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# **THE 5 th INTERNATIONAL AND CALL PAPER**

## **Legal Reconstruction in Indonesia Based on Human Rights**

**Imam As Syafei Building**

**Faculty of Law, Sultan Agung Islamic University**

**Jalan Raya Kaligawe, KM.4 Semarang, Indonesia**

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# The 5<sup>th</sup> PROCEEDING

## *“Legal Reconstruction in Indonesia Based on Human Right”*

**IMAM AS SYAFEI BUILDING**

Faculty of Law, Sultan Agung Islamic University  
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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## PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

## PROCEEDINGS

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# Legal Politics In Erading The Crime Of Money Laundering In Indonesia

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## Abstract

*In recent years, crimes involving money have begun to emerge in both the banking and non-banking sectors. Like money laundering, which is clearly illegal because it provides incentives and protects against illicit money. Typologies (types) classified according to the ways money launderers carry out their laundering activities are (1) Concealment with in business structure, (2) Misuse of Legitimate Businesses, (3) Users of fake identities, fake documents, or intermediaries (use of fatse identities, documents, or straw men), (4) Exploiting issues relating to international jurisdiction (Exploiting International Jurisdictional Issues), (5) Use of types of assets that are without a name (Use of Anonimouns Aset Type). In Law No. 15 of 2002 concerning money laundering in Indonesia still has many weaknesses, so in the first amendment the definition which was not previously included is then included in Article (1) of Law No. 25 of 2003 which contains the following: Money laundering is placing, transferring, paying, spending, granting, entrusting, bringing abroad, exchanging or other actions for assets which he knows or should reasonably suspect are the proceeds of a criminal act with the intention of concealing, or disguise the origin of assets so that they appear to be legitimate assets.*

*Keywords: Political Law, Eradicating, Money Laundering.*

## A. INTRODUCTION

Indonesia is one of the countries that is quite open to being the target of money laundering, because in Indonesia there are potential factors as an attraction for money laundering actors, a combination of weaknesses in the social system and legal loopholes in the financial system, including the free foreign exchange system. origins of investment and the development of the capital market, foreign exchange traders and banking networks that have expanded overseas. Seeing the magnitude of the impact this has on the economic stability of the country, a number of countries have set fairly strict rules to disclose money laundering.<sup>1</sup>

In recent years, crimes involving money have begun to emerge in both the banking and non-banking sectors. Like money laundering, which is clearly illegal because it

provides incentives and protects against illicit money. Money laundering is an act undertaken to change the proceeds of crime such as corruption, narcotics crime, gambling, smuggling and other acts of assets that are known or reasonably suspected to be the result of a criminal act with the intention of concealing or disguising the origin of assets so that they appear to be assets. legitimate wealth. For this reason, cases of money laundering must be complicated or prevented.

This act is very dangerous, seen both nationally and internationally, due to money laundering as a means of legalizing the proceeds of crime in order to eliminate traces. In addition, money laundering can affect national and global financial balances. By preventing the practice of money laundering, it is hoped that a system can reduce illegal activities such as smuggling, corruption, financing of terrorism, tax evasion, and others. If a criminal cannot enjoy the proceeds from his crime, then there will obviously be less chance for them to commit a crime.

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<sup>1</sup> Financial Action Task Force on Money laundering, *Report on Money: Laundering Typologies, 1999-2003*, 3 February 2000, p. 2

According to Sutan Remi Syahrani, money laundering is a series of activities which is a process carried out by a person or organization against illicit money, namely money originating from crime, with the intention of hiding data and disguising the origin of the money from the government or the authorities authorized to take action. by entering money into the financial system, either using bank or non-bank services. These institutions include the stock exchange, insurance and foreign exchange trading so that money can be removed from the financial system as halal money.<sup>2</sup>

This action is included in the scope of organized crime, in that money laundering is a criminal act in the economic field which in essence provides an illustration of the direct relationship that crime is a continuation of economic activity and growth. The phenomenon of money laundering is no longer a national problem but an international one, so it is very important to place it at the center of legal regulation. Almost all economic crimes are committed with the motive of profit. Therefore, to deter the perpetrator or reduce the crime by finding the facts of the crime so that the perpetrator cannot enjoy it and the crime also disappears.

Several cases of economic crimes, especially corruption as one of the predicate offenses that have been decided by the court have been proven to have committed the crime of money laundering and impose imprisonment and fines and confiscation of property obtained from the crime. Even so, law enforcement on the Crime of Money Laundering still has several obstacles that need attention, especially in terms of laws and regulations which form the basis for law enforcement officers in examining and prosecuting the perpetrators of the Crime of Money Laundering, in addition to other obstacles that come from professional officials. law enforcement and community culture.

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<sup>2</sup> Sutan Remi Syahrani, *Seluk Beluk Tindakan Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta, Grafiti, 2004, p. 19.

Constraints or obscurity and conflict in law not only in subsidence law but also in procedural law. In practice, the implementation of Law Number 8 of 2010 concerning the Crime of Money Laundering in Indonesia has not yet considered an objective balance between the interests of the suspect and the interests of the public. Even the application of Articles 77 and 78 is contrary to legal certainty and legal protection as emphasized in Article 28 D paragraph (1) of the 1945 NRI Constitution and non-retroactive principle as reflected in Article 1 paragraph (1) Criminal Code.

## **B. PROBLEM FORMULATION**

- 1) What is the typology of a money laundering crime?
- 2) What is the form of Indonesian legal politics in eradicating the crime of money laundering?

## **C. DISCUSSION**

### **1. Typology of a Money Laundering Crime**

The law regulating the Crime of Money Laundering in Indonesia has undergone several changes in less than ten years and has undergone two changes. This shows how complex the problem of the crime of money laundering is. The first law is Law Number 15 of 2002 amended by Law Number 25 of 2003, and the last is amended by Law Number 8 of 2010. In consideration, it is emphasized that the crime of money laundering does not only threaten economic stability and the integrity of the financial system, but it can also endanger the joints of life in society, nation and state, needs to be harmonized with the development needs of law enforcement, international practice and standards.<sup>3</sup>

The crime of money laundering is not only a national problem in Indonesia, but also a regional and international problem, so that an international cooperation is needed in the prevention and eradication of it.

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<sup>3</sup> Deni Krisnawati, dkk, *Bunga Rampai Hukum Pidana Khusus*, Jakarta, Pena Pundi Aksara, 2006, p. 126

Various definitions of money laundering can be found in various literatures, one of which is according to the Black's Law Dictionary, money laundering is "the term used to describe investment or other transfers of money flowing from machinery, drug transactions, political channels so that it's original sources can not be traced".<sup>4</sup>

Although there are variations in defining money laundering, in essence it contains the following elements: "intent" (intent or intentionally), a financial transaction, proceeds of criminal, knowledge or reason to know and proceed of crime or unlawful activity. The process of changing the identity or origin of illegally obtained assets so that the assets appear to have come from a legitimate source.<sup>5</sup>

The typology (types) classified according to the ways money launderers carry out their laundering activities are (1) Concealment with in business structure, (2) Misuse of Legitimate Businesses, (3) Users of fake identities, fake documents, or intermediaries (use of false identities, documents, or straw men), (4) Exploiting problems concerning international jurisdiction (Exploiting International Jurisdictional Issues), (5) Use of types of assets anonymous (Use of Anonimous Aset Type).<sup>6</sup>

## **2. Forms of Indonesian Law Politics in Eradicating the Crime of Money Laundering**

Money laundering crime cases are already international in nature, for that we need a regulatory standard and the same and international perception to be placed in a central regulation. In carrying out criminalization, it is determined in advance which form of the law on money laundering model will be adopted in Indonesia and of

course it is adjusted to the legal system and the overall conditions in Indonesia.<sup>7</sup> In order to see the factors that lead to inadequate enforcement of the anti-money laundering provisions in Indonesia, it is necessary to re-examine the understanding of why money laundering is criminalized or why money laundering should be eradicated.

The most dangerous organized crimes and the very interest in laundering the proceeds of their crimes were initially only the crimes of the illegal trafficking of narcotics and psychotropic substances. So the criminalization of money laundering was originally only directed at eradicating narcotics trafficking and the like as stated in the United Nation Convention Against Illicit Traffic In Narcotic Drugs and Psychotropic Substances of 1988 (The Vienna Convention). The term money laundering in the legal sense was first used by American courts in connection with decisions regarding the confiscation of proceeds from narcotics crimes committed by citizens of Columbia. International concern about narcotics and money laundering gave birth to an agreement called the International Legal Regime to Combat Money Laundering and there is even a tendency that money laundering is very complicated. Furthermore, money laundering has grown and not only originated from drug crimes but also from various crimes including organized crimes.

In Law No. 15 of 2002 concerning money laundering in Indonesia still has many weaknesses, so in the first amendment the definition which was not previously included is then included in Article (1) of Law No. 25 of 2003 which contains the following: Money laundering is placing, transferring, paying, spending, granting, entrusting, bringing abroad, exchanging or other actions for assets which he knows or should reasonably suspect are the proceeds of a criminal act with the intention of concealing, or disguise the origin

<sup>4</sup>Joni Erizon, *Apa dan Bagaimana Pencucian Uang*, Penerbit Unsri, 2002, p. 14

<sup>5</sup> Yenti Garnasih, *Anti Pencucian Uang di Indonesia dan Kelemahan Dalam Implementasinya*, Dirjen Perundang-undangan, Jakarta, Jurnal Legislasi Indonesia Vol. 3 No. 4, Desember 2006, p. 135.

<sup>6</sup> Aprillani Arsyad, *Analisis Yuridis Penegakan Hukum Tindak Pidana Pencucian Uang*, Jurnal Ilmu Hukum, Vol.5.No.2, Oktober 2014, p. 44

<sup>7</sup>Barda Nawawi Arief, *Tindak Pencucian Uang, Perkembangan Pembahasan Pencucian Uang Sejak RUU Sampai UU No. 25/2003*, Badan Penerbit Undip, Semarang, 2010, p. 40

of assets so that they appear to be legitimate assets.

From its formula, the crime of money laundering in the Law on Money Laundering can be divided into two criteria, namely Money Laundering (Articles 3 and 6) and Money Laundering (Articles 8 and 9). Each of these articles is:

#### Article 3

(1) Anyone who deliberately:

- a. Placing assets that he knows or should reasonably suspect are the proceeds of a criminal act into a financial service provider, either on behalf of himself or on behalf of another party;
- b. Transfer of assets that he knows or should reasonably suspect is the result of a crime from one financial service provider to another financial service provider either on his own behalf or on behalf of another party;
- c. Paying or spending assets which he knows or should reasonably suspect is the result of a criminal act, either on his behalf or on behalf of another party;
- d. Granting or donating assets which he knows or should reasonably suspect are the result of a criminal act either on his own behalf or on behalf of another party;
- e. To deposit assets that are known or reasonably suspected to be the result of a criminal act either on his behalf or on behalf of another party;
- f. Take out of the country assets which he knows or should reasonably suspect are the result of a criminal act; or
- g. Exchange or other actions for assets which he knows or should reasonably suspect are the result of a criminal act with currency or other securities; with the intention of hiding or disguising the origin of assets which he knows or should reasonably suspect are the proceeds of a criminal act, shall be sentenced for money laundering with a minimum imprisonment of 5 years and a maximum of 15 years and a fine of

at least Rp. 100 million and a maximum of Rp. . 15 billion.

The objective element (*actus reus*) of Article 3 is very broad and constitutes the essence of the offense and must be proven. The objective element consists of placing, transferring, paying or spending, granting or donating, entrusting, taking out of the country, exchanging or other actions of assets (which are known or reasonably suspected to have originated from crime). Meanwhile, the subjective element (*mens rea*) which is also the essence of the offense is intentionally, knowing or should reasonably suspect that assets originate from the proceeds of crime, with the intention of hiding or disguising the assets.

#### Article 6

(1) Anyone who receives or controls:

- a. placement;
- b. transfer;
- c. payment;
- d. grant;
- e. donations;
- f. safekeeping; or
- g. exchange, assets known or reasonably suspected to be the result of a criminal act shall be punished with imprisonment of at least 5 years and a maximum of 15 years and a fine of at least Rp. 100 million and a maximum of Rp. 15 billion.

The objective element of Article 6 is to receive or control the placement, transfer, payment, grant, donation, safekeeping, exchange of assets (which is known or reasonably suspected to be the result of a criminal act). Meanwhile, the subjective element or *mens reanya* is knowing or should reasonably suspect that property is the result of a criminal act.<sup>8</sup>

To enforce the law against money laundering requires good cooperation from all elements of the Criminal Justice System

<sup>8</sup> Ayumiati, *Tindak Pidana Pencucian Uang (Money Laundering) dan Strategi Pemberantasan*, IAIN, Jurnal Hukum Pidana dan Politik Hukum, LEGITIMASI, Vol.1 No. 2, Januari-Juni 2012, p. 84

(SPP), which in this case consists of the police, prosecutors, judges and also the Financial Transaction Reports and Analysis Center (PPATK).<sup>9</sup> Each of the SPP and PPATK elements must be able to run well coordinated and simultaneously. However, it seems that there are still problems in enforcing money laundering. For this reason, an investigative body was formed as the Financial Intelligence Unit (FIU).<sup>10</sup>

Furthermore, in relation to the form of error in the Crime of Money Laundering as formulated in Article 3, Article 4 and Article 5 of Law Number 8 Year 2010 in particular the words "Assets which he knows or should reasonably suspect are the result of a criminal act", then can be ascertained partly for intentional, partly for negligence. The logical consequence is that this article requires not only deliberate negligence, but also deliberate alternative. In the context of the theory, the mention of culpa is the real culpa and the culpa which is not real. Culpa actually means that the prohibited effect arises because of his negligence, while culpa tu does not actually mean committing an act of intent but one of them is being neglected.

#### **D. CONCLUSION**

1. Typologies (types) classified according to the ways money launderers carry out their laundering activities are (1) Concealment with in business structure, (2) Misuse of Legitimate Businesses, (3) Users of fake identities, fake documents, or intermediaries (use of fatse identities, documents, or straw men), (4) Exploiting issues relating to international jurisdiction (Exploiting International Jurisdictional Issues), (5) Use of types of assets that are anonymous (Use of Anonimouns Aset Type);
2. In Law No. 15 of 2002 concerning money laundering in Indonesia still has many

weaknesses, so in the first amendment the definition which was not previously included is then included in Article (1) of Law No. 25 of 2003 which contains the following: Money laundering is placing, transferring, paying, spending, granting, entrusting, bringing abroad, exchanging or other actions for assets which he knows or should reasonably suspect are the proceeds of a criminal act with the intention of concealing, or disguise the origin of assets so that they appear to be legitimate assets. From the formula,

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<sup>9</sup> A. Hajjah, *Hukum Pidana Ekonomi Modern*, Bandung, Citra Aditya Beki, 2001, p.56.

<sup>10</sup> Speaker's Notes International Workshop Indonesia, *Rancangan Money laundering Law*, Papers, Jakarta, 29-30 May 2000, p. 3.

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