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Account Trading As A Form Of Money Laundering

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ABSTRACT

In practice, buying and selling bank accounts is often used to hide or disguise the origin of funds that are the result of criminal acts, thus obscuring the financial trail and complicating law enforcement efforts. In cases of money laundering, buying and selling bank accounts can be categorized as active and passive money laundering. The party selling the account can be categorized as a passive money launderer because the perpetrator receives or controls assets that are the result of criminal acts. Conversely, the party buying the account can be categorized as an active money launderer because the perpetrator takes active actions such as placing, transferring, spending, or disguising the origin of assets that are the result of criminal acts. Due to the rampant buying and selling of accounts, the OJK has ordered banks to block a number of accounts used in illegal activities, fraudulent transfers by pretending to buy and sell goods, including online gambling. This refers to several provisions in Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector. However, the absence of regulations on penalties and prohibitions regarding the practice of buying and selling accounts in the TPPU Law makes it difficult to impose criminal liability on the perpetrators. Because the principle of legality in criminal law stipulates that a crime cannot be punished except based on the principle of legality, the criminal provisions of the law that existed before the crime was committed. Thus, there needs to be a provision or change to the rules that can accommodate the sale and purchase of this account. The practice of buying and selling bank accounts has not been clearly and in detail regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Criminal Acts of Corruption.

Keywords: Account Trading, Money Laundering.

A. Introduction

Based on Article 1 number 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, Money Laundering is any act that fulfills the elements of a crime in accordance with the provisions of this Law. Based on Article 3 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, Any Person who places, transfers,

diverts, spends, pays, grants, deposits, takes abroad, changes the form, exchanges with currency or securities or other acts on Assets that are known or reasonably suspected to be the result of a crime as referred to in Article 2 paragraph (1) with the aim of hiding 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).

The crime of money laundering is referred to as a crime that is dual and continuing (follow up crime), because the crime of money laundering is an act that is continued or continued from the original crime (predicate crime) where the perpetrator processes a large amount of illegal money from criminal acts into funds that appear clean or legal according to the law, using sophisticated, creative and complex methods. The crime of money laundering as a process or act that aims to hide or disguise the origin of a criminal act through activities of placing, transferring, diverting, spending, paying, granting, depositing, taking abroad, changing the form, exchanging with currency or securities obtained from the proceeds of criminal acts.[1]

Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes or abbreviated (TPPU), explains normatively that money laundering is any act that fulfills the elements of a crime in accordance with the provisions of this law. The elements in this crime are the perpetrator element, the unlawful act element, and the result of a crime. The methods or modes or techniques used in money laundering techniques vary widely, including those 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 misuse of corporate vehicles.

This research focuses on the crime of money laundering through the act of buying and selling bank accounts. Banks are part of the financial system and payment

[1] Yunus Husein dan Roberts K, *Tipologi dan Perkembangan Tindak Pidana Pencucian Uang*, (Jakarta: Raja Grafindo Persada, 2018), hlm. 14

system of a country, even in the current era of globalization, banks have also become part of the financial system and payment system in the world.[2]

B. Research Methods

Legal research is a series of systematic mechanisms in conducting research.[3] In this case, legal research is conducted to find solutions and answers to a problem that has been determined in the legal issue that is used as the object of research. The research method used to answer the problem. This research is a type of normative legal research.[4] This study uses secondary data sources. Secondary data sources, This research data consists of secondary data. Secondary data is data obtained from literature studies that are relevant to this study. Secondary data is "data sourced from literature studies (library research) related to publications, namely library data listed in official documents.

C. Analysis And Discussion

Money laundering in Indonesia is relatively new compared to several countries. In fact, money laundering has been known for quite some time by the international community. The term Money laundering comes from the activities of mafias who buy laundry companies (laundromats) as a place to invest or mix their very large criminal proceeds from extortion, illegal sales of liquor, gambling and prostitution.

Money laundering is a crime that has different characteristics from other types of crimes in general, especially that this crime is not a single crime but a double crime. However, between the main crime and the crime of money laundering, it is a stand-alone crime. In this context, it means that the charges of corruption, for example, with the crime of money laundering must be cumulative. The purpose of the perpetrator in processing money laundering is to hide or disguise the results of the predicate offense

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[2] Adrian Sutedi, *Hukum Perbankan: Suatu Tinjauan Pencucian Uang, Merger, Likuidasi, dan Kepailitan*, (Jakarta: Sinar Grafika, 2007), hlm. 1

[3] Abdulkadir Muhammad. *Hukum dan Penelitian Hukum*. Cetakan I. (Bandung: Citra Aditya Bakti, 2004), hlm. 57.

[4] Jhonny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*. (Malang: Bayumedia Publishing, 2008), hlm. 47

so that its origin is not known for further use, so it is not only for the purpose of hiding but also changing the performance or origin of the results of the crime for further purposes and eliminating direct links to the original crime. Thus it is clear that various financial crimes (enterprise crimes) will almost certainly be money laundered or at least money laundering must be carried out as soon as possible to hide the results of the crime in order to avoid prosecution by officers, or from the threat of tax officers.

The practice of buying and selling bank accounts in Indonesia is an increasingly worrying problem, especially since this practice has not been specifically regulated in existing laws. Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (UU TPPU) stipulates various money laundering crimes. These crimes include active actions such as placing, transferring, diverting, paying, and hiding assets known or suspected to originate from criminal acts with a maximum sentence of 20 years in prison and a fine of up to 10 billion rupiah (Article 3 of the TPPU Law). In addition, the TPPU Law also regulates passive crimes in the form of receiving or controlling assets known or suspected to originate from criminal acts, with a maximum sentence of 5 years in prison and a fine of up to 1 billion rupiah (Article 5 of the TPPU Law). Although the TPPU Law covers various crimes related to money laundering, there are no provisions that directly prohibit or impose sanctions on the practice of buying and selling bank accounts. This shows that the TPPU Law has not been able to comprehensively accommodate the practice of buying and selling bank accounts that can be used as a modus operandi for money laundering crimes. In practice, however, buying and selling bank accounts is often used to hide or disguise the origin of funds resulting from criminal acts, thus obscuring the financial trail and complicating law enforcement efforts.

Furthermore, Law Number 10 of 1998 concerning Banking, which is an amendment to Law Number 7 of 1992, stipulates provisions regarding bank confidentiality. Article 40 paragraph (1) of this law prohibits banks from providing information about their customers except under certain conditions regulated by law.

The principle of bank confidentiality aims to protect customers' personal information and maintain customer trust in banking institutions. However, the practice of buying and selling bank accounts contradicts this principle, because it discloses customers' personal information to third parties without permission. However, these banking regulations also do not specifically regulate the prohibition and sanctions against the practice of buying and selling bank accounts, this indicates a legal gap that needs to be addressed to prevent misuse of bank accounts.

The practice of buying and selling bank accounts often begins with identity theft, where the perpetrator changes the photo on the stolen ID card and tricks bank officers to get an account in the victim's name. This buying and selling of bank accounts is used for various financial crimes, including money laundering. This practice can threaten economic stability and the integrity of the financial system, because it makes it easier for criminals to hide or disguise the origin of the proceeds of crime.

In the case of money laundering, the sale and purchase of bank accounts can be categorized as active and passive money laundering. The party selling the account can be categorized as a passive money launderer because the perpetrator receives or controls assets that are the proceeds of crime. Conversely, the party buying the account can be categorized as an active money launderer because the perpetrator takes active actions such as placing, transferring, spending, or disguising the origin of assets that are the proceeds of crime. The absence of clear regulations regarding the prohibition of the practice of buying and selling bank accounts in the TPPU Law and banking regulations indicates obstacles in law enforcement against this practice. More detailed and comprehensive regulations are needed to follow up on the prevention and handling of the practice of buying and selling bank accounts used as a modus operandi for money laundering. Without adequate regulations, law enforcement efforts against this practice

will continue to face challenges, and the risks to economic stability and the integrity of the financial system will continue to increase.[5]

D. Conclussion

The practice of buying and selling accounts has not been regulated in Indonesian legislation. Based on the initial idea that buying and selling accounts is a mode of money laundering, then in order for buying and selling accounts to be subject to criminal penalties, it must be proven that the account is actually used for money laundering. There are several forms of money laundering crimes regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (UU TPPU) which are contained in several Articles 3, Article 4, Article 5, Article 6, Article 7, Article 8, and Article 10 of the TPPU Law. In banking activities, it is actually not only the role of the Financial Services Authority (OJK) that must play a role in protecting customers from banking crimes.

[5] Lorita Tupaida Pane, dkk, "Optimalisasi Penegakan Hukum Pidana terhadap Tindak Pidana Pencucian Uang dengan Modus Jual Beli Rekening Bank (Studi Putusan Pengadilan Negeri Jakarta Utara Nomor 1080/Pid.Sus/2019/PN. Jkt.Utr dan Putusan Pengadilan Negeri Jakarta Utara Nomor 1131/Pid.Sus/2019/PN. Jkt.Utr)", *Jurnal Ilmu Hukum, Humaniora dan Politik (JIHHP)*, Vol. 4, No. 5 Tahun 2024

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