



BLOCKING OF CUSTOMER ACCOUNTS WITH SUSPECT STATUS IN MONEY LAUNDERING CRIME CASES (TPPU)

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Abstrak

The purpose of this study is to analyze the arrangements regarding the deadline for blocking the accounts of customers suspected of money laundering offenses that have accommodated the value of justice. The method used is the Normative Legal Research Method with the Type of Research Obscurity of Norms in Article 12 Paragraph (Bank Indonesia Regulation Number 2/19/PBI/2000) concerning Requirements and Procedures for Giving Written Orders or Permits to Open Bank Secrets (PBI 2/19/2000) 2000). The results of this study are related to the blocking time limit for a period of 30 days. The basis for blocking ML accounts is to facilitate investigations in checking the flow of funds in order to reveal the truth about a fund owned by a customer.

Kata Kunci: Blocking, TPPU, customers.

INTRODUCTION

Investigators, public prosecutors, or authorized judges order the reporting parties to block assets which are known or reasonably suspected to be proceeds of crime of every person that has been reported by the Financial Transaction Reports and Analysis Center ("PPATK") to investigators; suspect; or the accused. In this case, what is meant by a reporting party is everyone who according to the ML Law is obliged to submit a report to PPATK, an independent institution established in the context of preventing

and eradicating ML. Reporting parties include Banks, as financial service providers.

Similar provisions are also stated in Article 12 paragraph (1) Bank Indonesia Regulation Number 2/19/PBI/2000 concerning Requirements and Procedures for Granting Written Orders or Permits to Open Bank Secrets ("PBI 2/19/2000"), as follows: *Blocking and or confiscation of Deposits on behalf of a Depositor who has been declared a suspect or accused by police, prosecutors or judges, can be carried out in accordance with applicable*

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laws and regulations without requiring permission from the leadership of Bank Indonesia. The order is made in writing by clearly stating the name and position of the investigator, public prosecutor or judge; identity of every person who has been reported by PPATK to investigators, suspects, or defendants; reasons for blocking; the criminal act that is suspected or charged; and where the assets are located.

The reporting party is obliged to block immediately after the blocking order is received from the investigator, public prosecutor or judge and submit the minutes of the implementation of the blocking a maximum of 1 working day from the date of implementation of the blocking. Blocking is carried out within a maximum of 30 working days, provided that the blocked assets must remain with the reporting party concerned. In the event that the blocking period ends, the reporting party is obliged to end the blocking by law. If the blocking period has passed 30 working days, the Bank is required to end the blocking by law and unblock the account of the customer concerned.

Meanwhile, to find out what can be done with the savings in the account, it is necessary to review further the specific rules regarding predicate crimes that are suspected/charged. For example, if the customer is suspected of committing ML originating from narcotic predicate crimes, then we can refer to Regulation of the Head of the National Narcotics Agency Number 7 of 2016 concerning Investigation and Investigation of Money Laundering Crimes from Narcotics Origin Crimes and Narcotics Precursors ("Regulation of the Head of BNN 7/2016").

In the event that data and asset tracing are required, Article 10 letter d Head of BNN Regulation 7/2016 authorizes BNN investigators to carry out unblocking financial accounts to: The interests of the

investigation, carried out by BNN investigators by: confiscating evidence of money from money laundering from the suspect's account; and put it in the evidence collection account on behalf of the Deputy for Eradication of the National Narcotics Agency for security and supervision. After unblocking the account for investigation purposes, BNN investigators immediately blocked the account again to avoid being used by the network of perpetrators of narcotics crimes and narcotics precursors. Returned to the rightful person Unblocking an account to be returned to the rightful party can be done if the result of the court case provides consent to unblocking the account. Therefore, the unblocking of accounts by BNN investigators is used for investigative purposes (seizing and placing them in an escrow account). In addition, the unblocking can also be returned to the rightful person if the results of the case approve it. Based on the description above, the formulation of the problem is: How to Limit Customer Account Blocking Related to Money Laundering Crimes in the Perspective of Justice? What is the Legal Protection for Blocked Customers Related to Money Laundering Crimes?

ANALYSIS AND DISCUSSION

Limitation Of Customer Account Blocking Related To The Crime Of Money Laundering In Justice Perspective

Justice is an ideal value that has always been fought for by mankind. As an ideal value, the goal of achieving justice has never been thoroughly sought, and has never been discussed. Justice will be a long discourse in the history of human civilization. In a rule of law country like Indonesia, efforts to achieve justice cannot be ignored. The rule of law cannot be apathetic towards struggles and every effort to uphold justice. The conception of justice is very

important so that a rule of law becomes the basis for all parties, both citizens and state leaders, as certainty in resolving various legal problems faced. A rule of law requires a concept of justice that can address and restore various legal issues to satisfy the sense of justice for all parties. Therefore, to assert certainty as a means to achieve justice, a rule of law must be able to formulate its legal concept in a constitutional affirmation.²

The State of Indonesia is a state based on law, thus the designation for a state based on law as stated in the 1945 Constitution of the Republic of Indonesia Article 1 paragraph (3). This affirmation requires that in a rule-of-law state issues related to law must be resolved through legal channels. The settlement procedure for all legal issues through legal channels is an affirmation of legal superiority. Superior law is never subject to any interests other than the interests of the law itself, namely to achieve justice, legal certainty and benefit which are the main objectives of law. But the law never works automatically. Law in a rule of law is always related and closely related to law enforcement officials. Superior and upholding legal justice requires law enforcement officials as parties who play a very important role in upholding justice so that the law has the power to regulate social order, regularity, and justice in society. Thus, a law that is firm and applies fairly makes the law superior; has advantages, advantages that are reliable and credible for all parties

Indonesia adheres to the concept of a state based on *rechtsstaat*. Moh Yamin stated that the Republic of Indonesia is a unitary state based on law (*rule of law, government of law*) where

written justice prevails, it is not a police state, a military state where the police and army hold government and justice, it is not a state of power (*machtsstaat*) where the armed forces and bodily forces act arbitrarily. 1 The affirmation of Indonesia as a constitutional state can be seen in the provisions of Article 1 paragraph (3) The 1945 Constitution of the Republic of Indonesia. Indonesia as a constitutional state basically has an obligation to provide legal protection to every citizen, therefore the Indonesian constitution provides space for citizens to receive equal treatment before the law. Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia confirms³ :

Everyone has the right to recognition, guarantee, protection, and legal certainty as well as equal treatment before the law.

Justice is one of the basic values of human life and is a classic problem that has never been completely resolved. The lack of conformity in interpreting justice encourages people to try to formulate and define it according to their respective backgrounds of knowledge and experience. Justice is defined as a constant and continuous division to provide everyone's rights. *The constant and perpetual disposition to render every man his due.* Justice demands that each matter must be weighed on its own. *To give to each his right*⁴ The fact of justice is the assessment of a treatment or action by examining it with a norm that according to the subjective view exceeds other norms. The law should indeed contain the value of justice, but the law itself is not identical with justice because

² Garnasih, Yenti. Criminalization of Money Laundering, page 7

³ 1Muh Yamin, 1982, Proclamation and Constitution of the Republic of Indonesia, Ghalia Indonesia, Jakarta, page 12

⁴ *Ibid Hlm 25*

there are legal norms that do not contain the value of justice.

In relation to legal justice, in criminal law, justice is not only given to the aggrieved party, but also given to the suspect or other parties involved in the case, one of which is the crime of money laundering. Money laundering is a crime that has existed for a long time. However, with the times, money laundering crimes have become more complex with increasingly complex methods and are difficult to trace. This is one of the reasons many people get money from the proceeds of money laundering, so that law enforcement officers cannot find out⁵.

The rise of money laundering has made the government make every effort to prevent and eradicate money laundering. One of them is by making regulations regarding the prevention and eradication of money laundering crimes, the most recent being Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU Law). Even though the Law on Money Laundering Crimes has regulated sanctions for perpetrators of money laundering crimes, this does not necessarily reduce the level of money laundering crimes. money laundering crimes.

Although the money laundering process can be carried out in various ways and methodologies, ranging from the simple to the most complex involving multiple jurisdictions, in general the money laundering process can be grouped into three stages, namely:⁶

- a. Placement, is the initial stage, in which the proceeds from or related to crime are converted into a form that causes little or no loss. In this case the examples are putting

in a bank deposit, insurance policy, buying assets such as houses, boats, or jewelry.

- b. Layering, is the next stage of placement, where the owner of the money makes an anonymous layered transaction on the assets originating from the transfer of the money. For example, in this case the method of selling the asset is used, and the proceeds from the sale are transferred via "wire transfer" to various accounts in one country, or between other countries. This aims to make it difficult to trace the origin of these funds
- c. Integration, is the stage where the disguised funds are put back into the perpetrator's account through a valid transaction, so that the origin of the funds is not visible.

In their book, John Mcdowell and Gary Novis mention the impact of money laundering in a country, among others:

- a. Undermining the legitimate private sector.

The practice of money laundering is mostly carried out in the business sector, apart from the banking sector, as an attempt to disguise the origin of money resulting from illegal activities. Business activities funded by proceeds of crime will certainly enter the market and compete with business activities originating from legal capital investments. Of course the existence of a business originating from ML will have the potential to disrupt legitimate business activities.

⁵ Remy Sjahdeini, Sutan, *The Ins and Outs of Money Laundering*

⁶ Husein, Yunus. *Legal Problems of Money Laundering*, page 18

b. Undermining the integrity of financial markets

The unclear financial investment scheme for assets related to crime within a financial institution will certainly make the stability of that financial institution unclear. For example, someone who places large amounts of proceeds from crime in a financial institution in order to disguise the origin of their assets can withdraw these funds at any time. Such financial institutions can certainly face serious liquidity problems as a result of withdrawing such funds as it occurs at Banks in Indonesia during the monetary crisis.

c. Loss of government control over economic policy

The large amount of money circulating in various countries will also have an impact on the economic stability of a country. As stated in UNODC research in 2009, it is estimated that the amount of money related to crime circulated in the world reached 2.7% of the Gross Domestic Product (GDP) value at that time. Although the value could be even greater due to the potential for assets related to crimes that have not been mapped. The magnitude of this value can certainly affect a country's economic policies, especially small countries with weak economic capabilities. Considerations solely on the safety of laundered funds make economic policy considerations not a determining factor in the placement of a money laundering fund. Because of this, the unpredictable nature of money laundering means that the government cannot fully control market conditions or a country's economic policies.

d. Loss of state revenue from the tax sector

One of the predicate crimes of ML is crimes related to taxes, such as tax evasion and tax avoidance. This practice makes taxpayers who are supposed to

pay a certain amount of tax actually pay a smaller amount, or even don't pay at all. This mode occurred in the case of the Asian Agri Group, which made fake transactions in its business activities in order to minimize the amount of tax it had to pay. Even though in this case the Asian Agri Group was not charged with the ML article, it was proven from this practice that the state suffered losses of up to 2.5 trillion in taxes that were not paid. Therefore the ML practice also directly impacted state revenues sourced from taxes.

e. Damaging the country's reputation

As previously explained, countries which have not implemented the AML regime to some extent, will be included in the NCCT list. The impact of the NCCT can be felt if the country cooperates with global financial institutions, some of which have committed to adopting the AML Regime as part of the assessment of cooperation with related countries. This, for example, was experienced by Indonesia during President Soeharto's regime, where Indonesia was still included in the NCCT list, so that it had an impact on the cooperative relationship that would be forged with the IMF and the World Bank.

f. Causing High Social Costs

There is a possibility that the money from money laundering is played back to continue and expand the crimes they have previously committed. For example terrorism or narcotics. This will certainly have an impact on the emergence of social costs that must be incurred by the government in terms of tackling the crimes that arise due to the circulation of money from TPPU.

In the anti-money laundering regime, there is a shift in the method of law enforcement, that is, if in the criminal justice process the focus is generally on "suspects" as individuals or

corporations, then in the anti-money laundering regime the focus is on "money" or "money laundering". asset". This shift is often termed as "from follow the suspect to follow the money" The object of the Crime of Money Laundering, apart from "Person" is "Asset". This has not been accommodated perfectly by the Criminal Procedure Code where the investigation process is still oriented towards "persons" as the subject of a crime. "Investigation" as an example in Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP) which is defined as⁷ :

"Investigation is a series of investigative actions in matters and according to the methods regulated in this Law to seek and collect evidence with which evidence makes clear the criminal acts that have occurred and to find the suspects.

The orientation of the investigation is still focused on finding "people" who are suspected of committing crimes. This is influenced by the understanding of the purpose of punishment in the Indonesian legal system, in this case the KUHAP which still adheres to a retributive understanding, in which the purpose of imposing a sentence is retaliation for mistakes committed through corporal punishment. By using an understanding like this, of course it will be difficult to take action against assets that are already known to be related to crime, but in order to be processed, the "owner" of the asset must first be found and found guilty. Therefore in taking action against ML, the concept was changed from "follow the suspect" become "follow the money". In order to support this change in concept, the use of confiscation and

confiscation mechanisms in the handling of money laundering offenses is an important part of efforts to reduce crime rates.⁸.

This is one of the many different concepts in terms of handling ML. In order to cover these deficiencies, Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, Supreme Court Regulation Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling Assets in Money Laundering or Other Crimes, and several other rules regulate several provisions that facilitate the handling of TPPU. In the process of seeking the truth in the Crime of Money Laundering, Investigators can do two things, namely temporary suspension of transactions, and Asset Blocking.

Temporary suspension of transactions can be carried out by investigators if the existing conditions have been met, which include:

1. Carrying out transactions that are reasonably suspected of using assets originating from the proceeds of crime
2. Have an account to accommodate assets originating from the proceeds of crime; or
3. Known and/or suspected of using fake documents

Because the Criminal Procedure Code has not maximally accommodated the actions required in handling assets, the ML Law regulates a new mechanism that can be used to handle assets, namely Article 26 related to delays in transactions carried out by financial service providers. The following are the provisions of Article 26:

⁷ Law number 8 of 1981

⁸ Muladi. Capita Selecta Criminal Justice System. page 37

Article 26

(1) Financial service providers may postpone Transactions for a maximum of 5 (five) working days from the postponement of Transactions.

In addition to Financial Service Providers, the Financial Transaction Reports and Analysis Center (PPATK) can also request the initiative to temporarily suspend transactions to Financial Service Providers, which request must be followed up immediately as stipulated in 44 letter i. If previously by the Financial Services Provider, the temporary suspension process could only be carried out for 5 (five) days, PPATK can extend the termination for a maximum of 15 (fifteen) days.

What's interesting about the mechanism for temporarily suspending the transaction is that if within 20 (twenty) days from the date of termination of the transaction no party submits an objection to the assets being terminated, PPATK will hand over the handling of the assets that are known or reasonably suspected to be proceeds crime to investigators for investigation. And in the event that 30 (thirty) days since the start of the investigation the perpetrator is not found, then said Assets can be submitted to the District Court to be decided as state assets or returned to the rightful owner within 7 days. With this mechanism, the handling of assets suspected of being related to crime can be carried out more easily without having to wait for a suspect to be proven guilty.

This mechanism can also be utilized by law enforcers and judges in handling these assets as also regulated in Article 70 of the TPPU Law, namely:

Article 70

(1) Investigators, public prosecutors, or judges have the authority to order the reporting Party to postpone transactions on assets that are known or

reasonably suspected to be proceeds of crime.

As for the inspection of financial transactions can be carried out by the PPATK in the event that there are indications of money laundering or other criminal acts. If these indications are found, the PPATK will then submit the findings to investigators for investigation. This process also continues to involve PPATK in the event that investigators need PPATK's assistance in resolving their case.

In addition to the temporary suspension of transactions, in money laundering cases, the term asset blocking is also known in Article 71 of the Money Laundering Act. The blocking order can be made for a maximum period of 30 working days in written form and clearly states:

- a. The name and position of the investigator, public prosecutor or judge
- b. The identity of each person who has been reported by PPATK to investigators, suspects or defendants
- c. Reason for blocking
- d. Criminal acts that are suspected or charged, and
- e. Where wealth is located

If the 30 days have passed, the reporting party must end the blocking period by law. What distinguishes blocking from confiscation is that the assets that are blocked remain in the hands of the complainant. This time limit is then related to the limitation in blocking customer accounts in money laundering crimes. In a sense, this blocking does not last forever, it only lasts 30 working days and after that the wajib blocking ends. In the perspective of legal justice, of course this also fulfills a sense of justice for the parties who will not lose all of the assets they did have prior to the occurrence of the crime of

money laundering. This is what is meant by providing legal justice in criminal acts to all parties.

The Supreme Court in response to the need for handling ML has issued Supreme Court Regulation Number 1 of 2013 concerning Procedures for Settlement of Applications for Handling Assets in the Crime of Money Laundering or Other Crimes (hereinafter referred to as PERMA of Asset Confiscation). The existence of this Asset Confiscation PERMA will fill the legal vacuum and make it easier for law enforcers, including judges, to handle assets suspected of being related to crime, especially TPPU. As in Article 67 of the Money Laundering Law, it is possible to confiscate assets that are allegedly related to criminal acts as state assets or to be returned to those who are entitled. In the process of upholding justice in seeking the truth and the assets of related parties involved in the crime of money laundering, there are also several parties or institutions tasked with guarding and monitoring customer assets from suspicious transactions or money laundering. The institutions in question include:⁹ :

A. Center for Reporting and Analysis of Financial Transactions

The Center for Financial Transaction Reports and Analysis (PPATK) is an independent institution established in the context of preventing and eradicating the Crime of Money Laundering as stated in Law Number 8 of 2010 Article 1 point 2. The formation of PPATK itself was carried out in 2003 as a mandate of the Law Number 25 of 2002 concerning the Crime of Money Laundering. When compared with other countries, PPATK can be categorized as a Financial Intelligence Unit (FIU) which

functions as a management and analysis center a. reports regarding suspicious transactions, b. other information relevant to money laundering activities or other crimes related to money laundering, and c. transmit the results of the analysis to the competent authorities for follow-up.

B. Bank Indonesia

Bank Indonesia is the Central Bank of the Republic of Indonesia as stipulated in Law Number 13 of 1968 concerning Central Banks.⁵⁶ With the duties of a. establish and implement monetary policy, b. arrange and maintain smooth payment system, and c. regulate and supervise banking in Indonesia, making Bank Indonesia have a very important relevance to its involvement in the anti-money laundering regime. In relation to the anti-money laundering regime, Bank Indonesia issued provisions regarding Know Your Customer (KYC) or Know Your Customer Principles (PMN). This principle aims to make banks more careful in managing their customers' funds so that they do not become a means for customers to commit money laundering. The application of this principle is also regularly monitored by Bank Indonesia.

C. Court

The court is tasked with carrying out examinations of ML cases at trial courts and especially at the Corruption Court, cases processed in addition to criminal acts of corruption are also ML originating from Corruption Crimes.

With the above institutions, of course, when customers experience blocked accounts that are limited within a period of 30 working days, they don't need to worry about losing all of their pure assets before money laundering,

⁹ Budi Saiful Haris, Strengthening Evidence of Money Laundering in Corruption Cases in

Indonesia, (Integrity Journal Volume 2 Number 1, August 2016)

because in the investigation process, of course the above are also involved in the customer's financial data collection process before and after the occurrence of money laundering, and this certainly fulfills a sense of justice for all parties involved. With the limitations provided by the Law Regarding Asset Blocking, in this case customer accounts, then of course this already meets the values of legal principles, one of which is the principle of legal justice.

As for actually the reason for blocking an account on the basis of a Money Laundering Crime is for the purposes of investigation and the process of checking the flow of existing funds in order to uncover the truth of funds owned by customers who are suspected of originating from money laundering, but from several cases in Indonesia, information regarding the blocking of customer accounts carried out unilaterally without any notification letter to the customer when the blocking occurred. One of them happened in the decision of the Banyuwangi Negri District Court Decision Study Number 154/Pdt.G/2017/PN.Byw where in this case the customer sued Bank Negri Indonesia for unilateral blocking of his account. In which in the decision the judge rejected the plaintiff's request, which in this case was the customer because the Indonesian state bank carried out the blocking because it was suspected that the funds in the account were the result of money laundering.

Blocking can only be done upon a written request from the account owner, the Police, the Attorney General's Office, the Supreme Court and the KPK. Account blocking is regulated in Article 12 paragraph (1) PBI Number 2/19/2000 concerning Blocking Customer Accounts which states that: "Blocking and or confiscation of deposits

on behalf of a Depositing Customer who has been declared a suspect or accused by the police, prosecutor, or judge, can be carried out in accordance with applicable laws and regulations without permission from the Management of Bank Indonesia." The bank has the right to block a customer's account if the customer is declared a suspect or defendant at the request of the authorities or the customer himself. Storing customer data is a bank secret, so if a bank violates bank secrecy, according to the provisions of Article 47 of the Banking Law, criminal sanctions can be imposed if members of the board of commissioners, directors, bank employees or other affiliated parties intentionally provide information that must be kept confidential. according to Article 40, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 4 (four) years and a fine of at least Rp.4,000,000,000.00 (four billion rupiah) and a maximum of Rp.8,000,000,000 .00 (eight billion rupiah).¹⁰

Therefore, a time limit of 30 working days is given for the police to investigate the truth of the flow of funds in the account whether it is true that it is the result of money laundering or vice versa. If later within the specified time it is not proven that the funds in the account originate from money laundering, the complainant must unblock the customer's account. In a different matter, if it is proven that the funds originate from the Crime of Money Laundering, then these funds will then be kept by the complainant to later become evidence in the ongoing legal process and then divided according to the provisions of Supreme Court Regulation Number 1 of 2013 concerning Procedures for Settlement of Requests for Handling Assets in the Crime of Money Laundering

¹⁰ Bank Indonesia Regulation Number 2/19/2000

or Other Crimes (hereinafter referred to as PERMA of Asset Confiscation). This PERMA for Confiscation of Assets regulates the legal vacuum in order to facilitate law enforcers, including judges, in handling assets suspected of being related to crime, especially TPPU. As in Article 67 of the Money Laundering Law, which makes it possible to confiscate assets that are allegedly related to criminal acts as state assets or to be returned to those entitled to them.

On the contrary, if later the funds are not proven legally during the 30 work process to originate from money laundering, but the complainant does not lift the blockage, then in fact the customer can take legal action against the court to get his rights back over the account that was blocked and cannot prove the truth of money laundering. So that the limitations stipulated in the law for blocking customer accounts related to the crime of money laundering are in accordance with the perspective of legal justice, where these limitations are useful for the purposes of investigating suspected money laundering, and also provide justice for customers who are not proven to have committed or where money laundering funds have flowed the account to return to get his rights regulated in law.

CONCLUSION

Based on the description above which reviews the blocking of customer accounts with the status of suspects in money laundering, the authors draw conclusions, namely: Account blocking will experience a time limit within 30 working days. Blocking an account on the basis of the Crime of Money Laundering is for the purposes of investigation and the process of checking the flow of existing funds in order to uncover the truth of the funds owned by the customer. of legal principles, one of which is the principle of legal justice. Justice is defined as a constant and

continuous division to provide everyone's rights.

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