

Implementing Customer Due Diligence Principle on Financial Services Corporation in Order to Prevent and Eliminate Money Laundering

Sunarmi¹, Detania Sukarja¹, and T. M. Lubis¹

¹Faculty of Law, Universitas Sumatera Utara, Jalan Universitas Nomor 4, Kampus USU, Medan, Indonesia

Keywords: Customer Due Diligence Principle, Financial Services Corporation, Money Laundering.

Abstract: Money Laundering, a white collar crime causes negative effects such as the loss of the government's control over its economic policies, undermining the integrity of economic markets, undermining corporate sectors, the emergence of an economic distortion and instability, and it reduces the country's revenue. A financial services corporation as the vessel where money laundering was conducted must perform a customer due diligence principle, however unfortunately, it has yet to be implemented, and therefore it is difficult to detect the activities of money laundering. The purpose of this research is to understand and analyze a financial services corporation that implements the customer due diligence principle in order to prevent and eliminate money laundering. This research is based on explanations or inventions on the anti-money laundering law field. The results of this research shows that there are still lots of financial services corporation Industry except for banking companies, insurance companies, and pawnshops that has yet to implement the customer due diligence principle even though this has been clearly regulated on Elucidation of Article 18 point (2) Law No. 8 of 2010 and Various Bank Indonesia Regulation (PBI).

1 INTRODUCTION

Money Laundering is considered as a white collar crime which caught international attention and concerns including Indonesia's. This is due to the remarkable effect that money laundering itself causes. Money laundering may hamper a state's progress, from social, economics, even cultural aspects (Amrullah, 2004). John Mc. Dowel and Gary Novis stated that there are a few impacts that money laundering causes which are: the loss of the government's control over its economic policies, undermining the integrity of economic markets, undermining corporate sectors, the emergence of an economic distortion and instability, it reduces the country's revenue from tax payment sources and it also causes the damage of a country's reputation (Syahdeini, 2004).

In an economic stand point, money laundering may: undermine a legitimate corporate sector owing to the fact that money laundering is usually done using a front companies to conceal the illegitimate cash with a legitimate cash so that a legitimate and clean business will lose the competition to those

companies that conducted a money laundering; it undermines the integrity of economic markets because the financial institutions are relying on funds that were made out of crime may face the danger of liquidity; it causes the loss of government's control over its economic policies owing to the fact that money launders invest their funds in countries that are less likely to detect their money laundering activities rather than investing in countries that gives them a higher rates of return; furthermore, it may cause an economic distortion and instability owing to the fact that money launders are not interested on making profits out of their investments and instead they are more interested in protecting their labor of crime and the funds that they have been placed on doesn't have to effect the receiving country's economy. For the government, the follow-up impacts are the increased of financial crimes and it also generates a high social cost especially on the cost to increase its law enforcement efforts.

In relation to the increased potential of financial crimes, effective banking supervision principles were introduced by the Basel Committee on Banking

Supervision on Core Principles for Effective Banking Supervision stated that implementing Customer Due Diligence is considered an important factor on protecting the well-being of the bank, as well as to prevent various risks. The purpose of this principle is so that banks may be protected from various risks such as operational, law, concentrated transactions, and reputation risks, with those risks being taken care of, banks will not be used as a vessel or an object of the perpetrators to money launder their labor of crime.

In order to prevent and eliminate money laundering, it is important to conduct the customer due diligence principle to every financial services corporation possible so that data or identity of a customer and their transactions would be recognized by the financial services corporation, hence they could categorize those transactions as a suspicious financial transactions. However, in reality the customer due diligence principle has yet to be conducted by the financial services corporation. The importance of implementing financial services corporation's customer due diligence principle correctly and maximally to prevent money laundering activities accompanied by an effective regulation and supervising systems.

2 RESEARCH METHODOLOGY

This research uses the normative juridical approach supported by the empirical juridical approach with the purpose is to gather the secondary data in a form of inventory of laws which are gathered by document studies. Empirical data gathering is to receive a primer data which was gathered directly from the respondent by conducting questionnaires and interviews.

This research is conducted using the normative juridical approach and supported by the empirical juridical approach. The data collecting is conducted by document studies, questionnaire and interviews. The Respondent Consists of Banks, Insurance Company, Savings and Loans Cooperative, Foreign Exchange Company, Securities Company, Automotive Showroom Company, Real Estate Company, Jewelry and Precious Metal Company as informants on money laundering. The interviews were conducted towards The Financial Services Authority (OJK) and Indonesian Financial Transaction Reports and Analysis Center (PPATK).

3 RESULT AND DISCUSSION

3.1 The Negative Impacts of Money Laundering

Money laundering has a negative impact which is disruption towards the economic stability. Moreover, money laundering has a very high potential to disrupt both national and international economy, this is because money laundering will jeopardize an economic effective operations and it will cause poor economic policies. This means that money laundering will cause a sharp fluctuation on exchange rates and interests, therefore, it will slowly destroys the financial market and it will decrease the public trust on the financial system that may increase the risks and instability of the system itself, it may also decrease the world's economic growth (Nasution, 2007). With regard to those impacts, the effort to prevent or eliminate money laundering is by conducting "follow the money" approach. This approach is conducted by involving numerous parties (known as Anti-Money Laundering Regime) which each of them has a specific role and a significant functions, for instance the Informant, The Supervising and Regulating Institution, Law Enforcement Institution, and other concerning parties. Preventing and eliminating money laundering must involve the cooperation between all law enforcement body and the financial services corporation and it is mandatory to be conducted, this is because in a legal structure that was mentioned by Lawrence M. Friedman, it is impossible to conduct if a legal structure, legal culture, and legal substance is not in a single system that works well (Basuki, 2001).

3.2 Financial Services Provider Corporation

The principle of customer due diligence must be conducted by every single financial services corporation as an informant as it was regulated on Article 17 of Law No. 10 of 2008 as follows: a. financial services providers are 1. Bank; 2. Finance company; 3. Insurance and Insurance Broker Company; 4. Financial Institution on Retirement Funds; 5. Securities Company; 6. Asset Manager; 7. Custodian; 8. Trustee; 9. Posts as a Giro Provider; 10. Foreign Exchange Trader; 11. Organizer of a Card Payment Method; 12. Organizer of E-money and/or E-wallet; 13. A Saving and Loan Cooperation; 14. Pawnshop; 15. Company Engaging

in Commodity Futures Trading; or 16. A Remittance Business Organizer. b. provider of goods and/or other services: 1. Property Company/Agents; 2. Motorized Vehicle Trader; 3. Pearls and Jewelleries/Precious Metal Trader; 4. Arts and Antique Trader; or 5. Auction Room.

Preventing money laundering may be applied through conducting customer due diligence especially on banks to prevent savings that were received through money laundering.

3.3 The Obligation to Conduct Customer Due Diligence Principle

In Indonesia, customer due diligence principle was introduced on Bank Indonesia Regulation (PBI), it adopted the recommendation that was issued by Financial Action Task Force (FATF) with regard to the efforts of preventing money laundering and preventing terrorism funding by using banking facilities and products. Within this regulation, the terminology of “know your customer” was converted to “customer due diligence (CDD)”. CDD is an “activity in a form of identification, verification, and supervision that a Bank conducted to ensure that a transaction is in accordance with the profile of the future customer, WIC (Walk in Customer), or customer. Besides the CDD there is also a term called “enhanced due diligence” (EDD). EDD is an in-depth CDD activity that a Bank conducted when they are encountering their future customer, WIC, or a high risked classified customer, such as politically exposed person, and the possibility of money laundering and terrorism funding.” (Article 1 Point 7 & 8)

In order to prevent and eliminate money laundering it is mandatory that all of finance services corporation to conduct a customer due diligence. With the following interests: 1. To avoid/reduce the Business risk, Banks must conduct a cautious principle, and one of the efforts of conducting a cautious principle is to conduct the CDD, 2. To avoid money laundering and terrorism financing in banks, 3. To aid the efforts of law enforcement, especially on money laundering.

Based on the results of researches that was conducted on financial services corporations, one can learn that the customer due diligence principle has yet to be conducted by a considerable amount of the financial services industry, with various reasons such as the company claimed that they did not know the principle, they knew about the principle but chose to prioritize their business interest rather than the rule of law. Even though through preventing

money laundering it will also prevent the negative implications of money laundering itself which are:

Letting the society enjoy an illegitimate funds, which means an organized crime is authorize to build an illegal business foundation and letting them enjoy their labors of crime. This practice will cause a dishonest competition. With a permissive treatment on money laundering, aren't we taking part on building the ethos of a dishonest competition as well? The decrease of business moral, legal authority will drop dramatically, materialistic oriented world is strengthened and so forth. The development of this practice will weaken the financial strength of society in general. The numbers that reflects the indicator of society's macro economy level of reliability will drop owing to the fact that there is too much money flowing around outside the economic system's control in general (Meliala, 1993).

4 CONCLUSION

The responsibility to conduct a customer due diligence principle has a strong legal basis behind it, it is regulated under Law No. 8 of 2010 on Preventing and Eliminating Money Laundering and also under Bank Indonesia Regulation (PBI) No. 3/10/PBI/2001 on Implementing Know Your Customer Principles which was later converted to Bank Indonesia Regulation (PBI) No. 5/21/PBI/2003. On 2009, Bank Indonesia Regulation (PBI) No. 5/21/PBI/2003 on Implementing Know Your Customer Principles was perfected on Bank Indonesia Regulation (PBI) No. 11/28/PBI/2009 on Implementing Anti-Money Laundering Program and Preventing Terrorism Funding For Commercial Banks, which was later updated to Bank Indonesia Regulation (PBI) No. 14/27/PBI/2012. Only banks and insurance companies that has formed a taskforce specifically to eliminate money laundering, financial services corporation industries however has yet to conduct those responsibilities. This causes difficulties to prevent and eliminate money laundering. The regulatory and supervisory institutions has yet to conduct itself optimally on supervising the implementation of customer due diligence principle on financial services corporation industries. Viable solutions includes socializing, constant and gradual supervision, and giving out strict sanctions.

REFERENCES

- Al Faqir, A., 2017. *12 Fokus Kerja PPATK Tahun 2017*, Published on Monday 9 January 2017, accessed on 8 June 2017, <<http://www.hukumonline.com/berita/baca/lt58736a0523edb/12-fokus-kerja-ppatk-tahun-2017>>
- Amrullah, MA., 2004, *Tindak Pidana Pencucian Uang (Money Laundering)*, Malang, Banyumedia Publishing.
- Eddyono, SW & Chandra, YI., 2015. *Mengurai Implementasi Dan Tantangan Anti Pencucian Uang Di Indonesia*, Jakarta, Institute For Criminal Justice Reform.
- Jahja, JSH ., 2012. *Melawan Money Laundering*, Jakarta, Visi Media.
- Husein, Y., 2004. *Upaya Memberantas Pencucian Uang (Money Laundering)*, Bandung, Makalah disampaikan dalam ceramah Program Pascasarjana (S2) Bidang Kajian Utama Hukum Pidana Universitas Padjadjaran.
- M. Friedman, L., 2001. *American Law an Introduction, dalam Wishnu Basuki, Hukum Amerika Sebuah Pengantar*. Jakarta, Tata Nusa 2nd ed.
- Meliala, A., 1993. *Mengungkap Kejahatan Kerah Putih (White Collar Crime)*, Jakarta, Pustaka Sinar Harapan.
- Nasution, B., 2007. *Hukum Kegiatan Ekonomi*, Bandung, Books Terrace &Library.
- Siahaan, N.H.T., 2005. *Pencucian Uang dan Kejahatan Perbankan*. Jakarta, Pustaka Sinar Harapan.
- Syahdeini, SR., 2004. *Seluk Beluk Tindak Pidana Pencucian Uang dan Pembiayaan Terorisme*, Jakarta, PT. Pustaka Utama Grafiti.

