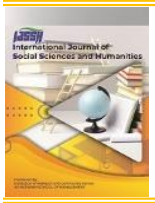

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The Application Of The Principle Of Bank Secrecy In The Process Of Eradicating Money Laundering Criminal Offences Based On Aspects Of Legal Certainty

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Abstract

Bank secrecy is the core of a banking system policy and is based on the "prevalence" of general banking practices. The problem in the prevention of money laundering is basically still a challenge and will be difficult in the handling process, it is because the Law on Money Laundering has not been maximally able to take legal action, not to mention the existence of strict bank secrecy principle rules in the relevant country. This research aims to examine the application of the principle of bank secrecy in the process of eradicating the criminal offence of money laundering in the aspect of legal certainty. The research method used in this research is normative juridical with the approach used Legislation approach and conceptual approach. The conclusion of this research is that bank secrecy is no longer the main reason for banks to refuse or delay providing information requested by law enforcement officials. The bank must comply with the procedures and mechanisms that have been established by law in order to avoid abuse of the principle of confidentiality for improper purposes. In the process of implementing money laundering criminal offences, it is necessary to run in a balanced, fast, and precise manner with effective law enforcement efforts. In addition, a structured and confidential information exchange mechanism between banks and law enforcement is important to strengthen the investigation and investigation process.

Contents

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Introduction

The development of technology and financial services today makes it easier for people to carry out fast, safe and easy transaction activities in the financial system, especially in the banking system which is one of the financial instruments that is the only instrument of public trust that has an influence on the country's economy, so it can be seen that banks are the centre of all sectors of the financial system. Therefore, it is a fact that the movement of a country's economic market is an important activity for the benefit of the country's welfare. The existence of the national banking system is not only guaranteed by financial service providers, but the public is also included in those who use national bank services, each of which must be responsible for realising a just and prosperous society in accordance with Pancasila and the 1945 Constitution. (Pranawa, 2023)

Financial service providers must maintain public trust by providing legal protection, especially for the interests of their customers. This is done as an internal precautionary measure by the relevant bank. Since public trust is the most important part of a bank's sustainability, it is important for the public to maintain that trust. The various factors that impact the level of public trust in a bank include "Integrity of the management, competence of the management in terms of managerial and technical capabilities, bank health, and bank compliance with bank secrecy obligations". (Ahmad, Anggraini, & Iswahyudi, 2022)

So in addressing measures to protect customers, banks follow the principle of bank secrecy, which is the core of a banking system policy and is based on the prevalence of general banking practices, agreements and contracts with banks and customers, as well as official (written) regulations made by the state. Law No.10 of 1998 on the Amendment of Law No.7 of 1992 on Banking regulates bank secrets in national law. According to Article 1 Point 8, "Bank Secrets are everything related to information about depositing customers and their Deposits". (Fahrurrozi, Murwadji, & Rukmini, 2020), This formulation recognises that "prevalence" is a step or policy that requires banks to maintain the confidentiality of information or information concerning their customers.

As technology develops, crime will become more modern, so that its existence is very difficult to detect only by ordinary analogy, especially crime in the banking world, the emergence of organised crime committed by one perpetrator or together by using bank instruments, as a means to break or hide the origin of money so that its existence is initially illegal to become legal resulting from illicit business, such as gambling, and embezzlement of funds, As a result, the definition of *Money Laundering has become* more specific, initially covering funds from "trafficking in narcotics and similar drugs", but then growing and becoming broader to include proceeds from "corruption, bribery, trafficking in women, arms trafficking, smuggling, gambling, pornography, illegal immigrants, and terrorism". (Setiawati, 2008), According to the criteria of these action factors, a person commits money laundering for no other purpose than to give the impression that the laundered money is legitimate money.

The prevention of money laundering offences is still fundamentally a challenge and will be difficult to handle, due to the influence of the principle of bank secrecy. It is also caused by the lack of professionalism of law enforcement and the transnational nature of this crime, which includes offshore banks. (Hidayat & Setyaningsih, 2023), One of the inhibiting factors for investigators to be able to find evidence, information in the scope of TPPU is the strict bank secrecy principle rules in related countries. Therefore, Law Number 25 of 2003 was presented, as well as amended and the current Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crime.

Furthermore, there is a possibility of breaching bank secrets in accordance with the Law for judicial purposes, if someone wants to open bank secrets, they must prioritise obtaining confirmation of written permission from the head of Bank Indonesia. The regulation is in line with Article 3 paragraph (1) of "Bank Indonesia Regulation Number: 2/19/PBI/2000", which regulates the procedure for granting an order or written permission to disclose bank secrets. To apply the rules listed in Article 2 paragraph (4) letters a, b, and c, official approval in black and white format from the head of bank Indonesia is required before doing so. (IR Febrianti, 2021), The Governor of Bank Indonesia authorises 14 (fourteen) days to disclose bank secrets, but modern technology can help defendants or suspects move their accounts at a moment's notice. And that will have an impact on the blurring of information or evidence that the police need as a guide to solving criminal offences. (Nurjanah & Andry, 2015)

However, this does not mean that the existence of the principle of bank secrecy does not affect law enforcement, especially in terms of *Money Laundering*. (Faisal, 2018), This is done because the bank has its privacy policy, so that the bank is used as a safe deposit place for illegal money by the perpetrator, but the effect caused by the crime of money laundering is detrimental to part of the national economy of state finances, the Law on the Crime of Money Laundering has not been maximally able to take appropriate legal action because it is often collided with the principle of bank secrecy. When viewed from the description, the problem in this research is "How is the application of the principle of bank secrecy in the process of eradicating the crime of money laundering based on aspects of legal certainty?"

Materials and Methods

This research is *normative legal research*. Scientifically conducting legal research to identify norms, doctrines, principles, principles as a solution to legal problems faced (*legal issues*), this research is also a means to provide solutions to existing legal problems. (Marzuki, 2013)

Results and Discussions

Application of Bank Secrecy Principles in the Process of Eradicating Money Laundering Crimes Based on Legal Certainty Aspects.

In Indonesia, euthanasia is a prohibited act and is debated with various arguments, both from the pro and con camps. The pro side says that everyone has the right to life and the right to die immediately on reasonable grounds, namely on humanitarian grounds. In cases where the patient's condition no longer allows for recovery or survival, the patient can apply to end their life immediately. On the other hand, those who oppose euthanasia say that everyone does not have the right to end life because the issue of life and death is God's absolute power that cannot be denied by humans. A common argument put forward by those against euthanasia is that we should help someone live, not create a form that allows them to die.

Legal certainty is the purpose of law made to realise the principle of justice. Law cannot be separated from certainty, especially in written legal norms. Legal certainty in its application does not cause doubts and must be logical, which means that it becomes between a system of principles and other principles, because its reference does not result in conflict between principles / norms. (Novianti, 2021), Certainty in the application of the law must be precise, clear and the process must not be influenced by the subjective scope. (Justian, 2023) According to Banking Law No. 10 of 1998, article 42 paragraphs 1, 2, and 3 reads as follows:

1. "In the interest of justice in criminal cases, the Chairman of Bank Indonesia may grant permission to the Police, Prosecutor, or Judge to obtain information from banks regarding the deposits of suspects or defendants in banks;
2. The permission referred to in paragraph 1 shall be granted in writing upon the written request of the Chief of the Indonesian National Police, the Attorney General or the Chief Justice of the Supreme Court;

3. The request referred to in paragraph 2 shall state the name and position of the Police Officer, Prosecutor or Judge, the name of the suspect or accused, the reason for the need for information and the relationship between the criminal case concerned and the criminal case in question."

The relationship between the authorities and the banking authorities is closely intertwined according to the capabilities of the duties and authorities of each party. Banks that are used as a place (*locus*) for the purpose of crime by the perpetrator, then it should be necessary to take actions that support each other and cooperate with each other in order to achieve the disclosure of money laundering crimes.

Article 42 of Law No. 7 of 1992 on Banking as amended by Law No. 10 of 1998 in the interest of criminal justice should provide information on the financial condition of the suspect or defendant whose funds are in banking deposits. However, in practice this provision is still not perfect, balanced and effective, because in order to obtain the licence, it must wait and it takes a relatively long time. Given the strict procedures in order to obtain permission to open bank secrets from the Chairman of Bank Indonesia, it must take 14 (fourteen) days given by the Governor of Bank Indonesia. This is intended to be done quickly and in a timely manner.

Banks can block accounts at the request of investigators or seize them if indicated or suspected to be related to money laundering. The law on confiscation and blocking of bank accounts is still incompletely regulated. Currently, the regulations governing blocking are still based on "Circular Letter of the Police Force Department Number 028/9/I/EK/67 dated 13 September 1967". As long as it does not reveal the financial data of the depositor (customer), confiscation or blocking does not constitute a breach of bank secrecy. Parties that are authorised to take possession of certain objects are called confiscation. (Sutiawan, Mulyati, & Tajudin, 2018).

The blocking in question is a forced effort to ensure that the funds in the bank account are not moved or changed, so that the money remains in the bank. (Sulfiarini, Marwiyah, Prawesthi, & Amiq, 2024), Confiscation on the other hand is the control of a number of funds in a bank account and its implementation is carried out by means of forced efforts. the size of a country with a bank regulation mechanism that may vary, the perpetrator very carefully places his money so that it is not known by the relevant authorities not to mention the strict bank secrecy provisions.

To support and maximise the role of the state in the process of eradicating this type of crime, it must be understood by examining the legal arrangements contained in Law No. 8/2010 on PPTPPU.

Regulation of Money Laundering Offences According to Law No. 8 Year 2010

Money laundering in Indonesia is categorised as a criminal offence that can be subject to criminal penalties. Legal regulation for this criminal offence has existed since 2002 through Law No. 15 of 2002 concerning TPPU and has been updated to Law No. 8 of 2010 concerning PPTPPU.

Firstly, this criminal offence can be committed by "*any person*". According to Article 1 point 2 of the UUPU, any person can be either a "*natural person*" or a "*corporation*". According to Article 1 point 3, a corporation is "*an organised collection of persons and/or assets, whether or not it is a legal entity*". According to Article 1 point 4, assets consist of "*all movable or immovable objects, both tangible and intangible*". Since the formulation states that this type of crime can be seen against assets that are known or suspected to be known by the perpetrator as the proceeds of a criminal offence, it is then necessary to remember and know the limitations of the "*proceeds of a criminal offence*".

Furthermore, the formulation of Article 2 paragraph (1) of Law No. 8/2010 on PPTPPU which states "that the proceeds of a criminal offence are assets obtained from a criminal offence committed in the banking sector, which is committed in the territory of the Republic of Indonesia or outside the Republic of Indonesia and the criminal offence is also a criminal offence under Indonesian law". the meaning of the phrase includes the principle of dual criminality, which in the phrase "*that the criminal offence committed outside the territory of the Republic of Indonesia and the criminal offence is also a criminal offence under Indonesian law*". (Supriyanta, 2007).

Article 77 of Law No. 8/2010 on PPTPPU is also based on the principle of reverse proof, namely: "For the purpose of examination in court, the defendant is obliged to prove that his assets are not the proceeds of a criminal offence". According to the explanation of the above article, the defendant must immediately disclose transparently the origin of his/her assets or funds to see the validity of the assets. However, after the judge decides this matter, the principle of proof also has 2 types according to the PPTPPU Law:

1. "Active money laundering offences contained in Articles 3 & 4;
2. Passive money laundering offences contained in Article 5." (Yusuf & Sari, 2022)

In addition, Law No. 8/2010 on PPTPPU "authorises prosecutors and authorises investigators, such as the Police, the Attorney General's Office, the Inspector General of Taxes, the Inspector General of Customs, Customs & Excise, and strengthens PPATK". This law also allows trials to be conducted in the absence of the defendant as stated in Article 79 paragraph (1), with the principle of *in absentia*. (Emirzon & Yuningsih, 2022)

1. Regarding Assets is found in Article 72 paragraph (1)
2. Regarding bank secrecy is found in Article 72 paragraph (2).

Mechanism of Bank Secrecy Principles in the Interest of Law Enforcement.

To carry out law enforcement as mandated by the Constitution, especially investigators must have the ability to carry out various methods, one of which is "good relations" with bank employees or PPATK employees, if there are indications of problems or obstacles, so that the investigation must be carried out immediately and completed by paying attention to the detention time limit specified in the regulations. However, the bureaucracy of the bank secrecy principle usually becomes an obstacle and barrier, ie: to obtain information from the Bank on any matters relating to a person's account there must be consent from the account holder, or it could be that the account holder has deliberately disappeared and his whereabouts are unknown, on the other hand by instantly the financial services authority can provide immediately, but must wait for a relatively long time lag, the process is estimated to require a lag time of 1 week to up to 2 weeks. However, except in situations that are highly political or have a significant impact on society, the licence can be granted immediately. It is possible that the licence will be made directly but there must be an indication that the licence is for the main perpetrator who is already a suspect and then the application letter will be signed by the Chief of the Indonesian National Police or the Regional Police Chief.

In order to immediately get a signature from one of these officials, there are several stages that are not short, such as the existence of internal police bureaucracy, the investigator is far from the place of investigation and it will be conveyed to wait 1 week and can be delayed within a period of 2 weeks just to get a signature from one of these officials. In terms of determining the status of the perpetrator as a suspect, the case title process must fulfil the requirements of the Regulation of the Head of the Criminal Investigation Agency (Perkaba). In addition, the actions of investigators in the field must also be fast and responsive to ensure that the law enforcement of Money Laundering Crime can be carried out immediately. (Sutiawan et al., 2018)

Components that support law enforcement. Professionalism used in the process of preventing and combating criminal offences consistently affects the certainty of handling cases. According to Article 72, paragraph 3, by submitting a request for information, it must be submitted in writing with a concrete mention. In addition, pursuant to Article 72, paragraph 5, the letter must be signed and the request addressed to the relevant authority, as referred to in paragraphs (1) and (2).

The rise of crime in financial instruments will lead to an increase in high expenditure to cover the cost of law enforcement efforts, so it is an additional consequence for governments. One additional challenge is that simple criminal transactions have been left behind, but have travelled through high-tech banking systems with the advantage of security procedures and bank secrecy regulations, these crimes are not only within the country but also take place across borders, not to mention the need to find the origin of the wealth generated from the crime, which is usually the weakest point of the crime itself.

From this explanation, the process of the principle of bank secrecy is clearly at the core of ML. The bank secrecy of a country is a factor that causes money laundering to occur, and the strict rules or principles of bank secrecy within the scope of the country, the more often the funds are used by the perpetrator to split money outside the country or can be referred to as transnational crime. If the tracing of the identification of the crime can be done in an easy way, then the end of the disclosure process carried out systematically will be found the crime.

Conclusion

The application of the principle of bank secrecy must pay attention to aspects of legal certainty. This is due to the implementation of the eradication of money laundering offences, bank secrecy should not be an excuse for banks to avoid or delay providing information requested by law enforcement officials. The bank must comply with the procedures and mechanisms that have been established by law so that there is no abuse of the principle of confidentiality for improper purposes. In the process of implementing money laundering offences, it is necessary to run in a balanced, fast, and precise manner with effective law enforcement efforts. In addition, a structured and confidential information exchange mechanism between banks and law enforcement is important to strengthen the investigation and investigation process.

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