



OPTIMIZING THE DIRECTOR GENERAL OF CUSTOMS SUPERVISION OF ACT CRIMINAL MONEY LAUNDERING IN EFFORTS TO RESCUE STATE ASSETS

Yasmirah Mandasari Saragih¹, Redyanto Sidi², Muhammad Mahendra Maskhur Sinaga³

^{1,2,3}Faculty Social and Science, Universitas Pembangunan Panca Budi, North Sumatera, Medan, Indonesia

Email: yasmirahmandasari@gmail.com¹, redysidi.unpab@gmail.com², mahendra.globiz@gmail.com³

ARTICLE INFO	ABSTRACT
Date received : Revision date : Date received : Keywords: Supervision, Crime, Money laundering	Money laundering crimes (TPPU) are increasingly complex, crossing jurisdictional boundaries, using increasingly varied modes. ML has penetrated into various sectors, so that it can threaten the integrity and stability of the financial system and the economy, as well as endanger the foundations of social, national and state life. This study aims to describe and analyze the regulatory dimensions of policies in controlling cash and/or other payment instruments whose implementation is borne by DJBC. This research uses a type of normative legal research method with a qualitative descriptive approach. The results of the study show that DGCE's policy in supervising the carrying of cash is based on 2 (two) dimensions of different laws and regulations. First, the dimensions of prevention, monitoring and supervision of the potential of ML. Second, the dimension of the manifestation of Bank Indonesia's authority to request information and data regarding foreign exchange activities that cross national borders. The results of the study show that DGCE's policy in supervising the carrying of cash is based on 2 (two) dimensions of different laws and regulations. First, the dimensions of prevention, monitoring and supervision of the potential of ML. Second, the dimension of the manifestation of Bank Indonesia's authority to request information and data regarding foreign exchange activities that cross national borders. The DGCE's role is increasingly important and strategic in overseeing the transfer of cash and/or other payment instruments to and from the territory of the Unitary Republic of Indonesia in order to prevent and eradicate money laundering crimes.

INTRODUCTION

The development of science and technology is like a double-edged sword, on the one hand it provides extraordinary benefits to the economy and business, on the other hand it increases the risk of irregularities in the use of this technology for evil purposes (Husein, 2006). Several types of crimes in the economic field that take advantage of technological sophistication and information, including fictitious L/C issuance; the crime of attacking the security of banking information systems; piracy credit card; breaking into accounts through automated teller machines (ATMs); crimes through counterfeiting of securities (bonds and mutual funds) and foreign currency; and money laundering (Kurniawan, 2012).

Money laundering is one of the most dominant and widely used types of crime (modus), especially financial instruments offered by the banking sector (Yani, 2013). The problem of money laundering has attracted much attention from the international community due to its dimensions and implications that



violate national borders. Money laundering is a type of crime that is worldwide and is part of organized crime (Amrullah, 2003). Money laundering has caught the attention of the international community due to its dimensions and implications that violate national borders.

Indonesia is suspected of being a haven for money laundering, because Indonesia adheres to a free foreign exchange regime, bank secrecy is still very strict, and the level of corruption always ranks high (Trinugroho, 2004). Based on PPATK data for 2019, courts decided on 404 ML cases from January 2005 to June 2019 with a maximum sentence of life imprisonment and a maximum fine of IDR 32 billion (PPATK, 2019). During this period, most of the court decisions related to money laundering offenses were decided by the courts (including the District/Tipikor Court, the High Court, and/or the Supreme Court) in the DKI Jakarta area as many as 140 decisions or 34.7 percent. The court's decision regarding ML is a maximum sentence of life imprisonment and a maximum fine of IDR 32 billion.

The crime of money laundering (TPPU) not only threatens economic stability and financial system integrity, but can also endanger the foundations of social, national and state life, based on Pancasila and the 1945 Constitution of the Republic of Indonesia, so that the Government of Indonesia through the Law -Law Number 8 of 2010

regulates the prevention and eradication of money laundering crimes. Law Number 8 of 2010 is a substitute for Law Number

15 of 2002 concerning the Crime of Money Laundering, which is deemed necessary to be adapted to developments in law enforcement needs, practices and international standards. Law Number 15 of 2002 was only issued to comply with the wishes of international countries, so it is still not perfect and it is suspected that it still contains many weaknesses.

Determination of the amount of fines and the mechanism for depositing it in the state treasury is harmonized with the norms in force in the laws and regulations. Other invitations related to carrying cash, including Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (TPPU) and Government Regulation Number 99 of 2016 concerning Carrying Cash and/or Other Payment Instruments Into or Out of the Region Indonesian Customs. Based on this, the amount of fines imposed on people (individuals or corporations) who do not have permits and approvals is 10% (ten percent) of the total amount of foreign banknotes brought with a maximum fine of IDR 300 million. Sanctions in the form of fines will also be imposed on Permitted Agencies carrying foreign banknotes in an amount exceeding the approval of Bank Indonesia for foreign banknotes.

In order to maintain and maintain the stability of the value of the rupiah, as well as supervise the circulation of money, the Governor of Bank Indonesia through Bank Indonesia Regulation Number 20/2/PBI/2018 regulates the carriage of foreign banknotes into and out of the Indonesian Customs Area. Bank Indonesia Regulation Number 20/2/PBI/2018 changes several provisions in Bank Indonesia Regulation Number 19/7/PBI/2017 regarding bringing foreign banknotes into and out of the Indonesian Customs Area, which is related to the application of sanctions for violating PBI regarding the carrying of foreign banknotes (UKA). Previously, what was regulated was only in the form of prevention of carrying foreign banknotes and after the provisions were amended, it became an obligation to pay sanctions (fine).

Since September 3, 2018, the policy of imposing sanctions on any person or corporation carrying foreign banknotes with a value equivalent to or more than IDR 1 billion has been enforced. The said sanctions are exempted for Licensed Bodies, namely Banks and Non-Bank Foreign Exchange Business Activities (KUPVA) operators who have obtained permits and approval from Bank Indonesia.

Carrying cash and/or other payment instruments is the modeto carry out an attempt to obfuscate the origin of assets derived from criminal acts. Regulations for carrying foreign banknotes are not a foreign exchange control policy. This policy emphasizes regulating the traffic of carrying foreign cash in cash. For Indonesian Citizens (WNI) and Foreign Citizens (WNA) who need to carry foreign currency above the threshold for carrying foreign banknotes, they can still do so in cashless. It is hoped that the implementation of the provisions for carrying foreign banknotes will support the effectiveness of monetary policy, particularly in maintaining rupiah stability.

Sutedi explained the importance of controlling the carrying of cash into and/or outside the Indonesian Customs Area, not only in the context of maintaining the stability of the rupiah exchange rate and preventing

internationalization of the rupiah currency, but very important in the context of preventing and eradicating money laundering crimes (Sutedi, 2008).

Ayu's research results show that in order to eradicate money laundering, there are 2 (two) institutions, namely the Directorate General of Customs and Excise (DJBC) and the Central Reporting on Financial Transaction Analysis (PPATK) has the authority to follow up on perpetrators who do not carry out



reports of carrying cash, because DJBC and PPATK are the main focus of preventing perpetrators of bringing cash into and out of the country, as stipulated in the Money Laundering Law, as well as in terms of prevention perpetrators are required to carry out and notify reports of cash carrying not exceeding IDR 100,000,000.00 so as not to be subject to criminal sanctions and administrative sanctions and prevent engineered finance (Ayu, 2018).

One of DGCE's duties is to oversee the borders of Indonesia's territory with other countries, especially for the export or import of goods to/from outside the territory of Indonesia. In carrying out supervisory duties, DGCE performs one of its roles as a community protector, namely providing protection to the public from prohibited or restricted items that can cause disruption to health and safety as well as morality (Ministry of Finance, 2019). The role of community protector is reflected in one of the supervisory duties on goods that are determined by ministries/technical agencies as prohibited or export-restricted goods.

Customs and Excise officials carry out supervision of bringing cash and/or other payment instruments into or out of the Customs Area, as stated in Article 2 paragraph (1) Regulation of the Minister of Finance Number 100/PMK.04/2018 concerning Amendments to Minister of Finance Regulation Number 157

/PMK.04/2017 Concerning Notification and Monitoring Procedures, Suspicious Indicators, Carrying Cash and/or Other Payment Instruments, as well as the Imposition of Administrative Sanctions and Deposits to the State Treasury.

The challenges faced by DGCE in supervising the entry and exit of cash and/or other payment instruments into or out of the Indonesian Customs Area in accordance with the applicable provisions are quite difficult to do, considering that the object of supervision, namely cash in the form of rupiah and foreign banknotes, has different dimensions of interest but equally urgency.

Based on these conditions, this study aims to examine and analyze the regulatory dimensions of policies in controlling cash and/or other payment instruments whose implementation is borne by DJBC. This research is expected to provide theoretical benefits as a contribution to scientific literature and information to understand, explore, and develop insights and knowledge regarding the scope of duties, functions, and authorities of DGCE in supervising the carrying of cash and/or other payment instruments into or out of Indonesian Customs Area. The practical benefits of the results of this research as a paradigm of thinking and a frame of reference for legal practitioners and legislators to formulate appropriate and efficient policies,

RESEARCH METHODOLOGY

2.1. Types of research

This research uses normative law research method. According to (Fajar and Achmad, 2017), normative legal research is research that has an object of study on legal norms or rules. The author's reason for using normative legal research is because this research is based on written legal materials relating to supervision in carrying cash and/or other payment instruments, in connection with the prevention and eradication of money laundering crimes. In analyzing the research results, the authors used a qualitative descriptive approach to present an overview of the regulatory dimensions of DGCE policies in supervising cash and/or other payment instruments brought into and out of the Customs Area.

2.2. Data source

Data is the most important thing in a research. The main data source in the normative juridical research method is secondary data obtained through library research. In this study, secondary data sources are divided into 3 (three) legal materials, as follows:

1. Material primary law.

Primary legal materials are legal materials authoritative in the form of statutory regulations. This study examines and analyzes the various purposes and meanings contained in:

- a. Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs.
- b. Law Number 6 of 2009 concerning Stipulation of Government Regulation in Lieu of Law Number 2 of 2008 concerning the Second Amendment to Law Number 23 of 1999 concerning Bank Indonesia to Become Law.
- c. Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes.
- d. Bank Indonesia Regulation Number 20/2/PBI/2018 concerning Amendments to Bank Indonesia



Regulation Number 19/7/PBI/2017 concerning Carriage of Foreign Banknotes Into and Outside the Indonesian Customs Area.

2. Legal materialsecondary.

Secondary legal material consists of evidence, records, or historical reports that have been compiled in published and unpublished archives (documentary data), including legal opinions/doctrines/theories obtained from journals, textbooks, scientific papers, articles in magazines and web pages related to research.

3. Tertiary legal material.

Tertiary legal materials provide instructions and explanations of primary and secondary legal materials that the author obtains from dictionaries, encyclopedias, cumulative indexes, and other sources that support the object of research.

2. 3. Collection TechniquesData

Data collection techniques need to be done with the aim to get valid data in research. The author uses library and documentation techniques. Library techniques are very important in conducting research, this is because research cannot be separated from scientific literature (Sugiyono, 2012), while documentation techniques are methods of collecting data by searching or digging up data from literature related to what is meant in the problem formulation. The data that has been obtained from various literature is collected as a single document that is used to answer the problems that have been formulated.

DISCUSSION ANALYSIS

3.1. Arrangements for Supervision of the Directorate General of Customs and Excise Against Money Laundering Crimes Based on the TPPU Law

After the tragedy of the September 11, 2001 attacks (9/11 attacks), the FATF has issued the 9th Special Recommendation (SR-IX) which later became the 32nd of the 40 FATF Recommendations. This recommendation was issued with the aim that countries/jurisdictions have 5 (five) steps in strengthening the Anti Money Laundering and Counter Financing of Terrorism regime, among others to detect the physical transfer of cash and other payment instruments across borders; stop or withhold cash and/or other payment instruments suspected of being linked to terrorism financing or money laundering and to apply appropriate sanctions for false notifications.

On item 60 International Best Practices implementation of SR-IX, the FATF states that many UT and IPL that are disclosed will eventually be returned to the violators due to a lack of evidence linking cash and/or other payment instruments, offenders with the crimes committed, so that acts of concealment, smuggling or attempts to avoid liability notification deserves a separate criminal sanction.

Jahja (2012) suggests that bringing cash and/or other payment instruments into or outside the Indonesian Customs Area is one of the means or modes of TPPU. Sutedi (2008) describes the modus operandi of ML in several ways, as follows:

1. Capital cooperation.

Cash proceeds from crime are taken abroad. The money goes back in the form of joint venture projects. Investment profits must be reinvested in various other businesses. The profits from these other businesses are enjoyed as clean money because it appears to have been processed legally, even being taxed.

2. Credit collateral.

Cash is smuggled out of the country, then stored in certain state banks whose banking procedures are relatively lenient. From the bank it is transferred to the Bank of Switzerland in the form of a deposit. After that, a loan was made to a bank in Europe with the guarantee of the deposit. Money from credit is invested back into the origin of the illicit money.

3. Journey overseas.

Cash is transferred abroad through foreign banks in their countries. Then the money is disbursed again and brought back to its home country by a certain person. As if the money came from abroad.

4. Undercover effort in country.

Establishing an undercover company with proceeds of crime with the aim of making clean money, so that it doesn't matter if the company makes a profit or a loss.



5. Disguised gambling.
The money was used to set up a gambling business. It doesn't matter whether you win or lose, but it will appear that you have won, so there is a reason for the origin of the money. If in Indonesia there was still a lottery or something else like that, owners of illicit money could be offered winning numbers at a higher price. Thus, the money gives the impression to the person concerned as the winning result of the gambling activity.
6. Disguise documents.
The money physically doesn't go anywhere, but its existence is supported by various fake documents or those that are held, such as making double invoices in buying and selling and export-import, to give the impression that the money is the result of foreign activities.
7. Foreign loans.
Cash is taken abroad in various ways, then the money is put back as foreign loans. This seems to give the impression that the perpetrators are obtaining foreign credit assistance.
8. Engineering foreign loans.
Physically, the proceeds of crime remain in the country, but documents are manipulated as if aid or loans were given from abroad.

The pattern of movement of money traffic related to the crime of money laundering is the result of a crime or dirty money that is in the jurisdiction of law crosses the border into clean money in another legal jurisdiction, after it becomes clean, legal, legal money in another legal jurisdiction, it returns across the border to the original legal jurisdiction, becomes legal money, as illustrated in Figure 2 below:

Based on Article 34 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes, stipulates that everyone who carries cash in rupiah and/or foreign currency, and/or other payment instruments in the form of checks, traveler's checks, promissory notes, or demand deposits of at least IDR 100 000,000.00 (one hundred million rupiah) or equivalent in value into or out of the Indonesian customs area must notify DGCE.

The existence of Law 8/2010, in addition to narrowing the space for money laundering activities, is also expected to deter money laundering activities. The principal provisions of ML listed in Law 8/2010, among others:

1. Regulations regarding punishment for the perpetrators of criminal acts money laundering.
2. Everyone who intentionally does, helps, or commits conspiracy for money laundering activities can be criminally charged and fined.
3. Arrangements regarding reporting obligations that must be carried out by financial institutions for suspicious financial transactions or financial transactions in the amount of IDR 500,000,000.00 (five hundred million rupiah). These negligence and obligations can be threatened with criminal sanctions and fines.
4. Establishment of PPATK as an independent institution to prevent and eradicate money laundering activities.
5. Obligation to report by financial institutions to PPATK on receipt of cash in the amount of IDR 500,000,000.00 (five hundred million rupiah) or better, which is made in one receipt or several receipts. The financial reporting obligations include receiving payments, deposits, and transfers from other financial institutions or the safekeeping of funds that are known or reasonably suspected to have originated from criminal acts.
6. The obligation to report by DGCE to PPATK regarding cash amounting to IDR 100,000,000.00 (one hundred million rupiah) or more brought by anyone, both from within and outside the territory of the Unitary State of the Republic of Indonesia.
7. It is the obligation of depositors (individuals or corporations) to convey their identity completely and correctly at the bank, including mutual fund customers and securities companies.
8. PPATK's authority arrangements in the process of investigation, investigation, prosecution, and examination in court including the possibility of carrying out bilateral and multilateral cooperation with other countries in these processes.
9. Protection settings for complainants and witnesses.

DGCE is an institution that has a special role with regard to monitoring the bringing of cash and/or other payment instruments into or out of the Indonesian Customs Area (NRA Indonesia, 2015). If you do not notify the Customs officer that you will bring cash, then pursuant to Article 35 of Law Number 8 of 2010 stipulates the imposition of administrative sanctions in the form of a fine of 10% (ten percent) of the total amount of cash and/or other payment instruments carried with a maximum amount of Rp.



300,000,000.00 (three hundred million rupiahs)). Likewise, if a person has notified the carrying of cash and/or other payment instruments, but the amount of cash and/or other payment instruments brought is greater than the amount notified, then an administrative sanction will be imposed in the form of a fine of 10% (ten percent). from the excess amount of cash and/or other payment instruments brought in a maximum amount of IDR 300,000,000.00 (three hundred million rupiah).

For the implementation of its supervision, DGCE is obliged to make a report regarding the carrying of cash and the imposition of administrative sanctions to be submitted to PPATK. Of course, the report submitted by DGCE will then become PPATK's analysis material. PPATK is a body with an intelligence function (Financial Intelligence Unit) for certain transactions and suspicious transactions, and the results of analysis of PPATK's intelligence work are then used as evidence.

3.2. Dimensions of Arrangements for Oversight of Money Laundering Crimes by the Director General of Customs and Excise based on the Bank Indonesia Law

The term money laundering was first used as a crime terminology in the United States in 1930, which refers to the actions of the mafia in processing the proceeds of their crimes to be mixed with legitimate businesses with the aim of making the dirty money clean or seen as money from legitimate business results (Noble and Golumbic, 1998).

Money laundering can be carried out using a wide variety of modus operandi, from depositing money in a bank to buying luxury houses or stocks. Money laundering is carried out for various purposes, including:

1. Hiding money or assets obtained from crimes, with the aim that the money or assets are not legally disputed and are not confiscated by the authorities or also so that many people are not suspected.
2. Avoid investigations and/or lawsuits. The perpetrators of crime want to get their own money/wealth resulting from crime, for example by saving it in the name of another person.
3. Increase profits. The perpetrator of the crime may have several other legal businesses. Often, the proceeds of crime are included in the circulation of their legitimate businesses. As a result, money from crime can merge into legitimate businesses or businesses, making it more difficult to detect as proceeds of crime, and can also increase the profits of these legitimate businesses (PPATK, 2016).

Basically all of these modes can be classified into 3 (three) types of typology, which do not always occur gradually, but are even carried out simultaneously. The three typological stages are placement, layering, and integration (Insani and Haryadi, 2020).

Money laundering is a form of invisible crime which is explained at the bottom of the prism. At a lower level, invisible crime indirectly harms many people over a long period of time. The impact of this type of hidden evil is not directfelt, so that the community's reaction was even less because many victims did not realize that they felt a loss and in fact they were victims of these actions.

In fact, the impact of money laundering is quite large and widespread. Money laundering acts have an impact on the country's economic stability. First, the activity disrupts the legitimate private sector. Money launderers who disguise the proceeds of their crime in a legitimate business structure, but do not aim to invest their wealth, but to hide the proceeds of their crime. Business owners dare to offer prices that are much lower than market prices, resulting in bankruptcy for the private sector in the same business sector. Second, if criminals succeed in laundering the proceeds of their crimes, they can enjoy the wealth generated or use it to develop crime and its criminal organizations.circulating. Third, money laundering activities have an impact on increasing the state's social costs used to deal with perpetrators (Henry and Lanier, 2006).

In addition to the arrangements for bringing cash and/or other instruments based on Law Number 8 of 2010, there are arrangements for carrying cash set forth in Law Number 6 of 2009 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2008 concerning the Second Amendment to Law Number 23 of 1999 concerning Bank Indonesia Becomes Law, which determines that the objective of Bank Indonesia is to achieve and maintain stability in the value of the rupiah. The stability of the value of the rupiah and a reasonable exchange rate are some of the preconditions for achieving sustainable economic growth which in turn will increase people's welfare. Bank Indonesia's goal of achieving and maintaining



stability in the value of the rupiah needs to be supported by 3 (three) main pillars, The regulation by Bank Indonesia is a reflection of either authority related to money circulation policy. In general, the direction and objectives of the money circulation policy are to meet the public's need for money (banknotes and coins) in sufficient nominal quantities, maintain the quality of money fit for circulation, and tackle acts of counterfeiting money (Dermawan, 2018).

There are 2 (two) strategic objectives of the money circulation policy, namely maintaining the smooth and efficient availability of cash (Ensuring a smooth and efficient supply of cash) and maintaining the integrity of the currency (Maintaining the integrity of the currency) (Sigalingging, et al, 2004).

In addition, there are implications for the implementation of the free foreign exchange system policy by Indonesia. The implementation of the policy on the foreign exchange system and the exchange rate system is carried out by Bank Indonesia as the monetary authority responsible for maintaining the stability of the rupiah. This effort needs to be supported by an effective foreign exchange monitoring system. Therefore, Bank Indonesia was given the authority to request information and data regarding foreign exchange activities and to stipulate provisions regarding foreign exchange activities based on the principle of prudence. This is stated in Law Number 24 of 1999 concerning Foreign Exchange Flows and the Exchange Rate System.

Based on the type of currency, arrangements for carrying cash by Bank Indonesia are as follows:

1. Provisions regarding the carrying of rupiah currency.

Preamble to Bank Indonesia Regulation Number 4/8/PBI/2002 concerning Requirements and Procedures for Carrying Rupiah Currency Out of or Entering the Customs Territory of the Republic of Indonesia is an implementing regulation for the provisions contained in Article 3 of Law Number 23 of 1999 concerning Bank Indonesia determining the carrying of money rupiah regulated by Bank Indonesia, including bringing in or out of the customs territory of the Republic of Indonesia. Consideration of the existence of regulations for carrying rupiah currency either leaving or entering the Indonesian customs territory is in the framework of regulating, maintaining and maintaining the stability of the value of rupiah currency, as well as in the framework of monitoring the traffic of money circulation including monitoring counterfeit money.

The main provisions stipulated in Bank Indonesia Regulation Number 4/8/PBI/2002 regulate the determination of the amount of rupiah that can be taken out or entered into the territory of Indonesia; permit procedures to carry rupiah currency leaving or entering the territory of Indonesia; and administrative sanctions for violating provisions on transferring rupiah currency from or to foreign countries without permission.

Bank Indonesia Regulation Number 4/8/PBI/2002 contains boundary provisions the amount of rupiah currency that can be brought freely into or out of the territory of Indonesia is less than Rp. 100,000,000.00 (one hundred million rupiah). If the rupiah currency being carried is IDR 100,000,000.00 (one hundred million rupiah) or more, then there is an obligation to first obtain a permit from Bank Indonesia and have the authenticity of the money checked at the Customs and Excise officer at the place of arrival. The violation is subject to administrative sanction in the form of a fine of 10% (ten percent) which is imposed from the amount of rupiah currency brought both into and out of the customs area, with a maximum sanction limit of Rp. 300,000,000.00 (three hundred million rupiah) .

2. Provisions regarding the carrying of foreign banknotes.

According to Bank Indonesia Regulation Number 20/2/PBI/2018 concerning Amendments to Bank Indonesia Regulation Number 19/7/PBI/2017 concerning Carriage of Foreign Banknotes into and Outside the Indonesian Customs Area stipulates that Bank Indonesia has the authority to carry out monetary controls that carried out, one of which is through regulation of traffic for carrying foreign banknotes into and out of Indonesian customs areas. Regulations regarding permits for carrying foreign banknotes into and out of the Indonesian Customs Area are in line with efforts to support Bank Indonesia's policy in realizing a non-cash national movement and implementing the mandatory use of rupiah in transactions within the territory of the Unitary State of the Republic of Indonesia (NKRI).



CONCLUSIONS

DGCE's policy in supervising carrying cash and/or other payment instruments is based on 2 (two) dimensions of different laws and regulations. First, the dimensions of prevention, monitoring and supervision of potential ML, according to the mandate of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes. Second, the dimensions of the manifestation of Bank Indonesia's authority in requesting data and information on foreign exchange flow activities, as referred to in Law Number 6 of 2009 concerning Bank Indonesia. Both of these dimensions highlight the same thing, namely cash that crosses national borders, so that the DGCE's role is increasingly important and strategic in overseeing the bringing of cash and/or other payment instruments into and out of the territory of the Republic of Indonesia in order to prevent and eradication of TPPU.

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