

LAW ENFORCEMENT AGAINST TRANSACTION MODES INTERNATIONAL TRADE

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Article's Information	Abstract
<p>Keywords: International Trade Transaction Mode, Letter of Credit, Money Laundering.</p> <p>DOI: https://doi.org/10.31599/c52v2f39</p>	<p><i>In the era of globalization, transnational crime is an inevitable trend as the lines between nations become more unified. One form of transnational crime that is very disturbing to various countries is money laundering which has several modes and one of them is international trade transactions. This mode is done through a Letter of Credit (L/C) document as a means. The purpose of this study is to determine the form of regulation against money laundering in the mode of international trade transactions and understand its law enforcement against the mode of international trade transactions. The type of research used is normative juridical research with a statutory approach to find out the overall legal regulations governing the examination of documents in L/C, and a conceptual approach using a way of looking at legal principles in legal theory. The result of this study is that the Government has regulated the use of L/C through Permendag Nomor 94 Tahun 2018, especially for exports of minerals, coal, oil and gas, and palm oil. This regulation requires the use of L/C from domestic banks for certain types of exports and imposes sanctions for violators of this regulation and its enforcement against abuse of the authority of credit facilities by banks through L/C, must immediately prioritize the improvement, improvement, and renewal of the Banking Law accompanied by firm law enforcement and managerial improvement of banking.</i></p>



I. INTRODUCTION

With the development of information technology and globalization in the financial sector, there has been an increase in the volume of trade in commodities and services as well as related money flows. Technological developments do not always help a nation. Sometimes it has the opposite effect, acting like a "double-edged sword" offering huge advantages to the economy and trade and also increasing the likelihood that technology will be misused for evil. This makes sense considering that the wider the range of commercial activities that can be carried out through the use of technological advancements, the more attractive it will be for money laundering offenders to use technology as a means to commit crimes involving economic activities.

Nowadays, technological advances are developing so rapidly that the speed of change in the world of crime has become more sophisticated and well organized, it makes it difficult to detect, especially in cross-border crimes. In the period of globalization, transnational crime is an inevitable trend because the lines between nations are increasingly united. In terms of telematics technology, the globalization period is full of advances that make it easier for criminals to travel across countries which in addition to making it easier for humans to communicate across countries, also makes it easier to commit crimes across countries. One form of transnational crime that greatly disturbs various countries is money laundering.

The term money laundering, i.e. when cabal buys legitimate and official companies as one of its strategies, has been known since 1930 in the United States. The biggest investment was the laundry company, or Landromat, which was famous in the United States at the time. The laundering business is thriving, and various proceeds of crime such as from other branches of the business are invested in this laundry business, for example money from illegal liquor, gambling proceeds, and prostitution business.¹ According to Sutan Remy Sjahdeini, money laundering is defined as "a series of activities that are a process carried out by a person or organization against haram money, namely money that comes from crime with the intention of concealing or disguising the origin of the money from the government or the authority authorized to take action against criminal acts by mainly entering the money into the financial system so that the money can then be removed from the financial system as halal money", while in the opinion of Harkristuti

¹ Adrian Sutedi, *Money Laundering Crime*. Bandung: PT Citra Aditya Bakti, 2008, p. 2

Harkrisnowo sees money laundering as a crime that seeks to hide the origin of money so that it can be used as legally obtained money.

One of the vulnerability conditions is the existence of various vulnerabilities in Money Laundering Crimes (TPPU) in Free Trade Zones and can be described as follows²:

- a. There are more than 3,000 free trade zones in more than 135 countries.
- b. Free trade zones play a very important role in international trade, as a designated geographical area with specific regulations and tax treatment for the trade of certain goods and services, then free trade zones are often in developing countries and are located near ports of entry but separate from traditional ports of entry and usually operate under different rules.
- c. Some free trade zones export billions of dollars annually but few authorities are able to monitor and inspect these cargo and trade transactions.

According to the *Financial Action Task Force* (FATF) report in March 2010, systemic weaknesses for free trade zones include:

- a. Inadequate implementation of the AML/PPT program.
- b. Minimal oversight by local authorities.
- c. Weak procedures for the inspection process of goods and various legal entities, including appropriate administration and information technology systems.
- d. Lack of cooperation between free trade zones and local customs authorities.

To eradicate the practice of money laundering, in 2002 Indonesia has criminalized money laundering, namely by promulgating it. Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning Money Laundering Crimes (TPPU Law) and in 2010, there was an amendment to the TPPU Law, namely Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Indonesia is a "paradise" for criminals, namely as a place to launder the proceeds of crime, even according to the Director of *the Institute for Transformation Studies* Harry Azhar Azis, it is estimated that the amount of money in circulation and laundered in Indonesia reaches Rp. 50 trillion.³

Money laundering has several modes that have developed during this money laundering crime circulating in the world and one of them is international trade

² Dimas Kenn Syahrir, Tantangan Dan Jawaban : Pencucian Uang Dengan ModusPerdagangan (*Trade Based Money Laundering*), <https://ifi.ppatk.go.id/assets/upload/artikel/file/20211208105821.pdf>, di akses pada tanggal 05 April 2024 Pukul 19.10 WIB

³ Nancy Mamarimbing, Penegakan Hukum Tindak Pidana Pencucian Uang (*Money Laundering*), Manado: Lex Crime, Vol.VI/No.3/Mei/2017, hlm.144

transactions. This mode is carried out through a *Letter of Credit* (L/C) document as a means. This mode is carried out because the bank's focus is on the bank's documents and does not know the state of the goods, so this is very easy to be used as a means of money laundering by making large invoices for small goods or even goods that do not exist.

At this time, the ideal payment method that is often used includes L/C or Documented Letter of Credit (SKB). The implementation of trade transactions involving banking services activities are in different countries, so there is a need for regulatory conformity that contains uniformity both in the way and regarding the understanding between the banks. The development of procedures and payment systems is like a double-edged sword, on the one hand it provides very extraordinary benefits to the economic and business sectors, on the other hand it increases the risk of irregularities in the use of the system for malicious purposes. Several types of crimes in the economic sector that also take advantage of the system include the issuance of fictitious L/Cs. In the practice of L/C payment, it is possible that there will be deviations from the terms and conditions that have been set, for example, L/C issued not from the correspondent bank, discounts are made before acceptance from the Issuing Bank, to forgery of L/C documents.

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II. METHODS

In this paper, the author uses a type of normative juridical research, which is research that is focused on examining the application of rules or norms in positive law by using a statutory approach and a conceptual approach is used to support the writing. The legislative approach is used to find out the entire legal regulations that govern the

examination of documents in the L/C, while the conceptual approach uses a way of looking at legal principles in the opinion of scholars or legal theories. The data source of this study was obtained from secondary data, with literature studies, document studies, and browsing the internet. The sources of legal materials used include primary legal materials, secondary legal materials, and tertiary legal materials.

III. DISCUSSION

Regulation of Money Laundering in the mode of international trade transactions

At this time, laws on money laundering in various countries have expanded the object of money laundering not only from narcotics trafficking. This is in accordance with the recommendations of the FATF as contained in its 1990 report which stated, among other things:

Each country should consider extending the offence of drug money laundering to any other crimes for which there is a link to narcotics: an alternative approach is to criminalize money laundering based on serious offences, and/ or on all offences that generate a significant amount of proceeds, or on certain serious offences.

In 2006, the FATF issued a report on *Trade Based Money Laundering* (TBML). Based on the FATF (2006), TBML is defined as a process of disguising the proceeds of crime and transferring value through the use of trade transactions to legitimize their illegal origins. Money laundering-based trading is a process to disguise the results of criminal acts and move value through the use of trade transactions in an effort to legitimize their illegal assets. In the FATF, TBML, it is stated that:

“trade-based money laundering is defined as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origin”

Then the definition was revised back to become, the process of disguising the results of criminal acts and moving value through the use of trade transactions in an effort to legitimize their illegal origin property or to finance their activities. *Trade based money laundering techniques* range from simple fraud such as the interpretation of a wrong price, a large amount of wealth that is derived from a crime into an inconspicuous asset or commodity that is inconspicuous or the wrong quality of the object contained in an invoice, to the complex networks of a trade transaction and financial transaction. So based on the description *Trade based money laundering* can be distinguished into the following: *opportunity to earn, move and store proceeds disguised as legitimate trade”*

In the current era of globalization, there are various conditions that cause international trade (import and export) to become a very attractive mode for international crime syndicates to become a means to move money across jurisdictions in a series of money laundering on a global scale. In its development, foreign trade transaction activities which include export and import transactions of goods and services have experienced developments in payment methods and guarantees. Import and export transactions can be carried out properly, if the payment relationship that is commonly carried out in an indirect way through banking services can be held smoothly and securely for all parties.

Many modern entrepreneurs and businesses want everything to be easier and safer, especially when it comes to trading. International trade transactions, commonly called exports and imports, are essentially a simple process that involves the purchase and sale of goods between entrepreneurs operating in different countries, but in practice complex problems often also arise between these entrepreneurs due to differences in country boundaries (geopolitics), geographical, social, and demographic structures. This causes variations in the form of transactions and agreements as well as payment methods.⁴

In order to run international trade smoothly, especially in terms of payments, it is important that the payment relationship can be well organized and provides security for all parties involved. This payment includes all voluntary implementation or fulfilment of agreements, such as payment of a sum of money or the execution of work by workers, and so on. L/C or letter of credit, is a letter from the bank that guarantees that the buyer's payment to the seller will be received on time and in the correct amount. If the buyer is unable to make payment for the purchase, the bank is obliged to cover all or the remaining amount of the purchase. This assistance can be offered as a facility (financial aid which is basically a loan),⁵ Due to the nature of international transactions, including factors such as distance, different laws in each country, and difficulties in getting to know each party personally, the use of L/C has become a very important aspect in international trade to protect buyers and sellers.

Due to the nature of international transactions, including factors such as distance, different laws in each country, and difficulties in getting to know each party personally, the use of L/C has become a very important aspect in international trade to protect buyers and sellers.

⁴ Meriza Elpha Darnia, *Penipuan L/C Fiktif Bank BNI 46 dalam Perspektif Tindakan Pidana Korupsi*, Innovative: Journal of Social Science Research Volume 3 Nomor 5 Tahun 2023, hlm.8371

⁵ Julia Kagan, Letter of Credit: Apa Artinya, contoh, dan cara penggunaannya, https://www-investopedia.com.translate.google/terms/l/letterofcredit.asp?_x_tr_sl=en&_x_tr_tl=id&_x_tr_hl=id&_x_tr_pto=tc, di akses pada tanggal 06 April 2024 pukul 20.55 WIB

The use of L/C as a means of payment for export and import transactions cannot be separated from the benefits that arise from L/C itself. L/C as a means of payment has benefits in its use for both parties (exporter and importer).⁶

- a. The use of L/C as a means of payment for export and import transactions cannot be separated from the benefits that arise from L/C itself. L/C as a means of payment has benefits in its use for both parties (exporter and importer).
- b. With the existence of L/C, payments made by importers to exporters are guaranteed from losses for the importer itself. It can be said that it does not harm the importer because the exporter will not get payment from the Bank before the exporter delivers the goods ordered by the importer and submits the shipping documents as required/requested in the L/C;
- c. L/C provides a guarantee that both exporters and importers will be able to request (*financing*) from their respective banks; and
- d. There is a guarantee for *foreign exchange* in the respective counterpart country, because the L/C is opened in a foreign currency that has previously been mutually agreed upon.

In the MPL case, it resurfaced and brought the banking world and law enforcement into the public spotlight after the Ministry of Law and Public Affairs succeeded in extraditing MPL from Serbia on July 7, 2020. MPL has been a fugitive for more than 17 years since 2003. MPL is one of the perpetrators of the break-in of the Bank Negara Indonesia (BNI) Kebayoran Baru branch of Rp1.7 trillion. In carrying out its actions, MPL used a fictitious L/C from the Corruption Crimes Court (Tipikor), Jakarta sentenced MPL to 18 years in prison and a fine of Rp 800 million in 4 months of imprisonment. He was found guilty of corruption and TPPU for the BNI Bank break-in case which cost the state Rp 1.2 trillion. MPL was proven to have committed a criminal act in accordance with the indictment Article 2 paragraph 1 Jo Article 18 of Law of the Republic of Indonesia Number 31 of 1999 concerning Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Corruption Jo Article 55 paragraph 1 to 1 of the Criminal Code Jo Article 64 paragraph 1 of the Criminal Code, and was proven to have committed other criminal acts in accordance with Law Number 15 of 2002 concerning the prevention and eradication of TPPU Article 3 paragraph 1 letter a as amended by Law Number 25 of 2003 concerning

⁶ Andhibroto, S., *Letter of Credit dalam Teori dan Praktek*. Jakarta: Dahara Priz, 1991, hlm.87

amendments to Law Number 15 of 2002 concerning the prevention and eradication of anti-money laundering.⁷ Based on the facts of the trial, MPL was proven to have committed corruption and *money laundering*.

The government has regulated the use of L/C through the Regulation of the Minister of Trade (Permendag) Number 94 of 2018, especially for the export of minerals, coal, oil and gas, and palm oil. This rule requires the use of L/C from domestic banks for certain types of exports and imposes sanctions for violators of this rule. However, this rule provides an exception if the contract between the exporter and the buyer abroad that regulates the method of payment other than L/C was made before the regulation came into effect. The exporter can also adjust the payment method with L/C within a certain period of time by attaching the correct declaration letter. The use of L/C will lock in most of the foreign exchange from exports (DHE) of certain commodities for several months in national banks before being converted to local currencies, in an effort to maintain the stability of the country's currency. The government also issued a previous regulation related to the use of banking in mineral and coal exports.

Law Enforcement Against International Trade Transaction Modes

In Law Enforcement for the crime of money laundering, it can be said that it is an organized crime because it has a systematic framework both in terms of models, modus operandi, instruments, methods, stages and certain perpetrators in criminal activities are one package. Law enforcement is an effort to realize the ideas of justice, legal certainty and social benefits into reality. So law enforcement is a process of embodying ideas. Law enforcement is often divided into 3 (three), namely::

- a. Preventive Law Enforcement.
- b. Repressive Law Enforcement.
- c. Law Enforcement is Curative.

The law enforcement process starts from the Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK) and reporting with allegations based on sufficient preliminary evidence, and therefore Bank Indonesia and the police and the prosecutor's office formed an integrated team in an MoU to follow up on the alleged criminal acts. The functions and authorities of PPATK in carrying out their duties as referred to in

⁷ Yohanes Fransiskus Raimond Tjung, *Kasus L/C Fiktif Bni: Penyalahgunaan Letter Of Credit Dalam Perdagangan Ekspor Impor Dalam Perspektif Tindak Pidana Pencucian Uang*, Jurnal Ilmu Sosial dan Pendidikan (JISIP), Vol. 6, No. 3 Juli 2022, hlm. 10143

article 39, that PPATK has the following functions: Prevention and eradication of money laundering crimes, processing of information data obtained by PPATK, supervision of the compliance of the reporting party, analysis or examination of reports and financial transactions that indicate money laundering and/or other criminal acts as referred to in Article 2 paragraph (1).

Banking supervision and governance are urgently needed to prevent the recurrence of fictitious L/C cases. Bank observer from the Perbanas Institute Piter Abdullah Redjalum revealed that the L/C mode will not succeed if it does not involve "insiders", especially bank officials who give approval for disbursement of funds, because L/C is an instrument whose approval requires a gradual process. The most basic mitigation that banks need to do to prevent cash breaches with the L/C mode is to improve employee integrity. This is indeed not an easy matter because integrity is sometimes easily shaken if it receives promises of profits from parties who intend to break into bank cash. Another way is to carry out a tiered procedure and use a strict system. This has actually been implemented in banks in general, but it can be improved again. In particular, for the business valuation process and the examination of the parties related to the L/C submission.⁸

In L/C transactions, the issuing bank often encounters problems due to the occurrence of criminal acts in L/C document transactions. One of these criminal acts is document fraud in the L/C transaction agreement. In L/C, fraudulent crimes are divided into 2 (two) types, namely *forged or fraudulent documents* and *fraud in transaction*). Both types of fraud are classified as an exception to fraud. The meaning of this fraud exemption is that fraud is an exception to the application of the principle of separation of contracts and the principle of document attachment.

What is meant by fraud is the action of the beneficiary either by the *beneficiary* himself or with the help of a third party, without the knowledge of the *applicant*, to deceive the issuing bank or the bank authorized to pay by using a certain way carried out in the L/C transaction or the documents on the L/C, with the intention of obtaining payment from the issuing bank. A fraud can be said to be a document fraud if it meets the following things:⁹

- a. If the documents submitted are physically in accordance with the terms and conditions requested by the buyer and in accordance with the terms and

⁸ *Ibid*

⁹ Adrian Sutedi, *Tinjauan Yuridis Letter of Credit dan Kredit Sindikasi*, Bandung: Alfabeta, 2012, hlm 91

conditions in the L/C, but the documents are found to have been forged or substantially contain fraud.

- b. There is incorrect information or data on the documents submitted to the bank by the *beneficiary*.
- c. The inaccuracy of the information as referred to above can be done by *the beneficiary* or a third party with the knowledge of the *beneficiary*.

The exception to fraud does not apply or in other words, the issuing bank can accept or reject the application for refusal of payment if the following occurs::

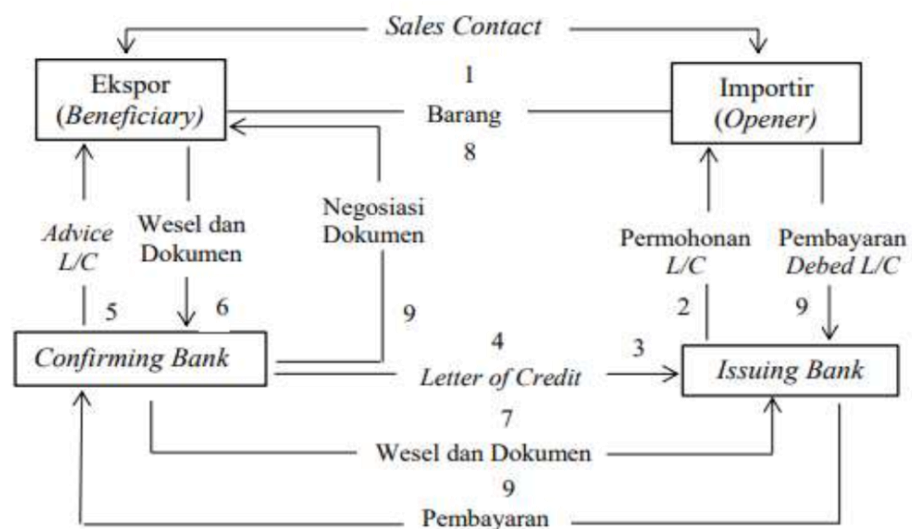
- a. The designated bank has made the payment or negotiated in good faith. In this case, the appointed bank makes payments or negotiations without knowing that there is any counterfeiting or fraud;
- b. Payment has been made to *the beneficiary* by the confirming bank that makes the payment in good faith;
- c. The legal holder (*holder in due course*) of the money order drawn under the L/C after acceptance by the accepting bank;
- d. The execution of obligations by the party receiving the transfer of obligations from the issuing bank and/or obligations from the designated bank that has been paid. The party receiving the obligation from either the issuing bank or the designated bank is not aware of any forgery or fraud

In the MPL case, the fraud of the L/C document nullified the principle of independence, which caused the underlying contracts for the birth of the L/C which were originally unrelated to each other, then became a single unit. Fraud also nullifies the principle of attachment to documents and provisions for determining conformity. When associated with the case of PT. Bank BNI Kebayoran Baru Branch, it has been proven that the elements of unlawful acts described in Article 1365 of the Civil Code have been fulfilled.

MPL itself uses the scope area of export-import trade which uses Indonesian L/C instruments. L/C is one of the services offered by banks in the context of purchasing goods, in the form of suspension of purchase payments by buyers (importers) since the L/C is opened until a certain period of time according to the agreement. L/C itself can be interpreted as a promise to pay from the issuing bank to the recipient whose payment can only be made by the issuing bank if the recipient submits to the issuing bank the documents in accordance with the requirements of the L/C. Generally, L/C is used to finance contracts for the sale of goods over long distances, between countries where

sellers and buyers do not know each other well and more specifically, L/C is used in international trade transactions. Bank Indonesia defines L/C as a promise from the issuing bank to pay a certain amount of money to the exporter as long as he can meet the terms and conditions of the L/C. In this case, Bank Indonesia is of the opinion that the essence of the L/C is a "promise of payment". L/C payment to the recipient can be made directly by the issuing bank or through another bank as its power of attorney.

As a contract, the L/C can be binding on the issuing bank since the L/C is notified to the receiving bank (exporter), but the recipient is not automatically bound to the contract so that the recipient is free to perform or not to execute the L/C. The recipient is considered bound in the L/C contract, namely since submitting the documents required in the L/C. The general mechanism of payment transactions with L/C can be seen in the following scheme:



In the MPL act, if it is associated with money laundering, it cannot be categorized as Trade-based Money Laundering because in the case of BNI's Fictitious L/C, the abuse of L/C is carried out by forging L/C documents and even forging export-import activities. Therefore, the case is more appropriately categorized as ordinary money laundering / money laundering only with predicate offences in the form of Counterfeiting Article 363 of the Criminal Code, while in Trade based Money Laundering, money laundering is carried out based on export-import transactions. This means that there will still be trading activities, but using trading operations to disguise the origin of funds which are usually funds generated from illegal things. The money laundering carried out by MPL is by placing the search money L/C (fictitious L/C) in two companies named PT Aditya Putra Pratama Finance.

The responsibility of the bank is only limited to conducting research on the documents submitted by the beneficiary to the bank. Where the research of documents carried out by the bank aims to determine the suitability of the documents in question both physically and substantially with the terms and conditions of the L/C. If the documents are appropriate, the bank makes a payment, and if it is the other way around, the bank can refuse to pay. However, in the event of fraud being found while the documents are being negotiated, the issuing bank may refuse to pay the L/C to the beneficiary. This is supported by data on the legal relationship of sales contracts to the examination of documents that are being negotiated in L/C that contain fraud, that the existence of fraudulent documents on the L/C which then causes the beneficiary to be disqualified from payment is a manifestation of the exemption from fraud. The occurrence of fraud in L/C documents causes the nullification of the principle of independence, which causes the contracts underlying the birth of L/Cs that were originally unrelated to each other, then become a unit. Fraud also nullifies the principle of attachment to documents and provisions for determining conformity.

Until now, the settlement of the case is still unclear, because the settlement of this case is legally fully handled by the authorities. The settlement is still far from expected, the legal path taken by BNI is already the right action to provide lessons to the perpetrators of irregularities both from employees and outside parties. Judging from the MPL case, it shows the weakness of law enforcement, namely the lack of optimal implementation of internal bank supervision so as to encourage the courage of state-owned bank operational officials to conspire with private entrepreneurs to abuse their authority for personal interests, in addition to reporting these fraudsters to the police, BNI can also file civil lawsuits against its employees to get compensation. BNI can not only sue civil but also sue the board of directors or board of commissioners because the L/C officers at the branch office are their subordinates so they are their dependents.

IV. CONCLUSION

Money laundering has economically cost many countries. Moreover, the Indonesian country that does not have a criminal law regarding *money laundering* will find it difficult to handle these crimes. The eradication of *money laundering* in Indonesia can be handled by realizing the development of human resource training programs. At a time when Indonesia's economy is unstable, there is suspicion in the entry of illegal funds for economic recovery. *Money laundering* is a threat in both regional and international environments. In international trade transactions, banks offer the use of *Letter of Credit (L/C)* as a solution to create smoothness in the international trade

payment mechanism. L/C is a promise to pay from the *issuing bank* to the exporter (*beneficiary*) in the amount of L/C as long as the exporter meets the requirements of the L/C. L/C requirements are requirements in the form of fulfilment of documents stated in the L/C, both physically and in the content of the document. L/C involves parties such as exporters, importers, issuing banks, and correspondent banks. The government has regulated the use of L/C through the Regulation of the Minister of Trade (PM) Number 94 of 2018, especially for the export of minerals, coal, oil and gas, and palm oil. This rule requires the use of L/C from domestic banks for certain types of exports and imposes sanctions for violators of this rule. However, this rule provides an exception if the contract between the exporter and the buyer abroad that regulates the means of payment other than L/C was made before the regulation came into force.

V. SUGESTIONS

In Law Enforcement for the crime of Money Laundering, it can be said that it is an organized crime because it has a systematic framework both in terms of models, modus operandi, instruments, methods, stages and certain perpetrators in criminal activities are one package. Law enforcement is an effort to realize the ideas of justice, legal certainty and social benefits into reality. So law enforcement is a process of embodying ideas. The policy carried out by the bank to improve the existing regulations and its law enforcement against the abuse of credit facility authority by the Bank through L/C, must immediately be prioritized for improvement, improvement, and renewal of the Banking Law accompanied by *strict law enforcement* and managerial improvement of banking.

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