

THE ANTI-MONEY-LAUNDERING REGIME IN INDONESIA

*Wicklief Herbert**

I. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF INDONESIA IN THE CONTEXT OF IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

Indonesia signed the United Nations Convention against Corruption on 18 December 2003 and ratified it on 19 September 2006. The main implementing legislation includes: Law No. 31 of 1999 on Eradication of the Criminal Act of Corruption, as amended; Prevention and Eradication of the Money Laundering Criminal Act No. 8 of 2010 (MLCA); Law No. 5 of 2014 on State Civil Apparatus (ASN); Law No. 8 of 1974 on Principles of Civil Service, as amended; Law No. 14 of 2008 on Public Information Disclosure; Law No. 28 of 1999 on State Administration that is Clean and Free from Corruption, Collusion and Nepotism; Regulation No. 54 of 2010 on Public Procurement of Goods and Services, as amended; and Law No. 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters (MLA Law).

Institutions involved in preventing and countering corruption in Indonesia include:

- Corruption Eradication Commission (KPK);
- Attorney General's Office (AGO);
- Ministry of Law and Human Rights;
- Ministry of Foreign Affairs;
- Ministry of Finance;
- Indonesian National Police;
- Supreme Audit Board (BPK);
- Finance and Development Supervisory Agency (BPKP);
- National Ombudsman Commission;
- Financial Intelligence Unit (PPATK);
- Financial Service Authority (OJK);
- Ministry of National Development Planning (Bappenas);
- Ministry of Administration and Bureaucratic Reform (AR&BR);
- Civil Service Commission (KASN);
- Public and Procurement Agency (LKPP) and Judicial Commission (KY).

* Investigator, Directorate of Investigation, Corruption Eradication Commission (KPK), Indonesia.

II. INFORMATION ON ANTI-MONEY-LAUNDERING REGULATORY AND SUPERVISORY REGIMES AND DESCRIPTION OF THE RELEVANT SECTORS AND TYPES OF PERSONS SUBJECT TO THE REGIMES

Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering (Money Laundering Law) establishes the tasks, authority and mechanism of work of Indonesia's financial intelligence unit (FIU), the reporting party, regulators / supervisory and regulatory institutions, law enforcement agencies, and other related parties in the anti-money-laundering regime. This law regulates:

- Acts which fall into a money-laundering crime;
- Compliance monitoring and reporting procedures, including the application of the principle of recognizing service users and reporting suspicious financial transactions;
- Procedures for carrying cash and other payment instruments into or outside Indonesian customs areas;
- The structure and authority of the FIU;
- Procedures for the temporary suspension of financial transactions;
- Investigations, prosecutions and court hearings;
- Protection for whistle-blowers and witnesses;
- Cooperation in the prevention and eradication of money-laundering.

The FIU, officially named *Pusat Pelaporan Dan Analisis Transaksi Keuangan* (PPATK), is an independent institution established in the framework of preventing and combating the crime of money-laundering (Article 1, number 2 of the Money Laundering Law) and operates under an administrative model. In this case many play a role as an intermediary between the public or the financial services industry with law enforcement institutions. Its main task in accordance with Article 39 of the Money Laundering Law is to prevent and eradicate the crime of money-laundering.

Criminal acts regulated in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering (Money Laundering Law) include:

- Any person who places, transfers, spends, pays, grants, entrusts, carries abroad, changes forms, exchanges for currency or securities, or other acts of assets that are known to be or reasonably suspected to be the result of criminal acts as referred to in Article 2 paragraph (1) with the aim of disguising the origin of assets is subject to imprisonment for a maximum of 20 (twenty) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah) (Article 3 of the Money Laundering Law);

- Any person who conceals or disguises the origin, source, location, designation, transfer of rights, or ownership when the actual assets are known or reasonably suspected to be the result of a criminal act as referred to in Article 2, paragraph (1), is subject to imprisonment for a maximum 20 (twenty) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah) (Article 4 of the Money Laundering Law);
- Every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange, or use of assets known or reasonably suspected to be the result of a criminal offence as referred to in Article 2, paragraph (1) shall be sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp 1,000,000,000.00 (one billion rupiah) (Article 5 of the Money Laundering Law).

Efforts to eradicate corruption and enforce the law are carried out by investigators, public prosecutors and judges by involving the participation of the FIU and the Reporting Party. As an individual or entity with first-hand knowledge of the crime, the Reporting Party submits a report on Suspicious Financial Transactions (TKM) and Cash Financial Transactions (TKT) to the PPATK for analysis. If there are indications of Money Laundering and / or other criminal acts, the analysis report (LHA) or Examination Report (LHP) is submitted to the original criminal investigator which includes the Police, Attorney's Office, Corruption Eradication Commission (KPK), National Narcotics Agency (National Narcotics Agency (National Narcotics Agency) BNN), the Directorate General of Taxes, and the Directorate General of Customs and Excise. These law enforcement agencies can also request an analysis report (LHA) from the PPATK for criminal acts and / or return of assets being handled.

III. TYPICAL MONEY-LAUNDERING SCHEME

There are three stages to the money-laundering process,¹ namely:

- i. *Placement*: efforts to place funds generated from criminal activities into the financial system.
- ii. *Layering (Transfer)*: separating the proceeds of crime from the source, namely criminal acts through several stages of financial transactions to hide or disguise the origin of funds. In this activity there is a process of transferring funds from certain accounts or locations as a result of placement to other places through a complex series of transactions designed to disguise and eliminate traces of sources of funds.
- iii. *Integration (Using Property)*: efforts to use assets that have seemed legitimate, both to be enjoyed directly or invested in various forms of material and financial wealth, are used to finance legitimate business activities, or to refinance criminal activities. In conducting money-laundering, the perpetrators do not consider the results to be obtained and the costs involved, because the main purpose is to disguise or eliminate the origin of money so that the end result can be enjoyed or used safely.

¹ Joni Emirzon, Bentuk Raktik Dan Modus Tindak Pidana Pencucian Uang, see <https://jurnal.kpk.go.id.pdf>, Palembang, October 2017.

The mode of crimes of money-laundering are as follows:

1. Open an account at a bank using your real identity, but the person who comes to the bank is another person who is similar to the photo in the identity and a signature similar to that printed on the original identity. In this case, before coming to the bank, the actor looks for a figure who is similar to the holder of the original identity and later acts as if he is the holder of the original identity. Previously the suspect had borrowed the original identity of the owner of the original identity for various reasons, namely for the processing of letters in the context of the transaction, for example, for the maintenance or checking of documents to the authorized agency.
2. Using the proceeds of crime to open a halal business such as catering, renting party tools, boutiques, restaurants or other businesses with the aim of obtaining profits that appear to come from the results of legitimate activities.
3. Using the proceeds of crime to purchase vehicles or assets in the name of other people such as wives, children, parents or drivers.
4. Making fictitious invoices, bills or accounts receivable as underlying transactions to place, transfer or transfer assets resulting from criminal acts.
5. Hiding the actual purpose of the transaction information in the transfer form (transfer, clearing or RTGS), for example, writing the purpose of the transaction for payment of debt or for payment as an underlying financial transaction of assets resulting from criminal acts.
6. Borrowing other people's accounts by mastering ATMs, tokens and savings books so that the perpetrators of criminal acts can freely withdraw cash, transfer or spend money from the crime as if it were legal money.
7. Borrowing an account belonging to someone else. The ATM and account book is held by the account holder, but when the money has entered the account, the perpetrator orders the account holder to transfer to the account of the offender or account designated by the offender.
8. Writing in the account opening application as a businessman, company owner, director of a PT, but in fact the company is only a front and there are no business activities. This effort was carried out so that the money that was deposited into his account as if from the results of business activities but actually came from the results of criminal acts.
9. Borrowing or using an account of a company that has long existed but its financial transactions are classified as passive to collect the proceeds of crime and subsequently the proceeds from criminal acts are withdrawn in significant amounts continuously or transferred to an account designated by the criminal offender.

10. Acting as a beneficial owner of a company which is used to accommodate assets resulting from criminal acts and subsequently the perpetrators who control the company's operations, including controlling corporate checks / BGs, some of which have been signed by directors and commissioners who have close relationships (wife / relatives / friends), and then the perpetrator freely withdraws cash using the check / BG.

IV. EXAMPLE OF A MONEY-LAUNDERING CRIMINAL CASE

This money-laundering case involved Nazaruddin, a member of parliament. Nazaruddin was convicted of committing a criminal act of corruption in the construction of the Hambalang Athlete House. Nazaruddin was charged with receiving Rp40.3 billion from PT Duta Graha Indah (DGI) and PT Nindya Karya and also charged with receiving bribes from PT Waskita Karya in the amount of Rp 13,250,023,000, from PT Adhi Karya in the amount of Rp 3,762,000,000, and from PT Pandu Persada Konsultan amounting to Rp 1,701,276,000. Nazaruddin then hid the proceeds of the crime through 42 accounts which were then transferred to ownership of the shares of Permai Group companies, ownership of land and buildings, spending or paying for the purchase of land and buildings, spending for vehicles, paying insurance policies, and paying for the purchase of shares and *sukuk* bonds.

V. ACTS OF INVESTIGATORS IN CARRYING OUT CRIMINAL INVESTIGATIONS OF MONEY-LAUNDERING

In carrying out investigations of money-laundering crimes, investigators carry out the following actions:

1. Tracing the suspect's family history, both direct lineage and marriage;
2. Tracing the nearest circle of suspects who are suspected of being where the assets are hidden;
3. Immediately block a bank account or non-bank financial institution related to a suspect or related party suspected of having a relationship with the money-laundering conducted by the suspect;
4. Ask for help from the FIU to trace financial transactions by the suspect, the company or related parties to facilitate the work of investigators;
5. Perform calculations of how much profit or benefit the suspect has received from the original crimes;
6. Browse profiles of suspects and their companies;
7. Carry out compulsory measures against suspects or related persons.

VI. CHALLENGES OF INVESTIGATORS IN DEALING WITH MONEY-LAUNDERING CRIMES

In carrying out investigations of money-laundering crimes, it is often found that some investigators are less professional in carrying out investigations. This is caused by, among others:

1. Lack of competence and integrity;
2. Lack of understanding of financial products;
3. Lack of understanding of how money-laundering takes place in all financial services sectors;
4. Insufficient study of the cases that occur;
5. Failure to review the existing weaknesses in regulations, financial institutions and existing regulations;
6. Failure to plan measures for the prevention of customs and excise crimes;
7. Lack of cooperation and coordination with various agencies;
8. Not acting independently, objectively and professionally.