

The Nature of the Stand-Alone Money Laundering Concept: An Interest Theory Perspective

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Abstract

The concept of stand-alone money laundering remains a subject of debate in academic discourse. Critics argue that it is inconsistent with the principle of justice because it does not require proof of the predicate offence in prosecuting money laundering. This debate has also affected the effective enforcement of stand-alone money laundering provisions. Using a doctrinal approach based on secondary data, this study examines the nature of stand-alone money laundering and the balance of interests in its implementation through Roscoe Pound's theory of interests. The findings show that stand-alone money laundering is a response to the increasing sophistication of organised financial crime. It strengthens efforts to disrupt criminal proceeds by criminalising acts intended to conceal or disguise illicit assets and by permitting indirect evidence to establish the existence of a predicate offence. The study further demonstrates that the enforcement of stand-alone money laundering can balance competing public and private interests. However, its implementation must be supported by rigorous evidential standards, transparent legal procedures, and independent oversight to ensure justice while safeguarding human rights.

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Introduction

Crime develops in tandem with the dynamics of societal life. Accordingly, authorities are required to respond proportionately and adaptively to the constantly evolving characteristics, complexity, and sophistication of criminal conduct. In the context of financial crime, money constitutes the primary objective, driven by greed as a relatively constant motivating factor over time. At the same time, lifestyle demands and the desire for instant wealth encourage some

individuals to resort to various means, including unlawful conduct that may harm individuals, society, and the state.¹

A key evolving aspect of financial crime lies in the *modus operandi* employed by perpetrators. This development is closely associated with technological advancement and changes in social interaction patterns. For instance, fraud initially relied on face-to-face interactions using verbal deception, such as offering or selling goods that did not correspond to their actual condition. With technological development, such methods have evolved by exploiting telecommunication, the internet, and social media to target victims on a much broader scale. Currently, perpetrators have even begun to utilize artificial intelligence² (AI) to enhance the effectiveness, scale, and complexity of their criminal activities.

Modern financial fraud perpetrators generally possess and integrate several technical capabilities, namely³:

- a. mastery of fraudulent schemes themselves;
- b. ability to conceal their true identity;
- c. proficiency in information technology ranging from basic to advanced systems; and
- d. capacity to manage financial aspects in receiving and securing criminal proceeds.

In terms of financial control and management, perpetrators also study weaknesses inherent in financial systems and products to conceal and disguise the origins of illicit proceeds, while simultaneously exploiting vulnerabilities arising from developments in financial technology. The acquisition of such technical capabilities enables modern criminal conduct to generate larger proceeds of crime, expand victim targeting, and more effectively conceal illicit gains. The concealment of the origin of criminal proceeds is aimed at enabling perpetrators to enjoy such proceeds in order to sustain their lifestyle without fear of detection, arrest, or prosecution by law enforcement authorities.

One legal response to the development of financial crime is the criminalisation of money laundering. Various acts intended to conceal or disguise the proceeds of crime derived from predicate offences, such as corruption, drug trafficking, fraud, and other serious crimes, are classified as money laundering offences. This policy not only introduces a new form of criminalisation but also establishes a new paradigm in crime control by placing the financial dimension at the centre of law enforcement strategy. Money is not only the primary objective of criminal activity but also its lifeblood. At the same time, the financial dimension constitutes a critical vulnerability that can be exploited to detect and combat crime. Accordingly, law enforcement has developed approaches focused on tracing financial flows, supported by a range of legal innovations and evidential mechanisms adopted by enforcement authorities.

The concept of *stand-alone money laundering*, recognized in international standards, refers to money laundering offences that may be prosecuted independently without requiring prior prosecution of the predicate offence. According to the Financial Action Task Force (FATF),

¹ Consider the Fraud Diamond theory, which posits four causes of fraud, namely: rationalization, pressure, opportunity, and capability or authority. The pioneers of the Fraud Diamond theory are David T. Wolfe and Dana R. Hermanson, who developed this model in 2004 as an enhancement of Donald Cressey's Fraud Triangle theory by introducing a fourth element: capability. See Puspasari, Novita. "Fraud Theory Evolution and Its Relevance to Fraud Prevention in The Village Government in Indonesia." *Asia Pacific Fraud Journal* Volume 1.2, 2016. pp. 177-188.

² According to The Law Dictionary, Artificial Intelligence is defined as "machine learning, using repetition and experience as how humans seem to learn. Using software whose operations mimic these methods, employing artificial intelligence techniques to enhance the ability of a machine to improve its own." See The Law Dictionary, <https://thelawdictionary.org/?s=artificial+intelligence>, accessed on April 5, 2026.

³ See Mohamad Nur Efendi, Mukhtar Adinugroho, and Selvina Khomairoh, "Evolusi dan Pola Kejahatan dalam Sistem Perbankan: Dari Penipuan Tradisional hingga Kejahatan Siber," *AML/CFT Journal* Vol. 03 No. 2, pp. 168-196.

stand-alone money laundering refers to the independent prosecution of money laundering without the need to first prosecute the predicate offence. This concept is relevant, *inter alia*⁴, in situations where sufficient evidence of a specific predicate offence generating illicit assets is unavailable, or where jurisdictional or territorial limitations exist with respect to the predicate offence. Such illicit proceeds may be laundered either by the predicate perpetrator themselves (*self-laundering*) or by third parties (*third-party money laundering*).

The concept of prosecuting money laundering without proving the predicate offence has generated considerable debate in legal scholarship, as some argue that it may conflict with the principles of justice. Herman et al. (2024) contend that convictions for money laundering without prior proof of a predicate offence may give rise to several legal implications, including the risk of acquittal, inconsistency with the principle of the presumption of innocence, legal uncertainty in establishing predicate offences, and potential sentencing disparities between money laundering and predicate offences that may undermine substantive justice.⁵

Similarly, the doctoral dissertation of Adardam Achyar, which specifically examines the position of predicate offences in corruption-related money laundering cases, questions the removal of the requirement to prove predicate offences and the application of reverse burden of proof mechanisms. Referring to the United Nations Convention against Corruption (UNCAC), particularly the concept of illicit enrichment, which has not yet been criminalised in Indonesia, the dissertation argues that such an approach may be inconsistent with the principle of legality and the presumption of innocence.⁶

The root cause of this ongoing discourse stems from the lack of a comprehensive and fundamental understanding regarding the true nature of the stand-alone money laundering concept. There is a critical need to examine the essence, the profound meaning, or the core rationale underlying the existence of stand-alone money laundering. This study also highlights the importance of evaluating the concept through the lens of protecting various interests to assess whether there is any violation of the principles of justice, as raised by certain questioning parties.

The root of this discourse lies in the absence of a comprehensive and fundamental understanding of the nature of *stand-alone money laundering*. The concept must be examined from its essential dimension as the most fundamental meaning underlying its existence. Furthermore, this study emphasizes the importance of analyzing *stand-alone money laundering* from the perspective of protecting competing interests in order to assess whether it violates principles of justice, as alleged by some scholars.

This article employs Roscoe Pound's theory of interests, which posits that when law is directed toward achieving justice, it seeks to satisfy competing social interests to the greatest extent possible.⁷ Pound's thought is also known for the concept of *social engineering*, which explains the relationship between law and societal development. This theoretical framework is used to analyze the development of financial crime, which has led to the emergence of money laundering criminalization as an independent offence.⁸

⁴ FATF, *Methodologi Assessing Technical Compliance with The FATF Recommendations and The Effectiveness of AML/CFT Systems*, Paris: FATF, 2018, p. 111.

⁵ Herman (et.al), "Kedudukan Hukum (*Legal Standing*) Tindak Pidana Pencucian Uang Tanpa Pembuktian Tindak Pidana Asal (*Predicate Crime*)", *Halu Oleo Legal Research Volume 6, Issue 2, August 2024*. p. 297.

⁶ Adardam Achyar, *Kedudukan Tindak Pidana Asal (Predicate Crime) dalam Tindak Pidana Pencucian Uang (Money Laundering) Perspektif Pembaruan Hukum Pidana* (Naskah Sidang Terbuka Disertasi), Program Studi Doktor (S3) Ilmu Hukum Universitas Pasundan, Bandung: 2018. p. 55.

⁷ Roscoe Pound, *Social Control through Law*, Archon Books, 1968. p. 64.

⁸ See Rasji, William Chandra dan Marcellius Kirana Hamonangan, "*Hukum Sebagai Alat Rekayasa Sosial: Gagasan Roscoe Pound Dan Relevansinya Bagi Reformasi Hukum Di Indonesia Law As A Tool Of Social*

Based on the 2023 Mutual Evaluation Report (MER) on Indonesia conducted by the Financial Action Task Force, Indonesia's enforcement of stand-alone money laundering was assessed as sub-optimal. The FATF report revealed that within the period spanning from 2017 to April 2022, the government of Indonesia reported only four cases resulting in convictions categorized as stand-alone money laundering. This figure represents a decline from the law enforcement statistics for stand-alone money laundering between 2013 and 2017, which had previously reached nineteen cases. The low statistics and limited case studies presented by law enforcement authorities during the latest MER led the FATF to maintain the same critical notes regarding the law enforcement practices of stand-alone money laundering in Indonesia.

Based on the 2023 Mutual Evaluation Report (MER) on Indonesia issued by the Financial Action Task Force (FATF), Indonesia is assessed as not yet optimal in enforcing *stand-alone money laundering*. FATF data for the period 2017 to April 2022 indicate that only four *stand-alone money laundering* convictions were reported by the Indonesian government.⁹ This figure represents a decline compared to the 2013–2017 period, which recorded 19 cases.¹⁰ The low number of convictions and limited case studies submitted by law enforcement agencies during the latest MER process led FATF to maintain similar observations regarding Indonesia's enforcement of *stand-alone money laundering*.

In addition to academic debates and low enforcement effectiveness, Article 69 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which stipulates that investigation, prosecution, and trial of money laundering offences do not require prior proof of the predicate offence, has been repeatedly subject to constitutional review and examined by the Constitutional Court.¹¹

This study is a doctrinal legal research aimed at providing a systematic explanation of areas of difficulty in understanding (*explain areas of difficulty*), particularly regarding the concept of *stand-alone money laundering*. It adopts a prescriptive approach to identify the root causes underlying the discourse on the enforcement of *stand-alone money laundering*, which is often considered to be in tension with human rights concerns.

The Nature of Money Laundering as an Independent Offence

An authentic formulation of the concept of *stand-alone money laundering* is reflected in the FATF Immediate Outcome, as previously elaborated. The prosecution of money laundering without the requirement to first establish a predicate offence is regarded as a significant breakthrough, given that in practice the proof of predicate offences often encounters substantial obstacles and limitations.

In its development, law enforcement authorities frequently lag behind the dynamics of crime, which continuously evolve alongside societal changes. Moreover, proving predicate offences characterized by secrecy deliberately designed by perpetrators remains highly challenging, often relying on gaps or weaknesses in the construction of the underlying criminal activity.

Engineering: Roscoe Pound's Concept And Its Relevance To Legal Reform In Indonesia", Jurnal Hukum Lex Generalis. Vol.5. No.10, 2025.

⁹FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures Mutual Evaluation Report Indonesia*, op.cit p. 68.

¹⁰ FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures Mutual Evaluation Report Indonesia*, Paris: FATF, 2018, p 125.

¹¹ Among the challenges reviewed by the Constitutional Court, these are documented in Putusan No. 77/PUU-XII/2014, No. 90/PUU-XIII/2015, No. 35/PUU-XV/2017, dan No. 15/PUU-XIX/2021.

Secrecy as a Fundamental Aspect of Criminal Conduct

Secrecy constitutes a central element inherent in criminal behavior. This characteristic is present in both conventional and modern forms of crime. Secrecy plays a significant role across various offences, including violent crimes. After committing an offence, perpetrators often attempt to destroy or conceal evidence and even intimidate witnesses in order to obscure their actions. In property crime, secrecy becomes a primary concern from the planning stage through execution. Perpetrators typically design their actions carefully to avoid detection, including selecting appropriate timing and location, as well as using specific tools or methods to avoid leaving traces that could lead to the discovery of the offence.

Secrecy is profoundly reflected in the characteristics of white-collar crime,¹² namely:

- a. perpetrators are difficult to identify, and victims may remain unaware until harm is realized;
- b. investigation and proof require significant time and specialized expertise;
- c. at the organizational level, responsibility is difficult to determine, with liability often shifting upward (failure to prevent) or downward (failure to comply with instructions);
- d. victimization processes are obscured because perpetrators and victims do not directly interact, making tracing difficult;
- e. adjudication is challenging due to limited evidence and unclear attribution of responsibility;
- f. perpetrators often receive relatively lenient sanctions;
- g. perpetrators may acquire an ambiguous criminal status.

According to Harkristuti Harkrisnowo, the term organized crime predominantly refers to offences perpetrated by established organizations; at times, it is even interpreted as an entity whose very existence is predicated upon illicit or criminal activities. In this regard, the aspect of secrecy is maintained by utilizing clandestine communication methods, establishing hierarchical structures, and employing various codes to shield operations from law enforcement actions.

Secrecy in white-collar crime constitutes a defining characteristic that is often manifested through sophisticated illicit schemes, including the concealment and disguise of financial transactions through practices such as budget inflation (*mark-up schemes*) and the manipulation of accounting records. In the context of organized crime, secrecy serves as a fundamental pillar that enables the planning, execution, and continuity of criminal operations.

Arif Amrullah asserts that organized crime refers to clandestine organizations, such as mafia groups, that maintain extensive networks extending even to legitimate business entities.¹³ Meanwhile, Harkristuti Harkrisnowo explains that the term organized crime is commonly used to describe criminal activities perpetrated by well-established organizations and is frequently understood to refer to organizations whose existence is inherently predicated upon the commission of criminal activities¹⁴

In practice, the element of secrecy in organized crime is manifested through the use of covert communication methods, the establishment of hierarchical structures, and the use of coded language to evade detection by law enforcement authorities.

¹² Eleanora, Fransiska Novita. "White Collar Crime Hukum dan Masyarakat." *Forum Ilmiah*. Vol. 10. No. 2. 2013. p. 242.

¹³ Arif Amrullah, *Tindak Pidana Pencucian Uang dalam Perspektif Kejahatan Terorganisasi*, Kencana. Jakarta: 2020. p. 284.

¹⁴ Harkristuti. "Transnational Organized Crime: dalam Perspektif Hukum Pidana dan Kriminologi." *Indonesian J. Int'l L.* 1 (2003): p. 323.

In addition to facilitating the effective execution of criminal operations and avoiding detection and prosecution, the concealment of various aspects of criminal activity is essential to the sustainability of a criminal enterprise. The objectives underlying the principle of secrecy in various forms of crime may be summarized as follows:

- a. Secrecy is necessary to facilitate criminal operations and to protect the perpetrators and/or criminal associates involved;
- b. Perpetrators conceal their identities and criminal activities in order to evade detection, investigation, and apprehension;
- c. In cases of cybercrime, secrecy may be maintained through the selection of methods and technological tools intended to hinder victims and competent authorities from developing effective countermeasures;
- d. Secrecy is also employed to protect criminal networks, including their organizational structures and members. This is achieved, among other means, through the use of coded language, secure communication channels, and information compartmentalization;
- e. In profit-driven crimes where financial gain constitutes the primary objective, secrecy is also intended to safeguard and maximize illicit proceeds. By concealing their activities, perpetrators are able to continue exploiting their targets without disruption;
- f. The concealment of perpetrators' identities and criminal activities enables them to preserve their social standing and continue interacting within society without suspicion. Perpetrators may even use the proceeds of crime to finance political activities, including campaigns aimed at obtaining legislative or executive office.

Perpetrator Schemes: Concealing, Disguising, and Enjoying the Proceeds of Crime

The second aspect in understanding the concept of stand-alone money laundering concerns the characteristics of assets generated from criminal activity, commonly referred to as *proceeds of crime*. Although derived from unlawful conduct, perpetrators ultimately seek to enjoy such proceeds themselves or channel them to their families or other designated parties in order to sustain their desired needs and luxurious lifestyles. To avoid raising suspicion among competent authorities, perpetrators create layers between themselves and the return of the proceeds of crime by engaging in a series of activities aimed at concealing and disguising the origin of such assets, a process commonly known as money laundering.

Money laundering¹⁵ constitutes a transitional mechanism employed by offenders to conceal the illicit origin of criminal proceeds and to transform such assets so that they appear, or are made to appear, as though they originate from legitimate sources.

The methods of money laundering employed by perpetrators are diverse and continue to evolve alongside societal developments. These methods include:¹⁶

- a. The use of large-scale cash transactions

This method remains a preferred option for perpetrators because cash transactions are largely disconnected from the original financial audit trail. The use of cash transactions is often combined with other techniques, including:

¹⁵ Money laundering can be described as the process by which a person conceals or disguises the identity or the origin of illegally obtained proceeds so that they appear to have originated from legitimate sources. IMF dan UNODC, *Model Legislation on Money Laundering and Financing of Terrorism*. IMF dan UNODC. 2005. Hlm. iii.

¹⁶ Periodically, international bodies such as the Asia/Pacific Group on Money Laundering publish updated money laundering typologies. Similarly, within the domestic scope, the Indonesian Financial Transaction Reports and Analysis Center (PPATK) routinely releases research findings on money laundering typologies in Indonesia. See: <https://apgml.org/typologies/apg-typologies-reports>

- 1) Concealing the cross-border movement of cash (cash smuggling);
 - 2) Transporting cash through intermediaries (couriers), as in commonly observed in illicit narcotics trafficking and terrorism-related offences;
 - 3) Making incremental deposits into financial institutions (structuring) or using multiple individuals to make deposits (smurfing).
- b. The use of third parties (use of nominees)
- This method is widely preferred because it enables offenders to hide behind bank accounts or other facilities held in the names of other individuals. To competent authorities, the transactions appear to belong to the third party, whereas the account is in fact controlled and operated by the offender. Variations of this method include:
- 1) The sale and purchase of bank accounts by criminal syndicates;
 - 2) The use of accounts belonging to family members or associates;
 - 3) The use of false identities to open accounts;
 - 4) Holding ownership of property acquired using proceeds of crime in another person's name.
- c. The use of complex financial transaction schemes
- Another method employed by perpetrators is to exploit the complexity of financial products or vulnerabilities inherent in financial systems. Such methods include:
- 1) Using insurance products to obscure the receipt of proceeds of crime;
 - 2) Exploiting the complexity of capital market transactions as a bribery mechanism;
 - 3) Utilizing complex banking transaction schemes, such as *u-turn* transactions, *pass-by* transactions, or loans repaid by third parties;
 - 4) Exploiting the complexity of virtual asset transactions;
 - 5) Utilizing foreign jurisdictions as part of complex financial transaction schemes.
- d. The exploitation of business or commercial mechanisms
- Methods involving the misuse of business and trade mechanisms include:¹⁷
- 1) Establishing shell companies;
 - 2) Acquiring shelf companies that already possess existing financial and tax records;
 - 3) Misusing legitimate operational companies;
 - 4) Employing trade-based money laundering schemes to transfer funds across international borders;
 - 5) Exploiting trade mechanisms within e-commerce platforms.
- e. The use of traditional and informal mechanisms
- Money laundering methods remain highly diverse. One such approach involves the use of traditional and informal mechanisms, such as *hawala*, *cuckoo smurfing*, and barter trade. These mechanisms are frequently utilized because they facilitate the covert transfer of value outside the formal financial system. Money laundering typologies continue to evolve under the influence of various factors, including perpetrators characteristics, innovations in modus operandi, economic and social developments, technological advancements, and weaknesses in regulatory frameworks and law enforcement.¹⁸

¹⁷ See APG on Money Laundering, *Methods and Trends of Money Laundering and Terrorism Financing*, Sidney: 2023. p. 37.

¹⁸ According to Ivan Yustiavandana, criminal organizations engage in money laundering based on a number of factors, namely:

- a. The type and location where the crime is committed;
- b. The quantity of the assets;
- c. The structure and organizational level of the criminal syndicate;
- d. The threats and intimidation that the criminal organization can execute;
- e. The background of the perpetrator, including education, profession, and business;

The schemes employed by perpetrators to conceal and disguise assets derived from criminal activities may obscure or disguise the audit trail and origin of such assets, either wholly or partially. In its legal reasoning in Constitutional Court Decision No. 35/PUU-XV/2017, which reviewed Article 1(5) and Article 9 of Law No. 8 of 2010, the Constitutional Court held that the objective of money laundering perpetrators is not merely to conceal criminal proceeds, but also to transform their origin for subsequent use and to sever their direct connection with the predicate offence in order to evade law enforcement actions.¹⁹

Law Enforcement Framework: Identifying and Criminalizing Money Laundering

From the perspective of public authorities, the law enforcement approach is not limited to the criminalization of money laundering offences (ML). It is also complemented by an anti-money laundering (AML) approach. This approach encompasses efforts to detect criminal activities through the monitoring and analysis of financial transactions, as well as tracing the origin of assets. Through the AML approach, various suspicious financial transaction patterns can be identified, including the following:²⁰

- a. The discovery of assets that are directly or indirectly linked to a specific criminal offence;
- b. The discovery of assets that are directly or indirectly partially linked to a specific criminal offence, while the remaining portion cannot be verified as originating from legitimate sources and exhibits indicators consistent with money laundering patterns;
- c. The discovery of assets that are directly or indirectly determined to have originated from illegitimate sources and that satisfy the indicative patterns of money laundering offences.

The existence of assets whose origin cannot be traced to legitimate sources, coupled with transaction patterns indicative of money laundering and explainable only within the context of criminal activity, constitutes a sufficient basis for prosecuting *stand-alone money laundering*. Severing the connection, or *nexus*, between assets and the specific predicate offence that generated them is the principal objective pursued by criminals through the application of secrecy measures and a series of money laundering activities.

Criminal actors who possess a sophisticated understanding of business operations and the vulnerabilities of financial products will exploit weaknesses within various dimensions of a country's socio-economic environment to facilitate criminal activities and conceal illicit proceeds. Conversely, assets derived from legitimate sources should be capable of explanation regarding their origin and should exhibit patterns consistent with ordinary or normal financial behaviour.

Money laundering as a stand-alone offence is reflected in the constituent elements of money laundering offences, which may be established either through direct evidence relating to the underlying criminal conduct or through broader opportunities afforded to law enforcement authorities to prove the offence indirectly.²¹ The essence of separating the proof

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- f. The availability of technology;
 - g. The cost of employing financial experts in developing countries and the anti-money laundering frameworks.

Ivan Yustiavandana, Arman Nefi, Adiwarmar, *Tindak Pidana Pencucian Uang di Pasar Modal*, Ghalia Indonesia, Bogor: 2010. p.38.

¹⁹ Mahkamah Konstitusi, *Putusan Mahkamah Konstitusi Perkara No. 35/PUU-XV/2017 Pengujian UU No. 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*, p. 37.

²⁰ Based on the author's analysis of various references and case studies, a comparative examination can be drawn with the guidelines issued by the Netherlands. Fiscal Information and Investigation of The Netherland, *Indirect Method of Proof Providing Evidence in stand-alone money laundering investigations*, 2019. p 9-23.

²¹ According to the ACFE guidelines, circumstantial evidence is evidence that tends to prove or disprove a fact at issue indirectly, through inference. Many fraud cases are proven entirely by circumstantial evidence, or through a combination of both direct and circumstantial evidence, but rarely by direct evidence alone

of money laundering from that of the predicate offence in the context of *stand-alone money laundering* lies in the use of indirect evidentiary mechanisms to establish the existence of a criminal offence.

This position is explicitly reinforced by the views of Ricardo Pinto and Ophelie Chevalier (2006)²², who argue that money laundering should be regarded as an autonomous crime distinct from its predicate offence, on the grounds that money laundering is not a traditional crime but rather a method employed by organized criminal groups to support illegal activities of a transnational nature.²³ Pinto and Chevalier further assert that the autonomy of money laundering offences becomes particularly evident from a procedural standpoint when the object of the offence, namely the criminal origin of the laundered assets, can be established by any available legal means, without requiring a prior conviction for the underlying offence, such as drug trafficking or other serious crimes. In this context, evidence concerning the criminal origin of assets should be admissible by any lawful means.²⁴ Proof of the existence of a predicate offence should therefore be accepted on the basis of indirect evidence applied appropriately and in accordance with clear criteria.²⁵

In Indonesian law enforcement practice, several money laundering cases have been adjudicated using indirect evidentiary mechanisms. One of the most notable examples is the case of Bahasyim Assifie, decided at the district court level in 2010.²⁶ Bahasyim was found guilty of money laundering, resulting in the confiscation of assets exceeding IDR 64 billion, despite the proven corruption offence amounting to only IDR 1 billion. In essence, the proceedings applied an *indirect proof* mechanism, as demonstrated by the public prosecutor's efforts to establish that Bahasyim, as a civil servant, could not reasonably have accumulated such wealth from legitimate sources. Nevertheless, neither the evidentiary narrative constructed by the prosecution nor the arguments advanced by the defence explicitly relied upon the framework of indirect proof; rather, both primarily focused on the concept of reverse burden of proof.

Subsequently, several other cases have involved single charges of money laundering. However, their application has generally been confined to specific circumstances, such as where the defendant was not the perpetrator of the predicate offence, or where the perpetrator of the predicate offence could not be prosecuted because their identity was unknown, they had died, or they had absconded.²⁷ The existence of these judicial decisions has led some scholars to interpret *stand-alone money laundering* narrowly, namely as applying only where the money launderer is not the perpetrator of the predicate offence.²⁸ This condition suggests that the concept of money laundering as a stand alone offence, supported by indirect evidentiary mechanisms to establish the existence of a predicate offence, has not yet been comprehensively understood in law enforcement practice.

without circumstantial evidence. The most difficult element to prove in fraud cases is typically established indirectly. Indirect proof becomes necessary because relying on direct evidence derived from the confession of the defendant or their co-conspirators is often an impossibility (see ACFE, Fraud Examiners Manual, Volume II, ACFE, Texas USA: 2006, p. 2602).

²² Ricardo Pinto dan Ophelie Chevalier, *El Delito de Lavado de Activos Como Delito Autónomo. Comisión Interamericana para el Control del Abuso de Drogas (CICAD)*, CICAD: 2006. p. 55.

²³ e.g., Ibid., p. 55.

²⁴ e.g., Ibid., p. 55.

²⁵ e.g., Ibid., p. 55.

²⁶ See Putusan Pengadilan Negeri Jakarta Selatan No. 1252/Pid.B/2010/PN.Jkt.Sel by Bahasyim Asifie.

²⁷ Lihat Putusan Pengadilan Negeri Batam Nomor: 929/Pid.B/2016/PN. Btm atas nama Tomi Andhika Janur.

²⁸ Lihat Defid Tri Rizky dan Mochamad Kevin Romadhona, "Prinsip Pembuktian Perkara Tindak Pidana Pencucian Yang Berdiri Sendiri (*Stand Alone Money Laundering*)", *Media Iuris* Vol. 5 No. 3, October 2022. Hlm. 397.

Roscoe Pound's Theory of Interests and Its Relevance to the Application of Stand-Alone Money Laundering

Nathan Roscoe Pound, an American legal scholar, argued that law consists of certain interests that society considers worthy of legal protection²⁹. However, not all interests warrant legal protection. According to Pound, the interests that should be protected by law comprise individual interests, public interests, and the interests of the state as the guardian of social interests.³⁰

Although Pound did not explicitly equate individual interests with private law, he closely associated individual interests with the domain of civil law. An interest is classified as an individual interest when it takes the form of a claim, demand, or desire directly implicated in an individual's life and recognized as a right pertaining to that life.³¹ Fundamentally, individual interests³² can be categorized into three groups:

- a. Personal interests, such as life, health, and reputation;
- b. Interests in domestic relations, including the reciprocal claims of spouses, as well as parent-child relationships;
- c. Interests of substance, namely claims or demands relating to an individual's right to maintain their economic existence, including interests associated with property ownership and contractual relationships.

Pound emphasized the importance of private law as a systematic instrument for protecting individual interests and ensuring their recognition and protection within the legal order.³³ Public interests, on the other hand, refer to claims or demands associated with the life of a politically organized society and asserted on behalf of society as a collective entity. Roscoe Pound argued that public interests encompass matters relating to general welfare and the effective functioning of society as a whole, including public safety, public health, and public order.³⁴

Pound also identified the interests of the state as the guardian of social interests, referring to the state's role in protecting social interests through the effective and efficient administration of society's political organization. This role is manifested, among other ways, through the maintenance of public infrastructure, the preservation of economic stability, and the defence of the state against external threats or attacks.

The various interests within society must be formulated in a manner that achieves a harmonious balance. This process involves evaluating competing interests, defining the limits of recognized interests, and determining the relative weight to be assigned to each interest in the effective application of law. To achieve such balance, Pound introduced the concept of *social engineering*, which conceives of law as an instrument for shaping society by reconciling and accommodating both individual and social interests.³⁵

The objective of this concept is to advance civilization and ensure the effective functioning of society while minimizing friction and waste arising from social interactions. Within the framework of social engineering, the law is tasked with providing mechanisms that enable the

²⁹ Atip Latipulhayat, "Khazanah Roscoe Pound", *Padjajaran Jurnal Ilmu Hukum*, Volume 1 No. 2. 2014. pp. 415.

³⁰ *Ibid.* p. 416.

³¹ Lihat Joseph Clarence Verhelle, Thesis: *Roscoe Pound and His Theory of Social Interests*, Loyola University Chicago, 1957. p. 28.

³² *Ibid.* p. 28.

³³ Lihat Roscoe Pound, *Social control through law*. Transaction Publisher, London: 2006. p. 51.

³⁴ Atip Latipulhayat, *Opcit.* p., 416.

³⁵ See Atip Latipulhayat, *Opcit.* p. 416.

fulfilment of the various demands and needs of individuals living together in a politically organized society.³⁶ If the law cannot satisfy all human claims, it should at least ensure that their fulfilment is distributed as broadly as possible.

According to Roscoe Pound, this constitutes the essence of the law's pursuit of justice. Justice, in this sense, is neither an individual virtue nor an idealized relationship among human beings; rather, it is an order that regulates and adjusts human relationships and social conduct so that the resources of life, namely the means by which human claims to possess and act may be fulfilled, can be utilized by the greatest number of people with the least possible friction and waste.

Legal scholars and practitioners must therefore be capable of producing laws that correspond to the needs and interests of society. The concept of social engineering requires legal scholars and judges to move beyond rigid interpretations of the law and to accommodate societal changes so that the law can facilitate the fulfilment of societal interests and aspirations while minimizing social friction.³⁷

Pound further argued that when competing interests arise, the law plays a role in balancing the various claims and demands advanced by individuals and groups within society.³⁸ There is no predetermined rule dictating that either individual interests or societal interests must always prevail. Instead, legal decisions should be based on a contextual assessment that considers their impact on the general welfare and the effective functioning of society as a whole.³⁹

This balancing process involves evaluating and delimiting recognized interests and determining the weight that should be assigned to practical limitations in the effective administration of the law. Roscoe Pound emphasized that such balancing is essential to ensuring that the law can preserve and advance civilization by accommodating the diverse interests existing within society.⁴⁰

Conflict of Interests Regarding Property Rights

The enforcement of *stand-alone money laundering* signifies a shift from offender-oriented (*in personam*) prosecution to an asset-oriented (*in rem*) approach. Such a shift inevitably raises questions concerning the protection of property rights. Within Roscoe Pound's theory of interests, property rights constitute part of the interests of substance and therefore fall within the category of individual interests.

Property rights, particularly ownership rights, are often regarded as possessing an absolute character. This understanding is principally derived from Article 570 of the Indonesian Civil Code, which confers upon owners the right to enjoy, use, and dispose of their property. However, such rights are not without limitation. Their exercise remains subject to statutory restrictions, may not infringe upon the rights of others, and may be curtailed in the public interest through expropriation accompanied by compensation as prescribed by law.

Accordingly, Article 570 of the Indonesian Civil Code cannot be construed as establishing an absolute and unrestricted right of ownership. Although ownership confers broad powers upon the owner, the exercise of those powers remains subject to legal limitations. Property rights may therefore be restricted, extinguished, or revoked under certain circumstances, including where assets are proven or reasonably suspected to constitute proceeds of predicate offences and/or money laundering offences.

³⁶ Roscoe Pound, Op.Cit. p. 51.

³⁷ Ibid. p. 416.

³⁸ Ibid. p. 421.

³⁹ Ibid. p. 8.

⁴⁰ Tonny Andreas, Dominikus Rato, dan Y.A. Triana Ohoiwutun, "Sumbangsih Roscoe Pound terhadap Perkembangan Ilmu Hukum Sosiologis", Jurnal Supremasi Volume 15 No. 1 Tahun 2025. p. 137.

Such limitations reflect the coexistence of individual, public, and state interests, whereby individual property rights may be subordinated to broader societal interests, particularly where unlawful conduct has occurred or where harm has arisen in connection with the assets concerned. From this perspective, property rights cannot be regarded solely as individual rights; rather, their exercise must be reconciled with public interests and the state's responsibility to safeguard social interests.

The criminalization of *stand-alone money laundering* within a national legal framework constitutes a legal basis for limiting certain rights, particularly property rights, in relation to assets that are known or reasonably suspected to constitute proceeds of crime. Consequently, given that criminal assets constitute the central object of *stand-alone money laundering* enforcement, the use of indirect evidence may be justified, provided that such evidentiary mechanisms are expressly grounded in applicable legislation.

From a broader institutional perspective, the anti-money laundering framework, including the enforcement of *stand-alone money laundering*, functions as a mechanism through which the state preserves the stability and integrity of the financial system while protecting society from the harmful effects of crime, particularly organized crime. Its objectives extend beyond the confiscation of criminal proceeds to encompass the disruption of criminal networks capable of undermining social and economic order.

Balancing Competing Interests in the Evidentiary Framework of Stand-Alone Money Laundering

Herman et al.⁴¹ and Adardam Achyar⁴² argue that the application of *stand-alone money laundering* may conflict with the principle of justice because it is perceived to be inconsistent with the presumption of innocence. The presumption of innocence constitutes a fundamental principle of criminal law, under which any person accused of a criminal offence must be presumed innocent until proven guilty according to law, with the burden of proof resting upon the prosecution as a safeguard for fairness within the criminal justice system. Such criticism, however, is closely linked to the understanding of the concept of *stand-alone money laundering* itself. This approach does not dispense with the existence of a predicate offence; rather, it shifts the focus of prosecution to the act of money laundering and to assets that are known or reasonably suspected to constitute proceeds of crime. The issue, therefore, does not concern the absence of a predicate offence, but rather the inability to establish a specific predicate offence through direct evidence due to the complexity of the criminal schemes employed by offenders.

In balancing public interests with the protection of individual rights, many legal systems impose stringent evidentiary standards in the enforcement of money laundering offences to ensure that the presumption of innocence is not unduly compromised. One of the most debated issues concerns the potential reversal of the burden of proof in *stand-alone money laundering* proceedings. Certain jurisdictions have adopted mechanisms requiring defendants to explain or establish the lawful origin of suspicious assets. Such a shift in the burden of proof may be regarded as inconsistent with the presumption of innocence because it places defendants in a position where they are required to establish their innocence, notwithstanding the fundamental principle that the prosecution bears the burden of proving guilt.

In *stand-alone money laundering* proceedings, however, the burden of proof remains fundamentally balanced because the public prosecutor retains the responsibility of proving all elements of the offence charged. Nevertheless, the prosecution of *stand-alone money laundering* relies predominantly on indirect evidence and financial profile analysis rather than

⁴¹ Herman et.al, Opcit, p. 197.

⁴² Adardam Achyar, Opcit, p. 55.

direct evidence of the criminal activity that generated the assets in question. This evidentiary characteristic has generated debate as to whether such an approach is capable of satisfying a high evidentiary threshold, such as proof *beyond a reasonable doubt*, which constitutes an important safeguard of the presumption of innocence.

Within the context of the presumption of innocence, the principal debate concerns the application of reverse burden mechanisms. The Constitutional Court has held that, in order to achieve legal certainty, utility, and justice, the application of reverse burden mechanisms cannot be disregarded solely on the basis of a rigid and formalistic interpretation of the presumption of innocence.⁴³ Furthermore, such mechanisms are intended to ensure that judges have considered all relevant inferences in forming their conviction, particularly where the predicate offence cannot be established through direct evidence.

The prosecution of *stand-alone money laundering* may indeed give rise to tensions with the presumption of innocence. Nevertheless, such an approach is not inherently incompatible with that principle, provided that it is implemented in a manner that preserves legal safeguards and respects fundamental individual rights. The central issue, therefore, lies in maintaining an appropriate balance between effective law enforcement and the protection of individual rights.

Proof in *stand-alone money laundering* proceedings does not rest exclusively upon reverse burden mechanisms involving the defendant. Such mechanisms are supplementary in nature, while the essence of the evidentiary process lies in the use of indirect evidence by law enforcement authorities. Through this mechanism, law enforcement authorities construct an evidentiary narrative intended to satisfy the court that the assets forming the subject matter of the proceedings originate from unlawful sources, notwithstanding the absence of direct proof of the predicate offence.

As reflected in the relevant literature and case studies, the use of indirect evidence by law enforcement authorities generally serves two purposes. First, it seeks to establish that the assets concerned do not originate from legitimate sources. Second, it seeks to demonstrate the existence of transaction patterns indicative of money laundering or patterns that could rationally be associated only with criminal conduct.

In constructing such an evidentiary framework, law enforcement authorities may rely upon various forms of indirect evidence, including witness testimony, documentary evidence, electronic evidence, expert testimony, and other relevant forms of evidence recognized under applicable legislation. The use of indirect evidence is particularly pertinent, given that assets acquired through legitimate means should, in principle, always be traceable with respect to their origin, source, and method of acquisition through lawful and verifiable channels.

The use of reverse burden mechanisms by defendants is necessary to complement the evidentiary framework established by law enforcement authorities through indirect evidence. The objective is to determine whether any reasonable alternative explanation exists other than that the assets originate from criminal activity. Under this mechanism, defendants are afforded the opportunity to provide a specific explanation regarding the origin of their assets, and such explanations must be objectively verifiable. Where defendants are unable to provide an adequate, consistent, and verifiable explanation, or where prosecutorial verification reveals inconsistencies between the defendants' explanations and other established facts, the totality of the evidence may lead to an *irresistible inference* that the assets originate from unlawful sources.

⁴³ Mahkamah Konstitusi, Putusan No. 77/PUU-XII/2014, p. 206.

As a safeguard for the defendant's fundamental rights, defendants retain the right to remain silent and the privilege against self-incrimination.⁴⁴ The exercise of these rights, however, may limit the defendant's ability to rebut the evidentiary framework established by law enforcement authorities, particularly where an explanation concerning the origin of the assets is required.

The incorporation of reverse burden mechanisms demonstrates that the application of *stand-alone money laundering* remains consistent with the principle of the right to a fair trial. This principle forms an integral component of the legal system and guarantees that every individual involved in judicial proceedings receives fair and equal treatment. Accordingly, the implementation of *stand-alone money laundering* must be accompanied by appropriate safeguards, including the maintenance of a high evidentiary standard, transparency in legal proceedings, and the provision of a meaningful opportunity for defendants to present an effective defence.

Conclusion

Stand-alone money laundering emerged as a response to the evolution of criminal activities that are increasingly organized, clandestine, and characterized by a high degree of secrecy, thereby complicating the identification of the predicate offences that generate criminal assets. The evolution of criminal methodologies, coupled with a more sophisticated understanding of the techniques used to conceal and disguise criminal proceeds and the characteristics of assets derived from illicit activities, has prompted the criminalization of conduct aimed at concealing and disguising criminal proceeds through the adoption of *stand-alone money laundering* provisions. Within this framework, the criminal origin of assets may be established through the use of indirect evidence. A comprehensive understanding of *stand-alone money laundering* further demonstrates that this approach seeks to strike an appropriate balance between effective law enforcement, the protection of public interests, and respect for individual rights.

Two considerations are essential to ensuring that the enforcement of *stand-alone money laundering* appropriately balances these competing interests. First, further research is required to develop clear standards governing the use of indirect evidence, and such standards must be applied rigorously in practice. Second, legal proceedings involving *stand-alone money laundering* must be conducted transparently and supported by independent oversight mechanisms to ensure accountability and safeguard individual rights.

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⁴⁴ According to the European Court of Human Rights (ECHR), the final assessment in stand-alone money laundering cases is not based solely or predominantly ('exclusivement ou essentiellement') on the defendant's silence, as there must be other corroborating evidence presented by the prosecution. See Fiscal Information and Investigation Service of The Netherlands, op. cit., p. 23

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