

ISLAMIC LEGAL ANALYSIS OF THE ILLEGAL CIRCULATION OF FOREIGN CURRENCY AS A FORM OF ECONOMIC CRIME

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ABSTRACT

The illegal circulation of foreign currency (foreign exchange/forex) is a serious form of economic crime that significantly impacts a country's financial stability and sovereignty. In Indonesia, this activity is strictly regulated by law and central bank regulations to prevent economic losses. Legal regulations regarding circulation of foreign currency as a form of economic crime in Indonesia regulated in a legal framework that establishes The Rupiah is the sole legal tender within the territory of the Republic of Indonesia. The use and circulation of foreign currency in violation of statutory provisions, especially if conducted without permission or through illegal channels, can be categorized as an economic crime. Criminal sanctions for perpetrators of this crime illegal circulation of foreign currency as a form of economic crime will be subject to severe criminal sanctions, as stipulated in the Criminal Code (KUHP) and the Currency Law (Law No. 7 of 2011). Sanctions can include imprisonment of up to 15 years and a fine of up to IDR 50 billion, depending on the level of intent and the perpetrator's actions (counterfeiting, distributing, or bringing into/out of Indonesia).

1. Introduction

The illegal circulation of foreign currency in Indonesia refers to the use of foreign currency in violation of applicable regulations, especially the obligation to use the rupiah for every transaction within the country. This practice can damage the stability of the country's economy and financial system. The illegal circulation of foreign currency is a form of economic crime that can undermine the monetary stability and financial system of a country. This crime is often linked to other crimes, such as money laundering, terrorism financing, and smuggling. The illegal circulation of foreign currency is a form of economic crime.

Facing an era of openness in the economic sector influenced by market freedom, which has triggered various forms of economic crime, it is necessary to consider protecting the Indonesian economy. When economic turmoil occurs, people often assume it is solely the government's fault for its economic policymaking. In fact, bank customers who have been victims of the liquidation of several banks

have accused the government of being the cause. This is also used by the bank leaders in question to find scapegoats.

Today's economic activities cannot be separated from legal regulations. In addition to requiring professional staff and capital to carry out economic activities, a proper understanding is also required to ensure that economic activities do not violate regulations and result in criminal acts.

Economic crimes are understood to encompass all criminal acts related to the economy, whether violations or crimes. The principle of criminal law states that an act cannot be punished, so there are rules that regulate it. Legally, economic crimes are stipulated in Articles 378 to 481 of the Criminal Code, which regulate fraud. Substantively, economic crimes are specific offenses distinct from those stipulated in the Criminal Code. Judging by the perpetrators, economic crimes are not only committed by individuals, but also by groups and even syndicates. The resulting impacts significantly impact the rate of economic development in society and the losses incurred by the state.

Illegal practices in foreign exchange circulation often aim to profit significantly from exchange rate fluctuations without a clear need for the transaction. This element of speculation or gambling is called *maisir* and is prohibited by Sharia law. Some illegal instruments, such as unqualified options or forward transactions, carry a high degree of uncertainty (*gharar*), as the initial agreed-upon price differs from the future value at delivery.

According to the DSN-MUI Fatwa, foreign exchange transactions are permissible if there is an urgent need, such as for real transactions (imports/exports), precautionary measures (savings), or other legitimate needs. If the circulation of foreign currency is conducted without a clear purpose and solely to seek speculative profit, then such transactions lack a legitimate basis in sharia.

The circulation of illegal money not only violates Sharia principles but can also be part of a larger criminal practice. Islam prohibits any form of action that harms others and creates chaos in society. Most illegal circulation of foreign currency violates national laws.

Islam teaches its followers to obey leaders and laws that do not conflict with Sharia law, in order to maintain public order. Openly engaging in illegal transactions violates this rule

2. Research Method

This research is descriptive, because it only describes the object that is the main problem. Descriptive research leads to normative juridical research, namely "research that starts from problems by looking at the reality that occurs in

the field, then connecting it with applicable laws and regulations." The type of research used in this study is normative juridical approach, namely to analyze laws and regulations relating to the illegal circulation of foreign currency as a form of economic crime

3. Results And Discussion

The development of the (global) economy, from its early stages, and even today, is inseparable from the development of the state. From the era of monarchy-based governments to nation-state-based governments, and then to welfare-based governments, there is a close connection between the economic sphere on the one hand and the political sphere on the other.

In the context of a modern state, the scope of economic law can be either public or private, or a combination of the two. Therefore, economic law allows for the publicization and privatization of economic activities, leading to both criminal and civil sanctions for deviations from these principles. In carrying out economic activities, society faces restrictions imposed by existing regulations, often manifested in the form of criminal penalties, particularly if the violation results in state losses.

Along with advances in the economy, science, and technology in society, the world of crime has also grown. Crime is no longer committed in traditional ways, but rather exploits these technological advances. This development poses a threat and disruption that can undermine national resilience, which is known to be a prerequisite for successful development. Furthermore, compared to other traditional crimes, particularly crimes against property, economic crime has unique characteristics. Economic crime is more dependent on the economic system and level of development of a society.

Economic development has long been a key focus in long-term development. This is because significantly improving economic outcomes will undoubtedly impact all development activities, including social, cultural, defense, and security development. Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Trial of Economic Crimes (Emergency Law No. 7 of 1955) is the primary regulation enacted to regulate economic activities. This regulation serves as the basis for subsequent regulations and, of course, also regulates the nation's economy. This law provides an opportunity for the next generation to define the nation's economic norms and understandings related to the economy in general and those that are detrimental to the state.

In general, economic crimes are defined as crimes committed for economic reasons. Economic crimes are part of criminal law, but they have specific characteristics.



The enactment of economic crimes in Indonesia is relatively new because it only began to be known since the enactment of Emergency Law No. 7 of 1955. Meanwhile, economic criminal law is the acts prohibited in Emergency Law No. 7 of 1955. Substantially, the law only mentions a small part of the entire existing economic activities, therefore, when viewed from the substance of Emergency Law No. 7 of 1955, it can be classified into the definition of economic crimes (economic crime) in the narrow sense. While in the broad sense, it is a crime that in addition to the narrow sense, also includes crimes in economic regulations outside those contained in Emergency Law No. 7 of 1955.⁷ Activities in the field of a healthy state economy and finance can cover very broad and interrelated fields, including in the fields of trade, industry, and banking. The definition and scope of economic crimes in this broad sense are what in foreign terms are usually called economic crimes, crime as business, business crime, abuse of economic power or economic abuses.

Economic crime is a new dimension of crime, with perpetrators comprised of wealthy, intellectual, and organized groups. Economic crime is also commonly referred to as white-collar crime. Another characteristic of this crime is its high mobility and its perpetration not only within a single region but across national borders.

Historically, the definition of TPE is as regulated by Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Trial of Economic Crimes. This Economic Crimes Law is an adaptation of the Dutch *Wet op de Economische Delicten* of 1950. This law specifically regulates how to effectively protect against violations of an act expressly stated in the law, namely "provisions in or based on" *gecontroleerde goederen* ", *prijsbeheersing* ", *hoarding of goods* ", *rijsterdonnantie* ", *"rice milling obligations"* and *"divison"*. These six areas were considered very important at that time in the economic sector, all of which are currently no longer valid. Thus, the material of economic crimes is related to legal politics in the economic sector at a certain time. Through Emergency Law No. 7 of 1955, the term TPE began to enter the Indonesian criminal and judicial law treasury, and it continues to develop today.

Economic crimes (ECC) are a special type of criminal law that developed outside of the codification (KUHP). Economic crimes, as a special criminal law system, have been recognized since Emergency Law No. 7 of 1955 and are likely to continue to evolve in line with economic developments, particularly international business and banking. Internationally, economic crimes tend to be related to banking crimes, thus the terms financial crimes or business crimes are known.

Today, economic crimes have a relatively new name: any act that violates economic and financial laws and carries criminal sanctions. This definition of economic crimes clearly states the concept of finance.

As is known, economic criminal law in the Indonesian legal system is included in the category of special criminal law. The categorization of economic crimes as special criminal law is based on Paul Scholten's opinion, which provides a benchmark for "general application" and "special application" for criminal law. Criminal law that applies generally is also called general criminal law, while special criminal law is "non-criminal legislation that has criminal sanctions, also called government criminal law". Andi Hamzah narrows the definition of criminal law, namely regarding the term "special criminal legislation for all legislation outside the Criminal Code that contains criminal provisions, and general criminal legislation for provisions contained in the Criminal Code.

Furthermore, the definition of economic crime can be divided into a narrow/limited meaning and a broad meaning. In the narrow sense, "economic crime is limited to acts that are prohibited and subject to criminal penalties by applicable regulations as referred to in a limitative manner in Article 1 of Emergency Law No. 7 of 1955 or in other words, simply and from a narrow perspective, it is solely related to the law on economic crime, especially what is referred to in Article 1."

The definition of economic crime in a broad sense is "a crime which, in addition to the narrow sense, also includes crimes in economic regulations outside those contained in Emergency Law No. 7 of 1955." Or academically and in a broad sense, economic crime can be interpreted as an act by someone who violates government regulations in the economic field.

Thus, economic crimes in the broad sense can be defined as all crimes outside of Emergency Law No. 7 of 1955 that are economic in nature or motivated or that could have a negative impact on the healthy economic and financial activities of the State. Economic crimes in this broad sense are also referred to as "economic crimes."

Economic crime can be generally defined as a crime committed for economic motives. This is as stated by Muladi who said that "Economic crime (economic crime/financial crime) is an illegal act committed by an individual or an organized group of individuals to obtain financial or professional gain." Then as also quoted by Muladi, the US Department of Justice (1976) and Edelhertz (1970) stated, "Economic crime is a criminal activity without the use of violence which is primarily concerned with traditional ideas that are deceitful, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention."

Furthermore, regarding the elements of economic crimes according to Coklin as quoted by Muladi and Barda Nawawi Arief, they are as follows:

1. An unlawful act that is punishable by criminal sanctions;
2. Carried out by an individual or corporation in the course of his/her legitimate work or in the course of his/her search/business in the industrial or trade sector;
3. For the purpose of obtaining money or wealth, avoiding payment of money or avoiding loss/loss of wealth, obtaining business advantage or personal gain.

Another formulation related to the elements of economic crimes, put forward by Edi Setiadi and Rena Yulia as quoted by Hartiwiningsih, is as follows:

1. The act is carried out within the framework of economic activities which are basically normal and legitimate;
2. Such actions violate or harm the interests of the state or society in general, not just individual interests;
3. These actions also include actions in the business environment that are detrimental to other companies or other individuals.

Based on the previous description, it can be understood that economic criminal law is a part of criminal law that has its own characteristics, namely economic characteristics. Therefore, economic criminal law should take a place alongside criminal law. Furthermore, according to Moch. Anwar, as quoted by Hartiwiningsih, economic criminal law is defined as "a set of regulations in the economic field that make provisions regarding obligations/duties and/or prohibitions, which are punishable by punishment."

As for the term economic crimes The substance of Emergency Law No. 7 of 1955, known in Indonesia, appears to be closer to, or can be included in, the narrow term economic crime. This is because the law substantially contains provisions that only regulate a small portion of overall economic activity.

Associated with economic crimes The most fundamental thing is "the understanding that criminal acts in the economic sector are part of the economic laws that apply in a nation, while the economic laws that apply in a country cannot be separated from the economic system adopted by that nation."

Economic Criminal Law defines economic crimes as regulated in Emergency Law No. 7 of 1955 as crimes as stated in Article 1 sub 1e, sub 2e, and sub 3e. Criminal acts in Article 1 sub 2e are criminal acts in Articles 26, 32 and 33 of Emergency Law No. 7 of 1955. While criminal acts in Article 1 sub 3e are the implementation of a provision in or based on another law, as long as the law mentions the violation as an economic crime.

In its development, apart from what has been described above, banking crimes have also become part of economic crimes, in addition to criminal acts in the field

of customs (smuggling), fraud in the field of customs (customs fraud), crimes in the field of maritime transportation, crimes in the field of fisheries (illegal fishing).

The definition of acts described as criminal in the narrow sense depends on the direction of the government's economic policies. This means they can fluctuate according to national, regional, and international developments. Therefore, it's natural that economic regulations frequently change, making it difficult to identify which regulations are still in effect and which are no longer in effect. This makes it difficult to determine which acts constitute economic crimes and which do not.

In the economic crimes law, there is a clear distinction between economic crimes in the form of crimes and economic crimes in the form of violations. This is as stipulated in Article 2 of Emergency Law No. 7 of 1955, which states:

1. The economic crimes referred to in Article 1 sub 1 c are crimes or violations, simply because they are crimes or violations according to the provisions of the relevant law. Other economic crimes, as referred to in Article 1 sub 1 e, are crimes if they are committed intentionally. If they are not committed intentionally, they are violations.
2. The economic crimes mentioned in Article 1 sub 2e are crimes.
3. The economic crimes referred to in Article 1 sub 3e are crimes if the act contains an intentional element; if the act is not...contains an intentional element, the crime is a violation; one with another, if the law does not specify otherwise.

From these Articles, it can be concluded that the legislative policy adopted in classifying the scope of TPE as a crime or violation uses the following measures: Firstly, it is left to the relevant law, meaning that a type of TPE is a crime or violation is left entirely to the law. In this case, the law does not specify that the measure used is the element of intent, meaning that if a crime is committed intentionally then it is a crime, whereas if it is not committed intentionally then the economic crime is a violation.

Illegal trading and circulation of foreign currency (foreign exchange/forex) can be classified as an economic crime, primarily due to its detrimental impact on the country's financial stability and legitimate banking system. It is closely linked to illicit activities such as money laundering, terrorism financing, and tax evasion

4. Conclusion

Legal regulations regarding circulation of foreign currency as a form of economic crime In Indonesia, the Rupiah is regulated by a legal framework that establishes the Rupiah as the sole legal tender within the territory of the Republic of Indonesia. The use and circulation of foreign currency in violation of statutory provisions, particularly if conducted without a permit or through illegal channels, can be categorized as an economic crime.

Criminal sanctions against perpetrators of crime illegal circulation of foreign currency as a form of economic crime will be subject to severe criminal sanctions, as regulated in the Criminal Code (KUHP) and the Currency Law (Law No. 7 of 2011).

Criminal act illegal circulation of foreign currency as a form of economic crime from an Islamic legal perspective (muamalah jurisprudence and jinayah jurisprudence), the crime of illegal circulation of foreign currency (without official permission or in violation of state regulations) is categorized as a forbidden act and is included in economic crimes (jarimah iqtishadiyah).

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