

Law Enforcement Problems Against Account Buying and Selling Cases in Money Laundering in Indonesia

Wahyu Sabrudin¹, Triono Eddy², Adi Mansar³

¹ Doctoral Program in Law, University of Muhammadiyah North Sumatra

^{2,3} Lecturer, Faculty of Law, University of Muhammadiyah North Sumatra

wahyusabrudin@yahoo.co.id, trionoeddy@umsu.ac.id, adimansar@umsu.ac.id

Article Info

Received: 2024-10-10

Revised: 2024-12-18

Accepted: 2024-12-20

Keywords:

Fashion; Sell; Buy;

Account;

Corruption.

Abstract

There are many modes of money laundering with the aim of obscuring the origin of money from criminal acts so that the law is often lagging behind, regulating the dynamics of the modes that emerge, one of which is buying and selling accounts in money laundering crimes so that there are problems in law enforcement. The research method used is normative juridical. The results of the study show that the urgency of regulating the mode of buying and selling accounts for money laundering crimes can strengthen the law enforcement process.

I. Introduction

Money laundering is the process of hiding or disguising the origin of money obtained from illegal activities to appear as if it came from a legitimate source. In Indonesia, this phenomenon continues to develop along with the emergence of various *modus operandi* that are increasingly sophisticated and difficult to detect. One of the modes that is increasingly prevalent and has become a serious concern is the buying and selling of bank accounts which are used as a means to launder money from criminal acts.

Buying and selling accounts is an activity in which a person sells his bank account to another party with the aim that the account is used to receive, transfer, or store the proceeds of crime. This mode is increasingly popular because criminal offenders can use other people's accounts to obscure the traces of illicit money, making it difficult for law enforcement efforts to trace the origin of these funds.

Law enforcement is a must to be carried out by the community together with law enforcement officials. Experts give the following theory about law enforcement: Sudarto stated that law enforcement includes actions when there is or is a suspicion that a crime has occurred and prevents the occurrence of a crime. Prohibition includes many institutions or individuals, such as the legislature, prosecutor's office, courts, civil servants, criminal execution officials, and the general public, if broadly defined. This organization carries out the process of sentencing in an effort to prevent the person concerned and the community in general from committing criminal acts. The police immediately have the authority and obligation to prevent this from happening. According to Satjipto Raharjo, law enforcement is the process of elaborating principles, concepts, and objectives set by law (Abdul Aziz Dahlan, 2009). Law enforcement is an effort to create, maintain, and maintain peace in life through the incorporation of strong values in rules and attitudes of action as the final stage of value elaboration, according to Soerjono Soekanto (Soerjono Soekanto, 2007).

Law enforcement against cases of buying and selling accounts in money laundering crimes faces various challenges and obstacles. One of the problems is the lack of specific regulations governing the buying and selling of accounts. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law) has indeed regulated various acts of money laundering, but it has not explicitly covered the *modus operandi* of buying and selling accounts. This causes legal loopholes that are used by perpetrators to avoid legal entanglements

2. Research Method

This study belongs to the category of normative juridical research. Because the purpose of this research is to examine the principles, principles, and doctrines of law (Soerjono Soekanto and Sri Mamudji, 1995). Norms, both legal dogmas and legal norms, are considered as research objects in normative juridical research (Peter Mahmud Marzuki, 2014).. This study uses a legislative approach, or "a research approach to legal

products, where this research examines and examines legal products" (Soerjono Soekanto, 2007). .

The study is classified as a prescriptive analysis, which means "research that explores an object, an event with the intention of knowing the state of the object being studied. Secondary data comes from official documents, books, and research results in the form of reports. Secondary data, which consists of primary, secondary, and tertiary legal materials, are used in this normative law research. Documents and libraries are secondary data sources used in this study. The data collection method uses literature research. Furthermore, similar data grouping is carried out using qualitative methods (Bambang Waluyo, 1996).

2. Results and Discussion

Criminal Law Enforcement and Account Buying and Selling Crimes

Jimly Asshiddiqie stated that the application of law is a process to make legal standards function as a reference in legal interactions or relationships in society and the state. This process can be understood from the point of view of the object, namely the law itself, which has a broad and narrow meaning. In a broad sense, the application of law includes the values of justice that apply in society, while in a narrow sense, the application of law only includes the enforcement of written and official rules.

Law enforcement conceptually is an effort to create, maintain, and maintain a social order through the application of consistent and strong values, as well as actions that reflect those values. Law enforcement must still respect human rights. However, in the case of coercive devices (such as *dwangmiddelen*), what is meant is not physical coercion, but rather coercive devices regulated by law such as arrest, detention, and confiscation (Soerjono Soekanto, 2004).

Law enforcement is a process to realize legal provisions so that they become obligations that are obeyed by the community, with the aim of creating order, peace, and justice, as well as maintaining a balance between protected interests so that every member of the community can obtain as many rights as possible (Waluyadi, 2004).

According to Moeljatno, law enforcement is part of the national legal system that contains certain elements and rules, such as determining prohibited acts accompanied by threats or criminal sanctions for violators, as well as determining whether a person who violates the prohibition can be sentenced to a predetermined sentence. Law enforcement is the struggle to achieve justice, legal certainty, and social benefits. Thus, law enforcement is basically an effort to realize legal ideas and concepts desired by the community and ensure that legal standards are properly implemented (Moeljatno, 1993).

Law enforcement reflects the principles and methods that support justice and truth. Law enforcement is not only the responsibility of well-known legal professionals, but it also involves every individual. However, in the context of public law, it is the government that bears the primary responsibility. Law enforcement can be divided into two categories: (Dellyana, Shant, 1988)

- a. By Subject: All parties involved in legal relations participate in law enforcement. Any individual who implements or does not implement the applicable legal rules is considered part of law enforcement. In a simple sense, law enforcement means the efforts of law enforcement officials to ensure that the law is applied correctly.
- b. Based on the Object or Law: Law enforcement includes the values of justice, which include formal rules and principles of community justice. In a narrow sense, law enforcement focuses on the application of formal and written rules.

Understanding effective law enforcement requires an understanding of the underlying principles. These principles can be used as a benchmark for performance in law enforcement. The quality of law enforcement can be assessed based on the extent to which good law enforcement principles are applied, referring to democratic principles such as legitimacy, accountability, protection of human rights, freedom, transparency, power-sharing, and community control. Thus, law enforcement can be considered moral and good if its implementation meets the elements of democratic principles (Kusnu Goesniadhie, 2010)..

Law enforcement against the crime of buying and selling accounts in money laundering faces various obstacles. In addition to the lack of specific regulations, coordination between law enforcement agencies is still not optimal. This legal vacuum and weak coordination are used by perpetrators to avoid punishment, thus complicating efforts to prevent and eradicate money laundering in Indonesia.

Ideally, the regulation of the crime of buying and selling accounts

Indonesia as a country of law, so all actions taken must be in accordance with applicable law and can be legally accounted for. It also includes efforts to develop and implement laws to prevent the criminal practice of money laundering through corruption (Tri Andrisman, 2008).

Money laundering, including the conversion of income into what appears to be legitimate money, must be prevented and eradicated with criminal law policies. Money laundering crimes have a negative impact on local and international life and threaten Indonesia's economic stability. The government as the organizer of the life of the nation and the state has the responsibility to protect the interests of the people through social policies that include the fields of politics, economy, law, taxation, security, property management, and proper housing, health, etc (Diana M. Dinitto, 2013).

The eradication of corruption has three aspects, namely prevention, enforcement, and compensation (Atmasasmita, R., 2016).. Prevention aims to prevent people from committing corruption crimes, while the recovery process includes the return of assets resulting from corruption through criminal and civil prosecution. Restoring state wealth stolen due to corruption is often a major challenge in the era of globalization. Perpetrators of corruption crimes have wide opportunities to hide or pay off their income, so the prosecutor's task in using civil law to recover state money harmed by corruption crimes must be formulated clearly and inclusively. the possibility of starting a lawsuit in another country to save money

and recover hidden assets (Bernadeta Maria Erna, 2013).. The Indonesian government made some significant changes after ratifying the Anti-Corruption Convention in 2003. The first step is to create a Corruption Law that criminalizes various new forms of corruption, such as illegal enrichment and corruption committed by foreign public officials (ST. Burhanuddin, 2013). The ratification of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering which replaced the previous law. The Corruption Eradication Act of 2009 introduced an important third level, which is expropriation through civil procedures, although there are still weaknesses in the expropriation chapter that must be considered from the point of view of security, human rights, the rights of the accused and the exercise of judicial power.

Anti-money laundering policies in Indonesia were not created because people know how important it is to fight financial crime, but they allow economic criminals to take advantage of their actions (Ayumiati, 2012). Organized crime uses payments to expand its network and hinder law enforcement. Legal action can be taken if the bank violates the customer's rights (Nidyo Pramono, 2006). However, given the principles contained in the Constitution and the 1945 Law that must be considered, mediation is an important element that must be considered, especially in the case of buying and selling accounts (Try Widyono, 2006). To enforce a Know Your Account rule. The know-your-customer principle aims to identify the characteristics and profile of customer transactions so that banks can immediately spot suspicious transactions. The principle also aims to reduce the risks associated with bank operations. Risks such as concentration that occur when banks receive large amounts of money from many customers and risks that arise as a result of the spread of negative information about banking services. Risk profile assessment: A risk-based approach is used to determine the level of risk that does not impact the product, service, or customer that may be involved in the terrorist financing or financing process. Banks do not need a risk-based system that can be managed safely and in accordance with the complexity of their business. The highest score does not need to be used as a basis for determining the final value of each evaluation component.

A Risk-Based Approach is used to assess the risk profile. The risk profile indicates the level of risk unrelated to goods, services, or customers that may be involved in money laundering or terrorism financing. There is no need for banks to have complex risk-based procedures that can be managed carelessly. It is not necessary that the final score of each assessment component is based on the most dominant rating of all components.

Customer Acceptance and Identification Policy: Banks are not required to have policies related to the acceptance and identification of prospective customers, including WIC. This means that banks do not need to ask for information about potential customers, proof of identity, or other supporting documents. There is no prohibition on opening or maintaining anonymous or fictitious accounts, and documents supporting the identity of potential customers do not need to be checked. It is also not necessary to meet with a potential client in person at the beginning of a business relationship to ensure that they are the real person. There is no reason to be cautious about transactions or business relationships with potential clients who are from countries that have not yet met the FATF's recommendations. Once started, the identity verification process of prospective customers does not need to be

carried out. There is no obligation to categorize prospective customers into groups of individuals or companies. However, in cases where the potential customer is a company, the profit owner does not need to be included in the company's customer group. The Bank may open an account for a Prospective Customer or WIC if they violate the terms, use false documents, provide doubtful information, or are in the form of a Shell Bank. If there is a suspicious transaction, the bank does not need to record or report the Prospective Customer or WIC who meets the suspicious criteria to LTKM. In addition, banks do not have the authority to refuse, cancel, or close transactions involving sources of funds from prospective customers or WICs.

According to Matthew H. Fleming, the restitution of assets is not a significant process, and there is no need to withhold, deprive, or deprive people of the rights of people affected by criminal acts, including corruption. No action was taken to prevent money laundering in the banking sector before this law was enacted. The impact of money laundering on the economy and the need to comply with international standards is underestimated, and current banking regulations are considered unimportant. Companies that mix illicit money with legitimate money do not threaten the stability of financial markets, and money laundering does not affect the country's economic policies (Ade Muhammad, 2020)..

Money laundering, the government does not lose control of its economic policies, and money launderers do not undermine economic stability. The high financial crimes and social costs caused by money laundering are not considered significant, and there is no urgent need for law enforcement (Budi, Untung. 2011).. Since the regulations regulated in the Banking Law are not related to corruption crimes, violations of the principle of prudence of banks are considered ordinary acts. In other areas of law, law enforcement is considered unimportant, and the role of administrative criminal law is considered irrelevant in supporting administrative regulations with the threat of criminal sanctions. In Indonesia, the anti-money laundering system is considered ineffective and the pillars that support it are considered unimportant. It is considered that eradicating money laundering does not require a strong legal system, sophisticated information technology, checks and compliance, and local and international cooperation (Marwan Effendy. 2010)..

The modus operandi of crime in Indonesia remains the same, and the complexity of criminal acts remains the same despite advances in information technology. Current regulations are sufficient to deal with all types of economic crimes, and law enforcement does not need to adjust to the increase in economic crimes. In the criminal law enforcement process, asset forfeiture is not considered an additional crime, because Article 10 of the Criminal Code does not regulate it as an additional crime. Additional crimes do not have to be imposed together with the main sentence, and the type does not need to be chosen voluntarily. Those who commit money laundering do not need to keep their money in various financial institutions and do not need to worry that their money will be traced. It is considered that technological advances are not related to an increase in money laundering crimes (Eddy O. S. Hiariej, 2016).

Asset forfeiture is not considered essential to prevent perpetrators from committing crimes again, and corruption is not considered a serious problem that requires efforts to stop the flow of crime proceeds. The principle of *actori incumbit onus probandi* in criminal law is

irrelevant, and the public prosecutor does not need to prove the defendant's guilt. Criminal policies relating to the act of buying accounts are considered unimportant, and there is no reason to consider fairness, effectiveness, or protection of human rights when creating these policies (Artidjo Alkostar, 2008)..

Since the PPATK became fully functional on October 20, 2003, the anti-money laundering system in Indonesia has been effective. This system is built by upholding four main pillars. First, strengthening laws and regulations, which aims to build a solid and clear legal framework, thus facilitating the law enforcement process. Second, the development of information technology and human resources, which focuses on creating a strong, competent, and highly moral workforce, as well as ensuring communication and information security globally. Third, the implementation of inspection and compliance, where the results of the analysis of the PPATK report are expected to be able to make a high-quality contribution to support law enforcement optimally. Fourth, local and international cooperation. With close collaboration between domestic and international institutions, cross-sector coordination can be formed, allowing the FIU (Financial Intelligence Unit) to accelerate the exchange of information without sacrificing confidentiality (Artidjo Alkostar, 2008)..

Over the past ten years, economic crimes in Indonesia have become increasingly complicated. The development of information technology makes it easier for criminals to carry out their actions, resulting in changes in the *modus operandi* used. The emergence of various new modes of crime certainly makes law enforcement more challenging. In addition, technological advances also allow perpetrators to more easily hide the proceeds of their crimes. Assets resulting from crimes can be concealed through international jurisdiction, no longer limited to a single country. This situation requires regulations that are able to overcome the development of economic crime. These regulations should allow law enforcement to deal with economic crimes, both modern and traditional, in accordance with existing regulations. Along with this development, the types of crimes involving asset confiscation also increased. Corruption, money laundering, terrorism, human trafficking, arms smuggling, narcotics, forestry, fisheries, as well as other economic crimes such as embezzlement and fraud fall into this category. Although laws related to this crime already exist, until now there are no regulations that specifically regulate asset confiscation (Artidjo Alkostar, 2008).

Article 10 letter b number 2 of the Criminal Code (KUHP) regulates the confiscation of assets as an additional punishment. In the context of additional crimes, the confiscation of "certain items" has different characteristics and impacts than the main punishment. According to PAF Lamintang and Theo Lamintang, there are two main differences between the principal punishment and the additional punishment: first, the additional punishment can only be given at the same time as the principal punishment; cannot be dropped separately. Instead, additional penalties should be given along with the principal penalty. However, in situations where a minor has been returned to his or her parents, guardians, or caregivers, the judge may decide on the confiscation of goods without principal penalty, as provided for in Article 40 of the Criminal Code. Second, additional penalties are optional and can be imposed, but not mandatory (PAF Lamintang dan Theo Larnintang, 1993)..

Since the penal code now no longer regulates the forfeiture of all the convict's

property, formerly known as general forfeiture, only certain items can be confiscated in the context of additional penalties in the form of confiscation (Jan Remmelink, 2003)..

Money launderers who have a lot of wealth often keep their money in various financial institutions through money laundering practices, making it difficult for security forces to track the whereabouts of the money. This action is carried out to ensure that these assets can be used for long-term living needs. Advances in technology and science have a positive impact on the development of practices and crimes that are not directly related to crime. For example, money laundering crimes are increasing along with the growth of the business world supported by technological advancements, which has also triggered an increase in white-collar crimes. Money laundering crimes, at first glance, may look similar to other types of crimes such as murder or narcotics, but they have different characteristics (Hakim, A.L. & Martin, A.Y., 2015)..

According to Mardjono Reksodiputro, the Criminal Code (KUHPid) promulgated in 1915 and the Banking Principles Law (UUPB) enacted in 1967 became the main basis for regulations related to crimes in the banking sector. However, the Criminal Code does not expressly state that some of the articles in it can be used to deal with violations in the banking sector. The Banking Law is included in the realm of administrative law that regulates criminal sanctions, in contrast to laws that regulate special crimes such as corruption, economic crimes, and the eradication of subversive activities (Reksodiputro, M., 2020).

Since October 2010, the police, prosecutor's office, and the Corruption Eradication Commission (KPK) have been given the authority to investigate money laundering cases. The police and the prosecutor's office are the two law enforcement agencies that receive the most reports related to this case. The Financial Transaction Reporting and Analysis Center (PPATK), as an independent institution under the President of the Republic of Indonesia, is responsible for preventing and eradicating money laundering. To assist PPATK in monitoring suspicious transactions, individuals with large amounts of wealth must report it (Garnasih, Yenti, 2012)..

Law enforcement is a response to regulatory violations in the banking sector. The goal is to ensure that the perpetrators who have harmed the banking sector and the public are punished fairly and proportionately according to the level of losses they cause, both to the bank and the state, and to provide legal certainty to the public (L. Alfies Sihombing, 2019).

In an effort to eradicate criminal acts, especially corruption, law enforcement and the recovery of criminal assets must be seen as two sides that complement each other. For white-collar crime perpetrators, the management and protection of the proceeds of crime is very important, because their actions are based on the calculation of profit and loss. If the profits from corruption outweigh the risk of punishment that may be faced, the perpetrators tend to dare to commit corruption. Many corruptors are willing to serve prison sentences in the belief that they and their families can still live prosperously during their sentences (Basrief Arief, 2014).

Banks are often a place where money launderers hide the proceeds of crime. This situation is very advantageous for them, as it makes it easier to disguise the money obtained from illegal activities. Although electronic money cannot be seen or touched physically, it can be accessed in the form of data and can be easily moved from one place to another,

making it difficult for law enforcement to track it. Eradication of corruption is not enough just by punishing the perpetrators, but it also needs to be accompanied by efforts to stop the flow of the proceeds of the crime. By depriving the perpetrators of property obtained from corruption, it is hoped that the perpetrators will lose motivation to repeat or continue their actions, because the desire to enjoy the fruits of their crimes will be hindered or become useless (Prihartini, T., Cyberlaundering, 2016).

In criminal law, there is the principle of *actori incumbit onus probandi*, which means that the prosecuting party must prove. In this case, the public prosecutor is responsible for proving the defendant's guilt in a criminal case (Eddy O.S. Hiariej, 2012).

An ideal criminal policy to prevent and combat crimes related to account purchases in the context of money laundering should include several important elements. The principles of justice, effectiveness, and protection of human rights must be the foundation in formulating this policy. In addition, clear and firm regulations regarding account purchases are needed, including comprehensive definitions and appropriate sanctions for perpetrators. The punishment system must also be proportionate and balanced with the severity of the violation, effective in preventing and cracking down on without violating the principles of justice. Strengthening law enforcement must also be ensured, by providing adequate skills, knowledge, and resources to law enforcement so that they can find, investigate, and handle account purchase cases efficiently.

Institutional and International Cooperation Encourage active cooperation between banking institutions, law enforcement, and other relevant agencies to uncover information, monitor suspicious transactions, and report suspicious activities. Increasing international cooperation to combat cross-border crimes, including money laundering involving account buying.

Money laundering cases in Indonesia show that there are innovations in increasingly sophisticated *modus operandi*, one of which is buying and selling accounts. This practice is used by criminals to disguise the origin of illicit funds by utilizing bank accounts belonging to others. This phenomenon creates new challenges for law enforcement, which requires more specific and decisive regulations to be able to deal with them effectively. The regulation of account buying and selling crimes must be carried out comprehensively and integrated to face the increasingly complex challenges of money laundering. Specific regulations, coordination between agencies, the use of advanced technology, and education and prevention are all important elements in creating an effective law enforcement system. Thus, it is hoped that the practice of buying and selling accounts can be suppressed and money laundering in Indonesia can be eradicated comprehensively.

4. Conclusion

Law enforcement against cases of buying and selling accounts in money laundering crimes in Indonesia faces various significant challenges. Although Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law) has

regulated various aspects related to money laundering, it has not specifically covered the modus operandi of buying and selling accounts that are increasingly used by criminals. It is hoped that law enforcement against cases of buying and selling accounts in money laundering crimes can be more effective, so that it can reduce the movement space of criminals and strengthen efforts to prevent and eradicate money laundering in Indonesia.

Good arrangements will support international cooperation in the exchange of information and cross-border law enforcement measures. Through effective legal arrangements, the prevention of money laundering crimes can be improved, and the financial system can be kept from risks that can harm its stability and integrity.

It is important to note that the practice of buying and selling accounts or bank accounts is not explicitly regulated in positive law in Indonesia. Nonetheless, this practice often raises legal questions especially related to violations of banking rules, financial security, and potential involvement in illegal acts such as money laundering or identity forgery. Some aspects that need to be considered in this context are the Banking Law Banking laws in Indonesia, especially Law No. 10 of 1998, provide a legal basis related to banking activities in Indonesia. The practice of buying and selling accounts can be considered a violation of the provisions governing the management of bank accounts. Money Laundering The act of buying and selling accounts can have serious implications related to money laundering. The Money Laundering Law (Law No. 8 of 2010) involves the abuse of the banking system to disguise the origin of illegal funds.

Fraud and Identity Forgery If the practice of buying and selling accounts involves acts of fraud or identity forgery, this may violate criminal laws related to fraud and forgery. Copyright and Intellectual Property If this practice involves the use of identities or information protected by copyright or intellectual property, this may also raise legal questions. The ITE Law on Information and Electronic Transactions (UU ITE) may be used if this practice involves electronic transactions or communications. Legal Principles of Engagement The legal principles of engagement or contract can be applied if there is an agreement or contract between the parties involved in the sale and purchase of accounts. It is important to seek professional legal advice if engaging in this kind of practice because the implications can be quite complex and involve a variety of different aspects of the law. In addition, banks have strict policies related to account management and can take legal or administrative action against violations of their policies.

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