

1-31-2014

## MONEY LAUNDERING: HOW IT BECOMES AN INTERNATIONAL THREAT (RESPONSE AGAINST MONEY LAUNDERING FROM THE SIDE OF INDONESIA)

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### Recommended Citation

Kurniasari, Eka (2014) "MONEY LAUNDERING: HOW IT BECOMES AN INTERNATIONAL THREAT (RESPONSE AGAINST MONEY LAUNDERING FROM THE SIDE OF INDONESIA)," *Indonesian Journal of International Law*: Vol. 11: No. 2, Article 3.

DOI: 10.17304/ijil.vol11.2.275

Available at: <https://scholarhub.ui.ac.id/ijil/vol11/iss2/3>

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## **MONEY LAUNDERING: HOW IT BECOMES AN INTERNATIONAL THREAT (RESPONSE AGAINST MONEY LAUNDERING FROM THE SIDE OF INDONESIA)**

**Eka Kurniasari<sup>1</sup>**

### **Abstract**

*Money Laundering is one of the transnational organized crime which has been increasing intensively. Money laundering is the term used to describe a process of concealing the source of money that gained through crime (it is usually called "dirty money"). This process is done with the aim to make the "dirty money" converted into "clean money". There are many ways for this process to be done, among them is by buying properties and houses. Other is by saving the "dirty money" in a bank account that will later turned it into "clean money". This is where the bank service could get involved in this particular crime. In an attempt to overcome this problem, countries joining in the G-7 Summit established the Financial Action Task Force (FATF) in Paris in July 1989 that provides standards recommendation, national and international, as measures to make integrated cooperation among countries. This essay discusses the very definition of money laundering, the role FATF takes in order to prevent money laundering, and the responses of Indonesia regarding money laundering.*

*Pencucian Uang adalah salah satu kejahatan transnasional yang terorganisasi yang telah berkembang secara pesat. Pencucian Uang adalah ungkapan yang digunakan untuk menggambarkan proses yang digunakan untuk menyembunyikan uang yang didapat dari hasil kejahatan (yang biasa disebut "uang haram"). Proses ini dilakukan dengan tujuan membuat "uang haram" tersebut menjadi "uang halal". Banyak cara yang dapat dilakukan untuk proses ini, salah satunya adalah dengan membeli properti dan rumah. Cara lain adalah dengan menyimpan "uang haram" tersebut didalam Bank yang nantinya akan berubah menjadi "uang halal". Ini adalah situasi dimana jasa perbankan terlibat dalam kejahatan ini. Salah satu cara untuk menanggulangi masalah ini, negara-negara yang tergabung dalam G-7 mendirikan Financial Action Task Force (FATF) di Paris pada Juli 1989 yang memberikan dasar-dasar rekomendasi, nasional maupun internasional, sebagai gambaran untuk membuat kerjasama terintegrasi antar negara. Esai ini menggambarkan definisi terkait pencucian uang, peran FATF dalam hal mencegah pencucian uang, dan tanggapan dari Indonesia terkait Pencucian Uang.*

**Keywords:** *Transnational Organized Crime, Money Laundering, Financial Action Task Force*

### **I. INTRODUCTION**

Money laundering has become an intensive crime lately. It has developed broader from crime that involves only one crime such as banking crime to terrorism that attached to banking crimes. Then, this crime is not only committed in one country, but also organized in transnational.

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Many countries, including Indonesia, have affected by money laundering and thereby, take serious action against it. Some efforts have been carried out to combat money laundering, namely, Indonesia complies with 40 of FATF recommendations and 9 special recommendations.

Since the crime of money laundering is attached to provider of financial services (banks), it is important to banks to take some measures to prevent banks from being tools of terrorists in financing their activities by regulating "know your customer principles". Giving limitation to the amount of money in an account, complying with FATF and its recommendation, exchanging information between banks in other countries, and cooperation between regulatory bodies are among measures that has been taken.

This paper attempts to describe money laundering related to terrorist financing in Indonesia. Since Indonesia complies with FATF recommendation, I will also try to describe FATF and its 40 and 9 special recommendations.

In describing the topic, I have some questions which need to be answered, which are: What is money laundering and how it causes problems? What is FATF and how it helps countries to combat money laundering? How Indonesia responses to money laundering?

## **II. WHAT IS MONEY LAUNDERING AND HOW DOES IT CAUSE PROBLEMS?**

Money laundering is the term used to describe the process that disguises the (usually criminal) source of money.<sup>2</sup> This process is needed by criminal to make a change to the source of the money, which they got from criminal activities, from dirty money to be clean money, so that they can use it without hesitating that they can be investigated and be put behind bars. The stress of money laundering is that the source of the money comes from criminal activities. Such activities as trafficking, kidnapping, and corruption are common to result a lot of money for criminals.

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<sup>2</sup> E.P Ellinger, E. Lomnicka, and R.J.A. Hooley, *Ellinger's Modern Banking Law*, Fourth Edition, Oxford, 2009, p.94

There are many ways to keep the money resulted from crime as if it does not come from criminal activities, for example by buying properties such as a house and building. Another way is by opening an account in a bank. This is how a bank can be a part of a way out by criminal to “wash” the money to be clean money by using bank services. They commonly open an account under their own name or they use a tactic by putting names of their trusted friends and family. By doing this way, it is not easy to trace how the money comes from.

The problem caused by money laundering is still in progress in order to hide the original source of the money. Criminals even do it through<sup>3</sup> a series of transaction involving different jurisdiction. This is how the process of money laundering evolves and as a result transnational crimes occur.

The worst part of money laundering is that the money is used to commit crimes such as terrorism. In this case, dirty money is used to finance crime to meet the terrorist’s purpose. This worst part has brought serious attention from many countries to combat money laundering.

### **III. WHAT IS FATF AND HOW DOES IT HELP COUNTRIES TO COMBAT MONEY LAUNDERING?**

Countries on this world are forced to face that money laundering has been transmitted beyond national boundaries. For example, terrorist commit a kidnapping in a country and ask for money for the kidnapped person to be set free. The terrorist open one or more bank accounts under a name of someone or several other persons in another country to save the money resulted from the crime (kidnapping is categorized as one of crime). Then, the money is used to finance other terrorism action such as buying bombs to destruct another country. It can be seen how crimes funded from money laundering can affect many countries.

Realizing how serious money laundering is, countries joining in the G-7 Summit tried to find a way out to combat it. They discussed the problem and established the Financial Action Task Force (FATF) in Paris in July 1989 that provides standards recommendation, national

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<sup>3</sup> *Ibid.*

and international, as measures to make integrated cooperation among countries.

The FATF recommendation has scope that includes all serious offences and provides principles such as know your customer to be taken by countries. This principle obliges banks awareness on the identity of their customers by taking Customer Due Diligence (CDD), to keep record of their customers even until 5 years after the business relationship between banks and their customers over, and to have a risk management system. One thing to be sure that banks, related to the use of them as tools in money laundering and terrorist financing, can not be sued as has been disclosure their customers' information such as stated in bank secrecy provision.

Another recommendation that provided by FATF is to build relationships through cross border correspondent and focus more on complex transaction, transaction of unusual amount of money, and unusual patterns of transaction. Special attention is given in the case of banks in a country that comply with the FATF recommendation have business relationship with banks in a country that do not have or do not have enough effort to comply with the FATF recommendation. This special attention is aimed to force countries to meet the international standards against money laundering and terrorist financing by putting them under the list of Non-Cooperative Countries and Territories (NCCTs) and obliging banks in countries complying with FATF recommendation to do<sup>4</sup> heightened scrutiny on transaction from NCCT-listed countries. To deal with reports in the case of suspicious transaction occur, FATF established a body called Financial Intelligence Unit (FIU) that has authority to receive and analyze Suspicious Transaction Report (STR).

After all of all these recommendation, FATF even provides International integrated cooperation that can be conducted to prevent money laundering and terrorist financing to occur by making extradition treaties.

FATF also provides 9 special recommendations (SR) as a basic framework in detecting, preventing, and suppress the financing terror-

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<sup>4</sup> FATF-GAFI, FATF Strengthens Global Anti-Money Laundering and Anti-Terrorist Financing Campaign, Paris, 27 February 2004.

ism and terrorist acts when it is combined with 40 recommendation. In my opinion, most of SR has been regulated in 40 recommendations, but the SR emphasizes them more particularly about criminalizing the financing of terrorism and associated money laundering (SR II), reporting suspicious transaction related to terrorism (SR IV), and international cooperation (SR V).

The emphasizing is needed because countries have to take action against the way terrorist use bank service to support their crime. When the crime spotted banks make a report to FIU and make a bilateral and multilateral cooperation to combat money laundering. This is what SR calls a basic framework, which is including preventive action and solution.

#### **IV. HOW DOES INDONESIA RESPONSE TO MONEY LAUNDERING?**

Indonesia has taken serious action to combat money laundering by regulating some provisions. Those provisions are Law Number 15 Year 2002 as amended by law number 25 of 2003 concerning the crime of money laundering, Regulation of the Republic Indonesia Number 57 Year 2003 concerning the procedure for special protection of reporting parties and witness in criminal acts of money laundering, Bank Indonesia Regulation Number: 3/10/PBI/2001 concerning the implementation of know your customer principles, Bank Indonesia Regulation Number: 11/28/PBI/2009 concerning implementation of anti money laundering and combating the financing of terrorism program for commercial bank, and Guidelines on Cash Financial Transaction Reports and Their Reporting Procedures for Financial Dealers. Those provisions are described below:

##### **1. Bank Indonesia Regulation Number: 3/10/PBI/2001**

According to the Financial Action Task Force (FATF) on money laundering, know your customer principle is important to prevent banks from being used by criminal activities. Then the principle is adopted by Indonesia in Bank Indonesia Regulation Number: 3/10/PBI/2001. This principle is important to know and recognize identity of banks

customer, to monitor customer's transaction, and to make a report on transaction suspected in money laundering.<sup>5</sup> The regulating of Bank Indonesia Regulation Number: 3/10/PBI/2001 is aimed to anticipate money laundering while the law Number 15 Year 2002 had not been existed yet at that time.

The first thing to do in implementing this principle is by establishing a special unit or appoints an officer.<sup>6</sup> Then, banks is obliged to obtain information about customer before they have business relationship that supported by legal documents.<sup>7</sup> Finally, monitoring customer's account and transaction by keeping the account until five years after the customer's account has been closed.<sup>8</sup> Another unit such as management information system<sup>9</sup> and a special officer to handle high-risk customer<sup>10</sup> are established. Management information system is needed to identify, analyze, monitor, and report the characteristic of customer's transaction.

In the case of domestic bank located abroad, the implementation of know your customer principle depends on which is best for Indonesia and the host country.<sup>11</sup> If the principle in both countries are the same or more stringent in host country, then the bank will implement the host country principle. If the principle has not implemented yet or less stringent in host country, then the bank will implement principle based on this regulation. But, if this regulation violates the host country, the bank has obligation to inform the head office of the bank and Bank Indonesia that the bank can not implement principle in this regulation.

## **2. The Law Number 15 Year 2002**

The law concerns about preventing and eradicating the crime of money laundering. It mentions some crimes that can be led to money laundering. Those crimes are corruption, bribery, smuggling of goods, smuggling of workers, smuggling of immigrants, banking, narcotic,

<sup>5</sup> Article 1 (b) of Bank Indonesia Regulation Number: 3/10/PBI/2001

<sup>6</sup> Article 3 of Bank Indonesia Regulation Number: 3/10/PBI/2001

<sup>7</sup> See Article 4 of Bank Indonesia Regulation Number: 3/10/PBI/2001

<sup>8</sup> See Article 8 of Bank Indonesia Regulation Number: 3/10/PBI/2001

<sup>9</sup> See Article 9 of Bank Indonesia Regulation Number: 3/10/PBI/2001

<sup>10</sup> See Article 12 of Bank Indonesia Regulation Number: 3/10/PBI/2001

<sup>11</sup> See Article 16 of Bank Indonesia Regulation Number: 3/10/PBI/2001

psychotropic substance, slavery and trade in women and children, illegal trading, in arms, kidnapping, terrorism, theft, embezzlement, and fraud.

A person can be sued committing money laundering if he does several activities mentioned in the law that are categorized as crime related to money laundering, which are:

- a. Doing criminal acts on his or someone else's behalf to a provider of financial services, whereby he knows or suspects that the money resulted from a crime. Such acts are places assets, transfer assets, disburses or spend assets, donates or contributes assets, entrust assets, takes overseas assets, exchanges assets in currency or other negotiable documents, and hide or conceals the origin of assets.<sup>12</sup>
- b. Attempting, assisting, or having conspiracy in the mentioned crimes.<sup>13</sup>
- c. Receiving or controlling the placement, transfer, payment, donation, contribution, storage, and exchange assets resulted from the mentioned crimes.<sup>14</sup>
- d. Providing assistance, opportunities, facilities or information about the crime of money laundering<sup>15</sup> in the case of a citizen or a corporation of Indonesian are outside of the territory of Indonesia.
- e. Failing to provide report within 14 business days after knowing the crime has been committed to the PPATK, in the case the person is a provider of financial services. Such report is in the matter of the amount of financial transaction that reaches RP. 500,000,000.00 (five hundred million rupiah) or in the equivalent amount if it is in foreign currency belonged to its customer.

This Law provides some preventive measures to avoid money laundering to occur, which are:

- a. The determination of asset that can be suspected to be resulted from a crime is in an amount of RP 500,000,000.00 (five hundred million

<sup>12</sup> See Article 3 of Law Number 15 Year 2002

<sup>13</sup> See Article 3 of Law Number 15 Year 2002

<sup>14</sup> Article 6 of Law Number 15 Year 2002

<sup>15</sup> Article 7 of Law Number 15 Year 2002



- rupiah).<sup>16</sup>
- b. Obligation to report to Directorate General of Customs and Excise if bringing cash into or taking cash out of the territory of Indonesia.<sup>17</sup>
  - c. Obligation to give full and correct identity to person who has business relationship with a provider of financial services.<sup>18</sup>
  - d. Obligation of provider of financial services to confirm to whom their customer acts for.<sup>19</sup>

Center for financial transaction reporting analysis (PPATK), as an independent agency that responsible to the President, is established to deal with the reporting of financial transaction. In playing its role to combat money laundering, the center also protects reporting parties and witnesses. The unique of this law is that in the case the reporting parties is a bank officer, he is<sup>20</sup> exempted from doing disclosure of customer information. This law also allows international cooperation to be taken

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<sup>16</sup> Article 2 of Law Number 15 Year 2002: The proceeds of crime shall be assets in the amount of RP.500,000,000.00 (five hundred million rupiah) or more or an equivalent, obtained either directly or indirectly from the following crimes:

- a. Corruption;
- b. Bribery;
- c. Smuggling of goods;
- d. Smuggling of workers;
- e. Smuggling of immigrants;
- f. Banking (offences);
- g. Narcotics (offences);
- h. Psychotropic substance (offences);
- i. Slavery and trade in women and children;
- j. Illegal trading arms;
- k. Kidnapping;
- l. Terrorism;
- m. Theft;
- n. Embezzlement;
- o. Fraud;

Committed in the territory of The Republic of Indonesia or outside the territory of the Republic of Indonesia and such crime is also a crime according to Indonesian law.

<sup>17</sup> Article 16 (1) of Law Number 15 Year 2002

<sup>18</sup> See Article 17 (1) of Law Number 15 Year 2002

<sup>19</sup> See Article 17 (2) of Law Number 15 Year 2002

<sup>20</sup> See Article 14 of Law Number 15 Year 2002

through bilateral and multilateral forum.<sup>21</sup>

The law Number 15 Year 2002 mentions 15 crimes, including banking crimes, which are categorized as money laundering crimes. This categorizing is aimed to build a narrow space to money laundering to be committed and at the same time the law also makes a wider protection to banks and other provider of financial services (financial field institution, securities companies, mutual fund managers, custodians, trust agents, depository and settlement agencies, foreign exchange traders, pension funds, and insurance companies) to be used by criminals.

### **3. Regulation of the Republic Indonesia Number 57 Year 2003**

The Regulation of the Republic Indonesia Number 57 Year 2003 concerns about the procedure for special protection of reporting parties and witnesses in criminal acts of money laundering. This protection is needed as a guaranty to reporting parties and witnesses that they will be saved from threat endangering them either prior to, during or following a case examination proceeding.<sup>22</sup> The opportunity to be reporting parties is given to anyone who does it either under the reason of obligation under law and regulation or voluntarily reason.

It is the duty of the police, investigators, public prosecutor, and judges to provide protection in the forms of personal safety and family safety against physical or mental threats, property safety, keeping confidential and disguise identity, and giving testimony without being confronted with the suspect or defendant at any case examination level.<sup>23</sup>

### **4. Bank Indonesia Regulation Number: 11/28/PBI/2009**

In combating money laundering related to the financing of terrorism, Bank Indonesia has taken preventive steps stipulated in Bank Indonesia Regulation Number: 11/28/PBI/2009. This regulation considers about the risk of banks to be used for committing money laundering to finance

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<sup>21</sup> See Article 44 of Law Number 15 Year 2002

<sup>22</sup> See Article 2 of Regulation of the Republic Indonesia Number 57 Year 2003

<sup>23</sup> See Article 5 of Regulation of the Republic Indonesia Number 57 Year 2003

terrorism. What a bank needs to do in implementing this regulation to combat money laundering is<sup>24</sup> to establish a special work unit or appoint an officer of the bank, which is granted sufficient capability and authority to access customer's data and information.

Another thing to do is relating to customer due diligence procedure (CDD).<sup>25</sup> CDD is needed in the case of having business relationship with potential customer and walk in customer (WIC), there is a doubt about information given by the customer, and there are unusual financial transaction related to money laundering or terrorist financing.<sup>26</sup> It is important to make a classification of customer risk level to deal with CDD that is done by analyzing customer's identity, profile, transaction amount, and business activity.<sup>27</sup>

If there is a doubt and bank find false identity or information given by the customer, it can refuse to have business relationship with the person and report it in suspicious financial transaction report.<sup>28</sup>

Last thing that Banks do to implement this regulation is to make a screening procedures and training in the hiring of new employees. This is important to avoid person who pro to terrorist hired by banks.

To meet with United Nations (UN) recommendation, banks have to maintain database of terrorist list based on data published by the UN that is received from Bank Indonesia<sup>29</sup> and have to cross border correspondent banking.<sup>30</sup> If there is a suspicious things related to the customer, banks must report it in report suspicious financial transaction. All reports of suspicious financial transaction, which is related to the refusal of having business relationship and being suspicious to the customer, must be submitted to PPATK<sup>31</sup>.

<sup>24</sup> See Article 6 of Bank Indonesia Regulation Number: 11/28/PBI/2009

<sup>25</sup> See Article 9 of Bank Indonesia Regulation Number: 11/28/PBI/2009

<sup>26</sup> See Article 1 (5) of Bank Indonesia Regulation Number: 11/28/PBI/2009: Walk in customer is a user of banking services that does not own accounts in the bank, however it does not include parties that are instructed or assigned by customer to engage in a transaction for the benefit of the said customer.

<sup>27</sup> See Article 10 (2) of Bank Indonesia Regulation Number: 11/28/PBI/2009

<sup>28</sup> See Article 23 of Bank Indonesia Regulation Number: 11/28/PBI/2009

<sup>29</sup> See Article 28 of Bank Indonesia Regulation Number: 11/28/PBI/2009

<sup>30</sup> See Article 31 of Bank Indonesia Regulation Number: 11/28/PBI/2009

<sup>31</sup> PPATK: Center for the Reporting and Analysis of Financial Transactions.

## **5. Guidelines on Cash Financial Transaction Reports and Their Reporting Procedures for Financial Dealers**

This guideline is established by the Indonesian Financial Transaction Reports and Analysis Center (PPATK) and it refers to Article 13 (1) (b) of Law Number 15 Year 2002 which regulated that financial dealer such as banks must make a report suspicious financial transaction to the PPATK concerning financial transaction conducted in cash in the amount of RP. 500,000,000.00 (five hundred million rupiah) or the same amount in foreign currency, conducted in one or more transaction (known as cash financial transaction report - CFTR).

Based on the guidelines, CFTR is submitted in two ways, which are manually<sup>32</sup> and electronically.<sup>33</sup> In submitting CFTR electronically, banks have to submit a request for CFTR first by sending e-mail to [helpline@ppatk.go.id](mailto:helpline@ppatk.go.id), but CFTR will be made manually if banks have problem with the receiving of user id, password, and secure key.

However, this report can not be conducted to transactions that involve<sup>34</sup> inter bank, the government, Central Bank, and payment of salaries and pensions.

In my opinion, all of those provisions show the seriousness of Indonesia in combating money laundering from all aspects due to money laundering is not an independent crime. It is always attached to other factors such as banks (that makes banks as a tool), so it is also important to regulate all relevant aspects of money laundering.

## **V. CONCLUSION**

Money laundering and terrorist financing has suffered many people and to combat the crimes it is important to build cooperation in bilateral or multilateral. After the establishment of FATF in Paris this cooperation becomes a step that is obliged to be taken. FATF provides

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<sup>32</sup> By sending a hard copy of CFTR in compliance with the sample of CFTR form attached to these guidelines

<sup>33</sup> By submitting CFTR on-line through the internet by accessing the PPATK's server using user id, password, and secure key determined by the PPATK.

<sup>34</sup> Article 13 (4) and (5) of the Law Number 15 Year 2002

measures that are needed to be implemented such as creating financial institution unit to deal with suspicious transaction reporting, allowing the exchange of information about suspicious transaction, and even allowing extradition treaty in the case of high risk customer escape from a country to other countries.

By complying with FATF recommendation countries can build international integrated cooperation. The compliance gives other advantages for Indonesia such as being erased from the list of NCCTs and countries comply with FATF recommendation no longer put special attention when banks or people from countries that do not comply with FATF recommendation have business relationship with countries that comply with FATF recommendation.

Considering that terrorists use banks as tools for them in committing their crimes, it is urgent to Indonesia to comply with the FATF recommendation in order to create a save financial system and to avoid more victims caused by terrorists activities that are attached to money laundering.

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