

The Implementation of International Law on Strengthening Cooperation in Combating Money Laundering Crimes of ASEAN Countries

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Abstract. *The development of technology that is growing rapidly and continues to increase makes criminals smarter and more creative in conducting money laundering. It is one of the transnational crimes because it is a crime that allows the perpetrators to commit criminal acts outside the country's borders. In 2022-2023 Indonesia has eradicated money laundering, ranging from those originating from narcotics, gambling, investment fraud, environmental crimes, banking, and cybercrime. This effort succeeded in uncovering 242 money laundering cases with 161 suspects and recovering state losses of IDR 3.74 trillion. So, the research discussed how the implementation of international law in strengthening cooperation in combating money laundering in ASEAN countries is. This research method was normative research with legal research as a process in finding legal rules, legal principles, and legal doctrines. The results of the research that has been done can be concluded that in Strengthening cooperation in eradicating money laundering in ASEAN region by making agreements (treaties) and implementing treaties on Mutual Legal Assistance in Criminal Matters 2004 (MLAT 2004) among ASEAN countries with the concept of free movement of judgment in the field of criminal matters and Strengthening inter-state ties politically to eradicate transnational crimes, especially money laundering in ASEAN member countries for cross-country law enforcement and implementing the principle of aut punire aut dedere.*

Keywords: Asean; Eradication; Money Laundering.

1. Introduction

The development of advanced technology in the 20th century has made a big impact in various sectors, such as economics, politics, and socio-culture. These developments have positive and negative impacts on a country, such as the ease of communicating with relatives and family even though the distance is very far apart, but also the rapid increase in crime and the delay in the establishment of positive laws to deal with criminality that occurs. Criminality or crimes committed massively by individuals or groups who obtain wealth illegally in very large amounts, and these crimes can be committed within the borders of a country or across the borders of other countries (transnational crime).

The development of technology that is growing rapidly and continues to increase makes criminals smarter and more creative in conducting money laundering. In the current digital era, money laundering activities can be carried out using technologies such as the Internet, e-commerce, and crypto currency. This makes money laundering activities increasingly difficult for the authorities to eradicate. So, because of this, more effective and efficient legal efforts are needed in eradicating money laundering activities in the current digital era.¹

International law (public) is the overall rules and principles of law governing relationships or issues that cross state boundaries (international relations) that are not civil in nature.² The definition of international law is more detailed explained by Shearer as cited by Starke and Alina Kaczorowska, namely:³

International law may be defined as that body of law which is composed for it is greater part of the principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relations with each other, and which includes also:

1. The rules of law relating to the functioning of international institutions or organizations, their relations with each other, and their relations with states and individual, and

¹ Raihana, Tri Endang Kumala, and Fanny, 2023, *Tindak Pidana Pencucian Uang Perspektif Hukum Pidana dan Perkembangan Teknologi*, SEIKAT: Jurnal Ilmu Sosial, Politik dan Hukum, Volume 2 No. 3, p. 349

² Mochtar Kusumaatmadja, 1982, *Pengantar Hukum Internasional*, Buku I Bagian Umum, Binacipta, Jakarta, First Prin, p. 1.

³ Alina Kaczorowska, 2002, *Textbook: Public International law*, Old Balleys Press, London, p. 7.

2. the rules of law relating to individuals and non-states so far as the rights or duties of such individuals and non-states entities are the concerns of the international community.

In the above understanding, it can be concluded that international law does not only regulate relations between states, but also regulates international organizations, but John O'Brien argues that international law is a legal system that is primarily concerned with relations between states.⁴ This is because considering that the state is the main subject of international law. Other subjects are referred to as derivative subjects.

Money laundering is one of the transnational crimes because it is a crime that allows the perpetrators to commit criminal acts outside the country's borders. Money Laundering is a crime that can harm the country's economy as well as Indonesia in 2022-2023 the National Police handled all money laundering crimes, ranging from those originating from narcotics, gambling, investment fraud, environmental crimes, banking, and cyber crime and successfully uncovered 242 TPPU cases with 161 suspects and recovered state losses of IDR 3,74 Trillion.⁵

Cross-border money laundering as part of transnational crime has become a global problem and an international issue that disrupts the life of the international community because it greatly damages the order of the world economy and the global financial system.⁶ In the context of ASEAN Crimes, Money Laundering is increasingly prevalent, this is due to several factors, namely:⁷

1. The Financial System Globalization.
2. Information Technology Advancement.
3. Very Strict Bank Secrecy.
4. The Use of anonymity
5. The Use of E-Money.

⁴ John O'Brien, 2001, *International Law*, Cavendish Publishing Limited, Great Britain, p. 1.

⁵<https://www.antaraneews.com/berita/3870936/polri-kembalikan-kerugian-negara-rp374-triliun-akibat-pencucian-uang> Accessed on Saturday, December 16, 2023.

⁶ Efendi Lod Simanjuntak, 2021, *Penegakan Hukum Pencucian Uang Lintas Yuridiksi*, Arti Bumi Intaran, Yogyakarta, Second Print, p. 26.

⁷ Priyatno, 2010, *Iktisar Ketentuan Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*, NLRP, Jakarta, p. 3-18.

6. Layering money laundering practices.
7. Lawyer-client confidentiality.
8. The state is not serious in combating money laundering and
9. non-discriminalization of money laundering as a criminal offense.

In eradicating Money Laundering Crimes in ASEAN, close cooperation and collective efforts between countries are needed, one of which is through the implementation of international law, so from this background the researcher tried to raise the issue of how the implementation of International Law in strengthening cooperation in eradicating money laundering crimes in ASEAN countries.

2. Research Methods

It was normative research, legal research as a process in finding a rule of law, legal principles, and legal doctrines to solve the research problem of the source of legal issues at hand, so that this research was carried out to examine literature sources.⁸ This research examined theories and also international and national regulations relating to the Implementation of International Law in the Settlement of Money Laundering Cases.

3. Results and Discussion

3.1. The Implementation of International Law in Strengthening Cooperation in Combating ML Crimes in ASEAN Countries

International law is bilateral, trilateral, regional, multilateral, and universal. This means that the rules are made by two or more countries that agree to bind themselves to each other. So with this, it is clear that international law does not have a formal legislative body that has the authority to make rules or laws. However, this does not mean that there is no formal legislative body so there is no international law. It is the international community itself that makes international rules.⁹

International law has an important role in combating ML, because international law

⁸ Soerjono Soekamto and Sri Mamudji, 1985, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Rajawali Press, Jakarta.

⁹ Sefriani, 2021, *Hukum Internasional: Suatu Pengantar*, PT. Raja Grafindo Persada, Depok, Cat-11, p 5.

can be the basis for cooperation between countries in combating ML, especially in ASEAN countries. The establishment of FATH (Financial Action Task Force on Money Laundering) 1989, the Vienna Convention 1988, the UN Convention on Transnational Crime 2000, the UN Convention on Anti- Corruption 2003, and the ASEAN Declaration 1979 which mentions money laundering as a transnational crime accompanied by the issuance of various money laundering regulatory regimes throughout the world, all of which show that cross-border money laundering has become a common concern among nations in the world.¹⁰ So many countries have agreed that there must be firm action in combating money laundering. It consists of 3 activities that each standalone but are often carried out together, namely: placement, layering, and integration.¹¹

Money Laundering has many types of predicate crime, namely corruption, taxation, narcotics, terrorism, etc. Bambang Purnomo provides an explanation of money laundering which can contain at least 5 (five) elements, namely:¹²

- a. A person or organization that performs an action;
- b. Illicit money derived from criminal acts;
- c. It is with the intent to hide the money from the government or authorities authorized to take action against the criminal offense;
- d. By entering into the financial system of a country; and
- e. The money is withdrawn from the financial system of the country in question to become legal tender.

Besides being very detrimental to society, money laundering activities are also very detrimental to the state, because they can affect or damage the economic stability

¹⁰ Efendi Lod Simanjuntak, *Op., Cit.*, p. 27

¹¹ Money Laundering : A Banker's Guide to Avoiding Problem, occ.treas.gov/laundry/org.h.htm, p.2 as cited from Husein, Yunus, 2007, *Bunga Rampai Anti Pencucian Uang*, Bandung: Books Terrace & Library, and cited from Lydia Anggun, 2022, *Perkembangan Kejahatan Tindak Pidana Pencucian Uang dan Tindak Pidana Pendanaan Terorisme (TPPU dan TPPT) di Masa Pandemi Covid-19*, Technology and Economics Law Journal: No. 1, Volume 1, p.76.

¹² Bambang Purnomo, 2011, *Money Laundering Persepsi Hukum Sosial-Ekonomi Beraspek Pidana*, PT Raja Grafindo Persada, Jakarta, p. 187.

of a country. There are various adverse effects caused by money laundering that have been proven, among others:¹³

1. Destroying the Integrity of Financial Markets, namely, money laundering has the effect of destroying the integrity of financial markets. If the profits in the form of assets or money derived from criminal acts enter financial institutions such as banks, securities, and others, then we can be sure that it can cause market liquidity problems for these financial institutions.

2. The loss of control over economic policy, namely, money laundering crimes affect economic policy in a government, developed and developing countries still need investment from foreign countries. However, the presence of money laundering crimes in the form of large fund investors in the country will create a power over the country thanks to its investment.

3. It creates economic distortions and instability, i.e., the purpose of money laundering crimes is not primarily to make a profit, but to hide the proceeds of their crimes. For example, a group of criminals who get money from corruption offenses finance the construction industry or hotels to hide the proceeds of their corruption. With this financing action, only for a short-term plan to launder money, when the industry is no longer in line with the perpetrators of money laundering, they withdraw their investment, which causes the collapse of the industry that was originally given investment.

4. It can weaken the legitimate private sector, namely, Industry in the private sector that is the sector most affected by money laundering crimes. This happens because the perpetrators who commit laundering crimes use front companies by combining the benefits of the crimes committed together with the legitimate funds owned.

5. Social Costs, namely, money laundering crimes also cause the focus of market economic forces, citizens, and governments on the perpetrators of money laundering crimes.

It is a criminal activity that causes losses to the state, because crime has a negative impact on economic growth, even every general or specific crime will reduce the rate of economic growth.¹⁴ The large impact obtained by the state which results in

¹³ Ivan Yustiavandana, Arma Nefi, and Adiwarmar, 2020, *Tindak Pidana Pencucian Uang di Pasar Modal*, Ghalia Indonesia, Bogor, p. 14.

¹⁴ Derry Angling Kesuma, 2019, *Analisis Hubungan Tingkat kejahatan dan Pertumbuhan Ekonomi di Indonesia*, Jurnal Ilmiah Nasional, Volume 1, No. 3, p. 7.

the misery of the community, must be done through systematic and concrete efforts so that the eradication of money laundering can be done. The Indonesia in this effort has made various efforts, one of which is Law number 8 of 2010 on the prevention and eradication of money laundering crimes.

It is one of the transnational crimes because money laundering is a crime that allows the perpetrators to commit criminal acts outside the national borders. The United Nations (UN) issued resolution 55/25 regarding the United Nations Convention Crime that a crime is transnational if the crime involves more than one country.¹⁵ So, a crime is said to be a transnational crime if the crime is committed in more than one country, money laundering is a transnational crime because the perpetrator can commit it in more than one country. The problems that arise in transnational crimes are determining which country has jurisdiction over the perpetrator, and what efforts are made to eradicate or prevent money laundering.

Efforts by perpetrators of money laundering crimes in order to avoid punishment or accountability for criminal acts are made, such as going abroad. The difficulty in prosecuting transnational crimes is how to determine the location and evidence. There is a theory that explains how the state can prosecute crimes, namely personal jurisdiction, jurisdiction owned by a state against persons or legal entities, both its own citizens and foreign citizens and national or foreign legal entities. This jurisdiction is based on the citizenship or residence of the person or legal entity concerned. Personal jurisdiction can be divided into two types, namely:

- a. Active personal jurisdiction, which is the jurisdiction possessed by a state to prosecute its own citizens or national legal entities that commit criminal offenses outside the territory of the state. This jurisdiction is based on the nationality principle.
- b. Passive personal jurisdiction, which is the jurisdiction possessed by a state to prosecute foreign nationals or foreign legal entities that commit criminal offenses outside the territory of the state against its own citizens or their interests. This jurisdiction is based on the protection principle.

Dealing with Money Laundering that crosses national borders requires legal cooperation mechanisms among international countries in order to create legal

¹⁵ D.J. Harris, 1979, *Cases and Materials on International Law*, Sweet & Maxwell, London, p. 236, cited from Jeanny Jessica, 2020, *Tindak Pidana Pencucian Uang yang Dilakukan Oleh Korporasi: Studi kasus Putusan PN Nomor: 64/Pid.sus/TPK/2016/PN.BGL*, Jurnal Hukum & Pembangunan, Volume 51, No. 4, p. 16.

instruments related to the crimes of Money Laundering. The state plays a very important role to eradicate and prosecute the perpetrators through negotiations and international cooperation. International law plays a role in strengthening cooperation to eradicate money laundering in the ASEAN region such as by implementing Mutual Legal Assistance (MLA), and extradition cooperation agreements.

Mutual Legal Assistance (MLA) is a form of mutual assistance cooperation between countries covering the fields of investigation, prosecution, court proceedings, and confiscation of assets from crime. It is a cross-jurisdictional law enforcement instrument covering the scope of formal cooperation, including the following:¹⁶

- a. The taking of evidence or statements from a person.
- b. The arrangements for a person to provide evidence or assist in criminal proceedings
- c. The submission of documents related to the judicial process.
- d. The search and seizure measures.
- e. The act of investigating an object and place.
- f. The submission of original documents or legalized copies of records and evidence.
- g. The identification or tracing of property obtained from criminal acts and objects used to commit criminal acts.
- h. Blocking and confiscation of assets resulting from criminal acts that can be confiscated and seized.
- i. The confiscation and return of assets resulting from criminal acts.
- j. The search and identification of witnesses and suspects.
- k. The provision of other agreed assistance in accordance with the objectives of the agreement and the provisions of the laws and regulations of the requested party.

¹⁶ Efendi Lod Simanjuntak, *Op., Cit.*, p. 249

The extradition itself is a means of handing over the perpetrator of a crime by a country to a country that has the authority to try or punish the perpetrator. It is carried out on the basis of an agreement between the republic of Indonesia and another country, if there is no agreement then extradition can be carried out on the basis of good relations and if the interests of the state require it.¹⁷

The scope of the MLA Cooperation is a tangent of MLA and Extradition in the nature of these two instruments complement each other, namely with MLA objects concerning assistance in the field of judicial proceedings, and extradition objects concerning people. When a criminal has been arrested and handed over to a country that has the authority to prosecute, and further evidence is still needed in court, the MLA instrument is very effective to use. MLA and Extradition tangent points cover aspects of identification and localization of people, this means that the scope of MLA Cooperation in the criminal field (criminal matters) must be interpreted more broadly not only concerning cooperation in the context of mutual legal assistance in the judicial process but also concerning the search for criminals.

Cooperation in the field of criminal matters between ASEAN member states with the MLA instrument is getting stronger because of the signing of the ASEAN treaty on Mutual Legal Assistance in Criminal Matters 2004 (MLAT 2004) on December 29, 2004 in Kuala Lumpur, Malaysia. Initially, MLAT 2004 was only signed by Brunei, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, and Vietnam. In 2006 Myanmar and Thailand, so at this time all ASEAN countries have signed the treaty means that according to the practice of international law MLAT 2004 is a binding norm and acts as a regulation or positive law for ASEAN countries, this is in accordance with one of the principles of international law namely *pacta sunt servanda*.

The concept of free movement of judgment regarding the recognition and enforcement of foreign court decisions, recognition and enforcement of foreign court decisions in various countries is not a simple matter, because there is the principle of *par in parem non habet imperium* in international relations, namely that a sovereign state cannot exercise its jurisdiction against another sovereign state. This results in the right of immunity for the head of a sovereign state. The recognition and enforcement of foreign judgments depends on whether the judgment is contrary to national law and whether there are political and economic interests of the country where a judgment is to be implemented.

¹⁷ Muh. Irfansyah Hasan, 2018, *Kejahatan Transnasional dan Implementasi Hukum Pidana Indonesia*, Lex Crimen, Volume VII, No. 7, p. 18.

Globalization and rapid technological advancement make transnational crimes increasingly younger, especially money laundering, so the classic concept of sovereignty according to the principle of *par in parem non habet imperium*, which does not want other parties to interfere in the internal affairs of a country, it is time to abandon it in the interests of law enforcement and the interests of the international community.

Cross-jurisdictional law enforcement in ASEAN through the MLA instrument aims to enforce the law against money laundering with an international dimension, can be done in 3 ways, namely:

a. The Implementation of the concept of free movement of judgment in criminal matters

In the concept of free movement of judgment is the idea of recognition and implementation of national courts against perpetrators of cross-border Money Laundering Crimes in the national jurisdiction of ASEAN member states on a reciprocal basis. This is intended to avoid impunity of the perpetrators, based on the following reasons:

- 1) MLA and Extradition instruments are mutually complementary.
- 2) MLAT includes Cooperation concerning people
- 3) MLAT 2004 is applicable and binding on all ASEAN Members.
- 4) In accordance with the charter of the formation of ASEAN which is open including cooperation in law enforcement.

b. Follow the money approach

It prioritizes asset recovery from ML and balances it with corporal punishment to prevent repetition of the crime.

c. The decision on extradition should be a judicial decision, not an executive one, because when it is in the hands of the president (executive) it tends to be too political or have a political dimension.

d. The Implementation of *aut punire aut dedere principle*.

In international relations, every state is morally obliged to hand over or prosecute the perpetrators of transnational crimes.

4. Conclusion

Strengthening cooperation in combating money laundering in ASEAN countries by entering into treaties and implementing the Treaty on Mutual Legal Assistance in Criminal Matters 2004 (MLAT 2004) among ASEAN countries with the concept of free movement of judgment in criminal matters. Strengthening political inter-state relations to eradicate transnational crimes, especially money laundering in ASEAN member countries for cross-border law enforcement and apply the principle of *aut punire aut dedere*.

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