

Banking Crime in Money Laundering
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Abstract

Every year the Bank is required to improve its performance, especially the Bank's profit, then the Bank will expand or boost the distribution of funds (loans or credit). Thus, the source of the Bank's profit is still mostly from interest or proceeds from lending. Although the Bank wants to increase the portion of its loans, it is constrained by the amount of funds raised by the Bank. This research is a mixed methods study, with a convergent approach (combining quantitative and qualitative data to strengthen research findings and an exploratory approach (combining quantitative and qualitative data to gain a deeper understanding of complex research topics). Credit growth and liquidity fulfillment, money laundering, the nature of the Bank's business, the weakness of existing regulations, the role of government and stakeholder demands are things that can make the Bank involved in money laundering. Banks must be returned as institutions that prevent the entry of funds from criminal proceeds. It takes a comprehensive or holistic solution to the problems that make banks involved in money laundering, where the business, the function of the Bank as an intermediary institution continues to run. A new business method is needed and can truly release the Bank from the dependence of liquidity that must be fulfilled.

Keywords: liquidity; money laundering; nature of bank business; weak regulation; stakeholders

1. Background

In conducting its business, banks always prioritize funding or liquidity for the Bank, so that the intermediary function, namely providing loans or credit can run, so that ultimately it is able to provide income (profit) for the Bank itself. Competition between banks in raising funds is like a fight in the gladiator arena. Each bank is competing to attract customers with various strategies, which in essence only one is to collect as much funds as possible. With the funds raised, the Bank will get the energy to expand loans. Thus, indirectly, funding or liquidity is a major and very important factor for the Bank.

Article 1 point 2 of Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (hereinafter referred to as the Banking Law) which states: *"Bank is a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of credit and or other forms in order to improve the lives of the people;"*

Many people, even those who have worked in banks for a long time, do not understand this article 1 point 2. Most just assume that the article is the definition of Bank, which is even required to be memorized in all schools majoring in economics and or even in colleges or universities, especially those majoring in economics and or banking.

Actually, in the Banking Law, in addition to mentioning the definition of the Bank, the article also explains the actual core business of the Bank, namely: First, the Bank must raise funds, second, the Bank must distribute the funds raised to the public in the form of loans (credit) or other forms. So the first thing prioritized by the Bank, in conducting its business operations is to raise funds.

According to the Indonesian Banking Statistics (SPI) December 2023 data published by the Financial Services Authority (OJK)¹, the number of banks in Indonesia in 2023 is 105 Commercial Banks and 1405 Rural Banks or BPRs. With such a large number of banks, which only compete for the community (prospective customers and customers) with a number that relatively does not change much every year, making the competition more competitive.

Competitive fundraising competition makes the Bank demand every employee to win the competition. Of course, it is a challenge and a very dilemma for every leader of the Bank Branch Office in raising funds. In addition to being required to always improve its performance, the Bank is also faced with various kinds of very strict regulations (high regulated). If analogized: a person is required to run as hard as possible, as fast as possible, but both legs are given increasingly heavy loads.

Banks become problematic because of 1 (one) thing, namely starting from the liquidity difficulties in the Bank, either overshooting loan expansion, or others. Therefore, all banks will compete, by all means, to keep their liquidity within safe limits in accordance with the provisions set by the regulator. Initially, a bank that experiences liquidity difficulties will become a Troubled Bank, which if not handled quickly will cause a more severe impact and possibly cause its business license to be revoked.

The practice of money laundering will lead to the challenge of getting funds from criminal offenses into the financial system, which in this case is through the Bank. As the last guard, the last line of defense, to prevent money laundering that occurs, the Bank is required to be firm and uncompromising in terms of preventing and eradicating money laundering.

The demand to meet liquidity needs and the demand to prevent and eradicate money laundering put banks in a very dilemmatic position. This makes banks ultimately "flirt" with this condition, besides that the existing regulations also make criminal practices more difficult to overcome because the perpetrators take advantage of this condition.

The uncertainty of banks in preventing and eradicating money laundering will be even more severe, because all banks will compete for potential customers and or customers, in order to increase their funds in the Bank and or the condition of the Bank is really in trouble in terms of liquidity.

One of the stages of money laundering is placement. If the perpetrators of money laundering successfully pass this first stage, then the next stage will not be difficult, and this is what the perpetrators of criminal acts actually want, because the funds from criminal acts will not be traced and eventually become clean.

The fulfillment of liquidity that must be maintained and its task in preventing money laundering is problematic, especially as Financial Institutions such as banks, are expected to be able to sail between large reefs, until they reach their destination. The dilemma faced by banks is not easy, in addition to being able to convince someone to become a customer, the Bank is also required to be able to maintain customer confidentiality and deposits are maintained safely.

On the other hand, the demands of the State to prevent and eradicate money laundering are increasing. This is due to, among others, the acceptance of Indonesia as one of the 40th permanent members in the Financial Action Task Force (FATF) organization in October 2023², an organization engaged in the anticipation of money laundering and the financing

¹ Banking Statistics December 2023, <https://www.ojk.go.id/id/kanal/perbankan/data-dan-statistik/Default.aspx>, Financial Services Authority, downloaded on April 24, 2024.

² Kompas News: "President Jokowi Announces Indonesia as Permanent Member of FATF",: <https://nasional.kompas.com/read/2023/11/06/12531491/presiden-jokowi-umumkan-indonesia-jadi-anggota-tetap-fatf.>, downloaded on April 24, 2024.

of terrorism. Of course, the hope with Indonesia's entry as a permanent member of FATF is that the financial system in Indonesia can be trusted by other countries.

2. Problem Formulation

The formulation of the problem in this study is as follows:

1. How can a bank be said to be involved in money laundering?
2. How is the problem of meeting liquidity needs and preventing money laundering?
3. What is the solution for banks to avoid being involved in money laundering?

3. Research Methods

This research is mixed methods research, with a convergent approach (combining quantitative and qualitative data to strengthen research findings and an exploratory approach (combining quantitative and qualitative data to gain a deeper understanding of complex research topics).

In collecting data, the researcher conducted a literature search (library research), both extensively and intensively. Library research aims to study, research, and trace primary data, in the form of financial reports, and secondary data in the form of statistical reports and legal materials. The data is normative-perspective, used mainly to examine legal issues related to the substance of positive legal regulations (*ius constitutum*) which regulates the problematic disclosure of bank performance, between the interests of the state and aspects concerning banking, based on its binding force classified as primary legal materials and secondary legal materials. The data analysis technique used is juridical analysis, namely analysis based on theories, concepts and laws and regulations.

4. Research Results and Discussion

4.1. Business and Bank Operations

The collection of public funds by banks, also known as funding or fund mobilization, or often referred to as Third Party Funds (DPK) or Third Party Funds, is the process in which banks collect funds from the public to be managed and channeled back into the economy through credit or investment. The source of these funds generally comes from deposits, deposits, and other money market instruments. All of these activities (funding) are carried out to fulfill the Bank's liquidity needs.

Normatively, OJK has required the Bank to always maintain its liquidity. Article 2 point 1 of the Financial Services Authority Regulation Number 42/POJK.03/2015 concerning the Obligation to Fulfill the Liquidity Coverage Ratio (LCR) for Commercial Banks clearly states³:

"Banks must maintain adequate liquidity".

This implies that OJK, as a banking regulator, has placed great importance on the liquidity factor for a bank. If analogized as the anatomy of the human body, then liquidity is the blood for humans. Without blood circulating in the tissues of the human body, it can be considered that the human is no longer alive, aka dead. This is also the case with banks. Without liquidity, it can be said that the Bank is dead.

In order to fulfill its liquidity, banks will usually compete to collect Third Party Funds or DPK, among others through:

³ Article 5 of POJK 42/POJK.03/2015 on the Obligation to Fulfill the Liquidity Coverage Ratio (LCR) for Commercial Banks., applies to Banks of the Bank Group Based on Tier 1 Capital or KBMI, namely KBMI 3 and KBMI 4 and Foreign Banks.

1. Attractive Savings and Deposit Products:
Banks offer various savings and deposit products with competitive interest rates, attractive features, and easy access.
2. Excellent Customer Service:
The Bank provides excellent customer service, such as ease of transactions, digital accessibility, and service personalization.
3. Aggressive Promotion and Marketing:
The Bank conducts aggressive promotion and marketing through various media, such as advertising, sponsorship, and financial education programs.
4. Building Networks and Partnerships:
The Bank collaborates with various parties, such as companies, organizations, and the government, to expand its fundraising reach.
5. Offering Innovative Products and Services:
The Bank continues to innovate by offering new products and services that meet customer needs, such as sharia products, digital services, and integrated financial solutions.

Along with the demand for the Bank to constantly improve its performance, especially the increase in revenue or profit earned, whether we like it or not, the Bank must always increase the loans (credit) provided. In Indonesia, the Bank's profit is still based on the size of the loans provided. By increasing the portion of loans provided, the Bank is indirectly required to increase its liquidity as well. Without adequate liquidity support, the Bank's expansion plan becomes difficult to realize and the dream of obtaining high profits is lost.

Every year the Bank is required to improve its performance, especially the Bank's profit, so the Bank will increase expansion or boost the distribution of funds (loans or credit). Although the Bank has other sources of income, which are not derived from loans and are known as non-interest income or fee-based income, the contribution of this fee-based income to bank profits is still not significant compared to income from loans. Thus, the source of the Bank's profit is still largely from interest or proceeds from lending.

Although the Bank wants to increase its loan portion, this is constrained by the amount of funds raised by the Bank. The regulation regarding the maximum amount of funds that can be distributed is known as the Financing to Deposits Ratio (FDR) or Loan to Deposit Ratio (LDR). FDR or LDR is the ratio between financing provided by the bank and third party funds successfully mobilized by the bank. If the FDR is the amount of loans provided divided by deposits plus equity capital, then the LDR consists of the amount of loans provided divided by deposits only.

OJK regularly reviews and updates policies related to LDR and FDR to adjust to the latest economic and financial conditions. Banks that have ratios above the prescribed limits may need to develop action plans to bring them within safe limits, at OJK's discretion.

The maximum FDR and LDR is 92% - 94%. These are safe limits set⁴ to ensure that banks have sufficient liquidity and are not overly aggressive in lending, which could compromise the financial stability of the bank, in the event of problems with customer withdrawals.

⁴ Article 11, Regulation of Bank Indonesia No. 15/15/PBI/2013 on Statutory Reserves of Commercial Banks in Rupiah and Foreign Currency for Conventional Commercial Banks, dated December 24, 2013.

This regulation is intended to ensure that banks have sufficient liquidity to respond to customer withdrawals and to manage the greater financial risks that may arise from too much funding being channeled into loans or financing.

The conclusion is that if the Bank wants to increase the loans given, so that it can earn a greater profit than before, the Bank must also increase the number of loans given. And to increase the amount of DPK as well. Thus, DPK is needed to increase the Bank's profit (through loans disbursed).

Performance improvement is increasingly becoming a priority for bank management, due to stakeholder demands. In general, stakeholders demand that every year the Bank's profit increases compared to the previous year. For the Bank's management, this stakeholder demand is non-negotiable, because it is related to the Bank's shares and or management's position to continue to be in the management position.

This desire of stakeholders is in line with the profit-seeking objective of Limited Liability Companies, which can be considered as an inherent basis in the operation and establishment of PTs, but Law No. 40 of 2007 on PTs deals more with the structure, administration and obligations of the company, not explicitly stating "profit-seeking" as the main objective.

However, the article that most closely describes this is probably Article 3 of the UUPT, which emphasizes the company's purpose and objective to conduct business activities with prudent principles and achieve this purpose through business activities stated in the Articles of Association. While "seeking profit" may be the general objective of almost all business activities, the emphasis on the prudential principle and the specification of business activities in the articles of association provide a framework for such activities to be carried out in a responsible and sustainable manner, where Article 3 states:

- 1) *Shareholders of the Company are not personally liable for agreements entered into on behalf of the Company and are not liable for losses of the Company in excess of the shares owned.*
- 2) *The provisions contemplated in paragraph (1) do not apply if:*
 - a. *the Company's requirements as a legal entity have not been or are not fulfilled;*
 - b. *the shareholder concerned, directly or indirectly, with bad faith, utilizes the Company for personal interests;*
 - c. *the relevant shareholder is involved in an unlawful act committed by the Company; or*
 - d. *the relevant shareholder directly or indirectly unlawfully uses the assets of the Company, resulting in the Company's assets becoming insufficient to pay off the Company's debts.*

It is also important to understand that:

1. The main purpose of establishing a PT is to seek profit. This profit is obtained through the business activities carried out by the PT.
2. Profits earned by a PT are distributed to its shareholders in the form of dividends.
3. The amount of dividends distributed to shareholders depends on the profits earned by the PT.

Thus, seeking profit is the main and essential objective of the establishment of a PT. And if correlated with the core business of the Bank, it is clear that the Bank's main objective is to seek profit, which in this case is obtained through lending sourced from

the collection of available funds. This condition will flow from the management level to all branch offices of the Bank, both at home and if there are branch offices abroad.

Furthermore, banks are competing to increase their deposits, while the available "cake" is very limited. As a result, competition will move from official to unofficial means. Interest offers vary widely, between the interest on the counter and the interest on the under table. Generally, the interest given in the under table is very different from the interest in the counter rate. This is because the amount offered by the customer is very large and usually in a short time, and the interest is higher than the normal interest (special rate).

The gap between the need for liquidity fulfillment and that available in the "market" (Society) is very large. The vision to continue sustainable profit growth has become a guideline for every Bank leader. Many ways are done by banks for this, starting to turn off the system (offline) withdrawal of funds towards the end of the month, especially in certain months, certain programs to attract and retain customers, offering high interest rates (cost of funds) until finally the potential "close eyes" to incoming funds. In a sense, Banks officials and or officers have the potential to receive funds of unclear origin, just for the sake of meeting the target funds required by Bank management.

For the perpetrators of money laundering, the gap that occurs in the Bank is a "gap" or opportunity, which they can utilize to commit money laundering, namely in the early stages: Placement. In the end, a mutually beneficial cooperation (mutualism symbiosis) is formed: between the Bank and the perpetrators of money laundering.

At first glance we can see that this cooperation benefits all parties. However, banks are actually in a weak position because they really need funds to achieve profit growth.

Banks that are supposed to be the guardians of the financial system (guardian of the financial system) the influx of funds from the proceeds of criminal acts referred to in the Law⁵.

The Financial Services Authority or OJK has issued OJK Regulation No. 12/POJK.01/2017 concerning the Implementation of Anti-Money Laundering and Countering the Financing of Terrorism Programs in the Financial Services Sector. This regulation is a guideline for Banks as Financial Service Providers (FSPs) to prevent money laundering as intended in article 60 which states:

- "To prevent the use of a Financial Services Institution as a medium or destination for Money Laundering and/or the Financing of Terrorism involving internal Financial Services Institutions, Financial Services Institutions shall:*
- a. screening procedures in the context of hiring new employees (preemployee screening); and*
 - b. recognition and monitoring of employee profiles."*

Thus the demands of the government, banks are a filter to prevent the entry of funds from the proceeds of crime. The above condition is a dilemma for the Bank, and not a few eventually close their eyes to this, in order to save their position (position) and the Bank.

⁵ Article 2 of Law No. 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (Anti-Money Laundering Law)

4.2. Weak Regulation

The cause of a Bank's confusion in facing the dilemma: between enforcing money laundering eradication regulations and its business interests cannot be entirely the responsibility or fault of the Bank. This is because the existing rules or regulations are still weak and even support the Bank to receive and ultimately utilize the proceeds of crime for the benefit of the Bank.

An example is Article 29 number 4 of Law Number 31 Year 1999 on the Eradication of Corruption, which states:

"(4) Investigators, public prosecutors, or judges may request banks to block deposit accounts belonging to suspects or defendants suspected of being the proceeds of corruption."

There is a difference between account blocking and account balancing, where account blocking is an action taken by the bank to stop all transactions on the customer's account. Thus, customers cannot do things such as: cash withdrawals, money transfers, bill payments, use of debit cards, ATMs or other activities, which involve the movement of funds in their deposit accounts at the Bank⁶. Consequently, the customer will experience financial difficulties.

While blocking the account balance is an action taken by the bank to temporarily stop the customer's access to part or all of his account balance. This means that customers can still carry out several activities, such as: checking account balances, printing account mutations and making transfers to other accounts belonging to the same customer. Article 29 point 4 of Law Number 31 Year 1999 on the Eradication of Corruption states:

5. Investigators, public prosecutors, or judges can ask banks to block deposit accounts belonging to suspects or defendants who are suspected of being the proceeds of corruption.

For banks, these two types of blocking do not have a very significant impact, because the funds or money are still in the control of the Bank, so they can be used for the benefit of the Bank. And if the average court proceedings from the beginning of the trial until the issuance of the final judgment is very different.

This condition will be very different, if the funds leave the Bank, then this will have a very significant impact on the Bank, because in general the money from criminal offenses, especially such as corruption cases which generally involve very large amounts.

If the criminal process generally runs for an average of 18 months or 1.5 years, then during that time the Bank can use it for Bank needs, both operational and business. In principle, the longer the blocking period, the more profitable it will be for the Bank.

The bank receiving money or funds from the proceeds of a criminal offense is also a result of the Law, as Article 22 number 4 of Law Number 1 of 2004 concerning State Treasury, states:

6. In the implementation of state revenue and expenditure operations, the State General Treasurer may open an Expenditure Receipt Account at a commercial bank.

⁶ *Op.cit.*, Banking Law

The Bank's action of using funds from criminal offenses clearly violates the Anti-Money Laundering Law⁷. This is because Article 29 of the Anti-Money Laundering Law only states:

Unless there is an element of abuse of authority, the Reporting Party, officials, and employees cannot be prosecuted, either civilly or criminally, for the implementation of reporting obligations under the Law.

From this article, it is clear that the Reporting Party (Financial Service Provider or Bank) is not authorized to use funds from criminal acts, and only states that the Financial Service Provider cannot be prosecuted civilly or criminally, for reporting suspected money laundering crimes.

From the results of the author's research, there are no laws or other regulations that state whether Financial Service Providers or Banks can use money from criminal offenses that are confiscated and deposited by Law Enforcement Officials (APH) as deposits with them, before finally being deposited into the State Treasury account at Bank Indonesia. State Financial Management in Indonesia is managed by the State Minister of Finance as the State Chief Financial Officer⁸.

4.3. Nature of Bank Operations

In the course of their day-to-day operations, banks collect and disburse funds that they receive. This is the nature of the Bank. All incoming funds, whether through demand deposits, savings, deposits and others⁹, will be pooled into one group. In banking terms, this is pooling of funds. Furthermore, the Bank will use the incoming funds for its business purposes or use them as an intermediary institution, as mandated by law¹⁰.

Because it is a pool of funds, the funds that enter the Bank are mixed, and become unclear or blurred: funds from current accounts, savings, deposits and or others and including whether the funds come from legitimate activities (legal) or from the results of criminal acts (illegal). The pool of funds approach is preferred by banks, especially Islamic banking because of the simple nature of the cost calculation¹¹.

If the Bank receives funds that are entrusted by the Law Enforcement Agency (APH), in the form of money confiscated during the court process, such as blocking accounts or after the issuance of a court decision or *inkracht*, (before being transferred to the State Treasury), the funds that enter the Bank will indirectly be used for the Bank's internal interests.

On the other hand, account blocking orders carried out, both by the Bank and or on the orders of APH, courts or other institutions will make the Bank more free to utilize these blocked funds, as the Bank's internal operations and business.

Thus, the nature of the Bank's business indirectly encourages money laundering. The role of the Bank, which was originally to prevent the entry of funds into the banking system, and also to prevent money laundering, is the opposite: banks as perpetrators of money laundering.

⁷ *Op.cit.*, Articles 3 and 5 of the Anti-Money Laundering Law

⁸ Harjowiryo, M. & Sigit, T. A. (2022). Development of state treasury management in Indonesia based on international best practices: A comparative study. *Indonesian Treasury Review: Journal of Treasury, State Finance and Public Policy*, Vol. 7 No. 4, 2022: pp. 347-363

⁹ *Op.cit.*, Article 6 letter a, Banking Law

¹⁰ *Op.cit.*, Banking Law

¹¹ Mulyani, Sri and Siti Jamilah, "Implementation of Fund Management in Islamic Banks," *Journal of Islamic Banking*, Vol. 3 No. 1, p. 46, 2022. 46, 2022, Sunan Kalijogo Islamic Institute

There needs to be a separation between incoming funds and their different uses. This means that funds that are short-term, then the designation is a loan that is also short-term. Long-term funds, the designation is for long-term loans¹².

4.4. Role of Government and Stakeholders

Indirectly, the government has a role in the Bank's involvement in money laundering. This can be proven, that every year, the government always receives dividend deposits to the state as income for the State Budget (APBN), as Non-Tax State Revenue (PNBP).

Over the last 10 (ten) years, from 2013-2023, the average SOE deposited IDR 10 trillion to the State, and even in 2023, SOEs made deposits to the State of IDR 82.1 trillion and this amount was the largest deposit of all time¹³, where BUMN Banks deposited as much as IDR 46.68 trillion¹⁴.

This deposit is a positive thing to increase state revenue from the PNBP sector. Indirectly, the State's finances can be helped by deposits from BUMN, and BUMN Banks contribute more than 50% of the State treasury deposits.

Stakeholders play an important role in the Bank's involvement in money laundering. Based on the Limited Liability Company Law (UUPT) Number 40 of 2007, stakeholders can be divided into two main categories:

1. Internal Stakeholders:

- a. Owners: The owners of the company have a direct interest in the profitability and success of the company.
- a. Employees: Employees depend on the company for their income and well-being.
- b. Management: Management is responsible for the management of the company and the achievement of its objectives.

2. External Stakeholders:

- a. Customers: Customers are those who buy the company's products or services.
- b. Suppliers: Suppliers provide the raw materials and services that the company needs to operate.
- c. Creditors: Creditors are parties that provide loans to the company.
- d. Government: The government has the authority to regulate and supervise the company.
- e. Community: Communities have an interest in the social and environmental impacts of the company's activities

Stakeholders have various important roles in the company, including:

- a. Provide Support: Stakeholders can provide financial, moral, or political support to the company.
- b. Providing Input: Stakeholders can provide input and suggestions to the company to improve its performance and success.
- c. Monitoring Performance: Stakeholders can monitor the company's performance and ensure that the company operates ethically and responsibly.
- d. Help Resolve Conflicts: Stakeholders can help resolve conflicts that may arise between the company and other parties.

¹² Rahmatika, Aviratu Ni'mati, "Dual Banking System in Indonesia", Journal of Islamic Studies and Muamalah, Vol. 3 No. 1, p. 46, 2022.

¹³ SOE Dividend Deposits in 2023 Reach Rp82.1 Trillion, the Largest in History (bisnis.com)

¹⁴ List of SOEs with the Largest Dividend Deposits in 2023 - Market - Page 2 (bloombergtechnoz.com)

For the Bank, the stakeholders are:

1. Shareholders: Provide capital to the bank and oversee management performance.
2. Employees: Provide services to customers and ensure the smooth operation of the bank.
3. Customers: Deposit funds and use the bank's products and services. Investors are included in this group as they engage in business with the Bank's business, such as shares.
4. Lenders: Provide funds to the bank to support its operations.
5. Government: Regulates and supervises banks to protect customers and maintain financial system stability.
6. Society: Ensure that banks operate responsibly and ethically and do not harm the environment.

At first glance, all Bank stakeholders have a very important role for a Bank. However, based on observations and experience in a bank, internal stakeholders, especially shareholders, have an important role in the sustainability of management. Through the mechanism of the General Meeting of Shareholders or GMS, stakeholders can make changes to the composition of the Bank's management.

If the Bank does not achieve the results (profit) as determined in the previous GMS, then stakeholders will take actions such as replacing the management of the Bank.

By looking at the possibilities as described above, profit growth becomes a benchmark for Stakeholders against Bank management. And this makes the Bank will continue to race to continue to improve its performance, namely profit growth. Being a healthy growing bank is the dream of every bank.

Another thing is the provision of *tantiem*. The provision of money or other benefits to the company's directors and commissioners for the company's performance in achieving profit or profit. *Tantiem* is usually routine and calculated based on a percentage of the company's profit. In Law Number 40 of 2007 concerning Limited Liability Companies (UU PT), article 96 number 1 states:

1. *Provisions regarding the amount of salary and allowances for members of the Board of Directors shall be determined by resolution of the GMS.*

Meanwhile, Article 113 of UU PT states:

Provisions regarding the amount of salary or honorarium and benefits for members of the Board of Commissioners shall be determined by the GMS.

From article 96 number 1 and article 113 above, it is clear that the distribution of bonuses or *tantiem* to directors and commissioners generally depends on several factors, including the performance of the company and the individual performance of members of the board of directors and board of commissioners during a certain period. This determination is usually based on recommendations from the remuneration committee, if any, which is part of the board of commissioners.

For SOEs, the criteria generally considered in the distribution of *tantiem* are¹⁵:

¹⁵ Regulation of the Minister of State-Owned Enterprises of the Republic of Indonesia Number PER-12/MBI/11/2020 concerning the Fifth Amendment to the Regulation of the Minister of State-Owned Enterprises Number PER-4/MBU/2014 concerning Guidelines for Determining the Income of Directors, Commissioners and Supervisory Board of State-Owned Enterprises.

1. Achievement of predetermined financial targets, such as net profit, revenue growth, and operational efficiency.
2. Achievement of non-financial targets, such as customer satisfaction, innovation, and environmental performance.

Meanwhile, non-SOE or private companies are generally not much different from SOE criteria, namely profit. Therefore, it is only natural that the Company (Bank) wants to always have profit growth, because *tantiem* or management performance incentives are measured based on performance, in this case profit.

4.5. Fulfillment of liquidity needs and prevention of money laundering

The problem of fulfilling the Bank's funding¹⁶ or liquidity is an old, classic but very important problem. The Bank's liquidity, which comes from deposits or third parties and funds derived from tradable securities, both central bank securities, government and other securities, will be the "blood" for the Bank to carry out its daily operations.

To fulfill the Bank's liquidity needs, there are many ways that are usually done by the Bank, among others: first. Raising funds through the public with various conventional products offered, such as current accounts. Savings, deposits, certificates of deposit, debt securities or bonds¹⁷. Funds collected through this method are referred to as Third Party Funds (DPK) or Third Party.

The weakness of these collected funds called DPK is that these funds have the potential to move or leave the Bank, either suddenly or based on a period or period of time. This is what the Bank always maintains, how to keep the funds in the Bank. Various programs are offered to attract new prospective customers and or just to retain old customers, including in this case is a special interest offer (special rate), which of course is only intended for special customers as well. Third Party Funds (DPK) is the most important source of funds for the Bank. As much as 80%-90% of the funds managed by the Bank come from DPK¹⁸.

The race for public funds is inevitable, and coupled with the demands of management or stakeholders, to keep performing to produce increasing profits, making the fulfillment of liquidity something that must always be fulfilled or fulfilled. In conclusion: the liquidity factor plays a very significant role in the profitability or profit of the Bank¹⁹.

The stages of money laundering consist of three main stages²⁰:

1. Placement.

This stage involves the introduction of funds derived from criminal activity into the financial system. This can be done by depositing cash into a bank, purchasing

¹⁶ Wuryandani, Gantiah, et.al, Fund Management and Bank Liquidity, 2014, Bulletin of Monetary Economics and Banking, Buletin Bank Indonesia, Volume 16 Number 3, Article 6: 2

¹⁷ *Idem*

¹⁸ Tofan, Muhammad, et.el, "Analysis of the Effect of Third Party Funds and Lending Interest Rates on the Profitability of State-Owned Banks", Scientific Journal of Unitary Management. (JMKES), Unitary Institute of Business and Informatics, 2022, Volume 10 No.1: 98

¹⁹ Nainggolan, Edisah Putra, "The Effect of Third Party Funds and Liquidity on the Profitability of Government-Owned Banks in 2015-2018", Journal of Accounting and Business Research, University of Muhammadiyah Sumatra Utara, 2019, Vol. 10 No. 2: 157.

²⁰ Laowo, Yonathan Sebastian, "A Legal Study of the Crime of Money Laundering", Journal of Panah Keadilan.

financial instruments (such as checks, bonds), or using the money for commercial transactions that appear legitimate.

Article 3 of the Anti-Money Laundering Law defines money laundering and includes activities that conceal or disguise the origin of assets known to be derived from the proceeds of crime.

It is at this early stage that the role of the Bank is very important. Banks have an obligation to screen or filter the funds that enter the Bank.

If this stage can be passed, the next is not too difficult to pass.

2. Disguise (Layering)

Once the funds are inside the financial system, the second stage is to carry out a series of complex transactions to make the money trail difficult to trace. This often involves the transfer of funds between accounts and between countries, the conversion of money through the purchase of assets, and the creation of fake lending agreements or invoices.

Articles 3 and 4 of the PTPU Law describe the process of disguising the identity or original source of funds, which is part of the definition of money laundering.

3. Integration

If the placement and layering stages have been successfully completed, the perpetrator will attempt to recombine the laundered funds in a form that can be utilized by the perpetrator, the integration mechanism uses the same financial instructions or financial service providers and tools used in the other stages. At this stage, the launderer needs to make the funds look like their legitimate origin²¹. This can be done through investments in businesses, real estate, or other types of assets that appear legal.

This stage of money laundering is the main focus of efforts to prevent and combat money laundering by various institutions, including PPATK (Pusat Pelaporan dan Analisis Transaksi Keuangan), which has the obligation to analyze and report suspicious transactions that may be related to money laundering. This is all done in order to reduce organized crime and ensure the integrity of the financial system.

In performing its duty to filter or filter incoming funds, the Bank is equipped with various policies, among others:

1. Law of the Republic of Indonesia Number 8 Year 2010 on the Prevention and Eradication of Money Laundering Crimes (Anti-Money Laundering Law):

This law is the main legal basis in Indonesia governing the prevention and eradication of money laundering. It includes provisions on customer identification, transaction monitoring, and suspicious transaction reporting obligations.

2. Financial Services Authority Regulation Number 12/POJK.01/2017 on the Implementation of Anti-Money Laundering and Countering the Financing of Terrorism Programs in the Financial Services Sector.

OJK as an institution that regulates and supervises activities in the financial services sector in Indonesia, also issued regulations that support the prevention of money laundering.

²¹ *Idem*

3. Internal Bank Guidelines:

Each bank must have internal guidelines governing the prevention of money laundering, based on applicable regulations and tailored to the operational characteristics of each bank. This is the Bank's accountability for compliance with regulations issued by regulators, such as OJK, BI, laws and so on.

4. Financial Transaction Reports and Analysis System (PPATK)

PPATK has regulations and guidelines that must be followed by financial institutions, including banks, to report suspicious transactions and transactions involving large amounts of money.

PPATK will even provide sanctions for reporting parties who do not report²², as regulated by the Law and or other Regulations.

5. Government Regulation of the Republic of Indonesia Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering Crimes, and so on.

The implementation of these policies is an obligation for banks to ensure that they are not used as a tool for money laundering or other illegal activities. Banks that do not comply with these regulations can face serious sanctions, including fines, restrictions on business activities, and revocation of business licenses.

In the Anti-Money Laundering Law or Anti-Money Laundering Law Article 26 number 1, banks are authorized to postpone transactions. This is clearly stated:

The financial service provider may postpone the Transaction for a maximum of 5 (five) working days as of the postponement of the Transaction.

And the postponement of transactions can be continued with blocking, as stated in Article 71 number 1 of the Anti-Money Laundering Law:

Investigators, public prosecutors, or judges are authorized to order the Reporting Party to block assets that are known or reasonably suspected to be the proceeds of criminal acts from:

- a. Any person who has been reported by PPATK to the investigator;*
- b. a suspect; or*
- c. the defendant.*

Article 71 number 3 also states:

Blocking as referred to in paragraph (1) is carried out for a maximum of 30 (thirty) working days.

The action of the Bank, as a reporter, which delays and blocks can be said to be compliance with the Anti-Money Laundering Law, namely preventing money laundering.

5. Solutions for banks to avoid being involved in money laundering

The beginning of the Bank's involvement in money laundering is because the Bank uses or utilizes funds that are suspected of being the proceeds of a criminal offense, and even though it has been proven to be the proceeds of a criminal offense, the Bank can still use

²² Financial Transaction Reports and Analysis Center Regulation Number 01 of 2024 concerning Procedures for Imposing Administrative Sanctions for Violations of Reporting Obligations

these funds for its operational needs. The solution to overcome this is through a comprehensive or holistic approach. This means involving regulators, such as the Minister of Finance, OJK, BI, Law Enforcement Officials (APH), Banking²³, the Minister of Economy, and it is possible to be appointed to a higher level.

Banking is an institution that must be involved, because it requires changes in the operation of Conventional Banks or Sharia Banks. Changes to the operations of banks operating in Indonesia are not easy, not just changing the Banking Law, either the Conventional Bank Law or the Islamic Bank Law, but changing banking operations, which by nature is to collect funds received, where all funds are made into one unit or pooling of funds, before the funds are distributed.

With the duration of the assets suspected or known from the perpetrators of criminal acts, the Bank can also use the assets for the Bank's operational needs. The Bank's actions that use the assets of the perpetrators of criminal acts that have been suspended and blocked as intended by Articles 26 and 71 numbers 1 and 3, are clearly a violation of Article 3 of the Anti-Money Laundering Law which states:

Every person who places, transfers, diverts, spends, pays, grants, entrusts, brings abroad, changes the form, exchanges with currency or securities or other actions on Assets that he knows or reasonably suspects are the proceeds of a criminal offense as referred to in Article 2 paragraph (1) with the aim of hiding or disguising the origin of the Assets shall be punished for the crime of Money Laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).

In addition to the placement of confiscated money, other matters related to the Bank's operations, such as: transaction delays and blocking also need to be changed.

To restore the Bank's duty as The Last Line Against Money Laundering, but also not to reduce profits, the Bank can act as a channel in financing²⁴. In this case, the Bank can act only as a conduit of funds, from investors or owners of funds to those who need funds (borrowers). Banks can prevent money laundering by applying the Know Your Customer (KYC) principle, followed by the application of Customer Due Dilligence (CDD) and even Enhanced Due Dilligence (EDD²⁵) to investors who want to use the channeling facility.

6. Conclusion

Some conclusions derived from the above explanation are:

1. As a financial institution that is expected to be the last line of defense against money laundering, the banking industry is expected to be able to perform its duties as mandated by the law and many parties, including international institutions.
2. To run its business, the first thing done by the Bank is to collect funds as optimally as possible. This collection of funds is the beginning of the next business process, namely

²³ Agustin, Hamdi, "The Theory of Islamic Banks", Journal of Islamic Banking, Vol. 2 Number 1, UIR, 2021: pp. 68

²⁴ Alzefin Yolandi Roos Mareike, Sinolungan (2018)., "Influence of is Amount Channeling of Credit to Profit Bank Credit People of Millenia in Manado (Study Case in The Year 2014-2018)"., Journal of International Conference Proceedings (JICP)., Vol. 1 No. 1: 2., Manado State University

²⁵ Sunarmi, Sukarja, D., & Lubis, T.M., (2022)., "Implementation of Customer Due Diligence Principles on Financial Service Companies in Preventing and Eradicating Criminal Action of Money Laundering in Medan". Jurnal Mercatoria, Vol. 15 No. 2: 103-116

the distribution of funds or loans or credit. This is referred to as the intermediary function²⁶.

3. The weakness of existing regulations has encouraged banks to eventually become involved as perpetrators of money laundering, and no longer as The Last Line of Defense Against Money Laundering. This is certainly very concerning because the Bank participates in enjoying the funds from criminal acts.

4. Bank Operations

By the nature of the Bank's operations, all funds entering the Bank will be collected into a single unit or pooling of funds. This condition causes the mixing of funds from legal and illegal business results.

5. Banks that are involved in money laundering are in violation of Article 3 of the Anti-Money Laundering Law. Thus the Bank has committed a criminal offense.
6. The government has a role in the metamorphosis or evolution of the Bank, from preventing money laundering to money laundering offenders. The assets of the perpetrators of criminal acts, whether still under suspicion or those that have been decided by the Court (inkracht), are stored in the Bank before finally being deposited into the State Treasury. The authorization of the Bank to postpone transactions and / or blocking the assets of the perpetrators of criminal acts is instead utilized by the Bank for its business and operational interests.

Demands from stakeholders to always grow, in this case generating profits on an ongoing basis, the potential for changes in Bank Management if they do not achieve targets, investors who want to always see their investments make a profit, are also factors that cause the Bank to potentially or even be able to turn a blind eye to funds entering the financial system.

Suggestions

Suggestions that the author can give are:

- i. Make changes to the policy on the placement of funds originating from the results of investigations and so on until the Court's decision is inkracht, not allowed to be deposited in the Bank. This will certainly change many related laws and regulations.
- ii. There is a separation between incoming funds and their different uses. This means that funds that are short-term, then the designation is for loans that are also short-term. Long-term funds, the designation is for long-term loans.
- iii. Any assets of the perpetrators of criminal acts, whether they are newly suspected or have been sentenced by the Court must be removed from the banking system, and then placed in the State Treasury as a deposit for money laundering cases.
- iv. Confiscated assets of criminal offenders are not deposited in Commercial Banks, but are directly deposited in the State Treasury.
- v. Fast, precise and fair judicial process, especially for cases of criminal offenses as mentioned in Article 2 of the Anti-Money Laundering Law.
- vi. The problem of banks evolving into money launderers cannot be solved part by part. A comprehensive or holistic approach between the Government, Regulators, Stakeholders and banking institutions, must sit at one table, so that the solution can be thorough or comprehensive.

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²⁶ The Financial Action Task Force (FATF), is an intergovernmental body established in 1989 to develop and promote global policies to combat money laundering (ML) and the financing of terrorism (TF). FATF recommendations provide a framework for countries to develop effective regulations against money laundering and terrorism financing. And in 2023, Indonesia became the 40th member of this body.

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