Efforts to Prevent Criminal Acts of Money Laundering Using Penal Policy Measures

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Abstract

The context of enforcement of money laundering is not a simple concept that is very complicated because it is so complex that it is very difficult to formulate criminal offenses in an objective and effective manner. This can be seen from countries that regulate the problem of money laundering. Money laundering is already a phenomenon of cross-border crime and organized crime which requires special law enforcement as well, in this case one of the means used is a means of punishment. The modus operandi of money laundering crime continues to change from time to time in line with the advancement of the era and the technology of the community. To that end, increasing the ability of law enforcement officers in the field of enforcement of money laundering crimes must always be improved, one of the efforts to overcome and prevent money laundering by means of a penal policy. In this study, the data used are secondary data with a normative juridical approach and normative descriptive analysis reported in a research report. From the results of the research that has been carried out, it has been concluded that the means of reasoning are useful in efforts to prevent and deal with money laundering.

Keywords: *crime, money laundering, penal policy.*

Introduction

Indonesia's economic development aims to create a just and prosperous society based on Pancasila and the 1945 Constitution as reflected in good economic growth and controlled inflation. Some principles that must be considered and applied in bank management so that the banking system can be healthy can be done, among others, by the principle of prudential, safety, profitability, and efficiency that can support the strength and growth of the banking system and can accommodate the development needs of government and society. Like other countries, Indonesia also pays special attention to the problem of money laundering (Law No. 25/2003) and bringing abroad considered transnational organized crime (Transnational Organized Crime/TOC).

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In further development, with the increasingly sophisticated forms of crime that have international networks and use financial institutions, especially banks as targets and facilities, for example, it can be stated as white-collar crime or money laundering, banks must more alert. In some countries, banks are required to have and implement a Know Your Customer Principle policy and system, so that bank management and banking authorities can have legal consequences, both civil and criminal sanctions against the bank. The involvement of banks in money laundering is due to the ease of the process to manage the proceeds of crime in various bank businesses, including in the form of deposits such as deposits, demand deposits, and can also be placed in the form of other financial instruments such as Bank Indonesia Certificates, the use of safe deposit boxes and so. The use of banks as mentioned above is an indispensable thing in money laundering because criminal organizations need to manage financial cash flow by placing their funds in banking business activities so that they do not need to reinvest their funds in criminal activities.

The process of money laundering, there is always a connection with financial service providers. Money laundering is a crime that harms the interests of the community, and can lead to economic instability in a country and economically not beneficial to the country.

Banks conduct their business on the basis of economic democracy using the precautionary principle, with the main function being to collect and distribute funds to the public. Thus, banking is a very fertile place to disguise the proceeds of crime in the form of laundering the proceeds of crime that enter the financial system as if it became lawful property (clean money). For this reason, criminal sanctions need to be formulated in the policy of handling and preventing money laundering. The problems raised in this study are to explore the criminal sanction policy is formulated in or specifically the issues raised whether criminal sanctions (imprisonment) can be used as a means to prevent and eradicate non-criminal money laundering.

Research Methods

The research approach is preferred through the normative juridical approach and supported by a sociological juridical approach. The normative juridical approach relies on secondary data sources in the form of criminal law regulations, or other supporting materials. The sociological juridical approach relies on primary data/materials, which is the source of the data that is directly found. The data obtained will be analyzed and presented qualitatively using discrete normative analysis.

Money Laundering Practice

In practice, money laundering almost always involves banks because of the globalization of the banking system, so that through payment systems, especially those that are electronic in nature, large proceeds of crime will flow or move beyond the jurisdiction of a country by utilizing the bank secrecy factor that is generally upheld high by banks[1,2]. After the ratification of the Law of the Republic of Indonesia Number 15 of 2002, which has been amended by the Law of the Republic of Indonesia Number 25 of 2003, concerning Criminal Acts of Money Laundering, and finally with the enactment of Law Number 8 of 2010 concerning Prevention and Eradication of Criminal Acts Money Laundering which is expected to be a crime of money laundering can be prevented or eradicated, where the form includes criminalization of all acts in each stage of the money laundering processes.

In Law Number 8 of 2010 described in Article 3, Article 4, Article 5 regarding money laundering stated that laundering, transferring, donating, exchanging, or other acts of assets that are known or reasonably suspected are the results of criminal acts with the intention to conceal, or disguise the origin of assets so that they appear to be legitimate assets. The formulation in the article above can be used as a picture of the public about what is meant by money laundering activities, which is a crime where by putting cash into a financial system, transferring assets that originate from criminal acts, using assets or money illegal, which originates from criminal offenses that successfully enter the financial system which is motivated to pursue profit and has a negative influence or can be harmful or detrimental to national and even international interests. Another instrument which is an institution to prevent and eradicate money laundering is the establishment of the Financial Transaction Reports and Analysis Center (PPATK) by the government as mandate for the enactment of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. The Financial Transaction Reports and Analysis Center (PPATK) is tasked with storing and evaluating suspicious transaction information and reporting it to the police and prosecutors if there are elements that fulfill the crime of money laundering[3]. Besides that, PPATK is an independent institution formed in order to prevent money laundering.

In international practice in the field of money laundering, the same institution as PPATK is called the Financial Intelligence Unit (FUI), which is implicitly regulated for the first time in forty recommendations, from the Financial Action Task Force on money laundering (FATF). The Financial Intelligence Unit is a harvesting agency that specializes in handling money laundering. This institution is one of the most important structures in money laundering efforts in each country.

Politics of Law of Criminal Policy in Money Laundering

From the perspective of politics of criminal law, the use of a legal means cannot be a priori or absolutely stated as a necessity or otherwise stated as something that must be rejected or abolished altogether. This means, seen from the criminal point of view of politics of criminal law, the main problem does not lie in the pro or contra problem of the use of criminal sanctions,

but the most important is the lines of policy or approach which should be taken in using criminal sanctions. One of the sounding considerations of the Caracas Declaration of the Sixth UN Congress in 1980 consider that the phenomenon of crime, through its influence on society, disrupts the entire development of nations, damages the welfare of the people both spiritually and materially, endangers human dignity and creates an atmosphere of fear and violence that encourages quality of life. Therefore, planning policies to improve social welfare must also be accompanied by a policy of social protection planning. In fact, in determining social policy, which is rational efforts to improve the welfare of the community, it must also include a policy regarding social protection planning, called "politics of criminal law"[5]. The ultimate goal of criminal policy is "community protection" to achieve the main goal which is often referred to by various terms, for example "happiness of the citizens", "a healthy and refreshing cultural life" (a wholesome and cultural living), "Social welfare" or to achieve "equality". Thus, politics of criminal law which are part of the planning of community protection are also part of the overall social policy.

In connection with this concept of thought,[6] once stated that if criminal law is to be involved in efforts to overcome the negative aspects of community development, then it should be seen in the overall relationship of politics of criminal law or "social defense planning". It was also stated later, that even "social defense planning" must be an integral part of the national development plan. This integrated conception of thought and policy also underlies the discussion of the issue of "Crime and development" which became the central theme of the fourth 1970 United Nations Congress on Prevention of Crime and The Treatment of Offenders. Therefore it is also natural that in one report on the issue of "Social defense policies in relation to development", it was stated among other things: "every dichotomy between state policy for the protection of society and planning for national development is something that is not according to its definition" (Fourth United Nations Congress). Thoughts of this integral policy were put forward by W. Clifford at the 32nd International Seminar Course on Reform in Criminal Justice in Japan in 1973[7].

From the concept of thought and the integral policy, there are two things that need to be considered in the crime prevention policy using criminal sanctions. First, there needs to be an integral approach between penal and non-penal policies. Second, policy approach and value approach are needed in the use of criminal sanctions. Efforts to tackle crime problems have been carried out in various ways, but the results have not been satisfactory. It is very interesting what was stated by Habib-Ur-Rahman Khan in his article entitled "Prevention of Crime - It Is Society Which Needs the Treatment" and Not the Criminal"[8], that criminal policy as an inherent part of general political and social policy. One of the efforts to tackle crime is to use criminal law with criminal sanctions. However, even this business is often questioned. The debate over the role of the criminal in dealing with this crime, according to Inkeri Anttila[9], has been going on for hundreds of years and according to Herbert L. Parker[10], efforts to control anti-social acts by wearing criminal someone who is guilty of violating a crime is "a social problem that has an important legal dimension"[11].

The use of legal measures, including criminal law as one of the efforts to overcome social problems, including in the field of law enforcement policies, in addition because it aims to achieve the welfare of society in general, the law enforcement policy is also included in the field of social policy, namely all rational efforts to achieve community welfare. As an issue that is a policy issue, the use of criminal law is not a necessity. There is no absolute in the field of policy because in essence in the policy problem people are faced with the problem of policy assessment and selection of various alternatives[10]. Thus, the problem of controlling and overcoming crime by using criminal law is not only a social problem as stated by Parker[10], but also the problem of policy.

Policy formulation can be said as a stage of functionalization, in this case the functionalization of criminal sanctions of prisons related to the problem of prevention and eradication of the crime of money laundering. Broadly speaking, the functionality of criminal sanctions against money laundering prevention and eradication can be divided in some ways. First, the functionalization of criminal law can be interpreted as an effort to make the criminal law can function, operate or work and be realized concretely. The term functionalization of criminal law can be identified with the term operationalization or concretization of criminal law which is essentially the same as the definition of criminal law enforcement. Contrary to this understanding, the functionalization of criminal law, such as the functionalization or law enforcement process in general, involves a minimum of three interrelated factors, namely legal factors, law enforcement agencies/

factors and legal awareness factors. The division of these three factors can be related to three components of the legal system, namely the legal substance, legal structure and legal culture.

Second, legislative factors that should be reviewed are legislative policy factors relating to the problem of preventing and eradicating money laundering. Reviewing this issue is very important because legislative policy is basically the most strategic initial stage of the overall planning of the legal functionalization process during or criminal law enforcement process. In other words, the legislative policy stage is the most strategic stage for crime prevention efforts. This stage is the formulation stage that forms the basis, basis and guidelines for the next functionalization stages, namely the application stage and the execution stage[12]. Hence, crime prevention planning or policy as outlined in the legislation, in general covers planning or policies regarding what prohibited acts will be dealt with because they are considered dangerous or harmful; planning or policy on what sanctions are imposed on the perpetrators of the prohibited conduct (whether in the form of a criminal or act) and the system of its application; planning or policy regarding procedures or mechanisms of the criminal justice system in the framework of criminal law enforcement processes.

Therefore, a review of legislative or formulative policies relating to money laundering should also be focused on the three policy areas (policy or plan of action) above.

Conclusion

Efforts are made in preventing and overcoming the Crimes of Money Laundering there are two suggestions that can be chosen: firstly, using the means of punishment (criminal sanctions), and secondly, using non-penal means (other than criminal sanctions), such as social sanctions, economic sanctions, and so on. Basically, the means of punishment are retaliatory/ retributive of crimes committed by perpetrators, while non-penal means are essentially meaning to prevent the occurrence of criminal acts or commonly referred to as a means of incentive. Perpetrators of money laundering can be classified into two namely active and passive perpetrators. The two perpetrators can be criminally liable, Money Laundering Crime Countermeasures conducted by the Financial Transaction Analysis Center must pay attention to: alert principles and reporting system, implementation of financial reporting systems, the application of the principle of getting to know customers, cooperating with related parties. The modus operandi of money laundering often uses bank secrecy, but by Bank Indonesia confidentiality can be excluded for checking customer accounts. The use of penal means is intended to deter and act against any act that can harm the public or state finances. For suggestions, it is necessary to increase bank supervision by the PPATK in particular for suspicious transactions and the enforcement of the principle of knowing customers as a means of preventing money laundering. It is also suggested to uphold the principle of state financial protection in the criminal justice system relating to the practice (legal case) of money laundering. Then hold relations between countries as an effort to prevent and prosecute cases of money laundering and finally the imposition of maximum penalties as a means of law enforcement.

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