

## Prevention Policies for Money Laundering through Capital Market Instruments: The Case of Indonesia

Sutarno BINTORO<sup>1</sup>, Sjamsiar SJAMSUDDIN<sup>2</sup>, Ratih Nur PRATIWI<sup>3</sup>, Hermawan HERMAWAN<sup>4</sup>

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### Abstract

The phenomenon of money laundering through capital market instruments and various investment instruments in it is a challenge for law enforcement officials, particularly the Corruption Eradication Commission (KPK) in investigating money laundering crimes originating from corruption. This study aims to analyze comprehensively about: (1) implementation of policies on prevention and eradication of money laundering at the KPK in the context of handling money laundering on the capital market; and (2) an effective model for implementing policies to prevent and eradicate money laundering in the KPK in the context of handling money laundering on the capital market. By using a qualitative approach and Interactive Model analysis from Miles and Huberman, it was concluded that the results of the implementation of the policy of preventing and eradicating money laundering at the Corruption Eradication Commission in the context of handling money laundering crimes in the capital market had a positive impact on society, individuals and groups. The theoretical implications of the results of this study are related to the content of policy that is still relevant but for the context of implementation it needs to be refined or reconstructed by adding three elements, namely: communication, monitoring, and evaluation and security.

**Keywords:** Policy Implementation, Money Laundering, Corruption, Capital Market

**JEL Classification Code:** D73, F38, F68

### 1. Introduction

The rapid development of the Indonesian capital market has had a positive impact on economic growth and national development. In addition, the capital market also plays a strategic role as a source of funding and investment needs for Indonesia's infrastructure development. But on the other hand, the capital market sector is at high risk and

vulnerable to being used as a money laundering as stated in research by Elamin (2018) titled "Is Capital Market Integrity Really Essential for Anti Money Laundering (AML)?" and Jayasuriya (2006) titled "Good Stock Market Governance in the Context of Anti-Money Laundering Regimes".

According to Jayasuriya (2006) capital market vulnerability occurs due to several things, for example there is an individual investor or company that conducts money laundering activities is possible because there are officials who are corrupt and this has the support of stockbroking companies, stock exchanges and regulatory agencies. Another vulnerability is the nature of trading instruments and the existence of companies registered only as a cover for obtaining money from money laundering where the money is generated by legal or illegal means.

Money laundering in its implementation there are several types of activities that are usually done. According to Mahmoedin as quoted by Hendrawan (2011) these activities are usually carried out in the crime of money laundering, namely: (1) investment cooperation; (2) Swiss Bank credit collateral; (3) transfers abroad; (4) undercover business abroad; (5) disguised in gambling; (6) disguising documents; (7) foreign loans; and (8) engineering foreign loans.

<sup>1</sup>First Author and Corresponding Author. Faculty of Administrative Sciences, Brawijaya University, Indonesia [Postal Address: Veteran Street, Malang, East Java, 65145, Indonesia]  
Email: sutarno@student.ub.ac.id

<sup>2</sup>Faculty of Administrative Sciences, Brawijaya University, Indonesia.  
Email: sjamsiarsjamsuddin@gmail.com

<sup>3</sup>Faculty of Administrative Sciences, Brawijaya University, Indonesia.  
Email: ratihnurpratiwi@gmail.com

<sup>4</sup>Faculty of Administrative Sciences, Brawijaya University, Indonesia.  
Email: hermawan.ub.fia@gmail.com

While the instruments used for money laundering practices are Banks and other financial institutions, private companies, real estate, Deposit Taking Institutions and Money Changer, institutions for investing foreign money, gold and antiques, financial consultants, capital markets and money markets.

Capital market institutions are chosen as money laundering instruments because they are seen as a safe place for those who want to whiten their money. For example, it can be done by buying securities offered in the capital markets through a broker while maintaining the confidentiality of the identity of the perpetrators, such as using other people's accounts. Or it can also be done by conducting a private placement in a company where the company then goes public in the capital market. In addition to the capital market, national and international money markets are also often used by money launderers.

In Indonesia, the crime of money laundering is regulated on April 17, 2002 through Law Number 15 of 2002. The Act is the first legal rule governing money laundering offenses. However, not even two years, precisely on October 23, 2003, Law Number 15 of 2002 was amended by Law Number 25 of 2003. Furthermore, as the *modus operandi* and complex handling of money laundering crime, the Indonesian government in 2010 through State Gazette No. 122 passed Law No. 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. One of the reasons for the ratification of this Law is that the crime of money laundering not only threatens economic stability and financial system integrity, but can also endanger the joints of community, nation and state life based on the Pancasila and the Constitution of the Republic of Indonesia. 1945.

The Corruption Eradication Commission of the Republic of Indonesia (KPK) is one of the agencies given the authority to handle Money Laundering (TPPU) cases whose criminal acts originate from corruption. The authority of the KPK to investigate TPPU cases is expressly regulated in Article 74, namely: "Investigation of money laundering is carried out by criminal investigators of origin in accordance with procedural law and statutory provisions, unless otherwise stipulated under this law". Likewise, in the explanation of Article 74 which states "What is meant by" original criminal investigator "is an official from an institution authorized by law to conduct an investigation, namely the Indonesian National Police, Attorney's Office, Corruption Eradication Commission (KPK), Narcotics Agency Nasional (BNN), as well as the Directorate General of Customs and Excise, Ministry of Finance of the Republic of Indonesia. The original criminal investigator can carry out an investigation of the crime of money laundering if he finds sufficient preliminary evidence of the occurrence of a money laundering crime when conducting an investigation of the original criminal offense according to his authority.

The principles contained in Law No. 8 of 2010 can be used as instruments in preventing and combating criminal

acts of corruption. Although Law No. 8 of 2010 is clearly said to be a law to prevent and eradicate money laundering, but if it is explored and understood in depth, this law can be used to prevent and eradicate other criminal acts including corruption due to the relationship between corruption and money laundering is very closely as said by Husein (2013) and regulated in Article 2 of Law Number 8 of 2010. So the effort to prevent and eradicate money laundering from corruption is the same as preventing and combating corruption itself.

Granting the authority to investigate money laundering cases to the Corruption Eradication Commission is a step forward and should be appreciated because with that authority the KPK can directly handle money laundering cases that originate from corruption. In addition, by implementing the crime of money laundering, the perpetrators of corruption will be deterred considering the punishment will be more severe. This is in response to the results of research conducted by Alatas (1982) who concluded that weak legal action against officials who commit corruption causes corruption to flourish. He further explained that corruption cases at the top level are rarely handled seriously and are punished with severe punishment so that there is no deterrent effect.

The case of money laundering resulting from corruption carried out by Muhammad Nazaruddin in accordance with the statement of Lord Acton (1834-1902) who alluded to the problem of corruption in relation to power, namely "power tend to corrupt, absolute power corrupt absolutely" (power tends to corrupt, and absolute power will definitely commit corruption). As long as there is power the opportunity for corruption will remain. Therefore, opportunities for corruption must be closed. One of them is by implementing good governance.

As conveyed by Rasul (2009) that the application of good governance is very necessary in efforts to eradicate corruption in Indonesia, especially through effective and balanced prevention and enforcement strategies. The application of the principles of accountability, transparency and law enforcement in governance and development will be efficient and effective. Azam and Emirullah (2014), Ngo and Nguyen (2020), Bong and Premaratne (2019) have empirically assessed the impact of corruption on the economic growth of the nine selected Asia-Pacific countries in the 1985-2012 period. By using fixed and random effect estimation methods, the results show that corruption and inflation have a negative effect on economic growth in these countries.

In addition, there has been no previous research that examines the implementation of policies on prevention and eradication of criminal acts of money laundering (Law Number 8 of 2010) in the Corruption Eradication Commission in the context of handling money laundering on the capital market. All these various aspects need to be reviewed systemically, so that the research results are expected to be more holistic and substantive. Considering this aspect, the

present research is considered as something that has a novelty value. This research will focus on the policy of preventing and eradicating money laundering (TPPU) in Indonesia, the results of implementation in the KPK, KPK's efforts in the prevention and eradication of money laundering crimes in the capital market as well as the model of implementing policies on preventing and eradicating TPPU in the capital market originating from corruption in the KPK.

## 2. Literature Review

Administration in the sense of service according to Rewansyah (2011) is a ministry and ministry, so the essence of administrative science is the study of services and services carried out by those who serve in this case the state administrators to those who are served, namely citizens. So that administrative administration is a series of activities carried out by two or more people wherein these activities there is a process of cooperation to achieve predetermined goals. Purpose in administration is something that is useful and is done consciously or intentionally. So in administration there are big goals or ideals to be achieved. These ideals can relate to the problems of the state or society currently known as public administration or problems in other fields.

Research on the implementation of policies on prevention and eradication of money laundering at the Corruption Eradication Commission in the context of handling cases of laundering in the capital market is the domain of public administration. This study examines the implementation of a program of prevention and eradication of money laundering crimes involving various resources available in public agencies, in this case the Corruption Eradication Commission.

### 2.1. Public Administration Ethics

Plan (2017) says that the principle of public administrators acts in a responsible manner as the basis for developing the field of public administration.

*The principle that public administrators act in a responsible manner has been fundamental to the development of the field of public administration as a profession and scholarly discipline since its inception. Administrative responsibility is seen as the glue that connects administrative ethics to the more general questions regarding the proper role and behavior of unelected officials in a democratic system.*

On the other hand in relation to public administration ethics, Aktan (2015) emphasizes the importance of transparency in order to prevent corruption (Transparency in governance ensures reducing political corruption significantly). In addition, Aktan (2015) also explained about unethical behavior in government such as bribery, nepotism, rent seeking and so on.

*Unethical behavior in government is viewed as a situation where there is fraudulent or dishonest conduct or improper behaviour by people who are in a position or power. Bribery, extortion, embezzlement, the use of legislated powers by government officials for illegitimate private gain, nepotism, rent seeking etc. are some examples for unethical behavior in government.*

Public administrators must be free from corruption and should set an example in the administration of government so that public services can take place properly and public confidence increases.

### 2.2. Money Laundering Prevention and Eradication Policy

Money laundering can be understood as the transfer or disguise of money from illegal or illegitimate sources (dirty money) through legal channels from which the source of the money is unknown. So there are activities which constitute a process carried out by a person or organization to hide the origin of money or assets resulting from crime from the government or competent authorities such as law enforcement into the financial system so that if the money comes out of the financial system turns into money legal or illegal.

In 1999, Egmont Group which is a worldwide association of Financial Intelligent Units (FIU) held that the Egmont Training Working Group (ETWG). In the ETWG cases of money laundering were collected from all FIU members of Egmont Group. In the compilation 100 cases were chosen which tells the success stories of Egmont Group members. The compilation of money laundering cases from Egmont Group members is expected to be useful and be a lesson for each FIU.

The typology is currently a reference for Edmont Group members, which currently has 159 Financial Intelligent Units as of February 2019 and the Indonesian Financial Transaction Reports and Analysis Center (PPATK) is part of it based on Law No. 8 of 2010 concerning Prevention and Eradication of Actions Criminal Money Laundering.

### 2.3. Corruption

Pope (2007: 6–7) says that corruption encompasses all the behavior of public sector officials, both politicians and civil servants, who enrich themselves improperly and violate the law, or those close to them, by abusing power that is entrusted to them.

Furthermore, Klitgaard (1988) said that there is a formula that can explain the occurrence of corruption with the formula: "Corruption = Monopoly Power + Discretion by officials - Accountability (C = M + D - A)". This formula was proposed in connection with a strategy to prevent corruption that originates at the root of the problem of the emergence of

opportunities for corruption, namely that corruption occurs because of a monopoly power supported by discretion by officials but there is no accountability.

## 2.4. Capital Market

Usman (1997) states that theoretically capital markets (capital markets) are defined as trading long-term financial instruments (securities), both in the form of own capital (stocks) and debt (bonds), both issued by the government (public authorities) and by private companies. Thus the capital market is a narrower concept than the financial markets (financial market).

Along with the development of science and technology, capital market crime has unique characteristics. These characteristics are used by irresponsible parties to commit crimes and make the capital market a means of money laundering.

The first characteristic according to Sutedi (2008) is that the first item which is the object of a crime is information. Second, actors do not rely on physical abilities, but the ability to read the market situation and make most of it. The impact of this crime is fatal and widespread. Significant violations of the amount and quality will undermine the credibility of the capital market. To overcome this, balanced legal instruments, facilities, infrastructure and human resources are needed in the capital market.

Money laundering by utilizing the capital market as a target and means can be done by utilizing the formulation of capital market criminal acts by implementing money laundering methods. The process or stages are the same as money laundering in general, namely placement, layering and integration.

## 2.5. Good Governance

According to Santosa (2008), governance is said to be good (good and sound) if public resources and problems are managed effectively and efficiently and is a response to the needs of the community. While Rewansyah (2012) defines good governance as the existence and functioning of several public institutional devices in such a way as to enable the interests of the community to be guaranteed well. If further elaborated the institutional tools include:

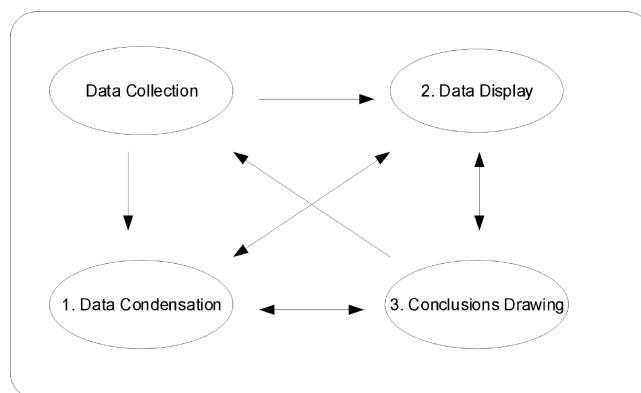
1. The existence of a clean and efficient bureaucracy;
2. There is an aspiring legislative and it is responsive to the interests of the community and has a good and constructive control tool for the government bureaucracy;
3. The existence of a reliable law enforcement system including law enforcement officers who have good integrity.

4. The existence of a strong civil society (civil society) to fight for the interests of citizens and control government institutions.
5. There is a balanced distribution of power and constructive control of each other.

The implementation of policies on prevention and eradication of money laundering (Law Number 8 of 2010) in the Corruption Eradication Commission is closely related to the rule of law principle in good governance where the implementation of Law Number 8 of 2010 is used to eradicate corruption, especially in relation to case handling money laundering in the capital market which originates from corruption.

## 3. Research Methodology

This study uses a qualitative research method which is a research procedure that produces descriptive data in the form of written or oral words from people and by observing their behavior. Data collection in this study was carried out through several sources, namely: informants, phenomena or events and documents. This research was conducted at the Corruption Eradication Commission of the Republic of Indonesia (KPK). Data collection in this study was carried out by observation, in-depth interviews and documentation. Data collection with in-depth interview techniques involved key informants, namely: KPK Leaders, Former KPK Leaders, Investigators and Public Prosecutors who handled Money Laundering, Muhammad Nazaruddin, Coordination and Supervision Specialist, Laboratory Specialist, and other related parties from PPAK, OJK, KSEI, IDX, academics and NGOs. Determination of informants is done purposively. The analysis presented by Miles, Huberman and Saldana is known as interactive model data analysis. The interactive cycle model referred to as follows:



**Figure 2:** Components of Interactive Model Data Analysis

Source: Miles, Huberman dan Saldana (2014:33)



#### 4. Results and Discussion

Prevention of TPPU in Indonesia is carried out by the PPATK agency as an independent agency that acts as a focal point and intermediary based on Law No.8 of 2010. Prevention of TPPU in Indonesia is carried out through supervision and reporting by applying the Principles of Recognizing Service Users or Know Your Customer.

Eradication of Money Laundering Criminal Acts  
Corruption Type:

1. Loss of State Finance
2. Bribes bribe
3. Embezzlement in office
4. Extortion
5. Cheating
6. Conflict of Interest in PBJ
7. Gratuities

Money Laundering Risk: the type of corruption most at risk is state financial losses and bribery. Meanwhile, gratification ranks third followed by a conflict of interest in the procurement of goods and services (PBJ), fraudulent acts, extortion and embezzlement in positions.

Money Laundering Method:

1. Placement
2. Layering
3. Integration

Money Laundering Typology:

1. Article 3 (Active Actor)
2. Article 4 (Active Actor)
3. Article 5 (Passive Actor)

Typology:

1. Concealment into business structure
2. Misuse of legitimate business
3. The use of fake identity.
4. Exploitation of matters relating to international jurisdiction.
5. Use of anonymous assets.

Handling of TPPU Cases in the Capital Market with Criminal Acts of Corruption: The KPK has succeeded in handling two cases of money laundering crimes in the capital market whose criminal acts were originally corruption, namely TPPU cases Muhammad Nazaruddin and Bambang Irianto. In total there have been 31 TPPU cases that KPK has successfully handled.

Thus, the Eradication of Money Laundering can be carried out by identifying types of corruption and money laundering risks, detecting money laundering methods, understanding money laundering typologies, the ability and number of human resources handling money laundering cases, understanding of capital markets and good governance will determine the successful implementation of policies prevention and eradication of TPPU in the context of handling TPPU in the capital market originating from criminal acts of corruption.

Positive impact on society, individuals and groups: The Results of the Implementation of TPPU Prevention and Eradication Policy in the KPK in the Context of Handling Money Laundering in the Capital Market are influenced by the variable content of policy and the context of implementation, namely:

1. Support (Government, DPR, PPATK, OJK, capital market actors, community, international).
2. Commitments of KPK Leaders.
3. Culture of integrity and egalitarianism.
4. Close cooperation between policy implementing actors.

Changes and acceptance in the community is not optimal. This result is influenced by the variable content of policy and context of implementation, namely:

1. Limited Human Resources (HR) both investigators, investigators and public prosecutors;
2. Competence of investigators, investigators and public prosecutors regarding TPPU has not been evenly distributed.
3. The understanding of investigators, investigators and public prosecutors regarding the capital market is still low.
4. There are no regulations that govern the execution of shares.
5. There are differences in perceptions related to the handling of TPPU, especially in criminalizing passive perpetrators (Article 5 of Law Number 8 of 2010);
6. The attitude of the people who are still permissive towards corruption;
7. The development of technology and information and the modus operandi of TPPU which is increasingly sophisticated and rapid.
8. The synergy between institutions dealing with money laundering from corruption is not optimal and there is still a sectoral ego.
9. There is no special unit that handles TPPU.
10. Corruption backlash (corrupt fight back).

Based on the results of the implementation of the TPPU prevention and eradication policy in the KPK in the context

of handling money laundering on the capital market, it can be concluded that the limitations of Human Resources (HR) both investigators, investigators and public prosecutors; the competencies of investigators, investigators and public prosecutors regarding TPPU have not been evenly distributed; Understanding of investigators, investigators and public prosecutors related to capital markets, differences in perceptions in handling TPPU, permissive attitude of the public towards corruption, development of ICT and TPPU's modus operandi are increasingly sophisticated and rapid; not yet optimal synergy between institutions dealing with TPPU originating from criminal acts of corruption, there are still sectoral egos, there is no special unit dealing with TPPU, corrupt fight backs determine the effectiveness and successful implementation of TPPU prevention and eradication policies originating from TPA corruption.

## 5. Conclusion

The implementation of the policy of preventing and eradicating money laundering (Law Number 8 of 2010) at the Corruption Eradication Commission of the Republic of Indonesia in the Context of Handling Money Laundering in the Capital Market has a positive impact on the community, individuals and groups. This result is influenced by variables of content of policy and context of implementation, namely: (1) Support (Government, Parliament, PPATK, OJK, capital market actors, community, and international); (2) Commitment of KPK Leaders; (3) Culture of integrity and egalitarianism; (4) close cooperation between policy implementing actors. However, changes and acceptance in the community is not optimal. This result is influenced by the variable content of policy and context of implementation, namely: (1) Limited Human Resources (HR) both investigators, investigators and public prosecutors; (2) Competence of investigators, investigators and public prosecutors regarding TPPU has not been evenly distributed; (3) the understanding of investigators, investigators and public prosecutors regarding the capital market is still low; (4) There are no regulations governing stock execution; (5) There are different perceptions related to the handling of TPPU, especially in criminalizing passive perpetrators (Article 5 of Law Number 8 of 2010); (6) There are attitudes from the public that are still permissive towards corruption; (7) The development of technology and information and the modus operandi of TPPU which is increasingly sophisticated and rapid; (8) the synergy between institutions dealing with money laundering that originates from corruption has not been optimal and there is still a sectoral ego; (9) There is no special unit that handles TPPU; (10) Corrupt back fighters (corruptor fight back).

The recommended model for the implementation of policies on prevention and eradication of money laundering in the context of handling money laundering in the capital

market is a model in which there is communication, monitoring and evaluation (internal supervision) and security (security) for policy implementers.

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