

Legal Politics of Money Laundering Law on Taxpayer Evasion Cases

Dr. Imam Ropii, S.H., M.H^{1*} and Umar Said, S.H²

¹Lecturer Master of Law, Indonesia

²Master of Law Student, Indonesia

*Correspondence

Abstract: Lately, some people have misused a tax collection system to benefit themselves. One of them is the misuse of the self-assessment system, this system does not look like its initial goal, namely to improve tax compliance from taxpayers, but taxpayers interpret it as a gap in the implementation of tax avoidance activities. At a practical level, taxpayers can carry out tax avoidance activities such as setting operating costs, goods for sale, transfer pricing, and intercompany pricing, this can be done to minimize or avoid paying taxes. Of course, in the author's opinion, this is a crime in the taxation sector, and it can even be categorized as an initial crime of money laundering, hereinafter referred to as ML. So that the author aims to conduct this research in order to explore and examine the direction of legal politics with regard to money laundering in the case of taxpayer evasion by using a statutory approach and a conceptual approach. The results of the study show that there is a connection between tax crimes and money laundering offenses, where tax crime is a predicate crime and money laundering is a derivative crime. Where it was also found that the legal political direction of the ML law adheres to the *concursum realist* principle which in its law enforcement ML is independent, and there is an obligation for investigators to investigate the merger between predicate crimes, in this case, tax crimes and money laundering offenses.

Keywords: Tax Crime, Money Laundering, Legal Politics.

I. INTRODUCTION

Indonesian Taxation applies several tax collection systems, including the *Self Assessment System*, *Official Assessment System* and *With Holding Assessment System*. The *self-assessment system* is a tax collection system where the tax burden is determined by the taxpayer. In this case a taxpayer is the one who actively involve in tax calculations, tax payments, and reporting to the Tax Office or by online tax administration system.

The role of the government in this system is to supervise taxpayers, and the self-assessment system applies to central taxes such as Value-Added Tax (VAT) and Income taxes. Indonesia has been implementing this tax collection system since the tax reform period in 1983. However, It lead a big consequence since taxpayers have the authority to calculate their tax payments, thus generally, they will try to deposit as little tax as possible.

The self-assessment system introduced in the Indonesian tax system is essentially an initiative to improve taxpayer compliance. This system shows that tax laws are

highly adapted to instill trust to taxpayers to improve tax compliance through voluntary compliance.¹

However, this self-assessment system does not look like its initial goal, but taxpayers interpret it as a gap in the implementation of tax avoidance activities. On practically, taxpayers can carry out tax avoidance activities such as setting operating costs, goods for sale, transfer pricing, and intercompany pricing, this can be done to minimize or avoid paying taxes.

As explained before, by the gaps of fraud to avoid paying taxes is actually an act of violating the law and it's even a crime. In terms of law enforcement authority against taxpayers who make tax avoidance efforts, the tax authority has power to carry out tax audits, tax collections and tax investigations which include meet classification both of tax violation or crime.

Regarding to the development of tax prosecutions, oftenly associated with the prosecution of money laundering commonly known as ML. These are some tax criminal cases related to money laundering, including the decision of the District Court No. 05/Pid.Sus/2016/PN.Jkt.Utr read out on March 29, 2016. Based on the decision, Sales and Tax Invoices of Rp (FP TBTS) which are not based on actual transactions. The taxpayer's decision to carry out the profit of 49,148,707,679, and the profits which have been certified and fulfilled by the taxpayer, has been announced. Elements of Article 3 of Law Number 8 of 2010 on Prevention and Eradication of Money Laundering (ML Law). Article 2 of the Money Laundering Law also states that one of the main problems related to the consequences of crime is assets originating from criminal acts in taxation field.

The rules regarding tax crimes as predicate crime mean that the perpetrators of money laundering must first commit certain crimes as referred to in Article 2 Paragraph 1 of the Money Laundering Law. What is meant by money laundering for a series of activities to seek money from crime with the aim of disguising or disguising the source of money?

¹Arifki, N.A. and Azmi, I.F. (2020), "Tax Avoidance in the Discourse on the Crime of Money Laundering." *Pandecta: Journal of Legal Studies*, Vol. 15 No. 2. pp. 167-77, available at: <https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/18667>.

Therefore, like corruption, money laundering in this case can be both of derivative crimes or predicate crimes.²

Money laundering which is now more worrying is one of crimes that not only threatens economic stability and the integrity of the financial system, but can also threaten society and the nation. Crimes that use financial systems network to hide the source of money from the proceeds of a certain crime pretend that money is lawful, cause huge losses and even systematic. As an ongoing crime against related certain crimes, crime requires extensive resources or efforts to overcome it.³ Money laundering starting from tax avoidance activities simply needs special attention in resolving and tackling these crimes. So that in law enforcement, a legal regulation is needed that really provides a deterrent effect on the perpetrators.

Law is always said to be a political product, in the reality of the state, there is attraction relationship between politics and law, where law is often influenced by politics. This is because the political sector has a dominant concentration of energy compared to the law. In this case, according to Mr. Lev that when looking at the law, one must look from below what is the socio-political role of the community in understanding the legal system in the midst of political change. In where the legal system in the midst of political change has a greater concentration of energy, it is not surprising that Indonesia's political autonomy is often hampered not only in its formation process, but also in implementation.⁴ This of course also occurs in the formation of legal products that regulate money laundering.

From the explanation above, the author is interested in studying how the direction of legal politics regarding to the money laundering in the case of taxpayer evasion by applying the statutory approach and conceptual approach.

II. DISCUSSION

Mahfud MD said that legal politics is an official legal policy for laws that will be enforced or will not be enforced by making new laws or replacing old laws to achieve state goals.⁵ In same line, Syauckani and Thohari stated that legal politics is the basic policy of state administrators in a law field, distinguished from the general values of society, national law is in line with policies that follow *double movement* principle, based on legal policies used to criticize the previous published legal products.⁶

The rise of money laundering, so this study is intended to explore and examine the direction of legal policy of the

money laundering law to prevent and eradicate the crime, which initial modus was the avoidance of the obligation to pay taxes.

Generally, the form of money laundering is carried out through a modus operandi like diversion, usage/implementation of crime which are usually in an organized crimes or by individuals who actually commit crimes such as corruption, drug trafficking, and other crimes.⁷ In essence, money laundering is an act to change or hide special assets from proceeds of crimes as if it is not.

Regulations regarding to Money Laundry in Indonesia are regulated in Law No. 8 of 2010 on Prevention and Eradication of Money Laundering. Money Laundering has various forms of crimes, whether committed by individuals or companies within the borders of a country or those committed outside the borders of other countries, which are increasing day by day. Money laundering were initially preceded by some criminal acts, including corruption, bribery, drugs, psychotropic, labor trafficking, migrant smuggling, human trafficking, arms trafficking, terrorism, kidnapping, theft, embezzlement, fraud, counterfeiting and gambling, and various other crimes which the proceeds are disguised by buying objects or saving into the banking system.

In order to prevent and eradicate money laundering, that the legal politics by criminalizing money laundering is not only providing a deterrent effect to perpetrators by maximizing their criminal threats, but also as an effort to return/asset recovery from the proceeds of crime that have been stolen/taken against the law through discovery and efforts to return the assets proceeding from the crimes.⁸

The Money Laundering Law emphasizes that, the proceeds of various crimes are assets obtained beyond of money laundering such as corruption, bribery, narcotics, psychotropic, labor smuggling, migrant smuggling, banking sector, capital market, Insurance, Customs, Trafficking, Illegal Arms Trading, Terrorism, Kidnapping, Theft, Fraud, Counterfeiting, Gambling, Prostitution, Taxation, Forestry, Environment, Marine and Fisheries Sector, Or and other crimes imprisoning four people (4) Crimes committed within or outside the territory of the Republic of Indonesia or outside the territory of the Republic of Indonesia for more than one year, and such crimes are also crimes according to the applicable regulations.⁹

Observing the various kinds of crimes mentioned above, it can be understood that money laundering is derivatives crime from various possible of previous crimes. Money laundering is a way or mode to disguise/divert the proceeds of other crimes so that it is not detected or known

²Ibid.

³Pradityo, R. (2021), "Criminal Law Policy in Efforts to Combat the Crime of Money Laundering Performed by Corporations", *The Supremacy of Law: Journal of Legal Research* 30, No.1. pp. 80–90.

⁴Mahfud, M.D., (2011), *Legal Politic in Indonesia*, Rajawali Press, Jakarta. pp. 20.

⁵Syauckani, I and Thohari, A.A. (2013). *The Political Basics of Legal Politics*, Rajawali Pers, Jakarta. pp. 51.

⁶Syauckani, I and Thohari, A.A. (2013). *The Political Basics of Legal Politics*, Rajawali Pers, Jakarta. pp. 51.

⁷Syauckani, I and Thohari, A.A. (2013). *The Political Basics of Legal Politics*, Rajawali Pers, Jakarta. pp. 51.

⁸Denniagi, E. (2021), "Economic Analysis of the Criminalization of Money Laundering in Law Number 8 of 2010 on Prevention and Eradication of Money Laundering." *Lex Renaissance* 6, No. 2. pp. 246–264.

⁹Law of the Republic of Indonesia No. 8 of 2010 on the Prevention and Eradication of Money Laundering. Articles 2 paragraph 1.

where the proceeds of crimes from. If the disguise of the origin of the money is successfully carried out, then the proceeds of the crime will appear as legal property in the eyes of the law if the owner will use it for further purposes.

Furthermore, observing the provisions in Articles 3-5 of the Money Laundering Law, shows the term related to "crime development". The criminal status requires that with the existence of a money laundering crime, it must be proven that there is an element of a *predicate crime*. This means that both predicate crimes and money laundering are related violation and must be proven to replace them. Furthermore, Article 69 of the Money Laundering Law states that "it is not necessary to first prove a predicate crime for the investigation, prosecution and testing of a money laundering". Because the material in Article 69 of the Money Laundering Law contains the phrase "it is not necessary to prove the predicate crime first", then this arrangement is the essence of the Money Laundering Law which is a derivative crime. Article 3-5 of the Money Laundering Law affirms that the money laundering crime has special characteristics. The criminal act or money laundering crime is a continuation of the predicate crime which also can be said to be a derivative crime.¹⁰ Article 2 paragraph (1) of the Money Laundering Law essentially contains the intent of the double criminality principle in determining predicate crimes in the substance of the Money Laundering Law.

This double crime is often referred to as the "concursum realist" principle. In connection with the inclusion of the concursum realist principle in the Money Laundering Law, interpreting the Article 69 of the Money Laundering Law must be comprehensive, in Article 69 of the Money Laundering Law does not annul the existence of a predicate crime before money laundering, but in this case reading the phrase 'It is not mandatory to prove the predicate crime first' must be comprehensive, that is the phrase 'first' contains the intention of explaining the time for proving the predicate crime. Due to the characteristic of the concursum realist principle, it is a concurrent (combined) crime, so that criminal evidence must be seen as a separate and independent act, each of which meets the formulation of a criminal act regulated in the law.

Practically, the activities of placement, layering and integration as a mode of money laundering, if associated with loss of state revenue which is one of the elements of tax crime, are part of tax avoidance. There are several tendency activities in tax avoidance, namely: 1. Transaction Fraud; 2. Fraud Management; and 3. Shifting (transfer of tax responsibilities).¹¹ Technically these three activities are regulated in the details of Articles 39 and 39 A of Law no. 6/1983 on General Provisions and Tax Procedures.

The study of tax evasion, which involves asset disposal, financial report design, and even transfer pricing,

includes some tax criminal activities. The discussion of tax crimes as predicate crimes in money laundering at least leads to the use of other forms of potential loss of state revenue by taxpayers by using various tax avoidance activities. So in this case there is a link between money laundering and taxes, because in there is a criminal element between money laundering and tax crimes.

The debate about tax crimes as a predicate crime in money laundering causes at least taxpayers take advantage of other forms of potential loss of government revenue through tax evasion. In this case there is a link between money laundering and taxes because of the criminal addiction factor between money laundering and taxes. In the tax law debate, there are several non-penal solutions to elements of potential losses in state revenue such as Tax Return Correction, Disclosure of Untruth Tax return, Disclosure of Untruth Acts, there is even a termination of Investigation for the Interest of State Revenue, including; From this point of view, the Money laundering cases which predicate is a tax violation, then in the implementation of the criminal elements of Articles 3 to 5 of the Money Laundering Law, there are several things such as, First: objective elements, criminal acts, and others must be taken into account. Not only related to the money laundering law, but also related to the subject and objective elements of the tax system.

Second: There is a reverse proof principle of money laundering (Article 77 of the Money Laundering Law). This is because Article 69 of the Money Laundering Law contains a statement that there is no need to prove it first, because money laundering is basically a crime from the predicate crime. (Continued or additional crime) begins with the predicate crime. Money laundering is basically a crime in itself. Therefore, an asset stipulated in the Money Laundering Law must be from a tax crime originating from a tax violation.

Non-penal efforts made to overcome the loss of government revenue in the taxation system do not necessarily rule out the nature of the crimes committed: both tax evasion and money laundering. If there is sufficient preliminary evidence in investigating between a tax crime and a money laundering cases, then the existence of a realist concursum principle between a tax crime and a money laundering must be combined with a preliminary investigation. In this case, the prosecutor must prove all charges. This requirement comes from the provisions stipulated in Articles 74 and 75 of the Money Laundering Law.

III. CLOSING

The legal politics of Money Laundering Law contains principle of realist concursum that is the principle implying law enforcement process in cases of tax evasion; clearly stated that the act of tax evasion is a crime in taxation sector which has a connection with money laundering. Wherein the Money Laundering Law adhering to the principle of realist concursum stated crime in taxation is a *predicate crime*, so that money laundering is a derivative crime. However, the law enforcement process for Money Laundering is independent as

¹⁰Erma Denniagi, *Loc. Cit.*

¹¹Arifki and Azmi, *Op. Cit.*

stipulated in Article 69 of Money Laundering Law and if investigators find sufficient preliminary evidence of Money Laundering and predicate crimes, the investigators will conduct a merger investigation of predicate crimes; it is taxation crime with money laundering.

REFERENCE

- [1] Arifki, N.A. and Azmi, I.F. (2020), "Tax Avoidance in the Discourse on the Crime of Money Laundering." *Pandecta: Journal of Legal Studies*, Vol. 15 No. 2, available at :<https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/18667>.
- [2] Denniagi, E. (2021), "Economic Analysis of the Criminalization of Money Laundering in Law Number 8 of 2010 on Prevention and Eradication of Money Laundering." *Lex Renaissance* 6, No. 2.
- [3] Syaokani, I and Thohari, A.A. (2013). *The Political Basics of Legal Politics*, Rajawali Pers, Jakarta.
- [4] Rahayu, L.S., Riska, D.R. and Mahira, D.F. (2021), "Money Laundering as a Transnational Crime in the Era of Globalization with Comparison of Legislation in Indonesia, Singapore and the Philippines", *Journal of Positum Law* 6, No. 1.
- [5] Mahfud, M.D., (2011), *The constitutional law debate after the constitutional amendment*, Rajawali Pers, Jakarta.
- [6] Pradityo, R. (2021), "Criminal Law Policy in Efforts to Combat the Crime of Money Laundering Performed by Corporations", *The Supremacy of Law: Journal of Legal Research* 30, No.1.
- [7] Law of the Republic of Indonesia No. 8 of 2010 on the Prevention and Eradication of Money Laundering.