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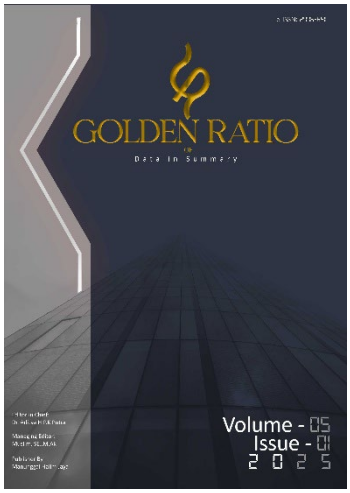

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DATA IN SUMMARY | LAW, POLITICS, PUBLIC ADMINISTRATION

Legal Analysis of Crimes Committed Through Shell Companies and The Role of Prosecutors in Combating Such Crimes

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Abstract: This paper aims to analyze the legal aspects related to crimes or violations committed by forming shell companies and the role of prosecutors in taking action against crimes committed through shell companies that have the potential to harm the State. Shell companies are often used as a tool to hide assets and commit various illegal acts such as tax evasion, money laundering and manipulation of financial statements. The existence of shell companies is a challenge for law enforcement agencies, especially for prosecutors, who play an important role in the investigation and prosecution process. Using the normative research method, this research analyzes the applicable laws and regulations, especially in Indonesia, and the steps taken by prosecutors in taking action against crimes or violations of the law committed through shell companies. The results of this study show that there is a legal vacuum in the supervision and prosecution of shell companies, which often operate across state jurisdictions, making investigation and prosecution difficult. The role of prosecutors is important to conduct in-depth investigations, collect evidence, and cooperate with other institutions to recover state losses. Therefore, stricter regulations and increased inter-agency coordination are needed to strengthen the role of prosecutors in combating shell company crime.

Keywords: Shell Companies, Role of Prosecutors, Business Crime.

1. INTRODUCTION

Much of our lives are heavily influenced by the corporate world, especially in the form of companies. We can note that large corporations have made enormous positive contributions to the development of industry and commerce in their respective countries as well as in other countries. They also provide employment opportunities to millions of people, provide services and goods, improve the welfare of society and enhance infrastructure. If the influence of these corporations is positive, then of course we do not need to worry about them. However, we should not be caught off guard, every company is competing for profits in accordance with their achievement targets so that not only can many companies make a positive contribution to the development and life of the community, but it turns out that many companies are making huge profits by carrying out various business activities that harm the community in ways that violate the law.

Large corporations influence prices and thus the rate of inflation, the quality of goods and the level of unemployment. They can manipulate public opinion through the use of mass media and they clearly affect the environment. Their influencing behavior can even endanger the democratic process through illegal political contributions (Clinard, Marshal B, 1983). The existence of shell companies has become an increasingly troubling phenomenon in the legal and political realm of law in many countries. They have no real operations and are only a means to commit criminal acts. The criteria for a company to be called a shell company according to the Organization for Economic Co-Operation and Development (OECD) are:

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1. A legal entity formally registered with the national authorities and subject to taxation and other economic laws in the place where the legal entity (shell company) is located.
2. Controlled by a parent company domiciled outside the jurisdiction of the legal entity, either directly or indirectly.
3. Has no or only a few employees, business activities, and physical presence.
4. Almost all of the company's assets are in the form of investments in or from other countries.
5. The core business of the shell model company consists of group financing or holding activities, channeling funds from non-residents to other non-residents (Mahesa, 2021).

Countries often identified as having many shell companies or dishonest business practices include Seychelles, British Virgin Islands, Panama, Mauritius, Belize, Cayman Islands, Bermuda, Bahamas and Marshall Islands (Rizki, 2018). Prosecutors play a central role in enforcing the law and prosecuting criminals, including shell companies. Prosecutors have the authority to conduct investigations, file indictments and bring offenders to justice. However, to carry out prosecutors' duties effectively, prosecutors need strong support from the relevant legal framework and legal politics.

According to the author, one of the challenges in enforcing the law against shell companies is that the relevant policies against shell companies have not been regulated, limited resources, both in terms of personnel and finances in investigating suspicions of Corporate Crime. Therefore, adequate political and policy support from the government is essential to ensure that prosecutors have sufficient resources to handle shell company cases. In terms of investigation, it is necessary to check transactions in bank, cash, and cryptocurrency. Cryptocurrency is an internet-based currency using blockcain technology that maintains the privacy of transactions securely. The use of cryptocurrency in illegal activities is often carried out due to the lack of regulations regulated by countries, so tracking transactions through cryptocurrency is often untraceable. Cryptocurrency is often used to find funds for a project, which is often not executed, some other activities carried out are such as terrorist financing, money laundering, drug transactions. If we trace, the origin of the criminalization of money obtained or derived from criminal acts is to deal with narcotics and taxation crimes committed by organized crime. The 1988 United Nations Convention on the Prohibition of Trafficking in Narcotics and Psychotropic Substances (1988 UN Convention) and the 1990 EU Convention on Money Laundering, Investigation, Search and Seizure of Proceeds of Crime (1990 EU Convention) are agreements of the international community. Indonesia has ratified the 1998 UN Convention in 1988 (BPK Regulation, 2009).

The existence of Money Laundering Crime, hereinafter referred to as TPPU, does not stand alone like other conventional crimes, but is a crime that is related to other crimes (the original crime), so it is appropriate if it is stated that this crime is a conditio sine qua non to the original crime as stated in Article 2 paragraph (1) of the Anti-Money Laundering Law 2010. The two crimes (the crime of origin and the crime of money laundering) do not have one evil will (Mr. J.M.Van Bemmelen, 1987) or the same 'mens-rea' because the will to commit the crime of origin manifested in the act is different from the will to commit ML, which is normatively reflected in the formulation of the provisions of Article 3, Article 4, and Article 5 of the 2010 ML Law. For this reason, ML is not considered a continuing criminal offense (vorgezette handeling). The two criminal offenses are independent criminal offenses (perbarengan) even though they are related to each other. Therefore, ML and corporate crime through shell companies are concurrent criminal offenses. So that the criminal acts committed in shell companies are criminal acts (concurrent).

Based on the background listed, the author formulates several problems. First, how is the Legal Analysis of Crimes Committed Through Shell Companies? Second, what is the role of the prosecutor in the effort to crack down on crimes committed through the shell company? By studying and analyzing these questions, it will enable a better understanding of the Legal Analysis of Crimes Committed Through Shell Companies and the Role of Prosecutors to Crack Down on Such Crimes.

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2. RESEARCH DESIGN AND METHOD

The research method used in the research is Normative legal research (legal research) is usually "only" a document study, which uses sources of legal material in the form of laws and regulations, court decisions / decrees, contracts / agreements / contracts, legal theories, and opinions of scholars (Muhaimin, 2020). According to Ahmad Mukti Fajar ND and Yulianto, the definition of normative legal research is "legal research that places law as a system of norms. The system of norms in question is about principles, norms, rules, from laws and regulations, court decisions, agreements and doctrines (Muhaimin, 2020).

3. RESULT AND DISCUSSION

3.1. Legal Analysis of Corporate Crimes Committed through Shell Companies

A shell company is created for the purpose of selling or transferring shares of a company established or domiciled in a tax haven country that has a special relationship with an entity established or domiciled in Indonesia, or a permanent establishment in Indonesia (Minister of Finance Regulation, 2008). However, it is also done for the sake of tax amnesty as an intermediate company established solely to carry out certain special functions for the benefit of its founder, such as for the purchase and/or financing of investments, and does not carry out active business activities (Minister of Finance Regulation, 2016). However, according to the author, some of the tricks practiced in the field are several modes of crime committed through intermediary companies:

a. Manipulating the company's books by creating various fictitious transactions with subsidiaries/shell companies to minimize profits, with the aim of reducing tax bills,
b. Creating various layers of connected parties in one transaction to disguise the proceeds of crime,
c. Being a means of transferring funds to parties in trouble with the law,
d. Hiding criminal transactions.

An Indonesian citizen who owns a shell company can use it to hide his or her identity. For example, a public official can channel illicit funds without raising suspicion and being associated with his name. Some of the stages that are usually carried out are as follows:

a. Opening a shell company in a tax-free country, such as Panama.
b. Opening an offshore company bank account in one of the other countries, for example Japan, with a correspondence address in Japan with a company name usually like a Japanese name. This is done so that it looks like the company comes from Japan even though it is actually registered in a tax-free country such as Panama.
c. After the bank account is opened, the Indonesian citizen is very easy to receive money from anyone, one of which is the money from his crime.
d. Creating fictitious invoices for the purpose of the name of the company created. The transaction must look like a normal business transaction. The transaction will be guaranteed by bank secrecy, and in Indonesia it will look like a legitimate transfer to the bank account of a company in Japan.
e. Withdrawal of money from the created Company account, the funds can be withdrawn using shared ATMs from Indonesia or can be withdrawn in cash from various other countries. The withdrawal will not be detected by KPK, PPATK or other authorities.

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Several other modes are used using shell companies to avoid paying taxes to the state by transferring profits of affiliated companies abroad to shell companies located in the country. This is used to cover the profits earned by the affiliated company, so that the shell company serves to manipulate the financial statements of the affiliated company, so that it will reduce the tax value of the affiliated company due to the transfer of profits to the shell company established. Cases such as corruption, money laundering, and terrorism financing by transferring funds to shell companies located outside the jurisdiction of Indonesia (Minister of Law and Human Rights of the Republic of Indonesia, 2008).

Formally, there are no specific regulations governing shell companies in Indonesia. However, the establishment of a shell company in the form of a Limited Liability Company refers to Law Number 40 of 2007 concerning Limited Liability Companies. Meanwhile, shell companies with legal entities that are not established and not domiciled in Indonesia but carry out activities through a permanent establishment in Indonesia or that receive income from Indonesia not by conducting business through a permanent establishment in Indonesia, can be classified into the category of corporations in the form of Permanent Establishments, hereinafter referred to as BUT, in accordance with the provisions of the income tax law (Minister of Finance Regulation, 2019).

BUT as a form of business used by individuals who do not reside in Indonesia, individuals who are in Indonesia for no more than 183 (one hundred eighty three) days within a period of 12 (twelve) months, and entities that are not established and have no domicile in Indonesia to conduct business or carry out activities in Indonesia (Minister of Law and Human Rights of the Republic of Indonesia, 2008). Specifically, regulations in Indonesia, especially in Law Number 40 of 2007 concerning Limited Liability Companies, do not regulate the existence of shell companies because Law Number 40 of 2007 concerning Limited Liability Companies regulates more related to the establishment of companies established in the territory of Indonesia or hereinafter referred to as onshore companies. The Law on Limited Liability Companies only regulates the establishment of onshore companies or companies in Indonesia. Meanwhile, shell companies are generally companies established abroad or hereinafter referred to as offshore companies. Although the Limited Liability Company Law does not cover these offshore companies, under certain conditions these companies are bound by the rule of law in Indonesia (Kevin G. Inkiriwang, 2017).

So if an offshore company enters Indonesia and is registered as an investment company in carrying out its business activities in Indonesia, the company will be bound by the legal rules that apply in Indonesia. But the legal basis for the establishment of an offshore company is not in Indonesia. Thus, what is binding is only the business activity, not the legal subject itself because the PT is established for example in Panama or other countries. Because the offshore company is established in an area outside Indonesia, it cannot be seen from only one legal perspective. In this regard, the legal aspects that can be used when looking at offshore companies from the perspective of Indonesian law. When viewed through the aspect of investment, the majority of these companies are not in the form of holding companies but subsidiaries or sister companies. With this status, offshore companies that will enter Indonesia must first register in Indonesia. Because the company that enters from outside is registered abroad but actually the owner is Indonesian. This is considered reasonable because one of the purposes of forming a shell company is usually to erase traces of its original ownership. Efforts to erase these traces are often carried out with the aim, for example, of avoiding tax obligations that must be paid to the state. So that by itself the existence of shell companies established in foreign countries is detrimental to Indonesia. In this case, Indonesia is disadvantaged because the taxation system in Indonesia adheres to the concept of universal or global income in accordance with Article 4 of the Income Tax Law without recognizing country boundaries. Where every income must be reported and tax calculated. So the violation that occurs is not because individuals or companies open companies in tax-free countries. But because the company and its activities are not reported in the tax report. So whatever the reason, if it is not reported, it has violated the tax provisions by hiding what should be reported. Regardless of whether or not there is tax to be paid to the state because the tax system in

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Indonesia which adheres to the self-assessment system still requires reporting. In addition, the use of these shell companies, which are used to open offshore company accounts, can be used to camouflage something illegal. This mode is actually often used so it is quite dangerous. Usually the opening of an offshore company can be accompanied by the opening of accounts in the name of the company, in certain banks in various countries. This bank account will easily be used as a channel to transfer money without being able to be linked to the direct ownership of the company. This is what can be misused to commit crimes. In the event of misuse of a shell company, for example used to hide funds from criminal acts, tax evasion, and/or money laundering, the perpetrators can be charged according to the existing provisions.

The liability of the Management in Corporate Crimes is explained that corporations that commit criminal offenses can be charged with criminal law whose regulations are scattered in several laws and regulations, in accordance with the actions they have committed. However, in practice, it is currently difficult to trace the ownership of shell companies, considering that it is not uncommon for shell company owners to establish dozens, tens, or even more shell companies that are layered in various jurisdictions and involve many countries. In addition, the majority of shell companies are established in countries that strictly maintain the confidentiality of the owner's identity.

3.2. The Role of the Prosecutor in Cracking Down on Crimes Committed Through the Shell Company

Shell companies are often used as a means to commit crimes, including money laundering. In this case, the role of the prosecutor is very important in taking action against violations of the law committed through the shell company. The prosecutor's office as a law enforcement agency has the authority to prosecute, investigate criminal offenses and recover assets from the proceeds of crime. This is very important in handling cases that harm the state which often involve complex Special Crimes. The ability of prosecutors to trace, seize and return assets obtained from criminal acts to the State is key in efforts to recover State losses. In addition, the prosecutor's authority in the field of intelligence allows for effective investigation and security against illegal practices that harm the State.

Prosecutors, of course, in terms of data collection can go directly to the location to check whether the company is operating properly or even just a company that exists on paper that has no activity at all. In terms of cracking down on shell company crimes, prosecutors need to collect strong evidence to support the charges against the perpetrators. We can see valid evidence in Article 184 paragraph (1) of the Criminal Procedure Code which states that valid evidence is:

1. Witness testimony;
2. Expert testimony;
3. Letters;
4. Instructions;
5. Testimony of the defendant.

As a shell company is certainly a legal entity or can be called a corporation, as for the criminal process whose legal subject is a corporation has been regulated in several provisions (Regulation of the Attorney General, 2014). The criminal process against corporations is as follows:

1. Examination and Summoning Stages

The summons stage against the corporation by the prosecutor's office is addressed to the corporation to the address where the corporation's legal domicile is or the address where the corporation operates. In the event that the address of the corporation is unknown, the summons is delivered to the residential address of one of the management. However, if the address of the management is also unknown, the summons is delivered through printed or electronic mass media and affixed to the announcement place at the courthouse authorized to hear the case (Supreme Court

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Regulation, 2016). However, shell company crimes are usually carried out to cover up the flow of funds from the original criminal act, so that in the examination and summoning process, the prosecutor will summon the parties involved in the original criminal act to reveal the criminal act of money laundering by the shell company.

2. Stages of Inquiry and Investigation

The examination of the corporation by the prosecutor's office as a suspect at the investigation level is represented by the management. Then, the investigator conducting the examination will summon the corporation represented by the management with a valid summons. Furthermore, the management is obliged to attend the corporate examination process. If the corporation has been properly summoned but the management does not heed, refuses to attend or does not appoint other management to represent the corporation in the examination, then the investigator determines one of the management to represent the corporation and summons once again with an order to the officer to bring the management by force (Supreme Court Regulation, 2016).

In this case, the prosecutor can conduct investigations and investigations of corporations that commit criminal offenses based on Chapter III number 1 of the Appendix to Attorney General Regulation Number 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects. Investigation and investigation of criminal offenses under the law against corporations can be carried out jointly with individual legal subjects. In addition, investigators are required to confiscate the Articles of Association/Bylaws of the corporation or other deeds in the event that the corporation is a suspect (Regulation of the Attorney General, 2014). However, the evidence has certainly been kept away by the perpetrators in order to hide the criminal acts committed by the shell company.

3. Stages of Prosecution

Prosecutors appointed as public prosecutors carry out the pre-prosecution stage first. The appointed public prosecutor examines the completeness of the case file, among others (Regulation of the Attorney General, 2014):

a. Deed of Incorporation of the Corporation
b. Deed of Amendment of the Corporation
c. Decree of the Minister of Law and Human Rights regarding the ratification of the Deed of Establishment/Corporation Amendment
d. Form of the corporation
e. The relationship between the corporation and the management representing the corporation
f. Power of Attorney of the corporation to the representative
g. Letters, documents, books and evidence related to the alleged criminal offense
h. Damage and losses caused by criminal offenses as well as profits obtained by the Corporation
i. Financial and tax data of both the Corporation and the management of the corporation
j. Expert Testimony if needed
k. Other matters related to the case

After the case file is complete, the next stage is the preparation of an indictment against the corporation (Regulation of the Attorney General, 2014). The indictment against the corporation refers to the Criminal Procedure Code, specifically Article 143 paragraph (2) with adjustments to the contents of the indictment as follows (Supreme Court Regulation, 2016):

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a. Name of the corporation, place, date of establishment and/or number of articles of association/deed of establishment/regulations/documents/agreements as well as the latest amendment, domicile, nationality of the corporation, type of corporation, form of activity/business and identity of the representative management; and
b. Careful, clear and complete description of the criminal offense charged by mentioning the time and place where the criminal offense was committed.

Based on Chapter IV letter d number 1 of the Attachment to Attorney General Regulation Number 028/A/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects, corporations that can be prosecuted include:

a. Corporations;
b. Corporations that are transferred or taken over;
c. Group corporation which is a collection of persons or entities that are related to each other in terms of ownership, management, and/or financial relationships; and/or
d. Corporations that are still in the bankruptcy process.

Then, it is important to know that corporations can only be prosecuted with fines and additional penalties and/or disciplinary actions (Supreme Court Regulation, 2016).

4. Trial Stages

At this stage, the prosecutor brings the manager who represents the corporation at the investigation level must also be present at the examination of the corporation in the court session (Supreme Court Regulation, 2016). If the manager is absent due to temporary or permanent disability, the judge / chairman of the session orders the public prosecutor to determine and present another manager to represent the corporation as the defendant in the examination at the court session. Then, in the event that the management representing the corporation as the defendant has been properly summoned and does not appear at the examination without a valid reason, the presiding judge will postpone the trial and order the public prosecutor to summon the representative management to appear on the next trial day. Then, if the management does not appear at the next hearing, the presiding judge orders the public prosecutor to force the management to appear at the next hearing (Supreme Court Regulation, 2016).

5. Stages of Judgment and Enforcement of Court Decisions

This stage is divided into sentencing, verdict, and execution of the verdict.

a. The first stage of imposing punishment, the judge can impose punishment on the corporation or the management, or the corporation and the management based on each law regarding the criminal sanctions against the corporation and/or the management. The imposition of punishment does not rule out the possibility of imposing punishment on other perpetrators who are proven to be involved.
b. The second stage, the decision to impose punishment on the corporation is made in accordance with the Criminal Procedure Code. Then the judge can impose punishment on the corporation in the form of principal punishment (fine), and/or additional punishment in accordance with the applicable provisions.
c. The third stage, the execution of the verdict is carried out based on a court decision that has obtained permanent legal force (inkracht). In the event that a fine is imposed on the corporation, a period of 1 month is given since the verdict is inkracht to pay the fine. The period can be extended for a maximum of 1 month. Then, if the convicted

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> corporation does not pay the fine, the corporation's property can be confiscated by the prosecutor and auctioned (Supreme Court Regulation, 2016).

Then, in the event that a fine is imposed on the management, a period of 1 month is given from the inkracht decision to pay the fine. The period can also be extended for a maximum of 1 month. However, if the fine is not paid in part or in full, the management is imposed with imprisonment in lieu of fine which is carried out after the expiration of the main criminal punishment (Supreme Court Regulation, 2016). Furthermore, as additional information, for corporations that are legal entities such as Limited Liability Companies, criminal liability lies with the directors. This is reflected in Article 109 number 1 of the Copyright Center Regulation which amends Article 1 number 5 of the Limited Liability Company Law as follows:

> "The Board of Directors is an organ of the company that is authorized and fully responsible for the management of the company for the benefit of the company, in accordance with the aims and objectives of the company and represents the company, both inside and outside the court in accordance with the provisions of the articles of association."

Evidentiary challenges in shell company cases are greater than in other criminal cases, because the perpetrators always keep the evidence that can ensnare them away. The application of reverse proof can be detrimental to the prosecution process where the perpetrator may be able to show the source of the acquisition of his/her unnatural wealth from a business that is a fabrication. Investigators also experience problems in tracing assets that are not in the name of the suspect. Prosecutors can coordinate with PPATK (Financial Transaction Reports and Analysis Center) to analyze financial transaction reports and information indicating criminal acts committed through shell companies. Prosecutors cooperate with related institutions to secure and return misappropriated assets to recover state losses due to business crimes.

Prosecutors seek to provide a deterrent effect through the imposition of criminal sanctions for criminals who use shell companies. So that in the pre-prosecution stage it is also important for the prosecutor to prove that the company is a shell company used for illegal acts. The prosecutor will examine the completeness of the deed of establishment of the corporation whether it is real or not, the deed of amendment of the corporation, expert testimony and the results of the GMS. The GMS is also a reference to see the financial statements and corporate relations and who represents the corporation at the GMS appointment and dismissal of the Board of Directors and / or Board of Commissioners. Prosecutors can request expert testimony to strengthen evidence by identifying suspicious fund flows, proving embezzlement or money laundering and detecting manipulation of financial statements.

4. CONCLUSION

1. Shell companies are often used to commit various corporate crimes, such as:

    a. Manipulating the company's books to minimize profits and reduce taxes.
    b. Disguising the flow of proceeds of crime.
    c. Hiding the ownership and identity of the company owner.
    d. Avoiding tax obligations by shifting profits to offshore shell companies.

2. Indonesian regulations do not specifically regulate shell companies, as most shell companies are established outside Indonesia. However, the business activities of shell companies in Indonesia are still bound by the applicable laws.

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3. Prosecutors have an important role in taking action against crimes committed through shell companies, starting from the examination, investigation, prosecution, trial, to the implementation of court decisions. The main challenge in proving shell company cases is the difficulty of tracing ownership and tracing the flow of funds, because the perpetrators always try to hide evidence, so prosecutors need to coordinate with related institutions, such as PPATK, to collect strong evidence and secure and return misappropriated assets.

Thus, this study also suggests that shell companies in Indonesia require more specific and comprehensive legal arrangements. This includes clear definitions and criteria for shell companies to avoid misinterpretation. In addition, there should be restrictions on the use of shell companies, along with strict requirements for their establishment. Reporting obligations and ownership transparency should also be strictly regulated to ensure accountability. Equally important, strict sanctions should be imposed to crack down on any abuse of shell companies, thereby creating a deterrent effect and better compliance. On the other hand, the capabilities and coordination between law enforcement officials, especially prosecutors, need to be improved to handle cases involving shell companies. This includes strengthening the ability to trace the flow of funds and hidden assets. Prosecutors also need to be supported by effective collaboration with related institutions, such as the Financial Transaction Reports and Analysis Center (PPATK), to obtain valid evidence. In addition, prosecutors' authority in the process of examination, investigation, prosecution, and execution of decisions must be strengthened to ensure the legal process runs optimally.

Synergy and information exchange between law enforcement authorities in Indonesia and authorities in other countries should also be improved. This is particularly important for jurisdictions where shell companies are often established. Cross-border cooperation can help uncover wider crime networks and accelerate legal proceedings. In addition, socialization and education for the public, especially business actors, need to be intensified. This step aims to increase understanding of the risks and negative impacts of shell company abuse, while encouraging compliance with applicable laws. Thus, business actors will better understand the importance of conducting business in a transparent and responsible manner.

Supervision of the opening of bank accounts by companies, especially shell companies, should also be tightened. This step aims to prevent the misuse of accounts in money laundering or funding illegal activities. With stricter supervision, suspicious shell company activities can be detected early and followed up appropriately.

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