



Government Anticipation in Tackling Crime of Money Laundering (*White Collar Crime*) in Indonesia

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ABSTRACT

Indonesia is currently racing with time related to the increasingly rampant criminal corruption committed by state officials who have a very significant impact also on the increase of TPPU. One of the perpetrators' efforts to avoid him from the law by hiding or obscuring his crime through money laundering takes advantage of the mechanism of financial traffic.

Money laundering practices are very often committed against money earned from crime. The practice is simply a way to disguise or conceal the proceeds of a criminal offense. Money laundering is then used as a shield for the proceeds of the crime. Therefore, the existence of provisions or regulations on TPPU is very beneficial to minimize the velocity of funds from the crime.

The latent danger of corruption has touched almost all levels of society, not only in relation to state organizers, power and policy, but also to the presence of private parties. Various methods have been taken to eradicate it, both preventively and repressively as well as by making changes to the method of eradication. One of the objectives of repressive action is to restore the State's losses. Corruption has resulted in heavy losses to the state's finances and undermines the stability of the national economy.

The state losses in the form of assets resulting from corruption in returning it are not easy, the complexity of the settlement of criminal cases is one of the most dominant causes, not to mention the settlement of cases of corruption, especially those that have obtained permanent legal force, in relation to the spoils and payments replacement money, suspects, defendants, or convicted persons who disappeared at the time the proceedings were underway.

The handling of TPPU cases has significance for the return of state assets related to the eradication of corruption. Property becomes a very fundamental object in relation to corruption and TPPU. Money laundering is always associated with property derived from a crime. The outcome of corruption is certainly related to assets or property acquired in an unauthorized and dirty manner. The prosecution of the perpetrators of corruption is not only related to the problem of his actions but also the repression of the result of his act of seizure of assets or assets of the perpetrator.

Presidential Instruction Number 5 of 2004 on the Acceleration of Corruption Eradication issued by the President on December 9, 2004 to prove the seriousness of the government in criminalizing the money laundering of corruption results as well as a legal instrument that ordered law enforcement officers to immediately restore the state loss (asset recovery).¹

The handling of TPPU, is a tough task for PPATK, especially to detect the occurrence of TPPU and further criminal acts. So the prevention and eradication of money laundering

1 Article 1 paragraph (13) of Law Number 8 Year 2010 on the Prevention and Eradication of TPPU.

requires a systematic and comprehensive mechanism, which includes the detection process and legal process.²

The practice of money laundering through bank mechanisms is possible because banks are the most vulnerable financial institutions, and are subjected to the practice of Money Laundering whereby banks have a clearing system, international correspondence and a secret banking system.³

The role of the financial and government industry (PPATK) in preventing and eradicating TPPU becomes a barometer. It is based on banking and other financial services providers as front lines, in anti money laundering regimes. It is expected that financial institutions together with employees are at the forefront, in an effort to combat illegal financial activities.⁴

Keywords: Money Laundering, criminal acts, corruption, PPATK

1. PRELIMINARY

1.1. Background Issues

Today, resistance to money laundering activities is increasing. Some of the things that drive governments to combat money laundering, especially are concern for organized crime. The results have not been touched by the applicable legislation. The magnitude of the attention of various nations to this crime is mainly due to the impact it has caused, among others, the instability of the financial system, economic distortion, and possible disruption to the control of the amount of money in circulation. This can happen because of the accumulation of funds that can be exploited by money laundering activities that include a very large amount.⁵

General Provisions Article 1 point 1 of Law Number 8 Year 2010 concerning Prevention and Eradication of Criminal Act of Money Laundering (hereinafter abbreviated as Law of TPPU) explains that money laundering is any act which fulfills the elements of crime in accordance with the provisions of the law. this law.

The proceeds of crime under Article 2 of the TPPU Law are assets acquired from corruption, bribery, narcotics, psychotropics, smuggling of labor, immigrant smuggling, banking, capital markets, insurance, customs, excise, trafficking, illegal weapons, abduction, theft, embezzlement, fraud, fraud, gambling, prostitution, taxation, forestry, the environment, marine, fisheries and other crimes punishable by imprisonment of 4 (four) years or more, in the territory of the Unitary State of the Republic of Indonesia (NKRI) or outside the territory of NKRI and criminal acts under Indonesian law.

The background of the perpetrators of the TPPU in carrying out its action is to remove or perpetrate the perpetrators from crimes obtained from proceeds of crime, to separate the proceeds of crimes from crimes committed, to enjoy the proceeds of crime without any suspicion from the authorities. There is a tendency that the cultivation of proceeds of crime for money laundering purposes, not merely for profit, the principals are more interested in protecting the proceeds of their crimes. Money launderers never consider whether the funds invested are beneficial to the recipient country's funds or investment. This results in a country's economic growth can be disrupted.

2 Made Sadguna. Reports To detect Money Laundering, In Optimizing TPPU (Jakarta, KHN, 2006) p. 118.

3 Warsono Santoso. Anticipatory Efforts in Money Laundering Operations. In Optimizing TPPU. (Jakarta, KHN, 2006) p. 79 .

4 Yunus Husein, *Urgency Act of TPPU, In Optimizing TPPU*. (Jakarta: KILN, 2006) p. 80.

5 Pathorang Halim, *Law Enforcement of Money Laundering Crimes in the Era of Globalization*, Total Media, Yogyakarta, 2013, p. 1.

In the case of money laundering actors who feel disturbed by their interests, they can at any time withdraw their investments, eventually resulting in the business sector collapsing and exacerbating the economic conditions of the country.⁶ TPPU actors can also threaten the government's efforts in implementing the privatization program. With substantial fund holdings, they can buy privatized state-owned companies, even though they are much higher than other prospective buyers.

The rise of money laundering activities and crime in the financial sector (financial crimes) in a country can lead to crisis of market confidence in the system and financial institution of the country concerned. The destruction of that reputation, has implications for the loss of legitimate business opportunities. This in turn can disrupt the sustainability of development and economic growth.⁷

Money laundering is not a simple concept because the problem is so complex that it is quite difficult to formulate its crime objectively (criminalization) objectively and effectively. This is reflected from the limitations of the understanding that quite a lot and vary. Different definition of definition (definition) also occurs in countries that have anti money laundering legislation. Likewise, among the competent international institutions and organizations in the field of prevention and eradication of TPPU.⁸

In Indonesia. Recognized or not, the eradication of TPPU faces obstacles, both technical and non technical. Although economic crimes that reach the court amounts are very large (especially those who are still in the investigation stage of the number is much more), for example from the composition of banking crimes, illegal logging, smuggling and others. All such crimes should be brought to justice with two counts at the same time, namely the crime of origin and estuary of proceeds of crime as TPPU.

Indonesia, like many other countries, is paying great attention to organized transnational crime, such as terrorism and money laundering. One of the real forms of concern is the promulgation of Law No. 8 of 2010 on the Prevention and Eradication of TPPU on October 22, 2010.

This legal product provides a solid legal foundation for the prevention and eradication of TPPU, as well as concrete evidence of Indonesia's commitment to work together with the international community to help ward off any form of money laundering crime in its various dimensions.

The magnitude of the attention of nations to this crime is mainly due to the magnitude of the impact it has caused, among others, the instability of the financial system, economic distortions, and possible disruption to the control of the amount of money in circulation. The accumulation of funds that can be exploited by this activity includes a very large amount, although it is difficult to estimate the exact number due to the nature of its disguised activities and, not reflected in statistical figures.

In general there are several reasons why money laundering is fought and declared a crime. First, the influence of money laundering on the financial and economic system is believed to have a negative impact on the world economy. Secondly, the enactment of money laundering as a crime would make it easier for law enforcement officials to confiscate proceeds of criminal offenses that are sometimes difficult to confiscate, such as assets that are difficult to trace or transfer to third parties. In this way the fugitive money can be prevented.

6 Muhammad Yusuf, et al, *Summary of TPPU Prevention and Eradication Provisions, The Indonesia Netherlands National Legal Reform Program (NLRP)*, Jakarta, 2011, p. 13.

7 *Ibid* ., p. 14 .

8 Pathorang Halim, op. cit., p. 3.

In many countries by declaring money laundering as a criminal offense, it is the basis for law enforcement to prosecute third parties deemed to be impeding law enforcement efforts.

Thirdly, with the existence of a certain number of transaction reporting systems and suspicious transactions, it makes it easier for law enforcement to investigate criminal cases to the characters behind them. These figures are difficult to trace and capture, as they are generally not seen in the execution of a criminal offense, but many enjoy the proceeds of the crime.

Recognizing the threat of TPPU as a serious crime (extraordinary crime) that can disrupt the stability of the financial system and economic system, and can have a broad impact on the life of society and nation, the efforts of prevention and eradication must be done through extraordinary steps conceptually, sporadically and thoroughly (comprehensive).

Given that money laundering crimes are mostly perpetrated by transnational organized crime across state boundaries, international cooperation between the Financial Transaction Reporting and Analysis Center (PPATK) with law enforcement agencies and PPATK-type institutions overseas is indispensable.

Efforts to prevent and eradicate money laundering crime can not be done by PPATK without the help of others. In this regard, the support and cooperation of all parties, especially the financial industry, law enforcement agencies (police, prosecutors, and judges), the press and the public at large are indispensable.

1.2. Discussion

In the discussion, the author will use several approaches, namely statute approach, conceptual approach, historical approach, and case approach.

The statutory approach is used, as it will examine the rule of law by reviewing legislation relating to the characteristics of the TPPU under Law No. 8 of 2010. This approach requires, examines, and studies the consistency and conformity of regulations one legislation with another.

Conceptual approach, is a research, which starts from the view and doctrine that developed in the science of law. By looking at these views and doctrines, legal notions will be found, as well as legal concepts, in accordance with the subject matter or material content of the law and can make legal arguments to answer the material content of the law that became the starting point of research.

Historical approach is done to know the background of the birth of legislation. By knowing the background of history made the rules of legislation. Law enforcers will have the same interpretation of the legal issues set forth in the legislation in question. The background of the rules of the legislation being studied and the development of the arrangements on the issues encountered in the research problem.

The case approach in normative research aims to understand the application of legal norms applied in legal practice. Especially against the cases that have been disconnected, as can be seen in the jurisprudence of the cases the focus of the study.

A normative study, these cases are studied to obtain an overview of the effects of normality in a rule of law; and use its analysis as input material in legal explanation. The case approach is carried out by examining the cases that have been terminated in relation to the problems at both the *judex factie* level and the decisions that have had permanent legal force. Case studies are the study of specific cases of various aspects of the law.

1.3. Money Laundering

Money laundering, is now a very serious threat to every country in the world. This is mainly due to the adverse effects it has caused, among others, the instability of the financial system, the economic system of the country and even the world as a whole. As a new dimensionless crime, money laundering activities take on sophisticated forms, techniques, and modes. Even its activities are transnational (transnational crime) and transcend the boundaries of the country (cross border).

With actors classified as "white collar", money laundering becomes a very complicated crime in form, technique, and mode. Money laundering is a crime that: (1) invisible (low visibility); (2) very complex (complexity); (3) the complexity of the provision of the criminal responsibility (diffusion of responsibility); (4) the victims' uncertainty (diffusion of victims); and (5) difficult to detect and prosecution (weak detection and prosecution).⁹

It is well known that through money laundering activities, criminals can hide the origin of money or property¹⁰ the proceeds of crime, and in doing so they may enjoy and use the proceeds of the crime freely.¹¹ Money launderers always try to avoid tracking of their crime by the authorities in various ways, including exploiting the weaknesses of existing legislation.¹²

Many countries are facing difficulties in handling money laundering, including Indonesia. Although Indonesia has adopted anti money laundering approach since 17 April 2002, marked by the enactment of Law Number 15 Year 2002 regarding TPPU, it has been revised by Law Number 25 Year 2003), but International Narcotics Control Strategy Report (INCSR) issued by Bureau for International Narcotics and Law Enforcement Affairs, United States Department of State in March 2003, still incorporated Indonesia in a major row of laundering countries in the Asia Pacific region.

There are 53 countries in Asia Pacific that belong to major laundering countries, including Australia, Canada, China, China Taipei, Hong Kong, India, Japan, Macao China, Myanmar, Nauru, Pakistan, Philippines, Singapore, Thailand, United Kingdom and United States. The predominantly laundering countries are awarded to countries whose institutions and financial systems are contaminated by international narcotics businesses that are suspected to involve huge amounts of money.

Furthermore, INCSR also highlighted several issues, namely Indonesia's efforts to combat illicit drug trafficking that is considered inadequate, the increase of drug abuse rate in

⁹ See Harkristuti Harkrisnowo, "Money Laundering Criminalization", paper presented at the National Video Conference organized by PPATK BI, UL UGM, USU, Undip, Unair, and Elips in Jakarta, May 29-October 2004, p. 2-4.

¹⁰ According to Sutan Remy Sjahdeini, the term "property" used in the TPPU Law is a translation of the term "property" used in various laws concerning money laundering in various countries. Although the law and its crime are called money laundering, but the obiek is not limited to money alone (Sutan Remy Sjahdeini, TPPU's Ins and Outs Financing, Jakarta: PT Pustaka Utama Grafiti, 2004, p.167 -168).

¹¹ "Money Laundering: a Banker's Guide To avoiding Problems", (occ.treas.gov/laundry/org.htm), p.2. Compare with Paul Allan Scott, Reference Guide to Anti Money laundering and Combating the Financing of Terrorism (Washington D.C: the World Bank, 2003), p. 1-8-9, also with Lim Choon Kiat, Kee Leok Soon and Josef Eby Ruin, *Guide to the Management of Anti-Money laundering and Counter-Financing of Terrorism*, (Selangor-Malaysia: Leeds Publication, 2005), p. 2-4.

¹² In Indonesia, many of the perpetrators of corruption and other crimes whether or not have been processed by law, is not known with certainty the number of proceeds of crime that has been seized and seized for the state. See Teten Masduki (ICW Coordinator), "Corruption Returns: Some Notes", a paper presented at the National Seminar on "Synergy Eradication of Corruption: Role of PPATK and Asset Recovery Challenges" in the framework of the 4th Anniversary of PPATK. Jakarta, April 4, 2006.

the country, and the rampant illegal trafficking of drugs from and to Indonesia involving countries such as Thailand, Burma, Singapore, Afghanistan, Pakistan and Nigeria.¹³

Advances in technology in the field of information, especially the use of the Internet allows organized crime committed by transnational organized crime organizations to be easy to do. Bank Secrets are often considered strictly enforced even though the law on TPPU has eliminated these provisions. It is still possible to use a pseudonym or anonymously by bank customers, much influenced by the weak implementation of KYC by the financial services industry.

Yenti Garnasih¹⁴ noted that there are at least 2 (two) major problems in the implementation of anti-money laundering law, namely bank secrecy and verification. From the aspect of bank secrecy, customers have the right to privacy and are protected under the law of bank secrecy. While from the aspect of proof, the crime of money laundering is not a single crime, but double.

The demand for an act of money laundering requires the proving of two crimes at once, the proof of the follow-up of the crime itself and the proof that the money is illegal. In other words, the enforcement of the TPPU Law can not work if there are no other supporting elements.

1.3.1. Money Laundering as International Crime

Globalization is a characteristic relationship between the earth's population that goes beyond conventional boundaries, such as nation and state. In the process, the world has been expressed (Compressed) and there is intensification of awareness of the world as a whole.¹⁵

Globalization, as a process has indeed accelerated since the last few decades, but the actual process has been going on since long ago, solely because of the predisposition of humankind to jointly live in one region and therefore conditioned to relate and establish relationships one another. Such circumstances suggest that the relationship between the power of the nations of the world will greatly color the social, economic and legal problems of a country.

Although the problem was initially without domestic but gradually revealed the strength of inter-nation behind him. From this point on, the problem becomes more complicated and intellectuals trying to describe the phenomenon that initially has a domestic direction, is local and has immediately entered the global level. Globalization also contains deep meaning and takes place in all aspects of life such as economics, politics, socio-culture, science, and technology.¹⁶

If the world economy wants to prosper in a changing atmosphere like now trade should play a vital role. Richard Rosecrance, describes how much power a nation can bring about through its trading capabilities, trading activities capable of replacing regional expansion and military wars as key to the welfare and achievement of international powers. It can be concluded that the benefits of international trade and cooperation today far outweigh the benefits of military individuals and regional expansion.¹⁷

¹³ *The Relationship Between the Crime of Illicit Circulation of Drugs with the TPPU (Paper)*, Spoken by the Indonesian Delegation at Forty-Seventh Session of The Commission on Narcotic Drugs, .. It was held in Vienna, 15-22 March 2004.

¹⁴ Yenti Garnasih, *Anti Money Laundering as a Strategy to Combat Financial Crimes (profit Oriented Crimes)*, *Progressive Legal Journal*, PDIH Undip, 2006, Semarang, p 40.

¹⁵ Roland Robertson, *Globalization, Social Theory and Global Culture in Problematic Globalization* Perspective Sociology of Law, Economics and Religion, (Surakarta: Muhammadiyah University Press, 2001). p. 3.

¹⁶ *Ibid*

¹⁷ Richard Rosecrance, *The Rise of the Trading State* Translation Budiono Kusumohaningdjojo under the heading "The Rise of the State of Commerce", in *Hatta Legal and Non -International Trade Law Aspects of GATT and W TO Systems*, STHB PRESS, 1968). p.1

It is undeniable that the globalization of the world economy has also affected the economies of Indonesia and the developing countries, so the development process is getting more complex. The complexity of economic problems is marked by the phenomenon that the development of a country today has increasingly been associated with changes occurring in other countries.¹⁸

The crimes include corruption, bribery, smuggling, labor smuggling, immigrant smuggling, change, illicit trafficking, narcotics and psychotropic drugs, slave trade, women and children, arms trade and white collar crimes crime). These crimes have involved or wasted an enormous amount of wealth.

Property derived from various crimes or criminal acts, generally not directly spent or used by the perpetrators of crime, because if directly used would be easily tracked by law enforcement on the source of the acquisition of these assets. Usually the perpetrators of crime in advance seek for wealth acquired from the crime into the financial system

In this way, the origin of the property is expected to be untraceable by law enforcement. Attempts to conceal or disguise the origins of assets acquired from criminal offenses referred to in this law are known as money laundering.

1.3.2. Money Laundering Crime Under Indonesia's Legal System

The development of national law, as an attempt to establish the law within a larger context. This is related to the increasing globalization of the world's problems over the last few decades. The golden period of the nations that can make their legal system according to what they wanted a few hundred years ago, is now past.

Internationalization of the legal spheres has become a reality distracted from the twentieth century to the twenty -first century, especially for so-called developing countries, as the world undergoes a global restructuring in the economic field that causes the relations of nations in the world to be internationalized as part of the process the.

Since the last few decades the industry has become part of the globalization process, especially in the process of global economic restructuring. The industry is increasingly accepting its role in the process and consequently must structuring it in order not to hinder the process of global reform. Correspondingly, the function of law has changed as the market economy system, clearly different from the legal function in the planet planet system.

Freedom of contract, of course, will no longer be fully enforced so that economic activity and business activities are basically no longer dominated by the private law rules of *rechtelijk*, but the *publiekrechtelijk* and even then very continuous to the *staatsrechtelijk*. Here the law tends to be used as the new giver of authority to the government (and all its apparatus) or also as a legitimator-giver to every act of government (and all its officers).¹⁹

The acceptance of the doctrine of law as a tool of social engineering in developing countries that adheres to the civil law system (as in present-day Indonesia) will in fact implicitly accept the idea of centralized control over all spheres of life, both business and non-business lawmakers .

Here, the regulation not only through the product of the law but also through the executive decisions will double, until it tends to the degree of over-regulation of almost all aspects of the life of the people of the nation, in such a way that it is easy to imagine that the

¹⁸ Roland Robertson. *Globalization, Social Theory and Global Culture in Problematic Globalization Perspective Sociology of Law, Economics and Religion*. Opcit . VIII.

¹⁹ Roland Robertson, *Globalization, Social Theory and Global Culture in Problematic Globalization Perspective Sociology of Law, Economics and Religion*. Opcit. p. 25

law now no longer has the position of supremacy, but has been degraded only as an instrument of control in the hands of the government (who have been too obsessed with the success of development).

So the principle of rule of law that gives a great role to the judges to guard it becomes no longer widely understood in practice and distorted into a reality rule (of executive rules) by using or not too expensive if to miss using law. The development of national law, in the future, is closely related to the first two points of moral relations between citizens and the law (state), the two capabilities of the legal system and our political system in fulfilling the people's demand for justice.²⁰

The importance of the rule of law enables people living under the law to foresee the consequences of their behavior. The simplest way to unify the rationality of the law, is to judge from the perspective of the purpose underlying and justifying its birth.

In the framework of UUDN-RI Year 1945, our legal objectives are formulated to protect the entire nation of Indonesia and the entire blood of Indonesia, realizing social justice for all people and so on. When people talk about the law, what is usually referred to is the legal system (official) that is, the system run by the government that we support by paying taxes.²¹

Economics sees the issue of money laundering only from the principle of benefit, that is what the impact of the way of transition and how the use of money from money laundering on the stability of macroeconomic, economic efficiency and distribution of income and wealth of society.²²

In turn, disruptions to the stability and decline in economic efficiency will accelerate the rate of growth. Therefore, the economic perspective is not always in line with the legal perspective. Legal or not, any money generated in a way that disrupts macroeconomic stability, reduces economic efficiency and creates an unfair redistribution effect will lower the level of community prosperity.

On the other hand, economic distortions can be sourced from government policy. In Indonesian criminal law, money laundering crime, in connection with Article 480 of the Criminal Code, is "Threatened with a maximum imprisonment of four years or a fine of not more than nine hundred rupiah for receiving".

In the development of the national legal system various elements must be built integrally, because one element is a complementary factor both in functional relationships with each other, for example between law substance and law enforcement. Between these two aspects, it is essentially simply distinguished but inseparable because:²³

- a. The success of a legislation depends on its application. If the law enforcement officer can not function properly, the legislation that however perfect does not or lacks meaning in accordance with its purpose.
- b. Decisions in the context of law enforcement are the instruments of control for the accuracy or lack of a legislation. The verdict is an input for the updating or refinement of legislation.

²⁰ *Ibid* ., p. 36

²¹ Lawrence M. Friedman, *American Law an Introduction Second Edition*, Wishu Basuki Translation of American Law An Introduction, PT. Tatanusa Jakarta Indonesia, 2001, p. 26.

²² Anwar Nasution. *Sources, Processes, Mechanisms and Economic Impact of Money Laundering*, in Koespramono Irsan, *The Role of National Laws in Combating Money Laundering*, Paper, Seminar on Money laundering held BP HN, March 4, 1997 .

²³ Bagir Manan. *Development of National Legal System in the Framework of Establishing the Unitary State of the Republic of Indonesia as a State of Law*, Regular Course Papers Force XXX National Defense Institute Ministry of Defense and Security, Jakarta, October 29, 1997.

- c. Law enforcers are the dynamics of legislation, through decisions in the framework of law enforcement, legislation is alive and applied in accordance with the needs and development of society. Even poor legislation will still achieve its goals or objectives when in the hands of good law enforcement. Therefore, political establishment and good law enforcement must be accompanied also by the politics of human resources development, work procedures and organizing and infrastructure and facilities.

1.3.3. Stages of Money Laundering Process

It is not easy to prove the existence of money laundering, because the activities are very complex, but experts have successfully classified the process of money laundering into 3 (three) stages.²⁴

- a. Stage Placement. This stage is an attempt to place funds generated from a criminal activity, for example by depositing the dirty money into the financial system. A sum of money placed in a bank, then the money goes into the financial system of the country concerned. So for example through smuggling, there is the placement of cash from an illegal with the money obtained legally. Another variation is by placing the demand deposit into bank deposits into stocks, converting into foreign currency.
- b. Layering Stage. The second stage is by layering. Various ways can be done through this coating stage whose purpose is to remove the traces, either the original features or the origins of the money. For example, transfer funds from various accounts to other locations or from one country to another and can be done many times, split the amount of funds in the bank with the intention of obscuring its origins, transferring in the form of foreign exchange, buying shares, conducting derivative transactions and others. Often also happens that the depositors of the funds are already layers of a distant, because it has been sought many times save save before. Another way for example the owner of dirty money asking for credit in the bank and with dirty money used to finance a business activity legally. By doing it this way, it appears that his business activities are not legally the result of the gross money but from the acquisition of the bank's credit.
- c. Stage Integration. This stage is the stage of reuniting the dirty money after going through the placement or layering stage above, which for the next money is used in various illegal activities before and in this stage then dirty money has been washed.

The above process begins when the perpetrator combines money from multiple sources. In the second stage the offender makes a personal deposit in the bank. The funds are then through wire transferring (electronic funds transfer) sent to other banks abroad. Easily the perpetrators can manipulate and avoid the reach of investigators from countries that have enacted anti money laundering.

The next stage, agitation involves using the money with a legitimate business opportunity to be placed anywhere. After a few transactions will be difficult to follow the money track because it can not be distinguished from the money in circulation. When reaching this stage, money will be halal and secure without a clear trace of the source mans.

In detail and concretely, the operational mode of money laundering crime, there are 13 (thirteen) modes, namely:²⁵

- 1) Loan Back Mode. By borrowing his own money. More detailed mode in the form of direct loan, which is by borrowing money from foreign companies, ie a kind of shadow

²⁴N.H.T Siahaan, Op. Cit, p. 9-10

²⁵N.H.T Siahaan, Op. Cit, hal 13-18.

companies (immbolen investment company), whose directors and shareholders is he himself. In the form of back to loan, where the perpetrator borrow money from a foreign bank branch in his country . The borrower with the foreign bank guarantees in standby letters of credit or certificate of deposit that money is obtained on the basis of money from crime. The borrower is then not returned, so the bank guarantee is withdrawn. Another form of this mode is the parallel loan, which is international financing that acquires assets from abroad. Since there are restrictions on currency barriers, it is sought by companies abroad to equally take the loan and the funds from the loan are exchanged for each other.

- 2) C-Chase Operation Mode. This mode is quite complicated because it has the nature of twists and turns as a way of removing traces. Examples are like the case in BCCI, where the couriers came to a bank in Florida to save \$ 10,000 in funds, to escape the reporting obligation. Then transferred from New York to Luxembourg, from Luxembourg to bank branch in England, then converted into Certificate of Deposit to guarantee the same amount of loan taken by people in Florida. Loan was made in the country of Karabia, famous for its tax haven. Here the loan is never billed, but only by diluting the certificate of deposit alone. From the drug dealer's account and there the money is distributed according to the needs and the business is completely dark. The results of this investment can be washed and safe.
- 3) Modes of international trade transactions. This mode uses the L/C document. Because the focus of bank affairs, both the correspondent bank and the opening bank is the bank document itself and not about the state of the goods, then this can be the target of money laundering in the form of a large invoice of small items or even the goods are not there.
- 4) The mode of smuggling of cash or parallel bank systems to other countries. This mode smuggles some of the money's physical money abroad. In this way there are risks such as being robbed of being lost or caught in the examination, sought in electronic transfer mode, transferring from one country to another without the physical transfer of the money.
- 5) Acquisition Mode. The meaning is the company itself. For example, a company owner in Indonesia, who owns a company in Indonesia, has a dark company also in Cayman Island, a state tax heaven. The proceeds of business in Cayman are deposited on behalf of an existing company in Indonesia. Then the company in Cayman bought shares from companies in Indonesia (acquisition). In this way the owners of companies in Indonesia have the legal funds, because it has been washed through the sale of its shares in companies in Indonesia.
- 6) Real Estate Corousule Mode. By selling a property several times to companies within the same group. Money laundering actors own a number of companies (majority shareholders) in real estate. From one to another the companies in the property group do sales to other companies in the company's environment as well as the increasingly increasing sales price patterns. The goal is that through this transaction, the proceeds of the sale become white, in addition, minority shareholders can be withdrawn in the process of money laundering money. The same mode is also done in the capital market, ie the buyer shares only the companies in the neighborhood alone with a high bid price.
- 7) Specific Investment Mode. This particular investment is usually in the business of painting or antique transactions. For example, the perpetrator purchases the painting and then sells it to someone who is actually the order of the perpetrator himself at an expensive price. Paintings at an immeasurable price, can be set at such high sales prices can be viewed as legitimate (washed) funds.

- 8) Over Invoices or Double Invoice Modes. This mode is done by establishing an export-import company in his own country, then abroad (which is a tax heaven system) established also a shadow company (shell company). The company in this tax heaven country exports goods to Indonesia and the overseas companies make high purchase invoices and when made 2 invoices, it is called double invoices. In order for companies in Indonesia to survive, then the company is abroad provide loan. By way of this loan, dirty money in the company abroad.
- 9) Stock trading mode. This mode never happened in the Netherlands. In a case on the Amsterdam Stock Exchange, involving the Nusse Brink securities company, where some of these securities companies became money launderers. This mode of funds from its invested customers comes from black money. Nusse Brink creates 2 accounts for those customers, one for a loss-taking transaction, and one for a profit-making transaction. The account is attempted to be opened in a highly secure place of confidentiality protection, so it is difficult to trace who the beneficial owner of the account is.
- 10) Pizza Connection Mode. This mode is done by investing the proceeds of drug trade invested to get a Pizza connection, while the other side is invested in Karabia and Switzerland.
- 11) La Mina Mode. A case seen as a mode of money laundering occurred in the United States in 1990. Funds obtained from drug trafficking were handed over to wholesale dealers of gold and gems as a syndicate. Then gold bullion is exported from Uruguay with the intention that the import is legal. The money is kept in the design of a gold packaging box, then shipped to jewelers who are syndicated with drug mafias. The sale is done in Los Angeles. The cash proceeds were brought to the bank, with the intention that it would come from the sale of gold and gems and shipped to the Bank of New York and from this city sent to a bank in Europe through the country of Panama. The money eventually arrived in Colombia for distribution in the form of paying fees, for drug trade, but mostly for long-term investments.
- 12) Taking Deposit Mode. Established a finance company such as Deposit Taking Institutions (DTI) in Canada. DTI is famous for money laundering facilities such as chartered banks, trust companies and credit union. Cases of money laundering involving DTIs include telex transfers, exchange currency securities, government bond purchases and treasury bills.
- 13) False Identity Mode. By using the banking institution as a money-billing machine, by depositing in a fake name, using a safe deposit box to conceal the proceeds of crime provides a transfer facility so that it can easily be transferred to the desired place, or using an electronic fund transfer to pay off the illegal transaction. Save or distribute the dark transfer.

Next need to know how the perpetrators of money laundering, so that can be achieved the results of legal money. Methodically known 3 (three) methods in money laundering:²⁶

- a. Buy and Sell Conversions Method. This method is done through transactions of goods and services. Say an asset can be bought and sold to a conspirator who is willing to buy or sell more expensive than normal with a fee or discount. The price difference is paid with illegal money and then laundered on business transactions. Such goods or services may be altered as if they were legitimate results through personal or company accounts in a bank.
- b. Method of Offshore Conversions. In this way the dirty money is converted to an area which is a very pleasant place for tax heaven money laundering centers to be deposited in

²⁶ Ibid, hal 27-28

a bank in the area. In countries that include or have a tax heaven there is a system of tax laws that are not strict, there is a very strict system of bank secrets, business bureaucracy that is easy enough to allow a tight business secret and the establishment of a trust fund business. To support such activities, the perpetrators use the services of lawyers, accountants or financial consultants and reliable fund managers to take advantage of any gaps in the country.

- c. Method of Legitimate Business Conversions. This method is done through legitimate business activities as a way of transferring or benefiting from any proceeds of dirty money. The proceeds of this dirty money are then converted by transfer, check or other means of payment to be deposited in a bank account or transferred then to another bank account. Usually the principals cooperate with a company whose account can be used as a "terminal" to hold the dirty money.

1.4. Money laundering Law in Indonesia

Money laundering, is a legal term, whether a law or a Government Regulation, which is legally questioned is the legality of the source of the income or any such "illegal" property.²⁷

Thus, the bleaching of money may be referred to as a means or process to amend "haram" money which is actually produced from an illegal source so that it becomes "as if" comes from a legal or "lawful" source. Viewed from the perspective of law, the bleaching can be done through 2 (two) ways, namely legal and illegal. Legal means for example is through bleaching or tax forgiveness.

Illegal bleaching is referred to as "money laundering", because the legalization process of money "haram" the proceeds of crime is done like the process of cleaning dirty clothes in the washing machine. The issue of money laundering has lately become an interesting and challenging topic for all of us, economists, lawyers, and finance professionals, especially banks.

In line with technological developments and globalization in the banking sector, banks have become the main target for money laundering activities because it is this sector that offers many services and instruments in financial traffic that can be used to conceal the origin of a fund.²⁸

Through the banking system, criminal proceeds that flow or move beyond the boundaries of the jurisdiction of a state and the secret institution of banks that are generally upheld by banks are often used to protect the effort to obscure the origin of the funds. Facing the issue of money laundering today has become a global issue, countries in the world, especially developed countries, have a strong commitment to combat it through legal instruments and the establishment of institutions dedicated to combating money laundering.

Criminalization of money laundering²⁹ is actually a double criminalization, because the crime of narcotics, psychotropic, corruption and smuggling is a crime, then the result of the offense is used in all its forms (money laundering) in criminalization again. So it is inclined to the deliberate delict as contained in Chapter XXX of the second book of the Criminal Code.

²⁷ Achyar Illyas. *Money laundering Judging from Legal Perspective, and Economics*, Key note Speech, Seminar organized by UI Student Senate, August 23, 2001. Jakarta.

²⁸ Pande Raja Silalahi. *Money Laundering and International Financial System*. Paper, Seminar About Money laundering BPIIN Depkeh. Date. March 4, 1997 p. 8-9.

²⁹ Heru Suprpto, *Op.cit.* p. 10.

The draft Penal Code has formulated provisions that specifically regulate criminal penalties against money laundering resulting from narcotics, sales, economic crimes, corruption, including the imposition of sanctions for money laundering activities.

1.4.1. Eradication of Money Laundering Crime Based on Financial Transaction System

The financial system is linked to the financial institutions as well as the exchanges where the transactions occur, which can be detailed as follows: ³⁰ *First, the banking group including the central bank as the monetary authority. Second, non-banking groups such as non-bank financial institutions, insurance companies. Thirdly, banks, money market and capital markets.*

The means used in the activities of money laundering, it is clear that all elements of the financial system, can be exploited, thus in the effort to eradicate money laundering can be understood that the financial system has an important role in cutting or detecting the flow of illicit money that is tried to enter the financial system .

It is realized that there needs to be an integrated cooperation with other institutions, both public and private, that include. Government agencies include: Department of Justice, Police, Customs and others. The principals in the financial system are banks and non-banks. International organizations.

The disadvantage of "money laundering" activities is the decline in the credibility of national banks both internally and internationally so that it can paralyze the government structure of a country . In addition, if these crimes are left uninvited, they will be excluded from international relations, especially in international financial activities.³¹

However, the prudential principle in handling this case needs to be paid attention to the investigation apparatus because public trust is one of the factors that determine the credibility of the banking world. In the context of a description of the activities of crime organizations and their modus operandi and profitability there can be no doubt that this international cooperation should also be a priority and an integral part of the Government of Indonesia's national policy on law enforcement against transnational/international dimensions.³²

The financial system in Indonesia is run by central banks, pawnshops, insurance companies, and pensions, capital markets and financing institutions. Initially the authority and responsibility regarding the licensing of the bank was in the hands of the Minister of Finance after the issuance of Law Number 10 Year 1998 licenses are in the head of Bank Indonesia so that Bank Indonesia has the authority and responsibility to establish licensing, supervision and supervision of banks, and imposition of sanctions against banks, which do not comply with prevailing banking regulations.³³

Thus there is no longer a dualism concerning the holders of the banking authorities. While other financial institutions, the authority granting business licenses, fostering and supervising them are in the Special Finance Minister's supervision of a finance institution unless the venture capital company is conducted by the Ministry of Finance assisted by Bank Indonesia.

The combination of the weaknesses of the social system (including in the national legal system underdevelopment of the financial system is a factor why Indonesia can become

³⁰ *Ibid .*

³¹ *Ibid . 5.*

³² Rachmadi Usman, *Banking Law Aspects in Indonesia*, (Jakarta: Gramedia Pusaka Utama, 2001). P. 21 .

³³ *Ibid . p. 7-8.*

a haven for the business of obtaining haram money and at the same time to launder or whiten (money laundering). Illegal money bleaching process becomes easier because the combination of national economic integration with the economy has strengthened the integration of the national economy with the world economy. The integration of the economy facilitates the process of disbursement of illicit money through transactions in the market: goods and services (including tourism), capital and labor production factors between Indonesia and abroad.³⁴

There are three aspects that facilitate capital traffic through banking in a series of deregulation packages introduced in October 1988. First. Increasing the number of banks and their offices including to conduct transactions in the form of foreign exchange. Second. Facilitating cross-border capital traffic through banks is due to the replacement of the foreign exchange system foreign exchange banks with the "Net Open Position" (NOP) system enlarging foreign exchange banks access to international financial markets. Third. Facilitating financial transactions through the banking system is due to the freedom provided by the pakto for the bank in determining the type of savings and depository products as well as the type and direction of credit or freedom in determining deposit and credit interest rates.

Unwanted banks and financial institutions can be used as an intermediary to carry out the delivery of funds or as a depository of funds derived from criminal activities. The widespread practice of money laundering by international criminal organizations, particularly with regard to narcotics trade, has prompted initiatives for international cooperation.

The Basle committee argues that the most important safeguard against money laundering is the integrity of bank managers and their determination to prevent their banks from engaging with perpetrators of crime or being used as a money laundering dealer.

The Basle committee requires that these principles be embraced by banks in each country . So that these principles can be applied around the world. With regard to the aforementioned stance, there is another stance that is the opinion that the central bank's main function is to maintain financial and health stability of banks, not to ensure that transactions conducted by bank customers are transactions that are not unlawful, it is not necessary to establish the ethical principles set forth in the statement issued by the Basle Committee to be incorporated into national legislation.

With regard to such stance, the Basle committee argues that public confidence in the banking system which is very influential on banking stability can be eroded if the public can know that the banks are in the activities perpetrated by the perpetrators of crime, given that banks are not merely part of the payment system and the national financial system only but also internationally, then not only the country should always be kept as optimal as possible but also the international community trust.

In addition to the issue of public confidence in the banking that must be maintained, the Basle committee argues also that banks can suffer huge losses due to crime, both because the bank is not careful in sorting out between where the good customers and the customers who are the perpetrators crime.

The Basle committee also argues that banks can be harmed as a result of the destruction of the integrity of bank officials because of their involvement with the perpetrators of crime. For that reason the members of the Basle committee argue that central banks around the world have an obligation to ensure that the ethical standards of professional conduct are undertaken and implemented by banks and other financial institutions.³⁵

³⁴ *Financial Action Task on Money laundering Report on Money laundering Typologies 1999-2000*, 3 February 2000. p. 3.

³⁵ *Ibid* .

1.5. Role of PPATK IN DEMOCRATIC COUNTRY SYSTEM

1.5.1. The role of PPATK in the Indonesian Economic System

Efforts to prevent and eradicate money laundering crimes in Indonesia are carried out with the ratification of Law no. 15/2002 on TPPU. In addition, the government also established a Financial Transaction Reporting and Analysis Center (hereinafter abbreviated as PPATK), an independent agency conducting an inquiry, collecting, storing, analyzing and evaluating information on suspected Transactions and suspected money laundering. This information is then forwarded to the investigator to be processed under the Criminal Procedure Code. 15/2002.

PPATK is an independent institution under the President of the Republic of Indonesia which is ratified in Law Number 8 Year 2010. This institution has functions, namely 1) Preventing and combating TPPU; 2) Manage data and information obtained by PPATK; 3) Supervise the compliance of the reporting parties; and 4) Analyzing or reviewing financial transaction reports and information indicating the TPPU and/or other criminal acts, as referred to in Article 2 paragraph (1).

PPATK is internationally recognized as an Indonesian Financial Intelligence Unit (FIU). FIU is a financial intelligence unit in the Anti-Money Laundering and Counter Terrorism Counter (AML/CFT Regime) Regime in Indonesia.

PPATK is also a member of The Egmont Group, an association of FIU institutions around the world in order to create a clean international world of laundering and financing of terrorism in accordance with international best standards. With the PPATK, it is expected that money laundering in Indonesia can be prevented and eradicated.³⁶

1.5.2. Duties and Powers of PPATK

Basically the task of PPATK as a financial intelligence unit does not see the perpetrator as a bureaucrat, technocrat, legislative, executive, or judiciary, let alone to assess the moral or mental parties reported. PPATK works with the mechanism of receiving Suspicious Financial Transactions Report (LTKM) submitted by Provider of Financial Services (PJK) and Provider of Goods and Services (PBJ). Then the report is analyzed by PPATK by using various sources of information to be analyzed using a proven method by which human resources are certified specifically for it.

The results of the PPATK analysis are then submitted to the investigator to develop and search for evidence to be presented to the public prosecutor who immediately submit it before the panel of judges. Indeed, from individual LTKM indicating that TPPU will spread and known also other parties involved in it, both individuals and corporations.³⁷

One of the parties involved with money laundering crime is the *Financial Service Provider* (PJK). This institution is considered to be involved if by deliberately not submitting a report to PPATK regarding:

- a. Suspicious financial transactions.
- b. Financial transactions made in cash in cumulative amounts of Rp 500 million or more or equivalent amounts made in a single transaction or multiple transactions within one business day. The requirement that the CHD be subject to punishment is that there should be an element "intentionally" not reporting, otherwise the report is due to negligence then the PFS can not be subject to sanctions (punishment). Therefore, PPATK, Investigator,

³⁶ <http://www.anneahira.com/pencucian-uang.htm>.

³⁷ Natsir Kongah, "*Money Laundering Enforcement*" Media Indonesia, March 27, 2012, p. 20 .

and Public Prosecutor must carefully prove the existence or absence of such intentional elements.

Criminal sanction for the PJK that does not implement the above provisions as regulated in Article 8 of the TPPU Law states that the PFS intentionally failing to submit a report to the PPATK as referred to in Article 13 paragraph (1) of the TPPU Law shall be punished by a fine of at least Rp. 250 million and at most Rp 1 billion.

CONCLUSION

The classification of TPPU type based on The law of the Republic of Indonesia number 8 Year 2010, is included in the category of independent crime. That is, this crime is separated from the original criminal act because the original criminal act can happen everywhere, known as predicate crime. Predicate crime is a term used to refer to a criminal offense, whether done directly or indirectly.

The policy of criminalization against TPPU in Indonesia, namely criminal politics, namely government policy in preventing and handling crime. So criminal policy, meaningful try or create and formulate a good criminal legislation. That is, in accordance with the definition of penal policy, which can briefly be expressed as a science as well as art, which aims to enable positive law rules, better formulated.

The line of criminal law policy is to determine; how far the applicable criminal provisions need to be changed or updated; what can be done to prevent the occurrence of a crime; how investigations, prosecutions, judicial and criminal proceedings should be carried out. The role of PPATK in the democratic country system, that the key role of TPPU eradication mechanism in Indonesia is in the hands of PPATK.

In carrying out its duties, PPATK has the authority, namely a) Requesting and receiving reports from financial service providers; b) Request information regarding the progress of investigation or prosecution of the TPPU that has been reported to the investigator or public prosecutor; c) Conduct an audit of the financial service providers concerning compliance with obligations in accordance with the provisions in law against the reporting guidelines on financial transactions; and d) To grant exemptions on reporting obligations on financial transactions conducted in cash.

SUGGESTION

The existence of the TPPU should be incorporated into an aggravating criminal offense as it is not an extraordinary crime, with severe penalties. So it is necessary for the formulation of legislation in making the perpetrators of TPPU to be deterrent. In the judicial process, the analysis of PPATK can be used as evidence as to remember the importance of PPATK's analysis report on suspicious financial transactions.

The use of the PPATK analysis report is expected to strengthen the evidence in the trial process. The PPATK report can be qualified as a proof of mail as it is issued by an authorized institution that tracks suspicious money flows. It is possible to be evidence evidence because the PPATK analysis report usually describes the flow and origin of money; which is as evidence of expert testimony.

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