

INITIATING THE REGULATION OF ELECTRONIC CURRENCY AS EVIDENCE OF MONEY LAUNDERING IN INDONESIA

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Abstract

This study aims to examine (1) the existence and development of electronic currencies associated with indications of money laundering in Indonesia; (2) the regulatory conditions and concept of proving electronic currency associated with money laundering in Indonesia; (3) The concept of proving electronic currency in money laundering which provides more legal certainty. The research method used is empirical juridical with a statutory approach, concept approach, and case studies. The results showed that; (1) The existence and development of electronic currencies in Indonesia has a large market share in E-money activities or electronic transactions as well as an increasingly sophisticated money laundering mode. (2) Regulatory Conditions and Concept of Electronic Currency Proof Associated with Money Laundering in Indonesia Several laws that partially regulate the existence of electronic evidence, namely: Law Number 8 of 1997 concerning Company Documents; Law Number 2 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption; Law No. 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism; Law No. 21/2007 on the Eradication of Trafficking in Persons; Law Number 8 of 2010 concerning Money Laundering. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law). (3) The concept of proving electronic currency in money laundering that provides more legal certainty guarantees through 4 (four) proof systems, as follows: 1) Proof Based on Conviction in Time; 2) Positive statutory proof system (positief wettelijk bewijstheorie); 3) the system of proof based on the judge's conviction with logical reasons (la conviction raisonee); 4) Negative statutory proof system (negatief wettelijk). Furthermore, in handling money laundering, further regulation should be regulated related to electronic currency as evidence as referred to in the Code of Criminal Procedure; and/or; b. Other evidence in the form of information spoken, sent, received, or stored electronically by optical or similar optical instruments and documents

Keywords: Regulation, Currency, Electronic, Evidence, Criminal Act, Money Laundering, Indonesia.

A. INTRODUCTION

Indonesia is one of the countries that is quite open to being targeted for money laundering, because in Indonesia there are potential factors as an attraction for money laundering actors, a combination of social system weaknesses and legal loopholes in the financial system, including the free foreign exchange system, the absence of the origins invested and the development of capital markets, foreign exchange traders and banking networks that have expanded abroad. Seeing the magnitude of the impact it has on the stability of the country's economy, a number of countries have set strict enough rules to uncover *money laundering*.¹

Crimes involving money began to emerge both in banking and non-banking fields, as well as money *laundering*. Money laundering is an act carried out to change the proceeds of crime such as corruption, narcotics crimes, gambling, smuggling and other acts of wealth that he

knows or reasonably suspects are the proceeds of crime with the intention to hide or disguise the origin of wealth so that it appears to be legitimate wealth.²

Money laundering is a series of activities that are processes carried out by a person or organization against illicit money, namely money derived from crime, with the intention to hide data and disguise the origin of the money from the government or authorities authorized to take action by entering money into the financial system, both utilizing bank and non-bank services. These institutions include stock exchanges, insurance and foreign exchange trading so that the money can be removed from the financial system as halal money.³

Money laundering or known as *money laundering* is a crime that has developed in its modus operandi. *Money laundering* is a type of crime that develops with advances in technology and information. One of them is the use of electronic currency. *Electronic Commerce Transaction (E-Commerce)* is a trade transaction between sellers and buyers to provide goods, services or take over rights. This contract is carried out with electronic media (digital medium) where the parties are not physically present and this medium is contained in a public network with an open system, namely the internet or *World Wide Web*. These transactions occur regardless of territorial boundaries and national requirements.⁴

Electronic Transaction is a form of exchange of business information without using paper (*Papersless Exchange of Business Information*) but by using EDI (*Electronic Data Interchange*), *Electronic Mail (E-mail)*, *Electronic Bulletin Boards (EBB)*, *Electronic Funds Transfer (EFT)* and through other network technologies.⁵ Electronic transactions facilitate cost and time savings. The occurrence of new legal acts due to globalization and advances in information technology still has a strong legal basis and creates legal certainty.⁶

The regulation of online transactions in Indonesia can be seen in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions. Furthermore, the regulation can be reviewed in Government Regulation (PP) Number 80 of 2019 concerning Trading through Electronic Systems, outside the enactment of Law Number 19 of 2016 which is an amendment to Law Number 11 of 2008. This PP has regulated several things, including the prohibition to share and use consumer data to third parties and rules regarding what data can be used by *electronic transaction service providers*. However, in it, there are still no clear parameters to measure the extent to which electronic transaction service providers perform in complying with applicable regulations.

Electronic transaction regulation in Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, there are 2 (two) important things regulating electronic transactions in the law: First, recognition of electronic transactions and electronic documents within the framework of engagement law and evidentiary law, so that legal certainty of *electronic transactions* can be guaranteed. Second, the classification of acts that include qualifying violations of the law related to misuse of IT (Information Technology) accompanied by criminal sanctions.

The problem of money laundering has attracted international attention because of its dimensions and implications that violate national borders.⁷ In Article 2 of Law Number 8 of 2010 concerning Money Laundering, there are 26 points of crime that can be charged with money laundering. In its development, Money Laundering is increasingly complex, crosses jurisdictional boundaries, and uses increasingly varied modes, utilizing institutions outside the financial system, and has even penetrated into various sectors.

Bank Indonesia (BI) has also issued a regulation, namely issuing Bank Indonesia Regulation (PBI) No.14/3/PBI/2012 dated March 29, 2012 concerning Anti-Money Laundering and Countering Terrorism Financing Programs for Non-Bank Payment System Service Providers. This provision is a follow-up to the mandate in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, and regulates the implementation of Anti-Money Laundering and Countering the Financing of Terrorism (AML and CFT) programs that must be implemented by payment system service providers. The rules regulate technically related to payment systems using information and communication technology.

B. METHODS

This research is included in the type of non-doctrinal research, where the approach method used is empirical juridical. The study method used in this study is normative legal research, which is a study conducted by examining certain legal problems based on the implementation of applicable laws and regulations or applied to a legal case.⁸ *The research* approach used is the Legislation approach and the Conceptual Approach.⁹ The research source used in this study is the result of data collection carried out with primary data and supported by *library research*. Secondary data are then grouped into three sources of legal materials used in this study are primary legal materials, secondary legal materials, and tertiary legal materials. Research techniques are descriptive analytical, where analysis is carried out critically using various theories of research problems. The collected data is analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic / verstelen*) scientifically.

C. DISCUSSION

1. The Existence and Development of Electronic Currency Associated with Indications of Money Laundering in Indonesia

E-Money comes from English, combining two words, namely the word *E* which stands for *Electronic* and the word *Money*. According to the language (etymology) is as follows (E) electronic is *the* science of electronics (electric charge), electronic devices, or all things related to the world of electronics and technology. While money is money.¹⁰ As for the term of understanding E-money is a transaction through electronic media connected to the internet.¹¹ *E-money* is a collection of technologies, applications, and businesses that connect companies or individuals as consumers to conduct electronic transactions, exchanges, and exchange information through the internet or television or other computer networks.¹² Indonesia has a large market share in *E-money* activities. The Indonesian Ministry of Communication and

Information recorded that internet user activities until 2015 reached 93.4 million users and 7.4 million of them were online shop consumers and managed to reach a transaction value of US \$ 3.5 billion. And that number will increase to 8.4 million online shop consumers throughout 2016. While according to (terminology) is according to the view of the WTO (World Trade Organization), e-commerce concerns all activities such as production, distribution, marketing, sales, delivery of goods or services through electronic means. While the Alliance for Global Business defines ecommerce as all value transactions involving the transfer of information, products, services or payments through electronic networks as a medium. Through these media goods and services of economic value are designed, produced, advertised, cataloged, inventoried, purchased or shipped.¹³

E-money arises from the results of *Electronic Commerce* or abbreviated as (*E-Commerce*) is business activities that concern consumers, manufactures, service providers, and intermediaries using computer networks, namely the internet. This *E-Commerce* already covers the entire spectrum of commercial activities.¹⁴ While the definition of transaction (*E-Commerce*) stated by Julain Ding that¹⁵: *E-Commerce Transaction* is a trade transaction between sellers and buyers to provide goods, services, or take over rights. This contract is carried out with electronic media (digital medium) where the parties are not physically present. This media is contained in a public network with an open system, namely the Internet or World Wide Web

The development of electronic currencies that are widely discussed today is about virtual money called *cryptocurrency*, then the review of *virtual money* (*cryptocurrency*) will be called *cryptocurrency*. *Cryptocurrency* can be called a commercial object without using cash, in digital form and can be used for electronic transactions. Virtual currency is digital money that is the result of a technology through a cryptographic system aimed at providing security guarantees by not being able to be imitated. Cryptography is a technique to enable the secure transmission of information.

The impact of using *cryptocurrency* seen from the prospect of Indonesian law can trigger various crimes that cause losses from several parts, namely the economy, law or state security. The development of *cryptocurrency* can be one of the new modes of money laundering in this case it can also be said to be money laundering because there is potential for money laundering based on using digital signatures and the use of false identities. Because this action aims to disguise funds and various information from transactions with virtual currencies, namely *cryptocurrency*, which is actually a currency without physical form formed with information technology.

The *cryptocurrency* that currently dominates the international world today is Bitcoin, Bitcoin is a form of *cryptocurrency*, it can be said to be like digital currency that is in a peer-to-peer (P2P) network, which is the opposite type of network to the server-based type. In this system, the computer acts as a server where it will serve requests for information or data processing that comes from clients. In a P2P network, all computers are said to be nodes, which can be connected to the network, act as servers, and can also be clients. Peer-to-peer networks make it easier for users to interact directly without using the services of third parties. Money

laundering is a special crime. Special criminal acts can be interpreted as legislation in a special section that has criminal sanctions in this case regulated in special legislation outside (the Criminal Code), both criminal and non-criminal legislation but has criminal sanctions.

Electronic contracts must also have the same legal force as conventional contracts, which are binding on the parties as article 18 paragraph 1 of the ITE Law states that "electronic transactions poured into electronic contracts are binding on the parties". When viewed from the civil law system, buying and selling via the internet cannot be said to be valid because in the sale and purchase transaction the seller and buyer do not meet directly so it is difficult to determine when the agreement occurs. That's why in addition to the guarantees provided by the seller or merchant itself, guarantees from the government are also needed. The government has issued Law Number 11 of 2008 which was later amended by Law Number 19 of 2016 concerning Electronic Information and Transactions, even though they are carried out online, based on the ITE Law and PP PSTE are still recognized as electronic transactions that can be accounted for. The Electronic Contract itself according to Article 48 paragraph (3) of PP PSTE must at least contain the following; identity data of the parties; objects and specifications; Electronic Transaction requirements; price and cost; procedure in case of cancellation by the parties; provisions that give the right to the injured party to be able to return the goods and/or request replacement of the product if there are hidden defects; and choice of law for settlement of Electronic Transactions. Thus, electronic transactions that occur in cases can use the instruments of the ITE Law and / or PP PSTE as a legal basis in solving the problem.

2. Regulatory Conditions and Concept of Electronic Currency Proof Associated with Money Laundering in Indonesia

Advances in technology will go hand in hand with the emergence of changes in the field of society. Changes in society can be about social values, social rules, patterns of behavior, organization and the structure of community institutions (Sitompul, 2012: 20). In particular, the development of computer technology and the internet has significant implications for the regulation or formation of regulations in cyberspace and cyber law as well as for the development of crime in cyberspace, (cybercrimes) (Sitompul, 2012: 26).

The use of computer technology and other digital equipment, and supported by the internet network, in addition to facilitating human work also has a negative impact, namely the increased potential for criminal acts. This is because, the emergence of a new forum for criminal acts, namely cyberspace or often also called the virtual world (Qamar & Djanggih, 2018) The proof system of the current information technology era faces major challenges that require serious handling, especially in relation to efforts to eradicate cyber-crime (cyber-crime).

Manusr & Gultom, (2005: 97) Observing this, it can be agreed that information technology crimes or cybercrime have a different character from other crimes both in terms of perpetrators, victims, modus operandi and crime scene so that special handling and arrangements are needed outside the Criminal Code (KUHP) and also the Code of Criminal Procedure (KUHAP).

Related to the law of evidence will usually raise a dilemma position, on the one hand it is expected that the law can keep up with the times and technology, on the other hand it is also

necessary to recognize the law of various types of digital technology developments to function as evidence in court (Fuady, 2001: 151).

Evidence plays an important role in the court examination process. This proof determines the guilt or innocence of a person presented before the court. If the results of proof with evidence prescribed by law are not sufficient to prove the guilt of the person, it will be released from punishment, otherwise if the guilt can be proven then found guilty and sentenced.

Therefore it must be careful, careful and mature in assessing and considering the issue of proof. An evidence instrument is said to be valid evidence is not only the evidence regulated in a law (*bewijsmiddelen*) but how the evidence is obtained and how to submit the evidence in court (*bewijsvoering*), as well as the evidentiary power (*bewijskracht*) of each evidence submitted also greatly affects the judge's consideration in assessing the validity of an evidence.

The process of proof in cybercrime cases is basically no different from evidence in conventional criminal cases, but in cybercrime cases there are several electronic things that are the main thing in proof, including the existence of electronic information or electronic documents, legal provisions regarding proof of cybercrime cases have been regulated in Article 5 paragraph (1) and paragraph (2) of Law Number 19 of 2016, which states that electronic information and / or documents are considered as valid evidence in the process of proving cybercrime cases and electronic evidence is also considered as an extension of the applicable evidence in the criminal procedure law in force in Indonesia, in this case the evidence contained in Article 184 of the Code of Criminal Procedure.

The development of electronic fund transfer systems is also followed by the development of high tech crime. Known among others the terms cyber crime, EFT crime, cybank crime, internet banking crime, online business crime, cyber/electronic *money laundering* (Arief, 2006). Electronic funds transfer crime is not only aimed at theft of funds, but also at the use, disclosure, deletion, theft or destruction of data, or aims to disrupt or damage the electronic funds transfer system itself (disruption or destruction of the EFT system).

Electronic funds transfer systems can also help hide or transfer the proceeds of crime, so it is often also called money laundering crimes committed electronically. Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Article 3, specifically mentions acts that are said to commit money laundering crimes, namely the act of placing, transferring, transferring, spending, paying, granting, entrusting, bringing abroad, changing forms, exchanging for currency or securities or other acts.

In carrying out actions that are said to be money laundering crimes, often using electronic transactions. Material regulation of electronic evidence has been regulated in several special laws such as in Law No. 19 of 2016 concerning the Prevention and Eradication of Money Laundering, but formal rules do not yet exist, although in practice judges in deciding money laundering cases have paid attention to the existence of this electronic evidence. The development of technology that is often misused and becomes a medium and means used in money laundering crimes, needs to get serious handling, including in evidence. Multi-interpretation as a result of the meaning of elements can be accessed, displayed, guaranteed

intact and accountable based on Article 6 of Law Number 19 of 2016 concerning Electronic Information and Transactions can affect the judge's confidence in assessing the validity of an electronic evidence. No positive Indonesian law that regulates in detail, comprehensively and uniformly the validity of electronic evidence that is guaranteed to be intact, causing differences of opinion in the trial process regarding the guaranteed integrity of electronic evidence.

3. Initiating the concept of electronic currency evidentiary arrangements in money laundering crimes that provide more legal certainty guarantees

The application of electronic data evidence as electronic evidence in criminal cases according to the ITE Law cannot be separated from the existence of evidence in the Criminal Procedure Code. The Criminal Procedure Code does not yet regulate electronic evidence as legal evidence, but several laws and regulations such as Law Number 8 of 1997 concerning Company Documents, Law Number 2 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, Law No. 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons, Law Number 8 of 2010 concerning Money Laundering, Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions, have stipulated that electronic data can be used as legal evidence. With the existence of the ITE Law, it has provided an expansion of evidence in the internet realm from what is regulated in the Criminal Procedure Code. The law of evidence in the ITE Law itself is *lex specialis*, because the ITE Law regulates everything that is more specific in the law of evidence contained in the Criminal Procedure Code. In legal interpretation, judges will change the status of electronic evidence by generalizing electronic evidence.

The generalization of electronic evidence is to change the status of electronic evidence into evidence of letters or instructions, which are valid evidence under Indonesian criminal law. The power of electronic evidence in the ITE Law can be said to be an extension of letter or clue evidence, which is valid evidence and can be presented at the trial after the judge makes legal findings and states that electronic evidence is valid and legally accountable evidence and has legal force as evidence. Evidence in the criminal act of money laundering has been regulated in Article 73 of the ITE Law which states that evidence in the form of information spoken, sent, received, or stored electronically with optical or similar optical instruments and documents is also valid evidence. Article 5 and Article 6 of the ITE Law stipulate electronic evidence, which explains that electronic information and/or electronic documents and/or printouts are valid evidence when using an electronic system in accordance with the provisions regulated in the ITE Law.

a. Electronic Data as Legal Evidence in Criminal Acts in Indonesia

Electronic evidence has a wide scope and various types, so the collection and examination of electronic evidence takes a long time and costs a lot of money. The regulation of electronic evidence must be based on the system and principles of proof of criminal procedural law applicable in Indonesia. The Criminal Procedure Code does not yet regulate electronic evidence as legal evidence, but several laws and regulations have stipulated that electronic data can be used as legal evidence. As for what is meant by electronic evidence is evidence obtained from crimes that use technological equipment to direct a criminal event in the form of electronic data both in the technological device itself, for example found on a computer, hard disk / floppy disk, memory card, sim card or which is a print out, or has undergone processing through a certain technological device such as a computer or in other forms of traces (path) of an activity using technology (Makarim, 2004: 455).

b. Evidence in Money Laundering Based on Law Number 8 of 2010

Money laundering is basically an attempt to process money from crime with legitimate businesses so that the money is clean or appears to be halal money. Thus the origin of the money was masked over. The definition of Money Laundering in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering is stated in Article 1 point (1), namely: "all acts that meet the elements of a criminal act in accordance with the provisions of this Law." In general, the elements of money laundering become 3, namely (Irman, 2006: 57-81): 1. Transaction; 2. Wealth 3. Unlawful

Thus money laundering always occurs after an unlawful act, so money laundering will not exist if there is no unlawful act that produces wealth. But it is not enough that the unlawful act only produces wealth, only then it is complete if the wealth resulting from the crime (the result of unlawful acts) is transacted under disguise of its origin (Irman, 2006: 57-80)

The validity and legal aspects of electronic evidence in money laundering cases are linked to the Electronic Information & Transaction Law

The law of evidence in the ITE Law is *lex specialis*, because the ITE Law regulates everything that is more specific in the law of evidence contained in the Criminal Procedure Code. With the enactment of the ITE Law, there is a new regulation regarding evidence recognized in Indonesian procedural law, specifically criminal procedural law, namely electronic document evidence.

Article 73 of the ITE Law stipulates electronic evidence, which explains that electronic information and/or electronic documents and/or printouts are valid legal evidence when using an electronic system in accordance with the provisions regulated in the ITE Law.

Article 73 letter b of the ITE Law expressly states that: "other evidence in the form of information spoken, sent, received, or stored electronically with optical instruments or similar optical instruments and documents."

Article 5 and Article 6 of the ITE Law stipulate electronic evidence, which explains that electronic information and/or electronic documents and/or printouts are valid legal evidence

when using an electronic system in accordance with the provisions stipulated in the ITE Law.

Article 5 paragraph (1) of the ITE Law, expressly states that electronic information and/or information and/or printouts are valid evidence. Electronic information and/or electronic documents and/or printouts are extensions of valid evidence in accordance with the applicable Procedural Law in Indonesia.

In addition to evidence regulated by the Criminal Procedure Code, Law No. 19 of 2016 concerning Electronic Information and Transactions, Article 44 also stipulates that: "evidence for investigation, prosecution, and examination in court according to the provisions of this law is as follows: a. Evidence as referred to in statutory provisions; and b. Other evidence in the form of electronic information and/or electronic documents as referred to in Article 1 number 1 and number 4 as well as Article 5 paragraph (1), paragraph (2) and paragraph (3)."

While the Money Laundering Law also regulates electronic evidence as stipulated in Article 73: "valid evidence in proving money laundering crimes is: a. Evidence as referred to in the Code of Criminal Procedure; and/or; b. Other evidence is information spoken, transmitted, received, or stored electronically by optical or similar optical instruments and documents."

A document is data, recording, or information that can be seen, read, and/or heard, which can be issued with or without assistance or means, whether contained on paper, any physical object other than paper, or electronically recorded.

The Criminal Procedure Code has provided clear regulations regarding forced searches and seizures in general, but not yet on Electronic Systems (Sitompul, 2012: 282). In the event that the Electronic System used has met these requirements, the quality of electronic evidence in its original form (Electronic Information or Document) and printout of Electronic Information or Document is the same. In other words, police, prosecutors, and judges can use both or one of them (Sitompul, 2012: 122).

D. CONCLUSION

The existence and development of electronic currencies in Indonesia has a large market share in E-money activities or electronic transactions as well as an increasingly sophisticated money laundering mode.

Regulatory Conditions and Concept of Electronic Currency Proof Associated with Money Laundering in Indonesia Several laws that partially regulate the existence of electronic evidence, namely: Law Number 8 of 1997 concerning Company Documents; Law Number 2 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption; Law No. 15 of 2003 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism; Law No. 21/2007 on the Eradication of Trafficking in Persons; Law Number 8 of 2010 concerning Money Laundering. Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE Law).

The concept of proving electronic currency in money laundering that provides more legal certainty guarantees through 4 (four) proof systems, as follows: 1) Proof Based on Conviction in Time; 2) Positive statutory proof system (positief wettelijk bewijstheorie); 3) the system of proof based on the judge's conviction with logical reasons (la conviction raisonee); 4) Negative statutory proof system (negatief wettelijk). Furthermore, in handling money laundryng, further regulation should be regulated related to electronic currency as evidence as referred to in the Code of Criminal Procedure; and/or; b. Other evidence in the form of information spoken, sent, received, or stored electronically by optical or similar optical instruments and documents.

Foot Note

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