

# OPTIMIZING THE KNOW YOUR CUSTOMER PRINCIPLE IN THE CASE OF MONEY LAUNDRY THROUGH THE ROLE OF BANKING FROM ISLAMIC LAW PERSPECTIVE

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**Abstract:** This research was conducted because one of the issues that has not provided legal certainty is related to buying and selling accounts in money laundering cases, where criminals aim to hide assets so as not to be detected by law enforcement. This case of buying and selling accounts often occurs in Indonesia. Even though buying and selling accounts is illegal This type of research is a normative juridical research using secondary data by processing data from primary legal materials, secondary legal materials and tertiary law. Based on the results of the study, it can be seen that Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering has not been able to take into account the act of buying and selling bank accounts. The Bank as an institution that issues customer accounts has measures to prevent misuse of accounts issued under Bank Indonesia Regulation No. 14/27/PBI/2012 concerning the Implementation of Anti-Money Laundering and Countering Terrorism Financing Programs for Commercial Banks, namely the Active Supervision of the Board of Directors and the Board of Commissioners, the Bank is required to have policies and procedures in carrying out its business activities, The Bank is required to verify the prospective customer's documents, and the Bank may close the business relationship or reject the customer's transaction. From this description, it can be concluded that the use of legal instruments, including criminal law, to overcome social problems is part of the realm of law enforcement policy. In addition, because the goal is to achieve the general welfare of the community, this law enforcement policy is also included in the field of social policy, which is all reasonable efforts to achieve public welfare.

**Keywords:** Banking, Account Borrowing, Money Laundering

## Introduction

One of the purposes of law is 'legal certainty' to encourage it to be regulated against something that has no legal certainty and then has legal certainty. The idea of the rule of law was first put forward by Plato and later the idea was affirmed by Aristotle.<sup>1</sup> According to Aristotle, it is not man who rules in a country, but a just mind and decency that determine the good or bad of a law. According to Aristotle, a good state is one governed by a constitution and the rule of law.<sup>2</sup>

<sup>1</sup> Ni'matul Huda. 2005. *Negara Hukum dan Demokrasi dan Judicial Review*, Yogyakarta: UII Press, halaman. 1.

<sup>2</sup> Dahlan Thaib. 2005. *Kedaulatan Rakyat, Negara Hukum dan Hak Asasi Manusia*, Jakarta: Kencana, halaman 22.

The problem that does not have legal certainty is the sale and purchase of accounts in *money laundry* (money laundering) cases to support criminals to obscure their assets so that they are not detected by law enforcement officials.

Cases of buying and selling accounts for *money laundering purposes* often occur in Indonesia. Even if buying and selling accounts is illegal, the name listed on the account must be the owner to be used. In fact, according to Yenti Ganarsih, this case of buying and selling bank accounts cannot be equated with the analogy of buying and selling cars. If *the laundering of money* has been proven then it is impossible for the original crime not to be proven.<sup>3</sup>

Criminal policies related to money laundering through the buying and selling of bank accounts. Based on Article 1 point 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering that Money Laundering is any act that meets the elements of a criminal act in accordance with the provisions of this Law.<sup>4</sup> Furthermore, in Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering that any person who places, transfers, moves, spends, pays, grants, deposits, carries abroad, changes form, exchanges for currency or securities or is reasonably suspected to be the proceeds of crime as referred to in Article 2 paragraph (1) with the intention of concealing or disguising the origin of wealth must be punished because Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah).<sup>5</sup>

The sociological aspect of buying and selling accounts in *money laundry cases* is that there are many cases of buying and selling accounts to obscure the assets of money laundering criminals. One example of a case of buying and selling bank accounts is a case with the Supreme Court decision Number 1131 / Pid.Sus / 2019 / PN Jkt.Utr. In the case, 4 defendants on behalf of Anjad Fendi Badriawan, Bim Prasetyo, Aditya Wijaya and Pipingan Tjok admitted to having bought and sold accounts since 2017. They use these accounts to hold money from online gambling proceeds. But in the verdict, the 4 defendants were released from all lawsuits. Another example of a case related to the practice of buying and selling bank accounts as a means of money laundering that the author found was the buying and selling of BNI Syariah Bank accounts in the name of Nyayu Emawati with 821618026 account numbers. BNI Syariah KCP Palembang Kota received a report that the account of a.n Nyayu Emawati had committed fraud against a victim named Raj Binder Kaur, a BNI Bank customer with a 737459900 account number of IDR 220,000 in an online bag buying and selling transaction. Nyayu Emawati has been summoned to the BNI Syariah KCP Palembang Kota office and claimed that the account in her name had been sold to her relatives. The case has been considered over, because the customer on behalf of Nyayu Emawati is willing to return the victim's money.<sup>6</sup>

Unequal in the aspect of reality (*das sein*) that is contrary to what should be (*das sollen*), then parties who are willing to have their accounts used to be a container for storing money from money laundering crimes should have legal construction to be able to classify them as parties who participate in committing, because they have helped perpetrators to obscure money from money laundering crimes.

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<sup>3</sup> Medcom Nasional. "Jual Beli Rekening di TPU Diduga Ilegal" <https://www.medcom.id/nasional/hukum/VNx464BN-jual-beli-rekening-dianggap-ilegal>, diakses pada 20 Oktober 2023.

<sup>4</sup> Lihat Pasal 1 angka 1 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

<sup>5</sup> Lihat Pasal 3 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang

<sup>6</sup> Fadilah Juliana Putri, Analisis Yuridis Praktik Jual Beli Rekening Bank dalam Kajian UU No.8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, *Lex Lata Scientific Journal of Legal Sciences*, Vol 3, No 3 (2021)

## Literature Review

Understanding criminal policy or criminal policy (criminal policy) is a rational and organized effort of a society to overcome crime.<sup>7</sup> Where this definition is taken from Marc Ancel who formulated it as "*the rational organization of the control of crime by society*". Criminal politics is essentially an integral part of social *defense* and efforts to achieve *social welfare*, therefore it can be said that the ultimate goal or main goal of criminal politics or criminal policy is the protection of society to achieve public welfare. Thus, it can be said that criminal politics is also an integral part of social politics.

Efforts to combat crime, criminal politics can be described in various forms, including:<sup>8</sup>

1. Application of criminal law (*criminal law application*).
2. Prevention without punishment; and  
Influencing views of society on crime and punishment.

Thus, in addition to criminal politics, it can be carried out repressively through the application of non-penal/criminal law, but also through non-penal/preventive means without punishment. Through these non-criminal means. Barda Nawawi Arief said it was necessary to explore, develop and utilize all potential community support and participation in an effort to streamline and develop the "*extra legal system*" or "*informal and traditional system*" *that exists in the community*.<sup>9</sup>

Policy is a guide that is always related to public management (*public policy*). Carl J. Frederick said that public policy is a set of actions proposed by a person, group or government in a particular environment by indicating obstacles or opportunities to the implementation of the policy proposal in order to achieve a specific goal.<sup>10</sup>

## Method

This research is a normative juridical research type. Because this research is intended to analyze the principles, rules and doctrines of the law that elaborate. Normative juridical research places norms as objects of research, both norms in the form of legal dogma, in and legal norms originating from a law.<sup>11</sup>

The approach in this study uses a statutory approach, *a statutory approach (statute approach)*, *a statutory approach (statute approach)*, namely "a research approach to legal products, where this study examines and examines legal products."<sup>12</sup>

This research is prescriptive analysis, namely: "research that explores an object, an event with the intention to know the state of the object under study."<sup>13</sup>

The source of data in this dissertation research is skunder data, which is data derived from official documents, books and research results in the form of reports.<sup>14</sup> The data sources needed in this study were obtained from libraries and documents, through secondary data. In research that becomes a secondary source of data can be laws, books, journals, articles related to the research topic.<sup>15</sup> The source of data used in this normative legal research is using secondary data. Secondary data consists of primary legal material, secondary legal material and

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<sup>7</sup> Sudarto.1981. *Hukum dan Hukum Pidana*, Bandung: Alumni, halaman. 38

<sup>8</sup> Barda Nawawi Arief, *Op. Cit.*, hlm. 45-46

<sup>9</sup> *Ibid.*

<sup>10</sup> Eddi Wibowo dkk. 2004. *Hukum dan Kebijakan Publik*, Yogyakarta: YPAPI, halaman. 20.

<sup>11</sup> Soerjono Soekanto dan Sri Mamudji, 1995, *Penelitian Hukum Normatif*, Jakarta: Rajawali Pers, halaman. 70.

<sup>12</sup> Peter Mahmud Marzuki, 2014, *Penelitian Hukum*, Jakarta: Kencana. halaman. 33.

<sup>13</sup> Soerjono Soekanto, 2007, *Pengantar Penelitian Hukum*, Jakarta: UI-Press, halaman 10.

<sup>14</sup> Peter Mahmud Marzuki, *Op. Cit.*, hlm. 67.

<sup>15</sup> *Ibid.*, hlm. 4.

tertiary legal material.<sup>16</sup>

Data collection techniques are carried out by means of *library research*. Furthermore, a grouping of similar data with a qualitative approach was held.<sup>17</sup>

M. Ali Zaidan in his book states that "legal reform according to Radbruch updating the penal code does not mean improving the criminal law but replacing it with a better one. As stated by Soedarto that carrying out criminal law politics means an effort to realize criminal law laws and regulations that are in accordance with circumstances and situations at a time and for the future".

## **Result and Discussion**

The principles of Islamic law are used as the basis of the financial management system known as sharia finance. Principles of sharia financial management: Financial management based on sharia must be based on the principle of expecting the pleasure of Allah SWT. The goals to be achieved must be in accordance with the teachings of Allah SWT and the hadith of the Prophet Muhammad SAW. free from usury or interest. place the principle of profit sharing between the bank and the customer. According to Islamic law, the sector being financed is not a prohibited sector. Investments must be guaranteed halal.

Indonesia as one of the strategic countries in the world that implements an open financial system, so it is very interested in maintaining the security and integrity of its financial sector. The development of globalization has greatly affected the entire country's economic system. The more economic activities carried out by a country, of course, it will be directly proportional to the faster the circulation of money that occurs in it. With conditions like this, the real sector will certainly move forward or grow more from time to time.

To maintain a stable level of the national economy, the State needs to form a financial institution that is able to play an active, effective, and efficient role, the financial institution is a bank. Banks have a product that is widely spread among the public that is used to store money, namely accounts. Every community today has an account that aims to make it easier to store money and transact electronically. However, the accounts used by the community can be misused by certain individuals. Banking is also very vulnerable to organized crime so it is very strategic to be utilized. Organized crime usually hides behind a company or other name (*nominees*) by conducting fake and large-scale international trade with the intent to move unauthorized money from one country to another. The bank account is traded online through social media. Bank accounts that are traded are often used as a shelter for money from criminal acts such as fraud and gambling. This is related to indications of money laundering.

Based on the example case above, it can be seen that Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering has not been able to accommodate the practice of buying and selling bank accounts. Legal certainty as one of the goals of law can be said to be part of efforts to realize justice. The real form of legal certainty is the implementation or enforcement of the law against an action regardless of who committed it. Gustav Radbruch stated that there are 4 (four) basic things related to the meaning of legal certainty, namely: First, that law is positive, meaning that positive law is legislation. Secondly, that the law is based on facts, that is to say, it is based on reality. Third, that facts must be formulated in a clear way so as to avoid errors in meaning, while being easy to implement. Fourth, positive law should not be easily changed. Legal certainty will guarantee someone to carry out behavior in accordance with applicable legal provisions, otherwise without legal certainty, a person has no provisions in carrying out behavior.<sup>18</sup>

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<sup>16</sup> Salim HS dan Erlies Septiana Nurbani II. 2016. *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. Jakarta: PT RajaGrafindo Persada, hlm. 17-18.

<sup>17</sup> Bambang Waluyo, 1996, *Penelitian Hukum Dalam Praktek*, Jakarta: Sinar Grafika, hlm. 77.

<sup>18</sup> Margono. 2019. *Asas Keadilan Kemanfaatan dan Kepastian Hukum dalam Putusan Hakim*. Jakarta: Sinar Grafika. halaman. 48

The Bank as an institution that issues customer accounts has measures to prevent misuse of accounts issued under Bank Indonesia Regulation No. 14/27/PBI/2012 concerning the Implementation of Anti-Money Laundering and Countering Terrorism Financing Programs for Commercial Banks, namely the Active Supervision of the Board of Directors and the Board of Commissioners, the Bank is required to have policies and procedures in carrying out its business activities, The Bank is required to verify the prospective customer's documents, and the Bank may close the business relationship or reject the customer's transaction. Banks must also apply *the Know Your Customer principle hereinafter referred to as KYC* and the Customer Due Diligence principle hereinafter referred to as CDD and Enhanced Due Diligence hereinafter referred to as EDD in verifying prospective customer documents. The application of KYC principles is intended to encourage the implementation of prudential principles in order to reduce business risks faced by banks in carrying out business activities.<sup>19</sup>

The methods and techniques used in money laundering techniques vary greatly, among others, applied by money launderers in the banking and non-banking sectors by utilizing professional facilitators, establishing fake companies, investing in real estate, purchasing insurance products, securities companies and misusing corporate vehicles and buying and selling accounts.<sup>20</sup>

Basically every citizen has the right to protection. Criminal policy or crime reduction efforts are essentially an integral part of community protection efforts (*social defense*) and efforts to achieve community welfare (*social welfare*).<sup>21</sup>

One of the policies born from community protection policies is a policy related to tackling criminal acts or better known as criminal policy. Criminal policy is a policy in determining an act that was not originally a criminal act into a criminal act, basically the prevention and control of a crime can be done through criminal policy (*criminal policy*) using criminal law (penal) and "non-penal" means. The increasing number of sexual violence crimes that not only affect women but also children, both men and women, makes the government of the Republic of Indonesia need to take legal policies. The legal policy taken is in order to carry out legal reform. The law that has been running is still based on the colonial legal order that is individualistic.

Penal reform *is also essentially part of penal policy that must be pursued with a policy-oriented approach and a value-oriented approach*. Criminal policy cannot be separated from the problem of value because as Christiansen said: *the conception of problem crime and punishment is an essential part of the culture of any society*; Similarly, according to W. Clifford: *the foundation of any criminal justice system consists of philosophy of given country*. Especially for Indonesia, which is based on Pancasila and its national development policy aims to form a complete Indonesian person.<sup>22</sup>

Criminal law policy can be interpreted by the way of acting or policy of the state (government) to use criminal law in achieving certain goals, especially in tackling crime, it does need to be recognized that there are many ways and efforts that can be done by each state (government) in tackling crime. One of the efforts to be able to overcome crime, including through a criminal law policy or criminal law politics.<sup>23</sup>

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<sup>19</sup> Kadek Adnan Dwi Cahya, Desak Putu Dewi Kasih, dan Ida Bagus Putu Utama. "Penerapan Prinsip Customer Due Diligence dan Enhanced Due Diligence Dalam Pencegahan Pencucian Uang Pada Bank Rakyat Indonesia" *Kertha Semaya*, Vol. 5, No. 1 (2018): 1-15.

<sup>20</sup> Fiorida Mathilda, *Loc. Cit.*

<sup>21</sup> Reni Astuti, Triono Eddy, Ida Nadirah, Penegakan Hukum Terhadap Pelaku Tindak Pidana Penganiayaan Anak Yang Dilakukan Oleh Orangtua, *Syntax Literate: Jurnal Ilmiah Indonesia* p-ISSN: 2541-0849 e-ISSN: 2548-1398 Vol. 8, No. 3, Maret 2023.

<sup>22</sup> Barda Nawawi Arief, *Op. Cit.*, halaman. 2-3.

<sup>23</sup> Aloysius Wisnubroto, 1999, *Kebijakan Hukum Pidana Dalam Penanggulangan Penyalahgunaan Komputer*, Universitas Atmajaya, Yogyakarta, hlm. 10

Thus, criminal law policy is related to the (criminal) law enforcement process as a whole. Therefore, criminal law policy is directed at the concretization/operationalization/functionalization of material criminal law (substantial), formal criminal law (criminal procedure law) and criminal implementation law.

Criminal law policy is basically the entirety of regulations that determine what actions are prohibited and included in criminal acts, as well as how sanctions are imposed on the perpetrators with the aim of tackling crime. In theory, many doctrines developed by experts are related to the understanding of criminal law policy. Barda Nawawi, argues that the term "Policy" is taken from the terms "policy" (*English*) and "politiek" (*Dutch*), so that "Criminal Law Policy" can also be referred to as "Political Criminal Law" and is often known as "*penal policy*", "criminal law policy" or "*strafrechtspolitik*".<sup>24</sup>

Sharia finance is a financial management system that is based on the principles of Islamic law. Sharia financial management principles: Sharia-compliant financial management must be founded on the premise of anticipating Allah SWT's pleasure. The objectives must be in agreement with Allah SWT's teachings and the hadith of the Prophet Muhammad SAW. There is no usury or interest. Place the profit-sharing principle between the bank and the customer. The sector being financed is not a banned field under Islamic law. Halal investments must be secured.

In essence, penal policy is not merely a technical work of legislation that can be carried out juridically normative and systematic-dogmatic, but also requires a factual juridical approach which can be a sociological, historical and comparative approach. In addition, penal policy also requires a comprehensive approach from various other social disciplines and an integral approach that is in line with social policy or national development policy.

The use of legal remedies, including criminal law, as an effort to overcome social problems is included in the field of law enforcement policy. In addition, because the goal is to achieve the welfare of society in general, this law enforcement policy is also included in the field of social policy, namely all rational efforts to achieve community welfare. As a matter of policy, the use of criminal law is not a necessity. There are no absolutes in the field of policy, because in essence in policy problems people are faced with policy problems of assessment and selection of various alternatives. In addition, efforts to reduce crime through the making of criminal laws are in fact also an integral part of social *welfare* efforts. Therefore, it is also natural that criminal law policy or politics is also an integral part of *social policy*.

## Conclusion

Criminal legislation Policy is defined as a legal regulation developed and determined by authorized entities as a guidance (positive legislation) for the community and law enforcement that tries to prevent and overcome a crime or criminal act. activities to combat crime through criminal law are fundamentally part of law enforcement activities (particularly criminal law enforcement), hence criminal law policy is frequently referred to as law enforcement policy. In addition to being a component of law enforcement, it is also a component of community protection activities (social welfare) and a component of social policy or politics (social policy). Social policy can be viewed as a reasonable endeavor to attain communal welfare while also including community protection, hence "social policy" also includes "social welfare policy" and "social defense policy." Broadly speaking, criminal law policy encompasses the scope of policy in the fields of material criminal law, formal criminal law, and criminal law criminal implementation, and it is compatible with the finance sharia system that there must be a fair principle and preventive step to stem fraud in the banking sector. Efforts and initiatives to improve criminal law laws are inextricably linked to the goal of crime reduction.

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<sup>24</sup> Barda Nawawi Arief, 2008, *Bunga Rampai Kebijakan Hukum Pidana Perkembangan Konsep KUHP Baru*, Cetakan Ke-1, Jakarta, Kencana Prenadamedia Grub, hlm 26

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