

Money Laundering Crimes Using a Letter Of Credit in a Cross-Country

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Abstract: This study will discuss how to setup money laundering crimes using Letter Of Credit in cross country, the purpose of this study is to know and analyst money laundering crimes using Letter Of Credit in cross country. The usefulness of research provides theoretical benefits, at least it can be useful as a donation of thought to the world of education. This type of research is normative research. The data analysis used in this study is the literature data or document study. The results of the research are known that in Indonesia, the settlement of crimes in the field of credit documents, where there is no regulation of money laundering criminal acts using a letter of credit that regulates the completion, so that there is no Clear legal norms. But regarding the completion of this period only refers to the law of the Republic of Indonesia number 25 year 2003 about the amendment to law number 15 year 2002 about Money Laundering criminal act, as a condition to be issued the latest provisions In the form of Law No. 8 of 2010 on the prevention and Eradication of Money laundering and law number crimes. 20 years 2001 about the amendment to law Number 31 year 1999 on corruption eradication.

Keywords: Money laundering, Letter of Credit

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I. INTRODUCTION

Cross-country trade activities are one of the most important activities as part of international trade. This activity is also one of the efforts in order to increase the income and economic growth of a country, because every country in the world has differences or distinctive characteristics such as geographic, ecological, demographic, natural resources, until its production. (Hadisoeparto, 1987)

The implementation of intemrational trade by using illegal or legal methods to commit crimes, in practice many actions of the legal subject that commit the crime, is seen from a juridical point of view and point of view Sociological acts of money laundering are popularly described as moving, using or undertaking other acts of criminal acts often committed by organized crime (*organized crime*) Individuals who commit corruption, narcotics trade and other criminal acts. (Husein, 2003)

The activity aims to conceal or obscure the origin of the money derived from the results of the crime so that it can be used as a legitimate money without being detected that the money comes from illegal activities.

Money laundering perpetrators have their own methods of committing criminal acts, although the perpetrators often perform using varied methods but in the outline of methods of money laundering can be divided into three phases, *Placement*, *Layering* and *Integration*. Where washing activities are generally done gradually. This is the staging that causes the money to be increasingly difficult to track or lose track. In simple way, the money laundering process can be grouped into three activities, namely the placement of funds (*placement*), Coating of funds (*layering*), and recollection (*integrasi*) (Adyan, 2004)

Money laundering or money laundering, is a term often heard in the mass media, therefore a lot of understanding that develops with respect to the term money laundering. The term has often been described with an attempt by a person or legal entity to legalize the "gross" money he acquired from the outcome of a criminal offence.

The emergence of the term money laundering from decades ago to date continues to experience developments including the use of *Letter Of Credit* as one of the methods of payment in the world of international trade. As known in the world of international trade the use of *Letter of Credit* can be one solution to create a smooth in the mechanism of payment of international trade.

According to Ramlan Ginting, international trade payment methods can be made in various forms:

1. Letter of Credit; (Ginting, 2008)
2. Non-Letter of Credit
 - a. Advance Payment

- b. Collection
- c. Open Account
- d. Consignment

Issuance of a *letter of credit* from the bank that acts as a substitute for the importer that gives the seller the confidence and certainty that the payment will be made by the Bank in accordance with the requirements contained in the *letter of credit*.

The use of a *letter of credit* is to accommodate and resolve the difficulties of the buyer (*importer*) and the seller (*exporter*) in the trading transaction. In other words, the *letter of credit* guarantees the smooth payment and delivery of goods in accordance with the agreement that has been made between the exporter and the importer through the goodwill of both parties. (Kasmir, 2005)

Letter of credit is any type of agreement or commitment or pledge of *issuing bank* that cannot be cancelled unilaterally to make payment to *beneficiary* when receiving documents in accordance with the terms and conditions of the *letter of credit*. (Warsidi, Letter of Credit, 2009)

Money laundering crimes in Indonesia are governed by Law No. 8 of 2010 on the prevention and Eradication of money laundering crimes. Where this criminal act has characteristic as a criminal act that is *white Collor crime*, it is in connection with the perpetrators who have the economic power or political power he owned, the subject or perpetrators of the individual criminal as Human beings and can also be an *organisation crimes* corporation crimes with traffic boundary region of the country.

Based on the above, there are some cases of money laundering crimes using the *letter of credit*, One of the cases that seized public attention was the case of a fictional Bank BNI letter of credit pursuant to the ruling number: 1982/PID.B/2004/PN.Jak.Sel) With defendant Adrian Herling Waworuntu. Problems arising in connection with a fictional Letter Of Credit case involving the Bank Negara Indonesia.

Based on the background description above, it can be formulated in this research that is how to setup money laundering crimes using Letter Of Credit in cross country?

II. LITERATURE REVIEW

The type of research in the preparation of this writing is a type of normative research, normative legal research is also called doctrinal law research, often in the research of this law in the conceptualized as what is written in the Regulation Legal in books or law in the concept of a rule or norm which is a human-behaved benchmark that is deemed appropriate. The legal materials and data collection methods are by literature study or document study. The approach used in this research is a statutory approach as well as a concept analysis approach.

III. CRIMINAL ACTS OF MONEY LAUNDERING USING LETTER OF CREDIT

A. The history and development of money laundering crimes in Indonesian criminal law

The term money laundering or *money laundering* has been known since 1930 in the United States, when Al Capone, the biggest criminal in America past, washed the black money from his crime efforts by using Meyer Lansky, the Polansia, a Accountant, washes Al Capone crime money through laundry (*laundry*) business. (Sutedi, 2010). Where at that time, money laundering was known as the deed of the Mafia in the United States who process money from its crimes (*illegal*) with legitimate business (*legal*) belonging to the Mafia temention. The purpose of money laundering is to make the money of crimes obtained illegally or against the law.

The funds derived from money laundering crimes are generally not directly spent or used by perpetrators of criminals. Because the consequences will be easily tracked by law enforcement officials regarding the source of obtaining it. Usually substantial funds from the crime are put first into the financial system especially in the banking system. This banking Model is very difficult to track by law enforcement.

The problematics of money laundering in English are known by the mention of Money lounderling is now beginning to be discussed in textbooks, whether it is the textbook of criminal law or criminology. Apparently, this money Haram problem has requested international attention because of its dimensions and implications that led to the boundaries of the country. As a crime phenomenon that concerns mainly the crime world called organized crime, apparently there are certain parties who come to enjoy the advantages of money laundering traffic without realizing the impact of the losses incurred.

Indonesia is referred to as a lively country with smuggling illegal goods because it is considered still weak law enforcement. At first the world of international money laundering crimes related to drug trade/narcotics and other major crimes and not attributed to crimes such as corruption. Now money laundering has been associated with the process or money result of criminal works which are generally in large quantities, while in various countries including Indonesia, money earned from the result of corruption is including the category of criminal, the problem of money laundering crimes is associated also with corruption.

The practice of money laundering crimes in Indonesia, can also be caused because Indonesia embraced the free foreign exchange system. The free foreign exchange System allows any person to freely enter or adopt foreign currency from the jurisdiction of Indonesia.

This free foreign exchange System also allows for various engineering of money laundering through cross-country transactions and difficult to track, otherwise the domestic students are more freely transfer their illegality funds to be washed through foreign banks, other than that The rise of capital market investment and foreign exchange business also increasingly enliven money laundering practices.

B. Setting money laundering crimes using Letter Of Credit in cross country

The development of science, technology and information, not always positive impact, on the one side of the developments has a negative impact, such as the development of criminal acts from conventional to criminal acts that are Organized and transnational. Even the proliferation of criminal acts in this modern century towards economical gains or more known as criminal acts with economic motives, such as corruption and criminal acts of money laundering. (Halit, 2016)

As *transnational crime*, according to the *International Monetary Found Report (IMF)*, the amount of washing around the world covers 2%-5% of *gross domestic product* or gross income has caused attention The international community to combat the ever increasing Money Laundering criminal act, both bilateral and multilateral through various international forums such as the UN, APEC, ASEAN, ASEM (ASEAN-European Meeting), or ADB (*Asia Development Bank*). (Syahdaeni, 2003).

The inernational Forum specializing in combating money laundering crimes such as *Asia Pacific Group on Money Laundering (APG)* and Indonesia is also one of the members of a *Financial Action Task Force on Money Laundering (FATF)* which is widely known As an organization that provides international standards in the field of eradication of money laundering. (Syahdaeni, 2003).

Currently, money laundering crimes are governed by law No. 8 of 2010 on the prevention and Eradication of Money laundering crimes, in which case the law replaces the previous law governing money laundering i.e. Law No. 15 of 2002 as amended by Law No. 25 of 2003.

The rule of law on money Laundering Crimes refers to sections 3, 4, and 5, Act No. 8 of 2010 on the prevention and Eradication of money laundering crimes. Article 3 states that "any person who places, transfers, redirects, spends, pays, comforts, entrust, carries abroad, deforms, exchanges with a currency or other securities or other acts of property. The wealth he knows or should be accused of criminal acts with the intention of hiding or disguise the origin of the wealth convicted of prison crimes of 20 (twenty) years and most fines Rp. 10.000.000.000 (Ten billion Rupiah) ".

Then article 4 states that "any person who conceals or disguises the origin, source, location, allocation, transfer of rights, or the actual possession of a property that he or she knows about or should be expecting Money laundering crime with a prison of longest 20 (twenty) years and a fine of at most Rp. 5.000.000.000 (five billion rupiahs) ".

Article 5 states that "any person who accepts or controls a placement, transfer, payment, grant, donation, care, exchange, or use of wealth is discovered by the result of a criminal offence sentenced to the most 5 (five) years old and the most fines Rp. 1.000.000.000 (one billion rupiah) ".

Pursuant to article 2 of law number 8 of 2010 which can be categorized as the original criminal act for the occurrence of money laundering, namely "corruption, bribery, narcotics, Psychotropika, labor smuggling, migrant smuggling, in the field of Banking, capital market, insurance, customs, excise, trade persons, trafficking in dark weapons, terrorism, abduction, theft, evasion, fraud, counterfeiting, gambling, prostitution, in the field of taxation, in the field of Environment, in the field of maritime and fisheries, or other criminal acts threatened with imprisonment of 4 years or more ".

According to Act No. 8 of year 2010 above financial transaction reporting and Analysis Center (PPATK) in the PPATK E-Learning classify the perpetrators of money laundering into 2 clarifications of active laundering and perpetrators of passive money laundering, actors Active money laundering is the perpetrator who meets article 3 and article 4, where the perpetrators of money laundering are as well as perpetrators of original crimes and are parties who know or are suspected that the property is derived from the outcome of criminal acts.

The perpetrator of passive money laundering is the perpetrator imposed on article 5 where the perpetrator of money laundering is the party who enjoys the benefit of crime and participating concealing or disguise the origins of wealth. (Lestari, 2018)

The financial transaction reporting and Analysis Center (Indonesian Financial Transaction Reports and Analysis Center (INTRAC) as stipulated in article 1 figure (2) of TPPU Law is an independent institution under the President of the Republic of Indonesia which is formed in order to prevent and eradicate money laundering crimes.

The establishment of this PPATK, then Indonesia has fulfilled one of The *Forty Recommendations* proposed by the *Financial Action Task Force On Money Laundering (FATF)*, in the effort to eradicate money

laundering crimes in Indonesia. In article 16 The *Forty Recommendations* of The FATF is mentioned on the formation of the *Financial Intelligent Unit* which is generally tasked with analyzing financial transactions to prevent the existence of transactions that are money laundering activities, and Institutions that have authority such as the Financial Intelligent Unit in Indonesia is PPATK.

The financial transaction reporting and Analysis Center (PPATK) has independent institutional, free from political interference such as State institutions, state organizers and other parties. PPATK in carrying out its duties is obliged to refuse interference from any party. PPATK, an independent institution responsible to the President, is a *Financial Intelligent Unit* with an (*administrative model*). This administrative Model more serves as an intermediary between the community or the financial services industry with law enforcement institutions. The report was analyzed first by the Institute and then reported to law enforcement institutions, namely the police and prosecutors.

In Indonesia, the use of the *letter of credit* is currently subject to UCP 500 which is based on government regulation No. 1 year 1983, and stipulated in circular letter of Bank Indonesia No. 26/34/ULN dated 17 December 1993, and in Decree of Board of Directors of Bank Indonesia No. 29/33/KEP/Dir dated 4 June 1996 concerning execution of import transaction payment.

Domestic *letter of credit* is governed by the Decree of the Board of Directors of Bank Indonesia No. 27/38/KEP/Dir dated June 30, 1994 concerning the letter of domestic documents (SKBDN), which is enhanced with DECREE No. 29/150/KEP/Dir dated 31 December 1996 and No. 30/195/KEP/Dir dated 4 February 1998 on SKBDN.

Some of the considerations underlying the thought of legal needs of the *letter of credit* are to provide clear legal certainty of the *letter of credit* and to complete the provisions of UCP. In this case, the parties in the *letter of credit* transaction may agree that the provisions of the UCP are complementary to the national provisions. It is evidenced by the draft of Bank Indonesia Regulation governing *letter of credit*.

Based on the provisions of Bank Indonesia, the issuance of letter of credit in Indonesia shall be conducted with reference to UCP 500 and also refers to the provisions of government regulation No. 1 year 1982 dated 16 January 1982 on export, import and traffic implementation Foreign exchange that regulates that the letter of credit as one way of payment by credit can be used to carry out export import transactions but until now there is no further provision that regulates the letter of credit so still use Provisions UCP 500.

Addressing these weaknesses various efforts have been made, such as legalizing the *Money Laundering* criminal act, establishing the Financial transaction reporting and Analysis Center (PPATK) as the *Financial Intelligence Unit* (FIU) and Focal point handling of *money laundering* in Indonesia, regulators and supervisors of *financial services Providers* (PJK) issued a provision on the (*Know Your Customer Principle*). But regarding the arrangement of money laundering crimes using a *letter of credit* in the cross-country there is no obvious norm that governs the matter, because so far perpetrators of money laundering crimes using the *letter of credit* in the Cross-country only used criminal rules of corruption and TPPU.

PPATK is collaborating with the Financial Intelligence Unit of other countries, forming the Committee. National coordination of TPPU (*national Coordination Committee*), including the relevant apparatus for training, workshops, seminars in order to increase *capacity building* both inside and outside the country, requiring every PJK to submit the suspicious Financial Transaction report (LTKM) or *Suspicious Transaction Reports* (STRs) and the Cash Transaction report (LTKT) which is five hundred million rupiah or more or known as *Cash Transaction Reports* (CTRs) To PPATK. (Lestari, 2018)

The sophisticated business transactions have facilitated various forms of money laundering which eventually obscured all the haram money. Most of the money is illegal, such as the results of corruption in Indonesia, concealed or disguised to various countries of criminal settlement through various financial transactions and complex business transactions by placing, transferring, coating and integration and other forms.

Therefore, there is a need for cooperation between institutions both domestically and internationally. Until now PPATK has signed a *Memorandum of Understanding* (MoU) on the exchange of information with 18 agencies in the country and 24 *Financial Intelligence units* of other countries. In addition, since June 2004 PPATK was accepted as a member of The *Egmont Group* which is a global *financial intelligence unit* community with members of The 106 *Financial Intelligence Unit* will greatly support the achievement of this mission, as it allows PPATK Access all information contained in the world's financial Intelligence network facilitated by *The Egmont Group*.

Under the terms of the legal basis *money laundering* internasional, First *Vienna Convention* This is also known as *United Nations Conventions Againsts Illicit Traffic in Narcotic Drugs and Psychotropic Substances* is a convention created with the aim of regulating medicines transactions worldwide, including money laundering.

IV. CONCLUSION

In Indonesia, the settlement of crimes in the field of loans, where there is no regulation of money laundering criminal regulations using *letter of credit* That regulates the completion, so there is no clear legal norm. But regarding the completion of this period only refers to the law of the Republic of Indonesia number 25 year 2003 about the amendment to law number 15 year 2002 about Money Laundering criminal act, as a condition to be issued the latest provisions In the form of Law No. 8 of 2010 on the prevention and Eradication of Money laundering and law number crimes. 20 years 2001 about the amendment to law Number 31 year 1999 on corruption eradication.

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