Prevention of Money Laundering Criminal Act in Overcoming Corruption Criminal Act

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ABSTRACT--With so many criminal acts of corruption occurring in Indonesia today, of course, must be addressed with the aim that the state's financial losses can be returned to the State to be used for people's prosperity, so that the State's finances are not lost so that juxtaposed with the enactment of the Law on money laundering. Criminal Acts of Corruption with Money Laundering has a very close relationship, This can be clearly seen in Article 2 paragraph 1 of Law No. 8 of 2010 concerning the prevention and eradication of Money Laundering Crimes. Corruption is one of the types of original crime related to money laundering. Predicate crime is a crime that triggers (source) the occurrence of money laundering. Prevention of Corruption through the implementation of the Law on Money Laundering must be carried out seriously by promoting the principles of criminal law as an integrated policy. If we look at the formulation of the crime of money laundering, two types of criminal acts will be drawn, namely crimes that produce illicit money such as corruption and illicit money laundering. Both types of criminal offenses can raise questions in the evidentiary system, whether the act of corruption must be proven in advance so that the money that is laundered can be qualified as a money laundering. Money laundering qualifications are formulated as the placement of assets that which is known or reasonably suspected is the result of a criminal offense into a financial service provider, either on its own behalf or on behalf of another person. Based on this provision, the existence of acts of corruption does not need to be proven first, if there is an allegation that illicit money originated from an act of corruption, then this means that there is sufficient initial evidence in proving money laundering.

Keywords: criminal acts, corruption, money laundering

I. INTRODUCTION

Evil is another side of life that continues throughout the history of human life. Conventional offenders when committing crimes for economic reasons, but there are also other forms of crime committed by people who have good thinking skills, and with a good economic background. Crimes committed by people who have the ability to think patterns and good economic support is one form of crime called Money Laundering.

In line with technological developments and globalization in the Banking sector, many banks have become the main target for Money Laundering activities because this sector offers many instruments in financial traffic that can be used to hide or disguise the origin the proposal of a fund. With the existence of banking globalization, funds from proceeds of crime flow or move beyond the limits of state jurisdiction by utilizing bank secrecy factors that are generally held in high esteem by banking institutions. Through this mechanism, funds from proceeds of crime move from one country to another that does not yet have a strong legal system to deal with Money Laundering activities or even moves to countries that apply strict bank secrecy provisions.

This Money Laundering crime is developing very rapidly in Indonesia along with the development of Science and Technology. Money Laundering will adjust to the development of science and technology. Corruption, bribery and gratuity by conversion will be directly carried out in cash. This Money Laundering crime can be committed by someone without having to travel abroad. The nature of Money Laundering is universal and international in nature, crossing the boundaries of state jurisdictions. Means that Money Laundering is associated with being achieved with technological advances through the Cyberspace (Internet) System, payments are made through banks electronically (Cyberpayment).

Money Laundering is a means for criminals to legalize the proceeds of crime in order to eliminate traces. Besides that it turns out that the amount of money that was laundered is very large, this means that the results of the crime have affected the national and even global financial balance and caused huge losses. The next danger is Money Laundering, which makes the perpetrators of crimes, especially Organized Crimes, develop their networks with the money that has been washed. In addition it makes the perpetrators of crimes such as corruption, narcotics and banking crimes freely use them so that these crimes will be more prevalent.

II. FINDINGS AND DISCUSSION

A. Prevention Of Money Laundering To Cope With Corruption

As a follow-up to the implementation of the prevention of the crime of Money Laundering at this time it is really expected of the people of Indonesia, because the implementation of this law can not be applied to the maximum. Factors underlying the Money Laundering crime, according to Sutan Remi Syahdeini in one of his writings, acknowledge there are at least 9 (nine) factors that are driving the rise of the crime of Money Laundering in various countries, namely:

1. Globalization

1. N.H.T Siahaan, Pencucian Uang (Money Laundering) Dan Kejahatan Perbankan, Pustaka Sinar Harapan, Jakarta 2005, p.3.
Pino Arlacchi states that: "Globalization has turned the international financial system into a money lever's dream, and this criminal process siphons away billions of dollars per year from economic growth at a time when the financial health of every country affects the stability of the global market. place ".

2. Technology advances
The most encouraging activity of Money Laundering is technology in the information field, namely with the advent of the internet and which shows remarkable progress. With the advancement of information technology, national boundaries become meaningless, and the world becomes a unified whole without borders. As a result, organized crime organized by crime organizations becomes easy to be carried out across national borders.

3. Strict Bank Secret Provisions
Law Number 10 of 1998 concerning Banking, which specifically regulates bank secrecy, is formulated in Article 40 as follows:
Paragraph (1): Banks are required to keep information about the depositing customers and their deposits, except in the case referred to in Article 41, Article 41a, Article 42, Article 43, Article 44 and Article 44a.
Paragraph (2): The provisions referred to in paragraph 1 shall also apply to affiliated parties.
This bank secret has a normative value in the form of positive law that is coercive. This forceful nature is contained in the words “Obligatory” contained in Article 40 Paragraph 1 of Law Number 10 of 1998 as mentioned above. The basis of bank obligations here is a law or positive law. Violation of the bank's confidentiality provisions is not just a Civil Violation, but is also considered a Criminal Violation.
Such provisions are commonly used by Money Laundering actors. With this bank secrecy, banks can not only collect legal funds from the public, but can also withdraw illegal funds from anyone, including large companies and government officials involved in Money Laundering crimes.

4. Possible Storage Using a Pseudonym or Anonymity
For example in Austria as one of the countries that are often used as a base for Money Laundering activities of corruptors and organizations engaged in drug trafficking, allowing someone or an organization to open an account anonymously.

5. The emergence of Electronic Money (E-Money)
Money Laundering is done by using an internet network, which is called Cyberspace, or also referred to as Cyber laundering. E-Money products that have been developed primarily to be used through an open computer network rather than doing Face to Face (direct purchases between buyers and sellers in a place). Such a system provides goods and services via the internet, which is then utilized by money launderers through Cyberlaundering.

6. Layering Crimes are Possible
Layering can be a factor driving the rise of Money Laundering activities, because by doing Layering makes the depositors of funds in the bank (Customer or Bank Depositors) not the real owner of the funds. The depositor only acts as a proxy or trustee of another party who assigns him to deposit a sum of money from him in a bank.

7. Confidentiality of Relationships between Lawyer and Clients and Between Accountants and Clients
Savings funds at various banks are often in the name of an Advocate's office, while the relationship between the client and the Advocate is protected by law. Therefore, an Advocate who holds funds in a bank in the name of his client cannot be forced by the competent authority to reveal his client's identity.

8. The State's Sincerity in Eradicating Money Laundering Crimes
That is because the country concerned is intentionally allowing the Money Laundering crime to take place, because the country has benefited from the placement of illicit funds in financial institutions in the country. Profits from funds collected in banking institutions are needed to finance development, or with these funds allow banks to get a lot of benefits from channeling these funds which will further contribute to a large tax for the country.

9. No Criminalization of Money Laundering
In some countries where there is no Money Laundering regulation in the criminal legal system, the crime of Money Laundering is fertile. There are no regulations regarding the eradication of Money Laundering in that country, usually also because there is a reluctance from the country to seriously eradicate the crime of Money Laundering. It is well known that Indonesia only enacted the regulation of Money Laundering in 2010, so it is not surprising that Indonesia is considered as one of the paradise for money launderers.

Talking about Money Laundering can not be separated from corruption, based on the Financial Transaction Reports and Analysis Center (PPATK) report as an Independent Agency, in this case the Money Laundering crime that leads to corruption is ranked number 2 (two) as a crime which must be eradicated.

For this reason, after we know the factors behind the Money Laundering crime as a new crime that is difficult to handle, to prevent the crime, we need to implement several ways that can be applied in order to prevent Money Laundering crimes. , which is as follows:
a. Maximizing the Role of PPATK.
PPATK as an Independent Institution assigned to carry out monitoring of large amounts of financial transactions, carried out by individuals and corporations that are considered necessary to do in-depth analysis of where the money is from, so that the origins of the money can be determined based on the findings made by PPATK. In carrying out the tasks referred to in Article 39, the PPATK has the following functions:
1) Prevention and eradication of Money Laundering;
2) Managing data and information obtained by PPATK;
3) Supervision of Reporting Party compliance; and
4) Analysis or examination of reports and information on financial transactions that indicate the crime of Money Laundering and/or other criminal acts as referred to in Article 2 paragraph (1).

In carrying out the function of preventing and eradicating the crime of Money Laundering as referred to in Article 41 letter a, the PPATK has the authority:
1) Request and obtain data and information from government agencies and/or private institutions that have the authority to manage data and information, including from government agencies and/or private institutions that receive reports from certain professions;
2) Establish Guidelines for Identifying Suspicious Financial Transactions;
3) Coordinate efforts to prevent money laundering with relevant agencies;
4) Providing recommendations to the government regarding efforts to prevent money laundering;
5) Representing the Government of the Republic of Indonesia in international organizations and forums relating to the prevention and eradication of the crime of Money Laundering;
6) Carry out an Anti-Money Laundering education and training program; and
7) Organizing information dissemination on prevention and eradication of Money Laundering.

b. Tackling Crime Through Penal Facilities (Criminal Law)

Crime prevention through Penal facilities in Money Laundering is required strict sanctions so that the perpetrators do not commit their actions and create a deterrent effect.

Tackling crime with Penal means is limited. Even though Law Number 8 Year 2010 lists 2 (two) types of sanctions both criminal and administrative as well as adopting several provisions contained in various international instruments regarding the handling of suspicious financial transactions, it still requires complex handling and can keep abreast of technological developments.

d. Strict Application of Know Your Customer Principles in Countering Money Laundering

The correlation between the application of Know Your Customer Principles and then abbreviated (KYCP) with the handling of TPPU from the Non-Penal Policy side is very necessary, so that prudential attitudes need to be improved. In Article 17 of the TPPU Law No. 8 of 2010 it has been explicitly formulated that a Financial Services Provider is any person or legal entity that provides services in the financial sector or other services related to storing, transferring, transferring a sum of money. This means that Financial Service Providers (PJK) are not limited to Banking Financial Institutions, but also include Non-Bank Financial Institutions.

e. Role of the Community

In order to prevent Money Laundering as well as other criminal acts related to Money Laundering, we cannot be released from the role of the public to participate in overseeing the government and officials related to Money Laundering as well as other criminal acts related to Money Laundering in order to provide information that will be followed up by law enforcement officials, so that they can break the chain of all forms of criminal acts.

B. Constraints And Solutions To Prevent Money Laundering To Deal With Corruption

Money Laundering can be popularly described as the activity of transferring, using or carrying out other acts of proceeds from criminal acts that are often committed by Organized Crimes and individuals who commit acts of corruption, narcotics trafficking and other criminal acts with the aim of concealing or obscuring the origin of the money derived from proceeds of the crime so that it can be used as if it were legitimate money without being detected that the money originated from illegal activities.

In Indonesia, Money Laundering crimes can be related to several legal issues, such as corruption, especially since the problem of corruption is now considered to be very severe and indeed has become the main agenda of the reformation government today in order to restore public confidence in the government.

With the level of corruption problems that have been so severe and destructive in almost all fields and institutions of the country, as well as various internal and external obstacles in law enforcement efforts, the obstacles faced in efforts to overcome the development of
the crime of Money Laundering to eradicate corruption is not an easy task. For this reason, it is necessary for the role of the general public to participate in overseeing the crime of Money Laundering, which will lead to corruption.

Whereas Constraints faced in the framework of preventing Money Laundering as stated by Ade Gita Rachmadi Boeaya, Compliance Supervisory (Deputy Prevention) PPATK, among others, are as follows:
1. Most people do not yet understand about the crime of money laundering (money laundering);
2. Lack of public knowledge about reporting procedures in the event of an act that indicates Money Laundering;
3. Lack of Professionalism Law enforcement personnel who are devoted to handling in the framework of preventing money laundering;
4. Lack of attention to follow up on every report from the public;
5. The existence of a law governing bank secrecy;
6. The lightness of the criminal threat set forth in the Money Laundering Act and the ease with which the convicted person gets his rights in coaching.
7. There is no legal protection for the personal safety of the Reporting Party in the event of a Money Laundering crime.

The crime of corruption with the crime of Money Laundering has a very close relationship. This can clearly be seen in Article 2 paragraph 1 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering. Corruption is one of the original types of criminal offenses related to Money Laundering. Predicate crime is a criminal offense that triggers (source) the occurrence of a Money Laundering crime. Placement of criminal acts of corruption as predicate crime is contained in Article 2 Paragraph 1 Number 1 (letter a) in the TPPU Law. This is from the formation of a law which views corruption as the most pressing national problem. Eradication of Corruption through the implementation of the Money Laundering Act must be done seriously by promoting the principles of criminal law as an integrated policy, meaning that it is fragmentary, partial and repressive but must be strived towards the direction of eliminating or overcoming and overcoming improve overall causes and conditions that are criminogenic factors for corruption. So an integral strategy is needed.

The type of proof in criminal law introduced in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Concerning Eradication of Corruption, is a reverse proof which is a deviation from proof in the Criminal Procedure Code (KUHAP). However, the reverse evidence still has a limited nature in which the Public Prosecutor is still required to carry out the proof of the charges he filed. Thus, the two laws do not merely provide an opportunity for the Defendant to prove his innocence. The formulation of the reverse evidence in the proof of the corruption act itself has been improved from the original formulation in Law Number 31 Year 1999 to the formulation in Law Number 20 Year 2001, so that it shows the balanced nature between the evidence carried out with the legal consequences of proof for the Defendant himself.

With the Law on the crime of money laundering namely Law No. 8 of 2010, it is proper for Indonesia to begin to rise from an economic downturn caused by corruption rooted in high officials to the lowest officials. Therefore, with the spirit and noble ideals of the nation who want to rise from adversity so that Law No. 8 of 2010 was born, concerning the prevention and eradication of money laundering in order to be able to accompany the course of the Law on the Eradication of Corruption, as regulated in Law Number 31 years 1999 as amended and supplemented by Law Number 20 of 2001.

III. CONCLUSIONS

Based on the results of the discussion the following conclusions are drawn:

1. Corruption Crime with Money Laundering has a very close relationship. This can be clearly seen in Article 2 paragraph 1 of Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

The implementation of the Prevention of Corruption through the implementation of the Money Laundering Act is carried out seriously by prioritizing the principles of criminal law. Considering that criminal acts of corruption and money laundering as crimes involving financial systems that have such a huge impact on a country, it is necessary to have a special effort to overcome them, these efforts include the effectiveness of the financia principle system to know customers.

2. While the obstacles in preventing the crime of Money Laundering are:
   a. Most people do not yet understand about the crime of money laundering (money laundering);
   b. Lack of public knowledge about reporting procedures in the event of an act that indicates Money Laundering;
   c. Lack of Professionalism Law enforcement personnel who are devoted to handling in the framework of preventing Money Laundering;
   d. Lack of attention to follow up on any reports from the public;
   e. There is a law governing bank secrecy;
   f. The lightness of the criminal threat set forth in the Money Laundering Act and the ease
with which a convicted person gets his rights in coaching.
g. There is no legal protection for the Reporter’s personal safety in the event of a Money Laundering crime.
While the ways to overcome and the solutions that use are:

a. By way of strict supervision of expenditure or use of money and always exercise regular and careful control.
b. Organizing information dissemination activities to the public about Money Laundering;
c. Providing special education and training on prevention and eradication of Money Laundering against law enforcers;
d. Enhanced work loyalty of investigators towards Money Laundering;
e. Increased threats of imprisonment and fines in the Money Laundering Act aimed at providing a deterrent effect;
f. Awarding and protecting security to the Reporting Party.

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