

The Convergence of Tax Rules and Money Laundering Crime in Indonesia

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Abstract: Indonesia, with its increasing size of the economy, cannot be separated from illegal activities in the form of money laundering. This phenomenon could be predicted from the size of the underground economy, which is quite large and more difficult to disclose because of its level of secrecy. This study tries to reveal the convergence of tax rules and money laundering crime in Indonesia. Convergence is carried out based on recommendations that have been applied in OECD countries. The objectives of this study addressed the treatment should be taken if any choices between tax revenue or combating money laundering. Although there is a provision in tax amnesty program that the authority could conduct the investigations separately, but basically there is still no convergence between Indonesia's tax rule and OECD recommendations. Tax revenue is the priorities for the tax examiner and tax auditor than combating the money laundering from proceeds of crime or possible acts of terrorism

1 INTRODUCTION

The underground economy is an integral part of the economic activities of most countries. The underground economy, ie, economic activities both legally and illegally missed from the calculation of Gross Domestic Product (GDP), also known as other unofficially economy or black economy, has now become a global issue (Scheineider & Enste, 2000).

Drug transactions, gambling, prostitution, smuggling, piracy, are activities that are classified as amoral and illegal in the eyes of the law. Legal activities are included in the underground economy because they are not recorded or not reported, so they are not included in the GDP calculation. The underground economy takes up a relatively high share in the GDP of every country in the world. They are thus giving rise to a tax gap that affects the collection performance and tax ratio. The value of the underground economy activity, which is quite large causes the loss of potential tax revenue, which should be collected by the government (Afdi and Purnomo, 2015). Illegal activities in the underground economy are more difficult to disclose because the level of secrecy is higher. At present Indonesia is a target market for underground activities in the circulation of illegal drugs. Advances in technology and

information in the era of globalization and progress in other fields facilitate the circulation of drugs across countries with Indonesia as the largest market for the distribution of illegal drugs in Southeast Asia. Approximately 70% of narcotics and similar illegal drugs circulating in Indonesia come from outside, such as Thailand, Laos, Cambodia and other exporting countries such as Latin America, Middle East and Africa (Iriawan, 2013).

The drug business is one business that is difficult to detect by law enforcement agencies. The large population and high economic development in Indonesia are the main attraction for the illegal drugs market to be open in Indonesia. The high number of demand and good market prices, the ease with which laws can be purchased also accelerates the development of this type of business. Within a year, no less than Rp52 trillion in money was successfully generated from the illegal drug business in Indonesia (Berisatu.com). In 2017, there were 325 drug cases with a total of 2,312 kilograms of methamphetamine drugs seized. The amount is higher than in the previous year (Tempo.co).

According to Welling (1993), money laundering starts from the existence of dirty money originating from the tax evasion and by breaking the law. The business of illegal drugs such as other underground economies is inseparable from money laundering.

Money laundering is carried out in an effort to disguise the original source of wealth obtained from the drug trade by hiding it into a legitimate business. In practice, money laundering from drug trafficking not only establishes relationships with other actors or government officials and law enforcement officials but also participates in the establishment of banking institutions that are classified as high-risk foreign banks in offshore financial centers (Savona, 2001). If the wealth of illegal activities can enter into a bank or other financial institution, the distribution will be easier, can be converted to other currencies, and used to invest in his business and pay for shopping. According to the Financial Action Task Force (FATF), estimates of the amount of money washed each year worldwide from illicit drug trafficking ranges from the US \$ 300 billion and the US \$ 500 billion.

Drug business activities are structured neatly and disguised by legal businesses by money laundering. Money laundering causes the main source of income for illegal drug businesses, and it is difficult to know the tax status mixed with money from legal businesses that can be taxed.

This study will reveal the convergence between money laundering and taxation provisions in Indonesia. Convergence is carried out based on recommendations that have been applied in various countries (especially OECD member countries) in addressing the treatment taken if there is a choice between purely remaining on tax goals in collecting state revenues or jointly combating money laundering.

2 LITERATURES

Drugs trade are one of the transnational crimes that have a wide scope of operations that is difficult; this causes the prevention of narcotics crimes to be difficult, both with persuasive and repressive efforts. Circulation of illegal narcotics has gone through various ages, genders, and the social and economic level of the community. The regulation of criminal sanctions in Law Number 35 the Year 2009 is quite adequate, applying criminal objectives on a twin-track system, by considering the retributive and rehabilitative effects (social improvement) of convicts.

Crimes given to narcotics offenders vary according to the level of crime committed, the heaviest sanctions are the death penalty. Narcotics crime is an extraordinary crime against humanity (extraordinary crime) so that enforcement requires

special, effective, and maximum treatment. One of the special treatments is by applying severe penalties, namely capital punishment. However, the use of criminal sanctions proved to be ineffective in overcoming narcotics crimes, marked by the increase in criminal acts of narcotics, residual perpetrators, the increasing variety of ways of smuggling narcotics both from within and outside the country.

Criminal cases in 2018 showed an increase in narcotics crime activities; drug offenses increased by 6.43% or 778 cases in the 3rd week of November 2018 compared to the 2nd week of November 2018 in only 731 cases in Indonesia. The number of suspected narcotics crimes also increased by around 5.35% from the previous 972 people to 1,024 suspects. (bisnis.com). Global and national policies regarding regulations that suppress drug trafficking and circulation have produced a side that is related to the increasing illegal trade and circulation of drugs (Cain, 2008).

Drug trafficking crimes are closely related to the money laundering process. The results of a UN survey (United Nations, 1992) suggest that drug trafficking is part of organized crime and money laundering is a way to manipulate the results. Stessen (2003) and Lilley (2006) reveal that a series of money laundering activities includes a series of activities carried out in an organized manner including the activities of placing a number of proceeds of crime into the financial system through financial service providers (PJK), coating the money through various financial transactions to obscure origin his proposal and reuniting it in the form of investment in a legitimate business in a certain period of time.

The pattern of Money Laundering from Drug Trafficking, by doing four phases, namely

- 1) The phase of placement of money from drug trafficking is included in the financial system by placement through banking institutions (Finckenauer, 2007; Lilley, 2006; Block & Weaver, 2004; Reuter & Truman, 2004). The money is the result of drug trafficking in cash. This money is then put into the financial system through banking institutions. Banking institutions that are a place to store money from drug trafficking are overseas banks that are classified as high risk (high-risk foreign banks). High-risk foreign banks are a means of placing money from drug trafficking due to having financial mechanisms and instruments. According to Lilley (2006), the placement is in the form of an anonymous bank account; internet banking and phone banking services; ATM cards and credit cards; availability of

banking services; unlimited cash withdrawal; and financial transfers without the need to include anonymity.

- 2) Layering phase in laundering money from drug trafficking is done to coat, break, or obscure money from drug trafficking contained in the financial system so that it is difficult to detect. Layering activities in money laundering from drug trafficking include smurfing, money changers, and buying stock portfolios on the stock market.
- 3) The Smurfing phase is an activity of transferring a sum of money to various other accounts in domestic and foreign banks (Reuter and Truman, 2004). Some of the proceeds from drug trafficking from traders (retail dealers or street dealers) are deposited with the main drug traffickers through the cartel of financial managers (Grosse, 2001). The money is deposited in cash and placed into the financial system through a banking institution. Then, the money from the drug trafficking that has been collected is broken down into various other cash fragments directed at the smurf. Furthermore, it is these smurf who coat the fractions of the drug trade by crediting them to various accounts in several banks. The money is credited with a number that is not much different.
- 4) Phase integration as a final activity in the money laundering process resulting from drug trafficking no longer has a direct relationship with the origin of the drug. There are three reasons for conducting business integration in money laundering from drug trafficking, namely (Lilley, 2006): trying not to involve many people in the business; have business staff who have work skills, and creating a business that is engaged in trade and has low production value. Integration in money laundering as a result of drug trafficking in the form of investments in the restaurant business, entertainment, sports, and property (real estate).

Meanwhile, the business forms used in the money laundering pattern are

a) Money changer

In laundering money from drug trafficking, there are activities to exchange some money from drug trafficking with foreign currencies. This money changer mode includes activities, namely a large amount of money from drug trafficking in the financial system in banking institutions exchanged for foreign currencies. Purchasing foreign currency

through electronic financial transaction services and instruments provided by banking institutions. Then, there was a transaction between money from drug trafficking using the local currency, which was exchanged for a number of money with foreign currency. As a result, there are differences in the value of the currency that has been exchanged. The case of money changers in money laundering activities resulting from drug trafficking is rampant in Colombia, Panama, and Indonesia (Grosse, 2001).

b) Purchase of stock portfolio

The stock market is an effective means of money laundering (Lilley, 2006). Various investors, both domestic and foreign, can carry out various financial transactions on the stock exchange (Yuhassarie, 2004). The money from drug trafficking is transferred to brokers and then managed in the stock exchange. The money is used to buy a number of stock portfolios from companies labeled infamous companies. In addition, these companies are classified as red flags or dotcom companies.

c) Invest in the restaurant business

The restaurant business is a business that has long been run by the Italian mafia in the United States (Finckenauer, 2007). The restaurant business is a pizza restaurant or other Italian specialty. In addition, according to Savona and De Foe (Savona, 2005), drug traffickers in China and Japan also have similar businesses.

d) Invest in the entertainment business

The entertainment business includes a casino, horse racing, and lotteries (Reuter & Truman, 2004). The casino business is a business that is rampant by drug traffickers (Savona, 2005). The velocity of money is fast becoming the reason. However, this gambling business can only be done in the country that legalizes it.

e) Invest in the sports business

The investment carried out by drug traffickers from Colombia is aimed at the sports business, namely the ownership of America soccer team (Lilley, 2006). Not only that, but the business of selling sports equipment is also a place for reuniting money from drug trafficking.

f) Investing in the property business (real estate)

Business in the property sector is done by buying real-estate through affiliated companies. Then, drug traffickers buy real-estate at a low price and resell it at market prices (Savona, 2005).

3 DISCUSSION

3.1 Money Laundering Crime Awareness

The OECD (2019) stated the importance of awareness of the crime of money laundering and funding of terrorism. Money laundering is a "white-collar" crime that threatens the economy and must be eradicated. It is important for each country to take firm action against the perpetrators of money laundering. For this reason, cooperation between authorized institutions is needed.

Fighting money laundering has several objectives. The first goal, for social purposes. Evil causes both tangible and intangible losses to third parties, individuals, and society as a whole. Money laundering can result in reduced public confidence in the credibility of certain professions such as lawyers, accountants, and notaries as well as trust in economic sectors such as real estate, hotels and banks, and other financial institutions. From the results of money laundering, actors can invest in large amounts so that it will have an impact on business competition and entrepreneurship. Actors have the opportunity to start, continue, and expand activities in the legitimate economic sector. This can create a perception that crime is beneficial and may inspire others to initiate criminal acts.

The second objective is to identify tax crimes and other financial crimes. Unreasonable transactions can identify tax crimes and all parties involved. At present, the Indonesian tax regulations are only focused on revenue. However, with these rules, it will not disclose the crimes that occur or the benefits they generate. Information exchange is needed with law enforcement agencies to be able to disclose criminal acts with the start of an investigation.

The third objective is to find and confiscate the assets of criminal offenders. By identifying unnatural transactions, money flows, and the conversion of proceeds of money laundering into assets such as real estate, vehicles, cruise ships, bank accounts, and virtual assets. This identification will help law enforcement agencies seize these assets during the investigation process.

The fourth objective is the legal context. The majority of world countries have a legal framework to eradicate money laundering and put it in separate criminal violations. The Criminal Code states a list of criminal acts originating from money laundering. The Financial Action Tax Force recommends setting tax crimes as a criminal offense from money laundering. Not all tax crimes constitute criminal origin from

money laundering; for example, sales not reported are not money laundering. If a country's tax authority identifies an indicator of money laundering when conducting a tax audit, this indicator can show the results of a serious crime, and it is very important for the tax authority to report it to authorized law enforcement in accordance with the existing legal framework.

3.2 Tax Amnesty and Money Laundering Crimes

The definition of income according to the Income Tax Law is any additional economic capability that is received or obtained by taxpayers, both from Indonesia and from outside Indonesia, which can be used for consumption or to increase the taxpayer's wealth in name and in any form. From the definition, it can be concluded that the income scope obtained by the taxpayer is almost unlimited, both the method of obtaining, the place of acquisition, the form of income, and the origin of where the income originates. The absence of regulations that limit the origin of income obtained by taxpayers results in legal loopholes. This was proven during the issuance of Law Number 11 of 2016 concerning Tax Amnesty.

The tax amnesty policy gives taxpayers space to report their assets and get forgiveness from tax sanctions. When tax amnesty is filed by money laundering agents, the tax amnesty policy seems to legalize money laundering and provide money laundering benefits. The advantage in question is that there is an opportunity for money laundering actors to repatriate the income they get from abroad while at the same time erasing the trace from where the income originates.

In fact, despite obtaining credit for unreported tax and property debts, the regulation does not eliminate the legal incidents of money laundering, so the case can still be investigated. One of the articles in the regulation raises a criminal dispute, namely in Article 20, which reads: "Data and information originating from a Statement and attachments administered by the Ministry of Finance or other parties relating to the implementation of this Law cannot be used as a basis for investigation, investigation, and/or criminal prosecution of Taxpayers ". In the article, it is explained that regulated crime includes criminal acts in the field of taxation and other criminal acts. Even so, the tax amnesty law only pays forgiveness to the two, namely administrative sanctions and tax crimes. However, this provision cannot be used for other legal violations. The data and information obtained cannot be used as evidence for investigations, investigations,

and / or criminal prosecutions of taxpayers. If there are indications of a crime found from existing data, law enforcement has the authority to conduct investigations separately. If there is a possibility of another criminal offense, such as a crime of money laundering, terrorism funding, or corruption which is not carried out on the basis of these regulations, the public has the right to file a judicial review.

Provisions concerning non-criminal law have been regulated in Article 44 of Law Number 6 of 1983 concerning General Provisions and Procedures for Taxation as amended by Law Number 16 of 2009. The purpose of the investigation in taxation is contained in article 44B, namely "for the interests of state revenues, at the request of the Minister of Finance "The Attorney General can stop investigating tax crimes as long as the criminal case has not been transferred to the court." Literally, it can be seen that the purpose of the tax provisions in the case of an investigation is purely for state revenues.

Meanwhile, the OECD (2019) since 2009 has recommended that tax auditors and the tax audit process actually help the process of disclosing money laundering. The technical provisions in the Minister of Finance Regulation (PMK) regarding procedures for inspection and procedures for examining the initial evidence of criminal acts in the taxation sector still do not accommodate OECD recommendations. Even in the Substitute Government Regulation number 1 the year 2017 concerning access to financial information for tax purposes, it only aims to secure state revenues.

4 CONCLUSION

Awareness of the existence of money laundering for tax auditors is needed. If a country's tax authority identifies an indicator of money laundering when conducting a tax audit, this indicator can show the results of a serious crime, and it is very important for the tax authority to report it to authorized law enforcement in accordance with the existing legal framework.

Indonesia applies a tax amnesty policy that raises disputes or differences of opinion in its application. In article 20, the data and information obtained cannot be used as evidence for investigation, investigation, and/or criminal prosecution of taxpayers. Then if there are indications of a crime found from existing data, law enforcement has the authority to conduct investigations separately.

Nevertheless, basically, there is still no convergence between Indonesia's tax provisions and

OECD recommendations which prioritize war on money laundering from proceeds of crime or from possible acts of terrorism.

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