

The Criminal Policy against the Prevention and the Elimination of Money Laundering Crimes by Law Number 8 in 2010 in the Fight against Money Laundering Crime



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ABSTRACT: Money laundering crime is a crime that not only threatens the stability of the economy and integrity of the financial system, but it can also divide the institutions of public, national and state life. These crimes have developed as a humanitarian problem of existence with the development of society, so in efforts to execute crimes have been penal and non-penal. Money laundering is one of the transnational and organized crimes, so it is necessary to remedy national efforts of so-called criminal policies. The problem in this journal is how the countercriminal money laundering efforts have been on the criminal policy perspective and how the non-penal effort has been on the development of the money laundering crime. The study is done using a normative-and-value juridical approach and as for the analysis techniques used, it is qualitative analysis.

From the research results, it is known that the Government has issued Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Money, but there are still weaknesses in the legislative policy so that it will greatly affect its implementation and execution. In Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Money, the existence of PPKATK has formulated better than the previous Law on Money Laundering Eradication. However, the role of PPKATK in tackling money laundering offenses is still not optimal, so Indonesia still needs to be improved.

KEYWORDS: criminal money laundering, legislative policy, centralized financial transaction reporting (PPATK)

INTRODUCTION

Money laundering was first known in the United States in 1930. The term "money laundering" has first been proposed to the Mafia that extorted money from extortion, illegal sales of alcohol and gambling and prostitution that had purchased automated laundry companies (laundromats). The purchase was meant to mix the evil money with clean business, for disguises.¹ Al Capone did it in the 1930s, which at the time was just deemed a tax evasion (tax evasion).²

Sarah N. Welling's reference to money laundering or money laundering is a process whereby crimes or so-called dirty money such as crimes of drug smuggling, corruption, tax evasion, gambling, smuggling and so forth that are converted or converted into legitimate forms for safe purposes.³

The evils, committed by either individual or company within borders of any other country across borders, are increasing. Crime, trafficking in arms, corruption, smuggling and so on. To avoid being easily tracked by law enforcement as to the origins of the money created by the crime, perpetrators do not directly use the intended funds but seek to disguise or conceal their origins in traditional ways, such as through casinos, horse RACES, or transfer the funds into the financial or banking system. Efforts to hide or equate the origins of funds derived from criminal ACTS refer to money laundering.

Today, money laundering has gone beyond the borders of jurisdictions offer a high level of confidentiality or a variety of financial mechanisms in which money can 'move' through Banks, money changers, businesses can even be sent abroad to become clean-laundered money.

The development of crime has been a shift in the dimension of greed, which means that the subjects of action, which was initially made by a group of poor, ignorant people, have given rise to the conventional crimes of theft, fraud and so on, have shifted

¹ Michael A. De Feo, "Depriving International Narcotics Traffickers and Other Organized Criminal of Illegal Proceed and Combating Money Laundering", *Den. J. Int'l L & Pol'y*, vol 18:3, 1990, hal. 405. Dikutip Dalam Artikel Erman Rajagukguk, *Rezim Anti Pencucian Uang dan Undangundang Tindak Pidana Pencucian Uang*, Universitas Sumatera Utara, 2005, hal 1.

² Biily @laundryman. U-net.com 5 Agustus 1998, Bil-3/27, Dikutip Dalam Artikel Erman Rajagukguk, *Ibid*.

³ Sarah N Welling, "Smurf, Money Loundering, and the U.S.Fed.criminal law: The Crime of Structuring Transcations," *Flo.L.Rev*, vol.41, 1989, hal, 290

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towards the crimes committed by the highly intellectual or otherwise known as the white collar crime.

It is the third time that the law on money laundering and eradication of criminals and the 2010 law on money laundering is the third time that Indonesia has made changes in the law on money laundering and under 2010 law no. 8 established the legality of money laundering as a crime. This money laundering crime is accelerated by the insistence of the international monetary fund (IMF) and FATF where the letter of intent between IMF and Indonesia requires an anti-money laundering law as a prerequisite for the liquidation of the loan fund.

Article 1 verse (1) act no. 8 in 2010 on the prevention and elimination of money laundering crimes is all that meets the elements of the crime under the terms of the law. Verse (3) states, transactions are all activities that generate a right and/or obligation or create a legal relationship between two or more parties, the verse (4) affirms a financial transaction is a transaction to make or receive placement, deposits, withdrawals, book transfers, transfers, payments, grants, donations, day care, and/or exchange for some money or action and/or any other money-related activity.

Money laundering is very close to shady financial transactions, to clarify what is done with shady financial transactions, article 1 of the verse (5) act no. 8 of 2010 is:

- a. A financial transaction deviates from the profile, characteristic, or habit of the transaction pattern of the service user involved;
- b. A financial transaction by the worthy service user is thought to be carried out in order to avoid reporting the relevant transactions made by the party of the appellant under the terms of the law;
- c. Financial transactions made or canceled by the use of wealth suspected of the results of criminal ACTS; or
- d. Financial transactions requested by the reporting center and PPATK to be reported by the chancellor for involving property suspected of criminal wrongdoing.

The crimes of money straightforward are not only a matter of law enforcement but also a national and international threat of security for a country. In this regard, efforts to prevent and eradicate money laundering practices have become international concern, among other things, by means of both bilateral and multilateral cooperation.

In order to cope with the application of money, there are two types of steps that can be taken between the penal and non-penal efforts. Talking of penal policy certainly does not release from criminal policy talks or "criminal policy" which G. Peter Hoefnagels has defined criminal policy is the rational organization of the social reaction to crime"⁴ It is noteworthy, however, that penal policy has its limitations, especially against money laundering crimes that are part of organized cross-country crime⁵ Judging from the juridical side, the main problem was how to formulate the problem of error and criminal liability in legislation products as Dennis had said most of the legislation in criminal law has related to specific offences. General principles of criminal liability are largely still the work of the judges"

FORMULATION OF THE PROBLEM

1. How has the retention of criminal money laundering efforts been in criminal policy perspectives?
2. How have the non-penal efforts been on the countercriminal money laundering countermeasures?

RESEARCH METHODS

The method used in writing this journal was normative-a study done by examining secondary legal material or research by established established rules of the law, also called literature study. In this regard the writer guidelines the terms of criminal money laundering the nature of this study is an analytical descriptive that represents the state of the law governing money laundering under law number 8 of 2010.

DISCUSSION

Criminal money laundering includes special crimes that have ties to a wide variety of crimes. Criminal money laundering is viewed as an ongoing crime, an attempt to disguise the results of a previously committed crime in order to enjoy the results undetected, as well as the result of corruption.

1. Penal policy

The eradication of money laundering has begun with the 2002 statute of money laundering crime, which states that money laundering is a crime, and the new law is the birth of a new society called the financial trading reporting and analysis center. The 2002 bill of law on the money laundering crime bill was amended a year later by the 2003 statute of 25 on the prevention and elimination of money laundering crimes, and the law was again amended with law enforcement of the 2010 number 8 bill on the elimination of money laundering crime, where money laundering crimes should not fall apart from criminal formulation policies.

⁴ G. Peter Hoefnagels, *The Other Side of Criminology*, Kluwer Deventer, Holland, 1973, hal. 57.

⁵ Barda Nawawi Arief, *Kapita Selektta Hukum Pidana*, Penerbit PT Citra Aditya Bakti, Bandung, 2010, hal.174

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Penal policy has been a counter-criminal effort using criminal means, where in this case there has been a form of criminal formulation and legalization that has been legalized through negotiations, so there has been a legal certainty in dealing with and solving crimes committed by criminal criminals. These penal policies have been repressive, so of those, criminal law functionizations are especially seen in the implementation of these criminal policies.

Penal policy on the elimination of money laundering crimes has been initiated with law enforcement by the police agencies, prosecutors and courts. Repressive efforts have been made through the penal policy of treating criminal money laundering. The policy is carried out by ACTS of inquiry and inquiry into criminal money laundering. Law enforcement is carried out from the point of inquiry through the trial. Repressive duty is to conduct investigations and investigations of crimes and violations under the strictures of the law.⁶

The penal policy on the handling of money laundering crimes has been carried out using legal instruments through law enforcement of money laundering crimes. Law enforcement is in essence the enforcement of legal norms, whether those that serve or otherwise, such as authorizing, enabling and perpetuating.

The repressive management of criminal money laundering efforts, which are basically part of law enforcement (specifically the prevention of money laundering crime), is often said, that the political and criminal enforcement policy are also part of the enforcement policy. Marc Ancel makes penal policy (penal policy) a science and art that ultimately has the practical purpose of allowing positive legal regulations to be better defined and to guide not only to lawmakers and also to organizers or judicial executioners.⁷

Barda nawawi arief, has revealed that there are two central issues of criminal policy using the penal implement, which is:

- a. A problem of determining what actions should be considered a felony.
- b. What kind of sanction should be used or imposed on the offender.

Both central issues cannot be removed from an integral conception between criminal policy and national development policy. That is, solving the two problems must also be aimed at achieving certain goals of the established political policies. Thus, criminal law policy, including addressing the above central problem, should be followed by a policy-oriented approach. Certainly goods an integral policy approach to policy not only in the field of criminal law but also in the general building of law.⁸

On the basis of the hat, toward the evildoer may need to be considered other approaches that are more for individual consideration. Behavior should not be assumed as a form of misbehavior driven solely by frivolous or sensational ACTS, but it must be seen as a result of environmental misappropriation on social conditions. By considering the background factors that encourage perpetrators to commit crimes, then a more appropriate, appropriate policy of shape and application of sanctions for those who want to be overcome by rewards of repayment, development and conflict resolution.

2. Non-penal policy

In relation to the nonpenal efforts to address the crime problem, it is the social hygiene problem, whether individual or society of lugs in general. According to hoefnagels, the hall includes "mental health" problems, "national mental health" and "child welfare" According to the sudarto, the trajectory includes the practice of the cadets' coral activities, scouting and proselyting activities with religious education, which have been nonpenal efforts on the prevention and misbehavior.⁹

On the development of modern society, non-penal efforts In addressing the problem of crime has become a consideration for more efficient policies, karma is recognized asa cost cost relatively less, but it can promise optimal results. As it grows, criminal policies have developed toward pro active actions that turn out to be cheaper and promise better results in the fight against crime. The expanded responsibilities of crime prevention included institutions and individuals outside the criminal justice system. Public involvement in preventing crime can be an informal tribunal that can solve criminal cases at school, jobs, or neighborhood harmony practiced by ordinary members of society. Non-penal efforts have focused on social, economic, and various public policy areas with the intent of preventing crime before it has taken place. Another form of society's involvement is seen by crime prevention efforts focused on the root of evil, or situational prevention and the increased capacity of society in the use of informal social controls. Recent developments point to the victim-centred crime prevention and victim-centred crime prevention.

3. Efforts to counter criminal money laundering by executing money laundering laws

A key aspect of dealing with ua laundering crimes is that of agreeing between countries on mutual aid. Such an arrangement provides the basis for law enforcement to accept and render mutually beneficial legal aid. Both bilateral and multilateral cooperation in this matter can be carried out on the basis of an intemational agreement that adheres to the precepts of the recipient. So that a help could

⁶ Sadjijiono, *Hukum Kepolisian Perspektif Kedudukan Dan Hubungannya Dalam Hukum Administrasi*, Yogyakarta: Laksbang Pressindo, 2006), h. 119

⁷ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Bandung: Citra Aditya Bakti, 2005), h.21

⁸ Ibid. hlm. 32-33

⁹ Sudarto. *Kapita Selektu Hukum Pida na*, Alumni, Bandung, 1981, hlm. 43-44

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be asked or granted if the country, which is concerned has belonged to the member of the mission. 2002 statute 15 years as amended by the 2003 25th law on money laundering gives a strong legal basis for the prevention and elimination of money laundering crimes in Indonesia.

Indonesia's commitment to co-operate with the international community against any form of money laundering crime. The law has not only declared that money laundering is a criminal offense but has also given rise to a new agency in order to prevent and eradicate the criminal that is the counter-financial reporting centre (PPATK). As discussed in the preceding section, the international practice of money laundering of such agencies as PPATK is called financial intelligence unit (FIU).

In accordance with the law of money laundering crime (both the 2002 law number 15 in 2002 as amended by the 2003 25th law on money laundering as well as the 2010 no. 8 on prevention and the elimination of money laundering crime), PPATK can provide domestic and foreign cooperation. The development of anti-money laundering regimes is also enhanced by ceasing cooperation with government agencies and by expanding international cooperation especially with fellow workers. This is formally signed by a memorandum of understanding or memorandum of understanding) with other domestic agencies and countries.

More concrete, PPATK has done his cooperation inside In addition, PPATK has signed a memorandum of understanding, including law enforcement institutions The law such as the attorney general, the Indonesian police department, the corruption eradication commission, the minister of forestry and customs enforcement. The many natural criminal ACTS (predicate crimes) as suggested in article 3 of the 2002 statute of law 15 as changed by the 25th 2003 law on money laundering as it was, was amended by article 2 verse (1) the 2010 article 8 of 2010 on the protection and elimination of the criminal wash of money, In an effort to suppress the problem, PPATK would also be obliged to hand over the results of the analysis of his financial transactions to his investigator, so in the event that the analysis indicated any indication of a criminal origin, PPATK turned over to the criminal investigator. Thus, it can be seen and determined that PPATK is also in charge of analysis to identify any indication of a criminal origin.

CONCLUSION

In connection with the penal endeavor to address the problem of crime, it has come to the attention of two central issues of criminal policy: the determining of what ACTS ought to be made a criminal and what penalties should be used or imposed on the offender. Both central issues cannot be removed from an integral conception between criminal policy and national development policy. And in the nonpenal effort to address the criminal problem, it is the social hygiene problem, both individually and society of lugs.

The existence of law number 8 in 2010 on prevention And the elimination of money laundering crimes is considered capable of covering up the loopholes on the previous set of laws. Even so, it cannot be denied that there are still some weaknesses of legislation in the 2010 statute 8 on prevention and eliminating criminal money laundering. The defects herein are: the inconsistencies of elements found in the law, the unsubstantiated original crimes that could violate human rights and the preconceived principles of innocence, the denial of a system of infallible, the confiscation of wealth without a strong ruling The law remains, as is irreparably clear on the meaning of examination in absentia, the development of a regressive, law-breaking system by PPATK on one side and the lack of authority granted to PPATK on the other.

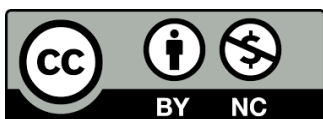
Hence, the weakening legislation policy found in the 2010 statute on prevention and eradication of criminal money laundering would no doubt have a significant impact on applications and executions in prevention and eradication of money laundering crimes in Indonesia. The authors reach this conclusion because it can be confirmed by data that suspicious financial transactions (LTKM) reports (LTKM), cash transaction statements (LTKT), cash transaction statements (lput), reports from suppliers and services (PBJ) and transactions delay reports (LPT) received by PPATK from 2010 to 2014 terns rose, but it is the case of money laundering crime that reached the trial and was terminated, Very few.

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