

Law Enforcement against The Abuse of Money Laundering Crime Companies

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Abstract. *The purpose of this study is to find out the forms of money laundering using shell company media and to understand the forms of legal settlement in terms of Indonesian legal regulations and other relevant legal sources as comparisons and references, it is hoped that this will open wider insights for writers and readers. This research technique uses a normative juridical approach. The type of data used in this study is secondary data which consists of primary legal materials, secondary legal materials, and tertiary legal materials that are relevant to this thesis. Money laundering is a concern for all countries in the world, including Indonesia, because its impact greatly affects the economy and stability of a country. The perpetrators of money laundering have their own specific ways and develop over time regarding how and where they hide the proceeds of their crimes. Shell companies have characteristics to support money laundering activities because they tend to be anonymous. Its characteristics also make it difficult for a country's authorities to be able to identify whether the transaction contains aberrant elements, because the position of a shell company is outside the jurisdiction of its owner. Developments regarding the investigation of fraudulent funds regarding shell companies prove that they can take advantage of this medium to commit money laundering crimes with various cases and methods. Indonesia is one of the countries that are hunting for the assets of its citizens who own shell companies by making various efforts such as tax amnesty, repatriation, and cooperation in various fields in an effort to exchange information with other countries.*

Keywords: Companies; Crime; Laundering; Money; Shell.

1. Introduction

In general, the crime of money laundering can be explained as the activity of transferring, using, or carrying out other actions on the proceeds of a crime committed by organized criminals with the aim of hiding or obscuring the origin

of the money originating from the proceeds of the predicate crime so that it can be used as if - as if the action was legal without detecting that the money came from a criminal act.¹Meanwhile, Black's Law Dictionary provides an explanation of money laundering, namely: "The term used to describe investment or other transfers of money flowing from racketeering, drug transactions, and other illegal sources into legitimate channels so that it's original source cannot be traced".²The translation "money laundering is used as a term that describes money investments or money transactions originating from organized crime activities with the aim of investing or transactions through legitimate channels, so that the original source cannot be traced back". Meanwhile, acts concerning money laundering in Indonesia are regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (hereinafter referred to as the TPPU Law).

Law enforcers and the public must take part in eradicating money laundering by upholding the current law in order to achieve law enforcement and the objective of eradicating money laundering itself. Execution of convicts is very important where the role of the prosecutor is needed as an executor who cooperates with correctional institutions in carrying out sanctions for convicts. The provision of criminal sanctions for perpetrators of money laundering which are categorized as extraordinary crimes at least provides a deterrent effect for the perpetrators.

Variations in hiding the proceeds of crime have become interesting in the last decade or so. They have many ways and certain methods of hiding their money so that it is not known and detected by a country's financial authorities. One of the methodologies that will be discussed in this thesis is the shell company media whose way of working is considered to take advantage of loopholes in domestic and foreign regulations.

The definition of a shell company in outline is a company on paper. This means that shell companies do not have buildings, offices, employees, and only the parties involved are mentioned without mentioning the nominal shares in the company. Even so, this kind of company has business activities such as bank accounts, passive investments, and company assets. Shell companies are categorized as Special Purpose Vehicles (SPV) whose establishment has special purposes such as tax avoidance and investment. The term shell company became popular in 2017 – 2018 amid the government's incessant pursuit of trillions of rupiah assets belonging to Indonesian citizens (WNI) abroad for tax recovery. At

¹Yunus Husein, 2003, "PPATK: Duties, Authorities, and Their Role in Eradicating Money Laundering Crimes", *Journal of Business Law*, Volume 22 No. 3, p. 26.

²Henry Campbell Black, 1991, *Black's Law Dictionary*, Sixth Edition, West Publishing. Co. St. Paul Minn, p. 611.

the time,³Shell companies have the potential to violate the law if used as a vehicle for business activities such as making fraudulent transactions, tax evasion, maintaining business confidentiality, hiding assets from creditors, corruption, drugs and money laundering. The method used by money launderers is to divert funds to shell companies that are outside the jurisdiction of Indonesia. Unfortunately, public understanding of criminal acts related to shell companies is still low, even though the potential losses in this way are very large.

The peak of the excitement regarding the above case was in 2016 when a document called the Panama Papers was leaked and caused global chaos. Approximately 140 world politicians, 12 leaders and former leaders of countries are named in 11.5 million documents that reveal alleged secret financial scandal practices. A total of 2,961 names from Indonesia were recorded in the document. This document includes data on financial transactions of world political leaders, global scandals, and detailed data on hidden financial agreements. This document comes from a law firm in Panama called Mossack Fonseca, a law firm and corporate service provider from Panama founded in 1997 by Jürgen Mossack and Ramón Fonseca. Saving money abroad like this can be seen as a mode of avoiding asset confiscation by law enforcement and hiding assets so that they are not known by local authorities.

In April 2021, 5 people in Singapore were arrested for being involved in the business of a shell company that was allegedly going to be used for money laundering. They are alleged to have received instructions from an unidentified man to open bank accounts for companies under six shell companies. From 2016 to 2019, Singaporean authorities received eight police reports from victims who claimed to have been tricked into transferring a total of US\$1,676,737 (Singa\$2.25 million) into the corporate bank accounts of six companies registered in Singapore. The companies are Plutusteam, Glidertex, Birseltex Global, Temco Industrial, Integrated Invest and Modelana Trading.

The men were charged in a Singapore court on 29 March 2021 with an offense under the Corruption, Drug Trafficking and Other Serious Crimes Act equivalent to the activity of receiving unlawful gains. They were convicted of conspiring to make deals to facilitate the profits from these criminal acts.

The term shell company generally refers to limited liability companies and other business entities without significant assets or ongoing business activities. Shell companies are formed for both legitimate and illicit purposes and generally have no physical existence other than a mailing address, employ no one, and have little or no independent economic income. Shell companies are often formed by

³ <https://www.Hukumonline.com/berita/read/lt5bb5c0dad0a85/sisi-gelap-kiprah-company-cangkang/>, accessed on July 23 at 04:23 WIB.

individuals and/or businesses to carry out legitimate transactions, such as domestic and cross-border transfers of currency and assets, or to facilitate corporate mergers and reorganizations.⁴

Indonesia itself has enough regulations preventing the establishment of shell companies. Based on the provisions of Law Number 25 of 2007 concerning Investment (hereinafter referred to as the Investment Law) in the provisions foreign investment (PMA) must be carried out in the form of a limited liability company under Indonesian national law and located in the territory of the Republic of Indonesia. Procedures, procedures, validation, and other regulations governing the establishment of companies from PMA are carried out in accordance with the provisions of Law Number 40 of 2007 concerning Limited Liability Companies (hereinafter referred to as the PT Law).⁵This Law provides an opportunity for Foreign Citizens (WNA) or foreign legal entities to form a Company as long as the laws that regulate it allow.⁶The PMA Law regulates the limitation of share ownership for foreign shareholders in certain fields. This triggers third parties as well as shell companies in foreign investment activities in Indonesia.

This research originated from the inspiration for an anti-money laundering moot court competition which the author participated in in 2021 as well as a continuation of a thesis that focuses on the perspective of Indonesian national law regarding shell companies. The author is interested in further studying and researching related to Law Enforcement Against the Misuse of Shell Companies as Actors of Money Laundering Crimes which discusses legal issues and forms of abuse of shell companies as a medium for committing money laundering crimes and efforts that can be made to overcome them, both in perspective of Indonesian and international law as a comparison.

2. Research Methods

The method used by the author in compiling the journal uses the normative juridical method. The research specification used in this study is a descriptive type of analysis. In this study the authors focused on library research as well as primary materials in the form of applicable laws and secondary materials in the form of expert opinions, law books, journals and magazines. The data collection technique carried out in this study used literature study, collecting data from the results of a review of literature and secondary data which included primary legal

⁴Department of the Treasury Financial Crime Enforcement Network, 2006, The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies, www.fincen.gov/sites/default/files/shared/LLCAssessmen_FINAL.pdf, on July 23, 2023

⁵Article 5 Paragraph (2) Law Number 25 of 2007.

⁶Explanation of Article 8 Paragraph (2) Letter a Law Number 40 of 2007.

materials, secondary legal materials and tertiary legal materials. Data analysis techniques in this study were carried out by qualitative data analysis, namely data collection using laws, theories and legal principles.

3. Result and Discussion

3.1. Definition of Shell Company

Shell companies can generally be established in the owner's country or abroad. However, the author's main focus here is shell companies established abroad that provide tax-free services and their criteria can be used as a medium to hide assets resulting from crime. Shell companies established domestically have generally gone through official procedures that have been registered with a country's authorities, but it does not rule out the possibility that local shell companies can be used as media for committing money laundering crimes.

The term shell company comes from English (Shell Company). It is called the shell because it relates to the form of the company itself which is a building form without "content" inside. The contents in question are the components of the company that actually must exist to move the company so that it can run according to its function. One common use for shell companies is for reverse acquisition purposes, also known as reverse mergers or takeovers. The procedure often involves the acquisition of a shell company, with private company shares taken as consideration. It should be noted that shell companies in reverse acquisitions are often previously active companies,⁷

Fundamentally, in the eyes of the law all corporations are simply "legal entities", which, like individuals, can sue and be sued, hold bank accounts, and own and sell property and other assets. However a shell company is nothing more than a conventional corporate legal identity due to its different nature. Despite their complex characteristics, shell companies tend to be quick and easy to form, and can be obtained in a few hours or days. Most shell companies are used for completely legal and legitimate purposes, for example as holding companies.

Regulations in Indonesia regarding Limited Liability Companies (PT) do not specifically regulate shell companies as stipulated in Law Number 40 of 2007 concerning Limited Liability Companies. These laws tend to regulate more about the establishment of companies located in Indonesian territory (onshore), considering that shell companies are companies that can also be established overseas (offshore). Therefore, not all countries allow shell companies to exist in their countries, including Indonesia.

⁷Department of the Treasury Financial Crime Enforcement Network, Op. Cit., p. 4

3.2. Money Laundering in the Shell Company Establishment Scheme

The definition of money laundering in general is contained in Article 3 of the TPPU Law which reads:

"Anyone who places, transfers, diverts, spends, pays, deposits, takes abroad, changes form, exchanges currency or securities or other actions on assets that he knows or reasonably suspects are the proceeds of criminal acts as referred to in Article 2 paragraph (1) with the aim of concealing or saving the origin of wealth."

The TPPU Law has regulated the definition of "suspicious financial transactions". These definitions are as follows:

- a. Financial transactions that deviate from the profile, characteristics, or usual transaction pattern of the customer concerned;
- b. Financial transactions by users of financial services that are reasonably suspected to have been carried out with the aim of avoiding the reporting of the transactions concerned which must be carried out by financial service providers in accordance with statutory provisions;
- c. Financial transactions that are carried out or canceled are carried out using assets that are suspected of originating from the proceeds of crime; or
- d. Financial transactions requested by the PPATK to be reported by the reporting party because they involve assets that are suspected of originating from the proceeds of crime.

There are 2 (two) categories of categories of money laundering crimes, namely objective elements (*actus reus*) and subjective elements (*mens rea*).⁸The objective element (*actus reus*) is a category of an activity to place, transfer, pay or spend, grant or donate, deposit, take abroad, exchange or other actions on assets (which are known or reasonably suspected to have originated from crimes or criminal acts). While the subjective element (*mens rea*) is a category that can be seen from the actions of a person who deliberately knows or reasonably suspects that the assets originate from illegal proceeds such as proceeds from a crime or crime, with the intention of the perpetrator to take the initiative to hide or disguise the proceeds of assets the crime.

Shell companies can be a medium for money laundering especially when they (owners or those in control) cannot be traced. Anonymous shell companies are

⁸Hibnu Nugroho et al, 2016, Investigation of Money Laundering Crimes in Attempts to Withdraw Assets, Journal of Legal Research, Volume 16 No. 1, p. 5.

especially useful for criminals because they can screen or cover up illicit behavior within the company. What is of note here is that a shell company can function as a "corporate cover" whose function is to screen and separate criminals from criminal activity. So the crux of the matter is whether the authorities can "check" the corporate veil to find the beneficial owner.

The EU Anti Money Laundering Directive defines a beneficiary owner as an individual or several individuals who own and control a company and/or several individuals. Beneficiary owners are generally individuals who own a majority share of more than 25% of all shares or voting rights of a corporation.

Investors generally have many ways to hide the identity of company ownership and even the country in which the company is owned. Therefore, to reach shell company data will always be unclear. If the existing data is limited to direct shareholders, then this can be circumvented by using nominee shareholders mechanisms, other intermediaries, subsidiary chains, or other instruments.⁹

The shell company scheme disclosed by the panama papers is likely to be categorized as illegal activity. Illegal activities in question are not only about tax evasion but in some cases these schemes are used to launder the proceeds of corruption and bribery, terrorism, drug trafficking, human trafficking, illegal immigration, and cyber crimes. The Panama papers list the names of at least 33 people and companies blacklisted by the United States government because it is proven that they have been involved in criminal schemes, such as doing business with Mexican drug cartels, terrorist organizations such as Hezbollah or association with countries such as Korea North. and Iran.¹⁰

The Panama Papers expose the activities of legal entities and individuals that lead to allegations of fraud, evasion of sanctions, money laundering, financing of corruption and tax evasion. The response from various countries to the data breach was significant and prompted many authorities to launch civil and criminal tax evasion investigations. These countries are Australia, Canada, Denmark, France, Germany, India, Israel, Malta, Norway, Pakistan, Singapore, Spain, Sri Lanka, Sweden, Thailand and the United States.¹¹

3.3. Enforcement of Money Laundering Crimes Using Shell Company Media

This law enforcement is part of the sub-system of the entire national legal policy system which is basically part of the national development system. Law

⁹Erik Vermeulen, 2013, Beneficial Ownership and Control: A Comparative Study-Disclosure Information and Enforcement, OECD Publishing, p. 11.

¹⁰Blomeyer et al., Op. Cit., p. 55

¹¹Ibid.

enforcement is more or less an effort made to make formal and material laws and their law enforcers able to guarantee the functioning of legal norms that apply in the life of society and the state.¹²

Although the Company Law does not cover regulations regarding the establishment of shell companies, Indonesia's regulation of shell companies can be seen from two other perspectives, namely from the investment and taxation aspects. When viewed from the investment aspect, a shell company can be seen as an amorphous company, or just a subsidiary company that is abroad where its parent is in Indonesia. This definition is almost the same as the provisions of other countries regarding shell companies. Based on CHAPTER IV Article 5 Paragraph (2) Law Number 25 of 2007 concerning Investment which reads:

"Foreign investment must be in the form of a limited liability company based on Indonesian law and domiciled in the territory of the Republic of Indonesia, unless otherwise stipulated by law."¹³

The tax perspective describes a shell company as a Special Purpose Vehicle (SPV). Article 1 Paragraph (2) Regulation of the Minister of Finance Number 258/PMK.03/2008 Concerning Withholding Tax defines an SPV company as an "intermediate company" or a company formed for the purpose of selling or transferring shares of a company established or domiciled in a country that provides protection tax (tax heaven country). SPV has a special relationship with an entity that is established (parent company) or domiciled in Indonesia or a permanent establishment in Indonesia. From this explanation, a shell company based on a tax perspective is a company created with a special purpose. From the explanation of the two perspectives above, it can be concluded that the establishment of shell companies by Indonesian businessmen is a common thing, especially for businessmen who do establish it for a specific purpose. From the perspective of Indonesian law, the position of shell companies is not illegal for business people who establish shell companies according to their functions.

By setting regulations regarding the establishment of shell companies both domestically and abroad, law enforcers will later have a legal basis to take action if in the establishment of the shell company there is an element of error that leads to the crime of money laundering. The development of cases of perpetrators originating from Indonesia hiding the proceeds of their crimes in shell companies is mostly limited to local subsidiaries.

The steps taken to enforce the law on abuse of shell companies are as follows:

¹²Abidin, Farid Zainal, 2007, Principles of Criminal Law, Sinar Graphic, Jakarta, p. 35.

¹³Article 5 Paragraph (2) Law Number 25 of 2007 Concerning Investment

1. The formulation stage, which is the stage of enforcing criminal law in abstracto by a law-making body that conducts legal studies to adapt it to current and future legal developments. This law is authoritative, meaning that it has a solid position to regulate all matters relating to the establishment of shell companies. This formulation stage does not only consider domestic conditions, but also foreign cooperation, especially those that provide tax-free services. This is because the model of hiding money from crime develops over time and is not limited by regional boundaries. Money laundering actors can not only be associated with domestic companies, but also abroad.

2. Application of criminal law enforcement by institutions authorized to enforce the law by law. Law enforcers in question are the police, prosecutors, up to the court level. Law enforcement officials can be tasked with enforcing and implementing statutory regulations that have been made by legislators. Knowledge of law enforcers regarding shell companies must also be adequate so that law enforcement can run optimally in upholding the values of justice and efficiency.

3. Concrete execution by law enforcement officials who are tasked with enforcing laws and regulations that have been made by the law-forming body. With continuous cooperation between the government and law enforcement, the goal of law enforcement can be achieved. This execution may include implementing government programs, outreach to business people, anti-corruption education, and taking action on legal events that have occurred. This execution has certain characteristics in each country, but tends to be distributive (distributive justice) because this crime of money laundering is contrary to social norms.

Law enforcement in carrying out investigations into money laundering crimes using the method of establishing shell companies in Indonesia has been running properly, as evidenced by the case that ensnared the former Minister of Maritime Affairs and Fisheries, whose indictment found evidence of alleged concealment of bribes against lobster seed export permits. In addition, in the ACT case, which used 10 shell companies that were allegedly used to hide the money from donations. To enforce the criminal law, it must go through the stages as a business or process that is deliberately planned to achieve a certain goal. Efforts have been made by state authorities around the world and the Indonesian government itself, in the form of tax amnesty, repatriation and cooperation between countries.

4. Conclusion

Forms of shell companies generally do not have a physical existence, do not employ anyone, and generate little or even no independent economic value. Tax

amnesty. This regulation was adopted in the context of increasing state revenues, as well as encouraging taxpayer compliance, which so far has not been compliant and honest in reporting assets owned both domestically and abroad. The repatriation steps contained in the regulation can also become a door for investigations into the disclosure of alleged irregularities in the funds of shell company owners.

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Article 5 Paragraph (2) Law Number 25 of 2007 Concerning Investment

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Explanation of Article 8 Paragraph (2) Letter a Law Number 40 of 2007.

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