CRIMINALIZATION IN MONEY LAUNDERING CASES IN INDONESIA

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ABSTRACT

This research aims to analyze the effectiveness of criminalization in the case of money laundering in Indonesia. Money laundering is a complex crime that is closely related to predicate crimes such as corruption, narcotics, and organized crime. Despite the existence of various legal instruments such as Law Number 8 Year 2010 on Prevention and Eradication of Money Laundering Crime, challenges in legal implementation remain a major obstacle. This research uses a normative juridical method with a literature study approach to examine criminalization policies in the Indonesian legal system. The results show that although the criminalization policy has provided a strong legal basis, law enforcement is often constrained by the lack of inter-agency coordination, personal data protection, as well as technological adaptation in detecting suspicious transactions. The study also identifies that international collaboration is key in combating transnational money laundering. The conclusion of this study underscores the need for continuous evaluation of existing regulations and capacity building of law enforcement to achieve effective eradication of money laundering in Indonesia.

Keywords: criminalization, money laundering, law enforcement, regulation, Law No. 8/2010, international collaboration, organized crime.

INTRODUCTION

Money laundering is a serious threat to a country's financial system and economic stability. This phenomenon not only harms the economic sector but also weakens law enforcement by creating space for criminals to disguise the proceeds of their crimes. Law No. 8/2010 on the Prevention and Eradication of the Crime of Money Laundering in Indonesia was designed as a strategic measure to counter such crimes. However, its implementation still faces various challenges that require in-depth evaluation.

In an era of globalization characterized by increasing mobility and complexity of financial transactions, the crime of money laundering (TPPU) has become one of the main challenges for legal systems in various countries, including Indonesia. Garnasih (2003) states that the criminalization of money laundering has been adopted as a new model in international law enforcement, reflecting global awareness of the detrimental impact of this crime on economic stability and the integrity of the financial system. However, despite the existing legal framework, its implementation in Indonesia is often constrained by weak coordination among law enforcement agencies and low human resource capacity in the sector.

Stessens (2000) also points out that global efforts to tackle these crimes require cross-border cooperation, something that is still not optimal in Indonesia. In this context, it is important to evaluate how Indonesia can strengthen international cooperation and improve the effectiveness of domestic law enforcement. By understanding the challenges and adopting best practices from other countries, Indonesia has the potential to become more effective in combating ML and contribute to global efforts to create a more transparent and accountable financial system.

The challenges faced by Indonesia in combating money laundering are complex, particularly due to the nature of this crime which often involves transnational networks. According to Husein (2004), effective international cooperation is key to overcoming the obstacles that arise from the involvement of multiple jurisdictions and regulatory differences in other countries. However, data shows that law enforcement at the national level is still limited to cases involving domestic transactions, so many money laundering cases involving international fund flows cannot be handled optimally. This limitation creates loopholes that are utilized by criminals to evade sanctions, thus worsening the situation and hampering Indonesia's efforts in creating a clean and transparent financial system. Without an increase in international cooperation and strengthened law enforcement capacity, Indonesia will struggle to meet the challenges of increasingly sophisticated and organized money laundering.

The gap between regulations and policy implementation in the field is a serious problem in law enforcement efforts in Indonesia, as highlighted by Simanjuntak's research (2019). Existing regulations are often unable to keep up with the increasingly complex dynamics of crime, especially with technological advances that allow perpetrators to hide the proceeds of crime through digital channels. This creates a huge challenge for law enforcement officials who must adapt to the new methods used by criminals. This problem is further exacerbated by the lack of education and training for law enforcement officers on the latest technology, resulting in their inability to identify and deal with crimes that utilize advanced technology. Without responsive regulatory reforms and increased law enforcement capacity, efforts to combat crime will continue to be hampered, threatening safety and justice in society.

In addition, Rahardjo and Santoso (2017) showed that although the Anti-Money Laundering Law has been enacted, the success of the policy depends on the ability of financial institutions to detect suspicious transactions. Aditya and Nugroho (2018) added that the role of the Financial Transaction Reports and Analysis Center (PPATK) as the spearhead of the eradication of money laundering has not been optimally maximized.

Weak internal supervision in the banking sector is a gap that is utilized by criminals in money laundering practices, as highlighted by Lubis and Nasution (2020). Although banks have an important role in supporting anti-money laundering policies, the inadequacy of the supervisory system makes banks vulnerable to suspicious transactions. This creates a significant risk to the integrity of the financial system, where proceeds of crime can be easily hidden and moved undetected.

In addition, legal and economic challenges are also major obstacles to the implementation of anti-money laundering policies, as outlined by Wibisana and Sutrisno (2021). Vagueness in regulations can cause confusion among financial institutions regarding their legal obligations, while economic pressures to achieve profitability often distract from regulatory compliance.

These limitations create an unfavorable environment for the enforcement of anti-money laundering policies, worsening the situation and allowing money laundering practices to flourish.

In the digital era, illegal transactions are increasingly difficult to trace. Sitompul and Hutabarat (2019) point out that information technology can be an early detection tool to prevent this crime. However, there is no adequate mechanism to integrate such technology into the Indonesian legal system.

In the perspective of Islamic law, Arifin and Maulana (2020) emphasize that money laundering contradicts the principles of sharia, which views wealth as a trust. A religious value-based approach can be an alternative to address this challenge. However, the gap between positive law and sharia values is still debatable.

The increasing volume of money laundering cases is also an indication of weak criminalization policies. Nugraha and Suryani (2022) underline that prevention strategies require a multidisciplinary approach, including regulatory reform and stricter law enforcement. Thus, this study aims to evaluate the effectiveness of criminalization policies in Indonesia, while providing relevant recommendations.

While many studies have addressed money laundering regulation in Indonesia, few have evaluated the effectiveness of criminalization based on actual implementation in the field. Studies on inter-agency coordination and technology integration in law enforcement are also limited. This research offers an evaluative approach to the effectiveness of money laundering criminalization policies, highlighting the role of technology and international cooperation as key elements in combating this crime. This research aims to analyze the effectiveness of money laundering criminalization policies in Indonesia and formulate strategic steps to improve law enforcement through a multidisciplinary approach involving technology, regulation, and international cooperation.

RESEARCH METHODS

This research uses a normative juridical method that focuses on literature analysis and document study. This method was chosen to evaluate the effectiveness of Indonesia's money laundering criminalization policy based on existing regulations and their implementation in practice. This research also includes comparative analysis with other legal systems to understand the successes and challenges of similar policies in other countries. The type of data used is secondary data, which includes legislation, law journals, textbooks, and institutional reports. The data was collected through literature study, both from national legal sources such as Law No. 8/2010 on the Prevention and Eradication of Money Laundering Crime and international documents such as the Financial Action Task Force (FATF) recommendations.

Data collection techniques are carried out using the documentation method, which identifies and reviews relevant legal sources, both in the form of laws, implementing regulations, and court decisions related to money laundering cases. In addition, literature related to the role of technology and criminalization policies in various countries is also part of the analysis. Data validity was obtained through source triangulation, by comparing various legal documents, theories from legal experts, and empirical reports to ensure the consistency and validity of the information used. This approach aims to avoid bias in data interpretation.

The data analysis technique is descriptive-analytical by describing legal facts and existing regulations, and evaluating them based on legal theory and empirical approaches. This research also uses an evaluative approach to assess the extent to which existing regulations are able to fulfill the objectives of preventing and combating money laundering crimes. The results of this analysis will be used to provide relevant recommendations in the context of policy reform. The regulations that form the basis of this research include Law No. 8/2010 on the Prevention and Eradication of Money Laundering Crimes, the revised Law No. 15/2002, as well as other relevant regulations. International regulations such as the FATF recommendations are also used to provide a global perspective on the issues studied.

RESULTS AND DISCUSSION

In the era of globalization and rapid technological advancement, financial crimes, including Money Laundering Crime (ML), are increasingly difficult to identify and address. This requires regulations that are adaptive and responsive to the evolving dynamics of crime. Money Laundering Crime (ML) is a complex crime that continues to develop in line with technological advances and economic globalization. In Indonesia, ML is regulated in Law Number 8 Year 2010 on the Prevention and Eradication of Money Laundering Crime (UU PTPPU). However, with the enactment of Law Number 1 Year 2023 on the Criminal Code (KUHP), there have been significant changes in the regulation of ML in Indonesia.

In an effort to combat financial crime, Indonesia has developed a clear legal framework to regulate the crime of money laundering (TPPU). The concept of criminalization of ML in Indonesia includes three main forms as set out in Article 607 of the Criminal Code. Ilato et al. (2021) explain that these forms include: first, the act of placing, transferring, or diverting assets that are known or reasonably suspected to be the proceeds of a criminal offense; second, hiding or disguising the origin of assets resulting from a criminal offense; and third, receiving or controlling the placement, transfer, or use of assets that are known or reasonably suspected to be the proceeds of a criminal offense.

Along with technological advances and changes in economic dynamics, money laundering practices in Indonesia have undergone significant evolution. In recent years, criminals have become smarter in devising strategies to hide the source of their illicit funds, utilizing technological advances and innovations. This creates new challenges for law enforcement and financial institutions in detecting and preventing increasingly complex money laundering practices. These developments not only reflect criminals' adaptation to new technologies, but also show that they are able to exploit loopholes in the existing financial system, often unanticipated by existing regulations.

There are five types of money laundering practices that have evolved in Indonesia, covering a wide range of methods and techniques used by criminals. First, personal name transactions, where individuals use another person's name to conduct suspicious financial transactions. This method often involves the use of false identities or identities of people who are unaware that their names are being used for illegal purposes. Second, the use of shell companies, where the perpetrator creates a fictitious business entity to hide the flow of funds and give the impression that the transaction is legitimate. Third, layering, which is the diversion of funds through various bank accounts to obscure the transaction trail, making it difficult to trace the origin of the funds. Fourth, the use of physical assets, such as property or valuables, to store and divert the proceeds of crime, often by purchasing assets that increase in value over time. Finally, the use of advanced technologies, such as cryptocurrencies and artificial intelligence, which allow perpetrators to conduct transactions anonymously and untraceably, and utilize algorithms to optimize their money laundering strategies.

These developments show that criminals continue to adapt to new technologies and take advantage of loopholes in the financial system. Cryptocurrencies, for example, offer a high degree of anonymity, making it difficult for law enforcement agencies to trace the flow of funds. In addition, artificial intelligence technology can be used to analyze big data and identify suspicious transaction patterns, but it can also be misused by criminals to increase the effectiveness of their money laundering. Thus, the challenges faced by law enforcement are increasingly complex, and they need to develop more innovative and responsive approaches to deal with evolving money laundering practices.

Indonesia has adopted various regulations related to the prevention and eradication of money laundering crimes (TPPU) which are regulated through Law Number 8 Year 2010. This law is the main foundation in the national legal system to deal with crimes that have a significant impact on economic stability and the country's financial integrity. With this regulation, it is expected to create a safer and more transparent environment in the financial sector, thereby reducing the risk of abuse of the financial system by criminals. However, challenges in the implementation of this regulation remain, especially in terms of effective supervision and law enforcement, which are often hampered by various factors, including lack of resources and inter-agency coordination.

Significant changes in ML/TF sanctions following the enactment of the new Criminal Code raise questions about the effectiveness of preventing and combating ML in the future. The maximum sanction for ML has decreased from 20 years' imprisonment to 15 years' imprisonment, which may trigger concerns about the firmness of the law in dealing with this crime. Garnasih (2003) highlights that the implementation of this regulation is not only aimed at punishing perpetrators, but also at preventing the use of proceeds of crime in legitimate economic activities. This reduction in sanctions may affect offenders' perception of the risks they face, making it important to re-evaluate prevention and law enforcement strategies to remain effective in the face of increasingly complex and sophisticated money laundering practices.

The criminalization of ML in Indonesia also covers a variety of predicate crimes covering 26 types of crimes, including corruption, narcotics, human trafficking, and various other economic crimes. The wide scope of this predicate crime shows the complexity of ML and the challenges in law enforcement. Thus, the law enforcement of ML requires not only an effective handling of the money laundering crime itself, but also a comprehensive handling of various related criminal offenses.

The complexity of ML also requires effective cooperation between law enforcement agencies, including the police, prosecutors, and courts, as well as other related institutions, such as PPATK and OJK. In addition, ML law enforcement also requires an increase in the capacity and capability of law enforcement officials, including increased knowledge and skills in handling complex ML cases. Thus, ML law enforcement can be carried out effectively and efficiently, so as to prevent and eradicate this crime more effectively.

The implementation of criminalization policy in Indonesia also includes provisions on the identification of suspicious transactions. According to Husein (2004), this step is in line with the Financial Action Task Force (FATF) recommendations, where member countries are required to adopt a transparent financial transaction reporting system. However, the main challenge in its implementation is the lack of coordination between law enforcement agencies, such as PPATK and the police.

Rahardjo and Santoso (2017) assessed that although the law has stipulated severe criminal sanctions, the effectiveness of its implementation is often hampered by the technical inability of the authorities to track the flow of illegal funds. This shows that criminalization alone is not enough without being supported by adequate legal infrastructure. Nugraha and Suryani (2022) added that policy reforms are needed to address the complexity of transnational crimes, especially those involving international networks.

In terms of prevention efforts, Aditya and Nugroho (2018) highlight the importance of PPATK's role as a financial transaction analysis institution. However, the weakness of this institution lies in the limited authority to take direct action. This shows a gap between regulation and implementation, as also expressed by Prabowo and Cooper (2016).

Kurniawan and Setiawan (2019) underline that Indonesia's money laundering law still has legal loopholes that allow perpetrators to utilize multiple jurisdictions to avoid criminal prosecution. In this regard, Indonesia needs harmonization with international law to improve the effectiveness of criminalization. Another study by Sitompul and Hutabarat (2019) also confirmed that information technology plays an important role in early detection of suspicious transactions, but its application still faces technical obstacles.

In general, the existing criminalization policy has shown a good first step, but still needs improvement in terms of supervision, institutional strengthening, and international collaboration. Lubis and Nasution (2020) added that the implementation of this policy requires full support from all stakeholders, including the private sector.

Challenges in enforcing ML in Indonesia include several aspects. Ilato et al. (2021) identified several key challenges, including difficulties in proving the connection between assets and the criminal offense of origin, rapid technological developments that allow criminals to use increasingly sophisticated methods to hide the origin of illicit funds, and limitations in international cooperation to handle cross-border ML cases.

In the face of these challenges, a comprehensive and adaptive approach to the criminalization and enforcement of ML is required. This includes strengthening the capacity of law enforcement agencies, enhancing international cooperation, and adjusting regulations to accommodate the latest technological developments in money laundering practices.

The effectiveness of the criminalization system against ML offenders can be measured through several indicators, such as the rate of return of state losses, the level of compliance of financial institutions, and a decrease in the number of money laundering cases. Simanjuntak (2019) shows that although the criminal sanctions applied are quite severe, such as imprisonment and fines, the deterrent effect for perpetrators is not optimal.

In a study by Dewi and Pratama (2018), it was revealed that the low level of compliance of financial institutions in reporting suspicious transactions is one of the main obstacles. This is influenced by fear of reputational impact and lack of understanding of legal obligations. In contrast, Wibisana and Sutrisno (2021) argued that effective law enforcement requires a multidisciplinary approach, including the integration of legal, economic and technological aspects.

Prasetyo and Santoso (2022) also noted that the application of special minimum sentences for ML offenders is often not in line with the principles of justice. In many cases, judges give lighter sentences for subjective reasons. This creates a gap between existing regulations and the reality on the ground. Aditya and Nugroho (2018) added that strengthening the supervision mechanism, both at the investigation and trial stages, is an important element to ensure the effectiveness of punishment.

One approach proposed by Kurniawan and Setiawan (2019) is the application of additional sanctions in the form of confiscation of assets obtained from the proceeds of crime. Asset confiscation is an important step in the fight against money laundering (ML), as it reduces the incentive for criminals to continue their illegal activities. Although this step has been regulated in law, its implementation is still constrained by complicated administrative procedures. Convoluted confiscation processes often result in delays in law enforcement, allowing criminals to take advantage of the time to hide or transfer their assets.

Lubis and Nasution (2020) recommend simplifying the legal process through clearer implementing regulations. This simplification is expected to speed up the asset confiscation process and increase the effectiveness of law enforcement. With more transparent and easy-to-understand regulations, law enforcement agencies will be better able to carry out their duties without being hampered by procedural complexities. In addition, socialization and training for law enforcement officials on the new confiscation procedures are also crucial to ensure that they can carry out their duties properly and in accordance with applicable legal provisions.

Another strategy that could improve the effectiveness of the sentencing system is the use of blockchain technology to monitor financial transactions in real-time, as proposed by Sitompul and Hutabarat (2019). Blockchain technology has the potential to increase transparency and accountability in the financial system, making it easier to detect suspicious transactions potentially related to money laundering. By utilizing this technology, law enforcement agencies can track the flow of funds more efficiently and quickly, which in turn can accelerate the investigation and prosecution of criminals.

However, the implementation of this technology requires substantial investment and adequate training of human resources. The government and relevant agencies need to consider the budget required for the implementation of these technologies, as well as design comprehensive training programs for law enforcement officers and other relevant parties. Without adequate support, efforts to integrate advanced technologies in the law enforcement system may be hampered, reducing the effectiveness of the proposed strategy. Therefore, collaboration between the government, private sector and international institutions is essential to create an ecosystem that supports the application of technology in preventing and combating ML.

From an international perspective, Stessens (2000) states that cross-border collaboration is essential in dealing with transnational crimes, including money laundering. Crimes involving cross-border flows of funds are often difficult to tackle by one country alone, given the complexities and dynamics involved. Therefore, international cooperation is key to creating effective strategies in preventing and combating ML. Through this collaboration, countries can share information, technology and resources, and develop a more coordinated approach to the challenges of transnational crime.

Indonesia can learn from the experience of other countries in strengthening international cooperation, especially in terms of extradition of perpetrators and return of assets. Countries that have been successful in handling ML often have strong extradition treaties and efficient asset recovery mechanisms. By adopting best practices from these countries, Indonesia can increase the effectiveness of law enforcement and accelerate the legal process against criminals operating outside national jurisdiction. This will also send a clear signal to criminals that they will not be able to avoid legal responsibility simply by fleeing to another country.

In addition, strengthening international cooperation also includes active participation in international forums and regional organizations that focus on preventing transnational crime. Through membership in organizations such as the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG), Indonesia can contribute to the development of international standards and gain access to resources and technical support. Involvement in these forums also allows Indonesia to share experiences and challenges faced in handling ML and learn from other countries' best practices.

However, to achieve this goal, Indonesia needs to address a range of challenges, including regulatory issues, human resource capacity, and supportive legal infrastructure. Investing in training and capacity building for law enforcement officers and improving legal infrastructure will be critical to ensuring that international cooperation is effective. Thus, cross-border collaboration will not only strengthen Indonesia's efforts in combating ML, but will also contribute to economic stability and the integrity of the global financial system.

Overall, the effectiveness of Indonesia's ML conviction system requires significant improvement, both in terms of regulation and implementation. Susanto and Wulandari (2021) emphasized that the success of countering ML depends not only on existing laws, but also on political commitment and coordination between institutions.

CONCLUSION

Criminalization of money laundering in Indonesia has undergone significant development through the implementation of Law No. 8/2010. This regulation provides a strong legal basis in tackling crimes involving the proceeds of crime. The criminalization policy shows a serious effort from the government to take action against the perpetrators through the regulation of main and additional punishment, such as confiscation of assets from the proceeds of crime. However, the effective implementation of this policy still faces a number of obstacles, including weak coordination between law enforcement agencies and less than optimal use of supporting technology.

The punishment system for money laundering offenders also faces major challenges. The effectiveness of penalties, although quite severe, has not fully created a deterrent effect for perpetrators. Weak supervision at the investigation stage and the low level of compliance of financial institutions in reporting suspicious transactions are the main obstacles in achieving the objectives of punishment. In addition, the lack of international collaboration in dealing with transnational crimes is one of the factors that affect the success of law enforcement.

To improve the effectiveness of the criminalization and punishment system in handling money laundering crimes, the government needs to take the following strategic steps. It is necessary to increase the technical capacity of law enforcement officials in investigating and tracing the flow of proceeds of crime. Intensive training and adequate budget allocation should be a top priority. The implementation of technologies such as blockchain and artificial intelligence can strengthen the monitoring of suspicious transactions. It can also minimize administrative errors in crime detection.

The government needs to harmonize domestic regulations with international law, especially within the FATF framework. This will facilitate cross-border collaboration in handling money laundering crimes. Socialization to the public and business actors regarding the obligation to report suspicious transactions can increase the level of compliance and transparency. More intensive cooperation with other countries is needed to facilitate the extradition of perpetrators and the return of assets from cross-border crimes.

With these steps, it is hoped that the criminalization and punishment system for money laundering in Indonesia can be more effective, so as to have a significant impact in creating justice and protecting the country's economic stability.

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