Eradication of the Crime of Money Laundering from General Criminal Offenses

Budi Novianto[1], Riswadi[2]

{novianto_budi@yahoo.com[1], riswadi@borobudur.ac.id[2]}

Universitas Borobudur[1, 2]

Abstract. The wrongdoing of illegal tax avoidance (tax evasion) is the returns of wrongdoing utilizing different means and entering it into the monetary framework with the goal that the resources coming about because of the wrongdoing appear to be illegal. Part of the mining crime, bribery crime. Where the results of the resources are versatile or unfaltering articles, both substantial and theoretical. The stages in the wrongdoing of tax evasion include the implementation or storage stage, layering and integration. In enforcing the law on the wrongdoing of illegal tax avoidance, no intervention by any party is permitted by the enforcement apparatus. So it is recommended to apply sanctions to the perpetrators of the crime of money laundering, giving the perpetrators the most severe punishment possible, so that the perpetrators become deterred and the crime of money laundering is a white collar crime so that it requires the seriousness of law enforcement officials, as well as the participation and participation of the community accompanied by adequate regulations, so that the crime of money laundering can be eradicated.

Keywords: Action; Crime; Money Laundering; General Justice

1 Introduction

The crime of money laundering, or what is known as money laundering, is a global phenomenon that is also an international challenge. In Indonesia, the legal basis for the crime of money laundering begins with Law No. 15 of 2002, then changed to Law No. 25 of 2003, and subsequently updated to become Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering. This change in law was motivated by weaknesses in the provisions of the previous law, which required improvement in various aspects. The improvement not only covers aspects of prevention but also law enforcement, which includes the formulation of the offense, the authority of the investigating agency, as well as the evidentiary mechanism in handling money laundering criminal cases. [1]

The presence of evidence plays a critical role in prosecuting cases of money laundering. Article 184 of the Criminal Procedure Code determines the guilt of individuals based on available evidence. In money laundering investigations, Article 69 of the Law on the Prevention and Eradication of Money Laundering regulates one of the evidentiary mechanisms. This article states that proving the original criminal act is unnecessary during investigations, prosecutions, or court examinations in money laundering cases. Matters concerning assets in money laundering crimes are often traced back to acts stemming from other criminal acts, known as

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predicate crimes. Predicate crimes generate illegal money or assets, which are then laundered through a money laundering process to conceal their origin and make them appear legitimate.[2]

In the context of money laundering, the "no money laundering without core crime" theory emphasizes the inseparable link between money laundering and predicate crimes. This theory suggests that money laundering cannot occur without a prior predicate crime. Therefore, uncovering the crime of money laundering necessitates the disclosure of the predicate crime that led to the laundering of money or assets. However, challenges arise in the prosecution process. A key question is whether both crimes must be proven simultaneously or if it suffices to establish the crime of money laundering without first proving the predicate crime.[3] Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, as outlined in Article 69, affirms that it is not obligatory to establish the original crime before prosecuting the crime of money laundering. This provision offers flexibility in law enforcement, allowing authorities to focus on the crime of money laundering without separately proving the predicate crime.[4]

This article seems to contradict the concept that money laundering involves double criminality. In a diverse country like Indonesia, it is crucial to prosecute suspects based on their overall culpability. To charge an individual as a perpetrator of a money laundering crime, tracing the source of the underlying criminal act, such as embezzlement, is essential.[5] This step simplifies investigations by revealing money trails and ensuring that the funds are returned to the state or handed over to the attorney general. The proceeds of crime are fundamental to predicate crime and the crime of money laundering. Without the proceeds of crime, there would be no money laundering crime.

Before designating someone as a suspect, it is important to verify whether the items obtained were acquired through criminal activity. Drug offenses and money laundering are more intricate than traditional economic crimes. Historical data demonstrates that drug trafficking is a major source of money laundering crimes. Organized crime groups often employ money laundering techniques to legitimize proceeds from illicit transactions. Additionally, funds acquired from drug trafficking are frequently reinvested to perpetrate similar crimes or establish new criminal enterprises.[6]

Money laundering crimes are often associated with tax offenses. Offenders frequently seek ways to evade taxes, such as manipulating business expenses, altering sales items, or employing Transfer Pricing and Intercompany Pricing practices to reduce or eliminate tax liabilities. When a tax offense serves as a predicate crime, the perpetrator typically commits a specific crime before engaging in money laundering. Thus, the Crime of Money Laundering (TPPU) can be deemed a derived criminal act or a derivative of a tax crime, much like its linkage to a corruption offense.[7]

Considering those backgrounds, it highlights the significance of comprehending the connection between general criminal acts and money laundering, as well as the necessity for effective strategies to combat these criminal activities. Therefore, this article presents an engaging discussion on eliminating the crime of money laundering from general criminal activities.

2 Method

2.1 Method

The research method used for this study is normative legal research. This method involves examining library materials and secondary data to analyze legal issues from a normative and analytical perspective. [8]

2.2 Approach

The normative approach is a method used to examine problems in the context of law and statutory regulations, including rules that can be used as a basis for investigating issues and their legal consequences. In this case, an example is Law Number 8 of 2010 concerning the crime of money laundering. The normative approach is taken in certain statutory regulations or written laws relating to law enforcement in cracking down on corruption crimes. This research describes the situation of the studied object and focuses on regulations and the concept of criminal acts of corruption. [9]

3 Result and Discussion

3.1 Money Laundering in Indonesia

The crime of money laundering, abbreviated as TPPU or known as money laundering, is not new in the development of legal science. However, in the context of positive law in Indonesia, this criminal act is regulated in Law No. 8 of 2010. Handling money laundering crimes requires a comprehensive and integrated approach. This problem cannot be solved solely by the efforts of individual law enforcement officers. Coordination between various law enforcement agencies, both at the national and international levels, is essential to overcome existing challenges. Considering that money laundering crimes often involve complex and cross-border transactions, international cooperation is required for effective prevention and law enforcement.[10]

The problem of money laundering is not only national but also global, because the flow of illegal funds can cross national borders and affect the international economy. The Law on the Prevention and Eradication of Money Laundering in Indonesia does not provide a complete definition of money laundering. [11] Article 1 Number 1 of this Law only defines money laundering as any action that satisfies the criminal elements outlined in this legislation, thereby constituting a criminal offense. A more detailed definition of the crime of money laundering can be found in Articles 3, 4, and 5 of the Law.

Article 3 of the Law on the Prevention and Eradication of Money Laundering regulates that every person who carries out various actions with assets, such as placing, transferring, diverting, spending, paying, donating, entrusting, taking abroad, changing the form, exchanging it for currency or securities, or committing other acts, can be charged with money laundering. This action must be carried out with knowledge or suspicion that the assets are because of a criminal act, and the aim is to hide or disguise the origin of the assets. [1]

Meanwhile, Article 4 of the same Law explains that every person who conceals or disguises the origin, source, location, designation, transfer of rights, or actual assets ownership that he knows or reasonably suspects is the result of a criminal act, can also be charged with money laundering. This article emphasizes that hiding or disguising information related to assets originating from criminal acts is also included in the crime of money laundering. Then, Article 5 of the Law on the Prevention and Eradication of Money Laundering explains that every person

who receives or controls various forms of transactions regarding assets such as placement, transfer, payment, grant, donation, custody, exchange, or use can be charged with money laundering if they know or reasonably suspect that the assets are the proceeds of a criminal act.

Money laundering crimes are divided into two types, active and passive. The crime of active money laundering involves direct actions taken by the perpetrator to disguise, hide, or change the origin of the proceeds of the crime so that they appear legally valid. These actions are usually carried out intentionally in an active attempt to deceive the authorities. On the other hand, the passive money laundering refers to the act of receiving, using, or exploiting the proceeds of crime that have been laundered without being directly involved in the laundering process. In this case, even if someone is uninvolved in disguising the origin of the money, they can still be considered guilty of using money or assets that knew or should have known came from a criminal offense. [12]

In general, two types of elements in criminal acts are subjective elements and objective elements. The subjective element refers to the component that originates from within the perpetrator, related to the error caused, whether in the form of intention or negligence. The principle of criminal law states that there is no law without error. On the other hand, the objective elements in the crime of money laundering include elements that must exist and can be factually proven in a money laundering case. [13] These elements include the origin of the criminal act which is the source, the acquisition of proceeds from the criminal act, the act of concealing or disguising the origin of the crime, as well as the financial transactions or transfer of related assets.

3.2 Eradicating the Crime of Money Laundering from General Crimes

The crime of money laundering has fundamental differences compared to other crimes in criminal law, especially because it is a predicate crime that precedes money laundering. Every offense formulation in money laundering always mentions the results of the predicate crime. One example of a criminal act that regulates predicate crimes is detention, as regulated in Article 480 of the Criminal Code. Money laundering functions as an underlying crime of a predicate crime. This predicate crime will determine whether a transaction can be subject to anti-money laundering laws.[14]

The Law on the Prevention and Eradication of the Crime of Money Laundering regulates that the source of the crime of money laundering is assets obtained from criminal acts, as explained in Articles 3 to 5 of the TPPU Law. From the assets resulting from the crime, the perpetrator then continued his actions. One of the methods used by perpetrators in the crime of money laundering is by using an account in someone else's name. In dealing with this crime, in particular, a new paradigm was applied using the "follow the money" method.[15]

The crime of money laundering often involves a large amounts of money, which can harm state finances and harm the national economy, and various aspects of people's lives. Considering that the crime of money laundering is an extraordinary crime, it must be handled seriously. This is reflected in Article 69 of the Law on the Prevention and Eradication of the Crime of Money Laundering, which states that in the process of investigation, prosecution, and examination in court for the crime of money laundering, prior proof of the original crime is not required. According to R. Wiyono, the phrase "does not have to be proven" in Article 69 means that show of a predicate criminal act does not require a court decision that already has permanent legal force.[16]

The crime of money laundering has significant differences compared to other crimes in the criminal law, especially because the predicate crime precedes the crime of money laundering.

In every formulation of a money laundering offense, the proceeds from the predicate crime are always mentioned. One example of a criminal act that regulates the existence of a predicate crime is the crime of detention, as regulated in Article 480 of the Criminal Code. The "reasonable suspicion" element in Articles 3 to 5 of Law No. 8 of 2010 indicates that a person is considered capable of estimating, based on data or information held or general practice, that a certain amount of money or assets results from a criminal act.[17]

In this situation, there exists an aspect of the heart or conscience that falls under the category of "culpa." To evaluate this negligence element, it can be observed from the information possessed by the perpetrator and the societal norms that are reasonably accepted. This reasonableness can be examined through the motive and background of the transaction. When proving the elements in the formulation of the TPPU Law article, the act of money laundering shares similarities with the formulation of Article 480 of the Criminal Code regarding the receipt of money. In money-related crimes, the offender is mandated by law to have knowledge or suspicion that the assets they possess are derived from a criminal activity.

In the commission of a money laundering offense, the perpetrator must know or at least suspect that the assets they possess are proceeds from a criminal activity, as stipulated in Article 2 Paragraph (1) of the TPPU Law. Articles 3 to 5 of the TPPU Law also encompass the "reasonably suspected" element [edhei sulisty]. It signifies that in the examination of a money laundering case, it is not necessary to establish the predicate crime first, as the offender must, at minimum, possess knowledge or awareness of the origin of the assets, whether stemming from illegitimate activities or not.

Therefore, the "reasonably suspected" element is inherent in criminal law provisions due to its nature of "property dolus, property culpa." This element indicates that the evidence of "Assets known or reasonably suspected" is purely speculative. In essence, it means that the perpetrator must have knowledge or awareness of the origin of the assets. The inclusion of the "reasonably suspected" element in the formulation of this law article renders it unnecessary to prove the Predicate Crime first.[18]

The element of "reasonably suspected" is half intentional and half negligent which can be equated with a type of intended crime. In this context, "proparte dolus, proparte culpa" can be equated with intent as awareness of the possibility. This intent occurs when someone acts to cause a certain consequence, but also realizes that his actions may cause other undesirable consequences that are prohibited by law. It means that the individual is aware of the possibility of undesirable and unlawful consequences, but continues his actions.[19]

Predicate crime and money laundering are distinct offenses, even though they are interconnected. When the same person commits both the predicate crime and money laundering, it is referred to as concurrency in law. Concurrency crimes are governed by Article 65, Paragraph (1) of the Criminal Code. Concurrency entails a combination of multiple acts, each of which should be considered an individual offense, and each act must satisfy the elements of a crime as stipulated in the Criminal Code. To examine the correlation between predicate crime and money laundering, it is imperative to amalgamate the investigation and prosecution of both criminal activities. In criminal law, the combination of several criminal acts is known as "samenloop." The legal doctrine asserts that an act encompassing several types of criminal acts falls within the concept of samenloop.[20] In Article 63 of the Criminal Code, the following elements can be drawn:

a. An act that involves more than one criminal rule or an act that violates more than one criminal provision.
b. If an act involves more than one criminal rule, then only one of the rules is imposed, and the one that contains the most severe main criminal threat is imposed;

c. If an act involves a general criminal rule and a special criminal rule, then the special rule is applied.

Reverse proof in TPPU in the science of criminal law, the combination of criminal acts is divided into three types: a combination of one act, a continued act, and a combination of several acts. The "concursus realis" refers to a scenario in which a person carries out multiple distinct actions, each of which individually constitutes a criminal offense according to the law. In this context, each action is treated as a separate and prohibited criminal act, and the perpetrator can be liable for punishment for each criminal act committed within a specific timeframe. Therefore, if an individual engages in several acts, each of which is recognized as a separate criminal offense by law, it falls under the classification of concursus realis.

The development of money laundering activities can be identified through several modes of operation regulated in Law No. 8 of 2010 concerning money laundering, one of them is placement which is an effort to insert cash proceeds of crime into the financial system. Another mode is transfer or layering, which is transferring assets from criminal acts that have been placed to other financial service providers. Furthermore, there is the use of assets or integration, which is using assets from criminal acts that have entered the financial system through placement or transfer so that they appear like legitimate assets.

Tax Crimes are crimes based on alleged losses to State Revenue. This loss of state revenue is not directly interpreted as a loss of state finances. Losses to state revenue in the context of tax are more interpreted as a shortfall in revenue that causes real and definite state financial losses due to unlawful acts, either intentionally or negligently. Losses to state revenue in the tax system are more specific compared to state financial losses. State revenue consists of tax revenue, non-tax revenue, and grants, while state finances include all state rights and obligations that can be valued in money, as well as everything in the form of money or goods that belong to the state related to the implementation of these rights and obligations. Therefore, state revenue is part of state finances, so losses in state revenue are also part of state financial losses.[21]

The various stages of money laundering, including placement, layering, and integration, can result in losses to state revenues, which are a key component of tax crimes and reflect efforts to avoid paying taxes. Tax avoidance encompasses actions such as asset placement and financial statement manipulation, as well as Transfer Pricing practices, and is considered a form of tax crime. In this context, tax crimes serve as predicate crimes in money laundering (TPPU), leading to strategies aimed at undermining state revenues through tax avoidance. Therefore, there exists a significant link between money laundering and taxes. In this particular scenario, the predicate crime is a tax crime, and it must fulfill both subjective and objective elements for it to be proven. According to Article 77 of the Money Laundering Law (TPPU), money laundering is a derivative crime that originates from a predicate crime, signaling its dependence on the existence of a predicate crime. Despite being a separate offense, assets covered by the TPPU Law that stem from tax crimes must indeed be derived from the tax offense.

4 Conclusion

The concept of money laundering, often expressed as "no money laundering without a predicate crime," emphasizes the close connection between money laundering and predicate crimes. It suggests that money laundering is triggered by a predicate crime. Nevertheless, money laundering is considered an independent crime and is not contingent on proving the predicate crime. In the prosecution of money laundering, there is no requirement to prove the predicate

crime, as money laundering can be established on its own. The TPPU Law upholds this by incorporating the element of "reasonably suspected" in its provisions, which removes the necessity to first prove the predicate crime.

The various activities involved in money laundering, such as placement, layering, and integration, can be linked to actions that result in loss of state revenue, an element of tax crimes. These activities reflect attempts at tax avoidance. Tax avoidance encompasses asset placement, manipulation of financial statements, and transfer pricing practices, and it falls within the category of tax crimes. In this context, tax crimes act as predicate crimes in money laundering (TPPU), leading to the use of tactics to diminish potential state revenues through tax avoidance. As a result, there is a correlation between money laundering and taxes in this scenario.

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