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BOOK REVIEW

MONEY LAUNDERING: HOW IT WORKS
AND LEGAL INSTRUMENTS, A REVIEW
BOOK "*HUKUM MONEY LAUNDERING
DALAM DIMENSI KEPATUHAN*", DR. GO
LISANAWATI, S.H., M.HUM & NJOTO
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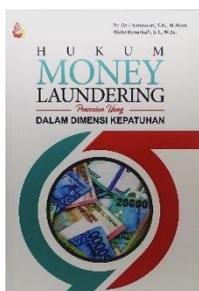
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ABSTRACT

This book contains practical knowledge about anti-money laundering in Indonesia and the global context. This book, in addition to presenting various theories regarding the crime of money laundering,

also presents various cases and their analysis to provide a comprehensive understanding.

Keywords: Money Laundering, Corruption, Criminal Law



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CORRUPTION ERADICATION STRATEGY, WHAT'S INTERESTING ABOUT THIS BOOK?

A. Anti-Money Laundering Law based on International and Domestic Constellation

IN THIS CHAPTER, we are going to analyze what act is to control money laundering, but first let us jump into the definition of money laundering itself. Money laundering is the process of making large amounts of money generated by a criminal activity, such as drug trafficking or terrorist funding, appear to have come from a legitimate source. The money from the criminal activity is considered dirty, and the process "launders" it to make it look clean. Money laundering is itself a crime. Therefore, the doer of the crime made the money gone by hiding all trace of the money to avoid criminal act.

After we understand the basic definition of money laundering, we must understand the danger caused by this activity. The danger cause by this activity is discussed many conventions and around the

world. There are international and domestic convention that discussed the criminal act of money laundering. Based on the international conventions, money laundering is categorized as serious crime meaning its range is very wide and even though basically this activity directly did not harm anyone or a company, not like any other crime like murder, thievery, or robbery that cause harm to the victim. According to IMF, money laundering can cause many problems like:

1. policy errors because a mistake in the data measurement as the act of money laundering
2. volatility to the exchange rate because of the uncontrollable cross border fund transfers
3. problems with the tax collection because of manipulation of fake money reports

These are just a few of many problems caused by money laundering. And as you can see it covers a very wide range of problems, that is why it is categorized as serious crime.

According to J.E. Sahetapy, the criminal act that controls money laundering is covered based on:

1. act conversion, transfer or concealment of the true elements of ownership of property
2. knowledge that the property is derived from one or more specified types of underlying criminal activity
3. objective to conceal the illicit origin of the property

At first, the act of money laundering is first controlled based on Vienna convention that gives a brief understanding on the criminal act of money laundering. It states that criminal act of money laundering can only be applied to the wrongful use of drugs. This act then is later used by other countries that then started to criminalized money laundering of drugs activity. Then other acts, conventions, standards, even model laws started to appear. These acts appeared just to highlight money laundering in general including the effort that must be done by a country to erase money laundering and earn the title as "safe haven country"

Indonesia on the other hand realized how important it is to eradicate money laundering by making the act Law No 15 of

2002 about criminal act of money laundering and is now changed to Law No 25 of 2003 about the change of Law No 15 of 2002. But after an evaluation done by the government, it turns out that the act can't be used effectively which made this act change yet again in 2010 to Law No 8 of 2010 concerning prevention and eradication of money laundering. This act emphasized to social approach on prevention and eradication. When this act is published and running, the regime is called anti money laundering regime which is until now is still running smoothly.

B. Elements of Criminal Act of Money Laundering

BASED ON THE Law No 8 of 2010 states that money laundering is all doings that fulfil all elements of a criminal act stated in this constitution. This means that money laundering must fulfil all that is stated on the Law No 8 of 2010 to be criminalized. The Law No 8 of 2010 had different sections; criminal act of money laundering (article 3-article 5), and criminal act which are related to the criminal act of money laundering (article 11-article 16).

Article 3 stated all persons that did transaction, put, divert, entrust, change the form of the assets he/she knows is done by criminal doings with the intention to hide where the assets is coming from are an act of criminal. Based on what is stated before, money laundering is done by vanishing all trace of where the money is obtained to avoid any suspicion to where the money came from. This criminal act of money laundering is *sui generis* meaning that to investigate a money laundering case, the perpetrators doesn't have to be investigated or sued. This is explained in an article 69 and article 75 explicitly.

Article 4 stated all persons that hide the assets that he/she knows is done by criminal doings are an act of criminal. This act is only intended to a person or a corporation that facilitate the doers of a money laundering by taking contribution of vanishing the trace of the assets. Article 5 stated all persons that receive assets he/she knows is done by criminal doings are an act of criminal. This act is intended

to the passive perpetrators which means that he/she were not aware of the money laundering act before. Article 11 stated all judge, investigators, officials, prosecutors must conceal all documents regarding their duty. This act is known as secrecy of position but is not applicable to all officials do it because they must according to the constitution.

C. Methods of Criminal Act of Money Laundering

THERE ARE THREE phase that is used in the constitution of money laundering act which then become more of a method rather than phase, here are 3 methods used:

1. Placement: the placing of an asset that came from criminal act to a financial system or a bank
2. Transfer: effort to transfer the asset that came from criminal act
3. Integration: effort to use the asset that came from a criminal act that has succeeded to be placed in a financial system to make it look like clean money

VARIOUS KINDS OF FINANCIAL TRANSACTIONS

A. Kinds of Financial Transactions

1. Suspicious Financial Transactions
 - a. Financial transaction that are deviated from profile, characteristics, or habits of financial transactions
 - b. Financial transaction that is done or cancel which are suspected came from a criminal act
 - c. Financial transaction that is requested by the authority for it to be reported to the reporting party because it involved assets that was suspected came from a criminal act
2. Cash Financial Transactions

Based on article 1 (6) Law No 8 of 2010 cash transaction is a financial transaction that is done by using paper-based asset. This transaction can be either acceptance or withdrawal.

3. **Abroad Fund Transfer Financial Transaction**

Based on article 1 (1) Law No. 3 of 2011 fund transfer is a series of activities that start with commands from a sender with the intention of transferring a number of funds to the receiver.

4. **Cash Carrying from/to Outside Indonesia**

Based on Law No 8 of 2010 all person that carry cash in a minimal of Rp. 100.000.000,00 must tell the directorate general of customs to be permitted. After that the directorate must write a report about what is mentioned above.

5. **Transactions that must be reported by the provider**

Based on article 27 Law No 8 of 2010 stated that item/service provider must file a report of the transactions done by the user of the service in the minimal of Rp. 500.000.000,00 to the authority

LAW PROFESSION AS REPORTING PARTIES IN AN ANTI MONEY LAUNDERING REGIME

A. Profession and their Role

According to Government Regulation No 43 of 2015, profession have a really important role in the process of the prevention of money laundering. Profession is thought to be “gatekeepers” in the process of money laundering preventions meaning that it is the vanguard, the first to face money laundering. But on the other hand, the title “gatekeepers” can also be exploited by the perpetrators. That’s why a law profession must be aware of how important it is to play a good role in society.

As mentioned in Law No. 18 of 2003 about advocates as part of law enforcement that play a role in law enforcement in a different function than police, prosecutors, etc. the function of advocate is

mentioned in article 5 which stated advocate as a device in the judicial process that has the same position as all of the other law enforcement.

Theodurus Yosep stated that advocate earn the title as *officium nobile* meaning it is a noble profession. *Officium nobile* is a fusion of noble value and status as a leading person, they help people when needed with the full intention of helping them not because of money, even though some did. Theodurus Yosep also stated the full role of advocate is to:

1. Fight for human rights
2. Implement advocate code of ethic
3. Hold the advocate oath
4. Prioritize idealism
5. Maintain independence
6. Improve the community service of having justice
7. Maintain personality as a noble profession
8. Keeping good relation with client
9. Give legal service
10. Give legal advice
11. Give legal consultation
12. Give legal opinion

A notary give legal service to the community by making authentic deeds and other authorities that can only be done by a notary, as mention in article 1 No 1 UU No 30 year 2004 about notary position. According to chapter 15, a notary's role is:

1. A notary is authorized to make authentic deeds about all doings, agreements that is required to fulfil the constitution rules which are prohibited to be shared to other institutions
2. Validate signature and establish the certain of a letter's date by filing it to a special book
3. Make an exact copy of a document which are validate and signed by the notary
4. Make a legalization copy of the real document
5. Make a deed regarding to land law
6. Make a deed regarding auction treatise
7. Give community service base on the constitution

Law profession only asked to make a report for the use of services if indicate fulfil these 3 elements:

1. Did transactions and do it in the name of service user
2. Do one of the following:
 - a. Property purchase or sale
 - b. Management of asset or other financial service products
 - c. Management of checking account, savings account, deposit account, and securities account
 - d. Management of a company
 - e. Company establishment, purchase, and sale
3. Fulfil the elements of suspicious financial transactions as mentioned in chapter 1 No 5 Law No 8 of 2010 jo. Chapter 1 No 8 PP No 43 of 2015

DATA of BOOK

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