CRIMINAL LAW ENFORCEMENT IN EFFORTS TO ERADICATE MONEY LAUNDERING IN INDONESIA

Sari Maharani Tarigan Sibero[1*], Kristiawanto[2], Mohammad Ismed[3]
[1-3]Master of Law Program, Universitas Jayabaya, Jakarta
E-mail: [1)] sarisibero@gmail.com

Abstract

Money laundering is an illegal act that aims to hide traces of funds obtained from crime, so that they appear legitimate and legal. Money launderers use a variety of complex methods to evade law enforcement, while still enjoying the proceeds of their crimes. In Indonesia, there are laws designed to prevent and eradicate the criminal offence of money laundering, complemented by various instruments to streamline law enforcement. This research uses the normative juridical method, with qualitative analysis of juridical data in the form of laws and regulations and expert opinions. This research confirms that the formulation of the elements of the crime of money laundering in Articles 3, 4, 5, 6, 7, 8, 9, and 10 of Law No. 8 of 2010 can facilitate the process of investigation, prosecution, and examination. This simpler formulation of unlawful acts allows law enforcement officials to be more effective in taking action against money launderers, especially with regard to corporate legal subjects. Thus, clear and simple regulations can increase the success of law enforcement in dealing with money laundering offences in Indonesia.

Keywords: *Criminal Offence, Money Laundering, Law Enforcement*

1. INTRODUCTION

Criminals always try to save money from their crimes through various ways. Even the proceeds of crime from one country can be transferred to another country and invested in legitimate businesses (Halim, 2013). This is known as money laundering. In this way, they try to convert or launder something that is obtained ‘haram’ (illegal) into halal (legal). Money laundering is generally carried out on the proceeds of drug trafficking, corruption, arms smuggling, gambling, tax evasion, and insider trading in stock market transactions (Arief, 1996).

Money laundering refers to the process of moving, concealing, or manipulating funds acquired through criminal activities in order to disguise their illegal origins. This allows the money to be used without attracting attention or raising suspicion about its criminal past (Amrullah, 2004). It can be inferred from the definition of money laundering provided earlier that corruption is the primary criminal activity leading to money laundering (Muhammad, 2013). The indication of this can be observed in the regulations outlined in Article 2, section (1) of the 2010 Law No. 8 on the prevention of money laundering, which specifies that:

The term 'proceeds of crime' refers to assets acquired through criminal activities such as corruption, bribery, drug trafficking, people smuggling, financial crimes, terrorism, and various other illegal acts, whether committed within or outside the territory of Indonesia and punishable by imprisonment of at least four years under Indonesian law.

In straightforward language, the process of money laundering can be categorised into three main activities: placement, layering, and integration (Putra, 2019). Seeing the reality that exists, makes this problem very interesting to study. How the legislation in Indonesia is able to overcome the problem of money laundering. So, this paper will

discuss it in the form of research entitled 'Criminal Law Enforcement in Efforts to Eradicate the Crime of Money Laundering in Indonesia'.

2. RESEARCH METHODS

This study utilises the normative juridical technique, which involves examining laws, regulations, and other relevant legal resources (Soekanto, 2007). The data used in this research is juridical data, including laws and regulations and opinions of experts in the field of law. The analysis is conducted qualitatively, with the aim of understanding and interpreting the applicable legal provisions and their implications for law enforcement practices. The process of drawing conclusions is done inductively, where the researcher starts with the collection of specific data and then compiles general patterns to reach a comprehensive conclusion.

3. RESULTS AND DISCUSSION

3.1. Current Indonesian Criminal Law Policy in Combating the Crime of Money Laundering

Law Enforcement, stated by Jimly Asshiddiqie, which states that:

"Law enforcement in a broad sense includes activities to implement and apply the law and take legal action against any violation or deviation of the law committed by legal subjects, either through judicial procedures or through arbitration procedures and other dispute resolution mechanisms (alternative desputes or conflicts resolution). In fact, in a broader sense, law enforcement activities also include all activities intended, so that the law as a set of normative methods that regulate and bind legal subjects, in all aspects of the life of society and the state, is truly obeyed and truly implemented as it should. In a narrow sense, law enforcement concerns the activities of prosecuting any violations or deviations from laws and regulations, especially more narrowly through the criminal justice process involving the role of police officers, prosecutors, advocates or lawyers, and judicial bodies" (Asshiddiqie, 2020).

Our legislators have used the word *'strafbaar feit'* to refer to what we know as a 'criminal offence' in the Criminal Code without providing any explanation as to what the word *'strafbaar feit'* actually means. The term *Het strafbaar feit* is translated as: 1. punishable act 2. Criminal event 3. Criminal act 4. Criminal offence.

To combat and eliminate the issue of money laundering, the Indonesian government has put in place various legal regulations (Prasetyo, 2011). One key regulation is Law No. 8 of 2010 focused on combatting and eliminating money laundering crimes. According to Chapter I of the Law, a separate body called the Financial Transaction Reports and Analysis Centre or PPATK is set up to address the problem of money laundering. Law No. 8/2010 provides new duties, authorities and working mechanisms for PPATK, Reporting Parties, regulators/LPPs, law enforcement agencies, and other related parties. As already known, the handling of ML/TF cases in the ML/TF Law uses a follow the money approach.

The strategy of "follow the money" is a fresh perspective in tackling crime, involving the tracking of funds or assets obtained illicitly and concealed within the financial system or finance-related institutions (Sjahdeini, 2007). Based on the results of

tracing the wealth, data and evidence will be obtained regarding the relationship between the act or criminal offence and the perpetrator. After going through the judicial process, assets from criminal offences can be confiscated and confiscated to be handed back to their rightful owners or confiscated to be handed over to the state.

The follow the money approach cannot be separated from the functions and authorities of PPATK as stipulated in Articles 40 to 45 of the PPTPPU Law. The main functions of PPATK as a Financial Intelligence Unit (FIU) include receiving financial transaction reports (collecting/receiving), analysing financial transaction reports (analysing), and forwarding analysis results to law enforcement agencies (disseminating). According to section 44, paragraph (1), subsection (e) of the PPTPPU Law, PPATK's analysis or examination findings are to be provided to investigators. The PPTPPU Law, in article 74 and its accompanying explanation, specifies that money laundering investigations are carried out by investigators looking into the initial criminal act.

Originating criminal investigators refer to officials from various government agencies in Indonesia who have the legal authority to carry out investigations. These agencies include the Indonesian National Police, the Attorney General's Office, the KPK, the National Narcotics Agency, the Directorate General of Taxes, and the Directorate General of Customs and Excise under the Ministry of Finance. If these investigators come across preliminary evidence of money laundering while investigating a criminal case, they are permitted to conduct a further investigation into the possible offence of money laundering (Bakhri, 2009).

PPATK as an independent institution that carries out the mandate to prevent and eradicate ML has made efforts through the provision of expert testimony in the field of prevention and eradication of ML both at the level of investigation and examination in court. PPATK as a party that provides expert testimony has made a positive contribution, especially in the context of handling ML. The parties requesting expert testimony from PPATK include the National Police, KPK, Attorney General's Office, BNN, Central Information Commission (KIP), and Military Court. Based on the results of monitoring ML/TF cases, expert testimony from PPATK is often taken into consideration by judges in deciding ML/TF cases.

3.2. Obstacles faced in Criminal Law Policy in tackling the Crime of Money Laundering in Indonesia

As formulated in Article 3, Article 4, and Article 5 of Law Number 8 Of 2010, especially the words *"Assets that he knows or reasonably suspects to be the proceeds of a criminal offence"*, it can be ascertained that some are for intent, some for negligence. The logical consequence is that the article requires not only intent but also negligence which is alternated with intent. In the context of the mention of culpa, namely actual culpa and non-actual culpa. Actual culpa means that the prohibited consequence arises because of his negligence, while non-actual culpa means committing an act in the form of intentionality but one of them is culpable.

The provisions of Article 3, Article 4, and Article 5 are considered to fall within the realm of fictitious culpa based on the information provided. However, these provisions appear to contradict the explanation given in Article 5 paragraph (1), which defines reasonable suspicion as a state where the individual possesses knowledge, desire, or intent at the time of the transaction that indicates a breach of the law. This definition alters the nature of fault from negligence to intentionality as it requires the presence of knowledge,

desire, or intent. The presence of these elements is essential for establishing intentionality rather than mere negligence.

Article 77 states:

"For the purpose of examination in court, the defendant is obliged to prove that the assets are not the proceeds of a criminal offence. Article 78 states: (1) In the examination at the court session as referred to in Article 77, the judge shall order the defendant to prove that the assets related to the case are not derived from or related to the criminal offence as referred to in Article 2 paragraph (1). (2) The defendant shall prove that the assets related to the case do not originate from or are related to the criminal offence as referred to in Article 2 paragraph (1) by submitting sufficient evidence".

These two articles do not set rules for how the proceedings should be conducted or even address the outcomes of proving the reverse. It must be clearly stated what happens if the defendant can show that their assets were not obtained from illegal activities. On the other hand, what if the defendant is unable to prove that the assets they possess were not derived from criminal activities. Therefore, law enforcement is anticipated to be unable to trace the source of the assets. The act of concealing or altering the origin of money acquired through criminal means is referred to as money laundering.

3.3. Efforts to Optimise Law Enforcement in Eradicating the Crime of Money Laundering

According to Purnadi Purbacaraka's academic perspective, the presence of a strong deterrent is crucial in preventing money laundering crimes, involving both individuals and companies. He defines law enforcement as a process of aligning values found in rules and assessing the consistent display of desired behaviors to promote peaceful living relationships.

When it comes to the topic, the implementation of laws can be broad and may also refer to efforts made by individuals in a restricted sense. From a wider perspective, enforcement of laws involves all parties within legal relationships. Anyone who follows normative rules based on legal norms is seen as upholding the rule of law. From a narrower viewpoint, law enforcement pertains specifically to the actions taken by certain officials to uphold the rule of law. To ensure compliance with laws, the enforcement authorities may resort to the use of force if required.

Criminal law enforcement in Indonesia is struggling to effectively tackle money laundering due to the lack of specific legislation regarding corporate criminal liability. This has created uncertainty in the investigation, prosecution, and trial processes.

4. CONCLUSION

Achieving legal certainty in the fight against corporations involved in money laundering in Indonesia has been a challenge, as the Prevention and Eradication of Money Laundering Crimes Law of 2010 imposes severe penalties on individuals and legal entities, but lacks clear procedural guidelines for prosecuting corporate offenders. In addition to this, the ineffectiveness of government supervision of every actor of banking business activities, especially banks or non-bank financial institutions in applying the prudential principle and Know Your Customer Principles in carrying out the management of their business activities as regulated in Bank Indonesia Regulations has an impact on

legal certainty in efforts to eradicate individuals and corporations who commit money laundering in Indonesia has not been achieved.

Law enforcers need to encourage legal improvements related to corporate criminal liability in money laundering offences to provide clearer legal certainty. Strengthening sanctions in Law No. 8/2010 also needs to be done in order to provide maximum deterrent effect for individual and corporate perpetrators. In addition, supervision of financial institutions and the principle of prudence to prevent money laundering. The capacity of law enforcement officers also needs to be improved so that they are better prepared to handle cases involving corporations. Future research can focus on the draft corporate procedural law, evaluation of the implementation of Law No. 8/2010, the effectiveness of financial institution supervision, and the impact of financial technology developments such as cryptocurrency on money laundering.

REFERENCES

Amrullah, M. A. (2004). Tindak Pidana Pencucian Uang (Money Laundering). *Malang: Bayumedia Publishing*.

Arief, B. N. (1996). Bunga Rampai Kebijakan Hukum Pidana, Bandung: PT. *Citra Aditya Bakti*.

Asshiddiqie, J. (2020). Contemporary issues on constitutional law. In *Advancing Rule of Law in a Global Context* (pp. 228–233). CRC Press.

Bakhri, S. (2009). Pidana Denda dan Korupsi. *Yogyakarta: Total Media*.

Halim, P. (2013). *Penegakan hukum terhadap kejahatan pencucian uang di era globalisasi*. Total Media.

Muhammad, Y. (2013). Merampas Aset Koruptor Solusi Pemberantasan Korupsi di Indonesia. *Jakarata, Kompas*.

Prasetyo, T. (2011). *Hukum Pidana Edisi Revisi. Jakarta: Rajawali Pers*. Jakarta: Rajawali Press.

Putra, A. R. P. (2019). Problematik Analisis Ekonomi Terhadap Hukum Tindak Pidana Pencucian Uang. *Lex Renaissance*, *4*(2), 303–316.

Sjahdeini, S. R. (2007). *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*.

Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (http://creativecommons.org/licenses/by/4.0/).