

PERMIT OBLIGATIONS AND THREAT OF CRIMINAL SANCTION FOR NON-BANK OR UNLICENSED MONEY CHANGER BUSINESS ACTIVITIES BEFORE EFFECTIVENESS OF LAW ON FINANCIAL SECTOR DEVELOPMENT AND STRENGTHENING OF 2023

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Abstract: *The exchange of foreign currency to rupiah or vice versa in Indonesia can be carried out by the public in the commercial banks or non - banks business entities commonly called as money changer or non-bank foreign exchange traders. The business activities of the non-bank foreign exchange traders (KUPVA BB) in general thrive in the areas which economy, tourism activities are growing and the area that is the area being the origin of the Indonesian workers working abroad. The purpose of writing of this paper is to study the legal basis of regulation and supervision of KUPVA BB in Indonesia, the permit obligations from Bank Indonesia, as well sanctions for breach of non-permit KUPVA BB from Bank Indonesia. The research method used is the normative law study or doctrinal research. From the result of study, it is obtained the conclusion that the regulation, supervision and permit of KUPVA BB are carried out by Bank Indonesia by referring to the Law, Bank Indonesia, the Law on Foreign Exchange Traffic and Regulation of Bank Indonesia governing KUPVA BB. There is no criminal threat for the breach of obligation to obtain KUPVA BB permit from Bank Indonesia thereby make it difficult in eradication of illegal KUPVA BB currently.*

Keywords: *Criminal Sanction; Effectiveness Of Law; Financial Sector; Permit Obligations.*

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INTRODUCTION

The development of technology and information has an influence not only on the economic growth but also the integration between the countries thereby to facilitate the human mobility in traveling from one country to another. Especially with globalization, the tourist destinations and trade activities will attract the attention of the foreign nationals or tourists of foreign countries to come and visit a country, including Indonesia. According to Prof. Hartiwiningsih, the technology development followed by the development of crime quality and quantity that is sophisticated and frequent raises the international, regional and national impacts causing the criminal law enforcement cannot yet well resolved.¹ In the current *borderless* era, every country is difficult to maintain the economy sovereignty

¹ Hartiwiningsih, quoted from Bambang Tri Bawono and Anis Mashdurohatun, *Enforcement of Criminal Law in Illegal Logging sector for Environmental Conservation and Efforts to Overcome It*, Journal of Law Vol XXVI, No. 2, August 2011, Pg. 599

from globalization. According to George C. Lodge: *Globalization is a promise of efficiency in spreading the good things of life to those who lack them.*²

The purpose of globalization is to gain the efficiency presumably in line with the fundamental economic principles. According to Posner, there are 3 fundamental economic principles i.e. *value*, *utility* and *efficiency*.³ The Bretton Woods Agreement in 1944 gave birth the international institution in finance and international cooperation as *International Monetary Fund (IMF)*, *The International Bank of Reconstruction And Development (IBRD)*, and *the World Bank*, with the United States as the main driving force. Bretton Woods also initiated the formation of *World Trade Organization* and *General Agreement on Trade and Tariffs (GATTs)* as well as *General Agreement on Trade and Services (GATS)*. In carrying out the transactions that have purpose of payment in Indonesia, everyone is obliged to profit using the rupiah currency as stipulated in the Law No. 7 of 2011 regarding Currency. Therefore, the foreign tourists presumably need to exchange his foreign currency into rupiah currency. Vice versa if Indonesian residents who have Rupiah can exchange it into foreign currency according to the country of destination or what they want to save. Both of them could conducted through Non-Bank Foreign Exchange Traders (PVA) or *money changers*, and through the domestic banks.

According to the statistical data of Bank Indonesia, as of October 2021 the number of Non-Bank PVA (head office) are 1,070 Non-Bank PVA, with the Buy Transaction Value in rupiah of Rp. 17,657 billion and the Sell Transaction Value in Rupiah of 17,634 billion.⁴

The existence of the *money changer* is highly required as a vital facility in the implementation of the practical, fast and efficient tourism and trade services. The *Money changers* are the only organizers of Non-Bank Foreign Exchange Business Activities (KUPVA BB), i.e. those carrying out the purchase and sale activities of foreign banknotes, as well as purchase of *Traveler's Checks*.⁵ The traveler's check is a traveler's check in foreign currency that can be used as non-cash payment instrument as referred to in the Law No. 23 of 1999 regarding Bank Indonesia as recently amended by the Law No. 6 of 2009 (Law of Bank Indonesia)⁶.

Bank Indonesia as the central bank regulated in Article 23 D of the Constitution of 1945 stating that the state has a central bank which composition, position, authority, responsibility, and independence are regulated by the law. According to Budiono, there are two important matters attached to the central bank i.e. central bank independence and functions of *the lender of last resort (LOLR)*.⁷ As the central bank, Bank Indonesia is regulated in the Law No. 23 of 1999 regarding Bank Indonesia as amended recently by the Law No. 6 of 2009 ("Law of Bank Indonesia"). In accordance with the Law of Bank Indonesia, Bank Indonesia is assigned as the monetary authority, payment system authority,⁸ and macroprudential authority. Since its establishment, the central bank is established to maintain the stability of the value of money and stability of finance system.⁹ Bank Indonesia as the central bank have the objectives to achieve and maintain the stability of rupiah value. To attain the duty of purpose above, Bank Indonesia has the duties to stipulate and implement the monetary policy, regulate and maintain the smoothness of payment system as well as carry out the *macroprudential* regulation and supervision.

² George C. Lodge, *Managing Globalization in the Age of Interdependence*, Warren Bennis Executive Briefing Series, Golden Book Center SDN. BHD, Kuala Lumpur, 1995, Pg. xi also see at Pujiyono, P., Waluyo, B., & Manthovani, R. (2020). Legal threats against the existence of famous brands a study on the dispute of the brand Pierre Cardin in Indonesia. *International Journal of Law and Management*.

³ Richard Posner, *Economic Analysis of Law*, Ninth Edition, Aspen Case Book Series, Wolters Kluwer Law & Business, 1986, Digitized by the Internet Archive in 2012, Copyright © 1986 by Richard Posner. p. 11

⁴ Bank Indonesia, SP Kupva BB Statistics as of October 2021 https://www.bi.go.id/en/statistik/ekonomi-keuangan/spip/Documents/TABEL_8.pdf

⁵ See Article 1 point 4 and 5 PBI No. 18/20/PBI/2016 regarding Non-Bank Foreign Exchange Business Activities

⁶ See Article 15 of the Bank Indonesia Law

⁷ Budiono, former Governor of Bank Indonesia, delivered in remarks on Bank Indonesia's birthday, 1 July 2021.

⁸ Articles 15-18 of the Bank Indonesia Law

⁹ Perry Warjiyo and Dr. Solikin M. Juhro, *Central Bank Policy Theory and Practice*, PT RajaGrafindo Persada Higher Education Book Division, Jakarta, 1st Printing, Jakarta, 2016. Pg. 4

Especially related to the foreign exchange traffic, based on the Law No. 24 of 1999 regarding Foreign Exchange Traffic and Exchange Value System (Law on Foreign Exchange Traffic), Bank Indonesia has the authority to request for information and data on foreign exchange traffic activities made by the resident, as well as Bank Indonesia implementing the policy on exchange rate based on the exchange rate system stipulated by the Government.

Further, the Government has issued PERPU No. 1 of 2020 regarding Policy on State Finance and Stability of Finance System For Handling of Corona Virus Disease Pandemic of 2019 and or to Overcome the Threats Endangering the National Economy of funds or Finance System Stability ("Perppu Covid 19"). Perpu Covid 19 has been approved by DPR RI to be stipulated as law through the Law No. 2 of 2020 regarding Determination of PERPU No. 1 of 2020 as Law (UU No. 2 of 2020). UU No. 2 of 2020 has amended and added the significant authority and function of Bank Indonesia. In accordance with Article 16 paragraph 1 (e), Bank Indonesia has the authority *inter alia* regulating the obligation on acceptance and use of foreign exchange for the people including the provisions on submission, repatriation, and conversion of foreign exchange to maintain the stability of macroeconomics and finance system.

As a *regulator*, Bank Indonesia will issue the provisions in the legislation in form of Regulation of Bank Indonesia (PBI) as the follow up of the Law of Bank Indonesia. PBI could arrange Non-Bank KUPVA. As a regulation, PBI will tie any person or entity in Indonesia as arranged in Article 1 point 8 of the Law of Bank Indonesia.¹⁰

The existence of *money changers* in Indonesia is regulated in PBI No. 18/20/PBI/2016 regarding Non-Bank Foreign Exchange Business Activities from the permit, requirement, and authority of Bank Indonesia in the course of KUPVA BB. That it is also clearly stated that the *money changer* in Indonesia is the non-bank business entity established with legal entity as Limited Liability Company. Basically, KUPVA is divided into Bank KUPVA and Non-Bank KUPVA (KUPVA BB), thereby any money exchange business outside of two categories above is *illegal*.

In this case, Bank Indonesia is the party that has authority to regulate and supervise KUPVA BB in Indonesia according to the Law on Bank Indonesia, the Law on Foreign Exchange Traffic and the Law No. 2 of 2020, namely making arrangements of acceptance and use of foreign exchange. In practice, the foreign exchange trader (KUPVA) business activities commonly known as *money changer*. In addition, Bank Indonesia as the Supervisory and Regulatory Institution for KUPVA BB as stipulated in the Law No. 8 of 2010 regarding Prevention and Eradication of Money Laundering Crimes (TPPU Law).

The regulation and supervision carried out on the activities of the foreign currency payment system and exchange by Bank Indonesia is not solely due to the authority it has, but because the position of KUPVA BB that is quite vital. Where the various innovations in payment system activities and foreign currency exchange have the potential to increase the risk of money laundering and terrorism financing.¹¹ In addition, the foreign exchange market have the high rank, reflecting the complexity of risk and the interconnection between the instruments in the financial market due to its unique function as a link for non-residents to enter the domestic market.¹²

In 2017, BI has issued the permit to total 1,064 KUPVA BB operating in the head office, while total of 883 Kupva BB constitute the branch office. But, KUPVA BB that has no its own permit refers to the data owned by BI as of October 2016 yesterday there is about 612 Kupva BB that has no permit throughout Indonesia spread across Jabodetabek (mostly), Lhokseumawe, Bali, East Kalimantan and Kediri.

However, there is no law that regulates specially the obligation to obtain KUPVA BB permit from Bank Indonesia and threats the criminal penalty against KUPVA BB that has no permit. As comparison, in relation to the bank that has no permit from OJK, it will be subjected to the criminal sanction of maximum 10 years and maximum penalty of Rp. 200,000,000,000.00 according to the Law No. 7 of

¹⁰ Bank Indonesia regulations are legal provisions stipulated by Bank Indonesia and are binding on any person or entity and are contained in the State Gazette of the Republic of Indonesia.

¹¹ N you Narendra Putra, "Money Changers and Payment Service Providers Must Identify Beneficial Owners", <https://www.-identify-beneficial-owner/>

¹² Fiscal Policy Agency and the Australia Indonesia Partnership for Economic Governance (AIPEG), "Strengthening The Role Of Financial Sector To Promote Strong And Sustainable Growth," <https://fiskal.kemenkeu.go.id/files/berita-kajian/file/StrengtheningTheRole.pdf>

1992 regarding Banking as amended recently by the Law No. 10 of 1998 (Law on Banking) and the Non-Bank Fund Transfer Provider without Bank Indonesia's permit was threatened by the criminal sanction of maximum 3 years and maximum penalty of Rp. 3,000,000,000.00 as regulated in the Law No. 2011 regarding Fund Transfer (Law on Fund Transfer).

Since the *illegal* KUPVA (without Bank Indonesia's permit) can be misused to commit money laundering, terrorism financing crimes as well as narcotics presumably need to review the permit obligation of KUPVA BB together with the application of sanction against the *illegal* KUPVA according to the law applicable currently.

The government and DPR RI are trying to regulate the existence of KUPVA in the Draft of Law on Development and Strengthening of the Financial Sector (RUU P2SK) which has been ratified as law by the Plenary Meeting of DPR RI on December 15, 2022. Article 10 B paragraph (1) item e of Bill of P2SK regulates that:¹³

- (1) Regulation, supervision, and development of Money Market and Foreign Exchange Market by Bank Indonesia as referred to in Article 10 paragraph (2) f covers:
- (f) permits and foreign currency exchange business activities conducted by non-Banks.

The Bill of P2SK will become the Law on P2SK in January 2023.

From that background there some problems that must be found the resolution about the sanctions and/or criminal sanctions that apply to KUPVA BB established without permit from Bank Indonesia (*illegal*) before the effectiveness of the Law on P2SK.

1. RESEARCH METHOD

The research method used by the writer is the normative law study method. The normative law study is also known as doctrinal law research.¹⁴ Usually, in the normative law study, the matters researched are only the bibliography or the secondary data, that may cover the primary, secondary and tertiary law material.¹⁵ On this research type, frequently the law is conceptualized as what is written in the legislation (*law in books*) or law that is conceptualized as the rule or norm that constitutes the benchmark of human being that is considered deserve.¹⁶ For the writing of this study, the collection of the law material is made by identifying and inventorying the legislation, the review of the bibliography material in form of writings and the scientific works, and the other sources of law material that is related and relevant and the issues in this study. In exposing this, the positive law theory of Hans Kelsen is stated that is stated that the law norms are always created through the will. The norms above will become tying the Public if the norm is desired to become law and must be contained in the written form, issued by the competent institution and contains the command.¹⁷

2. OVERVIEW OF AUTHORITY OF BANK INDONESIAN IN REGULATING AND SUPERVISING NON-BANK KUPVA AS REGULATED BY PBI OF NON-BANK (BB) KUPVA

Bank Indonesia's Authority in conducting the regulation and permission as well as supervision of KUPVA BB in Indonesia before the effectiveness of the Bill of P2SK presumably referring to the Law of Bank Indonesia, Law on Foreign Exchange Traffic and the Law No. 2 of 2020 i.e. regulating the acceptance and use of foreign exchange. The authority above is followed up in the regulation in form of PBI. But, the three Laws above did not regulate specially the obligation obtain KUPVA BB permit.

The increase in mobility as well as the level of visits by tourists or travelers to a country have the effect on improving the economy, where it can generate the new business sector. As the need to

¹³ Draft Law on the Development and Strengthening of the Financial Sector, December 2022

¹⁴ Amiruddin, and Zainal Asikin, *Introduction to Legal Research Methods, Revised Edition*, Rajawali Press, Higher Education Book Division, PT RajaGrafindo Persada, Depok, 2019. Pg. 118.

¹⁵ Soerjono Soekanto, *Introduction to Legal Research*, UI Press, University of Indonesia Publisher, Jakarta, 1986, p.52

¹⁶ Amiruddin, and Zainal Asikin, *loc.cit*.

¹⁷ FX, Adji Samekto, "Tracking the Roots of Hans Kelsen's Thoughts about Stufenbeautheorie in a Normative – Philosophical Approach", *Progressive Law Journal*, Vol. 7, No. 1, April 2019.

exchange the currency owned by the travelers to the currency of the country of destination, that is provided by the *money changers*. Thus, the existence of *money changers* will facilitate the currency exchange transactions. *Money changers* are KUPVA BB provider with legal entity as Limited Liability Company and runs the foreign exchange business activities. The existence of *money changers* as KUPVA BB is regulated and supervised by Bank Indonesia.

Meanwhile, PBI on KUPVA BB stipulates the types of business activities that can be carried out by the *money changers*, i.e. exchange activities carried out by using the sale and purchase mechanism of the foreign banknotes and purchase of the Travelers' Checks. Besides the business activities above, the other business activities can also be carried out the operation of KUPVA as long as they are stipulated in the provisions of Bank Indonesia. Further, the matters regulated in PBI of KUPVA BB inter alia cover, PBI of KUPVA BB covering:

- a. scope of business activities;
- b. obligation to submit transaction *underlying*;
- c. improvement of permit procedure and requirement;
- d. governance and consumer protection; and
- e. sale and purchase activities of Foreign Banknotes (UKA) by the parties other than the non-bank foreign exchange business activities (KUPVA BB) providers.

KUPVA BB in carrying out its activities comply with the regulations including but not limited to:

1. PBI No. 18/20/PBI/2016 regarding Foreign Exchange Business Activities;
2. PBI No. 19/10/PBI/2017 regarding Application of Anti-Money Laundering and Prevention of Terrorism Funding for Non-Bank Payment System Service Providers and Non-Bank KUPVA Providers;
3. SEBI No. 18/42/DKSP regarding Foreign Exchange Business Activities.

The regulation and supervision carried out by Bank Indonesia on KUPVA BB as the part of Bank Indonesia's objectives to achieve and maintain the stability rupiah value as well as in carrying out the monetary control through the open market operation in rupiah and foreign currency money market.

If the foreign exchange trader business activities are not managed properly, it can have impact on Rupiah exchange rate and able to disrupt the economic activity. In addition, through the Law on Money Laundering, Bank Indonesia is the Supervisory and Regulatory Agency for KUPVA BB.

In carrying out its activities, KUPVA BB, i.e. the *money changers*, must obtain and has a permit from Bank Indonesia. The permit is valid for 5 (five) years as of the issue of permit and the extension can be requested. The requirements for becoming KUPVA BB inter alia are:

- a. Limited Liability Company with Legal Entity
- b. Shares are entirely owned by the Indonesian citizens and/or the business entities which shares are entirely owned by Indonesian Citizens
- c. The aims and objectives of establishment of PT in the Articles of Association is limited to the sale and purchase of UKA and traveler's checks
- d. The paid-up capital of Rp 250 million for DKI Jakarta, Denpasar, Kab. Bandung, and Batam; and Rp 100 million for the other areas.
- e. The capital does not come from and/or for the purpose of money *laundering*.

After obtaining permit, KUPVA BB must comply with several matters and not carry out the restrictions already stipulated. The obligation to organize KUPVA BB after obtaining permit is to install:

- a. licensed logo of KUPVA BB Provider issued by Bank Indonesia;
- b. business permit certificate issued by Bank Indonesia; and
- c. the inscription "Money Changer Exchange Business Activities Providers (*"Authorized Money Changer"*) and the name of the Limited Liability Company that provides KUPVA BB, in a place that is easily visible in the business location.

Therefore, the public or potential service users can more easily find out which KUPVA BB providers are licensed or not (*illegal*).

For KUPVA BB providers, the permit, requirements and supervision are regulated by Bank Indonesia not only to maintain the stability of Rupiah exchange rate, but also to protect the public in general. It is since the public can be harmed by KUPVA BB Providers who do not have permit from Bank Indonesia

since Unlicensed KUPVA BB can become a means of counterfeit foreign currency circulation or be used as a means of other crimes such as money laundering and terrorism financing.¹⁸

According to the National Narcotics Agency, *money changers* are frequently misused as a means of crime such as money laundering, drug dealing, and terrorist financing.¹⁹ In practice, the criminal acts are not only target the *illegal* KUPVA BB, but also the legal ones with several modes such as the cooperation between the licensed *money changers* and the *illegal money changers* or using more than one personal account. The existence of these *illegal money changers* is detrimental to the society and can have an impact on disrupting the stability of the national economy, since these *illegal money changer activities* cannot be controlled and the data is known, such as:²⁰

1. Implementation of Forex selling or purchasing prices on daily basis.
2. The number or number of transactions that occur every day.
3. The identity of customers who make transactions every day.
4. *illegal* BB KUPVA do not routinely report to Bank Indonesia.
5. *illegal* BB KUPVA do not pay income tax that should be deposited into the state treasury.
6. *illegal* KUPVA BB illegally commit fraud against customers who cannot be monitored.

Regarding this matter, Bank Indonesia indirectly regulates through PBI KUPVA BB aimed at the Board of Directors, Board of Commissioners, and/or Shareholders of Non-Bank Money Changers prohibited from becoming the owners of unlicensed KUPVA; enter into cooperation with unlicensed KUPVA providers; and running business activities through unlicensed KUPVA providers.

As a measure to mitigate the risk of money laundering and terrorism financing (TPPU and PPT) in KUPVA BB, Bank Indonesia carries out the risk assessment based on the service user, country or geographical area, product or service, and transaction route or network.²¹ This KUPVA BB risk assessment is prepared to in form of *Sectoral Risk Assessment* that refers to the *National Risk Assessment* of TPPU and PPT, the objectives are:²²

1. identify and analyze the threats of TPPU and PPT in KUPVA BB sector;
2. identify the vulnerabilities and impacts of TPPU and PPT if carried out through KUPVA BB; and
3. analyze the *key risk* of TPPU and PPT.

Following up on this, Bank Indonesia also issued the provision and guidelines as well as conduct the direct and indirect supervision to mitigate the risks of TPPU and PPT in KUPVA BB. Bank Indonesia also enters into cooperation with the Police of the Republic of Indonesia to control the *illegal* KUPVA BB throughout Indonesia. Subsequently, Bank Indonesia has also carried out the outreach and education to KUPVA BB Providers and the public to raise awareness to prevent and eradicate TPPU and PPT.

3. PERMIT OBLIGATION AND THREATS OF CRIMINAL SANCTION TO NON - BANK (BB) KUPVA WITHOUT BANK INDONESIA PERMIT (ILLEGAL)

According to Prof. Marjono Reksodiputro, at first the definition of economy criminal act starting from the breaches of the regulation regarding the supervised goods, price control, goods hoarding, foreign exchange, customs and excise, company regulation, and so on.²³ The definition of economy crime is subsequently changed in line with the economy, technology and time developments.

Before the effectiveness of the Law on P2SK, there is no Law that regulates specially the obligation to have business permit as KUPVA BB from Bank Indonesia and there is no provisions in the law that

¹⁸ Tri Jata Ayu, "Foreign Exchange Business," <https://www.hukumonline.com/klinik/detail/-/ulasan/cl4714/-usaha-penukaran-valuta-asing/>

¹⁹ Binsan R Simorangkir, "The Criminalizing Of Illegal Foreign Currency Business Activity Or Illegal Money Changer In Indonesia," *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 13, Issue 4 (August), 2017, p. 156.

²⁰ *Ibid.*, p. 157.

²¹ Bank Indonesia, "Anti-Money Laundering and Prevention of Terrorism Financing," <https://www.bi.go.id/id/fungsi-utama/sistem-pembayaran/anti-pendicucian-uang-dan-penjuangan-pendanaan-terrorism/default.aspx>

²² Bank Indonesia, "Sectoral Risk Assessment of Money Laundering and Terrorist Financing Crimes in the Non-Bank Payment System Service Provider Sector and Non-Bank Foreign Exchange Business Activities," p. 18.

²³ Marjono Reksodiputro, *Criminal Justice System*, Java Kurnia Publishing, Rajagrafindo Persada, Depok, 2020, p. 44



specially gives the threat of criminal sanction against KUPVA BB that has no permit from Bank Indonesia. But, the regulation, permit and supervision of KUPVA BB is carried out by Bank Indonesia through PBI KUPVA BB. It is important for KUPVA BB to operate prudently and according to the applicable terms as well as to prevent the misuse of KUPVA BB as criminal intermediary or perpetrator. The risk mitigation efforts regulated by Bank Indonesia are not only regulated in PBI for KUPVA BB, but also regulated in PBI No. 19/20/PBI/2017 regarding Application of Anti-Money Laundering and Prevention of Terrorism Financing for Non-Bank Payment System Service Providers and Non-Bank Foreign Exchange Business Activity Providers. The issue of PBI takes into account the technology development as well as business innovations that increase the risks of TPPU and PPT.

In preventing the occurrence of TPPU and PPT, KUPVA BB providers are required to identify, assess, control, and mitigate the risks of money laundering and terrorism financing based on the risk factors of the Service User, country or geographical area, products or services, and transaction channels or networks, including by taking into account the *National Risk Assessment* and *Sectoral Risk Assessment* results. The Providers, in this case the *money changers*, are required to carry out the *Customer due diligence* (CDD) on service users, prospective service users, and *beneficial owners* of service users. These activities include the process of identifying, verifying, monitoring on an ongoing basis (*on going due diligence*), and understanding the aims and objectives of the business relationship or transaction. Responding to the occurrence of crime and loss to society to economic stability that can be caused by the *illegal KUPVA BB*, Bank Indonesia requires the obtaining of permit for KUPVA BB providers to carry out their business activities. Considering that the *money changers* play an important role in economic and monetary functions because their function is to exchange the money. So having a permit is very important for KUPVA BB providers to guarantee the legal certainty and protect the community's interests.

Based on PBI for KUPVA BB, it regulates the administrative sanctions if KUPVA BB providers run the business activities without obtaining permit from Bank Indonesia, which includes:

1. Written warning;
2. Obligation to pay;
3. Cessation of business activities;
4. Permit revocation.

While the sanction of cessation of business activities, it is applied to sale and purchase of UKA; purchase activities of traveler's checks; and/or other business activities related to the implementation of the foreign exchange business activities. As well as in imposing upon administrative sanctions, Bank Indonesia takes into account the level of violations, the consequences arising from consumer protection aspects and/or anti-TPPU and CFT aspects, as well as other factors.

In 2020, Bank Indonesia found about 41 unlicensed KUPVA BB in Kab. Badung, Bali.²⁴ This shows that there are still a lot of *illegal money-changers in an area, bearing in mind that the sanctions already regulated have not been able to bring order to the illegal money-money business actors*. Moreover, PBI for KUPVA BB only regulates the administrative sanctions, thereby the criminal sanctions that are believed to have the deterrent effect on perpetrators of crimes have not been accommodated in PBI. Meanwhile, PBI for KUPVA BB only stipulates KUPVA BB that already has permit, and for *illegal KUPVA BB* it is still weak. Since there is possibility that the business actors may take advantage of legal loopholes by carrying out certain *modus operandi*. Thereby it can be said that there is no strong legal basis for regulating and enforcing the *illegal KUPVA BB* in criminal manner, although the operation of *illegal KUPVA BB* can be detrimental to the wider community and the national economy.

The Director for Special Economic Crimes of Police Headquarters, the Brigadier General Pol. Agung Setya at the meeting with the Chief of Payment System Policy Department of BI on April 17, 2017 was of the opinion that the Illegal BB KUPVA could be subjected to Law on TPPU Articles 3, 4, 5 if related

²⁴<https://mediaindonesia.com/nusantara/284754/bank-indonesia-tertibkan-41-kupva-tak-berizin-di-bali>

to the law on money laundering²⁵. The Police will enter into cooperation with PPATK to carry out the monitoring on financial transaction of KUPVA BB is not permission.²⁶

Article 3 of the Law on TPPU inter alia regulate as follows:

Everyone who places, transfers, diverts, spends, pays, grants, deposits, carries to abroad, change the form, exchange with currency or valuable letters or other actions on the Assets he knows or deserves he suspected is the result of crime as referred to in Article 2 paragraph (1) with the objective of hide or disguise the origin of Assets shall be subjected to sanction due to Money Laundering of imprisonment maximum 20 (twenty) years and maximum penalty of Rp. 10,000,000,000.00 (ten billion rupiah).

Meanwhile Article 4 of the Law on Money Laundering regulates as follows:

Everyone who hides or disguises the origin, source, location, allotment, transfer the rights, or actual ownership of the Assets he knows or deserves he suspected is result of crime as referred to in Article 2 paragraph (1) shall be subjected to sanction due to Money Laundering of imprisonment maximum 20 (twenty) years and maximum penalty of Rp. 5,000,000,000.00 (five billion rupiah).

Further Article 5 of the Law on TPPU regulates the following:

(1) *Everyone who accepts or controls the placement, transfer, payment, grant, donation, deposit, exchange, or use the Assets he knows or deserves he suspected is results of crime as referred to in Article 2 paragraph (1) shall be subjected to sanction of imprisonment maximum 5 (five) years and maximum penalty of Rp. 1,000,000,000.00 (one billion rupiah).*

(2) *The terms as referred to in paragraph (1) will not apply for the Reporting Party who performs the reporting obligation as arranged in this Law.*

The three Articles above, can be imposed upon KUPVA BB if related to the money laundering activities or money laundering as stated in Bareskrim of Police Headquarters.²⁷

The National Narcotics Agency (BNN) noted that there is indication of Money laundering (TPPU) practice related to the narcotics through the financial service sector, especially about the abuse of Kupva BB as the container to commit the money laundering at the quite significant value, i.e. reached 3.6 trillion. Total value above are specifically for Kupva BB that has no permit from Bank Indonesia authority. According to the Director of TPPU BNN, Brigadier General Pol Rokhmad Sunanto, BNN notes that there is six Kupva BB. 4 Kupva BB have no permit and 2 Kupva BB have permit, after the press conference at Gedung BI Jakarta, January 30, 2017. There are 8 modes of abuse of Kupva BB in the transaction related to Narcotics according to BNN:²⁸

1. Existence of cooperation between KUPVA BB with permit and Kupva BB without permit.
2. Kupva BB without permit is used as intermediary of financial transaction of the Narcotics Agency.
3. Kupva BB uses the personal account of more than one.
4. Customers provide self-identity that is not actually.
5. There is feeling of reluctance from Kupva BB in checking the customer's identity.
6. Using BB kupva with permit as the place to accommodate the money.
7. Using the legal company as means for do crime.
8. Doing import and invoice document forgery.

²⁵ <https://www.hukumonline.com/berita/baca/lt58f4ada2a9b4d/awas-money-changer-illegal-bisa-dijerat-pasal-pencurian-uang>

²⁶ Riyanta, S. (2020). Corporate Criminal Liability in the Collapse of Bank Century in Indonesia. *Humanities and Social Sciences Letters*, 8(1), 1-11.

²⁷ <https://www.hukumonline.com/berita/baca/lt58f4ada2a9b4d/awas-money-changer-illegal-bisa-dijerat-pasal-pencurian-uang>

²⁸ <https://www.hukumonline.com/berita/baca/lt588f441f57441/penegak-hukum-mulai-bidik-tindak-pidana-yang-untungkan-money-changer-illegal>

It is still found the *illegal* KUPVA BBs that carry out the business activities presumably show the existence of legal vacuum for the enforcement of the permit obligations of KUPVA BB and inexistence of criminal sanctions against the *illegal* BB KUPVA providers. It is since PBI No. 18/20/PBI/2016 has not been able to regulate and enforce the *illegal* KUPVA BB providers, especially in the criminal manner, but only regulates KUPVA BB that has had permit with threats of administrative sanction.

4. CONCLUSION

The regulation on permit and supervision carried out by Bank Indonesia on KUPVA BB contained in PBI No. 18/20/PBI/2016 regarding Non-Bank Foreign Exchange Business Activities is aimed at attaining and maintaining the stability of Rupiah exchange rate as well as maintaining the continuity of the national economy, including the healthy domestic foreign exchange market. Since the existence of KUPVA BB in Indonesia that is quite important to provide the services to the wider community, it is necessary to have the good governance in KUPVA BB sector, i.e. through PBI No. 18/20/PBI/2016. Broadly speaking, PBI No. 18/20/PBI/2016 regulates the requirements, permission and consumer protection of KUPVA BB activities in Indonesia. Before the effectiveness of the Law on P2SK, there is no law that regulates the criminal sanction on violations of obligation to have business permit as KUPVA BB from Bank Indonesia. Consequently, there is no coercion base for KUPVA BB to obtain permit from Bank Indonesia. But, the regulation, permit and supervision of KUPVA BB is carried out by Bank Indonesia through PBI KUPVA BB. It is important for KUPVA BB to operate prudently and according to the applicable terms as well as prevent the misuse of KUPVA BB as intermediary or perpetrator of the criminal act.

In line with the positive law theory of Hans Kelsen, KUPVA BB without permit from Bank Indonesia could not be subjected to criminal sanction since there is no law that regulates the criminal sanction. Meanwhile the imposition of criminal sanction on KUPVA BB is possible if related to the money laundering that could be threatened by criminal sanction of Articles 3, 4 and 5 of the Law on TPPU. And also with the Law No. 9 of 2013 regarding Prevention and Eradication of Criminal Acts of Terrorism Financing, can only be imposed upon if the *illegal* KUPVA BB is related to conduct the terrorism financing. For law certainty and public orderliness, in the future there is necessity of the legal basis that is stronger and clearly regulates the obligation to have KUPVA BB permit by Bank Indonesia furnished with the threat of criminal sanctions against the *illegal* KUPVA BB contained in a norm of written regulation in the Law, in this case the Law on P2SK.

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