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LAW ENFORCEMENT CONCERNING THE CRIME OF MONEY LAUNDERING BASED ON PANCASILA

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ABSTRACT

Tujuan dari penelitian ini adalah untuk mengetahui penegakan hukum terhadap tindak pidana pencucian uang di Indonesia berdasarkan Pancasila, dan apa kendala yang dihadapi. Penelitian ini menggunakan pendekatan yuridis normatif, hasil penelitian menyebutkan bahwa tindak pidana pencucian uang diatur secara hukum dalam UU No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang. Dalam Pasal 4 UU No. 8 Tahun 2010, juga dikenakan kepada mereka yang menikmati hasil tindak pidana pencucian uang yang dikenakan kepada setiap orang yang menyembunyikan atau menyamarkan asal-usul, sumber letak, peruntukan, pengalihan hak, atau kepemilikan sebenarnya dari Harta Kekayaan yang diketahuinya atau patut diduga adalah hasil tindak pidana. Dalam tindak pidana pencucian uang, paling tidak terdapat dua permasalahan utama dalam pelaksanaan penyidikan dan penyidikan yang dihadapi oleh suatu negara.

The purpose of this research is to find out about law enforcement regarding the crime of money laundering in Indonesia based on Pancasila, and what are the obstacles faced. This study uses a normative juridical approach, the results of the study state that the crime of money laundering is legally regulated in Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. In Article 4 of Law no. 8 of 2010, also imposed on those who enjoy the proceeds of the crime of money laundering which is imposed on any person who hides or disguises the origin, source of location, designation, transfer of rights, or actual ownership of Assets which he knows or reasonably suspects is proceeds of a crime. In the crime of money laundering, there are at least two major problems in carrying out investigations and investigations faced by a country.

A. INTRODUCTION

The eradication of the crime of money laundering in Indonesia has begun with Law no. 15 of 2002 concerning the Crime of Money Laundering. The law has stated that money laundering is a criminal act. The new thing from the law is the birth of a new institution called the Center for Financial

Transaction Reports and Analysis (PPATK).¹ Money laundering is a stand-alone crime, even though money laundering is born from its original crime, such as corruption, but the anti-money laundering regime in almost all countries places money laundering as a crime independent of its original crime in the case of a money laundering probe. So if the crime of origin is not proven then it does not preclude the legal process of money laundering crime.²

In Indonesia, the regulation on money laundering was initially regulated in Law no. 15 of 2002 concerning the Crime of Money Laundering, however this Law specifically regulates the crime of money laundering is in fact unable to eradicate this crime. This law was amended 1 year later with the issuance of Law no. 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering. Over time, the government together with the legislative body think that eradication efforts alone are not enough to deal with this crime problem, therefore preventive measures are needed that are useful to prevent this crime from happening again and again. From this thought, Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.³

In the development and advancement of technology, this form of crime has been considered a white-collar crime and penetrates across borders between countries (transnational crime),⁴ Advances in information technology and the occurrence of financial globalization have caused an area to be no longer bordered, trade in goods and services and financial flows are no longer separated from the territory of a country. As usual, progress does not only have a positive impact but also has a negative impact on a country,⁵ because it is carried out through a wire system by a professional crime syndicate so that it can result in irregularities in state finances and the state economy or can even damage the national development goals which have been affirmed in the preamble of the 1945 Constitution. After this tremendous development in the world of electronic communications, modern electronic communications have become one of the most important means used in the implementation of money laundering operations, especially in the stages of recruitment and integration, such as electronic transfer of funds and payment of bills, becoming the most common and easiest way to carry out money laundering, Beyond the

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- 1 ⁵ Sri Endah Wahyuningsih, Rismanto, Kebijakan Penegakan Hukum Pidana Terhadap Penanggulangan Money Laundering Dalam Rangka Pembaharuan Hukum Pidana di Indonesia, *Jurnal Pembaharuan Hukum*, Vol.II No.1 Januari-April 2015, page.46-56
 - 2 ⁶ Muhtar Hadi Wibowo, Corporate Responsibility in Money Laundering Crime (Perspective Criminal Law Policy in Crime of Corruption in Indonesia), *Journal of Indonesian Legal Studies*, Vol.3 Issue.02, 2018, page.214-236
 - 3 ⁷ Budi Bahreisy, Implementasi Undang-Undang Tindak Pidana Pencucian Uang Terhadap Kerugian Negara Dari Tindak Pidana Korupsi, *Jurnal Legislasi Indonesia*, Vol.15 No.2 Juli 2018, page.103-117
 - 4 Komisi Hukum Nasional, Negara Kalah Perang Melawan Penjahat Cuci Uang, *Newsletter KHN*, Vol.10. No.5 2010, page.5
 - 5 Maria Irene Sembiring, Kajian Terhadap Proses Penyidikan TPPU pada Kasus Tipikor, *Jurnal Lex Societatis*, Vol.I No.3 Juli 2013, page.15

borders of one state, and calls for concerted international and governmental efforts to combat it.⁶

Money Laundering is an activity of laundering the proceeds of crime with the aim of concealing and or disguising it as if the property originated from legitimate or legal activities.⁷ The increase in money laundering crimes by utilizing the financial system to hide or obscure the origin of the proceeds of criminal acts will further have a negative impact on people's lives, especially in the economic and business sectors. Analysis of money laundering showed that its scale is not reducing in the long term.⁸ The impact caused by the crime of money laundering is extraordinary, it even threatens the economic stability of a country.⁹

Money laundering is a process or act aimed at hiding or disguising the origin of assets obtained from the proceeds of criminal acts which are then converted into assets that appear to have originated from legitimate activities.² According to Law Number 8 of 2010, money laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this Law.¹⁰ Article 1 Number 1 of Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (hereinafter abbreviated as the Money Laundering Law)⁴ states that: "Money Laundering is any act that fulfills the elements of a criminal act in accordance with the provisions of this Law." In this sense, the elements in question are elements of perpetrators, elements of acts against the law and elements that are the result of criminal acts.

In order to prevent and eradicate the crime of money laundering, including various criminal acts that produce illegal assets, based on this law, a Financial Transaction Reports and Analysis Center has been established whose main task is to assist law enforcement in preventing and eradicating the crime of money laundering and other serious crimes, by providing intelligence information resulting from analysis of reports submitted to PPATK, to carry out these main tasks, PPATK is obliged, among others, to make guidelines for financial service providers (PJK) in detecting the

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- 6 Khaled Abdel kader Alomari,⁸ Linking between E-government and Money Laundering: The Mediating Role of Compliance Unit, *International Journal of Academic Research in Business and Social Sciences*, Vol.10 No. 2, Feb, 2020, page.179-194
- 7 Yulianto, Bambang Waluyo, Implikasi Hukum Tidak Diwajibkan Pembuktian Tindak Pidana Asal (Tinjauan Pasal 69 UU No.8 Tahun 2010 Dan Putusan Mahkamah Konstitusi Nomor 77/PUU-XII/2014), *Humani (Hukum dan Masyarakat Madani)*, Vol.10 No.2 Nov 2020, page.229-255
- 8 Zbysław Dobrowolski, and Łukasz Sułkowski, Implementing a Sustainable Model for Anti-Money Laundering in the United Nations Development Goals, *Sustainability* 2020, Vol.12, page.244
- 9 Doni Adi Supriyo, Kaboel Suwardi, Dampak Tindak Pidana Pencucian Uang Terhadap Sektor Ekonomi Dan Bisnis, *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan*, Vol.2, No.1 April 2020, page.133-143
- 10 Fuady, M. *Hukum Perbankan Modern Kedua Tingkat Advance*, PT. Citra Aditya Bakti, Bandung, 2001, page.5

behavior of financial service users who commit fraud. suspicious financial transactions.¹¹

The consequences caused by the practice of money laundering have attracted the attention of countries in the world, moreover, the funds used in the practice of money laundering are the proceeds of serious crimes. These consequences include, among others, the crime of money laundering which has the potential to disrupt the economy both nationally and internationally because it endangers the effective operation of the economy and creates bad economic policies, especially in certain countries. The practice of money laundering also creates instability in the national economy because money laundering can cause sharp fluctuations in exchange rates and interest rates. In addition, the proceeds of money laundering can be transferred from a country with a good economy to a country with a poor economy. So that it can slowly destroy financial markets and reduce public confidence in the financial system, which can lead to increased risk and stability of the system which results in reduced world economic growth.¹²

The crime of money laundering not only threatens the stability and integrity of the economic system and financial system, but can also endanger the foundations of social, national and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Money laundering activities directly do not harm certain people or certain companies, or in other words at first glance there are no victims. Unlike the case of robbery, theft, or murder where there are victims and at the same time cause harm to the victims themselves.¹³

The purpose of this research is to find out about law enforcement regarding the crime of money laundering in Indonesia based on Pancasila, and what are the obstacles faced.

B. RESEARCH METHODS

The researcher uses a type of research that is juridical normative, or examines legal norms, especially positive law (laws that are currently in force in Indonesia). This research is also descriptive, namely a descriptive study, as written by Soerjono Soekanto.¹⁴ intended to provide and describe data as accurately as possible about humans, circumstances or other symptoms. Based on this understanding, this research is expected to provide an overview of the study of law enforcement in Indonesia against money laundering using a normative juridical approach. Legal research with a normative juridical approach is carried out by examining library materials

11 Nur Nugroho, Sunarmi, Mahmul Siregar, Riswan Munthe, Analisis terhadap Pencegahan Tindak Pidana Pencucian Uang oleh Bank Negara Indonesia, *ARBITER: Jurnal Ilmiah Magister Hukum*, Vol.2 No.1 2020, page.100-110

12 Bismar Nasution, *Rejim Anti-Money Laundering di Indonesia*, BooksTerrace & Library Pusat Informasi Hukum Indonesia, Bandung, 2008, page.2

13 Dewi Saksi Sudarto, Tindak Pidana Pencucian Uang Dalam Perspektif Hukum Indonesia, *Jurnal Universitas Islam Kalimantan MAB*, Juni 2021, page.1-8

14 Soerjono Soekanto, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, 1986, page. 9.

or secondary data.¹⁵ This research is limited to reviewing the literature on the basic aspects that underlie the urgency of legal studies in Indonesia against money laundering crimes.

C. RESULTS AND DISCUSSION

1. Law Enforcement Regarding the Crime of Money Laundering in Indonesia Based on Pancasila

Money laundering is a crime that seeks to hide the origin of money so that it can be used as legally obtained money.¹⁶ Money laundering is an illegal activity carried out by criminals which occurs outside of the normal range of economic and financial statistics.¹⁷ In general, the perpetrators of criminal acts try to hide or disguise the origin of the assets which are the result of criminal acts in various ways so that the assets resulting from their crimes are difficult to be traced by law enforcement officers so that they can freely use the assets for both legal and illegal activities. Money laundering cannot be measured directly by some easily accessible statistics since the whole purpose of money laundering is to disguise the criminal origin.¹⁸

Currently, the eradication of money laundering is regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. This law replaces the previous laws that regulate money laundering, namely: Law no. 15 of 2002 as amended by Law no. 25 of 2003.¹⁹

The crime of money laundering is legally regulated in Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, where money laundering is divided into 2 (two) criminal acts:²⁰

- a. Money laundering crime: active, namely any person who places, transfers, transfers, spends, pays, grants, entrusts, takes abroad, changes form, exchanges for money or securities or other actions on assets that he knows or deserves is suspected to be the result of a criminal act as referred to in Article 2 paragraph (1) with the aim of concealing or disguising the origin of the Assets. (Article 3 of Law No. 8 of 2010).

15 Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif*, Rajagrafindo Persada (Rajawali Grup), Jakarta, 2003, page. 13-14.

16 Iman Sjahputra, *Money Laundering (Suatu Pengantar)*, Harvindo, Jakarta, 2006, page. 2

17 Kehana Parveen, Impact of anti-money laundering legislation in the United Kingdom and European Union, *International Journal of Economics and Management Systems*, Vol.5, 2020, page.118-122

18 Joras Ferwerda, Estimating money laundering flows with a gravity model-based simulation, *Scientific Reports*, 2020, page.1-11

19 PPATK E-Learning, *Anti Pencucian Uang dan Pencegahan Pendanaan Terorisme, Bagian 4: Pengaturan Pencegahan dan Pemberantasan Pencucian Uang di Indonesia*, PPATK, Jakarta, tanpa tahun, page.1

20 Andry Mahyar, *Tinjauan Yuridis Terhadap Peran Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) Dalam Mencegah dan Memberantas Tindak Pidana Pencucian Uang (Money Laundering)* Tesis, Program Studi Magister Ilmu Hukum Program Pasca Sarjana USU, Medan, 2011, page.56.

- b. Passive money laundering is imposed on any person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange, or use of Assets which he knows or reasonably suspects is the result of a criminal act as referred to in Article 2 paragraph (1) . This is also considered the same as money laundering. However, an exception is made for the Reporting Party who carries out the reporting obligations as regulated in this law. (Article 5 of Law No. 8 of 2010)".

In Article 4 of Law no. 8 of 2010, also imposed on those who enjoy the proceeds of the crime of money laundering which is imposed on any person who hides or disguises the origin, source of location, designation, transfer of rights, or actual ownership of Assets which he knows or reasonably suspects is proceeds of the crime as referred to in Article 2 paragraph (1). This is also considered the same as money laundering. Sanctions for perpetrators of money laundering are quite severe, starting from a maximum imprisonment of 20 (twenty) years, with a maximum fine of Rp. 10,000,000,000,- (Ten Billion Rupiah).²¹

Moreover, the act of money laundering in its various forms, in addition to being not only a dangerous virus for the life of the Indonesian people, but also very contrary to the values contained in Pancasila as the ideology of the Indonesian nation, Pancasila is the ideals of law and the source of the order of Indonesian national law.²² If you look at the meaning of the basic norms according to Kelsen and or the fundamental norms of the state according to Nawiasky, then Pancasila is the basic norm that governs all kinds of norms in the normative order in Indonesia. To clarify the position of basic norms in the legal order of a country, Kelsen also explains the pattern of relations between norms through his theory of stufenbau or hierarchical norms.²³ Pancasila must be discussed or dialogued by all elements to become the energy of the unity of the whole nation,²⁴ This contradiction can be proven in the following description:

Contradicting the act of money laundering with divine values; emphasizes that a person is not allowed to interfere with the rights of others, both property, life, kasab (work), and so on in order to achieve his desire to have abundant material. Pancasila as the national principle that is religious and tauhidi, students will place Pancasila not only as of

21 Article 3 of Law No.8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering.

22 Jantje Tjiptabudy, Legal Development of Coastal Marine Management Based on the Idea of Pancasila, *Hasanuddin Law Review*, Vol.4 Issue.1, April 2018, page.113-122

23 Pais Yonas Bo'a, Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional, *Jurnal Konstitusi*, Volume 15, Nomor 1, Maret 2018, page.27-49

24 Dini Amalia Fitri, Pancasila as a Legal Science Paradigm, *International Journal of Law Reconstruction*, Vol.3, Issue.II, September 2019, page.123-133

the national principle and national ideology but also as a formulation of the practice of faith in Allah SWT.²⁵

Contradicting the act of money laundering with human values; Humans in the perspective of Pancasila are not seen as individual beings as understood by the ideology of liberalism, nor are they interpreted as social beings as is the view of groups of adherents of communism. But in the eyes of Pancasila, humans are seen as complete creatures, namely as individual beings as well as social beings.²⁶ The perpetrators of the crime of money laundering are not in accordance with the meaning of the second precept in Pancasila. Moreover, in the second precept there are the phrases "fair" and "civilized". Fair which is understood as an attitude of wanting to give to others what is their right.²⁷

Contradicting the act of money laundering with the value of Unity; Corruption can not only harm the state's finances, but can also divide the unity and integrity of the nation. Contradicting the act of money laundering with Democratic value; Democratic attitude is essentially an attitude that highly upholds responsible freedom. Contradicting the act of money laundering with the value of justice; Justice can be said to be an absolute requirement in the life of the nation and state, because justice can prevent unrest and chaos that occurs in society, and can seek and maintain a balance between rights and obligations. In order to realize social justice for all Indonesian people, strict law enforcement against the perpetrators of the crime of money laundering must be carried out in order to deter the perpetrators.

2. Obstacles Faced in Law Enforcement on Money Laundering in Indonesia

In the crime of money laundering, there are at least two major problems in carrying out investigations and investigations faced by a country, the two problems are bank secrecy and proof of the existence of a money laundering crime. The importance of connecting the predicate crime with the money laundering is to take back the crime result obtained by the criminals, and at the same time, punishing the criminals who are related to the predicate crime or the money laundering, anti-money laundering is the strategy to enforce the law, not only to punish the actors but also to seize all the crime result.²⁸

25 Ihsan, Ahmad Fatah, Pancasila and Islamic Education: The Deradicalization Model of Madrasahs Based on Islamic Boarding Schools in Central Java, *Qudus International Journal of Islamic Studies (QIJIS)*, Vol. 9, No.1, 2021, page.245-278

26 A.Gunawan Setiardja, *Filsafat Pancasila Bagian I*, Cet. Ke- XII, Universitas Diponegoro, Semarang, 2002, page.26.

27 *Ibid.*

28 Lintang Jendro Rahmadita, Supanto, Widodo Tresno Novianto, Juridical Study on the Corporate Criminal Liabilities for Money Laundering Criminal Action with the Defendant Labora Sitorus (A Study on the Decision on Appeal Number: 1081 K/Pid.Sus/2014), *International Journal of Multicultural and Multireligious Understanding*, Vol.5 No.3, June 2018, page.339-346

In essence, the crime of money laundering does not stand alone like other criminal acts, but this crime is related to other criminal acts (predicative offence), so it is appropriate to state that the crime of money laundering is a condition sine qua non (related) to the predicate crime as stated above. regulated in Article 2 paragraph (1) of Law Number 8 of 2010.²⁹

Countries that want to fight money laundering objectively must take steps to undermine the right to financial privacy. In financial reports and transactions made by customers, they are under sanctions that must be accountable to the public. Furthermore, there is a provision that requires them to provide information to law enforcement if requested, but otherwise may not notify the customer of the results of the examination. This provision also means that bank secrecy must be relaxed. That is, bank secrecy and prudential regulations do not prohibit the fulfillment of these provisions.³⁰

The next obstacle, namely the rapid progress of science and technology, makes it more difficult to detect money laundering. Why not, that the current mode and technique of money laundering offenses is very developed with the progress of science and technology. In terms of banking and other financial institutions, various service facilities are offered, including internet banking, electronic fund transfers, which allow funds to be trafficked in a short time across national borders.

Non-compliance of financial service providers in supporting anti-money laundering regimes. Although the know your customer principle (the principle of recognizing service users) and the obligation to provide reports to the Financial Transaction Reports and Analysis Center (PPATK) have been applied to financial service providers, not all of them comply with these provisions.

D. CONCLUSION

The crime of money laundering is legally regulated in Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. In Article 4 of Law no. 8 of 2010, also imposed on those who enjoy the proceeds of the crime of money laundering which is imposed on any person who hides or disguises the origin, source of location, designation, transfer of rights, or actual ownership of Assets which he knows or reasonably suspects is proceeds of a crime. In the crime of money laundering, there are at least two major problems in carrying out investigations and investigations faced by a country. Other obstacles in proving the crime of money laundering are that law enforcement officers have not achieved a common understanding of money laundering offenses, the rapid progress of science and technology has made it more difficult to

29 Halif, Proving Money Laundering Crime Without Accusation of Predicate Crime, An Analysis of Court Decision Number 57/PID.SUS/2014/PN.SLR, *Yudisial*, Vol.10 No.2 Agustus 2017, page.173-192

30 Risal Septian Nur'iqbal, Dudung Hidayat, Penyidikan Tindak Pidana Pencucian Uang Dari Hasil Kejahatan Narkotika, *Hukum Responsif*, Vol.9 No.1, Februari 2018, page.37-48

detect money laundering, and the non-compliance of financial service providers in supporting the anti-money laundering regime.

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- 16 Fais Yonas Bo'a, Pancasila sebagai Sumber Hukum dalam Sistem Hukum Nasional, *Jurnal Konstitusi*, Vol.15 No.1, Maret 2018;

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¹² Zbysław Dobrowolski, and Łukasz Sułkowski, Implementing a Sustainable Model for Anti-Money Laundering in the United Nations Development Goals, *Sustainability*, Vol.12 2020;

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