

ELUCIDATION
ON
THE LAW OF THE REPUBLIC OF INDONESIA
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CONCERNING
MONEY LAUNDERING CRIMINAL ACTS

I. GENERAL

Various crimes committed both by individuals as well as corporations within the territory of a country or across the borders of another country are increasing. Such crimes include among other things the criminal acts of corruption, bribery, smuggling, smuggling of manpower, smuggling of immigrants, banking, illegal trafficking of narcotics and psychotropic, slavery, white slavery, child slavery, illegal trading in arms, kidnapping, terrorism, theft, embezzlement, fraud and various white collar crimes. The aforementioned crimes involve or produce extremely large amounts of assets.

Assets derived from various such crimes or criminal acts are generally not spent or used directly by the perpetrators because if they do so such assets can be easily traced by law enforcement agencies. Perpetrators usually try to bring such assets derived from such criminal acts into the financial system first, especially into the banking system. Hence, they expect that law enforcement agencies will be unable to trace the origins of such assets. Attempts to hide or conceal the

origins of assets derived from criminal acts as intended in this Law are known as money laundering.

For criminal organizations, assets derived from crime are like blood in a body, meaning to say that if the flow of assets through the international banking system is cut off, the criminal organization concerned will weaken, its activities will decline, and it can even cease to exist. Therefore, assets are an extremely important part of a criminal organization. That is why there is an urgent need for criminal organizations to conduct money laundering so that the origins of such badly needed assets are difficult or impossible to trace by law enforcement agencies.

In addition to being extremely harmful for society, money laundering acts also inflict losses on the state because they can impact or disrupt national economic stability or state finances along with the increase of various crimes.

In the above context, endeavors for the prevention and eradication of money laundering practices have drawn attention internationally. Various countries have been undertaking various measures for the prevention and eradication of money laundering practices by engaging in international cooperation, both through bilateral as well as multilateral fora.

The enactment of the Law concerning Money Laundering Criminal Acts in the context of national interest is a reassurance that the Government and private

sector are not part of the problem, but are part of the solution, in the economic, financial and banking sectors.

The first step a country must make for the prevention and eradication of money laundering practices is the formulation of a law prohibiting money laundering practices and imposing heavy punishment on enactors of such crime. It is expected that with the enactment of this law money laundering criminal acts can be prevented or eradicated, among other things by criminalizing all acts in every phase of money laundering process consisting of:

- a. placement, namely attempting to place cash derived from criminal acts into the financial system or attempting to re-place cheque, bank draft, deposit certificate and others into the financial system, especially the banking system.
- b. transfer (layering) namely attempting to transfer assets derived from criminal acts (dirty money) placed successfully at the Provider of Financial Services (especially banks) as proceeds from attempted placement with another Provider of Financial Services. By conducting layering, it is difficult for law enforcement agencies to trace the origins of such assets.
- c. using assets (integration) namely attempting to use assets derived from criminal acts brought into the financial system successfully through placement or transfer as if it were clean money, for clean business purposes or for re-financing criminal activities.

Providers of Financial Services mentioned above are providers of services in the financial field including but not limited to banks, financial institutions, securities companies, mutual fund managers, custodians, trust agencies, depositing and settlement agencies, foreign exchange traders, pension funds and insurance companies.

Referred to as:

- banks shall be banks as intended in laws and regulations dealing with banking.
- financial institutions shall be business entities engaging in financing activities as intended in laws and regulations dealing with financial institutions.
- securities, custodians, depositing and settlement agencies, securities companies, mutual fund managers, securities accounts, mutual funds and Trust Agents shall be securities, custodians, depositing and settlement agencies, securities companies, mutual funds managers, securities accounts, mutual funds and trust agencies as intended in laws and regulations dealing with capital market.
- foreign exchange traders shall be foreign exchange traders as intended in laws and regulations dealing with foreign exchange trade.
- pension fund shall be pension funds as intended in laws and regulations dealing with pension funds.
- insurance companies shall be insurance companies as intended in laws and regulations dealing with insurance companies.

In the context of the prevention and eradication of money laundering criminal acts under this Law the Center for Financial Transactions Reporting and Analysis briefly referred to as PPATK shall be established, with the following functions:

- a. collect, keep, analyze, evaluate information obtained from the PPATK in accordance with this Law;
- b. monitor records in the exemption registry maintained by the Provider of Financial Services;
- c. formulate guidelines for the procedure of reporting suspicious financial transactions;
- d. provide advice and assistance to related institutions concerning the information obtained by the PPATK in accordance with the provisions of this Law;
- e. issue guidelines and publications to the Provider of Financial Services concerned concerning their obligations set forth in this Law or in other laws and regulations, and assist in detecting suspicious customer behavior;
- f. give recommendations to the Government concerning measures for the prevention and eradication of money laundering criminal acts;
- g. report the results of analysis of financial transactions indicating money laundering criminal acts to the Police and the Public Prosecutor's Office;
- h. prepare and submit periodic reports on the results of analysis of financial transactions and other activities once in every 6 (six) months to the

President, the People's Legislative Assembly (DPR) and to relevant agencies overseeing Providers of Financial Services.

In addition to the above, in order to ensure a smoother judicature process in trying money laundering criminal acts, this Law stipulates the authorities of investigators, the public prosecutors or judges in accordance with the level of case handling in order to be able to request Providers of Financial Services to freeze assets. This Law also stipulates the authority of investigators, public prosecutors or judges to seek information from Providers of Financial Services concerning the assets of any person reported by the PPATK, suspect or defendant.

In addition to the above specificity, this Law also provides for trial in the defendant's absence, if the defendant fails to appear following 3 (three) summons made validly in accordance with laws and regulations, then based on a temporary decision the Council of Judges can continue the hearing even though the defendant does not attend.

Based on the above considerations, the Law Concerning Money Laundering Criminal Acts needs to be formulated.

II. Article by article

Article 1

Self-explanatory.

Article 2

Self-explanatory.

Article 3

Paragraph (1)

Sub-paragraph a

"Constitutes proceeds from crime" is intended to mean that there is sufficient initial evidence of the occurrence of a criminal act.

Sub-paragraph b

Self-explanatory.

Sub-paragraph c

Self-explanatory.

Sub-paragraph d

Self-explanatory.

Sub-paragraph e

Self-explanatory.

Sub-paragraph f

Self-explanatory.

Sub-paragraph g

Self-explanatory.

Sub-paragraph h

Self-explanatory.

Paragraph (2)

Self-explanatory.

Article 4

Paragraph (1)

Self-explanatory.

Paragraph (2)

Referred to as "managers with functional position" shall be managers authorized by virtue of the corporation's articles of association to act for and on behalf of the corporation concerned inside as well as outside the courts.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Self-explanatory.

Article 5

Self-explanatory.

Article 6

Self-explanatory.

Article 7

Self-explanatory.

Article 8

Self-explanatory.

Article 9

Self-explanatory.

Article 10

Self-explanatory.

Article 11

Self-explanatory.

Article 12

Self-explanatory.

Article 13

Paragraph (1)

Sub-paragraph a

Referred to as "suspicious financial transactions" in this provision shall be among other things transactions of receiving, drawing, paying, depositing and transferring funds.

Sub-paragraph b

Referred to as "financial transactions conducted using cash" in this provision shall be among other things transactions of receiving, drawing, paying, depositing, conducted by using either cash, or other paying instruments, such as for example traveler cheque, cheque and clearing account note (*bilyet giro*).

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Paragraph (5)

Referred to as "other transactions" shall be exempted transactions that due to their characteristics are always conducted using cash and in large amounts, for example routine payments made by highway managers or supermarket managers.

Paragraph (6)

Self-explanatory.

Paragraph (7)

Self-explanatory.

Article 14

Self-explanatory.

Article 15

Self-explanatory.

Article 16

Self-explanatory.

Article 17

Paragraph (1)

- The intent of the provision of this paragraph is to make it easier for law enforcement agencies to trace customers if there are future allegations that the customer concerned committed money laundering criminal act.

In addition to the above, this provision also complies with international agreement recommending that every country should have in place provisions prohibiting the opening of accounts without clear identity of the customer concerned.

- Referred to as "complete and accurate identity" shall be among other things indicating name, address, gender, age, religion and occupation.
- Business relationship with the Provider of Financial Services in this provision shall include the opening of account, transferring funds, disbursement of cheque, purchase of travelers cheques, buying and selling foreign currency, deposits and using other financial services.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Referred to "laws and regulations" shall be currently Bank Indonesia Regulation Number 3/10/PBI/2001 concerning the Implementation of the Know Your Customer Principle as amended with Bank Indonesia Regulation Number 3/23/PBI/2001 and implementing regulations thereof.

Paragraph (5)

Self-explanatory.

Article 18

Paragraph (1)

Self-explanatory.

Paragraph (2)

Referred to as "independent" shall be free from intervention and influence from any party whatsoever.

Paragraph (3)

Self-explanatory.

Article 19

Self-explanatory.

Article 20

Self-explanatory.

Article 21

Self-explanatory.

Article 22

Self-explanatory.

Article 23

Self-explanatory.

Article 24

Paragraph (1)

Sub-paragraph a

The dismissal of the PPATK head or deputy head being outside the territory of The Republic of Indonesia is intended to ensure the maximum performance of PPATK tasks.

Sub-paragraph b

Self-explanatory

Sub-paragraph c

Self-explanatory

Sub-paragraph d

Self-explanatory

Sub-paragraph e

It is not appropriate for a person who has been imposed with criminal punishment due to having committed a criminal act to perform the task of eradicating a criminal act.

Sub-paragraph f

Holding concurrent positions is prohibited in order to avoid conflict of interest.

Sub-paragraph g

Self-explanatory

Sub-paragraph h

Self-explanatory

Paragraph (2)

Self-explanatory

Article 25

Paragraph (1)

Referred to as "conducting any form of intervention" shall be acts by any person whosoever resulting in the diminishing of the PPATK's freedom in performing its functions and tasks.

Paragraph (2)

Self-explanatory

Paragraph (3)

International cooperation shall be conducted with due observance of the provisions of laws dealing with external affairs and international conventions.

Article 26

Self-explanatory.

Article 27

Self-explanatory.

Article 28

Self-explanatory.

Article 29

Paragraph (1)

The purpose of preparing Annual Work Plan and Budget is to ensure that all matters conducted by the PPATK every year can be implemented in accordance with the set target so that the success or impediments encountered can be evaluated.

Paragraph (2)

Self-explanatory

Article 30

Self-explanatory.

Article 31

Self-explanatory.

Article 32

Paragraph (1)

The investigator's, public prosecutor's or the judge's order shall be in accordance with the phase of examination, namely in the investigation phase the authority shall be with the investigator, in the prosecution phase with the public prosecutor, and the judge's authority in the phase of examination in the court of justice.

Paragraph (2)

Self-explanatory

Paragraph (3)

Self-explanatory

Paragraph (4)

Self-explanatory

Paragraph (5)

Self-explanatory

Paragraph (6)

Self-explanatory

Article 33

Paragraph (1)

Self-explanatory

Paragraph (2)

This provision is an exemption from the bank secrecy provision and other financial transactions secrecy as in set forth in the laws dealing with bank secrecy and other financial transactions secrecy.

Paragraph (3)

Self-explanatory

Paragraph (4)

In the event that the Regional Police Head or the High Prosecutor Head are unable to attend, an appointed official may sign.

Article 34

Self-explanatory.

Article 35

This article contains the provision that the defendant is granted the opportunity to prove that his/her assets are not derived from a criminal act. This provision is known as the principle of reverse evidence.

Article 36

Paragraph (1)

The purpose of the provision of this paragraph is to ensure the smooth implementation of measures for the prevention and eradication of money laundering criminal acts in the judicature process, so that if the defendant does not appear in the court hearing after having been summoned 3 (three) times, even though he/she has a valid reason, the case can be tried without the defendant's attendance.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Article 37

The purpose of the provision of this article is to prevent heirs of the defendant from controlling or possessing assets derived from criminal acts. In addition to that, this is part of the efforts to repatriate state assets in the event that the criminal act concerned has inflicted a loss on the state.

Article 38

Self-explanatory.

Article 39

Paragraph (1)

Referred to as "PPATK" in this paragraph shall be the head, deputy head and all staff within the PPATK.

Paragraph (2)

Self-explanatory.

Article 40

Self-explanatory.

Article 41

Self-explanatory.

Article 42

Self-explanatory.

Article 43

Self-explanatory.

Article 44

International cooperation in the context of endeavors for the prevention and eradication of money laundering criminal acts [is needed] because in assets placement, transfer (layering) or integration there is a possibility for such assets to be circulated from or to other countries so that such cooperation is expected to result in more effective prevention or eradication measures.

Article 45

Self-explanatory.

Article 46

Self-explanatory.

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