered to in the illicit activity of money laundering assumes significant importance[5].

A lot of research has been done on AML regulation, and it lists the things that are needed for an AML regime to work: following the law, having a solid regulatory framework and court system, fighting corruption, running the government efficiently, and a culture of compliance that spreads throughout society. Although previous studies provide compelling evidence that deficiencies in these areas can compromise the development of a successful anti-money laundering (AML) framework, there still needs to be more data regarding the effects of AML measures on financial offenses. Additionally, there needs to be more comprehensive analyses regarding the optimal design for an institutional framework against money laundering (AML) and FIUs.[6]

Over time, criminal law enforcement's failure to safeguard victims' rights may result in negative consequences or excesses that undermine the credibility of the judicial system's staged punishment process, particularly regarding implementing the *ultimum remedium* principle. This is intended to safeguard the rights of victims who have suffered harm within criminal law [7], for victims standing under the protection of the rule of law to experience the significance of the objective behind formulating laws based on expediency

II. LITERATURE REVIEW

According to J.S., money laundering is acknowledged as a form of "serious and organized crime" in which eluding law enforcement detection is always the primary objective. M. Levi and M. Soudijn advocate for an examination of the financial implications of anti-money laundering compliance and an assessment of the potential of blockchain technology to facilitate KYC compliance. According to the European Survey of 2017, AML procedures can truly escalate the operational expenses of a bank. In 2020, global compliance expenditures amounted to \$213 billion, according to the source.[8] The Financial Action Task Force (FATF) reported in 2021 that high-risk countries have expressed apprehensions regarding the potential economic repercussions of AML regulations. In financial institutions, the increased utilization of banking resources has heightened the demand for technology to facilitate improved customer service and transaction management. Blockchain and distributed ledger technologies are currently found in a vast array of applications; in particular, numerous publications have proposed an architecture for identity and authentication based on blockchain.[9] Moreover, it has been demonstrated that a blockchain could potentially simplify the management of identities and authentications. Nevertheless, e-KYC encompasses a great deal more than a rudimentary authentication process. It operates on a specialized blockchain platform, ensures the security of credential registration, manages Know Your Customer documents, and conducts a streamlined verification process among customers, various FIs, and the platform itself.[10]

Historiographically, it is postulated that the term 'money laundering' originated in the United States within a legal framework, by virtue of the association between money laundromats and organized crime. Subsequent to its inception, the expression has garnered extensive recognition and is now frequently employed on a global scale. It is crucial to possess knowledge regarding the definition of money laundering, as certain illicit activities may be carried out unintentionally. Nonetheless, possessing knowledge of its definition guarantees compliance with numerous laws and the implementation of suitable measures to identify any manifestation of money laundering. "Money laundering is instrumentalized trafficking," a term that encompasses the entire process of money laundering, including the movement of funds, payment cards, and checks. Furthermore, it encompasses the procedure for establishing cash links to tangible assets, transferring property by means of title of ownership, modifying documentation to reflect a change in ownership, transferring funds from authorized accounts to unauthorized accounts, employing non-existent documents, and altering documentation by substituting the original source are all components of this process. All of this occurs within the jurisdiction of the nation that receives the unlawful funds.

This category of criminal activity typically encompasses intricate financial structures and instruments that demand cutting-edge technology to execute. The term 'instrumentalized' suggests that funds are transferred into the system without proper authorization, beyond their lawful purpose. On the other hand, 'money laundering' refers to the replication of an illicit activity involving the transfer of unaccounted funds from accounts to a person or entity that is aware of its illicit nature; the alteration of the flow of funds to a specific account under deceptive conditions; or any other improper conduct that may result in a breach of trust between the parties involved in a transaction. This form of criminal activity encompasses a multitude of procedures, which comprise acquiring intelligence regarding the source of transactions, altering the intended recipient accounts for the proceeds, withdrawing a portion of the funds from an account concurrently with its closure, concealing certain

transactions to ostensibly validate subsequent ones, and fabricating certain transactions to deceive the recipient into accepting them as legitimate.[11]

III. METHOD

The author employs a research methodology known as juridically normative research. Normative juridical research is an academic discipline devoted to the examination of legal materials through the application of reading, research, and analysis methodologies. The data acquired through the literature review methodology is derived from a qualitative analysis of judicial documents. The author then conducts a systematic analysis of the data using descriptive analytics in order to provide an overview of the issues addressed in this work. As previously mentioned, a Systematic Literature Review (SLR), one of the most prevalent research methodologies in Evidence Based Software Engineering (EBSE), was conducted. The SLR research method identifies, evaluates, and interprets all available evidence pertinent to a particular research query or topic in a systematic fashion.

IV. RESULT AND DISCUSSION

Legislation No. 13 of 2006 about the Protection of Witnesses and Victims has been applied to the victim's circumstances. A legal institution, precisely the Witness and Victim Protection Agency (LPSK), is entrusted with safeguarding the interests of victims. Article 7 of Law Number 13 of 2006 on the Protection of Witnesses and Victims as a Person specifies the LPSK's efforts to safeguard the interests of victims [12].

In conjunction with this, Government Regulation Number 44 of 2008 about Compensation, Restitution, and Assistance to Witnesses and Victims stipulates, among other things, that victims, their families, or attorneys with extraordinary power of attorney must submit written applications for restitution to the court via the LPSK. Rebate application: supporting documentation of actual losses incurred by the victim or family, as certified or authorized by the authorized official, may be submitted before or after the perpetrator's conviction based on a court judgment with permanent legal force. If a request for restitution is submitted before the charges are read, the LPSK then forwards the request to the Public Prosecutor along with its decision and consideration. The public prosecutor, operating within the criminal justice system, merges cases through the criminal procedure code. However, the essential matter and the merger involving compensation are fundamentally governed by civil law, not the Criminal Procedure Code [13].

As stipulated in Article 14c of the Criminal Code, a judge may impose a particular condition in addition to general conditions on a probationary sentence: the convicted individual must pay full or partial compensation for the damages caused by his crime. The Indonesian criminal justice system, comprising the Prosecutor's Office, Courts, Detention Centers and Prisons, and Advocates, fails to offer victims of criminal acts an optimal environment. The investigator possesses the authority to carry out investigations that center on the factual details of the show. In contrast, the Public Prosecutor represents legal interests as an embodiment of public law. On the other hand, the Court leaves little room for the victim, essentially a witness who personally experienced the incident. However, within the criminal justice system, the victim has minimal influence in determining the gravity of the offense. The designation of the regulation in the Criminal Procedure Code is ambiguous due to its exclusion from the primary criminal section delineated in the Criminal Code [14].

Legal protection must be provided for victims of criminal acts to reclaim their rights through economic damages incurred due to the criminal acts themselves. In this scenario, the government is dedicated to ensuring that each individual is treated equitably and effectively within the legal system, irrespective of whether they are suspects or victims of criminal activities. Humanity is considered a shared value of the government. The Pancasila philosophy permeates every aspect of the Indonesian state's legal system, from Constitution 45 to the following laws and regulations. Legal protection for victims of crime who have suffered economic losses does not consist solely of resolving cases or bringing them to trial through the Criminal Justice System in Indonesia, as was previously stated. This system has failed to consider the victims' own best interests. Nevertheless, the state must assume the responsibility of safeguarding victims, particularly those who suffer financial detriment due to crimes, by establishing mechanisms to incorporate their rights within the criminal justice system. As Salmond's theory of legal protection posits, the purpose of law is to integrate and coordinate the various interests of society. Fitzgerald argues that this is because specific goods can be protected by obstructing others in the traffic of goods. Legal claims pertain to human rights and interests; therefore, the law possesses preeminent jurisdiction in identifying human interests that require regulation and safeguarding [15].

Legal protection must get to the point where it is built into the law and all community-made laws. This is an agreement between the people in the community about how people should behave around the government, which is supposed to look out for their best interests. The author defines asset recovery as one of the legal safeguards for victims if they suffer financial losses due to a crime, such as the loss of money or goods.[16] This protection entails restoring the victim's rights in the form of cash or goods misplaced due to the perpetrator's actions. Asset

recovery for victims is a critical component in attaining the intended purpose of the legal system, which is justice, particularly for individuals who have been victimized by crime and lack a distinct position within the criminal justice system's framework. Victims of crime will continue to feel unjust if criminal justice mechanisms are unable to restore the losses they have sustained as a result of the crimes committed by the perpetrators; therefore, the Indonesian criminal justice system must make this clear[17].

The prohibition and eradication of money laundering, as outlined in Law No. 8 of 2010, provides an avenue for asset recovery. However, the legislation is overly simplistic, as it focuses primarily on criminalizing an act and equipment that can be used for asset tracing rather than the traceability of assets obtained through criminal activity. As of yet, there is no regulation governing the mode of return, particularly in cases involving the perpetrator's wealth. As defined in Law No. 8 of 2010, the Criminal Act of Money Laundering criminalizes the following actions: placing, transferring, spending, paying, granting, entrusting, bringing abroad, transforming, exchanging for currency or securities, or performing any other act on assets that the offender knows or has reasonable suspicion that the proceeds are criminal in nature; these actions are enumerated in Article 3. While the criteria for these actions are structured to apprehend those who engage in money laundering, certain aspects, namely the assets belonging to the victims of the crime, must also be given due consideration [18].

Although the provisions outlined in Law No. 8 of 2010 have effectively apprehended individuals involved in money laundering, this does not appear to be sufficient assurance that victims will be able to recover the assets lost due to the perpetrator's actions. Regarding the overarching elucidation of Law No. 8 of 2010, it is stipulated, among other things, that in the pursuit of anti-money laundering, tracing can be utilized to identify the culprits and the sources of illicit funds, allowing the state to seize the illicitly obtained funds or return them to their rightful owners. This extensive explanation makes it clear that the Law on the Prevention and Eradication of Money Laundering Crimes requires law enforcement to track down assets (assets) that the state has seized or returned to their rightful owners. Nevertheless, it has come to pass that the legislation's intended purpose of restoring holdings to their rightful owners—in this case, victims of criminal activities—has not been realized. Law No. 8 of 2010 contains no regulation regarding the return of assets acquired through illegal activity; therefore, the return of criminal proceeds in the form of assets must adhere precisely to the provisions of the Criminal Procedure Code [19].

One approach to preventing money laundering crimes is confiscating personal assets associated with the perpetrators. However, it is essential to note that not all initial criminal acts or offenses that lead to money laundering (predicate crime) qualify for asset tracing activities under the PPTPU Law (as defined in Article 2, paragraph (1)). This is because the assets the perpetrators own do not necessarily constitute the proceeds of the crime or *corpora delicti*. Predicate crime perpetrators who amass substantial wealth or funds through their illicit activities might have previously engaged in money laundering before coming to law enforcement's attention. Because of this, law enforcement officers often seize tools of crime and goods that they think were obtained illegally (*corpora delicta*) in exchange for things that criminals have claimed as their own instead of being the result of their crimes.[20]

V. CONCLUSION

Complicity and money laundering share a strong interconnection. By Article 2, paragraph (1) of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering, corruption is considered a predicate crime for financial laundering. Laundering consists of concealing or shaming the source of funds acquired through corrupt activities via mechanisms within the financial system. This enables criminals in the financial system to legitimize illicitly obtained funds. The asset recovery model that is more effective in recovering state assets from corruption crimes can be applied to general crimes, including money laundering crimes so that the state should be capable of administering justice to victims in the same manner that it does when it is a victim of corruption. The provisions of the Money Laundering Eradication Law should, therefore, incorporate the concept of Article 18 of the Corruption Eradication Law, which establishes an additional criminal offense. A mechanism that most closely resembles the provisions of the Corruption Eradication Law should be used to conceptualize restitution of losses to victims of crime from perpetrators; however, the prison substitute for indigent defendants should not be applied to the original crime in the form of a general offense to enable the practical implementation of the compensation claim's civilly regulated provisions even if the defendant is rendered incapacitated.

VI. REFERENCES

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