

## ANALYSIS OF THE FLOW OF FUNDS FOR MONEY LAUNDERING CRIMES WITH PREDICATE CRIMES OF NARCOTICS CRIMES BY FOREIGN NATIONALS, A CASE STUDY AT THE NATIONAL NARCOTICS AGENCY OF BALI PROVINCE

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ARTICLE INFO	ABSTRACT
<p><b>Keywords:</b> Money Laundering Drugs Criminal</p>	<p><i>The flow of funds of foreign nationals at home and abroad can be used in proving money laundering crimes in Indonesia because based on Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which states that in order to be able to carry out investigations, prosecutions, and examinations in court hearings on the crime of money laundering, it is not mandatory to first prove the original criminal act. With this intention, it does not mean that in conducting investigations, prosecutions, and examinations in court sessions, it is not mandatory to prove the original criminal act. There are obstacles faced by the National Narcotics Agency of Bali Province in handling cases of money laundering, namely juridical constraints, and technical obstacles.</i></p>

### INTRODUCTION

Criminalization of perpetrators who have the results of narcotics crimes that have an impact on money laundering crimes that cause problems in the penal system. Because there are two types of criminal acts that are related to one another, namely narcotics crimes and money laundering crimes. Each of these non-criminal cases already has a law that contains criminal provisions with criminal elements in accordance with articles in the relevant laws. The legal basis for the crime of narcotics is Law Number 35 of 2009 concerning Narcotics and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. The criminalization of perpetrators involved in narcotics crimes that are linked to money laundering presents a significant legal and enforcement challenge. These two crimes, while distinct in nature, are often interconnected. Narcotics trafficking generates large sums of illicit money, which criminals then attempt to launder to disguise its illegal origins. While Law Number 35 of 2009 concerning Narcotics and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes offer a legal basis for prosecuting each crime, the intersection between the two is not always adequately addressed. This has led to complications in legal processes, where authorities must navigate both sets of laws to build comprehensive cases against offenders. The dual nature of these offenses complicates the penal system, as separate prosecutions for narcotics and money laundering may not capture the full scope of the criminal activities.

The connection between narcotics crimes and money laundering is increasingly relevant as criminal networks evolve and become more sophisticated. Criminals involved in the narcotics trade often establish elaborate financial schemes to move and conceal their profits. Money laundering operations take advantage of gaps in financial oversight, leveraging offshore accounts, shell companies, and complex transactions to hide the proceeds of crime. This not only perpetuates drug trafficking but also undermines the integrity of financial institutions and economic stability. However, despite the growing sophistication of these operations, the current legal frameworks are often applied in isolation. The penal system struggles to bridge the gap between prosecuting narcotics traffickers and addressing the financial crimes that enable them to continue their activities.

Furthermore, the existing legal approach does not always account for the fact that these crimes are mutually reinforcing. A narcotics criminal who launders money is committing two serious offenses, each of which contributes to the survival and growth of their illegal enterprise. The difficulty lies in ensuring that both crimes are addressed comprehensively in the legal process. A failure to prosecute one aspect of the criminal operation, such as the financial crime, may allow the perpetrator to continue their illegal activities despite facing punishment for narcotics trafficking. The challenge, therefore, is to develop a penal strategy that recognizes and deals with the full scope of the criminal conduct.

The enforcement of laws against perpetrators involved in narcotics crimes and money laundering often faces significant challenges. This is due to the close connection between the two types of crimes, where narcotics offenses frequently generate financial profits that are then hidden through money laundering practices ((Gordon, 2019); (Levine, 2017). As transnational crimes, these two offenses exploit weaknesses in the global financial oversight system, making it difficult for authorities to track them down ((Gallant, 2016); (Sharman, 2022). Nevertheless, the existing legal frameworks, such as Law Number 35 of 2009 concerning Narcotics and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, have not fully addressed the complexities presented by the simultaneous occurrence of both crimes (Susanto, 2018).

Previous research, (Levine, 2017), highlighted the role of financial institutions in detecting and preventing money laundering practices, but did not specifically examine how these mechanisms apply in the context of narcotics crimes. (Johnson et al., 2023) studied the social and economic impacts of narcotics distribution, but this research focused more on prevention and rehabilitation than the financial consequences of drug trafficking. (Rachman, 2018) analyzed the legislative frameworks for narcotics and money laundering crimes separately, but noted the limitations faced by law enforcement in pursuing perpetrators involved in both crimes simultaneously. On the other hand, research by (Gordon, 2019) showed that law enforcement is often hampered by the lack of integration between narcotics and money laundering laws, resulting in ineffective legal actions.

Research by (Sharman, 2022) emphasized the importance of collaboration between international institutions in combating money laundering, particularly in relation to the proceeds of narcotics crimes. (Gilmour, n.d.) added that money laundering, as a financial crime, often exacerbates the conditions of both local and global economies. In the Indonesian context, (Susanto, 2018) observed that while there has been an increase in oversight of narcotics crimes, there remains a significant gap in law enforcement efforts related to money laundering. (Hasan, 2020) and (Utama, 2020) revealed that legal reforms are urgently needed to ensure that these laws can work synergistically, considering that these crimes are interconnected in their operations and impact on society.

Other references, such as (Turner, 2019) and (Ali, 2020), stress the importance of specialized training for law enforcement and financial regulators to combat these complex organized crimes. In broader research, (Williams, 2020) and (McCarthy, 2018) highlighted the global impact of drug trafficking and money laundering, noting that international cooperation is essential to stem the flow of illegal funds originating from drugs. (Weber, 2016) also suggested that strengthening suspicious transaction reporting mechanisms can help close the gaps often exploited by money launderers associated with narcotics crimes.

Despite numerous studies on narcotics crimes and money laundering, a research gap exists in understanding how the legal frameworks governing these offenses interact when the same perpetrator is involved in both crimes. Previous research has examined the role of financial institutions in detecting and preventing money laundering but did not explore how these mechanisms specifically apply to narcotics-related crimes. (Johnson et al., 2023) looked at the social and economic impacts of narcotics distribution, but their research focused on prevention and rehabilitation rather than the financial consequences of drug trafficking. Additionally, (Rachman, 2018) analyzed the legislative frameworks for narcotics and money laundering separately, noting the limitations in law enforcement's ability to pursue criminals involved in both crimes, but failed to propose practical legal reforms that would integrate these approaches.

In this context, it becomes clear that existing research treats narcotics and money laundering as separate issues rather than components of a single, interconnected criminal enterprise. While narcotics trafficking is primarily viewed as a public health and law enforcement issue, money laundering is often treated as a financial crime that threatens economic systems. There has been little examination of how these two forms of criminality reinforce each other, nor has there been sufficient analysis of how legal frameworks can be improved to tackle these offenses simultaneously. By addressing this gap, this research seeks to build on previous studies by focusing

on the intersection of these crimes, examining the difficulties prosecutors face when pursuing cases that involve both narcotics trafficking and financial crime.

The novelty of this research lies in its interdisciplinary approach to addressing the dual nature of narcotics-related money laundering. By exploring both legal and criminological perspectives, this study seeks to offer a more comprehensive understanding of how these crimes are prosecuted and how the penal system can be improved. This study will propose a model for integrating narcotics and money laundering laws, ensuring that law enforcement agencies can pursue more effective prosecutions and better dismantle the financial structures that support the narcotics trade.

The purpose of this research is to provide a deeper understanding of the challenges posed by the dual nature of narcotics and money laundering crimes and to offer practical solutions for addressing these challenges within the penal system. By examining both crimes together, the study aims to highlight the need for an integrated legal approach and propose reforms that can improve the coordination between agencies tasked with investigating and prosecuting these crimes. The potential benefit of this research is the development of a more effective penal system that can better address the complex realities of modern criminal enterprises, leading to more comprehensive convictions and a reduction in the ability of criminals to exploit legal loopholes.

## METHOD

The research method used in this study is a normative research method supported by empirical research that uses various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to proving the crime of money laundering as a source of research material. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or which is in the form of legal discovery efforts that are adjusted to a particular case

## RESULTS AND DISCUSSION

### Funds Flow of Foreign Nationals at Home and Abroad in Proving Money Laundering Crimes in Indonesia

Based on judicial practice so far, in the crime of money laundering, the original crime is not proven first (*predicate crime*), the prosecutor's office submits a charge of money laundering independent of the type of original crime. It is not really proven that the original criminal act has occurred, but it is enough to prove that there is sufficient preliminary evidence for the occurrence of the criminal act. This can be seen from one of the cases such as the case of Djoko Susilo's money laundering crime in the case of a driver's license simulator.

The crime of money laundering is the result of a criminal act in the form of wealth obtained from corruption and several other criminal acts. This indicates that the crime of money laundering has a very close relationship with other criminal acts, including narcotics crimes as predicate crimes. All assets that are suspected to come from the proceeds of crime that are concealed or disguised are money laundering crimes. The crime of money laundering does not stand alone because the wealth that is placed, transferred or transferred by means of integration is obtained from a criminal act, meaning that there are other criminal acts that precede it (*predicate crime*).

To see the flow of funds of foreign nationals at home and abroad in proving money laundering crimes in Indonesia, a case will be presented at the National Narcotics Agency of Bali Province in the Narcotics Case Report Number: LKN/0031-TPPU/VIII/2022/BNNP Bali dated August 25, 2022. There has been a Crime of Money Laundering with a Crime of Narcotics Origin allegedly committed by the suspect An. JONATHAN MORALES MARTINEZ in the period around 2018 to 2022 in the jurisdiction of the Province of Bali.

JONATHAN MORALES MARTINEZ was arrested on Friday, July 22, 2022 at approximately 00.15 WITA related to narcotics crimes and based on further investigation and investigation, facts were obtained that the suspect JONATHAN MORALES MARTINEZ had been involved in illicit narcotics trafficking since around 2018, which of course had obtained huge profits and the profits were stored in the suspect's account or had been purchased with assets allegedly obtained from the Narcotics business, so it is strongly suspected that JONATHAN MORALES MARTINEZ has committed the Crime of Money Laundering with the Crime of Narcotics Origin, as referred to in Article 137 letter "a" of Law of the Republic of Indonesia No. 35 of 2009 concerning Narcotics and Article 3, Article 4, Article 5 Paragraph (1) of Law of the Republic of Indonesia No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

If the case presented above is linked to Article 69 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which states that in order to be able to carry out investigations, prosecutions, and examinations in court sessions on the crime of money laundering, it is not mandatory to first prove the original criminal act. From the provisions of the article to be able to resolve the TPPU case, it is not mandatory to first prove the original crime (predicate crime).

Regarding the proof of TPPU, the Constitutional Court (MK) emphasized that the investigation of money laundering crimes can be carried out without the need to prove the existence of the original criminal act first. But after TPPU is proven, the original crime must be proven later. The above was emphasized by the issuance of the Constitutional Court Decision Number 77/PUU-XII/2014 submitted by M. Akil Mochtar. The Constitutional Court's Decision No. 77/PUU-XII/2014 dated December 15, 2014, one of the rulings emphasized that in proving the Crime of Money Laundering, it is not necessary to first prove the original crime (Predicate Crime). This is in accordance with Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering. In addition, Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering also emphasizes that the Crime of Money Laundering is a stand-alone criminal act. This is also stated very clearly in the legal considerations contained in the Constitutional Court Decision Number 77/PUU-XII/2014, namely: "What is meant by "not mandatory to be proven first" in the relevant article, that is, it is not mandatory to be proven by the existence of a court decision that has permanent legal force.

Thus, Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering states that it is not mandatory to prove it first, with this intention it does not mean that in conducting investigations, prosecutions, and examinations in court hearings it is not mandatory to prove the original criminal act. However, it needs to be understood in its entirety that the phrase "first" is more about the time to prove the original criminal act.

### **Obstacles to Handling Money Laundering Crimes Committed by Foreign Citizens in Indonesia**

In this flow of globalization, it is not surprising that money laundering crimes occur within the jurisdiction of other countries (Foreign Money Laundering). Jurisdiction basically concerns the power of the state, which based on international law the power to regulate people, objects and events and reflects the basic principles of state sovereignty, namely the principle of equality and the principle of non-interference in the internal affairs of other countries (the principle of non-intervention). This principle is implied in the legal adagium *par in parem non habet imperium* which means that the parties, namely countries in the same position (degree) do not have jurisdiction over other parties (countries).

The theory of international cooperation is used because all countries in the world cannot stand alone. Cooperation in the fields of economy, politics, education, culture and security can be established by one or more other countries. This collaboration aims to improve mutual welfare. Because cooperative relations between countries can accelerate the process of improving welfare and solving problems between two or more countries. In the theory of international cooperation, national interest is an important instrument of holding international cooperation.

In handling money laundering cases handled by investigators from the National Narcotics Agency of Bali Province, there are factors that become obstacles. These obstacles are a task that must be fulfilled so that in handling this money laundering criminal case, there are no obstacles in conducting investigations into money laundering crimes.

In practice, the obstacles that become obstacles for investigators of the National Narcotics Agency of Bali Province are a. Juridical Obstacles, including: 1) Overlapping Authority to Investigate Money Laundering Crimes, where the investigators who are authorized to conduct investigations are the National Police, Prosecutors, and KPK. This overlap is an obstacle for the National Police because these three legal agencies have the authority to conduct investigations. The possibility is that there is a discrepancy in the laws and regulations regarding certain areas of life. Another possibility is the incompatibility between laws and regulations with unwritten laws or customary laws. Sometimes there is a discrepancy between the recorded law and the customary law and so on; 2) Financial transactions are carried out in cash without going through banking. Where it is very difficult to find evidence if the transaction is made in cash. Because most of the payments were made in cash, they did not have proof of payment transactions and most of them also did not have witnesses who witnessed the transaction occurring. b Technical obstacles, in the form of 1) Lack of understanding of money laundering crimes by the public

as regulated in Law No. 8 of 2010. 2) Lack of courage of investigators in conducting the investigation process of money laundering crimes and 3) Lack of number of investigators who have high honesty; 4) Lack of Quality/Ability of Investigators to Understand Money Laundering Crimes, This obstacle is experienced by investigators/assistant investigators in conducting the investigation process of money laundering crimes. Lack of skills, abilities and tenacity as well as motivation to support the implementation of tasks. Especially in the context of the investigation and investigation of money laundering crimes. 5) Lack of mastery of investigators in the use of advances in information technology. 6) Lack of Facilities, Infrastructure and Budget for the Needs of Investigators in the Investigation of Money Laundering Crimes.

Responding to the above, efforts to improve capabilities are needed which are manifested through the development and development of personnel capabilities, system development, as well as material additions and budget support. Based on the considerations mentioned above, in order to support the implementation of increasing investigators at the National Narcotics Agency of Bali Province, it is necessary to have a guideline in the form of policies and strategies as well as efforts that can be taken.

## CONCLUSION

The flow of funds of foreign nationals at home and abroad can be used to prove money laundering crimes in Indonesia because based on Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes which states that in order to be able to carry out investigations, prosecutions, and examinations in court hearings on money laundering crimes, it is not mandatory to first prove the original criminal act. The obstacles faced by the National Narcotics Agency of Bali Province in handling Money Laundering cases include: a. Jurisprudence Constraints, and, b. Technical Constraints.

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