Efforts to Prevent the Crime of Money Laundering in the Field of Taxation in Indonesia

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Abstrak

Taxes are the most dominant source of funds from the state in the form of the APBN at present. Because it is the most dominant, it needs to be saved. Many acts of tax violations such as income concealment, tax evasion, tax evasion, falsification of tax documents are often a source of illegal funds which are then laundered through a series of transactions to make them look legitimate and not suspicious. Through normative juridical research relying on secondary data, both primary legal materials, secondary legal materials and tertiary legal materials, it was revealed that the factors causing the emergence of money laundering in the field of taxation are: complex tax system, lack of supervision and law enforcement, cross-border activities, corruption and use of technology. Furthermore, efforts to prevent money laundering in the field of taxation are carried out through: Increasing legal awareness, cooperation between institutions, supervision and regulation, training and counseling, international collaboration, use of technology and strict punishment must be carried out.
Keywords: *Money laundering crime, Tax, Prevention*

A. Introduction

Sources of financing for national development, especially those that rely on domestic sources of capacity, aside from originating from oil and gas, exports of non-oil and gas goods and from the tourism sector, the taxation sector is increasingly playing a very large and decisive role. This can be seen from the State Revenue and Expenditure Budget (Bambang Ali Kusumo, 2020: 2)

Considering that the tax function is so important, especially the budgetary function, it is necessary to increase public awareness to pay taxes. Paying taxes is an obligation for the people or society in order to support the continuity of national development. Development and funds/costs are two things that are mutually binding and cannot be separated from one another. Experience shows that many developing countries cannot carry out their development smoothly due to a lack of funds/costs. That is why the Minister of Finance, Bambang Brodjonegoro, again asked the members of the DPR in Commission XI, namely to push for the Tax Amnesty Bill (RUU) to be immediately discussed and passed into law. He asked for this on the grounds that tax revenue has not been optimal so far, this is indicated by a relatively low tax ratio, which is in the range of 12 percent. This value is still inferior to neighboring countries such as Singapore, Malaysia, the Philippines and Thailand (Republika, 13 April 2016). The Minister of Finance's request indicates a great expectation to obtain funds/costs from the tax sector to finance the development that will be carried out in the future.

Maximizing the acquisition of funds from the tax sector, there are several indications of the benefits and progress that the state can obtain (Gerard Arijo Guritno, 1996: 7), including: first, large and proportional revenue from the tax sector will be a sign that the state is increasingly independent in financing development. Second, independence supported by the tax sector will increasingly provide a strong foundation and structure in the context of growth and equity in the socio-economic sector. Third, with development financing that is increasingly independent by involving the rights and obligations of every citizen, such conditions will affect domestic stability

and the neutrality of foreign policy from possible international political pressure from other countries (donors), therefore the Minister of Finance invites all taxpayers to use good opportunities by participating in the tax amnesty.

The main purpose of having a tax amnesty is so that the funds needed by the state are sufficient, especially related to the State Revenue and Expenditure Budget and taxpayer data can be collected properly, so that it is very profitable to monitor future taxpayers. Based on the data the author obtained (Solo Pos, 3 April 2017) until the closing of the tax amnesty program on Friday, March 31, 2017, the total declaration of Indonesian taxpayer assets reached IDR 4,865.7 trillion. This value consists of domestic declarations of IDR 3,686.8 trillion, foreign declarations of IDR 1,031.7 trillion, and repatriations of IDR 147.1 trillion. The ransom money received was IDR 114.2 trillion. The declaration of IDR 4,865.7 trillion is equivalent to 39% of Indonesia's gross domestic product (GDP) and the ransom money of IDR 114.2 trillion, equivalent to 0.91% of GDP, is the highest tax amnesty achievement in the world. With the results of this encouraging tax amnesty, it is hoped that in the future the income from taxes will increase even better so that development will run smoothly.

In order to support the above-mentioned tax policies, several laws and regulations in the taxation sector have been promulgated and the enforcement of these regulations includes provisions for criminal sanctions. The use of the provisions of criminal sanctions or criminal law is a means of supporting the enforcement of laws and regulations in the field of taxation. Soehardjo Sastrosoehardjo said that the nature of criminal law is as an accompanying law, namely accompanying, guarding the norms that exist in other fields of law, namely state administrative law and constitutional law (Soehardjo Sastrosoehardjo, tanpa tahun: 13).

Criminal law as a support, companion or guardian of other laws through criminal sanctions has a double function, namely as an ultimum remedium and functions as a deterrent factor. As an ultimum remedium, criminal law is the last remedy for criminal acts that may occur when other drugs are no longer able to deal with criminal acts. Or it can be said that criminal sanctions or criminal law have a subsidiary function, criminal law should only be applied when other means (efforts) are no longer sufficient (Sudarto, 1986:22). Then as a deterrent factor, it is a deterrent factor so that the maker does not commit a crime again (special prevention) and prevents other people, potential perpetrators of criminal acts from refusing to commit crimes because they are afraid of threats in these regulations (general prevention).

The use of criminal law through criminal sanctions in laws and regulations to deal with criminal acts that may arise is a policy. The policy in question is a policy in the field of law enforcement (especially criminal law enforcement) whose aim is to achieve the welfare of society in general. Or it can be said that politics or criminal law policies are part of law enforcement policies (Barda Nawawi Arief, 1996: 29). Furthermore, in carrying out politics or policies, especially criminal law policies, it must be rational, meaning that in choosing and establishing criminal law through criminal sanctions in laws and regulations as a means to deal with criminal acts that may arise, it must really take into account the factors that can support the enactment of criminal law. criminal law. The irrational use of criminal law will result in a crisis of excess criminalization and a crisis of excess of criminal law (Barda Nawawi Arief, 1996: 36).

Furthermore, the use of criminal sanctions or criminal law as a support for administrative law in the field of taxation is closely related to the economic approach. In this regard, Ted

Honderich argues that punishment can be called an economic deterrent if the following conditions are met (Barda Nawawi Arief, 1996: 39):

1. The crime actually prevented;
2. The punishment does not cause a situation that is more dangerous or detrimental than what would have happened if the punishment had not been imposed;
3. There is no other crime that can effectively prevent harm or loss.

Furthermore, Jeremy Bentham stated that punishment should not be applied or used if it is groundless, needless, unprofitable or inefficacious (Muladi dan Barda Nawawi Arief, 1992: 132).

In addition to the description above, it is also necessary to state Soedarto's opinion that in order to criminalize a certain act, the following matters must be considered (Sudart0, 1986: 36 – 40):

1. The use of criminal law must pay attention to the goals of national development, namely creating a just and prosperous society that is materially and spiritually evenly distributed based on Pancasila; In this regard, the (use of) criminal law is aimed at overcoming crime and implementing countermeasures against itself, for the welfare and protection of society.
2. Actions that are attempted to be prevented or dealt with by criminal law must be unwanted actions, namely actions that cause harm (material and/or spiritual) to members of the public.
3. The use of criminal law must also take into account the cost and benefit principle.
4. The use of criminal law must also pay attention to the working capacity or ability of law enforcement agencies, namely not to overwork.

In practice there have been many cases of tax evaders that have escaped the clutches of the applicable law, including the tax evasion case that occurred in Solo, the Surakarta District Court acquitted, the Supreme Court with decision no. 2239 K/PID.SUS/2012 convicted a director of fourteen companies belonging to the Asian Agri Group, while the corporation was not investigated from the start.

Based on the description above, it shows that the losses that befell state finances are enormous, so it is not fair if such cases are allowed to go unpunished, while cases that cause even small losses are subject to criminal sanctions or be charged with criminal law. Given this, there seems to be a problem with criminal sanctions in the taxation. The Solo Court acquitted the Defendant, but in the Supreme Court the Defendant was punished (Solo District Court misapplied the rule). Then for the Asian Agri Group case, the Supreme Court did not indict corporations as perpetrators of tax crimes, even though in Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures stated that taxpayers consist of individuals and legal entities or corporations. But oddly enough, the law does not stipulate criminal penalties against corporations. Regarding such matters, you can actually follow the guidelines in the Criminal Code (Article 103), but the Criminal Code does not regulate corporations or legal entities as subjects of criminal law.

Furthermore, if you look at the formulation of criminal sanctions in Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures, the formulation of criminal sanctions is cumulative, namely imprisonment and fines. The cumulative formulation requires law enforcers to provide combined sanctions or cannot

choose between the two. This is when this sanction is applied to perpetrators of corporate or corporate crimes it cannot be carried out. Because it is impossible for perpetrators of corporate or corporate crimes to be jailed. In the end, because the law is like that, the perpetrators of corporate or corporate crimes will not be subject to these criminal sanctions.

Then in addition to those described above, in the handling of criminal acts of taxation, there are many criminal acts that have fulfilled the requirements in investigation and prosecution, but were not transferred to court, on the grounds that the Attorney General stopped them on the pretext that state losses resulting from criminal acts of taxation had been fulfilled. by taxpayers. The Attorney General will terminate the investigation at the request of the Minister of Finance in the interest of state revenue. Termination of the investigation can be carried out by the Attorney General no later than 6 (six) months from the request. This provision is regulated in Article 44 B of Law no. 28 of 2007. Seeing these conditions it seems that the perpetrators of tax crimes are very privileged by this regulation. Meanwhile, if you look at minor cases or other criminal acts that do not cause large losses, it is difficult to avoid criminal law entanglements.

In addition to what was described above, the system used in taxation in Indonesia is through a system of calculating, calculating and paying the tax owed yourself (known as the self-assessment system). Using this system, the taxpayer calculates the amount of tax to be paid to the state treasury or the Tax Service Office (KPP) without waiting/depending on the existence of a tax assessment letter. The purpose of using this system is to create elements of justice and truth or honesty from taxpayers, but the fact is that with this system there are many deviations or evasions or crimes involving many tax consultants to help taxpayers pay for what is not true, meaning transactions that occur in the company not all of them are reported correctly, and sometimes assisted by tax officers (remember the case of Gaius Tambunan who helped taxpayers to get tax relief). This also includes cases where the Government provides opportunities for businessmen abroad to report their companies, namely through the Tax Amnesty program. The intention is that the government is good, so that companies that are abroad are recorded so that in the future it can predict the amount of tax that is expected to enter the state treasury. But in reality many do not report. In the field there are many criminal acts to avoid paying taxes. Tax as a means to collect as much money as possible through various ways to enrich themselves. Tax activities are used as a means to commit money laundering crimes.

Tax offenders can gain large profits by not paying taxes (hiding income, tax evasion, tax evasion, falsification of tax documents and through submitting requests for objections to paying taxes by playing with tax officers). The proceeds of this crime are then used for transactions through banking or through certain investments in other fields so that the funds used look clean. When traced, most of the perpetrators of money laundering in the field of taxation are corporations or legal entities or companies.

B. Research Methods

This research is a normative or doctrinal juridical legal research, namely research that analyzes the applicable norms or regulations (Burhan Asshofa, 1996: 13) related to the criminal act of money laundering in the field of taxation. The data used in this study are primary data and secondary data. Primary data obtained directly from the field by means of observation. However, primary data is only as a support for secondary data. Secondary data is the main data in this study. Secondary data

is data that is indirectly obtained by researchers or data that has been processed by other people, which includes (Peter Mahmud Marzuki, 2009: 141):

a. Primary legal material

Primary legal materials are legal materials that are binding and include regulations related to the problem under study, namely;

1) Law no. 28 of 2007 concerning the third amendment to Law no. 6 of 1983 concerning General Provisions and Tax Procedures.

2) Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP).

3) Supreme Court Regulation No. 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

4) Regulation of the Attorney General Number PER-028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects.

b. Secondary legal material

Secondary legal materials are legal materials that provide explanations regarding primary legal materials, research results, works of legal experts in the form of writings and so on, which are relevant to this research.

c. Tertiary legal material

Tertiary legal materials are legal materials that provide instructions and explanations of primary and secondary legal materials, such as legal dictionaries and encyclopedias.

C. Results and Discussion

In discussing the crime of money laundering or money laundering is not easy, it is necessary to clarify what exactly is meant by money laundering? In Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, it is stated that money laundering is any act that fulfills the elements of a crime in accordance with the provisions of this law (Article 1 point 1). In this Law, the predicate crime of this crime of laundering is the result of the crime obtained from the crime of taxation (Article 2 paragraph (1) letter v. There are various definitions of money loundering, but all of them remain in one goal is to state that money laundering is a type of crime that has the potential to threaten various interests both on a national and international scale.

In simple terms, the notion of money laundering or money laundering is a process carried out to change the proceeds of crime, so that the proceeds of crime appear as the result of legitimate activities because their origins have been disguised or hidden (Yenti Garnasih, 2004: 1). Furthermore, according to Remi Sjahdeini, what is meant by money laundering or money laundering is a series of activities carried out by a person or organization against money generated from criminal acts whose purpose is to hide or disguise the origin of law enforcement by putting the money into the financial system (financial system).) so that later it becomes lawful money Remi Sjahdeini, 2007: 5).

Money laundering is a term that was first used in the United States. This term refers to the laundering of mafia property rights, namely business results obtained illegally which are mixed with the intention of making it appear as if all the proceeds were obtained from legitimate sources. In short, the term money laundering was first used in a legal context in a case in the United States in 1982. The case involved fines for laundering money from the

sale of Colombian cocaine. In its development, the process that is carried out is even more complex and often uses the latest methods in such a way that it seems as if the money being obtained is truly natural.

Why do so many funds that have been collected need to be laundered?, because if used directly they will be suspected, especially by law enforcement officials (PPATK). That is why it is necessary to commit or hide the proceeds of crime so that they are not detected by law enforcement, so that the proceeds of crime are safe for use. Money laundering is carried out by utilizing financial institutions or institutions, especially banking, investments such as housing or real estate, money changers and other businesses. In general, these efforts are carried out through: Placement, layering and Integration (Edy Waluyo, 2009).

Placement, namely efforts to place funds generated from a criminal activity into the financial system (Joni Emirzon, 2017). Forms of this activity include:

1. Placing funds at the Bank, sometimes this activity is followed by applying for credit or financing.
2. Depositing money at the FSP as credit payments to obscure the audit trail.
3. Smuggling cash from one country to another.
4. Financing a business that appears to be or is related to a legitimate business in the form of credit or financing, thereby converting cash into credit or financing.
5. Buying valuable items of high value for personal gain, buying gifts of high value as awards or gifts to other parties who pay through a Financial Service Provider.

This provision is contained in Article 3 of Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

Layering is separating the proceeds of a crime from its source, i.e. the crime goes through several stages of a financial transaction to hide or disguise the origin of the funds (Joni Emirzon, 2017). In this activity, there is a process of transferring funds from several accounts or certain locations as a result of placement to another place through a series of complex transactions designed to disguise and remove traces of the source of funds. Forms of activities carried out include:

1. Fund transfers from one bank to another and/or between regions or countries.
2. Use of cash deposits as collateral to support valid transactions.
3. Transferring cash across national borders through a network of legitimate business activities and shell companies.

This provision is contained in Article 4 of Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

Integration is an attempt to use assets that have been seen as legitimate, either to be enjoyed directly, to be invested in various forms of material and financial wealth, to be used to finance legitimate business activities or to refinance criminal activities(Joni Emirzon, 2017). In carrying out money laundering, the perpetrators do not really consider the results to be obtained and the costs to be incurred, because the main objective is to disguise or eliminate the origin of the money so that the end result can be enjoyed or used safely. This provision is contained in Article 5 of Law no. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.

Furthermore, what causes the crime of money laundering to continue continuously. According to the author's opinion, there are several causes for money laundering in the field of taxation:

1. A tax system that provides opportunities for perpetrators of money laundering crimes, in our country the tax system that is applied is a self-assessment system, namely a system that allows taxpayers to calculate the amount of tax to be paid to the state treasury or the Tax Service Office (KPP) themselves. without waiting / depending on the existence of a tax assessment letter. Taxpayers can take advantage of money laundering. They can use loopholes in tax laws to hide illegally acquired assets.
2. Lack of supervision and law enforcement. The lack of effective oversight and law enforcement in the field of taxation can provide opportunities for criminals to launder money. When tax violations are rarely detected or not strictly punished, then they can easily hide their illegal funds through tax transactions.
3. Cross-border activities. The crime of money laundering in the field of taxation often involves cross-border activities. In fact, many Indonesian businessmen have set up companies in other countries, for example in China, Singapore and many other countries which are havens for corruptors or economic criminals known as Safe Havens, such as Switzerland, Panama, The Seychelles. , Cayman Islands. Criminals can take advantage of differences in tax systems between countries to transfer funds illegally and avoid tracking. This makes prevention and law enforcement more difficult or encounters difficulties in enforcing the law.
4. Corruption. Corruption in the tax system can facilitate money laundering. Corrupt tax officials can give special treatment to money laundering perpetrators in return for money or personal gain (remember the case of Gaius Tambunan, an employee of the Director General of Taxes who was involved in an application for tax relief from several companies, which was granted by the Director General of Taxes 75 percent of the time, and caused substantial losses to the state.). Because there is help from insiders (tax officials) it allows them to avoid the taxes that they should pay.
5. Use of Technology. Advances in technology can also be a factor causing money laundering in the field of taxation. The use of digital technology and complex software can make it easier for criminals to hide traces of their transactions and manipulate tax data. Like nowadays there are lots of buying and selling through digital applications, how is the tax system to detect this, how is the Value Added Tax determined from the transactions that occur. This is a challenge for the country to fix the system due to technological advances.

It should be noted that these factors are not always present in every case of money laundering in the field of taxation. Each case is different and involves a different combination of factors.

With so many factors causing the emergence of money laundering in the field of taxation, it is necessary to address them. If this crime is allowed to continue, it will affect other things and development will not proceed as desired by the people, state and nation of Indonesia. To achieve the goals of establishing the Republic of Indonesia, protecting the entire nation and the homeland of Indonesia, promoting public welfare, educating the

nation's life and participating in carrying out world order based on justice and eternal peace will not be realized properly. The author conveys this because the tax sector is the main source of funds for the Republic of Indonesia in increasing the state treasury through the State Revenue and Expenditure Budget (APBN). Other sectors (natural wealth), tourism and others are only a source of additional funds. We can see this from the state budget for the last five years which has relied on the tax sector.

Given the above, the tax sector needs to be secured. Tax crime is not a predicate crime (predicate crime) of money laundering in the tax sector which is a derivative crime. To tackle money laundering in the field of taxation, integrated efforts are needed between the authorities (Government), Financial Institutions and the private sector. Efforts that can be made are:

1. There is an increase in legal awareness. Increasing legal awareness about the many consequences for other institutions will affect the existence of money laundering crimes in the field of taxation. Awareness raising can be done through educational campaigns and outreach to the public, entrepreneurs and professionals in the fields of finance and taxation. It is important to understand the signs of money laundering and how to report this to the authorities who handle this crime.
2. Cooperation between institutions. Strengthen cooperation between law enforcement agencies (Police, Prosecutors, Judges and Correctional Institutions) and financial institutions (although there are secrets that cannot be disclosed), but if there is suspicion there is a need for vigilance (this is the duty of PPATK. This includes cooperation with tax authorities (There must be transparency in reports about officials' assets. Cases such as tax official Rafael Alun Trisambodo and Customs and Excise employee Andi Pramono don't happen. It seems that the agencies of the two people are not transparent in reporting the wealth of Rafael Alun Trisambodo and Andi Pramono in their LHKN reports.
3. Strict Supervision and Regulation. Improving supervision and regulation in the taxation sector to prevent practices that facilitate money laundering in the taxation sector. Tax regulations must be applied correctly, correct and careful audits and the use of innovative financial technology can help identify suspicious transactions and use inappropriate patterns.
4. Training and Counseling. Provide counseling and training to tax officers, employees of financial institutions, and other related professionals to increase their understanding of money laundering crimes and methods of detection. Improve their ability to recognize indicators of money laundering and report suspicious activity by perpetrators.
5. International Collaboration. Intensifying international cooperation in information exchange and law enforcement coordination to uncover and stop cross-border flows of illegal funds. This involves exchanging data and financial intelligence with other countries, as well as active participation in international organizations focused on preventing money laundering. International cooperation is important, but in reality efforts to eradicate money laundering with international dimensions in Indonesia have so far seemed to provide less legal certainty and less space for human rights aspects, particularly regarding requests for extradition from Indonesia to other countries (out-coming extradition) and requests for extradition. foreigners to Indonesia (incoming extradition) (Efendi Lod Simanjuntak, 2023:

21). With regard to requests for foreign extradition to Indonesia (incoming extradition) so far it has been highly dependent on a Presidential Decree. Considering that this extradition depends on the President, it is no exaggeration to say that this extradition is based on political considerations rather than legal considerations (Efendi Lod Simanjuntak, 2023: 22). The crime of money laundering or TPPU continues to grow and expand in various countries. It cannot be denied that today one of the negative impacts of globalization is the increasing increase in cross-border crimes or transnational crimes or commonly also called transnational organized crimes. This transnational crime has become a common concern for many countries not only because of its enormous impact, but also the pattern of handling it which requires cooperation between nations because the perpetrators operate across jurisdictions (Efendi Lod Simanjuntak, 2023 : 28).

6. Use of Technology. Applying advanced technology, such as big data analysis, artificial intelligence, and blockchain, to detect suspicious transaction patterns and strengthen oversight of financial activity through empowering PPATK. The use of technology can also make it easier to report suspicious financial transaction.

7. Application of Punishment. Enforcing the law against money laundering requires good cooperation from all elements of the Criminal Justice System (SPP), which in this case consists of the police, prosecutors, judges and also the Financial Transaction Reports and Analysis Center (PPATK). Each element of the SPP and PPATK must be able to run well, coordinated and simultaneously. PPATK is an independent agency or agency that is administrative in nature, its task is to collect and process information related to suspicions or indications of money laundering. It is the driving force for analyzing suspicions of money laundering, especially through early detection of suspicious transaction flows. PPATK can conduct an initial investigation of suspected transactions, the results of this investigation are given to the Police and the Police are still continuing further investigations and are continuing to investigate suspicions of this transaction. In this case the Bank is always careful in maintaining customer trust, meaning that the Bank must be careful in providing information about this (Ayumiati, 2012). Law enforcement must be firm, precise and adequate against the perpetrators of money laundering in the field of taxation. Firm and appropriate punishment can reduce or prevent the occurrence of money laundering in the field of taxation.

D. Conclusion

From the description above it can be concluded:

1. Factors contributing to the emergence of money laundering in the field of taxation are the taxation system which provides opportunities for crimes, lack of supervision and law enforcement, cross-border activities, state officials commit corruption and use technology in carrying out crimes.
2. Efforts made to prevent the crime of money laundering in the field of taxation are increasing legal awareness, conducting inter-agency collaboration, conducting supervision and regulation in the taxation sector, conducting training and counseling to tax officers, employees of financial institutions and other related professionals, carry out international cooperation, use technology to reveal crimes committed and provide strict and appropriate punishment to the perpetrators of crimes.

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