

# Money Laundering in the Perspective of Local Culture and Banking Law in Indonesia

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## Abstract

The research aims to describe money laundering in the context of local culture and banking law. The research differs to previous studies that stress merely on individual and institutional aspects. 36 cases is observed and made as qualitative study material using normative law method. Research result shows that local culture, especially *catur purusa artha*, believed by the society is giving no truth space in gaining wealth in the right way. Based on the banking law, the principle of know the customers as a weapon to close the movement of money laundering should be strongly implemented by bank management.

**Keywords:** local culture, money laundering, banking law

## 1. Introduction

Globalization and information technology has brought fast and global movement of trade. The progress not only gives positive impact for the societies but also could be a tool for the development of criminalities especially white collar crime, business crime and corporate crime. One of forms of crime is money laundering. In the US it is estimated that \$100 billion - \$300 billion is resulted in from narcotics trafficking and 50%-70% of the numbers is being laundered or reinvested (Erman, 2001). Former Managing Director of IMF, Michel Camdessus, estimates the volume of cross-border money laundering is between 2-5% of the world's gross domestic product (GDP). According to him the lowest limit of the range, which is the numbers result in from activities of *narcotics trafficking, arms trafficking, bank fraud, securities fraud, counterfeiting* and other similar crimes that being laundered in all over the world reaches US \$600 billion every year (Remy, 2001). less cooperation from the bank on the transaction conducted by the customers. Some less cooperative banks are Bank BOT, Bank Gbl, Bank Hrf, Bank Vtr, and Bank PbD (Kompas, 2004). Efforts conducted by the government are by tracking the flow of money from suspicious transactions and the flow of funds from criminal offenses investigated by the police.

Based on various cases previously explained, the research sees money laundering from local culture perspective that differs to previous researches conducted by Jayasree and Balan (2016) , Omar et al (2014) , Nikoloska and Simonovski (2012) that stress on individual and institutional perspective. In addition, the research also sees from the aspect of banking law prevailing in Indonesia that surely differs to those from other countries. For example, the definition of money laundering in Indonesia according to Law No. 25, 2003 on Money Laundering in Article 1 Paragraph 1 stated that: "Money laundering is an act of placing, transferring, paying, spending, granting, donating, entrusting, carrying out abroad, and exchanging wealth, or other actions on wealth that it is known or it is suspected as the result of criminal offense with intention to hide or disguise the origin of the wealth so it looks like a legitimate wealth." Whereas Central Bank of Malaysia define money laundering as all activities and procedures to change the identity of illegally obtained money so that it appears to have originated from a legitimate source (Hamin et al. 2015). In concept, the definition of money laundering is not much different in every country as stated by Dillon, (2013) and Simser, (2013) that money laundering is a process or a technique to clean 'dirty money' derived from criminal activities to disguise the origin of such money and to make them appear to have come from a legitimate source.

Looking at the loss for the society and country due to money laundering, a more accurate solution is needed based on law as well as cultural approach developed in the society. A culture has a role in changing human behavior through customs such as harmonious culture (Astawa, et al 2015; Astawa et al, 2013). Local culture concept used in the research is a culture derived from the teaching of Hinduism, which is *catur purusa artha* (the four bases in gaining wealth). The research method is narrative based on banking law and the culture of *catur purusa artha*. The number of case analyzed is 36 cases sourced from Kompas (2004). The result of the study will give wider view in interpreting money laundering that against religious norm and law norm prevailing in Indonesia.

## 2. Literature Study

### 2.1 Money Laundering

Law No. 15, 2002 explains about money laundering; the explanation of the law, however, describes the act of money laundering as: "An effort to hide or disguise the origin of the wealth gained from criminal offenses as stated in this law". Law No. 15, 2002 on Money Laundering and amendment by Law No. 25, 2003 on

amendments to the Law No. 15, 2002 on Money Laundering (henceforth UU TPPU) did not give definition about money laundering but give examples about the criminal offences categorized as money laundering. It is listed in Article 1 Paragraph (1) that state about money laundering as:

“An act of placing, transferring, paying, spending, granting, donating, entrusting, carrying out abroad, and exchanging wealth, or other actions on wealth that it is known or it is suspected as the result of criminal offense with intention to hide or disguise the origin of the wealth so it looks like a legitimate wealth.” Black’s Law Dictionary explains money laundering as “Terms used to describe investment or other transfer of money flowing from recaketeering, drug transactions, and other illegal sources into legitimate channels so that its original source cannot be traced.” Another view stated by Remy (2002) that money laundering is:

“A series of activities which is a process conducted by an individual or organization against illicit money gained from criminal activity aiming to hide or disguise the origin of the money from the government or competent authorities that have authority to take action against the criminal offenses by putting the money into the financial system so it can be released from the system as lawful money.”

Edi (2004) stated that money laundering is a legal term that can be stated as a criminal offence where the modus operandi is by changing illicit money gained from illegal source so that it seems to be generated from a halal source. Based on various definition and examples, there are two levels of crime in the activity of money laundering. First, the crime that generates the money itself, such as from drugs trafficking, corruption, and so on. Second, the crime of money laundering where the money generates from the crime is laundered and the process, although it seems formally legal, is materially a crime offence based on Article 1 Paragraph (1) Law No. 25, 2003.

## 2.2 Motivation for Money Laundering

There are seven factors encouraging the incidence of money laundering (Remy, 2002): (1) Strict bank secrecy provisions. This provision can be found in Switzerland. England, however, in the meeting of the Financial Minister of European Union countries has suggested the members of European Union to negate provisions on bank secrecy. The idea was resisted by Luxemburg and Austria. (2) The possibility provided by banking provision in some countries, for example Austria, for someone to save money in certain bank using fictitious name or anonym. (3) Some countries were less serious in their act to eradicate money laundering practice conducted through banking system in the country. In other words, those countries deliberately let money laundering occurs because they gain benefit from the placement of the illicit money in their banking. (4) The emergence of a new type of money called electronic money or E-money due to the rapid development of electronic commerce or e-commerce on internet. (5) The possibility of money laundering practice to be conducted through layering. In layering, the party who save money in the bank (saving customer or depositor) is not the real owner of the fund. The depositor only acts as the power of attorney from another party who asked him/her to deposit the money in a bank. It happens especially in developed countries that protected by law. Lawyers who save money in a bank in the name of their client cannot be forced by the competent authorities to reveal the identity of their client. (6) The prevailing of law related to the confidentiality of relationship between client and lawyer. The fund saved in a bank is often uses the identity of the lawyer office. (7) No law on money laundering in those countries.

Based on the above description it can be seen that factors encouraging the occurrence of money laundering strongly related to banking provisions or legislations in a country. In other words, the widespread of money laundering practice is closely related to the government’s political will of a country to eradicate money laundering through legislations, especially in banking.

## 2.3 Banking and Money Laundering

Bank is used in money laundering since it is a type of financial institution offering many financial instruments. The use of bank in money laundering can be in form of: (1) saving money generated from criminal offenses using fake name, (2) saving money through deposits or saving or checking account, (3) exchanging money generated from the crime offence with bigger or smaller denomination, (4) using transfer facilities, (5) having fictitious export and import transaction using L/C by falsifying cooperation documents with related person, (6) establishing and using dark bank (Edi, 2004).

There are five main activities in the process of money laundering i.e.: (1) concealing the source of the dirty money, (2) concealing the real owner of the money, (3) changing the form of fund so it easy to carry around, (4) wherever and in whatever form the money still can be easily monitored by the owner, and (5) concealing the process of money laundering so it is hard to be tracked by the authorities (Munir, 2004).

Money laundering activity usually conducted in gradual. This gradual activity causes the money hard to be tracked or lose track of the money. Put it in simple way, money laundering process is divided into three activities: placement, layering and integration.

Placement ; In this stage, the money generated from a crime offence is placed in certain bank that is

considered safe. This placement is temporary. In this stage, there is also a process of immersing money through: **first**, legal payment process in various financial institutions, such as checking account, securities, traveler's cheque, etc.; and **second**, conducting as many cash transaction (cash and carry) as possible so it will be increasingly harder to track the origin of the money.

Layering; In this stage, activities are conducted aiming to eliminate track or indication on the origin of the money. In this stage, the money is being laundered through, among others, buying stocks in stock exchange, transferring money to another country in form of foreign currency, borrowing money in another bank using the existing deposits in the bank, buying certain properties, buying foreign exchange, derivative transaction, etc.

Integration, In this stage, the money generated from a crime offence and has been laundered in the immersion stage is integrated in a legal process. Therefore, in this stage, the money is already cleaned and hard to be tracked for the origin. Based on previous explanation, it can be seen that bank is the motivating factor of money laundering and preferred institution (media) for money laundering. Therefore, it is significant that through bank, money laundering can be prevented or eradicated.

In other words, the eradication of money laundering will be effective if it conducted through banking system in addition to legislations for non-bank financial institutions.

To what extent the bank could play role in the prevention and eradication of money laundering can be seen from the Forty Recommendation issued by FATF to fight money laundering practices. Among the forty recommendations, there are some recommendations that specifically related to financial institutions and the authority agencies that responsible in managing and monitoring financial institutions. Those recommendations are as follow:

(1) Bank and non-bank financial institutions should be required for not opening an anonymous account or any account that clearly use fictitious name. This prohibition should set forth in form of legislation. (2) Financial institutions should be expected to give information on the true identity of people whom on their behalf an account is open or a transaction is conducted. (3) Financial institutions should be required to maintain at least five years of record on transaction, domestic or international, conducted by the financial institution with the customers. (4) Every country including its financial institution should be required to pay attention on money laundering threats regarding the development in technology that make the activity possible. (5) Every country should be required to pay attention on large amount transaction of unusual transaction. (6) Financial institution should be required to report any fund deposited by a customer that suspected to be generated from crime offence to the competent authority. Financial institution, its board member, officials and staffs should be required to not give warning to its customers that their information is being reported to the competent authority.

Financial institutions are asked to formulate a program related to money laundering eradication. Those are the recommendation of FATF regarding money laundering. Those recommendations should be implemented by financial institutions. If a country did not implement the recommendation, it will be considered as less serious in preventing and combating money laundering.

## 2.4 Culture and Human Life

The importance of socio-culture in forming human behavior both inside and outside the company has been proven by some researches such as Jensen and Meckling (1976) that studied on agency issue based on manager's behavior. Manager's behavior is influenced by socio-cultural normative values (Ekanayake, 2004 ; Johson and Droegge, 2004). Manager's behavior is a dominant source regarding the formation of organization culture (David Drennan, 1992).

Discussing about human behavior is the same as discussing the value system (Schein, 2004). Value system gives characteristic of man in their act in the society and in organization. *Gotong royong* (mutual cooperation) and *tatwamasi* are the value systems of Balinese to build relationship with others. The relationship is called *pawongan*, which is maintaining harmonious relationship between company and its employees and company and the society (Astawa, 2011, Astawa *et al.* 2012, 2013, Surpha, 2001; Wiana, 2004; Ashrama, 2005). In business, harmonious relationship needs to be built between employees and the management and management and the society (Ashrama, 2005). Ashrama (2005) stated that harmonious relationship can be indicated from various things such as: groups in organization such as labor union and company maintain harmonious relationship with society through poverty alleviation, employ local labor and conduct skill training.

A culture builds a very complex human life; thus, an effort is needed to fulfill a balanced life. In order to realize a balanced life, various activities need to be done based on the existing habit or culture. One of the cultures basing on Hinduism is a culture to achieve happiness in life by implementing *catur purusa artha* (four purpose of life). This cultural concept stresses on the achievement of happiness in life through kindness (*dharma*), wealth (*artha*), work (*kama*), and happiness (*moksa*) and its implementation should be sequentially because it contains a belief that there will be no *artha* gained without *dharma*; no *kama* will be gained without *artha* and no *moksa* could be achieved without going through *dharma*, *artha* and *kama* (Satya, 1977).

*Dharma* has a broad meaning. It means law, nature, obligation, religion and truth. *Dharma* is the basic

of all human's behavior that useful to achieve heaven. *Moksa* eliminate all suffers, a source of goodness for those who implement it, to vanish sin, wealth that cannot be stolen and robbed and a basic to gain *Artha* and *Kama* (Dvivedi, 1990). *Artha* means goals or wealth and also something that is material and can be used to fulfill the physical necessity of life of human. Sufficient *artha* can be used to fulfill *kama*, which for religious activities, life necessity, work and saving (Dvivedi, 1990).

*Kama* means desire, affection, love, happiness and pleasure. The desire can give pleasure and the purpose of life. This pleasure will give satisfaction. *Kama* is happiness and pleasure gained from senses. *Kama* could also mean life necessity in form of food, clothes, house, social, spiritual, health and education. More wealth acquired, more freedom to achieve *kama*. If *dharma*, *artha* and *kama* are well satisfied an inner and outer happiness will be achieved. If the teaching of *catur purusartha* is implemented in reverse, human will do anything to achieve *artha* and it means it is no longer based on religious teaching; for example, gaining *artha* through stealing, deceiving, robbing, corruption, etc. *Artha* gained through this kind of way (*adharma*) will not be eternal and will make the future life miserable (*Sarasamuccaya* 76).

The term of *Moksa* came from the root word of *Muc* of the Sanskrit. The word means freeing, liberating, releasing or removing. The root word of *Muc* became *Mukta* (*Mukti*), *Moksa*. *Moksa* can also mean free from worldly ties, *karma phala* law, and *samsara*/birth. *Moksa* is an eternal spiritual peace and happiness (*suka tan pawali dukha*).

### 3. Methodology

The research was qualitative with approach toward law and Hinduism prevailing on various cases of money laundering published through Kompas (2004) mass media in Indonesia. The number of cases observed was 36. To simplify the analysis, the cases were divided into two: crime that generates money and money laundering. The result of this grouping would be studied in term of banking law and Hinduism culture and the existing theories for validation of result.

### 4. Result

Cases related to money laundering occurred in Indonesia gained big attention from the Government. The condition had been stated to the society through mass media of Kompas, 2004. About 36 cases had been transferred to the court with type of the case explained in Table 1.1.

Table 1.1: Description of Money Laundering in 2004

No	Name	Type of Crime	No	Name	Type of Crime
1	Asd	Generate money	19	WE	Generate money
2	Bdh	Generate money	20	WL	Generate money
3	KG	Generate money	21	JH	Money laundering
4	BG	Money laundering	22	LKO	Money laundering
5	BN	Money laundering	23	MMO	Money laundering
6	NM	Generate money	24	NG	Money laundering
7	CB	Generate money	25	KJ	Generate money
8	DD	Generate money	26	UH	Generate money
9	KH	Generate money	27	Bgu	Money laundering
10	BB	Money laundering	28	YU	Money laundering
11	CV	Money laundering	29	TUY	Money laundering
12	BH	Money laundering	30	Frs	Money laundering
13	Ap	Money laundering	31	DE	Generate money
14	KLM	Generate money	32	SWQ	Generate money
15	Bfg	Generate money	33	DUS	Generate money
16	KK	Generate money	34	SER	Generate money

Based on Table 1.1, it can be seen that case that generate money was 21 cases or 58.3% and money laundering case was 15 cases or 41.7%. All these money laundering cases had similar economic motive, which is to foster personal treasure by buying fix asset of 76% and the remaining was used to buy stock or other forms.

### 5. Discussion

#### 5.1 Money Laundering in the Culture of *Catur Purusa Artha*

The result from money laundering case analysis was followed with a study based on culture in Hinduism values of *catur purusa artha*. The value means that there are four ways to achieve happiness in life, which is: human should believe in the greatness of God; thus, they should work based on their religious teachings to achieve the desire to bring happiness (Dvivedi, 1990). Sometimes people forget the right ways in gaining wealth thus they broke the existing rules. There were three ways to see the synchronization between the ways in gaining wealth



and the desired goals:

**Artha and Kama that is Tamasik in Nature :** We sought *artha* and *kama* through ways that harm others, for example: stealing, robbing, cheating, unfair in revenue sharing, blackmailing, exploiting others, manipulating and so on. We did these without considering others who also wanted to be happy and live sufficiently and needed the sense of security materially and did not want to be disturbed and harmed. Those who looked for material, happiness and pleasure by doing harm to others were actually creating their own misery. Any efforts conducted with greed [*lobha*], sentiment or hatred not only made others suffer but also would brought delusion and more bad *karma* for themselves. They would trap themselves in darkness.

**Artha and Kama that is Rajasik in Nature :** In this way, people sought *artha* and *kama* through ways that did not harm others; however, did not care about other's difficulties and misery. People were forgetting others and only thought about themselves and their families. There was nothing wrong with this way. Life seemed to be easy and comfortable. However, these people were actually wasting their life to change their own karma circle and inner evolution within *samsara* wheel. If they did not careful, they would also fall into delusion because they lived in a selfish life without compassion and kindness.

**Artha and Kama that is Sattvik in Nature :** This was the bright way when we sought *artha* and *kama* through ways that did not harm others and beneficial for many others. The most important was the people whom we had work responsibility and those who worked in our environment. For example, if we were a business person or a manager in a company, first we had to work hard for the satisfaction of the customers and the second was that we had to think about our employees or subordinates so that they could fulfill their life necessities and their family. In another case, if we worked as government official or civil servant, first we had to work hard so that the people could live in prosperity and the second we had to think about how the government officials could fulfill their life necessities and their family. It was because other people would also want to life happily and sufficiency. They also wanted to feel save and did not want to be exploited or being hurt. If it could be done, they needed to extend its coverage to broader scope.

Based on Hinduism, in order to achieve happiness, human was demanded to work based on truth and did not deviate from God's teaching. Therefore, the act of money laundering that gained *artha* or wealth that is *Tamasik* in nature was harmed others.

## 5.2 Money Laundering in Banking Law

Money laundering was related to Bank; thus, a study that based on banking law or regulation was needed. Based on Legislation of Bank Indonesia (the central bank of the Republic of Indonesia) No. 3/10/PBI/2001, 2001 on Know Your Customer Principle it is a requirement to be cautiousness in implementing the banking law. Following are some principles in banking law. a.)the principle of trust ; The principle of trust stated that the business of a bank is based on trust relationship between the bank and its customers. Bank is doing business from the fund deposited by the society based on trust; therefore, each bank would need to maintain its health by maintaining and sustaining the trust from the society. The principle of trust is regulated in Article 29 Paragraph (44) Law No. 10, 1998 on amendment of Law No. 7, 1992 on banking. The connection between the principle of trust and money laundering activity was in terms that if bank did not give efforts in anticipating and eradicating money laundering activities or if bank supported money laundering; bank would face operational risk in form of direct and indirect risk of loss and legal risk related to the possibility of the bank became target of the imposition of sanction because they did not obey the legislation. In turn, their reputation was in harm. It would also influence the public appraisal of the trust of the bank.

The Principle of Prudence ; The principle of prudence stated that bank in conducting their business must implement the principle of prudence in order to protect the society's fund entrusted to the bank. The goal of the principle is that bank will always be in health condition and conducting its business properly by obeying the regulations and norms prevailing in banking world. The relationship between the principle of prudence and money laundering is that the principle acts as a warning to the bank to be careful in doing transaction so it will not against the rules. The principle of prudence is regulated in Article 2 and 29 Paragraph (2) Law No. 10, 1998.

The Principle of Confidentiality; The principle of confidentiality is often used as a shield to protect money laundering. Therefore, a question emerged regarding whether or not the regulation on bank confidentiality regulated in Law No. 7, 1992 and has been amended and supplemented on Law No. 10, 1998 remains in effect for the investigator, prosecutor and judge in investigation, prosecution and inspection of money laundering case. The question emerged because one of factors causing the widespread of money laundering in a country and the difficulty in eradicating money laundering was the strict bank secrecy regulated in the country.

Regulation on bank secrecy is regulated in Chapter VII and VIII of Article 40 to 47 and Article 47A Law No. 10, 1998. According to Article 40, bank is required to conceal the information on its customers and their savings. However, the requirement to conceal as stated in Article 40 does not mean without exception. The requirement is excluded in such cases as tax, settlement of bank accounts that has been submitted to the Agency for the Management of State Loans and Auctions (Badan Urusan Piutang dan Lelang/BUPLN) and the

Committee for the Management of State Loans (Panitia Urusan Piutang Negara/PUPN), for the interest of court in criminal case, in a civil case between bank and customers and in order to exchange information between banks.

Law that regulate on parties with authority to apply for, give permission and give information on financial matter of a customer is adjusted to the above exception forms. The exceptions are limitative in nature; thus, beyond those exceptions, banks are not allowed, in any reason, to give information on customers' financial and their savings. The exception might be added if the addition is included in banking legislation or other legislation.

The legislator of UU TPPU has realized that the eradication of money laundering in Indonesia will not be effective if the principle of confidentiality of the bank as stated in bank legislation is imposed on law enforcers of polices, prosecutors and judges who conduct investigation, prosecution and inspection on money laundering cases. Only by giving exception to those law enforcers, the eradication of money laundering might be successful.

Therefore UU TPPU gives special facilities to the investigator, prosecutor and judges to be excluded from the bank secrecy provisions. The exception is determined in Article 33 of UU TPPU. With the enactment of UU TPPU, the exception of the bank secrecy provision that previously had five items, as regulated in banking law, now is seven with two additions from UU TPPU. The inclusion of Article 33 UU TPPU is a breakthrough toward the solid bank secrecy. It indicates the seriousness of government and parliament in combating money laundering.

The Principle of Know Your Customers; According to the Regulation of Bank Indonesia No. 3/10/PBI/2001 on the implementation of the principle of know your customer, the definition of the principle is "a principle implemented by the bank to recognize and know the identity of the customers and monitor transaction activity including report any suspicious transaction." The principle is the most effective way for banking to combat money laundering activity that mostly conducted through bank. The purpose of the implementation of the principle of know your customer is as follow: (1) to increase the role of financial institutions through various policies that support the practice of the financial institutions; (2) to avoid various possibilities of financial institutions made as a way for criminal offences and other illegal activities conducted by the customers; and (3) to protect the reputation of the financial institutions. The principle of know your customer had basic urgency in banking transaction related to e-banking that gave fast access to the customers to do money laundering.

## 6. Implication

The research result gives encouragement to the banks in doing their business by implementing strict rules. Regarding local culture, the culture strictly against the practice of money laundering thus there is no doubt on the implementation of banking law. The owners and leaders of the bank not only think about profit of the activity of customers who put their money in the bank but they should be carefully looking at the process or in other words, implementing the principle of prudence properly. The research gives description that the existing culture gives guidance to the society for conducting their business based on the prevailing legal norms and truth.

## 7. Conclusion

Local culture, especially the culture of *catur pursa artha*, guides people in gaining wealth from the work according to religious norms sourced from God in order to fulfill their needs to achieve happiness. Money laundering is one of human's efforts in gaining wealth by breaking the existing truth values that could harm others. Based on local culture sourced from Hinduism, the activity of money laundering is *Tamasik*, which is an activity that does not care about the process of gaining the wealth through the truth instead it is conducted through dirty way, cheating, stealing, deceiving, and robbing others' rights.

Banking law has affirmed that in giving service to the customer, banks should properly implement the principle of know your customer by recognizing and knowing the identity of the customer, monitoring transaction activities of the customers and reporting any suspicious transactions. The purpose of the activity is to increase the role of financial institutions through various policies that support the practice of the financial institutions and to avoid various possibilities of financial institutions made as a way for criminal offences and other illegal activities conducted by the customers. Another purpose of the activity is to protect the reputation of the financial institutions. The principle of know your customer had basic urgency in banking transactions related to e-banking that gave fast access to the customers to do money laundering.

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