

EFFECTIVENESS OF MONEY-LAUNDERING INVESTIGATION IN INDONESIA

*Neva Sari Susanti**

I. INTRODUCTION

A. Background

The influence of political, social, economic and cultural changes in Indonesia encourages the creation of new crimes. In the classical school of thought, the crimes that were once only conventional in nature, namely those that only exist in the Criminal Code, are transitioning into non-conventional or transnational crimes.

In criminology studies, the non-conventional crimes are also known as white-collar crimes. The term white-collar crime was first used by Edwin Sutherland in 1939 to refer to crimes committed by "respectable" people in their work as bankers, entrepreneurs, industrialists and professional groups. Among the many white-collar crimes, corruption is a crime that could lead to money-laundering.

In his press statement, the Head of PPAATK (Indonesian Financial Transaction Reports and Analysis Center) said that in 2018 every day there were 100,000 incoming reports related to alleged money-laundering. From the overall reports received, there were 4,520 analysis results, 2,210 information and 123 examination results sent to law enforcers to be investigated for money-laundering, terrorist financing and organized crime.

B. Problem

In connection with the complexity, the proceeds of corruption are often disguised or hidden and could ultimately lead to money-laundering. Therefore, many efforts and strategies are needed to investigate money-laundering.

II. DISCUSSION

A. Public Services

Corruption has entered all sectors of life. Currently in Indonesia, some corruption cases involve many civil servants (PNS). The state loss due to corruption in 2018 reached Rp 9.29 trillion, while the efforts to recover the loss have not been maximized.

This was the result of a study from Indonesia Corruption Watch (ICW) (4/28/2019). ICW collects data on corruption case decisions issued by the district courts, the courts of appeal and the Supreme Court. Data collection was conducted from 1 January to 31 December 2018. ICW monitoring results in 2018 showed that there were 1,053 cases with 1,162 defendants who were adjourned at all three levels of courts and the problem of asset recovery remains a challenge. The most important thing right now is how to conduct a good investigation so that the assets obtained from the crime could be traced or returned to the State.

* Head of Cooperation and International Division, Attorney General Office, Indonesia.

Corruption often occurs in the public service sector. This happens because the duties and tasks carried out by the civil servants are always in contact with services to the community. A concrete example occurs in the public service sector which often results in the practice of bribery or gratuity by service applicants and civil servants as parties who are obliged to serve.

B. Money-Laundering

In Indonesia, money-laundering is regulated in Law No. 8 of 2010 on Prevention and Eradication of Money Laundering. It is stated in the provision of Article 1, number (1) of Law No. 8 of 2010 that money-laundering is "every act that fulfils the elements of a criminal act which are in accordance with the provisions in the law". In this sense, the intended elements are element of perpetrators, elements of acts against the law and elements which are the result of criminal acts.

Meanwhile the definition of money-laundering can be seen in the provisions of articles (3), (4) and (5) of Law No. 8 of 2010. The key point is that money-laundering is a form of crime committed either by a person and/or corporation intentionally by placing, transferring, diverting, spending, paying, granting, entrusting, bringing abroad, changing forms, exchanging with currency or securities or other acts of assets that are known to or reasonably suspected to be the results of criminal acts with the aim of concealing or disguising the origin of those assets, including those who receive and control them.

C. Case Position of Money-Laundering

In relation to money-laundering, here is an example of how a money-laundering case is handled:

1. Defendant X was a civil servant in the Indonesian National Land Office (BPN) who had acted as an intermediary from 2006 to 2016 to receive direct or indirect benefits in the context of managing land rights. The defendant in his position utilized the authority he had to promise the petitioners that the process would be expedited, but the petitioners were asked to provide fees for the management of land rights beyond the costs determined by the applicable Government Regulations.
2. The defendant from 2006 to 2016 had received bribes amounting to Rp8,715,570,000 (eight billion seven hundred fifteen million five hundred and seventy thousand rupiah) from the applicants for Land Rights or other third parties by transferring money to the Defendant's bank account and several accounts in the names of others.
3. The Defendant then saved the money, which amounted to Rp8,715,570,000, in several bank accounts in the name of the Defendant himself, the Defendant's Wife and the two Defendants' children as well as deposited and bought Indonesian Retail Government Bonds (ORI) at the Bank. The Defendant also used the money to buy houses and lands in several areas, as well as four-wheeled vehicles.
4. The Public Prosecutor charged the Defendant and sought 7 years' imprisonment and a fine of 300 million rupiah substitution for 1 year's imprisonment.

Article 12e of Law Number 31 of 1999 on the Eradication of Corruption in conjunction with Law Number 20 of 2001 states: any civil servant or state administrator who intends to benefit themselves or others unlawfully, or by abusing their power forces someone to give

something, pay, or receive payment in pieces, or to do something for him/herself. Article 4 in conjunction with Article 2 paragraph (1) of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering states: Any person who hides or disguises the origin, source, location, designation, transfer of rights, or the actual ownership of the assets he/she knows or reasonably suspects to be the result of a criminal offence as referred to in Article 2, paragraph (1) is convicted of money-laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiahs). The Semarang District Court sentenced Defendant X to 5 years' imprisonment and a fine of 200 million rupiah substitution for 6 months' imprisonment.

D. Money-Laundering Investigation Strategy

As a form of white-collar crime, the pre-investigation and investigation of a money-laundering case is different from the conventional crimes. Perpetrators of white-collar crime generally are people who are highly educated, with high intelligence. Therefore, their criminal acts are well planned. Furthermore, the perpetrators of money-laundering optimize various regulatory loopholes and exploit advances in information technology in the industrial revolution 4.0 era. It is done to disguise or hide the proceeds of crime so that it is difficult for law enforcers to detect it.

In the corruption case committed by Defendant X as a civil servant, the mode is as follows:

1. Using a bank account in the name of another party to conduct transactions using the source of funds from proceeds of crime;
2. Carrying out cash transactions in which the source is from the proceeds of crime with the aim of breaking the flow of funds and making the tracing difficult;
3. Spending the proceeds of crime such as buying cars, houses, apartments and other goods on behalf of others, deliberately not taking care of proof of ownership.

With 40 witnesses and almost 10 of them holding bank accounts to collect the proceeds of crime committed by the defendant, the investigation was more complicated. Investigators in this case also found several flows of funds resulting from the crime to be used for the benefit of the defendant and his colleagues, such as:

1. It was used for hotel bookings;
2. It was used for plane ticket reservations;
3. It was used for buying food, renting karaoke rooms and other entertainment costs.

On the investigation related to assets resulting from crimes committed by Defendant X, the investigators also paid attention to the lifestyle of the Defendant and calculated the total income received by the Defendant X as a civil servant. Another thing done by the investigators was conducting an analysis of the Report of State Officials' Wealth (LHKPN). LHKPN is the Report of State Officials' Wealth containing a list of all the assets of state officials as outlined in the LHKPN form determined by the Corruption Eradication Commission (KPK). LHKPN does not only cover the assets of a state organizer, but also covers the nuclear family, such as spouses and children who are still dependent on their parents.

In Indonesia, based on Article 2 of Law No. 28 of 1999, every year state officials are required to report LHKPN including State Officials at the State's Highest Institution, State Officials at the State High Institutions, Ministers, Governors and Judges. In addition to state officials, in accordance with the applicable laws and regulations, the officials who have strategic functions such as directors, commissioners, structural officials in State-Owned Enterprises and Regional-Owned Enterprises, heads of Bank Indonesia, university leaders, Echelon I Officials, prosecutors, investigators, court clerks and even treasurers of state projects are also categorized as parties that must report LHKPN.

As an investigator, it is common to identify money-laundering criminals and to know how to recover the assets derived from the proceeds of crime. We could identify these from the patterns or the techniques of money-laundering. Money-laundering involves several patterns or techniques, namely:

1. Placement;
2. Layering;
3. Integration.

Another difficulty is the resistance from the defendant in the process of pre-investigation, investigation and even prosecution, namely by removing evidence, influencing witnesses and appealing to the public to form the opinion that he or she is innocent. Other difficulties or obstacles that often hamper prosecutors' efforts to save or recover the assets derived from corruption are as follows:

1. Assets derived from corruption are obscured or transferred to other parties;
2. Assets derived from corruption are gone or used up;
3. Assets derived from criminal offences are pledged to other parties;
4. The criminal has passed away;
5. Assets derived from criminal offences have been taken abroad.

In reality, difficulties are often found by investigators in the field during investigations in tracing assets derived from the proceeds of crime. The research results of the National Legal Development Agency (BPHN) conveyed that the non-technical juridical constraints in revealing corruption cases are as follows:

1. The complexity of the cases requires comprehensive knowledge to solve it;
2. Corruption cases generally involve many people who enjoy the benefits of the crime. Therefore, they try to cover up their deeds;
3. It takes a long period of time for corruption cases to occur or to be revealed;

4. With a variety of efforts, corruption perpetrators have spent the proceeds of corruption or deliberately converted them to other forms, making it difficult to track the money derived from corruption.

From several studies, it is revealed that some of the most important things that must be done in the investigation of money-laundering are as follows:

1. Investigation and prosecution of corruption cases that attract attention or involve perpetrators who have high socioeconomic positions or that cause a large amount of state losses must be prioritized;
2. Improving the implementation, the application and the enforcement of laws that provide legal certainty and justice to the community, especially justice seekers. This strategy is to avoid errors in the investigation process by law enforcers;
3. Applying the principles of accountability and transparency in law enforcement of corruption cases;
4. Developing the management system and the law enforcement organization as community protectors;
5. Developing recruitment and promotion systems that support the realization of professionalism and integrity of law enforcers.