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Comparison of Money Laundering Criminal Law Between Indonesia and Malaysia

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Abstract: One form of crime that has become a primary focus of criminal efforts is money laundering. The process of improvement continues to evolve until today, with recent changes outlined in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. In addition to the national scale, efforts to combat money laundering are also carried out internationally. A significant step in international cooperation to combat money laundering is the establishment of the Financial Action Task Force (FATF) on Money Laundering. However, despite these collective efforts, there are still several challenges and obstacles in preventing money laundering globally. Differences in laws and regulations between countries, as well as the complexity of global financial pathways, are some factors that complicate the eradication efforts. Therefore, this research will focus on examining how the regulation of money laundering crimes differs between Indonesia and Malaysia and how the regulations compare in both countries. Specifically, this normative legal research generally focuses on the analysis of legal documents. The formulated issues can be outlined as follows: How is the regulation of money laundering crimes in Indonesia and Malaysia, and what is the comparison of the regulations on money laundering crimes in Indonesia and Malaysia.

Keywords: Money laundering, criminal regulation, comparative criminal regulation

INTRODUCTION

Background

One form of crime that has become a major focus of criminal efforts is *money laundering*. Money laundering involves concealing the origin of funds derived from illegal activities, so it not only harms individuals or direct victims of crime but also creates financial and national security risks. Therefore, handling money laundering cases is an integral part of criminal efforts to protect the integrity of the financial system and prevent the misuse of illicitly obtained funds.

Problems related to money laundering are not only a threat at the international level, but also a national problem. Indonesia, as a country, is not exempt from this problem and continues to face challenges in tackling money laundering crimes, which until now has been one of the

issues that has not been fully resolved at the national level. The Government of Indonesia has made consistent efforts by taking concrete steps to address this issue.

One of the steps taken by the government was the enactment of Law No. 15 of 2002, which was later updated to Law No. 25 of 2003. which was later updated to Law Number 25 Year 2003. This transformation demonstrated a commitment to strengthening the legal framework and improving effectiveness in the prevention and eradication of money laundering at the national level. The improvement process continues to this day, with the most recent amendment contained in Law Number 8 Year 2010 on the Prevention and Eradication of Money Laundering.

Through this series of laws, the Indonesian government has sought to create a stronger, more comprehensive and responsive legal basis for the dynamic development of money laundering crimes. These legislative measures not only reflect the government's commitment to taking this issue seriously, but also an effort to strengthen international cooperation against money laundering. Therefore, efforts to prevent and combat money laundering in Indonesia continue to evolve in line with the evolution of global financial crime.

In addition to the national scale, efforts to eradicate money laundering are also carried out internationally. One significant step in international cooperation to tackle money *laundering* is the establishment of the Financial Action Task Force (FATF) on *Money laundering*. This initiative was taken by the G-7 countries, who worked together to improve coordination in efforts to prevent and combat money laundering. With the FATF, member countries can share information, technology and best practices to create a strong synergy in dealing with the threat of money laundering.

However, despite these concerted efforts, there are still a number of challenges and obstacles in preventing money laundering globally. Differences in laws and regulations between countries, as well as the complexity of global financial channels, are some of the factors that complicate eradication efforts. Therefore, this research will focus on examining how the regulation of money laundering between Indonesia and Malaysia and how the regulation in the two countries compares.

Problem Formulation

1. How is the regulation of money laundering in Indonesia and Malaysia?
2. How is the comparison of the regulation of money laundering crimes in Indonesia and Malaysia?

METHOD

This research is a type of normative legal research. In particular, this normative legal research generally focuses on analyzing legal documents. These documents include laws and regulations, court decisions, contracts, legal theories, and the views of legal experts. This approach is also often known as doctrinal legal research, library research, or document studies in the field of law.

RESULT AND DISCUSSION

Regulation of Money Laundering Crime in Indonesia and Malaysia

Regulation of Money Laundering Crime in Indonesia

Money laundering, also known as money laundering, is a practice that involves the process of disguising assets - be it income or wealth - so that they can be used without detection that they originated from illegal or unlawful activities. The practice involves a complex set of measures aimed at hiding traces of the origin of illegally obtained funds.

One of the key aspects of money laundering is converting income or wealth obtained from unlawful activities into financial assets that appear to come from legitimate or legal sources. This process often involves a series of transactions and financial manipulations designed to

confuse or disguise the illegal money trail. The end goal is to make the assets appear legitimate and pass through various financial control systems without suspicion. *Money laundering* is often carried out using a variety of methods, such as the mixing of funds, the creation of fake companies, or investments in assets that are difficult to trace. Money launderers may also take advantage of lax regulations in some jurisdictions or use international financial channels to hide traces of their transactions.

The negative effects of money laundering are detrimental, not only to the global financial system, but also to society in general. It can provide financial support to illegal activities, including corruption, drug trafficking and terrorism. Therefore, the prevention and prosecution of *money laundering* is crucial in maintaining the integrity of the financial system and protecting the public from its negative impacts.

Various parties, including governments, financial institutions and international organizations, are working together to develop and improve regulations and supervisory mechanisms to inhibit *money laundering* practices. These measures include the reporting of suspicious financial transactions, cooperation between institutions and jurisdictions, and the development of financial technology that can detect patterns of suspicious transactions.

The Law on Money Laundering in Indonesia is regulated in the Law of the Republic of Indonesia Number 8 Year 2010 on the Prevention and Eradication of Money Laundering Crimes. In the chapter, several important points related to the crime of money laundering are mentioned;

1. Article 3 Every person who places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges with currencies or securities or other acts on Assets which he knows or reasonably suspects are the proceeds of criminal offense as referred to in Article 2 paragraph (1) with the purpose of concealing or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah).
2. Article 4 Every person who conceals or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of Assets which he knows or reasonably suspects to be the proceeds of a criminal offense as referred to in Article 2 paragraph (1) shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah).
3. Article 7 (1) The main punishment imposed on the Corporation is a maximum fine of Rp100,000,000,000.00 (one hundred billion rupiah).
4. Article 5 (1) Every person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange, or use of Assets which he knows or reasonably suspects to be the proceeds of criminal offense as referred to in Article 2 paragraph shall be punished with imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah). (2) The provisions as referred to in paragraph (1) shall not apply to the Reporting Party who carries out the reporting obligations as stipulated in this Law.
5. Article 6 (1) In the event that the criminal offense of Money Laundering as referred to in Article 3, Article 4, and Article 5 is committed by a Corporation, the punishment shall be imposed against the Corporation and/or the Controlling Personnel of the Corporation. (2) Punishment shall be imposed on the Corporation if the criminal act of Money Laundering:
 - a. is committed or ordered by the Controlling Personnel of the Corporation;
 - b. is committed in the context of the fulfillment of the purposes and objectives of the Corporation;
 - c. is committed in accordance with the duties and functions of the perpetrator or the order giver;
 - d. is committed with the intention of providing benefits to the Corporation.
6. Article 7 (1) The main punishment imposed on the Corporation is a maximum fine of Rp100,000,000,000.00 (one hundred billion rupiah). (2) In addition to the fine as referred to in paragraph (1), additional punishment may also be imposed on the Corporation in the form

- of: a. announcement of the judge's decision; b. suspension of part or all of the Corporation's business activities; c. revocation of business license; d. dissolution and/or prohibition of the Corporation; e. confiscation of the Corporation's assets for the state; and/or f. takeover of the Corporation by the state.
7. Article 8 In the event that the assets of the convicted person are not sufficient to pay the fine as referred to in Article 3, Article 4, and Article 5, such fine shall be substituted by a maximum light imprisonment of 1 (one) year and 4 (four) months.
 8. Article 9 (1) In the event that the Corporation is unable to pay the fine as referred to in Article 7 paragraph (1), the fine shall be substituted with forfeiture of Assets owned by the Corporation or the Controlling Personnel of the Corporation with the same value as the imposed fine. (2) In the event that the sale of forfeited assets of the Corporation as referred to in paragraph (1) is insufficient, imprisonment in lieu of fine shall be imposed on the Controlling Personnel of the Corporation by taking into account the fine that has been paid.
 9. Article 10 Every person inside or outside the territory of the Unitary State of the Republic of Indonesia who participates in the attempt, assistance, or conspiracy to commit the crime of Money Laundering shall be punished with the same punishment as referred to in Article 3, Article 4, and Article 5.

Regulation of Money Laundering Offenses in Malaysia

Money laundering in Malaysia is strictly regulated by the *Anti-Money laundering And Anti- Terrorism Financing Act 2001*, which is described in Act 613. The history of this legislation reflects the evolution and increasing complexity of legal measures to respond to the development of increasingly modern and complex crimes. Initially, the law only focused on money laundering and did not include anti-terrorism aspects. In 2001, the legislation was passed as the *Anti-Money laundering Act 2001*.

The realization of the urgency to include an anti-terrorism dimension in the legal framework became clearer over time. In an effort to respond to the increasingly complex and evolving threat of terrorism, the law was amended in 2007. This amendment not only updated and strengthened the provisions related to money laundering, but also incorporated the anti-terrorism dimension into the legal framework. As such, the law received a new title, the *Anti-Money laundering and Anti-Terrorism Financing Act 2001*.

The decision to incorporate anti-terrorism into the money laundering legal framework reflects an understanding that organized crime, including acts of terrorism, is increasingly becoming a serious threat and evolving with the times. The integration of anti-terrorism in the money laundering law creates a comprehensive and effective legal foundation to address various forms of financial crimes related to terrorism offenses.

Thus, the *Anti-Money laundering and Anti-Terrorism Financing Act 2001* is an important and highly relevant legal instrument in combating cross-border and organized financial crimes. This law provides a strong legal basis for law enforcement officials to investigate, prosecute, and punish perpetrators of financial crimes and terrorism. In the midst of rapid technological development and globalization, efforts to maintain and improve the effectiveness of this regulation will continue to be a priority in order to protect the integrity of the financial system and national security. Some of the regulations in the *Anti-Money laundering and Anti-Terrorism Financing Act 2001* are as follows.

- (1) Any person who
 - (a) engages, directly or indirectly, in a transaction that involves proceeds of an unlawful activity or instrumentalities of an offence;
 - (b) acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes of or uses proceeds of an unlawful activity or instrumentalities of an offence;

- (c) removes from or brings into Malaysia, proceeds of an unlawful activity or instrumentalities of an offence; or
 - (d) conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity or instrumentalities of an offence, commits a money laundering offence and shall on conviction be liable to imprisonment for a term not exceeding fifteen years and shall also be liable to a fine of not less than five times the sum or value of the proceeds of an unlawful activity or instrumentalities of an offence at the time the offence was committed or five million ringgit, whichever is the higher.
- (2) For the purposes of subsection (1), it may be inferred from any objective factual circumstances that—
 - (a) the person knows, has reason to believe or has reasonable suspicion that the property is the proceeds of an unlawful activity or instrumentalities of an offence; or
 - (b) the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is the proceeds of an unlawful activity or instrumentalities of an offence.
 - (3) For the purposes of any proceedings under this Act, where the proceeds of an unlawful activity are derived from one or more unlawful activities, such proceeds need not be proven to be from any specific unlawful activity.
 - (4) A person may be convicted of an offence under subsection (1) irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence.

Comparison of Money Laundering Crimes in Indonesia and Malaysia

Similarities and differences in the systematic regulation of money laundering crimes in Indonesia and Malaysia Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes and Anti Money laundering and Anti-Terrorism Financing Act 2001 have similarities, the following are the similarities between the two laws:

- a. The first chapter contains general provisions, application of the law, and interpretation of the law.

The first chapter in a legal text has a very important role because it serves as the foundation or basic framework for all the material contained in the law. It contains general provisions that cover various aspects of the law that are relevant to the scope of the law. For example, an explanation of the application of the law and how it is to be interpreted can be found in this chapter..

The general provisions included in the first chapter aim to provide the reader with a clear and comprehensive understanding of the basic aspects governed by the law. This includes key definitions, the scope of application of the law, and the interpretative steps to be followed. This chapter is therefore the foundation for a deeper understanding of the law in question.

In addition, the application of the law is an important focus in this first chapter. The process and mechanism for implementing the law, including the responsible agency or institution, is explained. This aims to provide clarity to stakeholders on the procedures and responsibilities in implementing the provisions of the law in question.

Last but not least, the interpretation of the law is also an integral part of this first chapter. Explaining how a provision or article in the law should be interpreted and applied can help prevent different understandings that could lead to conflict. This chapter therefore plays a central role in establishing a cohesive and consistent interpretative basis for the application of the law.

- b. In the second chapter is the regulation of money laundering offenses, which contains criminal sanctions in the form of imprisonment or fines.

The second chapter in the legal text that regulates money laundering offenses has a special role in enforcing the law and sanctioning behavior that violates these provisions. In this chapter, the main focus is on the regulation of criminal sanctions that can be applied to perpetrators of money laundering offenses, including imprisonment and fines as a form of punishment.

The second chapter presents the provisions relating to the crime of money laundering. These include the definition of money laundering, the elements that must be met to qualify as an offense, and the types of activities that may constitute money laundering. As such, this chapter forms the basis of an in-depth understanding of the nature and scope of money laundering.

Furthermore, this chapter discusses in detail the criminal sanctions that can be applied against perpetrators of money laundering offenses. The sanctions can be in the form of imprisonment with varying levels according to the severity of the offense. In addition, fines are also a form of sanction that can be imposed as a substitute or additional measure for imprisonment.

The existence of these criminal sanctions aims to provide a deterrent effect and prevent the occurrence of money laundering crimes. Therefore, this second chapter does not only provide rules regarding penalties, but also emphasizes on preventive purposes to maintain national financial integrity and stability.

- c. The two laws are different because the application in each country is different according to the needs of each country. However, the content or substance of the two laws has the same outline, only different in the writing systematics.

The different arrangements in the second chapter of the two laws addressing money laundering may result from variations in the application of the laws in each country. Nonetheless, it can be noted that the two laws are similar in outline or substance, suggesting similarities in their underlying principles. In other words, the main differences may lie in the systematics of the writing and the emphasis of certain aspects that are considered more relevant or urgent in the legal context of the respective countries.

It is important to recognize that countries have different legal needs and contexts, which may reflect differences in their legal arrangements. This can include variations in legal terminology, enforcement procedures, or even differences in understanding of certain aspects of money laundering offenses.

Although there are differences in the systematic writing, it is important to emphasize that the outline or substance of the laws remains in line. This reflects efforts to achieve consistency and harmonization in the handling of money laundering at the international level. This commonality can help facilitate cross-border cooperation in law enforcement and countering cross-border crime.

- d. Chapter IV of Law No. 8/2010 on the Prevention and Eradication of Money *Laundering* regulates Reporting and Compliance Monitoring, similar to the systematics of the Anti *Money laundering* and Anti-Terrorism Financing Act 2001 in Part IV also regulates Reporting Obligation, namely the obligation to report money laundering crimes.

Chapter IV of Law No. 8/2010 on the Prevention and Eradication of Money Laundering focuses on the aspects of Reporting and Compliance Monitoring. The focus on this section reflects the importance of involving reporting as one of the main instruments in preventing and combating money laundering. A comparable section, Part IV of the Anti Money Laundering and Anti-Terrorism Financing Act 2001, also contains regulations in line with the theme of Reporting Obligations, emphasizing reporting obligations related to money laundering.

The firmness in establishing reporting obligations reflects the seriousness of these two laws in involving various parties, including financial institutions, in efforts to detect and prevent money laundering. This indicates the coordination required between relevant sectors and the competent authorities to create an effective system for detecting and reporting suspicious transactions.

While they share a common focus on reporting obligations, differences in systematics and details may exist according to the legal context of each law. This could include differences in the definition of reportable transactions, reporting procedures, and responsibilities of financial institutions or other entities.

The two countries together have a money laundering enforcement agency, which is located in the general provisions, in Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Criminal Acts the definition of the enforcement agency (PPATK) is found in chapter 1 as well as the Anti Money laundering and AntiTerrorism Financing Act 2001 which is regulated in the first section.

The presence of this money laundering enforcement agency reflects the commitment of both countries in involving specialized entities responsible for preventing and eradicating money laundering crimes. PPATK or similar institutions play an important role in collecting, analyzing and reporting suspicious financial transactions, so as to support prevention and law enforcement efforts against these criminal acts.

e. The First Schedule Anti-Money laundering and Anti-Terrorism Financing Act 2001 regulates the Reporting Institution, namely what activities can be reported and is an offense of money laundering. The offense stands alone and not like in Law Number 8 Year 2010 on Prevention and Eradication of Money Laundering Crime. Criminal offenses committed are included in the criminal sanctions in Article 3, Article 4, and Article 5. All criminal offenses committed are reported to the authorized institution, in Indonesia, money laundering is reported to PPATK, in Malaysia it is reported to the Ministry of Finance.

The sanction system for the crime of money laundering in Indonesia and Malaysia shows interesting similarities and differences. Basically, the formulation of the Crime of Money Laundering (TPPU) in these two countries is almost identical, indicating the seriousness in handling transnational financial crimes. In both legal contexts, any person who engages in, attempts to commit, or assists in the commission of money laundering will be subject to criminal sanctions.

However, despite providing equal sanctions for perpetrators of money laundering offenses, there are significant differences in sanctions for offenses involving assistance to the crime. In both countries, the sanctions imposed on those who provide assistance in the crime of money laundering are no different from the sanctions applied to direct perpetrators. This is explained in Article 10 of Law No. 8/2010 on the Prevention and Eradication of Money Laundering. This reflects a serious approach to any form of involvement in suspicious financial practices.

The real differences arise when looking at the variety of sanctions that apply to specific money laundering offenses. Both laws set out a variety of offenses that can provide the basis for criminal sanctions. This shows that each country has a unique understanding of the severity and specific context of a money laundering offense. Criminal sanctions are therefore tailored to the characteristics of the offenses violated, providing legal flexibility to respond to diverse situations.

In addition, the differences in the formulation of certain offenses in each country's money laundering laws reflect an attempt to provide sanctions appropriate to the level of lawlessness. The qualifications imposed in such laws help to ensure that the sanctions imposed are in line with the severity of the money laundering offenses committed.

As such, the similarities and differences in the regulatory sanctions for money laundering offenses in Indonesia and Malaysia create a comprehensive legal framework that is responsive to a variety of financial crime situations. While the similarities indicate uniformity in the legal approach to money laundering, the differences reflect the adaptation of legal policies to each country's unique context and characteristics, ensuring effective and fair treatment of such offenses.

CONCLUSION

The regulation of money laundering in Indonesia has been expressly regulated through Law Number 8 Year 2010 on Prevention and Eradication of Money Laundering. This law serves as a guide for law enforcement in cracking down and eradicating money laundering practices in Indonesia. In the text, there are provisions regarding the rules and sanctions imposed on perpetrators of money laundering crimes in the territory of this country. Unlike Indonesia, Malaysia has its own regulations governing money laundering crimes. In Malaysia, the law is realized through the Anti-Money Laundering And Anti- Terrorism Financing Act 2001. In addition to addressing money laundering practices, this law also covers the regulation of terrorism crimes. This demonstrates a holistic approach in dealing with financial crime and terrorism, making Malaysian law a comprehensive and effective legal instrument.

A comparison between these two countries in regulating money laundering shows the diversity of legal approaches taken to address similar issues. Although the ultimate goal is the same, which is to eradicate money laundering practices, the differences in the legal framework reflect the different legal contexts and priorities in each country. The presence of terrorism-related provisions in Malaysia's laws also reflects an awareness of the interconnectedness between money laundering and terrorism financing, as well as serious efforts to address both simultaneously.

Advice

Preventing money laundering is very important in maintaining the integrity of the financial system and preventing illegal transactions that can harm the economy. One effective approach in preventing money laundering is to implement an anti-money laundering program that involves Customer Due Diligence (CDD) and Enhanced Due Diligence (EDD) to assess customer profile and risk.

First of all, Customer Due Diligence (CDD) is the first step in this process. It involves careful identification and verification of potential customers. A financial institution or business entity implementing CDD must collect personal and business identity information, including a history of financial transactions that may be suspicious. At this stage, the main focus is to ensure that the identity of the customer is reliable and matches the data provided.

Furthermore, Enhanced Due Diligence (EDD) is applied when the risk associated with a customer is considered higher. EDD involves a more in-depth examination of the customer's profile to identify potential suspicious activities or links to criminal offenses. The application of EDD allows financial institutions to better understand complex customer activities and apply additional supervisory measures as appropriate.

The implementation of CDD and EDD also includes measures such as continuous monitoring of customer activities to detect changes in behavior or suspicious transaction patterns. Regular customer profile updates are also an integral part of this effort. This ensures that the data held by financial institutions remains relevant and accurate over time.

The success of an anti-money laundering program depends on rigor and consistency in implementing CDD and EDD. It is important to create clear policies and procedures, and engage personnel who are trained to carry out these tasks. In addition, advanced financial technology can also be used to support the customer identification and monitoring process more efficiently.

By implementing a comprehensive anti-money laundering program, financial institutions and business entities can make a positive contribution to the global effort to prevent money laundering activities. Not only that, but it can also increase public confidence and maintain the stability of the financial system as a whole. Therefore, it is important for all parties involved to commit to implementing money laundering prevention measures for the sake of safety and fairness in the global financial system.

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