

# Liability For Money Laundry Criminal Actions According To Law No. 8 Of 2010

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**Abstract.** Today's money laundering has penetrated various aspects and developed in line with the development of technology. The perpetrators of money laundering use technology as a tool and financial/banking service providers as a place to carry out money laundering. White-collar crime or commonly known as white-collar crime is committed by utilizing technological sophistication ranging from manual to extra-sophisticated or super-sophisticated that enters the virtual world (cyberspace) so that white-collar crime in money laundering is called cyber laundering which is part of cybercrime supported by sufficient knowledge of banking, business, and electronic banking. This research is included in the normative research used by researchers in discussing the problem of money laundering by examining existing literature or what is written in laws and regulations. In light of the portrayal and conversation, it is reasoned that in Indonesia, the wrongdoing of tax evasion is directed in Regulation no. 8 of 2010 concerning the Counteraction and Annihilation of Tax evasion Wrongdoings. Culprits who perpetrate criminal demonstrations of illegal tax avoidance can be considered criminally dependable assuming that they have satisfied the components of discipline, in particular the capacity to be liable for the enterprise, the presence of slip-ups, and no great explanation for criminal discounts on partnerships.

**Keywords:** Crime, Money Laundry, Eradication

## 1. Introduction

The changes that have occurred starting around 1997 have given expect changes to happen in all parts of public and state life, to be specific governmental issues, financial aspects, and regulation. In the organization of state government, the normal change is towards a more equitable, straightforward, and exceptionally responsible state organization as well as the acknowledgment of good administration and opportunity of activity. [1]

The ramifications of Indonesia as a law and order nation is to maintain the actual law, one of which is criminal regulation. Criminal regulation by numerous specialists is supposed to be public regulation.[2] What is planned as open regulation is the law that directs the connection among people and society/government. Subsequently, criminal regulation assumes its part as a stabilizer in friendly and state life. In view of the goals of criminal regulation which contain the importance of avoidance of unfortunate social side effects. [3]

One of the monetary violations happening today is the Wrongdoing of Illegal tax avoidance (TPPU) or also called "tax evasion". The term illegal tax avoidance has been known starting around 1930 in the US when the mafia purchased lawful and official organizations as

one of its methodologies. [4] The greatest venture was a clothing organization called Laundromats which was popular in the US around then. The garments laundering business is creating and different sorts of cash got from violations, for example, from other business branches are put resources into this garments tax evasion organization, like cash from unlawful alcohol, betting returns, and prostitution continues. [5]

As a general rule, tax evasion is a technique for stowing away, moving, and utilizing the returns of a wrongdoing, hierarchical crimes, monetary wrongdoing, debasement, opiates dealing, and different exercises that comprise crime. [6] Tax evasion exercises include exceptionally complex illegal tax avoidance exercises. These exercises comprise of three stages, every one of which remains solitary yet is frequently completed together, in particular arrangement, layering, and reconciliation.

Money Laundering, or what we usually know as money laundering, is now commonplace in organizations and even at the government level. When discussing money laundering, the word CORRUPTION cannot be separated. Corruption is a criminal activity by manipulating the finances of a group, organization, or mass organization to benefit an individual or the perpetrators of the corruption. With Money Laundering, the perpetrator's financial history can be safe because the money from embezzlement has been smuggled into various aspects, such as donations to social foundations, stock investments, property purchases, and so on. So, it does not look suspicious.

Laundering fraudulent money proceeds through one of several ways: [7]

- a. Hiding and disguising its origin.
- b. Saving and mixing with clean money, such as through banks, pawnshops, or the economic sector.
- c. Move from somewhere or to someone.
- d. Paid in a purchase.
- e. Given to someone.
- f. Entrusted to someone.
- g. Changed its form to another type (e.g. rupiah to dollar)

In money laundering, many crimes have continued to develop until now, so that the crimes contained in the money laundering process have become widespread, such as corruption, bribery, narcotics, psychotropic substances, labor smuggling, taking other people's rights (stealing), cheating, falsely consuming wealth, lying, hoarding wealth, kidnapping to murder.[6]

Today's money laundering has penetrated various aspects and developed in line with the development of technology. The perpetrators of money laundering use technology as a tool and financial/banking service providers as a place to carry out money laundering. White-collar crime or commonly known as white-collar crime is committed by utilizing technological sophistication ranging from manual to extra-sophisticated or super-sophisticated that enters the virtual world (cyberspace) so that white-collar crime in money laundering is called cyber laundering which is part of cybercrime supported by sufficient knowledge of banking, business, and electronic banking.

Because the development of money laundering is very fast, especially in banking transactions to the detriment of the country's economy, the government together with the DPR make several laws regarding the problem of money laundering in banking transactions in the hope of minimizing and/or eradicating money laundering crimes. Some of these laws are as follows: (1) Number 23 of 1999 concerning Bank Indonesia and Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998, (2) Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes; (3) Law Number 23 of

2003 concerning Bank Indonesia. However, there may be several other regulations that can support the eradication of money laundering.

Even though the government and the DPR have made several regulations regarding money laundering crimes, violations against money laundering are still rife, especially in banking transactions. So, it is important to have awareness of the obligations and cooperation of various parties to assist in eradicating the Crime of Money Laundering. Therefore, the author is very interested in studying this problem.

## 2. Method

This examination is remembered for standardizing research, regularizing research strategies, specifically research utilized in legitimate exploration which is done by analyzing existing library materials or what is written parents in law and guidelines (regulation in book) or regulations that are conceptualized as rules or standards. which is a benchmark for local area conduct towards what is thought of as suitable.[8]

There are two kinds of information utilized in this review, in particular:

- a. Primary legitimate materials are lawful materials that follow or cause individuals to submit to the law, like regulations and guidelines, and judge's choices.
  - (1) The Criminal Code (KUHP)
  - (2) Law Number 8 of 2010 concerning the Crime of Money Laundering
  - (3) Law Number 3 of 2004 concerning Bank Indonesia
- b. Secondary legal material is interpreted as legal material that is not binding but explains primary legal material which is the result of processing the opinions or thoughts of experts or experts who study a particular field which will provide clues as to where the researcher will lead.[9]

## 3. Findings and Discussions

### 3.1 Regulation of Money Laundering in Indonesia

The term tax evasion in Indonesia is deciphered as illegal tax avoidance which is sorted as a wrongdoing, whether carried out by people or by lawful substances or enterprises. In Dark's Regulation Word reference by Henry Campbell Dark (1990), tax evasion is characterized as follows: [10]

*"Term used to describe investment or other money transfers flowing from racketeering, drug dealing, and other illegal sources into legal channels so that their original source cannot be traced."*

This term portrays tax evasion as keeping or putting away cash or different types of moving or moving cash starting from coercion, opiates exchanges, and other unlawful sources through legitimate channels so the wellspring of the cash can't be known or followed. [11]

Welling argued that "money laundering is a process by which a person conceals the existence, unauthorized source, or unauthorized application of income and then disguises that income to appear legitimate". Meanwhile, Frazer argues that "Money laundering is a fairly simple process in which "dirty" money (proceeds of crime). It is laundered through "clean" or legitimate sources and companies so that "bad people" can more safely enjoy their illness to gain profit. [12]

In the Unified Countries Show Against Illegal Traffic in Opiates, Medications, and Psychotropic Substances of 1988 which has been endorsed by Regulation no. 7 of 1997, the term tax evasion is characterized in Article 3 passage (1) as follows: "Change or move of resources, realizing that the resources start from infringement or serious infringement (which can be indicted), or from partaking in such infringement to stow away or camouflage illegal resources or aiding anybody associated with carrying out the wrongdoing or a wrongdoing to stay away from the lawful results of his activities; or hiding or masking the real essence, source, area, demeanor, development, privileges regarding or own property; realizing that the property starts from serious infringement or infringement (which can be indicted) or from taking part in such infringement or infringement.[9]

The advancement of this wrongdoing of illegal tax avoidance has raised global concern since it is expected that it could disturb the security of the business world economy because of the quick flow of a lot of assets starting with one spot then onto the next and even from at least one nations to at least one different nations. The world local area by and large accepts that tax evasion exercises completed by criminal associations or by crooks are extremely impeding to society or the local area. The beginning of illegal tax avoidance is completed by criminal associations, frequently known as the mafia. Tax evasion is typically completed in light of multiple factors, for example, the assets claimed are the aftereffect of burglary/debasement, continues of wrongdoing (for example in a lawbreaker organization), selling cannabis, prostitution, tax avoidance, etc. Consequently, the cash should be "washed" or executed to outsiders, through lawful substances, or underdeveloped nations. Thus, the cash can be gotten back by the first proprietor as though it came from legitimate business results. Consequently, it is important to fix management in regards to the progression of assets, both the beginning of the source and the reason for utilizing the assets. The point is, as a matter of fact, to break and forestall the chain of the hazy progression of assets that is destined to be "washed" by the proprietor. [10]

Tax evasion exercises genuinely affect both monetary framework soundness and the economy. The wrongdoing of tax evasion is a multi-faceted and transnational wrongdoing which frequently includes a sizable measure of cash. The wrongdoing of illegal tax avoidance (Tax evasion) is a coordinated wrongdoing. In this way, its taking care of is the obligation of the condition of every country which is appeared in local or global participation through respective and multilateral discussions.

Illegal tax avoidance exercises include extremely complex exercises. Essentially, this movement comprises of three stages, every one of which remains solitary however is frequently completed together, to be specific situation, layering, and incorporation.

1. Placement

Situation is characterized as an endeavor to put reserves created from a crime. For this situation there is an actual development of money either through cash carrying starting with one country then onto the next, consolidating cash beginning from wrongdoing with cash got from genuine exercises, or by putting expectation stores into the financial framework. For instance, bank stores, checks, or through land, or offers, or likewise changing over into different monetary standards, or moving cash into unfamiliar monetary standards.

2. Layering

Layering is characterized as isolating the returns of wrongdoing from their source, in particular related crimes through a few phases of monetary exchanges. For this situation, there is a course of moving assets from a few

records or certain areas because of position to different spots through a progression of complicated exchanges intended to camouflage or hoodwink these unlawful wellsprings of assets. Layering should likewise be possible by opening whatever number made up organization accounts as could reasonably be expected by using bank mystery arrangements.

### 3. Integration

Reconciliation is an endeavor to lay out a premise as a "genuine clarification" for the returns of wrongdoing. For this situation, the cash that was blackmailed through position or layering was redirected into true exercises so it appeared to be totally inconsequential to the past crime which was the wellspring of the cash being whitewashed. At this stage the brightened cash is returned to flow in a structure that is in accordance with law and order.

The results brought about by the act of illegal tax avoidance are of incredible interest to nations all over the planet. Besides, the assets utilized in the act of illegal tax avoidance are continues from serious wrongdoings. These outcomes incorporate the wrongdoing of tax evasion which can possibly upset public and worldwide financial matters since it jeopardizes the viable activity of the economy and makes terrible monetary approaches, particularly in specific nations. The act of tax evasion additionally weakens the public economy since illegal tax avoidance can cause sharp variances in return rates and loan fees. What's more, cash coming about because of tax evasion can be moved from a country with a decent economy to a country with a terrible economy. With the goal that it can gradually annihilate monetary business sectors and lessen public confidence in the monetary framework, which can energize expanded chance and steadiness of the framework which brings about diminished world financial development rates.

Right now, the wrongdoing of tax evasion is managed in Regulation no. 8 of 2010 concerning the Counteraction and Destruction of Tax evasion Violations. Beforehand, the wrongdoing of tax evasion was managed in Regulation no. 15 of 2002 concerning the Wrongdoing of Illegal tax avoidance and Regulation no. 25 of 2003 concerning the Wrongdoing of Illegal tax avoidance.

The guideline of tax evasion in Indonesia can be seen from Regulation no. 8 of 2010 concerning the Avoidance and Destruction of Tax evasion Violations which is pointed toward forestalling and annihilating wrongdoings as tax evasion rehearses in Indonesia. This is planned so the power of wrongdoings that create a lot of assets can be limited so monetary steadiness and state security are kept up with.

The Presence of Regulation No. 8 of 2010 concerning the Avoidance and Destruction of Tax evasion Violations gives an open door to policing conduct examinations of scholarly entertainers to figure out the progression of cash created. Moreover, it can likewise be utilized as a reason for trapping scholarly entertainers who money and plan violations, including predicates wrongdoings by leading examinations and examinations concerning the progression of cash continues from wrongdoings.

Predicate wrongdoing is a predicate wrongdoing of tax evasion. Predicate wrongdoing is managed in Article 2 passage (1) of Regulation no. 8 of 2010 concerning the Avoidance and Annihilation of Tax evasion Violations.

In Regulation no. 8 of 2010 concerning the Anticipation and Destruction of Tax evasion, matters that are remembered for the wrongdoing of illegal tax avoidance are managed in Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, and Article 10. In the mean time,

matters that are remembered for other crook acts connected with the wrongdoing of tax evasion are managed in Article 11, Article 12, Article 13, Article 14, Article 15, and Article 16 of Regulation No. 8 of 2010 concerning the Avoidance and Destruction of Tax evasion Wrongdoings.

Detailing of the Wrongdoing of Tax evasion in Regulation no. 8 of 2010 concerning the Counteraction and Destruction of Tax evasion Violations contained in Article 3 of Regulation no. 8 of 2010 states that each individual who places, moves, moves, spends, pays, awards, stores, takes abroad, changes structures, trades with cash or protections or different activities on resources that he knows or sensibly thinks is the consequence of acts wrongdoing as alluded to in Article 2 passage (1) determined to hide or masking the beginning of resources will be rebuffed for tax evasion with a greatest detainment of 20 (twenty) years and a most extreme fine of R. 10,000,000,000.00 (ten billion rupiahs).

Article 4 of Regulation no. 8 of 2010 states that each individual who stows away or masks the beginning, source, area, assignment, move of freedoms, or genuine responsibility for that he knows or sensibly thinks is the consequence of a wrongdoing as alluded to in Article 2 section (1) will be rebuffed for the wrongdoing of tax evasion with a most extreme detainment of 20 (twenty) years and a greatest fine of Rp. 5,000,000,000.00 (five billion rupiahs).

Article 5 section (1) of Regulation no. 8 of 2010 states that each individual who gets or controls the situation, move, installment, award, gift, protection, use, or uses resources that he knows or sensibly thinks are the returns of a wrongdoing as alluded to in Article 2 section (1) will be rebuffed with most extreme detainment of 5 (five) years and a greatest fine of Rp. 1,000,000,000.00 (one billion rupiah). The arrangements of Article 5 section (2) express that the arrangements alluded to in passage (1) don't matter to announcing parties who complete revealing commitments as specified in the law.

Illegal tax avoidance violations can be completed by people or partnerships. In Regulation no. 8 of 2010 there is a guideline in Article 6 section (1) which makes sense of that on account of tax evasion, as alluded to in Article 3, Article 4, and Article 5 completed by an enterprise, discipline is forced on the Partnership or potentially Corporate Control Staff.

Article 6 passage (2) of Regulation no. 8 of 2010 states that a sentence is forced on a partnership assuming the wrongdoing of tax evasion is perpetrated or requested by a Corporate Control Staff, and is completed with regards to satisfying the points and goals of the company, is done following the obligations and elements of the culprit under the request provider, and is completed to give advantages to the enterprise.

In Regulation no. 8 of 2010 concerning the Counteraction and Destruction of Tax evasion Wrongdoings, there has been a change in perspective in regards to moves toward battle tax evasion violations. In the previous arrangement, the principle of "follow the suspect" was used, namely following the suspect. Currently, the paradigm for eradicating money laundering crimes uses the "follow the money" principle, namely following the proceeds of crime. This is seen as more effective because it can eliminate the motivation of the perpetrators of crime, the proceeds of crime "as a blood of the crime" is the weakest point of the crime chain, the difficulty of proving criminal acts, and the responsibility of intellectual actors for crimes is overcome by tracing the proceeds of crime, and it is more just and far range.

### **3.2 Criminal Accountability of Money Laundering Actors**

Criminal obligation is characterized by Simon as a psychological state so that the use of a lawbreaker measure, both according to an overall viewpoint and according to the viewpoint of the individual, can be legitimate.[11] All in all, a culprit of a wrongdoing is thought of as fit for being dependable provided that his psychological state is solid, with the accompanying

qualities: 1) can understand or know that what he is doing is illegal and 2) ready to decide his own will under this mindfulness.

The subsequent assessment comes from Van Hamel who characterizes the capacity to be mindful as a state of mental ordinariness and development by giving three capacities, to be specific: 1) figuring out the results or truth of one's activities, 2) the individual has understood that his activities are denied by society, and 3) can decide his own will in doing. [11] In surveying regardless of whether an individual can be considered criminally mindful, one should focus on these circumstances.

The Lawbreaker Code doesn't give a comprehension of an individual's capable capacity, all things considered, the Crook Code just forms an individual's dependable capacity adversely and doesn't plan it decidedly.[11] An individual must be considered responsible in the event that there is a blunder in the material sense/*verwijbaarheid*, which incorporates three components: 1) having the option to assume liability, 2) there is an inward association between the culprit and what he/she did (*dolus or culpa*) lastly 3) there is no justifiable reasons/explanations behind pardoning (*schuld uitsluitingsgrond*).[12] The perpetrator of the crime of money laundering can only be punished if he has fulfilled the elements mentioned above. It is necessary to impose a sentence to achieve the goal of sentencing. Three well-known theories of sentencing purposes according to most scholars grouping the reasons for sentencing include the theory of retribution (absolute/retribution), the objective theory (utilitarian/*doeltheorieen*/relative), and the combined theory (*verenigingstheorieen*).

These stages are carried out by the perpetrator of criminal activity. Included in the crime of money laundering are various stages of activity which at each stage always stand alone, but it is not uncommon for activities from these stages to be carried out simultaneously which appear to be a single activity, these activities include:

- a. The first stage carried out is the placement stage or what is known in English as placement, which is the action of the perpetrator to place money/assets/funds obtained from the proceeds of the predicate crime;
- b. The second stage is the separation stage or what is known in English as layering, which is a process of the actions of money laundering actors to separate the proceeds of crime from the source of money/assets/funds obtained from predicate crimes after carrying out the placement process in the first stage.;
- c. The third and final stage is the stage of diverting money/assets/funds obtained from predicate crimes that have gone through the bleaching process (placement stage and separation stage) into activities that are official and legal in nature to eliminate the relationship between the criminal activity predicate crime which is a source of funds/assets/money that has been whitewashed through the two previous stages. [13]

#### **4. Conclusion**

Based on the description and discussion, the conclusions of this paper are:

1. In Indonesia, the wrongdoing of tax evasion is managed in Regulation no. 8 of 2010 concerning Avoidance and Destruction of Tax evasion Violations.
2. Perpetrators who carry out criminal demonstrations of tax evasion can be considered criminally dependable on the off chance that they have satisfied the components of discipline, specifically the capacity to be answerable for the organization, the presence of slip-ups, and no great explanation to discount the wrongdoing on the partnership.

Based on the description above, through this paper the author provides suggestions:

1. It is trusted that the public authority and policing can make a strategy that is contained in a type of regulation by focusing on the viability of these lawful items and joined by a decent legitimate construction and culture to have the option to forestall and destroy tax evasion wrongdoings,
2. It is normal that the country's financial development will be focused on, in light of the fact that the wrongdoings carried out by organizations significantly influence different parts of individuals' lives and are extremely adverse to the interests of other monetary entertainers.

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