

## THE CRIMINALIZING OF ILLEGAL FOREIGN CURRENCY BUSINESS ACTIVITY OR MONEY CHANGER ILLEGAL IN INDONESIA

Binsan R Simorangkir

### ABSTRACT

*Illegal Foreign Currency Business Activities, or illegal Money Changer is a money exchange business activity or Foreign Currency, which is not equipped with an official license from Bank Indonesia as the authorized institution to grant licenses to the conduct of Money Changer in Indonesia. Money Changer illegal, potentially causing legal problems, among others, as a means of committing criminal acts of money laundering, terrorism financing, Drugs Transaction, Human Trafficking, and Fraud Crime. The current regulation can not reach illegal Money Changer, so Bank Indonesia as an authoritative institution can not supervise and discipline, nor do law enforcement agencies have law to enforce law enforcement in order to provide legal sanction. The rise of illegal Money Changer in Indonesia, needs to be done law enforcement and enforcement, therefore it is expected to the fore of the publication of a Rule or Law adequate to regulate the activities of Money Changer activities in Indonesia.*

Keyword : Money Changer, Regulation, Legal Sanction

### INTRODUCTION

The development of technology and information and the development of the world economy in the era of globalization, bring a positive impact on the increasing mobilization of citizens of the world, from one country to another, one of which is the Unitary State Republic of Indonesia as one of destination country. The arrival of the citizens of the world is certainly with a variety of diverse interests in conducting its activities in Indonesia. The mobilization of the citizens requires money as a medium of exchange, either foreign money called Foreign Currency, which is exchanged into rupiah currency, or conversely the exchange of rupiah into foreign currency. The need for money changers requires the availability of money changers, namely Business Activities of Foreign Exchange Non-Bank or Money Changer is money changer is a money trading institution, its existence is needed as a very vital means in the implementation of trade tourism services that is practical, fast, comfortable and efficient. Foreign Currency and traveler's checks in Money Changer must be deposited with foreign Currency Bank physically to be redeemed into rupiah currency, while rupiah currency can be redeemed either with rupiah currency physically or through intra bank and inter bank transfers.

In order to facilitate the activities of tourists to exchange money, in several major cities in Indonesia, especially tourist attractions such as Jakarta, Bali, Lake Toba in Medan, Batam, Bandung, Semarang, Surabaya, Kalimantan, Nusa Tenggara, Sulawesi, Ambon and Papua , available Money Changer Building, which are managed by business actors, either individuals or companies or corporations, small business, medium-sized business, or large corporations, but it is unfortunate that among the Money Changer is not found equipped with a license from Bank Indonesia or illegal Money Changer.

Based on legal materials sourced from Bank Indonesia, in March of 2017, there are 783 illegal Money Changer. This number increased from the previous in January at around 621 Money Changer. Bank Indonesia explains that from the data of illegal Money Changer, many are found in the area of Java about 51 percent. While others are scattered in Sumatra as much as 184, Bali and Nusa Tenggara as much as 90, Kalimantan 82, and Sulampua 11.

According to the National Narcotics Agency. Money Changer is often misused as a target of crime, such as money laundry, drug transactions and terrorist financing. This crime is not only targeting the illegal Money Changer but also targeting the Legal Money Changer, namely by performing the modus in the form of cooperation between the Money Changer who has permission, with Illegal Money Changer. Currently Money Changer has become the spotlight of law enforcement officers, because a number of law enforcement agencies have sniffed the alleged criminal acts committed by utilizing the scheme owned by Money Changer, based on BNN Research which has been released in 2017, which conveys eight modus operandi misuse of Money Changer in conducting financial transactions such as:

1. The existence of cooperation between the Money Changer is licensed with Illegal Money Changer.
2. Illegal Money Changer is used as an intermediary of financial transactions from narcotics.
3. Money Changer using personal account more than one.
4. The customer gives a non-actual self-identity.
5. There is a reluctance from Money Changer entrepreneurs in checking customer identity.
6. Money Changer who is licensed as a place to haram money forbidden haram money laundering.
7. Using legal companies as a means to commit crimes.
8. The Illegal documents of Information and invoices related to narcotics that drug transactions are very significant using Money Changer, so it is necessary to create a legal product to anticipate the transaction.

The existence of illegal Money Changer business activities, which are not registered with Bank Indonesia, has resulted in losses to the public at large, as well as losses to the state will have an impact on the disruption of national economic stability widely. The illegal Money Changer activities that cannot be controlled by the government are as follows:

1. Implementation of the purchase price or sale of Forex every day, can not be supervised.
2. The number or amount of transactions that occur each day can not be known.
3. The identity of customers who make transactions every day can not be known.
4. The illegal Money Changer business actor does not report routine reports to Bank Indonesia.
5. The illegal Money Changer business actor does not pay the income tax that should be deposited into the state treasury.
6. Money Changer business actor illegally conduct fraud against customers can not be supervised.

Non-bank foreign exchange trading is a real money trading activity that grows and grows in the life of a society which is a vital money trading institution in the implementation of a practical, fast, convenient and efficient tourism trade service, positioned as a very money exchange medium required by tourists and the community, actually provide concrete answers to the people's need for fast, practical, convenient, and efficient exchange. Non-bank foreign exchange business activities or money changer is one form of financial institutions that are growing very rapidly in socioeconomic life of society, plays important and strategic economic and monetary functions, especially in terms of the function of money as a means of exchange and fulfillment. That is why licenses have meaning so important to their holders (actors) in doing legal relations, either with government or other parties. Permission permission is the legal basis, as an instrument to ensure legal certainty, as an instrument to protect interests, and as evidence in the case of claims (Y. Sri Pudyatmoko, 2009: 22).

With permission the government may direct the business community through a juridical instrument of permit. After the permit is processed, supervision is still underway, the permit holder is required to submit reports periodically and so on. The Government exercises control over community activities with licensing instruments. Permission may be intended to achieve certain purposes. For criminals such as money laundering and terrorism as well as other crimes, non-bank financial institutions can be used to obscure the origin of their criminal proceeds. It is alleged that the transfer of money laundering activities and terrorism crimes from the banking sector that is traditional to the non-banking financial sector. Money changer business is increasingly becoming a threat in the prevention and eradication of money laundering and crime terrorism crime as well as other crimes because money changer business has not been regulated tightly in Indonesia, unlike banks and other traditional financial institutions.

Based on the above background, the formulation of the issues to be discussed in this legal journal is how the current regulation to regulate, supervise, discipline and enforce the law against Unauthorized Money Changer Business Activities (KUPVA BB) that is not licensed or Money Changer illegal?

#### RESEARCH METHODS

This research uses normative legal research method by collecting, identifying and analyzing, statements and legislation, literature, and written document or material (Bambang Waluyo, 1996: 13), by approaching reviewing the law as a normative rule or legal research or legal research or doctrinal legal research, to find the correct answers to prove the truth, how the current regulation is, and how the future formulation or formulation will be able to organize, discipline and conduct law enforcement on Non-Bank Money Changer (KUPVA BB) Business Activities or Money Changer in Indonesia.

#### DISCUSSION

Where as Bank Indonesia Regulation Number 18/20 / PBI / 2016 dated October 7, 2016 concerning Non-Bank Foreign Currency Exchange Activities, is aimed at achieving and maintaining the stability of the Rupiah and maintaining the national economic viability, including a healthy domestic foreign exchange market. Therefore, in order to achieve the objective, it is necessary to align the foreign exchange transaction arrangement against Rupiah between the foreign exchange business carrying activities with other parties, provided that Bank Indonesia regulates foreign exchange transactions against Rupiah, between the Bank and foreign parties. In addition, Bank Indonesia also seeks to prevent non-bank foreign exchange activities to be used for criminal acts in the form of money laundering, terrorism financing, or other crimes, as well as to provide services to the public at large, hence the need for good governance in the field operation of non-bank foreign exchange or Money Changer (PBI Number: 18/20 / PBI / 2016).

That the implementation of the Regulation is expected to be achieved and maintained the stability of the Rupiah value in order to maintain the sustainability of national economic development due to the important legal factors in economic development (Hulman Panjaitan, 2002: 10), and Money Changer business activities are not used for money laundering, terrorism financing , or other crimes. Mentioned above, currently can not be realized because the existing regulations as contained in Bank Indonesia Regulation Number: 18/20 / PBI / 2016 dated October 7, 2016, has not been able to discipline and enforce the illegal Money Changer business actor. Whereas the current Bank Indonesia regulation is only able to regulate the Money Changer that already has permission, while unauthorized ones are not covered by the regulation, and more again with the behavior of business actors who cunningly exploit the legal loophole, that is intentionally making business and conducting illegal Money Changer activities in order to gain personal benefit, regardless of the impact that could harm the broad community and the national economy (Jonker Sihombing, 2010: 63-65), this could happen due to the current legal or regulatory tools this is not a legal tool to enforce illegal Money Changer business actors.

The articles of the present regulation which form the legal basis for regulating the Non-Bank Foreign Currency Exchange Activities (KUPVA BB) or Money Changer, pursuant to Bank Indonesia Regulation Number 18/20 / PBI / 2016 dated October 7, 2016, following:

1. Foreign Exchange which may be redeemed in Indonesia's currency trading system pursuant to Article 1 paragraph (1) and (2) of PBI Number: 18/20 / PBI / 2016 are:

- a. Foreign Banknotes hereinafter abbreviated as UKA or may be called Banknotes shall be banknotes in foreign currency officially issued by a country outside Indonesia which is recognized as a legal tender of the country concerned (legal tender).
  - b. Checks of Travels or can be called Traveler's Check is a travel check in foreign currency that can be used as a means of payment.
2. The Money Changer Provider is:
- a. The Operator of Non-Bank KUPVA or may be called Money Changer is a non-bank corporate entity incorporated as a Limited Liability Company which carries out KUPVA pursuant to Article 1 paragraph (5) of PBI Number: 18/20 / PBI / 2016.
  - b. Limited Liability Company is a legal entity as defined in the laws governing limited liability company. in accordance with Article 1 paragraph (3) of PBI Number: 18/20 / PBI / 2016.
  - c. Foreign Exchange Business Activities hereinafter abbreviated as KUPVA are UKA's sale and purchase activities, as well as the purchase of Checks of the Applicants, pursuant to Article 1 paragraph (3) of PBI Number: 18/20 / PBI / 2016.
3. The activities of Money Changer organizers are as follows:
- a. Exchange activities conducted under the UKA's selling and buying mechanism; and the Purchase of Checks of Visitors, in accordance with Article 2 paragraph (1) of PBI Number: 18/20 / PBI / 2016.
  - b. The mechanism of sale and purchase of UKA as referred to in paragraph (1) letter a shall be regulated as follows:
    - a. The submission of UKA shall be done physically;
    - b. The delivery of Rupiah is done physically or through intrabank or interbank transfers.
4. The licensing of Money Changer organizer is as follows:
- a. Non-bank business entities that will conduct business activities as Non-Bank KUPVA Organizer shall first obtain permission from Bank Indonesia, in accordance with Article 11 paragraph (1) of PBI Number: 18/20 / PBI / 2016.
  - b. Bank Indonesia shall evaluate the licenses issued to Non-Bank KUPVA Providers pursuant to Article 15 paragraph (1) of PBI Number: 18/20 / PBI / 2016
5. Sanctions for Money Changer organizers are as follows:  
The results of the evaluation as referred to in paragraph (2) shall be used as the basis for consideration to establish a policy related to the permit which has been granted in the form of:
- a. Extend the validity of the permit;
  - b. Shorten the duration of the permit;
  - c. Limiting the implementation of KUPVA; and/or
  - d. Revoke permission In accordance with Article 15 paragraph (3) of PBI Number: 18/20 / PBI / 2016.

Where as the Articles stipulated in Bank Indonesia Regulation Number 18/20 / PBI / 2016 dated October 7, 2016, only regulate the Money Changer which has obtained official permission from the Indonesian bank, but there is no legal norm stipulating the illegal Money Changer. Based on records from Bank Indonesia in March 2017, there were 783 KUPVA BBs or unlicensed or illegal money changers. This number increased from the previous data in January around 621 money changer. Bank Indonesia states that KUPVA BB has not been licensed to be found in Java Island or around 51 percent. While others are scattered on the island of Sumatra as much as 184, Bali and Nusa Tenggara as much as 90, Kalimantan 82, and Sulampua 11 (kumparan.com).

Bank Indonesia considers there are three models of illegal money changer business ie individual business, money exchange kiosk, money exchange business side. Individual business model is usually done by individuals and exchange of foreign banknotes and rupiah money is usually done in cash or transfer whereas individual kiosk models are done by opening kiosks where foreign exchange banknotes and foreign exchange banknotes and rupiah money are made in cash or transfer and a side business model of money exchange is done by gold shop, travel agency, electronics store (kompas.com). In the business world, often a person has the ability to make a business because of his skills, abilities or other matters because of his field, but because a person does not have enough start-up capital, his efforts can not be implemented in accordance with the applicable rules (Gunawan Widjajam 2014: 5). In addition, with the implementation of money changer services that do not meet certain terms / conditions, will be able to facilitate the perpetrators of crime in utilizing unlicensed money changer to smooth the business.

Based on the Regulation of the Minister of Finance No. 30 / PMK.010 / 2010 concerning Implementation of Know Your Customer Principles for Non-Bank Financial Institutions, Article 1 Sub-Article 16 states that "High Risk Business is a business field that is potentially used as a means of committing a crime money laundering and / or means of financing terrorism ". In the attachment of the regulation, it is stated that one of the high risk business is the money changer business. Terrorism crimes such as the MILF (Moro Islamic Liberation Front) movement, the Abu Sayyaf Group (ASG) in the Philippines, Laskar Jundullah in Indonesia, the Mujahidin Malaysia (KMM) in Malaysia, the Jemmah Salafiyah (JS) in Thailand, the Arakan Rohingya Nationalist Organization (ARNO) and Rohingya Solidarity Organization (RSO) in Myanmar and Bangladesh and Jemaah Islamiyah (JI), Southeast Asian organizations present in Australia. Almost all of the categories of groups based on religious motivation and radicalization in Southeast Asia constitute a definition very often associated with al-Qaeda groups, where the above groups are sufficiently representative of threats capable of endangering the state and government.

Organizations allegedly affiliated with al-Qaeda mentioned above, would require funding in moving or disseminating ideologies or ideologies that they believe so far. In the process of funding transactions they will certainly find a safe transaction medium and no supervision in criminal transactions and illegal money changer business model becomes a safe place for the perpetrators of terrorism crimes in the conduct of funding transactions. Breaking the chain of fund transactions will reduce the chain of terrorism among countries. It is undeniable that the crime of terrorism has implications for the increasingly heavy burden of the security threat of countries in the ASEAN region.

In addition to terrorism crimes, ASEAN countries should also be wary of money laundering crimes and each country should strengthen its own national legislation and combat money laundering and other transnational economic crimes. Because money laundering crime is detrimental to the Asian economy. Non-bank financial institution or illegal money changer business model becomes a safe place in committing money laundering crime and many other crimes that take shelter behind money changer business type.

In Indonesia, businesses such as Money changer are currently in the spotlight of law enforcement officers because a number of institutions have already suspected criminal acts committed by using the scheme owned by Kupva BB (hukumonline.com). But in the regulation related to illegal money changer business law enforcement officers are constrained by the absence of strict legal umbrella which regulates the sanction on the establishment of illegal money changer business, so that illegal money changer business actors can not be given punishment that cause deterrent effect.

The legal principle of *Nulla Poena Sine Crimine* which is often referred to as legality principle (Indroharto 1993: 103-104) has provided insight in the field of law enforcement, that there is no legitimate act, before any previous rules or regulations. With the understanding of the principle, the illegal Money Changer business actors can not be disciplined or carried out by law enforcement because there is no legal norms regulating the actions of the perpetrators.

That the existence of illegal Money Changer does not provide benefits for the people of Indonesia. Not paying income tax to the state as a source of state financial revenue, which will be used to build facilities and infrastructure or infrastructure as a public facility for community welfare. Not only that Money Changer is illegal, does not provide legal education to the wider community, to provide to the rules, because the number of its existence is getting more and more day, it means its existence has become a less good example to the society. The number of illegal Money Changer has also been widely abused as a means of committing crimes in the form of money laundering, terrorism financing, or other crimes. Therefore, the illegal Money Changer business actor must be enforced in order to give strict sanctions, to give legal awareness for both perpetrators and society in general as a form of accountability for his actions (Franz Magnis-Suseno, 2000: 87-109).

### Conclusion

Money Changer is illegal in many cities in Indonesia. Money Changer is often misused as a means of conducting Criminal Acts such as Money Laundering, Terrorist Financing, Drugs and other crimes. That the current regulation is Bank Indonesia Regulation Number 18/20 / PBI / 2016 concerning Non-Bank Foreign Currency Exchange Activities, unable to regulate, discipline and enforce law against illegal Money Changer business actor.

### Suggestion

Whereas in the future, there is a regulation that contains legal norms, binding and containing criminal sanctions in the form of Law, which is able to regulate, discipline and become the legal basis in law enforcement against illegal Money Changer. In order for transnational crimes such as terrorism crime, money laundering, narcotics and other crimes can be prevented, this will not only benefit Indonesia but also benefit other Asian countries.

### References

- Indroharto. 1993. *Usaha Memahami Undang-Undang tentang Peradilan Tata Usaha Negara*, Buku I: Beberapa Pengertian Dasar Hukum Tata Usaha Negara, Jakarta: Pustaka Sinar Harapan.
- Panjaitan, Hulman. 2002. *Hukum Penanaman Modal Asing*, Jakarta: Ind-Hill Co.
- Suseno, Franz Magnis. 2000. *Dua Belas Tokoh Etika Abad ke-20*. Yogyakarta: Kanisius.
- Sihombing, Jonker. 2010. *Peran dan aspek Hukum dalam Pembangunan Ekonomi*. Bandung: PT.Alumni.
- Waluyo, Bambang. 1996. *Metode Penelitian Hukum*, Jakarta: Sinar Grafika
- Peraturan Bank Indonesia (PBI) Nomor: 18/20/PBI/2016 tanggal 7 Oktober 2016
- Y. Sri Pudyatmoko, 2009, *Perizinan Problem dan Upaya Pembenahan*, Jakarta, PT. Grasindo.
- Widjaja, Gunawan, 2004, *Seri Aspek Hukum Dalam Bisnis*, Jakarta, Prenada Media.
- BI: Jumlah Money Changer Ilegal Terus Meningkat, <https://kumparan.com/angga-sukmawijaya/bi-jumlah-money-changer-ilegal-terus-meningkat>, diakses tanggal 30 Mei 2017, pukul 12.45 WIB
- Penegak Hukum Mulai Bidik Tindak Pidana yang Manfaatkan Money Changer Ilegal, <http://www.hukumonline.com/berita/baca/lt588f441f57441/penegak-hukum-mulai-bidik-tindak-pidana-yang-manfaatkan-money-changer-ilegal>, diakses tanggal 29 Mei 2017, Pukul 16.44 Wib.
- Mengenal Model Bisnis "Money Changer" Tak Berizin, <http://bisniskeuangan.kompas.com/read/2017/02/20/083937626/mengenal.model.bisnis.money.changer.tak.berizin>, diakses tanggal 31 Mei 2016, pukul 11.15 WIB

Binsan R Simorangkir  
*Doctorate Program of Law, Faculty of Law, University of Brawijaya*  
*binsanbareskrim@gmail.com*  
*binsansimorangkir@gmail.com*