

Strategi Soft Law dalam Konstruksi Politik Kriminal Anti-Money Laundering dalam Menjaga Kedaulatan Hukum di Indonesia (Studi Global Criminology) = Soft Law Strategy in Anti-Money Laundering Criminal Political Construction in Maintaining Legal Sovereignty in Indonesia (Global Criminology Study)

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Abstrak

Penelitian ini bertujuan mengkaji strategi "soft law" kebijakan kriminal anti-pencucian uang di Indonesia di bawah payung hukum internasional tentang anti-money laundering (AML). Penelitian menggunakan pendekatan kualitatif dengan menggunakan tiga teori utama, yaitu teori global criminology (Friedrichs, 2007), teori realitas sosial kejahatan (Quinney, 2004) dan teori bekerjanya hukum (Chambliss dan Seidman, 1971). Berdasarkan identifikasi, eksplorasi dan interpretasi data penelitian ditemukan tiga strategi kebijakan kriminal anti-pencucian uang di Indonesia. Pertama, kebijakan anti-pencucian uang perlu mengharmonisasi standar hukum internasional terkait tindak pidana pencucian uang. Perbedaan sistem hukum tidak semestinya menjadi hambatan bagi Indonesia untuk mengadopsi atau mengikuti rekomendasi FATF. Adanya satu standar hukum global akan memudahkan Indonesia melakukan penegakan hukum karena TPPU merupakan kejahatan lintas negara dan lintas yurisdiksi yang memerlukan kesamaan visi internasional. Kedua, kebijakan anti-pencucian uang di Indonesia perlu disesuaikan dengan konteks hukum nasional, normal sosial dan budaya yang hidup di masyarakat serta kompleksitas kejahatan pencucian uang itu sendiri. Sehingga ada usulan agar UU PPTPPU yang berlaku saat ini perlu direvisi untuk menjangkau kemutakhiran modus kejahatan pencucian uang. Terakhir, strategi soft law dalam konstruksi kebijakan anti-pencucian uang perlu diimplementasikan dengan mempertajam aturan dan norma-norma turunan yang di dalam peraturan yang dibuat lembaga penegak hukum dan pemegang peran seperti Polri, PPATK, Bank Indonesia dan OJK. Aturan-aturan tersebut bisa langsung mengadopsi ketentuan-ketentuan yang merupakan rekomendasi FATF dan UU PPTPPU.

.....This study aims to examine the "soft law" strategy of anti-money laundering criminal policies in Indonesia under the umbrella of international law on anti-money laundering (AML). The research uses a qualitative approach using three main theories, namely the theory of global criminology (Friedrichs, 2007), the theory of the social reality of crime (Quinney, 2004) and the theory of the working of law (Chambliss and Seidman, 1971). Based on the identification, exploration, and interpretation of research data, three anti-money laundering criminal policy strategies in Indonesia were found. First, anti-money laundering policies need to harmonize international legal standards regarding money laundering crimes. Differences in legal systems should not be an obstacle for Indonesia to adopt or follow FATF recommendations. The existence of one global legal standard will make it easier for Indonesia to enforce the law because money laundering is a transnational and cross-jurisdictional crime that requires a common international vision. Second, anti-money laundering policies in Indonesia need to be adapted to the context of national law, social and cultural norms that live in society and the complexity of the crime of money laundering itself. So there is a suggestion that the current UU PPTPPU needs to be revised to reach the latest modes of money laundering crimes. Finally, the soft law strategy in the construction of anti-money laundering policies needs to be

implemented by sharpening the derived rules and norms in the regulations made by law enforcement agencies and role holders such as the National Police, PPATK, Bank Indonesia and OJK. These rules can directly adopt the provisions which are the recommendations of the FATF and the PPTPPU Law.