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# Prevention of Money Laundering: Various Models, Problems and Challenges

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## ABSTRACT

It is well known that with money laundering activities, offender can hide the origin of money or property proceeds of crime, and thus they can enjoy and use the proceeds of the crime freely. Money laundering actors always try to avoid tracking their crime proceeds by various means, including taking advantage of the weaknesses of existing laws and regulations.

Efforts to eradicate the crime of money laundering still have obstacles that cause pros and cons within the law enforcement environment itself. Are the Corruption Crimes investigators and the Prosecutor's Office able to uncover the Corruption Crime of Money Laundering that occurred and how is the investigation model for the Crime of Money Laundering able to confiscate the assets of the perpetrators in the corruption case? Until now, investigations into the crime of money laundering have not found a genuine model as a step forward in eradicating money laundering crimes. Prevention of money laundering must involve all existing components, namely the superstructure (government), infrastructure (institutions dealing with money laundering), and sub-structure (society and non-governmental institutions).

**Keywords:** *Money Laundering, Crime Prevention, Mode*

## INTRODUCTION

Currently, money laundering is a very serious threat to every country in the world. This is mainly due to the bad effects it has, including instability in the financial system, the country's economic system and even the world as a whole. As a new dimension of crime, money laundering activities take sophisticated forms, techniques, and modes. Even its activities are transnational (transnational crime) and transcend national boundaries (cross borders). With perpetrators classified as "*white collar*", money laundering has become a very complicated crime in its forms, techniques, and modes. As a white-collar crime, money laundering is a crime that: (1) is not visible (low visibility); (2) very complex (complexity); (3) the complexity of proving criminal responsibility (diffusion of responsibility); (4) unclear victims (diffusion of victims); and (5) difficult to detect and prosecute (weak detection and prosecution).<sup>1</sup>

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<sup>1</sup> Harkrisnowo, Harkristuti. "Kriminalisasi Pencucian Uang (Money Laundering)." *Makalah Disampaikan pada Video Conference Nasional yang diselenggarakan oleh PPATK, BI, UI, UGM, USU, UNDIP, UNAIR, dan ELIPS di Jakarta*. 2004.

Although Money Laundering has been recognized as a crime by the international community and various countries have committed to criminalize money laundering. Money laundering itself does not yet have a standard and universal definition in all countries. The difference in background and focus on the formulation of criminal policies against money laundering in various countries is the cause. For example, Britain and France use money laundering instruments as part of efforts to eradicate drugs. Meanwhile in America, the goal of crime prevention is broader, not limited to narcotics only.<sup>2</sup>

The FATF also does not provide a standard definition, but only describes that money laundering is a process to disguise the origin of the money related to crime or illegal sources.<sup>3</sup> The definition can also be adapted to the purpose of criminalizing money laundering in each country. For example, Lutz Kraupkopf groups these definitions into three<sup>4</sup>, namely: Money laundering can be defined simply as a product of drug trafficking. This method creates a direct link between money laundering and drug trafficking. Money laundering can alternately be seen as product of various crimes, including, but not limited to, drug trafficking. Such a definition could (and perhaps should) include an enumeration of special crimes like counterfeiting, robbery, extortion, and terrorism. A third method would be to make money laundering a crime, not in the context of drug trafficking or enumerated, special crimes, but as a result of money laundering itself. In other words, whoever deals with money or other assets that he knows or must assume are the product of a crime meets the legal definition.

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<sup>2</sup> Haris, Budi Saiful. "Penguatan alat bukti tindak pidana pencucian uang dalam perkara tindak pidana korupsi di Indonesia." *Integritas: Jurnal Antikorupsi* 2 no. 1 (2016): 91-112.

<sup>3</sup> Financial Action Task Force on Money Laundering, Basic Facts about Money Laundering, <http://www.fatfgafi.org/mlaundering-e.htm>. See also Anti-Money Laundering and Counter-Terrorism Financing Act 2006, No. 169, 2006, An Act to combat money laundering and the financing of terrorism, and for other purposes; Asian Development Bank, *Manual on Countering Money Laundering and The Financing of Terrorism*, March, 2003

<sup>4</sup> Krauskopf, Lutz. "Comments on Switzerland's insider trading, money laundering, and banking secrecy laws." *Int'l Tax & Bus. Law.* 9 (1991): 277; Rajagukguk, Erman. "Rezim Anti Pencucian Uang Dan Undang-Undang Tindak Pidana Pencucian Uang." *Makalah pada Lokakarya "Anti Money Laundering" Fakultas Hukum Universitas Sumatera Utara, Medan* 15 (2005).

A fourth possibility is to include as money laundering any action by which somebody acquires, keeps, and/or maintains money or other assets that he knows or should know belongs to a criminal organization. Money laundering is not one of the most frequent activities of and impetus for criminal organizations.

Yunus Husein defines Money Laundering as: "*Efforts to obscure the origin of assets from the proceeds of criminal acts so that the assets appear as if they came from legitimate activities*".<sup>5</sup> Money launderers always try to avoid tracking the proceeds of their crimes by the authorities in various ways, including taking advantage of the weaknesses of existing laws and regulations.<sup>6</sup>

Many countries are facing difficulties in dealing with money laundering, including Indonesia. Although Indonesia has implemented an anti-money laundering regime approach since April 17, 2002 which was marked by the passing of Law No. 15 of 2002 concerning the Crime of Money Laundering, which was subsequently revised by Law No. 25 of 2003 and finally Law No. Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering but the International Narcotics Control Strategy Report (INCSR) issued by the Bureau for International Narcotics and Law Enforcement Affairs, United States Department of State, still includes Indonesia in the ranks of major laundering countries in the region. Asia Pacific. There are 53 countries in Asia Pacific that are classified as major laundering countries, including Australia, Canada, China, Chinese Taipei, Hong Kong, India, Japan, Macau, China, Myanmar, Nauru, Pakistan, Philippines, Singapore, Thailand, United Kingdom, and the United States of America.<sup>7</sup>

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<sup>5</sup> Husein, Yunus. "National and International Cooperation on the Prevention and Eradication of Money Laundering." *Indonesian Journal of International Law* 11 no.1 (2013): 1-18.

<sup>6</sup> Masduki, Teten. "Tiada Ruang Tanpa Korupsi", Semarang: KP2KKN (2004).

<sup>7</sup> Arifin, Ridwan, Indah Sri Utari, and Herry Subondo. "Upaya Pengembalian Aset Korupsi Yang Berada di Luar Negeri (Asset Recovery) Dalam Penegakan Hukum Pemberantasan Korupsi Di Indonesia." *IJCLS (Indonesian Journal of Criminal Law Studies)* 1 no.1 (2017): 105-137. See also Utari, Sri Indah. *Menyibah Money Laundering dan Penanggulangannya*. Semarang: Sarnu Untung, 2017.

## METHOD

This research is normative legal research using secondary data derived from various previous research reports, annual reports, policy briefs, and various legal regulations related to money laundering crimes in Indonesia.

## RESULTS & DISCUSSION

### I.

#### Revealing the Existence of Money Landing

Different parties each have their own definition of money laundering based on different priorities and perspectives. Among these definitions include:

- a. term used describe investment or other transfer of money flowing from racket steering, drugs transaction, and other illegal sources into legitimate channels so that original sources cannot be traced.
- b. to exchange or to invest money in such a way as to conceal that it come from illegal or improper sources
- c. According to Sarah N. Welling that Money laundering is the process by which one conceals the existence, illegal sources, or illegal application of come, and then disguises that income to make it appear legitimate.
- d. David Fraser Constance that money laundering is quite simply the process through which "dirty" money (proceeds of crime), is washed through "clean" or legitimate sources and enterprises so that the "bad guys" may more safely enjoy their ill 'gotten gains"
- e. Pamela H. Bucy give the view that "money laundering is the concealment of the existence, nature or illegal source of illicit funds in such manner that the fund will appear legitimate if discovered"

The Financial Action Task Force on Money Laundering (FATF), formulate money laundering as "the process of disguising wealth obtained from criminal acts in order to hide the illegal origin of the wealth" (the

processing of criminal proceeds (profits or other benefits) in order to disguise their illegal origin).<sup>8</sup>

Byung-Ki Lee from the Korea Institute of Criminology defines money laundering as "*the process of transforming the proceeds of illegal activities into legitimate capital*". Meanwhile, in Black's Law Dictionary, it is stated that money laundering is a "term used to describe investment or other transfers of money flowing from racketeering, drug transactions, and other illegal sources into legitimate channels so that its original source cannot be traced".

One of the definitions that has become a general reference so far is the definition contained in the United Nation Convention Against Illicit Traffic in Narcotics, Drugs and Psychotropic Substances of 1988 which was later ratified in Indonesia by Law No. 7 of 1997: The conversion or transfer of property, knowing that such property is derived from any serious (indictable) offence or offences, or from act of participation in such offence or offences, for the purpose of concealing or disguising the illicit of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his action; or The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from a serious (indictable) offence or offences or from an act of participation in such an offence or offences.

In other words, money laundering is an act of transferring, using or committing other acts of the proceeds of a criminal act, whether committed by a criminal organization or by individuals who commit crimes such as corruption, narcotics trafficking, and other criminal acts. with the aim of hiding, disguising, or obscuring the origin of the money derived from the proceeds of the crime, so that it can be used as if it were legal money without being detected that the asset originated from illegal activities.

It is clear that money laundering essentially involves assets (income/wealth) that are disguised so that they can be used without detecting that these assets originate from illegal activities.<sup>9</sup> Through money

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<sup>8</sup> Lyman, David. "Money Laundering." *Thailand: Tilleke & Gibbins*. Retrieved August 23 (1999): 2012.

<sup>9</sup> Garnasih, Yenti. "Penanganan Kejahatan Aliran Dana Perbankan, Korupsi dan Pencucian Uang." *Legalitas: Jurnal Hukum* 4 no.1 (2017): 22-34; Garnasih, Yenti. "Paradigma Baru dalam Pengaturan Anti Korupsi di Indonesia Dikaitkan dengan UNCAC 2003." *Jurnal Hukum PRIORIS* 2 no.3 (2016): 161-174. See also Yenti, Ganarsih.

laundering, income or wealth originating from unlawful activities is converted into financial assets that seem to come from legal/legal sources. Money laundering is a method for hiding, transferring, and using the proceeds of a criminal act, the activities of a criminal organization, economic crime, corruption, narcotics trafficking and other activities that constitute criminal activity. In short, money laundering is a means for criminals to legalize the wealth resulting from their crimes in order to eliminate traces.

The most specific thing in money laundering is that there is an attempt/process to disguise or hide the proceeds of a crime to change the proceeds of the crime to appear like the proceeds of legitimate activities because their origins have been disguised or hidden. The 'laundered' income or wealth can be in the form of money or goods obtained from serious crimes such as corruption, bribery, smuggling of goods, labor smuggling, immigrant smuggling, banking, narcotics, psychotropic substances, slave trade/women and children, arms trade, blackmail, kidnapping, terrorism, theft, embezzlement, fraud, and other serious crimes.<sup>10</sup>

Money laundering is not only limited to active involvement in criminal acts to generate wealth or money, but also in a broad sense, money laundering can include passive actions in the form of passive ownership of wealth obtained from criminal acts. This is in line with the definition put forward by the Prevention of Organized Act that money laundering includes even passive possession of criminal property. then it is money laundering.

If we look more closely, there are four main motives for the perpetrators of doing money laundering, namely: (i). keep the perpetrators away from 'predicate crimes' such as corruption, narcotics and others, (ii). separate the proceeds of crime from the crime committed, (iii). enjoy the proceeds of crime without any suspicion of the origin of the wealth or income, and (iv). reinvesting the proceeds of crime for subsequent criminal acts into legitimate businesses.

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"*Illicit Enrichment.*" Bandung: Citra Aditya Bakti (2012). Garnasih, Yenti. *Penegakan Hukum Anti Pencucian Uang dan Permasalahannya di Indonesia.* PT RajaGrafindo Persada, 2016.

<sup>10</sup> Yusuf, Y. "Penerapan Sistem Pembuktian Terbalik Untuk Kasus Korupsi: Kajian Antara Hukum Positif Dan Hukum Islam." *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 8 no.1 (2013): 207-233.

## II. Money Laundering Model

Schaap Cees, as quoted by Munir Fuady, suggested several models used by the perpetrators to commit money laundering crimes. Among the most common models of money laundering are:

a. Model with C-Chase operation.

This model keeps money in banks “under regulations” so that they are free from the obligation to report financial transactions (Non-Currency Transaction Reports) and involve foreign banks by utilizing tax havens.

b. Pizza connection model

This model utilizes the remaining money invested in the bank to obtain Pizza concessions and involves tax haven countries by exploiting fictitious exports. This Pizza Connection case uses a separate model called the “Pizza Connection model”. This Pizza Connection has many pizza restaurants that drain illicit money. The modus operandi used is investment cooperation and transfers abroad. The method used is the offshore conversion method. The instrument used is a bank. The Pizza Connection case broke out in 1984 which was handled by the International Police (Interpol). The case was investigated by US and Italian investigators led by Italian Judge Falcone. Pizza restaurants that are scattered everywhere make a lot of illicit money as a result of the drug trade in the United States. This money is partly used and invested to obtain pizza concessions, the rest through tax haven countries in the Caribbean and Switzerland. The money was given to mafia members in Sicily in the form of payments for the export of fruit juice to Romania, Bulgaria and Lebanon, even though the exports were fictitious. The intended target is to get the European community money for its export reimbursements.

c. La Mina models

This model utilizes domestic and foreign gold and gem wholesalers to disguise the proceeds of crime.

d. Model with cash smuggling to other countries.

This model uses a quasi-business conspiracy with a parallel banking system.



- e. Model by trading shares on the Stock Exchange.  
This model cooperates with financial institutions operating on the stock exchange.

### III.

## Prevention of money laundering is an effort of all components

Prevention of money laundering must involve all existing components, namely the superstructure (government), infrastructure (institutions/institutions dealing with money laundering), and sub-structure (society and non-governmental institutions). All these components must be mobilized as much as possible in an effort to prevent money laundering. All these components must be mobilized as much as possible in an effort to prevent money laundering.

#### 1. *Government Contribution*

The central role of the government in preventing money laundering can be carried out through regulatory policies related to money laundering itself. Considering that money laundering is a further crime from other crimes which are "predicate crimes/offences", then directly or indirectly, the prevention of money laundering must start from regulatory policies regarding the predicate crime.

Judging from the regulations that have been issued by the government relating to money laundering, it can be said that the government has taken relatively adequate steps in an effort to prevent money laundering. This can be seen from the regulations that have been made so far, which on the one hand criminalizes almost all crimes that are categorized as "original crimes" from money laundering, and on the other hand, develops procedures and mechanisms for early detection of money laundering activities. These regulations include:

- a. Law No.5 of 1997 concerning Psychotropics. This law regulates, among other things, the requirements and procedures for export and import,

- distribution and distribution of psychotropic substances so that these things are not used as a means of money laundering activities.
- b. Law no. 22 of 1997 concerning Narcotics, which among other things also regulates the requirements and procedures for the use, distribution, and export-import of narcotics so that they are not misused for crimes, including as a means of money laundering activities.
  - c. Law no. 24 of 1999 concerning Foreign Exchange Flows and the Exchange Rate System which obliges every resident to provide information and data regarding the activities of foreign exchange flows that they carry out, directly or through other parties as determined by Bank Indonesia.
  - d. Law no. 23 of 1999 concerning Bank Indonesia, which in Article 31 paragraph (1) regulates restrictions on the amount of rupiah currency that can be taken out or into the Indonesian customs territory in an effort to prevent, among other things, counterfeit money transactions and other transactions such as money laundering.
  - e. Law no. 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law no. 20 of 2001.
  - f. Law no. 15 of 2002 concerning the Crime of Money Laundering as amended by Law no. 25 of 2003 and replaced by Law no. 8 of 2010 concerning the Eradication of the Crime of Money Laundering
  - g. Law no. 15 of 2003 concerning Stipulation of Government Regulation in Lieu of Law (Perpu) No. 1 of 2002 concerning Eradication of Criminal Acts of Terrorism as a Law.
  - h. Law no. 1 of 2006 concerning Mutual Assistance in Criminal Matters.
  - i. Law no. 6 of 2006 concerning the ratification of the International Convention for the Suppression of the Financing of Terrorism, 1999 (International Convention on the Eradication of the Financing of Terrorism 1999).
  - j. Law no. 7 of 2006 concerning the ratification of the United Nations Convention Against Corruption, 2003 (United Nations Convention Against Corruption).
  - k. Law no. 13 of 2006 concerning the Protection of Witnesses and Victims
  - l. Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons

The criminalization of "original crimes" which are the source of money laundering as mentioned above, is very strategic in terms of

preventing money laundering. This is because the criminalization is not only a basis for law enforcers to take action against perpetrators of "original crimes", but also becomes an entry point for confiscating and seizing money or illicit goods resulting from the said crime.

By confiscating and seizing the proceeds of the crime, there is no longer any money or goods to be "laundered". That way, there is no longer available "capital" to support money laundering networks and activities. In the last instance, success in suppressing "predicate crimes" will automatically reduce money laundering activities including the criminalization of money laundering as stated in Law no. 8 Year 2010.

Referring to Article 3 of Law No. 8/2010 both the formulation of the offense and the threat of punishment for money laundering is relatively clear and contains the threat of severe punishment.

There are two important notes regarding the deterrent effect of such criminalization. *First*, the criminalization in Article 3 has a significant potential for preventing money laundering. The potential lies in the threat of severe sanctions. This was already said by von Feurbach. According to him, the prohibition of an act, especially with the threat of severe punishment, will create psychological coercion for potential perpetrators not to commit the act. *Second*, that the criminalization of money laundering itself is basically an attempt to suppress the proceeds of crime. This is the paradigm of money laundering criminalization. He does not stop at punishing the perpetrator, but first is to suppress the proceeds obtained from the crime he has committed.

The preventive effect of the criminalization of money laundering above will be felt if it is supported by real firm action. Per theory, the significance of firm and consistent action against money laundering crimes lies in three things.

First, firm action in prosecuting a crime (money laundering) will make people aware of the presence of the law as a means of control that needs to be obeyed. Because, as understood by Alf Ross from the Scandinavian exponent of Legal Realism, the existence of law has always been within the human physio-psychic framework. For Ross and other exponents of the Scandinavian school, such as Axel Hagerstrom, A.V. Lundstedt, K. Olivecrona, the law feels its authority for a person, because

of psychological feelings such as a sense of obligation, a sense of power, or fear.<sup>11</sup>

Second, firm and consistent action will make people aware that "no crime is free". By ensuring that crimes always lead to punishment, it will not only deter perpetrators, but also make others afraid to do the same. Through its deterrence effect, every action against law violators that is carried out consistently (consistently) will create fear in someone so that they discourage committing a crime.

Third, firm and consistent action is necessary because, as Homans, Hosland, Janis and Kelley say, that humans are active organisms that take into account ways of acting that allow them to maximize profits and minimize costs. Considering that the motivation of money laundering actors is basically to want to enjoy the existing access to make profits and turn their money into legal, then the firm and consistent action referred to must be directed at efforts to dispel the hopes of the profits to be achieved.

## 2. *Contribution of Financial Service Providers*

The expected contribution of Financial Service Providers in preventing money laundering is through the provision of an early detection management system within these institutions. Early detection management is a system, procedure, and mechanism that is able to detect early all the efforts, tactics, and techniques taken by the perpetrators in carrying out money laundering. Considering that financial institutions (banks and non-banks) are often used by money laundering actors as the main means for money laundering, early detection management needs to be institutionalized in all financial service providers.

Money laundering actors tend to use banks for money laundering activities, because banking services and products allow traffic or transfer of funds from one bank to another bank or financial institution so that the origin of the money is difficult to trace. Even through the banking system, perpetrators in a very short time can transfer the proceeds of crime beyond the jurisdiction of the state, so tracking them will be even more difficult, especially if the funds are entered into the banking system in which the country applies very strict bank secrecy provisions.

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<sup>11</sup> Tanya, Bernard L. *Hukum, Politik, dan KKN*. Jakarta: Srikandi, 2006.

### *3. Contribution of Non-Financial Service Provider Institutions*

Non-bank financial institutions (non-bank financial institutions). also have contribute to the occurrence of money laundering. This type of institution is also an equally attractive target for money laundering actors. Placement is the method most widely used by actors in dealing with non-bank financial institutions. Insurance companies, for example, can be utilized through the purchase of insurance, which is a stage of placing and simultaneously containing elements of layering and integration. Likewise with other modes such as sending money through money transfer companies or placing illicit funds in financing institutions and venture capital, or paying off loans to leasing companies. All of these are modes that can be used by money laundering actors using non-bank financial institutions.

In the case of the establishment of a company, the competent authority must create a provision that requires prospective shareholders to attach a statement that the paid-in capital does not originate from and for the purpose of money laundering. The statement letter must be accompanied by an attachment of documents regarding the traces of the origin of the funds to be deposited.

The Directorate of Customs and Excise needs to carry out strict supervision of everyone who brings Rupiah currency out of or into the territory of the Republic of Indonesia, or anyone who brings Rupiah currency out of or into the territory of the Republic of Indonesia in large quantities (above 10 million rupiah or something parallel to it).

Relevant institutions need to make requirements and procedures for the export and import of distribution and distribution of psychotropic substances so that these things are not used as a means of money laundering activities.

#### 4. *Community Contribution*

The community can take part in efforts to prevent money laundering through institutionalization and cultivating an intolerant attitude towards crime, including money laundering. Therefore, it is necessary to take the following steps:

- a. Citizens must boycott all institutions that are proven and indicated to be involved in money laundering activities and transactions.
- b. Community members must stay away from and not engage in any form of relationship with money laundering actors, including with institutions/institutions related to money laundering activities.
- c. Leaders and community empowerment institutions must work together to foster 'social hatred' against money laundering. Social hatred towards money laundering is the initial capital as well as the first step needed to prevent and eradicate this crime.
- d. Social hatred of money laundering must be institutionalized at all levels. This needs to be done to avoid the spread of the criminaloid syndrome to money laundering actors, namely enjoying immunity from being reproached because they are seen as strong people, have a "respectable" position, tie class, and have a special relationship with power (Edward Ross, 1977). This syndrome is very certain to occur in a society that is already apathetic due to the neglect of corruption all this time. Allowing social apathy towards crime/money laundering will not only complicate the work of law enforcement officers, but can also enrich the crime itself (John Braithwaite, 1989). Moreover, according to Braithwaite, the decrease in crime is not solely due to legal punishment, but mainly because of the existence of social hatred against every form of abuse.
- e. Civil society groups must establish a money laundering monitoring network that is tasked with detecting money laundering activities and at the same time monitoring and supervising the law enforcement process in all cases of "original crimes" and the handling of money laundering crimes itself.
- f. The government together with community leaders and other civil society institutions must declare that money laundering is a common enemy, and the perpetrators are despicable people who must be kept away from public relations.

- g. All heads of state institutions and government officials from top to bottom must immediately sever all relations with persons/parties who are indicated to have committed all “original crimes” and perpetrators of money laundering.
- h. All heads of state institutions must systematically eliminate anyone who is indicated to be doing money laundering and all “original crimes” that currently exist in the bureaucracy.

## CONCLUSION

To further strengthen the anti-money laundering government in Indonesia, the effort that must be made is to strengthen the four main pillars which are closely related to each other. *First*, laws and regulations. *Second*, information technology systems and human resources. *Third*, analysis and compliance. *Fourth*, domestic and international cooperation. The strengthening of the first pillar is intended to provide a strong legal framework and legislation, which can create firmness and clarity regarding the anti-money laundering regime so as to facilitate the law enforcement process. The second pillar mainly aims to provide an integrated and secure means of global information and communication, as well as to create strong, skilled and high moral human resources which in turn can streamline and streamline the anti-money laundering regime. The third pillar is to build a condition that can encourage reporting parties to be able to understand their roles and obligations in the anti-money laundering regime, especially in the obligation to submit reports, including the suspicious transaction report as material for analysis for PPATK which is then submitted to the investigating agency. The fourth pillar is aimed at strengthening cooperation between domestic agencies and increasing public participation as well as strengthening international cooperation so that effective and efficient cross-sectoral cooperation and coordination can be realized. In addition, good cooperation among FIUs can accelerate the exchange of information without sacrificing aspects of state secrecy and sovereignty.

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