## Article’s Information

### Keywords:
- Money Laundering
- Reformulation
- Transnational Crime

### Abstract

Various countries in the world today are threatened by money laundering as a transnational crime as know borderless crimes. This is because the impact of money laundering is not an ordinary impact. The crime of money laundering has a huge impact disrupt the stability of the economy and social life, and even damage the world economic order. However, various legal problems in dealing with money laundering often occur in Indonesia. With these various problems, it shows that Indonesia needs a legal reformulation related to money laundering as classified as a transnational crime. Based on this background, this research will be discuss the problems is how can money laundering be classified as a transnational crime and what are the problems with it’s law enforcement and how is legal policy of money laundering as transnational crimes reformulation in Indonesia. This study uses a descriptive normative research method with a qualitative approach. The results research show that the idea of reformulation in law enforcement of money laundering as a transnational crime in Indonesia is through the reconstruction of Mutual Legal Assistance or MLA between the Indonesian government and various countries in the world and the application of other international instruments, such as extradition and confiscation. Then regarding the problem of money laundering in law enforcement, it is necessary to reformulate the authority of

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A. Introduction

Globalization era\(^1\) marked by advances in information technology and the application of trade liberalization.\(^2\) However, advances in technology and trade have triggered irregularities in economic activity which in fact rises various forms of crime violations of the law.\(^3\) One form of economic crime in globalization era is transnational crime, especially cross-border money laundering.\(^4\) Money laundering is an attempt to hide or disguise the origin of money/funds or assets as a result of criminal acts through various financial transactions so that the money or assets appear from legal activities. So they can freely use these assets for both legal and illegal activities. Therefore, money laundering not only threatens the stability and integrity of the economic system and financial system, but also endanger the foundations of society life, nation and state.\(^5\)

Money laundering is a transnational crime because money laundering is related to other transnational crimes. Basically money laundering is an act carried out by a person or organization that commits acts of corruption, narcotics trafficking, and other criminal acts with the aim of hiding or disguising the origin of money or assets obtained from the criminal acts proceeds from the government or the competent authority to commit crimes, to be later converted into assets that seem originate from legal activities.\(^6\)

In a report disclosed by Global Financial Integrity stated that transnational crime is a business with the main motivation is to make money. Revenue generated from transnational crime is estimated to range between US$1.6 trillion and $2.2 trillion annually. This income is not only used for the personal interests of the perpetrators, but the income from crime is also used to finance various other transnational crimes. Therefore, transnational crime is not a crime

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\(^1\) Globalization refers to the concept of the human consciousness integration in a single world as a whole. Therefore, the discussion of globalization fully refers to the progress of life achieved by society with its various impacts. Mohammad Maiwan and Mohammad Maiwan, “MEMAHAMI POLITIK GLOBALISASI DAN PENGAHUSYA DALAM TATA DUNIA BARU: ANTARA PELUANG DAN TANTANGAN,” Jurnal Pamator: Jurnal Ilmiah Universitas Trunojoyo 7, no. 1 (April 1, 2014), https://doi.org/10.21107/pamator.v7i1.3098.


that can be underestimated, because this crime can threaten the national economy, even endanger the health and welfare of the community, and threaten environmental damage.\(^7\)

Indonesia implements a strategy to prevent money laundering by issuing laws and regulations to eradicate money laundering crimes in Indonesia, including Law Number 15 of 2002 concerning the Crime of Money Laundering, Law Number 25 of 2003 concerning Amendments to the Law Number 15 of 2002 concerning the Crime of Money Laundering and Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. However, money laundering continues to occur in Indonesia and increasing number of cases. As in 2021, illicit transactions in Indonesia increased from 2020. Based on the report from the Financial Transaction Reports and Analysis Center or PPATK,\(^8\) illicit transactions in Indonesia in 2020 is 965 transactions, but in 2021 it increased to 1,834 transactions.\(^9\) Nevertheless, at the global level in 2021, Indonesia occupies the 76th position as a country at risk for money laundering practices, as shown in Figure 1 below:

Figure 1 on the side shows that based on the global ranking calculation method by Financial Action Task Force (FATF),\(^{10}\) a score of 10 is the highest score as a country that has risk for money laundering, while Indonesia has a score of 4.68 which is that score is not too risky as a country with potential of practice money laundering. In addition, it can also be seen that Singapore as a neighboring country to Indonesia is 2 levels better than Indonesia with a score of 4.65.\(^{11}\)

Figure 1 also shows that various countries in the world are currently threatened by money laundering crimes. This is because the impact of money laundering is not an ordinary impact. The crime of money laundering has a huge impact that disrupt the stability of the economy and

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\(^8\) PPATK is an independent institution with the authority, prevention and eradication of money laundering, processing suspicious transaction data, supervision of financial service providers, analysis of money laundering transactions and forwarding to investigators the occurrence of money laundering. Sulaiman Bakri, “PUSAT PELAPORAN DAN ANALISIS TRANSAKSI KEUANGAN DALAM MENCEGAH DAN MEMBERANTAS TINDAK PIDANA PENCUCIAN UANG,” *Legal Opinion* 5, no. 1 (2017): 1–17.


\(^10\) The Financial Action Task Force (FATF) is an international organization established with the aim of implementing international standards and promoting effective measures to tackle financial crimes. FATF is an intergovernmental body that functions as a policy maker, and the products that have been produced are 40 recommendations related to anti-money laundering and 9 specific recommendations related to countering financing terrorism. Yuliana Andhika and Risang Putri, “PERAN REKOMENDASI FINANCIAL ACTION TASK FORCE (FATF) DALAM PENANGANAN PENDANAAN TERORISME DI INDONESIA,” *Journal of International Relations* 1, no. 2 (2015): 88–94, http://ejournal-s1.undip.ac.id/index.php/jihiWebsite:http://www.fisip.undip.ac.id/.

Money laundering activities that occur in a country on a macro basis can complicate monetary control and reduce state revenues, while on a micro level it will cause a high cost economy and disrupt the system of fair business competition. The magnitude of the losses caused by the practice of money laundering has made various countries continue to strive to prevent money laundering, including Indonesia. Although Indonesia as figures above that show not too risky for money laundering, but various legal problems in dealing with money laundering often occur in Indonesia.

As for the problems of eradicating money laundering in Indonesia generally, such as: the lack of public understanding about money laundering crime as regulated in Law no. 8 of 2010 and there are problems with law enforcement officials and the law enforcement process. Meanwhile, specific problems will be discussed in this study. However, with these various problems, it shows that Indonesia needs a legal reformulation related to money laundering which classified as a transnational crime.

Based on International Monetary Fund (IMF) statistics, the proceeds of money laundering through banks are estimated to be nearly $1,500 billion per year. Meanwhile, according to the Associated Press, most of the money laundering activities is resulting from drug trafficking, prostitution, corruption and other crimes are processed through banks and then converted into legal funds and it is estimated that these activities absorb a value of US$ 600 billion per year. This is equal to 5% of world GDP.

Based on this background, this research will discuss the problems as follows: How can money laundering be classified as a transnational crime and what are the problems in its law enforcement? and How is legal policy of money laundering as transnational crimes reformulation in Indonesia? This research uses a descriptive normative research method with a qualitative approach. The research approach used is the statutory approach or the statute approach.

The Novelty it looks at money laundering more broadly from the perspective of transnational crime. As it is known that transnational crimes are part of international law, in other words, this research does not only use the perspective of criminal law, but also uses the perspective of international law. So that the reformulation is emphasized in this research is also related to reformulation with a broader perspective in the perspective of international law. Meanwhile, other research focuses more on reformulation in law enforcement on a national scale, such as research conducted by Kristian & Christine Tanuwijay “Kebijakan Formulasi Pidana Terhadap Korporasi Sebagai Pelaku Tindak Pidana Pencucian Uang Dalam Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang” 2016.

B. Discussion

1. Money Laundering as a Transnational Crime and Law Enforcement Problems in Indonesia

Along with the development of the times and technology that easier for all activities in human life, modernization and globalization have brought many positive impacts such as rapid

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economic growth and free trade. However, it cannot be denied that the convenience provided by the influence of modernization and globalization is in line with the ease for humans to commit crimes the acts against the law. Crime develops with more modern and sophisticated ideas and mechanisms are marked by the existence of crimes with international dimensions such as the crime of money laundering. Money Laundering is a transnational crime that is considered a global phenomenon so that it gets special attention on an international scale.\(^{15}\)

Generally, the money laundering process is categorized into three stages; First, placement is the act of placing cash from a crime into the financial system, especially the banking system.\(^{16}\) The process involves the physical movement of cash either through the smuggling of cash from one country to another, combining cash from crime with money obtained from legitimate activities.\(^{17}\) In money laundering crime, at least it is possible that there are components in the form of 2 (two) variants of crime, namely the predicate crime and the crime of money laundering itself. Talking about predicate crime, this crime is a crime that source of illicit property (dirty money) then laundered. As for money laundering crime, it is an act intended so that the proceeds of a criminal act are hidden or disguised. Based on the description above, it can be explained that there is a close correlation between predicate crimes and money laundering crimes.\(^{18}\)

The predicate crimes of money laundering are mostly types of crimes classified as transnational crimes. According to I Wayan Parthiana, transnational crime is a crime that crosses the boundaries of a country. The scene, the purpose of the crime and the consequences that arise from the crime are some aspects of transnational crime that do not have certain boundaries.\(^{19}\) Transnational is a special term that refers to an individual who commits a crime, so that the individual can be held accountable for the committed crime based on international law and national law of a country.\(^{20}\) The characteristics of "transnational crimes" regulated on Convention Against Transnational Organized Crimes or known Palermo Convention (2000).\(^{21}\) Article 3 of the UNTOC Convention states that the elements of transnational crime are as follows:

a. Conducted by more than one territorial area of a country;
b. The crime was controlled, prepared, directed and planned in one particular country, but the execution of the crime was carried out in a different country;
c. Crimes committed in one country's territory, but involve an individual or an organized group that commits a crime in another country; or
d. Crimes committed in one country, but the consequences of these crimes befall another country.

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Transnational crimes as identified by the United Nations in the UNTOC consist of 18 forms of crime, namely: human trafficking, trafficking in human organs, illicit trade in troops and weapons, illicit drug trafficking, money laundering, fraudulent bankruptcy, intellectual property theft, corruption, terrorism, bribery of party officials, aircraft hijacking, theft of artistic and cultural objects, ship hijacking, bribery of public, infiltration of legal business, insurance fraud, cyber crime, dan environmental crime.22

Despite the fact that Indonesia has a money laundering law, the beginning of money laundering in Indonesia was due to international pressure and not because awareness of the importance eradicating money laundering for Indonesia. The practice of money laundering is a way for perpetrators of economic crimes to freely enjoy and take advantage of the proceeds of their crimes. Beside money (proceeds of crime) is the pulse for organized crimes in developing their crime network, so preventing perpetrators from enjoying the proceeds of crime is very important. The most dangerous organized crimes and most concern in laundering the proceeds of their crimes, it was initially only the crime of illegal narcotics trafficking. So the criminalization of money laundering was originally only directed at eradicating narcotics trafficking as stated in the United Nation Convention Against Illicit Traffic In Narcotic Drugs and Psychotropic Substances of 1988 (The Vienna Convention).23

However, the development of money laundering is not only limited to the proceeds of traffic in narcotic drugs, but also includes proceeds from other organized crimes such as: corruption; bribery; smuggling of goods; labor smuggling; immigrant smuggling; banking; narcotics; psychotropic; trade in slaves, women and children; illicit arms trade; kidnapping; terrorism; theft; embezzlement; fraud. That scope shows that crime related to money laundering is a form of economic crime in a broad sense which includes crimes in the field of trade, banking, investment, corporate and other economic in the scope of crime organized.24 By classifying money laundering as a transnational crime, it shows that money laundering has a very broad scope, not only limited to Indonesia, but also beyond national borders. So it can be said that money laundering law enforcement also requires an unusual effort. However, this effort must face several problems with the provisions of the money laundering law in Indonesia which can be grouped as follows:

a. Problems with the Money Laundering Law

The definition of the Money Laundering Crime (TPPU) is stated in the provisions of Article 1 of Law Number 8 of 2010 which explains that Money Laundering is any act that fulfills the elements of a criminal act using the provisions of this Law. This means that the crime of money laundering is in accordance with Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. This Law regulates two (2) types of money laundering crimes, namely the crime of money laundering and other crimes related to the crime of money laundering. However, in this PPTPPU Law there is no difference between "crimes" and "violations" of money laundering crimes. Regarding the qualification issue for this crime, Barda Nawawi Arief stated that the absence of a legal qualification determination is feared to cause problems/juridical consequences in practice, both material juridical consequences and formal juridical consequences. In other words, the problem of the absence of a "crime" or "violation" qualification will have implications for the application of criminal threats to the attempted

22 Convention Against Transnational Organized Crime 2000
criminal acts committed. As for the inclusion of "crime" or "violation" qualifications in this law, it is necessary to do so to avoid potential problems at the implementation stage later.  

In the Money Laundering Law, there is no difference between "crimes" and "violations" of money laundering. The absence of "crime" or "violation" qualifications will have implications for the application of criminal threats. Supposedly regarding the inclusion of the qualifications of "crime" or "violation" in the Anti-Money Laundering Law, it needs to be done to avoid potential problems at the implementation stage. In addition, another problem is Article 6 of the PPTPPU Law which regulates the criminalization of corporations as money laundering actors. However, in the case of corporations being accounted for as perpetrators of the crime of laundering there are weaknesses in this PPTPPU Law, namely in the case of corporations that carry out "experimental", "assistance" and "evil conspiracy" acts contained in Article 10 which only regulates the legal subject of "everyone" only. not equipped with corporation.

b. Problems in Law Enforcement

Basically, money laundering will be preceded by a predicate crime, because the object of a money laundering crime is assets resulting from a predicate crime. This means that the crime of money laundering will not occur if it is not preceded by a predicate crime. This relationship turned out to cause problems in law enforcement, either at the level of investigation, prosecution or at the time of proof in court. At the level of investigation, investigators have two options, conducting simultaneous investigations between money laundering and predicate crimes or only investigating money laundering crimes. Likewise, in the preparation of the indictment, the public prosecutor has two options, simultaneously indicting the predicate crime and the crime of money laundering or only indicting the crime of money laundering. This is also faced by judges when proving the elements of a crime, the judge has two choices, proving the predicate crime first and then proving the crime of money laundering. If both are indicted simultaneously, or only prove the crime of money laundering, it is because the predicate offense is not charged. Other problems that occur in law enforcement of money laundering crime, namely:  
1) Crime is difficult to see (low visibility);
2) Crime is very complex (complexity);
3) Diffusion of responsibility;
4) The spread of victims is quite wide (diffusion of victimization);
5) Detection and prosecution constraints;
6) Unclear regulations (ambiguous laws);
7) Ambiguous man of offenders.

2. The Reformulation Idea of Money Laundering Law Enforcement as a Transnational Crime in Indonesia

As a type of organized transnational crime, money laundering is not only the responsibility of individual countries, but is an obligation of all countries which can be realized in regional or international cooperation through bilateral and multilateral forums. This collaboration has been started since 1989. The G7 countries consisting of Canada, France, Germany, Italy, UK, US and Japan formed the Financial Action Task Force Money Laundering (FATF) in Paris. FATF

cooperates in tackling the type of money laundering crime, by collaborating across governments. One of the FATF’s mandatory activities is to develop and recommend guidelines to assist countries around the world to implement effective regulations in dealing with money laundering. Indonesia has been an observer and member of the FATF since 2018, then Indonesia was declared one of the countries included as Non-Cooperative Countries and Territories (NCTTs) by the FATF.28

Money laundering crime as a form of systematic transnational crime requires the work of national law in the context of international cooperation as has been called for by The United Nations Convention Against Corruption, 2003 in the form of the obligation of participating countries to take preventive actions through their national laws and require each country to adopt, in accordance with the principles of its domestic law, legislative and other necessary measures, to deal with activities classified as money laundering.29 Thus, the reformulation that Indonesia can carry out in the context of tackling money laundering as a transnational crime is the reconstruction of Mutual Legal Assistance or MLA30 between the Indonesian government and various countries in the world.

This is in line with the FATF's recommendations related to various aspects of international cooperation, which includes the application of international instruments, such as MLA, extradition, confiscation, and other forms of international cooperation between the Financial Intelligence Unit, financial supervisors, and law enforcement agencies. If implemented effectively, these recommendations ensure: countries provide appropriate and timely assistance when requested by other countries; competent agencies assisting requests to find and extradite criminals; and authorities identify, freeze, arrest, confiscate and share assets and provide information related to money laundering. The FATF recommendation also requires competent institutions to establish international cooperation with other countries in pursuing criminals and their assets. In addition, to combat money laundering by criminal syndicates operating internationally it is also necessary to maintain relationships with regional law enforcement partners.31

Then regarding the problem of money laundering in law enforcement, good cooperation is needed from elements of the Criminal Justice System (SPP), which consists of the police, prosecutors, judges and also the Financial Transaction Reports and Analysis Center (PPATK). Each element of SPP and PPATK must cooperate well, coordinated and simultaneously.32 However, other cooperation with independent institutions is also needed as an effort to overcome this transnational crime of money laundering. As it is known that money laundering

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30 Mutual Legal Assistance in Criminal Matters or abbreviated as MLA is a form of international cooperation other than an extradition treaty. Regulation regarding MLA have also been promulgated in Law Number 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters. MLA is the initial stage of law enforcement, especially in terms of recovering state assets resulting from corruption crimes and money laundering. Some countries that are often the targets of corruption and money laundering assets are Singapore, Australia, Hong Kong (PRC), and Switzerland, which these countries already have Mutual Assistance Agreements with Indonesia. Ricardo Santos and Hery Firmansyah, “Prosedur Pelaksanaan Mutual Legal Assistance Terhadap Pemulihan Aset Hasil Korupsi Yang Dilarikan Ke Luar Negeri (Procedures For The Implementation Of Mutual Legal Assistance To Recover Assets Resulting From Corruption That Are Rushed Abroad),” *Jurnal Hukum Lex Generalis* 2, no. 1 (2021): 40–56.
is related to corruption, however, the authority of the Corruption Eradication Commission (KPK) in tackling money laundering is only limited to the investigation stage. So that it is necessary to reformulate the regulation of the authority of the Corruption Eradication Commission in prosecuting money laundering crime which origin from the corruption which is carried out through criminal law policies, especially at the formulation stage. There is a need for a reformulation regarding the prosecution authority of the corruption eradication commission on money laundering crimes from corruption xirmes because the Money Laundering Law has not clearly regulated law enforcers who are authorized to prosecute money laundering crimes.

So to overcome this law enforcement problem, it is necessary to reform the money laundering law. Before entering the formal realm, it is necessary to formulate in the material area in order to create an integrated law enforcement. The formulation of a norm in the law must be prepared appropriately and take into account all its implications, because the weakness of the law (law in books) will result in the consequence of hampering the law enforcement process. The weakness of the law can occur due to several things, namely:

a. The principles of law enactment are not followed.

b. There are no implementing regulations that are urgently needed to implement the law.

c. The ambiguity of the meaning of words in the law which results in confusion in its interpretation and application.

The novelty of this research is that the author examines money laundering as a transnational crime and its problems in law enforcement in Indonesia. Money laundering is a transnational crime that requires regulation and reform in law enforcement. the law enforcement process and its formulation in laws that have not been clearly regulated in overcoming the problem of money laundering.

C. Conclusions

Based on the discussion above, it can be concluded that money laundering is a transnational crime as regulated in the Convention Against Transnational Organized Crimes or known as the Palermo Convention (2000). By classifying money laundering as a transnational crime, it shows that money laundering has a very broad scope, not only limited to Indonesia, but also beyond national borders. So it can be said that money laundering law enforcement also requires an unusual effort. However, this effort must face several problems with the provisions of the money laundering law in Indonesia. The problems in the enforcement of money laundering laws in Indonesia consist of problems in the regulation of the Money Laundering Law and problems in the law enforcement process. Thus, the idea of reformulation in law enforcement of money laundering as a transnational crime in Indonesia is through the reconstruction of Mutual Legal Assistance or MLA between the Indonesian government and various countries in the world and the application of other international instruments, such as extradition and confiscation. In addition, various forms of international cooperation are needed between the

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33 As stipulated in Article 74 of the Law of the Republic of Indonesia Number 8 of 2010 concerning the Crime of Money Laundering (UU TPPU), it is written: “Investigations of the Crime of Money Laundering are carried out by investigators of predicate crimes in accordance with the provisions of the procedural law and the provisions of the Prevailing Laws, unless specified otherwise according to this Law.”


Financial Intelligence Unit, financial supervisors, and law enforcement agencies, as well as maintaining relationships with regional law enforcement partners. Then regarding the problem of money laundering in law enforcement, it is necessary to reformulate the authority to prosecute the Corruption Eradication Commission for money laundering crimes from corruption because the Anti-Money Laundering Law has not clearly regulated the law enforcers who are authorized to prosecute the crime of money laundering. So to overcome this law enforcement problem, it is necessary to reform the money laundering law.

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