International Journal of Engineering Business and Social Science
Vol. 2 No. 02, November-December 2023, pages: 933-937
e-ISSN: 2980-4108, p-ISSN: 2980-4272
https://ijebss.ph/index.php/ijebss

The Crime of Money Laundering In The Perspective of Criminal Law

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Keywords
crime; money laundering; criminal law perspective

Abstract
The crime of money laundering is the act of processing large amounts of illegal money resulting from criminal acts into funds that appear clean or legal according to law, using sophisticated, creative, and complex methods. About the crime of money laundering, the Prosecutor's Office said that according to Article 30 of Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning TPPU, it is stated that "investigation, prosecution and examination in court of criminal acts as intended in this Law, it is carried out based on the provisions in the Criminal Procedure Law. This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively qualitatively. Concluding was carried out using a deductive method from general to specific, to that related topic, namely the Juridical Review of Ethical Witnesses for Police Members Who Commit Desertion. This research resulted in the findings of the Law on the Prevention and Eradication of the Crime of Money Laundering itself. provides a complete understanding of money laundering. Article 1 number 1 of the Law on the Prevention and Eradication of Money Laundering only states that money laundering is any act that fulfills the elements of a criminal act by the provisions of this law. Law enforcement against money laundering has been widely carried out after the promulgation of Law Number 15 of 2002 concerning the crime of money laundering as amended by Law Number 8 of 2010 concerning the Crime of Money Laundering

1. Introduction

The Criminal Procedure Law is a rule/provision that is excluded from this law and is a special rule. In fact, in this law there are also special rules/provisions of criminal law, the general provisions of which are regulated in the Criminal Code (KUHP). Handling the criminal act of money laundering, as with other criminal acts which are generally handled by the prosecutor's office, begins with the receipt of a Notice of Commencement of Investigation (SPDP) based on the provisions of Article 110 paragraph (1) of Law Number 8 of 1981 concerning Criminal Procedure Law. Next, proceed as the applicable program according to the provisions of the Criminal Procedure Code. You just need to remember that the crime of money laundering does not stand alone because the assets placed, transferred, or redirected employing integration were obtained from a criminal act, meaning that there was already another criminal act that

preceded (predicate crime). We can know this from the formulation of Article 2, namely that assets whose origins are or are obtained from criminal acts (Article 2 paragraph (1) letters a-y) are the proceeds of criminal acts.(Melani, 2014).

The term money laundering has been known since 1930 in the United States. The emergence of this term is closely related to laundry companies. This is because at that time the crime of money laundering was carried out by the mafia crime organization through purchasing clothes washing or laundry companies as a place to launder the proceeds of crime, that is where the term money laundering emerged. The crime of money laundering is the act of processing large amounts of illegal money resulting from criminal acts into funds that appear clean or legal according to law, using sophisticated, creative, and complex methods. The crime of money laundering can be referred to as a process or act that aims to hide or disguise the origin of money or assets, obtained from the proceeds of a criminal act which are then converted into assets that appear to originate from legitimate activities (Anggun, 2022). In general, there are two main reasons why the practice of money laundering is fought and declared a criminal act, namely, firstly, the influence of money laundering on the financial and economic system is believed to hurt the world economy, for example, a negative impact on the effective use of resources and funds which are widely used for activities are illegal and cause less than optimal use of funds, thus causing harm to society (Wibowo, 2018).

With the existence of a series of laws and regulations and the positive assessment of Indonesia, it was hoped that money laundering crimes in Indonesia would at least decrease, but in reality during 2008 the practice of money laundering increased drastically in Indonesia. As an illustration, in 2002, every month the Center for Financial Transaction Reports and Analysis (PPATK) received reports of 103 cases. In 2005, it reached 171 Suspicious Financial Transaction Reports (LKTM) per month, then rose again to 290 LKTM per month in 2006 (Wangga, Wirawan, & Kardono, 2022). In 2007, it became 486 reports per month, and in 2008 it increased by more than 90 percent compared to the previous year to 869 LKTM per month, with an average of 29 LKTM per day. In fact, in the January-December 2008 period, it has not decreased but has increased with fraud through the use of fake identities in opening bank accounts. Money laundering through purchasing valuable assets and investing in financial markets is also emerging. Likewise, money laundering resulting from corruption is still common, especially from the APBN/APBD carried out by treasurers or officials in government agencies (Irman, 2016).

In the regulation of money laundering crimes, there are several authorities given to PPATK agencies, including the authority to (i) request and receive reports from financial service providers; (ii) request information regarding the progress of the investigation or prosecution of money laundering crimes that have been reported to investigators or public prosecutors; (iii) audit the provision of financial services regarding compliance with obligations by the provisions of the TPPU Law and against reporting guidelines regarding financial transactions; and (iv) in conducting a PPATK audit, first coordinate with the institution that supervises the provision of financial services. The authority of investigators, public prosecutors, or judges to order financial service providers to block the assets of any person that has been reported by PPATK to investigators, suspects, or defendants who are known or reasonably suspected to be the proceeds of a criminal act.

The position of the Indonesian Prosecutor's Office according to Article 2 (paragraph 1) is a government institution that exercises state power in the field of prosecution and other authorities based on law. About the crime of money laundering, the Prosecutor's Office said that according to Article 30 of Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning TPPU, it is stated that "investigation, prosecution and examination in court of criminal acts as intended in this Law, is carried out based on the provisions of the Criminal Procedure Law, unless otherwise provided in this law." This means that the procedural law used for the crime of money laundering, both at the level of investigation, prosecution, and examination in court, is to use the Criminal Procedure Code (KUHAP) as long as it is not otherwise determined by the Money Laundering Crime Law.(Imron, 2019).

PPATK stated that in general the handling of TPPU cannot be separated from predicate criminal acts, therefore investigations of predicate criminal acts are carried out by investigators from various agencies by applicable laws and regulations. Based on the current TPPU Law, TPPU investigations are only carried out by the National Police. Considering the large number of predicate crimes related to TPPU, handling them requires good coordination and cooperation between fellow investigators from the various agencies in question. To avoid obstacles to coordination and cooperation in handling TPPU, it is necessary to expand investigators who have the authority to carry out TPPU investigations so that eradicating TPPU is more effective and efficient (Zoppei, 2015). PPATK explained that Money Laundering or TPPU is included in transnational organized crime or organized transnational crime. Crimes like this are serious crimes, so even though there are currently various laws and regulations related to TPPU, they do not result in a decrease in the level of TPPU in Indonesia. This is due to several things, such as the mode of operation becoming more and more complex day by day, making it difficult for law enforcers to trace both the proceeds of crime and the perpetrators of the crime. There are more and more money laundering media such as financial service providers,

professions, and providers of goods and services (property agents, car dealers, and gold and gem sellers) (Sitompul & Sitompul, 2020).

The crime of money laundering as amended by Law Number 25 of 2003 is quite severe, but what is needed that sanctions regarding carrying money abroad are still light, and the need for the TPPU Law to be strengthened with a civil asset forfeiture regime as adopted in the system in common countries. Laws such as the United States, Australia, and so on. The civil asset forfeiture regime strongly supports the confiscation of property resulting from criminal acts or found around the location of a criminal act or unclaimed property that is suspected to have originated from a criminal act. PPATK also said that sanctions for TPPU based on the TPPU Law were adequate. However, in its implementation, obstacles were encountered related to the minimum prison sentence. This obstacle arises when the level of crime committed by the perpetrator of the crime is included in a "light" crime, which can result in the criminal punishment imposed on the perpetrator of the crime being inappropriate for the crime committed (Haris, 2016).

The main criminal sanction against a corporation that commits a money laundering crime is a fine of 100,000,000,000.00 (one hundred billion rupiah). Additional criminal sanctions include the announcement of a judge's decision, freezing of part or all of a corporation's business activities, revocation of a business license, dissolution and/or prohibition of a corporation, confiscation of corporate assets for the state and/or takeover of a corporation by the state. In Article 9 of Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, it is explained that a substitute crime is that a corporation that is unable to pay a fine is replaced by confiscation of corporate assets or Corporate Control Personnel whose value is the same as the fine imposed. In addition, if the sale of confiscated corporate assets is insufficient, imprisonment in place of a forfeiture is imposed on the Corporate Control Personnel taking into account the fines that have been paid

2. Materials and Methods

This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively qualitatively (Moleong, 2019). Concluding is carried out using a deductive method from public to detailed, primarily those related to the examination topic, namely the crime of money laundering from a criminal law perspective. Qualitative data analysis is carried out if the empirical data obtained is in the form of a collection of words and not in the form of a series of numbers and cannot be arranged into categories. Data can be collected in various ways (interview observation, document collection, and tape recording). It is processed before being used in qualitative research, including the outcomes of interview transcripts, data reduction, analysis, data interpretation, and triangulation.(Amirudin, 2010)..

3. Results and Discussions

Implications of the Crime of Money Laundering from a Criminal Law Perspective

When carrying out money laundering, the perpetrator does not need to consider the results obtained and the amount of money spent, because the main aim is to disguise or eliminate the origin of the money. So that in the end it can be enjoyed or used safely. The aim of criminalizing money laundering is to prevent all forms of practices of disguising the proceeds of wealth obtained from the proceeds of crime. The crime of money laundering is punishable by criminal sanctions. Perpetrators can use the proceeds of their crimes "safely" without being suspected by law enforcement officials so that they desire to commit crimes likewise or to commit other organized crimes. 11 Criminal elements related to money laundering include (1) Act elements, (2) Knowledge Elements, and (3) Objective Elements. These three elements have been reduced in the formulation of Article 1 Paragraph 1 and Article 3 Paragraph 1 of Law No. 25 of 2003 (Ramdan, 2017).

The crime of money laundering is international in nature, for this reason, a regulatory standard and perception that is the same and international in nature is needed to be placed in a regulatory center. In carrying out criminalization, it is first determined which form of low on money laundering model will be adopted in Indonesia and of course, adjusted to the legal system and overall conditions in Indonesia. To see the factors that cause the lack of optimal law enforcement of anti-money laundering provisions in Indonesia, it is necessary to review the understanding of why money laundering is criminalized or why the practice of money laundering must be eradicated. Although Indonesia created anti-money laundering initially because of international pressure, not because of 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 utilize the proceeds of their crimes.

In Indonesia, PPATK is an independent body, but its function is very limited, namely only an administrative function. PPATK is tasked with collecting and processing information related 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. However, this agency remains in the status of carrying out preliminary investigations and has very limited (see Article 1 letter number and 2) assistance to the police. The results of transactions or suspicions of money laundering were then handed over to the police, where it turned out that the police were still carrying out further investigations and then following up with further investigations and processes. The results of the PPATK analysis are not evidence because they still have to be followed up in the investigation. Apart from that, during the investigation period, PPATK did not have the authority to block, meaning that the results of this analysis were not very meaningful .(Eddyono & Chandra, 2015)

Law enforcement against money laundering has been widely carried out after the promulgation of Law Number 15 of 2002 concerning the crime of money laundering as amended by Law Number 8 of 2010 concerning the Crime of Money Laundering. Some of them are the cases of Djoko Susilo, Ahmad Fatanah, Lutfi Hasan Isaq, Anas Urbaningrum, Akil Mokhtar, and several others cases. The crime of money laundering (TPPU) is a crime that arises from a predicate crime. The crime of money laundering is the culmination of several other crimes. TPPU is different from other criminal acts contained in the criminal law. The difference lies in the predicate crime, which precedes the crime of money laundering. The assets used by TPPU perpetrators are the proceeds of criminal acts as intended in Article 2 paragraph (1) of the Law on the Prevention and Eradication of Criminal Acts (Imron, 2019).

The Urgency of the Crime of Money Laundering from a Criminal Law Perspective

The Law on the Prevention and Eradication of the Crime of Money Laundering provides a complete understanding of money laundering. Article 1 number 1 of the Law on the Prevention and Eradication of Money Laundering only states that money laundering is any act that fulfills the elements of a criminal act under the provisions of this law. Meanwhile, in the Law on the Prevention and Eradication of the Crime of Money Laundering, what is meant by the crime of money laundering can be seen in Articles 3, 4, and 5. Article 3 of the Law on the Prevention and Eradication of the Crime of Money Laundering determines: "every person who places, transfers, diverts, spends, pays, gives away, entrusts, takes abroad, changes form, exchanges for currency or securities or other actions on assets which he knows or reasonably suspects are the proceeds of a criminal act (Yanto, 2017).

Specifically regarding investigative authority, in general, the handling of TPPU cannot be separated from the original criminal act. However, based on the current TPPU Law, TPPU investigations are only carried out by the Indonesian Police, so when the prosecutor's office, which also has investigative authority, finds a flow of funds that meets the elements of a money laundering crime, in the TPPU Law, there are no provisions governing the authority of investigators to predicate crime for money laundering, the prosecutor only uses his authority to investigate money laundering crimes based on the articles in the corruption crime. This investigative problem is also experienced by the tax authorities, for example, in tax cases there is often an element of money laundering, but because taxation experimenters cannot carry out TPPU investigations, as is the case with the prosecutor's office because it is not yet regulated in the TPPU Law, the TPPU rules are often not used. Even though TPPU cases can be handed over to police investigators, this will add to the bureaucracy and be less efficient so there are often obstacles to disclosing TPPU.

One improvement from a regulatory perspective that needs to be considered is the expansion of investigators of money laundering crimes by investigators of predicate/principal crimes. Apart from that, considering that in reality coordination is something easy to say but in practice is often difficult to implement, the rules regarding good coordination and cooperation between fellow investigators from the various agencies in question are very important and the regulations must be clear (for example regarding the scope of authority, procedures, and coordination and cooperation mechanisms). In other words, it is necessary to carefully consider the impacts or obstacles that will be faced by agencies that have the authority to investigate TPPU in the field when coordinating and collaborating. If not, then expanding the authority to investigate TPPU to several related agencies is likely to cause confusion which ultimately hampers efforts to prevent and eradicate TPPU (Asmar, Azisa, & Haeranah, 2021).

On the other hand, implementing regulator access without these restrictions will certainly affect the effectiveness of implementing the TPPU Law and other related laws and regulations. The effectiveness of the TPPU Law is very important for the banking sector considering that the anti-money laundering regime and Bank Indonesia in achieving their goals are interrelated. The stability of the value of the rupiah can be maintained if the financial system can be protected from the possibility of being used as a means and target for money laundering by criminals. Effective implementation of the TPPU Law can help Bank Indonesia in carrying out its duties, both in determining and implementing monetary policy, regulating and supervising banks, and regulating and maintaining the smoothness of the payment system effectively and efficiently, which in turn can achieve the goal of maintaining the stability of the rupiah value.

The active crime of money laundering as formulated in Articles 3 and 4 of the Law on the Prevention and Eradication of Money Laundering, places greater emphasis on the imposition of criminal sanctions for (a) perpetrators

of money laundering as well as perpetrators of predicate crimes; and (b) a money launderer, who knows or reasonably suspects that the assets come from the proceeds of a criminal act. The crime of passive money laundering as formulated in Article 5 of the Law on the Prevention and Eradication of Money Laundering puts greater emphasis on the imposition of criminal sanctions for (a) perpetrators who enjoy the benefits of the proceeds of crime; and (b) the participating perpetrator hides or disguises the origin of the assets. The crime of money laundering involves very large amounts of money so it can harm state finances and injure the national economy and also on various aspects of people's lives, these criminal acts are classified as extraordinary crimes which must be immediately prevented and eradicated. So, the money laundering regime uses a new paradigm to track the proceeds of crime, criminal acts, and the perpetrators with a follow-the-money approach.(Imron, 2019).

4. Conclusion

The Law on the Prevention and Eradication of the Crime of Money Laundering itself provides a complete understanding of money laundering. Article 1 number 1 of the Law on the Prevention and Eradication of Money Laundering only states that money laundering is any act that fulfills the elements of a criminal act by the provisions of this law.

Law enforcement against money laundering has been widely carried out after the promulgation of Law Number 15 of 2002 concerning the crime of money laundering as amended by Law Number 8 of 2010 concerning the Crime of Money Laundering.

The crime of money laundering is the act of processing large amounts of illegal money resulting from criminal acts into funds that appear clean or legal according to law, using sophisticated, creative, and complex methods. The crime of money laundering can be referred to as a process or action that aims to hide or disguise the origin of money or assets.

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