

Augmented Categories Of Proceeds Of Crimes In Relation To Money Laundering In Indonesia

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ABSTRACT

Money laundering is a serious crime that threatens economic gain and national welfare. This crime is closely related with other crimes, which serve as the providers of illicit funds or illegal wealth. This paper will explore the augmented categories of proceeds of crimes that might lead to money laundering. This paper is a normative descriptive one with statute and conceptual approach. Findings of this paper show that categories of proceeds of crime have been augmented over the years, as mentioned in amendment of the law of money laundering. Including to these augmented categories are “forbidden fruits” generated from common crimes, transnational crimes, white-collar crimes, and other crimes committed in Indonesian territory, as well as outside the territory with the Double Criminality principle.

Keywords: Money Laundering; Proceeds of Crimes Category.

INTRODUCTION

Indonesia is a potential and attractive country to hide proceeds of crime in as it has circumstance that might cover the practice of money laundering. This due to weak social control and legal loopholes in its financial system, including foreign exchange

free system, and overlooking of sources of capitals invested by forex traders in capital market, or overlooking of sources of money saved in foreign banks¹.

In recent years, crimes associated with money have been increasing, including money laundering. Money laundering is an attempt to convert proceeds of crime such as corruption, drugs trading, gambling, smuggling, and other fruits of any actions, which might be suspected as results of crimes, with the intention of hiding or disguise the origin of the wealth in order to look lawful.²

Remi Syahrani points out that money laundering is a series of activities committed by a person/s or an organization/s towards illicit money, resulted from crimes and with intention to hide and to disguise the source of the wealth from governments or authorized parties. These series of activities run by putting the money into a financial system, either by making use of banking service or non-banking service such as stock exchange, insurance service, and forex trading. The expected outcome of these processes is to withdraw the money from the financial system as lawful money.³

The definition of money laundering above is relatively the same with the one stated in the Law. According to the law, money laundering is a crime committed by a person and/or a corporation by intentionally placing, transferring, diverting, spending, paying, donating, taking abroad, and changing the form of money. It can be committed by exchanging the money with money or other portfolios, as well as other actions towards the money or wealth that are known or deserve being suspected as proceeds of crimes. The objective is the same, hiding or disguising the origin of the wealth, as well as receiving and taking control over the wealth.⁴

The initial attempt of the Government of Indonesia in eradicating the existing money laundering had been by establishing Law 15/2002 about Money Laundering, which later was amended by Law 25/2003 about the Amendment of Law 15/2002 about Money Laundering. Nonetheless, the enactment of the latter did not last for long. In 2010, the Indonesian Government enacted the new regulation regarding money laundering, Law 8/2010 about Prevention of Money Laundering, which serves as replacement of Law 25/2003.

The new law has been the latest main reference for law enforcers in eradicating and preventing money laundering. It is expected that by establishing such law, the rate of money laundering would be diminished, or even better, eradicated. In order to meet the expectation, several points of efforts in combating money laundering are stated in the law. As money laundering is inseparable with the original crimes, which generate the illicit money, it is important to comprehend and to identify the sources of the money that would be 'cleaned'. Hence, it is essential to sort out crimes that potentially generate illicit money that could be laundered. This paper will cover the task by explicating augmented categories of proceeds of crimes in relation to money laundering

METHOD

To achieve the objective of this paper, legal normative research method is applied, with statute and conceptual approach. Statute approach is an approach that is conducted by analysing laws and regulations that are related to the legal issue⁵. Whereas conceptual approach is the

¹ Ayumiati. (2012). "Tindak Pidana Pencucian Uang (Money Laundering) dan Strategi Pemberantasan", Jurnal Legitimasi, Vol.1 No. 2, p. 76.

² Hurd Insider. (1996). "Trading and Forigh Bank Secrecy", *Am. Bus. J.* Vol 24, p. 29.

³ Sultan Remi Syahrani. (2004). *Seluk Beluk Tindakan Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta: Grafiti, p.19.

⁴ Act Number 8 Year 2010 Concerning Money Laundering.

⁵ Mahmud Marzuki. (2005). *Penelitian Hukum*, Jakarta: Kencana Prenda Media Group, p.93-95.

approach that conducted by observing and analyzing already present information such as scholars' opinion and developed legal doctrines on a specific issue⁶. Data collection applied in this paper is Literature Review, and Qualitative analysis will be used to analyses the data.

ANALYSIS AND DISCUSSION

Definition of Money Laundering

Money Laundering has been around for quite a long time. It is said to have its origins from the mafia's ownership of Laundromats, a laundry company, in the US in the 1930's. Organized criminals were making so much money from extortion, prostitution, gambling and bootlegging; they needed to show a legitimate source of the money. Revealing such crime was difficult, but fortunately, the crime was proved and money laundering, since then, identified as a crime.⁷

The term of Money laundering came from the word 'money', which means cash, or notes, and the word 'laundering', which represent washing or turning the dirty into clean. Literally, money laundering refers to the process of putting illegal or dirty money through a cycle of transactions, or washed, so that it comes out the other end as legal or clean money. This term then further defined as a series of activities aiming to hide or to disguise the illegally obtained funds, and then converting them into appeared legitimate income from legitimate source.⁸

Welling (Sarah N Welling) defines money laundering as 'a process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate'⁹ Furthermore, Pamela H. Bucy points out that money laundering is the concealment of existence, nature of illegal source of illicit fund in such a manner that the funds will appear legitimate if discovered'¹⁰

There have been various definitions regarding money laundering, as above, as defined by scholars, investigation institutions, business people, governments, and other organisations.¹¹ To wrap up these various definitions, Sutan Remy Sjahdeini infers that money laundering is:

'a series of activities and processes committed by a person or organization towards illegitimate funds, which generated from crimes with the intention of disguising or hiding the origin of the funds, in the legitimate financial system, from governments or agencies authorized in persecuting crimes, so that those funds could be withdrawn as legitimate money'¹²

Article 1 point 1 of Law 25 / 2003 about the Amendment of Law 15 / 2002 about Money Laundering states that money laundering is an attempt of placing, transferring, diverting, spending, paying, donating, taking abroad, and changing the form of money. It can be committed by exchanging the money with money or other portfolios, as well as other actions towards the money or wealth that are known or deserve being suspected as proceeds of crimes with the intention of hiding or disguising the origin of the wealth, so that it appears as legitimate wealth.¹³

⁶ Amiruddin and Zainal Asikin. (2016). *Pengantar Metode Penelitian Hukum*, Cet. 6, Jakarta: PT. Rajagra findo Persada, p.166.

⁷ N.H.T. Siahaan. (2008). *Money Laundering dan Kejahatan Perbankan*, Jakarta: Jala Permata, p. 5.

⁸ Adrian Sutedi. (2013). *Pasar Modal Mengenal Nasabah Sebagai Pencegahan Pencucian Uang*, Bandung: Alfabeta, p. 9.

⁹ Sarah N Welling. Smurfs. (2003). "Money Laundering and The United States Criminal Federal Law", *Jurnal Hukum Bisnis*, Vol 22, No.3, p. 5.

¹⁰ Pamela H. Bucy. (1992). *White Collar Crime, Case and Materials*. St.Paul Minn: West Publishing Co, p. 128.

¹¹ As from Hana Krisnamurti, *Pembuktian Tindak Pidana Pencucian Uang (Money Laundering)*, <https://media.neliti.com/media/publications/281767-pembuktian-tindak-pidana-pencucian-uang-1900ff9e.pdf>, (accessed at 01/09/2019), p. 2.

¹² *Ibid.*

¹³ Article 1 paragraph (1) Act Number 25 of 2003 Concerning Amendment of Act Number 15 Year 2002 Concerning Money Laundering.

It can be inferred from several definitions above that money laundering is activities committed by a person or organization towards 'dirty' money, which resulted from crimes, with the intention to convert the illegitimate incomes and to hide the origin of the money illegally from governments or agencies authorized in prosecution, by placing the money in the financial system, so that the money could be withdrawn from the financial system as 'clean' or legitimate income¹⁴

Augmented Categories of Crimes in Relation to Money Laundering

Circumstances leading to the establishment of Law of Money Laundering are as follow:

1. Money laundering prevention and eradication attempts require a solid legal standing to guarantee legal certainty, and the effectiveness of law enforcement, investigation, and returning the illegitimate proceeds.
2. Investigation of proceeds of crimes generally is conducted by financial institution through mechanism regulated in the laws and regulations. Financial institutions play a key role, in particular, in applying the principle of recognizing customers and reporting suspected transaction to financial intelligence unit to be analyzed and delivered to investigators.
3. Financial Action Task Force (FATF) on Money Laundering has issued an international standard for countries to follow, in preventing and eradicating money laundering and terrorism, which is known as Revised 40 Recommendations 9 Special Recommendations (Revised 40+9) FATF. Several of the guidelines are augmented reporting parties, including gem and jewel sellers, and vehicle sellers. In preventing and eradicating money laundering, it is essential to organize regional and international cooperation through bilateral or multilateral forum, in order to minimize the intensity of crimes that generate or involve big money¹⁵

In Indonesia, combating money laundering had begun since the establishment of Law 15/2002 about Money Laundering, followed by its replacement by Law 25/2003 about the amendment of previous law. In the process, nonetheless, these laws had not been implemented to the fullest as they had legal flaws that led to ambiguous interpretations. Furthermore, these laws did not regulate the shift of burden of proof. Moreover, limited access towards information, limited scope of informer and limited report categories, as well as task and authority obscurity for the law enforcers contributed to the laws' flaws. Addressing the issue, a more comprehensive law, Law 8/2010 about Money Laundering Prevention and Eradication was established to replace the previous one.

Money laundering is, naturally, inseparable to other crimes, from which illicit money are generated. Consequently, as the first step to prevent or even eradicate money laundering, origins of proceeds of crimes, which might be followed by money laundering, are supposed to be identified and categorized. Over the years, the categories of proceeds of crimes that may lead to money laundering have been expanded and augmented. In Law 15 / 2002, origins of proceeds of crimes had been (a) corruption, (b) bribery, (c) smuggling, (d) workers smuggling, (e) immigrant smuggling, (f) banking, (g) drugs, (h) psycho tropics, (i) human, women, and children trafficking, (j) black market gun trade, (k) kidnapping, (l) terrorism, (m) theft, (n) embezzlement, and (o) fraud¹⁶

¹⁴ Adrian Sutedi, *Op.Cit.*, p. 12-13

¹⁵ Dian Andriawan. (September 2006). "Pengaturan Kejahatan Money Laundering (Pencucian Uang) Di Beberapa Negara", *Jurnal Hukum Prioris*, Vol 1. No 1, p. 48

¹⁶ Article 2 Act Number 15 Year 2002 Concerning Money Laundering

In Law 25/2003, those categories were augmented, and the area of the crime was expanded. Augmented categories are (q) cheating, (r) money counterfeiting, (s) gambling, (t) prostitution, (u) offense in taxing, (v) offense in forestry affairs, (w) offense in environment affairs, (x) offense in marine affairs, or other crimes that are sentenced 4 years or more in prison. While the locus of crimes is both in and out of Indonesian region, as long as the offense was convicted as crimes according to Indonesian law¹⁷

As for the newest law, Law 8/2010, the categories are added, including offense in stock market, insurance, and customs. These offenses represent white collar crimes. Moreover, this law regulates that the types of proceeds of crimes include actions that are recognized, or that deserve to be suspected to be used or to be about to be used, directly or indirectly, for supporting terrorism activities, terrorist organization, or individual terrorist¹⁸

According to the types of proceeds of crimes added over the years, key points regarding the law that are outlined are as follow:

1. Crimes that are categorized as sources of illicit money, which later would be 'washed' through money laundering are not only conventional crimes, such as theft, bribery, or fraud, but also transnational crimes, extraordinary crimes, and white-collar crimes.
2. United Nations Office on Drug Trafficking (UNDOC) identified transnational organized crimes as big businesses. In 2009, such business generated around \$870 billion, which was comparable with 1,5% Global GDP. This amount was six-time larger than the accumulation of grant for developing countries in 1997¹⁹. According to Global Financial Integrity report, it was pointed out that from 11 types of transnational crimes, including drugs smuggling, black market gun trade, human trafficking, internal organ trafficking, and fisheries trafficking, generated around \$1,6 trillion up to \$2,2 trillion annually. These crimes are definitely threatening local and national economy, detrimental for environment, as well as harming health and disturbing public interest.²⁰ These huge amounts of money were highly likely subject of money laundering. In the Indonesian law about money laundering in Indonesia, transnational crimes include immigrant smuggling, workers smuggling, drugs trade, fisheries and marine offense, and human, women, and children trafficking.
3. White collar crime is a type of crimes that involves official position. Classical concept of this crime is that the crime is mostly related to public sector, although several are affiliated with private one in the form of corporation²¹ including in such crime are corruption, banking, taxing, and customs related crimes, which are potential sources of illegal incomes that are also highly likely to be converted to clean money.
4. Indonesian law also covers proceeds of crimes that are not explicitly regulated. This is as stated in Article 2 paragraph (1) point (z). This clause is practical for anticipating types of crimes that are not stated explicitly yet are potential to be sources of money laundering. Such crimes could be committed in or out of Indonesian region. Nonetheless, in some circumstances,

¹⁷ Article 2 Act Number 25 of 2003 Regarding amendments of Act Number 15 Year 2002 Concerning Money Laundering.

¹⁸ Article 2 paragraph (2), Act Number 8 Year 2010 Concerning Money Laundering.

¹⁹ UNDOC, *Transnational Organized Crime –The Globalized Illegal Economy*, https://www.google.com/search?safe=strict&ei=NpeWXbX3EM6S9QPgjamIag&q=transnational+crimes+pdf&oq=transnational+crimes+pdf&gs_l=psy-ab.3..0j0i22i3017.25170.25885..26236...0.2..0.207.667.0j3j1.....0....1..gws-wiz.....0i71j0i8i67.2TXHKVdM-XU&ved=0ahUKEwi16r-msYHIAhVOSX0KHeBGCiEQ4dUDCAo&uact=5#, [accessed at 01/09/2019], p.1.

²⁰ Channing May, (Maret 2017), *Transnational Crime and the Developing World*, https://www.gfintegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf, [accessed at 01/05/2019], p.xi.

²¹ Firman Firdausi dan Asih Widi Lestari. (2016). "Eksistensi 'White Collar Crime' Di Indonesia:Kajian Kriminologi Menemukan Upaya Preventif". *Reformasi*, Vol. 6, No. 1, p. 1.

double criminality principle could be applied. The principle indicates that an offence is convicted as an offence as long as the similar law also exists in countries in question.

CONCLUSION

To wrap up, laws and regulations regarding money laundering is fundamental in identifying the crime and its series and flows, preventing it, and even eradicates it. Categories of original crimes that illicit money generated from has been augmented over the years, along with the amendment of the law regarding money laundering, from Law 15/2002, Law 25/2003, up until Law 8/2010. Categories of original crimes include conventional crimes, transnational crimes, white-collar crimes, and other crimes committed in Indonesian region as well as outside the region, with double criminality principle.

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