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Money laundering using financial technology through e-commerce transactions

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Abstract

The rapid development of technology today makes all activities in human life can be carried out easily. One of them is to make payments through an application in a smartphone. Payment with these technological innovations or in other words, technology-based financial services are commonly referred to as fintech. Fintech is here to facilitate the process of financial transactions but also has a bad impact on the economic sector, one of which is money laundering. Money laundering activities can currently be carried out through fintech. The illegal act of money laundering through fintech is increasing difficult to know who is behind the scenes. The purpose of this study is to make an improvement in legislation in the field of financial technology, which until now is still nil. This research is carried out through a normative approach using a statutory approach and a conceptual approach. The result of this study is to provide a new policy on financial technology, especially in money laundering activities carried out on the use of e-commerce transactions where currently there is none.

Keywords: money laundering, fintech, e-commerce transactions

I. Introduction

At this time the world has entered the digital era where technological developments are developing more rapidly and continue to evolve until now, even everything can be solved in a very practical way, not only daily life but technology has also made changes in the business world. Currently, companies that do not have the ability to adapt to technological developments will not survive and companies are obliged to innovate so that they are not less competitive with other companies, the adaptation that can be done by companies has many ways such as the use of the internet, websites, social media, online payments and many more, the need to adapt applies to all types of businesses including banking businesses. Innovations carried out by companies are also carried out in the financial sector. It turns out that advances in financial technology in the financial sector do not always seem to have a positive impact. The use of financial technology actually increases the risk of money laundering crimes or what is commonly called money laundering. Money laundering is a global phenomenon that in its handling requires a process of international cooperation. However, money laundering

actors can still find ways and means to grow and develop continuously.¹ This fact makes money laundering actors more comfortable in using technology as a means of their crimes.

The practice of money laundering that occurs in the field of financial technology is due to the fact that there are still many vacancies in financial technology rules whose regulations are still nil, especially in the payment transaction system. The absence of regulations in the payment transaction system is caused by the absence of standardization in the payment transaction system. In addition, there is no regulation regarding obligations for the field of financial technology where these service providers report their financial transactions.

II. Method

This study used a descriptive method. Furthermore, the approach method that the author uses is normative legal research, namely legal research carried out by researching library materials or secondary data. Such legal materials are systematically compiled, studied and then a conclusion is drawn in relation to the problem under study.

Related to this research will use the Law on "money laundering" through Law Number 15 of 2002 concerning the Crime of Money Laundering. As amended by the Cyber Money Laundering Act. Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning The Crime of Money Laundering, and finally amended by Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Article 1 number 1 of Law No. 25 of 2003 states the definition of money laundering, as the act of placing transferring, paying, spending, giving, donating, entrusting, taking abroad, exchanging or other acts for property that he knows or should reasonably suspect is the result of a criminal act with the intention of hiding or disguising the origin of property so that it seems to be legal property.

Lebih lanjut Welling mengemukakan bahwa "money laundering is the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate." Sedangkan Frazer mengemukakan bahwa "Money laundering is quite simply the process through which "dirty" money (proceeds of crime), is washed through "clean" or legitimate sources and enterprises so that the "bad guy" may more safely enjoy their ill'gotten gains". Pada United Nations Convention Against Illicit Traffic in

¹ ET Bureau, "FIU urges to combat money laundering", ET Bureau, 20 Juli 2009, http://articles.economicstimes.indiatimes.com/2009-07-20/news/28479153_1_money-laundering-fiu-pmla/

¹ Narcotic, Drugs and Psychotropic Substances of 1988 yang sudah diratifikasi dengan Undang-undang No. 7 Tahun 1997, istilah money laundering pada pasal 3 (1) sebagai berikut: “the conversion or transfer of property, knowing that such property is derived from any serious (indictable) offence or offences, or from act of participation in such offence or offences, for the purpose of concealing or disguising the illicit of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his action; or The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property; knowing that such property is derived from a serious (indictable) offence or offences or from an act of participation in such an offence or offences”.²

This research also uses Law Number 11 of 2008 concerning Electronic Information and Transactions.⁸ Article I of the General Provisions, in point 1 states that what is meant by electronic transactions is one or a set of electronic data not limited to, but not limited to writings, sounds, images, maps, designs, photographs, electric data interchange (EDI), electronic mail ("electronic mail"), telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbules or perforations that have been processed that have a meaning or can be understood by a person who able to understand it. Meanwhile, "electronic transactions" are described in point 2, namely legal actions carried out using computers, computer networks, and/or other electronic media.³¹ In point 3, it describes the meaning of Information Engineering, which is a technique for collecting, preparing, storing, processing, announcing, analyzing and or disseminating information.²⁹ Information Systems are described in point 5, which is a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and or disseminate electronic information.²⁰

III. Discussion

A. Method Pencucian money

² The methods and techniques used in money laundering practice vary widely, which among others are applied by money launderers in the banking and non-banking sectors by utilizing

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² Sutan Remy Sjahdeini, *Ins and Outs of Money Laundering and Terrorism Financing*, 2007, PT Pustaka Utama Gravity, Jakarta, p. 2

² professional facilitators, the establishment of fake companies, investments in real estate, the purchase of insurance products and securities companies, and the misuse of corporate vehicles. Likewise, in general there are three methods of money laundering aimed at manipulating and changing the status of illegal funds (proceeds of crime) into legal funds.³⁴

The money laundering tools used in financial technology are very difficult for law enforcement to trace. Because the evidence used in this electronic evidence must receive special attention. Why is it said to have to get special attention because electronic evidence requires the existence of a law of proof to be flexible enough to deal with its nature which tends to be very difficult to prove.⁵

Proof of the consecration of money is considered quite difficult because the funds that are hidden or disguised the origin of the money / funds or assets resulting from the criminal act are processed through various financial transactions so that it looks as if they came from legitimate / legal activities. Money Laundering began in America in 1930, where at that time the crime mafia bought a clothes laundering company as a place to launder money from the proceeds of its crimes, from here the term money laundering developed. Previously, in the 1900s Alphonso Capone or better known as Al Capone, the greatest criminal in America in the past, laundered black money from his crime attempts by wearing the genius Meyer Lansky, a Pole. Lansky, an accountant who laundered Al Capone's crime money through a laundry business or commonly referred to as laundry.⁶

I think "money laundering" is applied to financial transactions related to organized crime, but now the limitations of the notion of money laundering are less than that. Money laundering activities were expanded by the government regulator United States Office of the Comptroller of the Currency which eventually included any financial transactions that generated value as a result of illegal acts, such as the criminal act of tax evasion. Currently, illegal money laundering activities have the potential to be carried out by both individuals and small and large businesses

³ Sutan Remy Sjahdeini, *The Inside and Outs of Money Laundering and Terrorism Financing*, (Jakarta: Graffiti Main Library, 2004), p. 128-138.

⁴ E.R. Burke, "Tracing Illegal Proceeds Workbook", Investigation Training Institute (2001), hal. 15.

Compare that to Dragos Lucian's Radulescu who says that the most commonly used method is for hiding dirty money is represented by: (1) false overcharge; (2) false lawsuits; (3) layering; dan (4) reverse money laundering. Radulescu Dragos Lucian, "The Concept of the Money Laundering in Global Economy", *International Journal of Trade, Economics and Finance*, Vol.1, No. 4, December, 2010 (2010-023X).

⁵ Bainbridge, D. I. *Computer And The Law*, diterjemahkan oleh Prasadi T. Susmaatmadja, Law And Computers. Jakarta: Sinar Graphics. (1993).

⁶ Sumadi, A Study of Money Laundering Cases in a Review of the Shari'a Economic System, *Scientific Journal of Islamic Economics*, 3(03), 2017. <http://jurnal.stie-aas.ac.id/index.php/jie>.

and corrupt officials also coupled with members of organized crime such as drug dealers or mafia. It's a corrupt state or important institutions through a very complex network.

The results of money laundering crimes are wealth obtained from criminal acts of corruption, bribery, narcotics, psychotropics, labor smuggling, migrant smuggling, in the field of banking, in the field of capital markets, in the field of insurance, customs, excise, trafficking in persons, illicit arms trafficking, terrorism, kidnapping, theft, embezzlement, fraud, gambling, prostitution, in the field of taxation, in the field of forestry, in the field of marine and fisheries, as well as other criminal offenses whose criminal threat is 4 (four) years or more.

B. E-commerce transactions become a tool for money laundering

The world has entered a digital era where technological developments are developing rapidly and continue to evolve until now where everything can be solved in a very practical way, not only daily life but technology has also made changes in the business world. The business world in which there are important transactions is also changing. Transactions that in the digital world are called e-commerce transactions require regulations that can provide legal force. Although in Indonesia it has been formulated regarding e-commerce transactions as stated in Law Number 11 of 2008 concerning Electronic Information and Transactions.

However, the new challenge in e-commerce transactions needs special attention, because there are many crimes that are unwittingly misleading. One of them is the e-commerce transaction process that can occur money laundering activities. In addition to money laundering, there are also other crimes, namely by using telemarketing. Where to offer goods via telephone which lately has become more lively in cyberspace (virtual world or cyber space). Then there is also the presence of e-mail shipments via the internet or sending a short message system (SMS) via mobile phone yang containing misleading information. Not to mention the attempts of hackers to break into the electronic files of government agencies or institutions, companies, or individuals with the intent to steal information. In fact, it is not uncommon for them to deliberately change the stored electronic data, so that it can be used irresponsibly.

Money laundering processes in general can be grouped through three stages; First, placement, which is an effort to place cash derived from criminal acts into the financial system, especially the banking system.⁷ In this case, there is a physical movement of cash either through the

⁷ Sutan Remy Sjahdeini, 2014: 35

⁷ smuggling of cash from one country to another, the combination of cash derived from crime with money obtained from legitimate activities⁸ Money laundering by this placement method has been created Cash Transaction Report or CTR as a report of financial transactions carried out in cash. Second, layering where there is a risk of sending funds from unknown third parties and then the funds are transferred from one card to another known as electronic money.⁹ The third is integration or the stage of "drying", or "repatriation" or "integration", that is, the laundered money is returned in a form that according to the rule of law is "legal money".

The three parts of grouping money laundering can be done through e-commerce transactions. The occurrence of e-commerce transactions is a virtual asset transaction with real money that has been converted to a special private exchange rate on the site so that it becomes electronic money that is not an official digital currency, causing transactions with the use of that currency not to be tracked by official entities.¹⁰

E-commerce transactions that are part of Fintech or financial technology because transactions carried out digitally are part of financial technology. In terminology "Fintech" (the word used is Fintech, Fin-tech, or FinTech) is a new vocabulary which can be interpreted as how this internet-related technology is in business activities, especially financial services businesses such as money loans or other banking financial transactions. The fintech refers to financial sector innovators who take advantage of the availability of communication, especially through the internet and automated information processing. Such companies have new business models that promise more flexibility, efficiency, opportunities and security, than established financial services.¹¹

Financial technology, where there are e-commerce transactions, is indeed vulnerable to being used as a means of money laundering if government control does not run well. Therefore, industries based on digital technology must be more closely monitored by law enforcement, which needs to be considered the balance aspect in making regulations.

¹¹ E-commerce transactions that have informative Fintech services, will be able to drive conventional bank-based payment services with increased convenience and high efficiency.¹²

Therefore, there are at least 6 (six) fintech activities regulated in the regulation of the payment

8 Sumadi, A Study ⁵ Money Laundering Cases in a Review of the Shari'a Economic System, Scientific Journal of Islamic Economics, 3(03), 2017. <http://jurnal.stie-aas.ac.id/index.php/jie>. 2017: 188

9 Prihartini, T. (2016). Cyberlaundering. Retrieved Date Aug 1, 2022 dhttps://dosen.perbanas.id/cyberlaundering is 10 Shamsuddin, et al., 2017

11 Gomber et al., 2017

12 Moon & Kim, 2017

system and financial services system in Indonesia, namely: First, EMoney. The legal basis for e-money is regulated in PBI No. 11/12/PBI/2009 jo. PBI No. 16/8/PBI/2014 jo. PBI No. 18/17/PBI/2016 concerning Electronic Money. There are two types of electronic money:¹³

1. Registered Electronic Money, is Electronic Money whose identity data of the holder is recorded / registered with the issuer of Electronic Money. In this connection, the issuer must apply the principle of knowing the customer in issuing Registered Electronic Money. The maximum limit on the value of Electronic Money stored on chip media or servers for registered types is IDR 5,000,000.00 (five million Rupiah).

2. Unregistered Electronic Money, is Electronic Money whose identity data of the holder is not recorded / registered with the issuer of Electronic Money. The maximum limit on the value of Electronic Money stored on chip media or servers for unregistered types is IDR 1,000,000.00 (one million Rupiah).

Second, E-Wallet. The legal basis for e-wallets is PBI No. 18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing. An electronic wallet (ewallet) is an electronic service to accommodate funds to make payments. Alat payment using card and/or electronic money.

Third, Payment Gateway. The legal basis for Payment Gateway is PBI No.18/40/PBI/2016 concerning the Implementation of Payment Transaction Processing. Payment Gateway is an electronic service that allows merchants to process payment transactions using payment instruments using cards, electronic money, and/or Proprietary Channels.

Fourth, Peer to Peer (P2P) Lending. The legal basis for Peer to Peer (P2P) Lending is POJK No. 77 / POJK.01 / 2016 concerning Information Technology-Based Money Lending and Borrowing Services. Information Technology-Based Money Lending and Borrowing Services is the implementation of financial services to bring together lenders by receiving loans in order to carry out loan agreements in rupiah currency directly through an electronic system using the internet network.

Fifth, Mutual Fund Marketplace. The legal basis for the mutual fund marketplace is POJK No. 39 / POJK.04 / 2014 concerning Mutual Fund Selling Agents. Mutual Fund Selling Agent

¹³ Communication Department of Bank Indonesia. (2020). What Is Suspicious Financial Transaction Money from Electronic Money National Seminar on Law, Semarang State University, 7(2) 2021 475 Electronics. Retrieved 8 May 2021, from <https://www.bi.go.id/id/edukasi/Pages/Apa-itu-UangElektronik.aspx>

(Mutual Fund marketplace) is a party who sells mutual fund securities based on a cooperation contract with the Investment Manager who manages the mutual fund.

Sixth, the Insurance Marketplace. The legal basis for the insurance marketplace is POJK No. 69 / POJK.05 / 2016 concerning the Implementation of Insurance Company Business. Insurance Brokerage Company is a company that organizes consulting and/or consulting services in closing insurance or sharia insurance and handling the settlement of claims by acting on behalf of the policyholder, insured, or participant.

Fintech activities in e-commerce transactions through the internet open up greater opportunities for money laundering activities. The all-risk that occurs is the possibility of sending funds (ciberpayment) from an unknown third party and subsequently the funds are transferred from one card to another. Especially if there are fintech activities in e-commerce transactions that are not registered, they will be very vulnerable to becoming a place for money laundering and various other criminal acts.

The existence of e-commerce ultimately opens up opportunities for financial criminals to carry out their actions. The development of digital technology, especially in e-commerce transactions, forms a practice and a greater form of crime, for example the practice of money laundering which is supported by technological developments which is described as white collar crime. However, technology also offers solutions to overcome it. Artificial intelligence is spearheading the eradication of financial crime in the digital age, including money laundering. Artificial intelligence-based AML (Anti-Money Laundering) solutions help analysts by automating the process of searching, mapping and correlating the activities of companies or individuals who have been marked as committing fraudulent activities.

The practice of money laundering takes advantage of business activities that are currently increasingly broad in scope, increasingly complex, and across jurisdictional boundaries. This inter-jurisdictional gap ultimately has the potential to open up opportunities for money laundering practices. The use of increasingly varied modes in money laundering practices, especially in e-commerce transactions, has penetrated into various sectors both in financial system institutions that have used fintech and outside the financial system, which has a negative impact on people's lives, especially in the economic and business sectors. In the practice of money laundering using fintech, it will be easy to hide their true identity, because they can have unlimited on-line access and they can control their bank accounts from any part of the world.

The negative impact caused in people's lives on the practice of money laundering through fintech in e-commerce transactions does look as if it is a victimless practice. Although the practice of money laundering is not like ²² other crimes such as theft, murder, fraud, embezzlement, and other criminal acts that leave victims. However, in reality, the practice of money laundering activities, especially in fintech in e-commerce transactions, has had an impact on the economic and business sectors which have had a significant adverse impact.

IV. Conclusion

⁵ The practice of money laundering is an attempt to conceal or disguise the origin of money or wealth resulting from criminal acts through various financial transactions so that the money or harta wealth appears as if it came from legal activities. Adanya innovation in financial technology contained in e-commerce transactions actually increases the risk of money laundering from the proceeds of drug crime, gambling, and terrorism financing. Payment with technological innovation using fintech which is used for money laundering will have a bad impact on the economic field. Money laundering can reduce state revenues while complicating monetary control, also causing a rise in country risk, while micro-enactment will create a high cost economy and cause unfair business competition. Money laundering activities can currently be carried out through fintech. The illegal act of ⁷ money laundering through fintech is increasingly difficult to know who is behind the scenes.

Globalization and interconnection make cross-border economic crimes increasingly sophisticated and organized. E-commerce transactions, which are supposed to be an facilitated activity, are actually used by people ¹⁰ for money laundering events. The need for a review and an improvement of legislation in the field of financial technology, which until now is still nil. The government should provide a new policy on financial technology, especially in money laundering activities carried out on the use of e-commerce transactions where there is currently no such thing.

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