Ratio Legis Journal
ISSN 2830-4624
published by
Master of Law, Faculty of Law
Universitas Islam Sultan Agung

The Role of Banking in Preventing Money Laundering Crimes Linked to the Principle of Bank Secrecy

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Abstract. *In this very sophisticated era of globalization, there are more and more forms of crime and their types are increasingly complex, many crimes that have been carried out now use financial institutions, especially banks, as targets. The purpose of this study is to find out, review and analyze the legal regulations on money laundering, how banks are related to preventing money laundering crimes with the principle of bank secrecy. As well as to find out, review and analyze the problems of bank secrecy in efforts to prevent money laundering crimes. The approach method used is normative juridical, namely a legal research method used referring to existing Literature Studies or Secondary Data and aims to obtain Normative Knowledge about the Relationship between one Regulation and another Regulation and its Application in Practice. The writing specifications use descriptive analysis, the sources and types of data used are secondary. Data collection methods through literature research, document studies, and using qualitative data analysis methods. The problems are analyzed with the theory of overcoming criminal acts, and the theory of legal certainty. The research results explain that the arrangementThe law on money laundering in Indonesia is regulated in Law No. 8 of 2010 concerning the crime of money laundering, the involvement of banks in preventing the crime of money laundering with the principle of bank secrecy. is to increase public trust in a bank by implementing bank compliance with bank secrecy obligations, which concerns whether or not the bank can be trusted by customers to store their funds and/or use other services from the bank not to disclose the condition of the customer's money and transactions and other conditions of the customer concerned to other parties. the problem of bank secrecy in efforts to prevent money laundering is because there is still fraud or insiders and banks need several programs to stay safe from money laundering efforts.*

Keywords: *Crime; Finance; Laundering; Money.*

1. Introduction

Indonesia is a country of law where life must be based on binding rules and if the rules are violated there are sanctions that are received. According to the 1945 Republic of Indonesia Law Article 1 paragraph 3, hereby all state activities must be in accordance with the rules in force in Indonesia. Violations committed must be subject to sanctions in accordance with the applicable rules. If the violation is public, then the violation falls into the criminal category. In criminal law there are things that may be done and may not be done, prohibitions and requirements that have been determined by the government and if these rules are violated, they will receive sanctions that have been determined by the government. Criminal law regulates acts, both crimes and violations.

With increasingly sophisticated forms of crime and increasingly complex types, many crimes are being carried out now, many crimes use financial institutions, especially banks, as targets.

Money laundering is an attempt to hide or disguise the origin of wealth from a crime through various financial transactions such as saving or transferring to others so that the money appears to come from clean, legal/legitimate assets. Money laundering activities are currently classified as a crime.

*Money laundering*This is actually a great pleasure for financial institutions because on the one hand, with the existence of large amounts of funds stored, the bank will grow rapidly, while on the other hand, the bank is faced with laws that prohibit such activities. On the other hand, the rampant money laundering activities can trigger an increase in various crimes that generate money or assets. and the liquidity of the bank's financial institution will be considered low if it is related or associated with money from crime.

By utilizing the facilities offered by these banking institutions, the physical form of money can be changed into a value stored in an account or into a value in a monetary instrument. Banking service facilities also provide convenience to hide, disguise or transfer dirty money from criminal acts to banks in various parts of the world, which is why banking institutions are often used as the main means for national and international chains in the money laundering process.

2. Research Methods

In the research and preparation of this thesis, the author used a normative legal research method. Juridical is used to analyze various laws and regulations related to money laundering crimes. Normative juridical is a legal research of literature conducted by examining library materials or secondary data alone. This research was conducted in order to obtain materials in the form of theories, concepts, legal principles and legal regulations related to the subject matter. Descriptive analytical research is research that aims to provide the most accurate description possible of humans, conditions and other symptoms.

3. Results and Discussion

3.1. Legal regulations against money laundering in Indonesia

In line with the development of technology and globalization in the banking sector today, many banks have become the main targets for money laundering activities considering that this sector offers many instrument services in financial traffic that can be used to hide or disguise the origin of funds. With the globalization of banking, funds from crime flow or move beyond the boundaries of state jurisdiction by utilizing bank secrecy factors that are generally upheld by banks. Through this mechanism, funds from crime move from one country to another that do not yet have a legal system that is strong enough to combat money laundering activities or even move to countries that apply strict bank secrecy provisions.

Money laundering is a process or act that aims to hide or disguise the origin of money or wealth obtained from criminal acts which are then converted into wealth that appears to come from legitimate activities. In accordance with Article 2 of Law No. 15 of 2002 concerning the crime of money laundering (as amended by Law No. 25 of 2003), criminal acts that trigger money laundering include corruption, bribery, smuggling of goods/women/children/illegal weapons, kidnapping, terrorism, laundering, embezzlement, and fraud. According to Law No. 8 of 2010, money laundering is any act that fulfills the elements of a crime in accordance with the provisions of this Law.
In the TPPU Law, it is stated that any person who is inside or outside the territory of the Republic of Indonesia who participates in attempting, assisting, or conspiring to commit the crime of money laundering shall be punished with the same punishment as in Article 3, Article 4, and Article 5. The provisions in Article 5 paragraph (1) of the TPPU Law are exempted for reporting parties who carry out reporting obligations. For crimes of money laundering as in Article 3, Article 4, and Article 5 of the TPPU Law committed by a corporation, then the punishment is imposed on the corporation and/or the Corporate Controlling Personnel. Outside the provisions of Article 2, Article 3, Article 4, and Article 5, there are other articles that regulate criminal acts related to the crime of money laundering. Other criminal acts related to the crime of money laundering are regulated in Article 11, Article 12, Article 14, Article 15, and Article 16 of the TPPU Law.

In the TPPU Law, financial service providers include: banks, finance companies, insurance companies and insurance brokerage companies, financial institution pension funds, securities companies, investment managers, custodians, trustees, postal services as giro service providers, foreign exchange traders, card payment instrument providers, e-money and/or e-wallet providers, cooperatives that carry out savings and loan activities, pawnshops, companies engaged in commodity futures trading; or money transfer business providers. While other providers of goods and/or services: property companies/property agents, motor

vehicle traders, gem and jewelry/precious metal traders, art and antique traders, or auction houses.[1]

Criminal acts in Dutch are called strafbaarfeit, consisting of three syllables, namely straf which is interpreted as criminal and law, baar which is interpreted as can and may, and feit which is interpreted as action, event, violation and deed. The definition of criminal acts in the Criminal Code (KUHP) is known as strafbaarfeit and in the literature on criminal law often uses the term delict, while lawmakers formulate a law using the term criminal event or criminal act or criminal action.

Regarding the crime of money laundering which is regulated in Chapter II of Law No. 8 of 2010, namely:

Article 3 "Any person who places, transfers, diverts, spends, pays, grants, deposits, takes abroad, changes the form, exchanges for currency or securities or does other things regarding Assets which he knows or reasonably suspects are the result of a criminal act as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the Assets shall be punished for the crime of money laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

Article 4 "Any person who hides or disguises the origin, source, location, designation, transfer of rights or actual ownership of assets which he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) shall be punished for the crime of money laundering with a maximum prison sentence of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

Article 5 1. Any person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange, or use of assets that he knows or reasonably suspects are the proceeds of a crime as referred to in Article 2 paragraph (1) shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah). 2. The provisions as referred to in paragraph (1) do not apply to the Reporting Party who carries out the reporting obligations as regulated in this Law.

Article 6 1. In the event that the crime of money laundering as referred to in Article 3, Article 4, and Article 5 is committed by a corporation, the penalty shall be imposed on the Corporation and/or the Corporation's Control Personnel. 2. The penalty shall be imposed on the Corporation if the crime of money laundering: a. Is committed or ordered by the Corporation's Control Personnel; b. Is committed in order to fulfill the intent and purpose of the Corporation; c. Is

[1]Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, Article 17 paragraph (1).

committed in accordance with the duties and functions of the perpetrator or the person giving the order; and d. Is committed with the intention of providing benefits to the Corporation.

Article 7 1. The principal penalty imposed on a Corporation is a maximum fine of Rp. 100,000,000,000.00 (one hundred billion rupiah). 2. In addition to the fine as referred to in paragraph (1), additional penalties may be imposed on a Corporation in the form of: a. Announcement of the judge's decision; b. Freezing of some or all of the Corporation's business activities; c. Revocation of business license; d. Dissolution and/or prohibition of the Corporation; e. Confiscation of the Corporation's assets for the state; and/or f. Takeover of the Corporation by the state.

Article 8 If the convict's assets are insufficient to pay the fine as referred to in Article 3, Article 4, and Article 5, the fine shall be replaced with imprisonment for a maximum of 1 (one) year and 4 (four) months.

Article 9 1. In the event that the Corporation is unable to pay the fine as referred to in Article 7 paragraph (1), the criminal fine shall be replaced by the confiscation of the Assets belonging to the Corporation or the Corporation's Controlling Personnel with a value equal to the criminal fine imposed. 2. In the event that the sale of the Assets belonging to the Corporation that have been confiscated as referred to in paragraph (1) is insufficient, a prison sentence in lieu of a fine shall be imposed on the Corporation's Controlling Personnel by taking into account the fine that has been paid.

Article 10 Any person who is within or outside the territory of the Unitary State of the Republic of Indonesia who participates in an attempt, assists, or conspires to commit the crime of money laundering shall be punished with the same punishment as referred to in Article 3, Article 4, Article 5.

In general, there are three stages of the money laundering process, namely: a. Placement This stage is the simplest form of money laundering, where the perpetrator places (deposits) the illicit money into the financial system. At this placement stage, the form of the proceeds of crime must be converted to hide the illegal origin of the money. For example, the proceeds of drug trafficking consist of small denominations in very large amounts and are then converted into larger denominations, then the money is deposited into a bank account, and purchased into monetary instruments such as checks, money orders, and others.

3.2. The involvement of banks in preventing money laundering crimes with the principle of bank secrecy

One of the factors that can increase public trust in a bank is the bank's compliance with bank confidentiality obligations, which concerns whether or not the bank can be trusted by customers to store their funds and/or use other

services from the bank not to disclose the state of the customer's money and transactions and other conditions of the customer concerned to other parties.

The relationship between a bank and its customers is not like a regular contractual relationship, but in that relationship there is also an obligation for the bank not to reveal the secrets of its customers to any other party unless otherwise specified by applicable laws. This relationship can be said to be like the relationship between a lawyer and a client, or a doctor and his patient.[2]

The principle of secrecy in banking financial institutions has been known for a long time. It began when feudalism collapsed in the fight for individual rights in trade. Information about customers' finances and personal matters became a non-negotiable need for the protection of private property rights and the continuity of trade practices. By the mid-19th century, it could be said that all governments in Western Europe had ratified the principle of banking secrecy and had accommodated similar laws in every country that wanted an orderly banking system.

Confidentiality of information that arises in banking activities is needed both for the benefit of the bank and for the benefit of the customer itself. The principle of confidentiality is a principle that requires or obligates banks as financial institutions to keep confidential everything related to finances and others from customers who, according to
banking world custom, must be kept confidential

The definition of Bank Secrecy can be found in Article 1 number 28 of Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking (Banking Law):

“Bank secrecy is everything related to information about deposit customers and their savings.”

The principle of bank secrecy originated from the aim of protecting the interests of bank customers so that confidentiality regarding their financial situation and personal data of customers is protected. In addition, bank secrecy is also intended for the benefit of the bank itself, because banks can be trusted by customers to manage their money. Therefore, the principle of bank secrecy is the soul of the banking system. An illustration of how important bank secrecy must be upheld by banks can be seen in Tournier v. National Provicial and Union Bank of England in 1924. This case is often used as a reference in the common law system which clearly shows that the rights of customers are protected by law, one of which is the confidentiality of customer information by the bank. A bank is a financial institution that runs its business based on the trust of its customers so that banks are required to be able to maintain the confidentiality of all data and

[2]Fuady, Munir. (1999). Modern Banking Law. Bandung: Citra Aditya Bakti, p. 102.

information related to its customers including financial transaction information carried out by its customers.

The strict bank secrecy provisions in Indonesia allow for the occurrence of money laundering crimes such as the circulation of money from narcotics trade, gambling, bribery, terrorism and others. Therefore, bank secrecy provisions need to be relaxed. Bank secrecy provisions are very necessary in bank operations, but their implementation should not be too rigid. The issue of bank secrecy is related to the behavior of bankers and the parties involved. Bank secrecy provisions are stated in Article 40 of Law No. 7 of 1992 which was later amended by Law No. 10 of 1998 concerning Banking, because banks must protect their customers' funds except for tax purposes, for the settlement of bank receivables that have been submitted to the State Receivables and Auction Agency, for the benefit of justice in criminal cases and at the request, approval or power of attorney from the Depository Customer made in writing. Banks that leak information deserve to be subject to severe sanctions.

Every bank is required to implement the principle of bank confidentiality, where the bank is required to keep confidential everything related to information regarding depositors and customer deposits.

Bank secrecy aims to protect the interests of customers, and is also an element that every bank must have as a trusted institution in managing public funds, although not all aspects managed by the bank are confidential.

In theory there are two opinions about bank secrecy, namely:

1. The theory of bank secrecy is absolute, namely the bank is obliged to keep the secrets of customers known to the bank due to its business activities under any circumstances. All information regarding customers and their finances recorded in the bank must be kept confidential without exception and limitation for any reason and by anyone.

2. The theory of bank secrecy is relative, namely that banks are permitted to reveal their customers' secrets for urgent needs, for example for the sake of the state or public interest.

The theory of bank secrecy is relative in its application will be based on the principle of proportionality before disclosing confidential bank information. The principle of proportionality requires consideration of which interests are more serious, namely not disclosing secrets which means keeping secrets for limited interests or disclosing secrets for the interests of the state.

The principle of bank secrecy is regulated in Law No. 7 of 1992 concerning Banking as amended by Law No. 10 of 1998 in Article 40 and Bank Indonesia Regulation Number 2/19/PBI/2000 concerning Requirements and Procedures for

Giving Written Orders or Permissions to Open Bank Secrecy contained in Article 1 number 6, that what is meant by bank secrecy is everything with information about deposit customers and their deposits. The provision clearly states that the Bank in running its business is obliged to maintain and protect information data from its customers.[3]

3.3. The problem of bank secrecy in efforts to prevent money laundering crimes

The existence of provisions regarding bank secrecy then gives the impression to the public that banks intentionally hide the unhealthy financial condition of debtor customers, both individuals and companies that are in the public spotlight. In other words, so far there has been an impression that the banking world is hiding behind bank secrecy provisions to protect the interests of its customers, which is not necessarily true. However, if the bank really protects the interests of its honest and clean customers, then it is a necessity and propriety. In the banking world, customers are an element that plays a very important role, the life and death of the banking world depends on the trust of the public or customers. Therefore, the government must protect the public from the actions of institutions or bank employees or third parties outside the bank who are irresponsible.

The problem of bank secrecy in efforts to prevent money laundering crimes is also due to the fact that there is still fraud or insiders and banks need several programs to remain protected from money laundering efforts.

4. Conclusion

The law on money laundering in Indonesia is regulated in Law No. 8 of 2010 concerning the crime of money laundering, also regulated in Law No. 7 of 1992 which was amended to become Law No. 10 of 1998 concerning banking, and Law No. 23 of 1999 concerning Bank Indonesia. The involvement of banks in preventing money laundering crimes with the principle of bank secrecy is a bank that has the duty to increase public trust in a bank by implementing bank compliance with bank confidentiality obligations, which relate to whether or not the bank can be trusted by customers to store their funds and/or use other services from the bank not to disclose the state of the customer's money and transactions and other conditions of the customer concerned to other parties. The problem of bank secrecy in efforts to prevent money laundering crimes is because there is still fraud or insiders and banks need several programs to remain protected from money laundering efforts.

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