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Comparison of Legal Policies Towards Law Enforcement on Money Laundering in Indonesia and Denmark

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Abstract

Money laundering as one of the crimes committed by a group of people. This form of money laundering is in the form of a follow-up crime, while the original crime is often called predicate offense. Some of the motivating reasons for committing criminal acts of money laundering are that illicit money is used as capital as a business or sent to non-banking financial service providers such as insurance. Money laundering affects and disrupts national and international economies and can disrupt the operational effectiveness of the economic system which will later lead to bad economic policies, especially in certain countries. Money laundering practices can also create instability in the national economy as money laundering causes sharp fluctuations in interest rates and exchange rates. Money laundering is felt to never run out even more and even its development from year to year is increasing both in cases, a number of state losses and its modus operandi. This study aims to see policies on money laundering cases in Indonesia and will be compared with Denmark so that it can find out the differences in state policies and what obstacles the Indonesian state faces in its enforcement in combating money laundering. So the author is interested in giving a title to this study as a Comparison of Legal Policies Against Law Enforcement on Money Laundering in Indonesia and Denmark. The legal research used is qualitative research which is included in the category of normative research. The data used is secondary data

Keywords: Policy, Law Enforcement, Money Laundering

1. Introduction

Legislators in the government are obligated to draft policies or laws that are in line with people's current and future lives due to the fact that the pattern and level of life in Indonesia cannot be separated from legal developments. The pattern or stage of development which is related to society, drives the development of law. Society is served with the law in this instance. Indonesia needs to be prepared to accept globalization as a nation and as a part of the world. The crime rate increases with the development of society. Indonesia needs to be prepared to accept globalization as a nation and as part of the world. Globalization is the expansion of technology and information that will affect how each member of society acts in terms of culture and knowledge. Notwithstanding social and

logical advancement and development, human conduct according to the general population and state life is likewise progressively convoluted and even multi-complex.

Money laundering crimes have recently received special attention from various circles. Through international cooperation, countermeasures are carried out on a national, regional, and global scale (Arifin & Choirinnisa, 2019). Money laundering is often referred to as a double crime or follow-up because it is a continuous act of predicate crime where the perpetrators use sophisticated, creative, and complex ways to convert a number of illegal funds into halal (Muh. Afdal Yanuar, 2019). Money laundering should be focused on tracing funds or financial transactions (Ginting, 2021). Money laundering has schemes whose purpose is to hide illicit money profits that appear to come from legal sources (Ogbeide et al., 2023). In the future that money laundering will impact the economy and businesses in a country because it will continue to undermine and sabotage the integrity of financial markets (Iwan Kurniawan, 2013). Generally, money laundering uses the transmission or submission of other monetary actions resulting from various other criminal activities such as corruption or the sale of narcotics (Lestari Aprilia, 2021). People who do this have the motivation to disguise the source of money from a crime so that the money can be freely used without having to be proven to the financial audit agency in any country (Yunus Husein, 2017).

There are many factors push the growth of money laundering activities in different countries, leading to various causes of money laundering. The following is some of the main reasons why money laundering occurs (Sutan Remy Sjahdeini, 2016). The first factor is due to globalization. In this case, globalization can result in money laundering utilizing the international financial and banking system to carry out their activities; The second factor is the rapid development of technology. This technological development is perhaps said to be the most encouraging factor for the rise in money laundering. The development of information technology such as the internet, for example, can have the effect of losing boundaries between countries. The third is about bank secrecy provisions. This provision makes it difficult for authorities to investigate an account they suspect is illegal; The fourth factor is that it is possible by banking regulations in a country for a person to deposit funds in a bank under a pseudonym; The fifth factor is the emergence of a new type of money, namely electronic money or E-money, which is in connection with the rise of electronic commerce or e-commerce through the internet. Money laundering activities carried out through the internet network are commonly referred to as cyber-laundering.

From this opinion, we can see that the more developed a country is, the higher the crime rate, especially in the financial sector. In 2022, there are at least 5 cases categorized as money laundering in Indonesia, including corruption of IDR 81.3 trillion, gambling crimes of IDR 81 trillion, Green financial crimes or crimes related to natural resources of IDR 4.8 trillion, narcotics crimes of IDR 3.4 trillion, embezzlement of foundation funds of IDR 1.7 trillion according to the results of the Center for Financial Transaction Reporting and Analysis revealing cases of Money Laundering (Andry Triyanto Tjitra, 2023). In the opinion of the Danish state, Danske Bank described 2022 as a "different year" with soaring inflation and high volatility following Russia's invasion of Ukraine and the deteriorating macroeconomic outlook. Danske Bank also set aside nearly 1.8 billion euros in a legal case related to a money laundering scandal involving an Estonian branch (Danske Bank Staff, 2023). Based on the background that has been written, this article will discuss a comparison of legal policies for the prevention of money laundering crimes in Indonesia and Denmark and see what obstacles will be faced with the implementation of these policies, especially in Indonesia.

2. Methodology

In this study, qualitative research methodology will be used. Qualitative research is conducted to analyze events, phenomena, social dynamics of groups or individuals. Therefore, the process of qualitative approach research begins with the development of basic assumptions. This study aims to see policies on money laundering cases between 2 countries, namely Indonesia and Denmark, and analyze the obstacles that will be faced with the implementation of these policies, especially in Indonesia.

Meanwhile, the research approach uses a normative juridical approach. Normative juridical is an approach based on legal concepts and laws and regulations related to this research. This approach is also known as the literature approach that studies books, laws and other documents related to this research

3. Result and Discussion

3.1. Comparison of Policy in Money Laundering Cases in Indonesia and Denmark

3.1.1. In Indonesia

Based on criminal law policy or criminal policy to overcome corporate crime in this case against money laundering, many approaches can be taken, in addition to through a repressive criminal justice system that leads to the imposition of criminal sanctions and / or actions. For non-penal methodology situations are no less important, as expressed by Clinnard and Yeager quoted from their book Muladi and Diah Sulistyani (Muladi and Diah Sulistyani RS, 2015):

- a. Voluntary strategies to change the structure and behavior of the company;
- b. Strong state political intervention to force changes in corporate organizational reforms, accompanied by criminal, civil, and/or administrative legal sanctions to prevent;
- c. Boycotts of corporate products are examples of actions and pressure from consumers.

Barda Nawawi Arief (Muladi and Bardad Nawawi Arief, 2015) said that policies to stop crime are essentially part of efforts to protect the community (social defense) and achieve community welfare (social welfare). The methods used are not limited to correctional facilities (criminal law), but they can also be used in ways that aren't punishable. Because it focuses more on prevention, the latter method is regarded as the most strategic. Corporations are subject to the following regulations as a result of Law Number 8 of 2010 replacing Law Number 25 of 2003 regarding the Prevention and Eradication of Money Laundering.

This Law, corporations have the same responsibility as individuals (natuur person) because of their position as (recht person). This is evident from the clause that states that a corporation or its controlling personnel will be charged with a crime if they engage in the types of money laundering outlined in Articles 3, 4, and 5. Humans (elements of everyone) are the targets of the acts listed in Articles 3, 4, and 5. It is possible to say that corporations' inclusion in criminal acts is a departure from the provisions of the Criminal Code. Although this can be justified legally, it can make it difficult to enforce and interpret. Corporations that are suspected of committing placement, layering, and integration money laundering crimes first demonstrate whether individuals or on behalf of the management or corporation in question in order for sanctions to be imposed in accordance with their respective qualifications that carry out the acts of money laundering.

In imposing sanctions in accordance with their respective qualifications, corporations that commit money laundering crimes in the form of placement, layering, and integration must state whether these actions include money laundering crimes committed by individuals or on behalf of the management or corporation concerned. Article 7 of law number 8 of 2010 regulates several different types of crimes and is divided into two parts, namely the main punishment consisting of fines and additional penalties. The inclusion of imprisonment in lieu of a maximum fine of one year and four months for the management or controller of the corporation is listed in article 8.

Article 9 paragraph 2 states that the sale of assets belonging to the corporation seized as referred to in paragraph (1) is insufficient, imprisonment in lieu of fines is imposed on the controller of the corporation and takes into account the fines that have been paid. Regarding the imprisonment in lieu of fines, it can be carried out, including the calculation of confiscated corporate assets as a reason for reducing the criminal confinement in exchange for fines, which is not further regulated in the explanation of the law. So it can be concluded that Law Number 8 of 2010 still has shortcomings and weaknesses.

To support efforts to prevent and eradicate money laundering, it can be through follow the money approach or by finding where the money comes from. This method of following the money must involve several parties known as the Anti-Money Laundering Regime. Such parties have significant roles and functions including law enforcement agencies, whistleblowers and other related parties. Presidential Regulation Number 6 of 2012 concerning the National Coordinating Board for the Prevention and Eradication of Money Laundering which has been amended into Presidential Regulation Number 117 of 2016 which is to support efforts to prevent money laundering in Indonesia. This committee has the function to coordinate the prevention and eradication of money laundering.

Using Anti-Money Laundering approach to complement the conventional approach that has been used to combat money laundering crimes. This approach has advantages in uncovering Crime, pursuing the proceeds of Crime, and proving it in court. In order to maintain the stability and integrity of the financial system and assist law enforcement in Indonesia, it must be achieved by the establishment of INTRAC and Anti-Money Laundering.(Sutarno Bintoro, Sjamsiar Sjamsuddin, Ratih Nur Pratiwi, 2020)

3.1.2. In Denmark

Denmark's Anti-Money Laundering Act defines money laundering as:

1. To unlawfully accept for oneself or others a share in profits or means obtained through the commission of a crime
2. To a store, conceal, and assist in unlawful disposal or further serve to secure means or profits obtained through criminal offences
3. Participate or attempt in such actions
4. Arrangements made by anyone who commits offense to where profits or means derive from.

The fight against money laundering took a number of workers in Danish banks. Denmark's six largest banks employ around 4,300 staff and will be tasked with ensuring that banks will not be misused to provide avenues for terrorist financing, money laundering or other financial crimes. The number of such workers will continue to increase for a while and is expected to increase even more in the future. These efforts will not be focused on one area or region, but will be integrated in several areas to ensure that the bank or related staff in those areas comply with the bank's internal laws and regulations (FATF, 2019).

Anyone who has converted or transferred money resulting from the direct or indirect consequences of a criminal offence and concealing or obscuring its illegal origin may be punished money laundering in accordance with section 290 a of the Danish Penal Code. A predicate violation is an error related to tax evasion procedures, and can be a violation of the Danish Penitentiary Code. Corruption, drug trafficking, and other predicate violations are the most common examples of money laundering.

Money laundering acts committed by a Danish citizen or a person who has permanent or similar customary residence in Denmark are subject to Danish criminal jurisdiction, if, for example, they also commit a criminal offense under the laws of the country where the act was committed. Money laundering investigations and prosecutions fall under the purview of the Danish State Prosecutor for Serious Economic and International Crimes (SØIK).

Money laundering offenses are punishable by fines or imprisonment under the Danish Penal Code. For legal entities, the maximum penalty is a fine. The High Court of Eastern Denmark (stre Landsret) in 2017 handed currency exchange offices the largest fine to date, totaling DKK 111 million. A fine or imprisonment is the maximum penalty that can be imposed on an individual. Individuals' financial circumstances determine the size of the fine, while businesses' turnover at the time of the violation determines the amount of the fine. The length of the prison sentence depends on the severity of the offense and, as the main rule, is not more than one and a half years. However, this length can be increased to eight years in prison where the offense is very serious.

The penalty for money laundering offenses typically ranges from one and a half to eight years, so the statute of limitations is anywhere from five to ten years. However, the statute of limitations is always a minimum of ten years for systemically important financial institutions for gross violations committed by The Board of Directors or Executive Board members. Only the national level is involved in law enforcement; There is no state or regional enforcement. In Denmark, neither the management of any other bank or other regulated financial institution has been found guilty of money laundering; However, a lot of cases of money laundering in recent years, with the Danske Bank money laundering scandal being the most well-known example.

Money laundering that occurred in Estonian bank departments between 2007 and 2015 is the source of the Danske Bank case. The claim is not Danske Bank itself laundered money; rather, it is that the bank allowed itself to be used as a tool for large-scale organized money laundering by others through negligence. The case has led to further surveillance actions, parliamentary hearings, and criminal investigations. In addition, claims have been filed against Danske Bank outside Denmark; The United States and U.S. pension funds have filed claims in Danish courts against Danske Bank and its former CEO, Thomas Borgen, seeking redress for lost investments (Reuters Staff, 2018).

On the other hand, all banks in Denmark apply the main principle of must know your customer (KYC). In its implementation, the bank must know the scope of each customer's business relationship and must know the identity of the customer. Banks are required to know the customer's residence number and obtain other evidence such as the customer's passport. Banks must have extensive knowledge of all their customers under the Danish AML Act, the purpose of which is to help combat abuse of the financial system.

The requirements for new customers may be very complicated, but we can see from the positive side that a very deep knowledge of customers is very necessary for banks because it will be able to effectively monitor bank customer relationships and can identify activities related to money laundering or terrorist financing.

3.2. Challenges in Eradicating Money Laundering in Indonesia

First, the Increase in Money Laundering. In order to appear legitimate, criminals now have a number of options for concealing the proceeds of their crimes. The development of international banking technology as a result of the expansion of regional banking networks, also known as local networks, which eventually evolved into global financial institutions. Criminals involved in money laundering have access to this service network, which enables them to influence money from illegal transactions to become legal in international financial institutions (Ari Purwadi, 2012). At this time, anything related to money laundering crimes is certain these crimes transcend jurisdictional boundaries, provide a high level of confidentiality, or the use of various financial mechanisms, allowing money to move through banks, money transmitters, businesses, and even remittances abroad to be treated as net money laundering.

Second, the limitations imposed by the Center for Financial Transaction Reporting and Analysis (PPATK) in combating financial crime (Yoserwan, 2023). There are still difficulties in carrying out the responsibilities and authorities of PPATK, such as:

1. Suspicious Financial Transaction Reports (FSIs) and Cash Financial Transaction Reports (LTKT) from Financial Service Providers (CHDs) are limited sources of information.
2. The Financial Transaction Reporting and Analysis Center (PPATK) is informed of the accuracy of customer data contained in the Financial Transaction Report (LTKM) and Financial Transaction Report (LTKT) Cash;

The number of interpretations that have differences by academics, Financial Service Providers (CHDs), and law enforcement officials;

1. Financial Transaction Report and Financial Transaction Report online
2. Restrictions on the information technology system of Financial Service Providers (CHDs). (David Ramadhan, 2018)

Third, Challenges Faced by the Banking Sector (Shirly, 2011). Other factors that pose challenges for the banking sector include the following:

- a. It is difficult to determine the true identity of the customer, and applying the basic principle of service use may lead the customer to withdraw funds or avoid banking services because it would be considered a breach of his privacy;
- b. Luring banks into involving their administrations in tax evasion and other criminal activities through the use of fictitious administration client characters.
- c. Because bank employees are less knowledgeable, they are unaware of their role in the fight against illegal tax avoidance programs.
- d. Because there is not enough of an online network, bank information technology must manually report transactions.

Fourth, Challenges Posed by Investigators in Preventing and Eliminating Money Laundering Crimes If Money Laundering Law Cannot Be Followed Up. Parties involved in the enforcement process still do not understand some of its provisions that contribute to part of its scope. For example, the mail format for blocking and requesting customer asset information is not standardized, making its implementation often ineffective. We can understand that Indonesia's Financial Transaction Reporting and Analysis Center cannot tackle money laundering and terrorism financing on its own. The President encouraged all parties ranging from government agencies, the financial industry, to the public to jointly maintain the integrity and stability of the Indonesian economic and financial system. In combating increasingly massive economic crime, the President asked the Indonesian Financial Transaction Reporting and Analysis Center to find legal breakthroughs on various fundamental issues and immediately carry out digital transformation. For example, improving digital services by developing new service platforms and improving existing digital services. Ministries/agencies including **Indonesian Financial Transaction Reports and Analysis Center** which is the focal point and financial intelligence agency (FIU) can move quickly in dealing with new modes of money laundering and terrorism financing. It is very important to anticipate as early as possible at various levels to prevent efforts that can disrupt the integrity and stability of the economic system and a financial system, and to always anticipate an increase in economic crimes such as cyber crime and other crimes that utilize technological sophistication.

Indonesia is required to comply with the best international regulations and standards applicable as part of the global order of international relations. The FATF, through one recommendation, suggests that each country direct a national risk evaluation. To develop and implement a risk-based approach regime, each country must first identify, evaluate and understand money laundering risks. In addition, these cases require great responsibility and very difficult handling related to the prevention and eradication of money laundering crimes that have not been fully balanced with government measures. To respond to these developments, Indonesia must implement the prevention and eradication of money laundering through strategic risk mitigation innovations.

4. Conclusion

Existing policies in Indonesia for money laundering cases are subject to fines or imprisonment in accordance with the provisions of the article, but in Indonesia it is often not firm in providing punishment to the perpetrators of criminal acts. Some are not in accordance with the rules that have been applied. So that perpetrators in criminal cases do not feel the deterrent effect and that will later make the crime rate higher in Indonesia. When compared by the Danish state, criminal punishment will be adjusted to the level of crime he has committed. The similarity with the Indonesian state is that it is subject to fines and confinement.

The challenge in Indonesia to law enforcement on money laundering is because Indonesian Financial Transaction Reports and Analysis Center only does it alone, not supported by others, even though the crime rate of money laundering is very large from year to year. Therefore, the President encourages all parties ranging from government agencies, the financial industry, to the public to jointly maintain the integrity and stability of the Indonesian economic system and financial system. In combating increasingly massive economic crimes, the President asked **Indonesian Financial Transaction Reports and Analysis Center** to find legal breakthroughs on various fundamental problems and immediately carry out digital transformation.

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