

Mutual Legal Assistance as an Instrument for the Eradication of Transnational Crime in the Field of Taxation

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Abstract

The circulation of illicit money is still a concern for Indonesia in realizing equitable welfare for all people. One of the sources of illicit money circulating in Indonesia comes from tax evasion, where the source can come from within or outside the country. Tax evasion is inseparable from money laundering, which is a sophisticated crime that requires special treatment in its enforcement. This research tries to examine mutual legal assistance (MLA) as an instrument in law enforcement on cross-border tax evasion. This study uses normative legal research methods with a statute approach and a conceptual approach and is descriptive research. This research shows that the crime of tax evasion cannot be separated from money laundering and can be carried out across countries. To overcome this, MLA is one of the recommendations for the prevention and eradication of anti-corruption from transnational tax crimes in Indonesia. Unfortunately, this MLA approach has not been implemented effectively and efficiently because Indonesia does not have strong regulations related to asset confiscation.

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Introduction

The state has achieved goals that are always connected to the country's financial laws and include legal principles in managing state finances to fund government operations.¹ In running a country that can advance public welfare following the constitution's mandate, the Government, as the holder of the highest power of a country, is obliged to advance the general welfare following the constitution by formulating policies. Policies from the government often intersect directly and affect community activities, especially in economic sector policies.² Activities to improve people's welfare require significant funds and are carried out in stages.

¹ Saidi Muhammad Djafar and Djafar Eka Merdekawati, *Hukum Keuangan Negara: Teori Dan Praktik* (Jakarta: Raja Grafindo Persada, 2017).

² Ayief Fathurrahman Ayief, "Kebijakan Fiskal Indonesia Dalam Perspektif Ekonomi Islam: Studi Kasus Dalam Mengentaskan Kemiskinan," *Jurnal Ekonomi Dan Studi Pembangunan* 13, no. 1 (2012): 72.

The government tries to collect sources of state revenue every year through the State Revenue and Expenditure Budget (*Indonesian: Anggaran Pendapatan dan Belanja Negara, APBN*). The sources of the state budget include corporate revenue, government assets, fines and expropriation for the public interest, abandoned inheritances, wills, and grants. There are 3 other types of sources of the State Budget, namely taxes, levies, and donations.³

Taxes are one of the most significant revenues and are among the national backbones of the sources of state revenue mentioned.⁴ Taxes are contributions to the state that can be forced to be owed for them to pay obligatorily according to laws and regulations, without returns that can be appointed directly. The purpose of taxes is to provide financing for general expenditures related to state duties in the event of outgoing financing in general subjects closely related to state duties for the implementation of self-government.⁵ Revenue from the tax sector acts as a source of funds for the central and regional governments, which are then used to improve the infrastructure needed by the community and the state to improve welfare.⁶ Although it has a vital role in state revenue, taxes for companies are considered a burden that reduces net profit, thus causing companies to minimize tax payments.⁷ This encourages entrepreneurs to avoid and fight taxes, which has implications for low state tax revenues. Resistance to taxes can be categorized into active and passive resistance. Passive resistance is an obstacle that makes it difficult for tax collectors and their reports to be closely related to the structure of the economy. Meanwhile, active resistance is all efforts and actions directly directed at the government to avoid taxes.⁸ Active tax resistance includes all efforts and actions aimed at the fiscal office to avoid taxes. Two forms of active tax resistance are tax avoidance and tax evasion. These two types of tax resistance are different, but they both reduce the amount of government tax revenue.⁹

The difference between tax avoidance and tax evasion lies in the legality aspect. Tax avoidance refers to a legal and safe strategy to avoid paying taxes because it is in accordance with applicable tax provisions.¹⁰ Legally, tax avoidance includes a legitimate practice of taking advantage of gaps or weaknesses in positive tax law. On the other hand, tax evasion includes efforts to reduce taxes by violating tax rules, such as providing false information or hiding data.¹¹ Tax evasion can be criminally punished because it can be considered tax evasion, which is expressly declared an unlawful and illegal act. Tax evasion is carried out in a way that violates the applicable tax regulations, showing the intention of the taxpayer not to pay taxes.

This research focuses on one of the methods of tax evasion, which is placing money in a tax-free jurisdiction or Tax Haven country. Tax Haven has the meaning of a jurisdiction that allows transactions to occur under secret events by legalizing taxpayers in tax evasion.¹² Tax haven countries are often referred to as safe havens for tax evaders. The implication of Tax

³ R. Santoso Brotodihardjo, *Pengantar Ilmu Hukum Pajak* (Bandung: PT. Refika Aditama, 2008).

⁴ Sri Mulyani, "Deklarasi Pengampunan Pajak," 2016.

⁵ Pieter Adriani, "Het Belastingrecht Zijn Grondslagen En Ontwikkeling," in *Amsterdam: L.J. Veen's* (Amsterdam, 1948), 2.

⁶ Yuswar Zainul Basri, *Keuangan Negara Dan Analisa Kebijakan Utang Luar Negeri* (Jakarta: PT. Raja Grafindo Persada, 2005).

⁷ Titiek Puji Astuti and Y. Anni Aryani, "Tren Penghindaran Pajak Perusahaan Manufaktur Di Indonesia Yang Terdaftar Di BEI Tahun 2001-2014," *Jurnal Akuntansi* 10, no. 3 (2016): 373.

⁸ Thomas Sumarsan, *Indonesian Taxation (Indonesian: Perpajakan Indonesia)* (Jakarta: PT. Indeks, 2010).

⁹ Mardiasmo, *Taxation (Indonesian: Perpajakan) Edisi Revisi 2011* (Yogyakarta: Andi, 2011).

¹⁰ Chairil Anwar Pohan, *Tax Management, Strategy, Planning, and Business (Indonesian: Manajemen Perpajakan Strategi Perencanaan Serta Bisnis)* (Jakarta: PT Gramedia Pustaka Utama, 2013).

¹¹ Niru Anita Sinaga, "Tax Reform in the Context of Increasing State Revenue (Indonesian: Reformasi Pajak Dalam Rangka Meningkatkan Pendapatan Negara)," *Jurnal Ilmiah Hukum Dirgantara* 8, no. 1 (2017): 13.

¹² D. Larry Crumbley, Jack P. Friedman, and Susan B. Andfers, *Dictionary of Text Terms* (Indiana: Barron's Educational Series, 1994).

Haven countries occurs due to the transfer of taxes to Tax Haven countries and/or tax administration in other countries, which can be referred to as "source countries."

The practice of cross-border tax evasion is one of the transnational organized crimes. Tax law enforcement is closely related to law enforcement against other criminal acts, such as the money laundering.¹³ Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (*Indonesian: Undang-Undang Pencegahan serta Pemberantasan Tindak Pidana Pencucian Uang, TPPU Law*) in Article 2 paragraph (1) letter v states that wealth obtained from criminal acts in the field of taxation includes the proceeds of criminal acts. Furthermore, in Article 1, paragraph (1) of the TPPU Law, the action is included in the crime of money laundering. Every act, whether carried out within or outside the territory of Indonesia, is also a crime according to Indonesian law.¹⁴ This regulation emphasizes that the crime of money laundering can be prosecuted inside or outside Indonesia.

Money laundering is a form of transnational organized crime regulated in Article 7 of the United Nations Convention against Transnational Organized Crime (UNTOC). The article requires each party to establish comprehensive domestic regulation and supervision of banks and non-bank financial institutions, as well as other institutions vulnerable to money laundering, if necessary, to prevent and detect all forms of money laundering. This regulation emphasizes the importance of customer identification, record-keeping, and reporting of suspicious transactions. Indonesia has implemented UNTOC through Law Number 5 of 2009 concerning the Ratification of the United Nations Convention Against Transnational Organized Crime.

To prevent and eradicate transnational money laundering violations, international cooperation is very important. Success in effectively combating money laundering depends on good coordination between countries. If one country has an effective regime to fight money laundering, but other countries are unable to implement the anti-money laundering regime properly, then it becomes a gap that makes the efforts to eradicate and prevent money laundering becomes ineffective.¹⁵ UNTOC also emphasized the importance of international cooperation in the fight against money laundering. It is stated in Article 7 of the UNTOC that determines cooperation and information exchange at the national and international levels that have been determined by the domestic authorities of the law and require to form financial intelligence unit as a center for collecting, analyzing, and disseminating information on potential money laundering.

The Indonesian Financial Transaction Reports and Analysis Center (INTRAC) is the financial intelligence unit in Indonesia following the Law of the Republic of Indonesia Number 15 of 2002 concerning Money Laundering Crimes. INTRAC works within the scope of the TPPU Law as a form of commitment to the ratification of UNTOC. The TPPU Law has been adjusted to international standards in the context of eradicating anti-money laundering, and Law Number 8 of 2010, concerning the Prevention and Eradication of Money Laundering, was born. One of the amendments introduced is a new regulation on Mutual Legal Assistance (MLA). In accordance with Article 18 of the UNTOC, state parties are obliged to provide mutual legal assistance based on the principle of reciprocity in cases where the requesting state party has reasonable grounds to suspect that the criminal offence is transnational. This includes instances where the victim, witness, proceedings, means or evidence of the criminal offence is in the

¹³ Nindi Achid Arifki dan Ilima Fitri Azmi, "Tax Evasion in the Discourse of Money Laundering Crimes (Indonesian: Penghindaran Pajak Dalam Diskursus Tindak Pidana Pencucian Uang)," *Jurnal Pandecta* 15, no. 2 (2020): 168.

¹⁴ "Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (Indonesian: Undang-Undang Nomor 8 Tahun 2010 Tentang Pencegahan Serta Pemberantasan Tindak Pidana Pencucian Uang)." (2010).

¹⁵ "Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters (Indonesian: Undang-Undang Nomor 1 Tahun 2006 Tentang Bantuan Timbal Balik Dalam Masalah Pidana)" (2006).

requested state party, and where the criminal offence involves an organized criminal group. The amendments made to Law No. 15 of 2002 regarding international cooperation are set forth exclusively in Article 25. The TPPU Law provides further elaboration on this matter in Chapter X, comprising Articles 88 to 92. Both laws demonstrate that the MLA in UNTOC has been modified to align with the most recent TPPU Law. The MLA is regarded as a crucial instrument in the context of tax crimes due to its transnational character. Offenders can transfer assets and funds across borders, making it challenging to trace and recover them. Countries can collaborate to share information and coordinate their actions to halt criminal activities and recover assets.

The Financial Action Task Force (FATF) is an international organization that plays a pivotal role in establishing global standards to prevent and combat money laundering. The FATF comprises a task force responsible for developing international recommendations to combat money laundering. One of the forty recommendations, issued by the FATF, discuss mutual legal assistance (MLA) as an instrument in combating money laundering (ML). This confirms the importance of MLA as one of the instruments in combating ML as a transnational crime. This study aims to determine the necessary arrangements regarding transnational crimes in the field of taxation and the effect of mutual legal assistance as an instrument to eradicate international crimes in the field of taxation.

This study uses a normative legal research method with a normative juridical approach. The aim is to learn the fundamentals of law, legal regulations, and concepts through secondary data analysis.¹⁶ The objective of this method is to ascertain the veracity of legal rules, guarantee the adherence of legal norms, and evaluate an individual's conformity with legal norms and legal principles. The methodologies employed encompass both statutory (statutory approach) and conceptual (conceptual approach) approaches.¹⁷ This study employs descriptive analysis with a particular emphasis on mutual legal assistance in combating international crimes in the domain of taxation.

Regulation Regarding Transnational Crime in the Field of Taxation

Money laundering crimes in the field of taxation are transnational in nature, rendering legal instruments applicable not only at the national level but also internationally. Indonesia's legal regulation of transnational crime in the scope of financial transactions resulting from criminal acts in the field of taxation is contained in several laws and regulations, which will then be elaborated as follows:

Analysis of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes

Anti-corruption regulations in Indonesia have undergone two revisions within a decade. This shows how complex CAML is.¹⁸ Law Number 15 of 2002 was revised to Law Number 25 of 2003, then amended by Law Number 8 of 2010.¹⁹ Several changes have been implemented regarding the regulation of anti-money laundering, showing that the threat from anti-money laundering continues to grow. This can be seen in the section on considering Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, that the crime of Money Laundering not only threatens economic stability and the integrity of the financial

¹⁶ Soerjono Soekanto, *Introduction to Legal Research* (Indonesian: Pengantar Penelitian Hukum)(Jakarta: UI Press, 2014).

¹⁷ Peter Mahmud Marzuki, *Introduction to Legal Research* (Indonesian: Pengantar Penelitian Hukum) (Jakarta: Prenadamedia Group, 2014).

¹⁸ Apriliani Arsyad, "Juridical Analysis of Law Enforcement of Money Laundering Crimes (Indonesian: Analisa Yuridis Penegakan Hukum Tindak Pidana Pencucian Uang)" (Universitas Jambi, 2014).

¹⁹ Arsyad, "Juridical Analysis of Law Enforcement of Money Laundering Crimes (Indonesian: Analisa Yuridis Penegakan Hukum Tindak Pidana Pencucian Uang)."

system but can also endanger the joints of society, nation, and state life based on Pancasila and the 1945 Constitution of the Republic of Indonesia. The Crime of Money Laundering is an important thing to consider and legally enforce in Indonesia. Money laundering is a well-organized crime that is difficult to carry out without the help of other parties, and this crime will likely spread abroad. Money laundering is not only a national problem in Indonesia but also a regional and international problem, so international cooperation is needed to overcome and combat this crime.²⁰

Law Number 8 of 2010 relates to the mitigation and handling of money laundering, which is considered a transnational organized crime.²¹ Money laundering is a criminal act that arises as a result or result of a predicate crime. The predicate crime determines whether a transaction can be classified as violating the TPPU Law. If an act is considered a criminal act, then the money obtained from that activity will be considered money laundering.²² Although there is regulation stating money laundering can be treated as a stand-alone crime, it is still difficult to fully implement it. The proof of money laundering necessitates evidence of the criminal offence that generated the wealth to be confiscated, either partially or entirely. The application of the reverse proof principle by defendants, with the assistance of gatekeepers, can have a detrimental impact on the prosecution process, as perpetrators are often able to disclose the source of their illicitly obtained wealth, which originated from business.²³ Consequently, law enforcement agencies must be able to prove the origin of the property or assets obtained from the criminal offence that produced the property or assets.²⁴

Proving Money Laundering Cases

Based on Article 189 of the Criminal Procedure Code (*Indonesian: Kitab Undang-undang Hukum Acara Pidana, KUHP*),²⁵ To sentence the defendant, the judge must obtain full confidence in the two pieces of evidence presented by the public prosecutor in the trial. Each piece of evidence is specifically related to the elements of the crime reported. If you look at Article 68 of the TPPU Law, in the process of proof, procedural law stipulated in the Criminal Procedure Code and other regulations that regulate trial procedures, such as the TPPU Law and the Law on the Corruption Eradication Commission, are used. However, in the context of the original crime, the burden of proof remains with the public prosecutor.

The evidentiary system adopted by the Criminal Procedure Code is a negative proof system based on the law. The principle of judicial independence strengthens the negative proof system.²⁶ The implementation of the negative proof system in Indonesia is under the provisions of Article 183 of the Criminal Procedure Code.²⁷ Article 183 of the Criminal Procedure Code

²⁰ Arsyad, "Juridical Analysis of Law Enforcement of Money Laundering Crimes (Indonesian: Analisa Yuridis Penegakan Hukum Tindak Pidana Pencucian Uang)."

²¹ "United Nations against Transnational Organized Crime" (n.d.).

²² "Overview of Predicate Crime (Indonesian: Tinjauan Umum Tentang Tindak Pidana Asal (Predicate Crime)), 2017, <https://suduthukum.com/2017/06/tinjauan-umum-tentang-tindak-pidana.html>. Sudut Hukum Portal Hukum Indonesia.

²³ Komisi Pemberantasan Korupsi, "Strengthening Evidence of Money Laundering in Corruption Cases in Indonesia (Indonesian: Penguatan Alat Bukti Tindak Pidana Pencucian Uang Dalam Perkara Tindak Pidana Korupsi Di Indonesia)," 2019, <https://acch.kpk.go.id/id/component/content/article?id=493:penguatan-alat-bukti-tindak-pidanapencucian-uang-dalam-perkara-tindak-pidana-korupsi-di-indonesia>.

²⁴ Badan Pemeriksa Keuangan Perwakilan Provinsi Jawa Tengah, "Criminal Proof of Origin Related to Money Laundering (CAML) in Corruption Cases in Indonesia (Indonesian: Pembuktian Pidana Asal Terkait Tindak Pidana Pencucian Uang (TPPU) Dalam Perkara Tindak Pidana Korupsi Di Indonesia)," 2019.

²⁵ "Law Number 8 of 1981 concerning the Criminal Procedure Law (Indonesian: Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana)" (1981).

²⁶ Romli Atmasasmita, *Kapita Selekta Criminal Law and Criminology (Indonesian: Kapita Selekta Hukum Pidana Dan Kriminologi)* (Bandung: Mandar Maju, 1995).

²⁷ Law Number 8 of 1981 concerning the Criminal Procedure Law and Criminology (Indonesian: Undang-Undang Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana).

states that to sentence a person; the judge must have two pieces of valid evidence in accordance with the law, as well as the judge's conviction if the criminal act really occurred and the defendant is the perpetrator. In the development of the criminal proof system, an innovation has been introduced called the burden of proof reversal system (*omkering van het bewijslast*). This system is known as reverse proof, where the burden of proof is placed on the suspect.²⁸ This means that in accordance with the Criminal Code, the public prosecutor is usually responsible for providing evidence of the defendant's guilt. However, in the reverse proof system, the defendant (accompanied by legal counsel) will give evidence to the contrary, namely if the defendant has not been legally proven and is convinced of guilt in carrying out the crime charged against him.

Law Number 8 of 2010 concerning the Prevention and Eradication of CAML, Articles 77 and 78 regulate reversing the burden of proof or reverse proof. Article 77 mandates that the defendant in the court hearing must provide evidence if his wealth does not originate from a criminal act. Article 78 requires the judge to order the defendant to give evidence if the property related to the case has nothing to do with the criminal act intended in Article 2 paragraph (1).

Money Laundering Crime as an Independent Crime

When we carry out plain interpretation,²⁹ Article 69 of the TPPU Law states that to carry out investigations, prosecutions, and examinations in court hearings for the crime of money laundering, it is not mandatory to first prove the original criminal act. Departing from Article 69 of the TPPU Law to crack down on TPPU cases, it is not an obligation to provide evidence in advance of the original crime (predicate crime).³⁰ Money laundering as a stand-alone crime can be defined by separating its object from the original crime.³¹ The object of the original criminal act is related to the act and the perpetrator, while the object of money laundering is related to the wealth obtained from the criminal activity. The difference in objects in these two criminal acts has an effect on the normative proof process. Proof of the original crime focuses on the actions and mistakes of the perpetrator, while proof related to wealth in the crime of money laundering requires evidence of the acquisition of assets that are suspected to have originated from the crime.³²

²⁸ Ikhwan Fahrojih, *Criminal Procedure Law for Corruption* (Indonesian: *Hukum Acara Pidana Korupsi*)(Malang: Setara Press, 2016).

²⁹ Merriam Webster, "Plain Meaning Rule," n.d.

³⁰ Badan Pemeriksa Keuangan Perwakilan Provinsi Jawa Tengah, "Criminal Proof of Origin Related to Money Laundering (CAML) in Corruption Cases in Indonesia (Indonesian: *Pembuktian Pidana Asal Terkait Tindak Pidana Pencucian Uang (TPPU) Dalam Perkara Tindak Pidana Korupsi Di Indonesia*)."

³¹ Muh. Afdal Yanuar, "Discourse Between the Position of Money Laundering as an Independent Crime and as a Follow-up Crime After the Constitutional Court Decision Number 90/PUU XIII/2015 (Indonesian: *Diskursus Antara Kedudukan Delik Pencucian Uang Sebagai Independent Crime Dengan Sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUU XIII/2015*)," *Jurnal Konstitusi* 16, no. 4 (2019): 725.

³² INTRAC's statement on the Petitioner's Application point 3.4 in the Constitutional Court Decision No. 90/PUU-XIII/2015, p. 62. It is necessary to note that although, in general the object of the crime of money laundering is the property of the proceeds of crime, it will be specifically for the perpetrators of Article 4 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, which is the main object of the offense is the act of providing convenience or facilities through the authority or means it has, against the assets of criminal proceeds obtained from the Original Criminal Perpetrator (*Indonesian: Keterangan PPAK atas Permohonan Pemohon poin 3.4 pada Putusan MK No 90/PUU-XIII/2015, hlm. 62. Perlu untuk menjadi catatan jika meskipun pada umumnya objek dari tindak pidana pencucian uang ialah harta kekayaan hasil kejahatan, bakal tetapi khusus untuk terhadap Pelaku Pasal 4 UU No 8 Tahun 2010 tentang Pencegahan serta Pemberantasan Tindak Pidana Pencucian Uang, yang menjadi objek utama dalam delik itu ialah perbuatan yang memberikan kemudahan ataupun fasilitas melalui otoritas ataupun sarana yang dimilikinya, terhadap harta kekayaan hasil tindak pidana yang diperoleh dari Pelaku Tindak Pidana Asal*).

Concrete evidence of the interpretation of TPPU is that an independent crime can be understood if a systematic interpretation of the articles in Articles 3, 4, 5, and Article 69 of the TPPU Law is made. Articles 3, 4, and 5 of the Anti-Corruption Law are articles that criminalize CAML where each article contains elements "known or reasonably suspected of originating from the proceeds of criminal acts."³³ The element of "known or suspected origin from the proceeds of a criminal act" is an important element in the delinquency of money laundering.³⁴ Then, if you pay attention to the definition of "known or suspected if the wealth is derived from the proceeds of crime," then it can be understood that the crime does not always need to be proven first. At the same time, the elements known or suspected can be concluded by the Panel of Judges based on the facts obtained in the trial.³⁵ The above description reflects the position of CAML as an independent crime related to all important elements of the CAML offense.³⁶ In the case of Money Laundering, all articles in the Anti-Money Laundering Law, namely Article 3, Article 4, and Article 5, have an important element called 'known or suspected'. This phrase is taken from Article 6 of the United Nations Convention on Transnational Organized Crime (UNTOC).³⁷ The meaning of known or suspected is if the perpetrator knows or should suspect that his wealth comes from a crime. Evidence is not always required to provide evidence of the crime itself. The Panel of Judges can conclude that the elements are known or suspected based on the facts found during the trial.³⁸ This element is included in the money laundering offense and is related to the evidence in the case.³⁹ With the existence of Article 69 in the TPPU Law, TPPU can be considered an independent crime. This includes the logical consequences of the provision.⁴⁰

Effectiveness of Implementation of Provisions on Confiscation of Assets

Based on the analysis of legal evaluation on international and national cooperation in law enforcement by the National Center for Legal Analysis and Evaluation, the National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia in 2017 and to support the follow the money principle of the TPPU Law, strict regulation is needed in the process of confiscating assets hidden by criminal offenders, especially in terms of

³³ As stated in the Constitutional Court Decision Number 77/PUU-XII/2014, hlm. 203-204. "Considering if the phrase "suspected" or "suspected" contained in Article 2 paragraph (2), Article 3, Article 4 and Article 5 paragraph (1) of Law 8/2010 according to the Petitioner's postulates causes legal uncertainty and injustice so that it is contrary to Article 28D paragraph (1) of the 1945 Constitution (*Indonesian: Menimbang jika frasa "patut diduga" ataupun "patut diduganya" yang terdapat dalam Pasal 2 ayat (2), Pasal 3, Pasal 4 dan Pasal 5 ayat (1) UU 8/2010 menurut dalil Pemohon menimbulkan ketidakpastian hukum dan ketidakadilan sehingga bertentangan dengan Pasal 28D ayat (1) UUD 1945*).

³⁴ Yanuar, "Discourse Between the Position of Money Laundering as an Independent Crime and as a Follow-up Crime After the Constitutional Court Decision Number 90/PUU XIII/2015 (*Indonesian: Diskursus Antara Kedudukan Delik Pencucian Uang Sebagai Independent Crime Dengan Sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUU XIII/2015*)."

³⁵ Mahkamah Agung, "Money Laundering Academic Papers (*Indonesian: Naskah Akademis Money Laundering*)" (2006).

³⁶ Yanuar, "Discourse Between the Position of Money Laundering as an Independent Crime and as a Follow-up Crime After the Constitutional Court Decision Number 90/PUU XIII/2015 (*Indonesian: Diskursus Antara Kedudukan Delik Pencucian Uang Sebagai Independent Crime Dengan Sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUU XIII/2015*)."

³⁷ Mahkamah Konstitusi, "Constitutional Court Decision Number 90/PUU-XIII/2015 (*Indonesian: Putusan Mahkamah Konstitusi Nomor 90/PUU-XIII/2015*)" (2015).

³⁸ Mahkamah Agung, Naskah Akademis Money Laundering.

³⁹ Yanuar, "Discourse between the Position of Money Laundering Delik as an Independent Crime and as a Follow-up Crime after the Constitutional Court Decision Number 90/PUU XIII/2015 (*Indonesian: Diskursus Antara Kedudukan Delik Pencucian Uang Sebagai Independent Crime Dengan Sebagai Follow Up Crime Pasca Putusan MK Nomor 90/PUU XIII/2015*)."

⁴⁰ Mahkamah Konstitusi, Constitutional Court Decision No. 90/PUU-XIII/2015 (*Indonesian: Putusan Mahkamah Konstitusi Nomor 90/PUU-XIII/2015*).

concealment or carrying out money laundering transactions.⁴¹ Article 9, Article 79 paragraph (4), and Article 79 paragraph (5) of the TPPU Law have provided rules for confiscating property. Some of the challenges to carrying out tracking and confiscation of assets, especially related to assets that exist abroad, include:⁴²

- a. Indonesia does not have an Asset Recovery Law, and the bill was initiated in 2008;
- b. The Indonesian court's decision does not detail the assets abroad related to the crime decided in the District Court;
- c. Asset hunting teams need to be trained so that the implementation of investigations and prosecutions related to assets abroad is better;
- d. The sole authority of MLA from the Ministry of Law and Human Rights so that it can collaborate with stakeholders (Prosecutors and Investigators);
- e. Central Authority MLA is in the Ministry of Law and Human Rights, where the Minister of Law and Human Rights is not an executor nor a law enforcer, so it sometimes hampers the decision to ask for assistance related to requests for account information of someone abroad who is involved in the crime of origin and TPPU, the existence of perpetrators abroad and applications for asset confiscation abroad.

Law enforcement against CAML is expected to be carried out more effectively and efficiently by presenting laws related to asset recovery. So, efforts to complete the law are a priority for the stakeholders of the AML regime in Indonesia.

The Basis of the Application of Transnational Crime in the Field of Taxation: A Comparative Study of Switzerland and America

Indonesia, through the Ministry of Law and Human Rights, entered into an MLA agreement with Switzerland in August 2017. The cooperation was initiated by Switzerland, a country with a place to store assets from other countries, including the State of Indonesia. The MLA agreement has provided Indonesia with an advantage in limiting the movement of criminals who want to hide the proceeds of their crimes abroad. The ultimate goal of the presence of the MLA agreement between Indonesia and Switzerland is to assist Indonesia, namely to make forcible efforts against the perpetrators of criminal acts such as searching, misappropriating accounts, or knowing the opening of bank accounts belonging to suspects. Another form that Switzerland has given Indonesia is that it can request data on the list of companies allegedly related to money laundering but does not include extradition and punishment for criminal offenders. The presence of this agreement will provide a warning for corruptors and tax evaders not to channel funds suspected of crimes to the Swiss state.

Tax crime is a type of crime that is difficult to handle because the proof process is quite long because it is related to many sectors, both government, private and the wider community. All relevant sectors must dare to take preventive steps to avoid all activities detrimental to the country's economy. Provisions regarding the relationship between taxes and criminal law can be seen through Article 103 of the Criminal Code, which explains that including provisions in the tax law can be threatened as both a crime and a violation. This is also explained in Law Number 16 of the year 2000 concerning General Provisions and Taxation Procedures. Law

⁴¹ Muhammad Syammakh Daffa Alghazali, Fajri Kurniawan, and Afdhal Fadhila, "Determination of Efforts to Recover State Financial Losses Through the Role of the Prosecutor's Office in the Confiscation of Assets for Corruption Crimes (Indonesian: Determinasi Upaya Pemulihan Kerugian Keuangan Negara Melalui Peran Kejaksaan Terhadap Perampasan Aset Tindak Pidana Korupsi)," *Jurnal Hukum Lex Generalis* 3, no. 7 (2020): 345.

⁴² Pusat Analisa dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM Republik Indonesia, "Legal Evaluation Analysis Related to Global and Regional Cooperation in the Context of Law Enforcement (Indonesian: Analisa Evaluasi Hukum Terkait Dengan Kerjasama Global Dan Regional Dalam Rangka Penegakan Hukum)" (Jakarta, 2017).

enforcement in the field of taxation has not functioned or been carried out as expected because:⁴³

- a. The existence of a taxpayer's mental attitude that is oriented towards solving tax problems by means of negotiation/compromise;
- b. There is a tax doctrine that provides tax benefits that prioritize the interests of the state;
- c. Lack of public participation (taxpayers) in the settlement of tax crimes through the criminal justice system;
- d. There is a policy in taking steps by the tax authorities;
- e. Tax crimes require relatively reasonable actions in the audit process; f. Tax crimes are complaint offenses;
- f. The firmness of the tax authorities themselves is still lacking;
- g. Difficult to prove tax crimes;
- h. The tax apparatus prioritizes administrative efforts and uses non-penal methods.

If you look at the concept of asset confiscation with criminal provisions, it is classified as a mechanism in *Personam*. Asset forfeiture in *Personam* is an action aimed at a person's personal self (individual), therefore it requires proof of the defendant's fault first before seizing assets from the defendant.⁴⁴ In the confiscation of assets in *Personam*, there are formal requirements that must be met in punishing the defendant and also to confiscate the defendant's assets, including the characteristics of the imposition of decisions in the criminal law:⁴⁵

- a. It must be based on a specific charge and refers to a specific criminal act, not using a general identification of the crime committed;
- b. Requires evidence that is in accordance with the standard of proof to meet the requirements of the value of proof;
- c. The defendant is not allowed to be forced to admit his guilt (incriminated himself) as proof of guilt at trial;
- d. Resulting in the imposition of sanctions that are public. If found not guilty, prosecution for the same crime should not be carried out.

Asset forfeiture with the mechanism in *Personam* has several stages:

a. Asset Tracking

Investigation and asset tracking aims to identify assets, asset storage locations, evidence of asset ownership, and their relationship with the criminal acts committed.⁴⁶

b. Freezing of Assets

Under article 2 letter (f) of the UNCAC, the definition of freezing or seizure is a temporary prohibition on the transfer, convention, transfer or transfer of wealth or a temporary expropriation of responsibility or control over property based on an order issued by a court or other competent authority.⁴⁷

c. Forfeiture of Assets

⁴³ Antory Royan Adyan, "Criminal Law Enforcement Against Criminal Acts in the Field of Taxation (Indonesian: Penegakan Hukum Pidana Terhadap Tindak Pidana Di Bidang Perpajakan)," *Jurnal Pranata Hukum* 2, no. 2 (2007): 89.

⁴⁴ Linda M. Samuel, "Financial Transaction Reporting and Analysis Center (Indonesian: Pusat Pelaporan Dan Analisis Transaksi Keuangan)," in *Implementation of Presentation on the Asset Forfeiture System in the United States and Discussion on the Draft Law on Asset Forfeiture in Indonesia (Indonesian: Pelaksanaan Pemaparan Mengenai Sistem Perampasan Aset Di Amerika Serikat Dan Diskusi Mengenai Rancangan Undang-Undang Tentang Perampasan Aset Di Indonesia)* (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan, 2008), 2.

⁴⁵ Ian Smith, Tim B. Owen, and Andrew, *Asset Recovery: Criminal Confiscation and Civil Recovery* (United Kingdom: Reed Elsevier Ltd, 2003).

⁴⁶ Purwarning M. Yanuar, *Return of Assets Proceeds of Corruption (Indonesian: Pengembalian Aset Hasil Korupsi)* (Bandung: PT. Alumni, 2007).

⁴⁷ UNODC, "United Nations Office on Drugs and Crime" (Jakarta, 2009).

According to Article 2 letter (f) of the UNCAC, the definition of forfeiture is the revocation of property for perpetuity based on an order of a court or other authorized body.⁴⁸

d. Return and Assault to the Victim.⁴⁹

The above explanation provides urgency for Indonesia to issue the Asset Forfeiture Law, considering that it will provide benefits to the country that owns and applies it as has happened in the United States v. \$8,850 in Currency, 461 U.S. 555 (1983) No. 81-1062.⁵⁰ The Bank Secrecy Act of 1970, 31 U.S.C. § 1101, requires a person who knowingly brings monetary instruments in excess of \$5,000 into the United States to file a report with the Customs Office stating the amount carried. The government is authorized under 31 U.S.C. § 1102(a) to seize and retrieve assets necessary to make a report. On September 10, 1975, plaintiff Vasquez, upon arrival at Los Angeles International Airport from Canada, stated that he did not carry more than \$5,000 in currency, but a customs inspector confiscated US\$8,850 in United States currency. On September 18, 1975, the Customs Service notified Vasquez by letter that the seized currency would be confiscated. He still has the right to petition for remission or mitigation. A week later, he filed the petition. Then, from October 1975 to April 1976, the Customs Office, which suspected Vasquez of committing a narcotics offense, conducted an investigation into the petition. After contacting federal, state and Canadian law enforcement officials, it concluded that there was no evidence of any violations. Vasquez was charged in June 1976 and convicted in December 1976, of knowingly and knowingly making false statements to Customs officials. In March 1977, a complaint for seizure of the currency under 31 U.S.C. § 1102(a) was filed in Federal District Court. Vasquez claimed that the 18-month delay between the seizure of the currency and the filing of the forfeiture action violated his rights in legal proceedings. The District Court declared that the elapsed time was reasonable based on the circumstances and declared that the currency was forfeited. The Court of Appeal reversed and ordered the discontinuation of the confiscation action.

Law of the Republic of Indonesia Number 28 of 2007 concerning the Third Amendment to Law No. 6 of 1983 concerning General Provisions and Procedures of Taxation and Law Number 7 of 2021 concerning the Harmonization of Tax Regulations

Taxes are the transfer of wealth from the private sector to the public sector that comes from laws that are coercive but do not get a reward (*tegenprestatie*) that can be directly demonstrated, which is used as a tool of encouragement, inhibition, or prevention in order to achieve goals that exist outside the state financial sector.⁵¹ Taxation is related to the economy in general, especially in the public sector, which has implications for aspects of economic life. In general, taxes accommodate financing expenditures by the state, and their fulfillment is related to fiscal policy by the government. In general, revenue in taxation has two purposes, namely:⁵² as a balancing instrument between expenditure and revenue to form a budget surplus and its use to pay off previous state debts or budget deficits due to borrowing.⁵³

⁴⁸ UNODC.

⁴⁹ "Academic Manuscript of the Draft Law on Confiscation of Criminal Assets (Indonesian: Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana)" (2012).

⁵⁰ Muhammad Yusuf, *Seizing Corruptors' Assets: Solutions to Eradicate Corruption in Indonesia* (Indonesian: Merampas Aset Koruptor: Solusi Pemberantasan Korupsi Di Indonesia)(Jakarta: PT. Kompas Media Nusantara, 2013).

⁵¹ Rochmat Soemitro, *Brief Introduction to Tax Law* (Indonesian: Pengantar Singkat Hukum Pajak)(Bandung: PT Eresco, 1992).

⁵² Rukiah Komariah, "Tax Crimes in Tax Avoidance, Irregularities, Fraud and Tax Fraud (Indonesian: Tindak Pidana Perpajakan Dalam Penghindaran, Penyimpangan, Penipuan Serta Pemalsuan Pajak)," *Jurnal Legislasi Indonesia* 3, no. 4 (2006): 2.

⁵³ Komariah, "Tax Crimes in Tax Avoidance, Irregularities, Fraud and Tax Fraud (Indonesian: Tindak Pidana Perpajakan Dalam Penghindaran, Penyimpangan, Penipuan Serta Pemalsuan Pajak)."

Tax Crimes according to the Law on Tax Provisions and Procedures

One of the unique aspects of the tax collection system in Indonesia is the existence of a self-assessment system, so the tax administration must actively control the tax collection process through the tasks of coaching, serving, supervising, and implementing tax sanctions.⁵⁴ A healthy government, in carrying out the tax function, should form an integrated and comprehensive tax system, both internally and externally, with the tax justice system. The goal is to create the rule of law based on legal certainty in order to achieve justice. The system is designed partially and will have unintended legal implications. In another view, the tax system in tax law must support the increase in revenue from taxes for the state treasury and help economic growth. This will certainly provide an opportunity for the government to carry out its duties and functions in a complex and responsible manner.⁵⁵ The formation of tax law needs to look at the right and correct legal principles and principles, including the implementation of them. This is important because laws formed after independence tend to become obsolete quickly and are of poor quality. In fact, several laws are formed with characteristics similar to colonial law, such as general provisions and tax procedures as well as income tax laws that still inherit the colonialist tax collection system.⁵⁶

On the other hand, there are still many taxpayers who do not understand their rights and obligations in terms of taxation, so there is often reluctance and inability to solve tax problems using the correct legal procedures.⁵⁷ Crimes that occur in the realm of taxation are closely related to tax law enforcement which aims to accommodate tax employees, taxpayers, tax officials, or other parties to comply with the provisions of tax regulations.⁵⁸ From a juridical perspective, crimes in the field of taxation show that the crime is related to the substance of tax law, because it violates the principles of tax law. Sociologically, tax crimes are a reflection of the reality that occurs in society and are the result of various activities carried out by taxpayers, tax employees, tax officials, and other parties. On the other hand, philosophically, from taxation, there is an implication of changing values in society, especially when taxation activities are carried out as a form of participation in the life of the nation and state.⁵⁹

Tax disputes occur between individuals as legal subjects and private legal entities with legal bureaucrats and the government. Based on the legal legitimacy obtained, the state has the competence to make laws or regulations that bind all citizens. If we trace history, the emergence of crimes in the field of taxation is based on tax law rules that try to distinguish between *dolus* (intentionality) and *culpa* (negligence). The difference lies in the intention of the perpetrator when carrying out their respective duties and obligations. Crimes in the field of taxation are the beginning of acts that violate tax laws related to the implementation of regulations and tax laws.⁶⁰

The principle of legality is a fundamental principle in criminal law. The principle of legality in tax regulations is realized through a formulating policy regarding tax criminal acts

⁵⁴ Marwan Effendy, *Discretion, Legal Discovery, Corporations, and Tax Amnesty in Law Enforcement* (Indonesian: *Diskresi, Penemuan Hukum, Korporasi, Dan Tax Amnesty Dalam Penegakan Hukum*) (Jakarta: Referensi, 2012).

⁵⁵ Mochtar Kusumaatmadja, *Legal Concepts in Development* (Indonesian: *Konsep-Konsep Hukum Dalam Pembangunan*) (Bandung: Alumni, 2002).

⁵⁶ Bagir Manan, "The Role of Law Towards and in New Indonesia (Indonesian: *Peranan Hukum Menuju Dan Dalam Indonesia Baru*)" (Surabaya, 2000).

⁵⁷ Siti Kurnia Rahayu, 2010, *Indonesian Taxation: Formal Concepts and Aspects* (Indonesian: *Perpajakan Indonesia: Konsep dan Aspek Formal*), Penerbit Graha Ilmu, Yogyakarta. hlm. 142.

⁵⁸ Muhammad Djafar Saidi, *Crimes in the Field of Taxation* (Indonesian: *Kejahatan di Bidang Perpajakan*), (Jakarta: PT Raja Grafindo Persada, 2011).

⁵⁹ Effendy, *Diskresi, Legal Discovery, Corporations, and Tax Amnesty in Law Enforcement* (Indonesian: *Penemuan Hukum, Korporasi, Dan Tax Amnesty Dalam Penegakan Hukum*).

⁶⁰ Effendy, *Diskresi, Legal Discovery, Corporations, and Tax Amnesty in Law Enforcement* (Indonesian: *Penemuan Hukum, Korporasi, Dan Tax Amnesty Dalam Penegakan Hukum*).

regulated in Chapter VIII concerning criminal provisions in the Law on General Provisions and Tax Procedures, namely Articles 38, 39, 39A, 40, 41, 41A, 41B, 41C, 43, and 43A. This shows how important legal certainty is in the criminal law system in Indonesia.⁶¹ The actions of tax crimes include:⁶²

- Misuse or use without the right of the Taxpayer Identification Number;
- Refusing to conduct an examination;
- Showing false bookkeeping or documents;
- Taxpayers do not deposit taxes that have been deducted or collected so that they can cause losses in state revenue;
- Taxpayers issue and/or use tax invoices, proof of tax collection, proof of tax withholding, and/or proof of false tax payment;
- The taxpayer attaches information whose content is incorrect,⁶³ etc.

The above modus operandi is a practice of tax crimes that are commonly committed by taxpayers and have been regulated in the KUP Law. Taxpayers are also looking for loopholes in the regulations, and many of them are looking for asylum countries with very low taxes (Tax Haven) to avoid taxes in Indonesia and/or obscure the suspicious origin of money. This is a common phenomenon that does not only occur in Indonesia, but we, as FATF member countries, should look for strategic steps to overcome this phenomenon.

Tax Crime as Ultimum Remedium in the Law on General Provisions and Tax Procedures

When running their business, entrepreneurs consider tax payments as a burden that must be minimized so that business profits can be optimized. In the business world, paying taxes is considered a burden that must be reduced through maximum efficiency. Erly Suandy stated that managers should strive to minimize the tax burden as much as possible to increase the efficiency and competitiveness of the company.⁶⁴ Lawrence M Friedman's theory of the concept of Culture Law refers to the atmosphere of social thought and social forces that affect how the law is applied, avoided, or abused. The concept of Legal Culture is closely related to people's legal awareness. When people's legal awareness increases, a good legal culture will be created, which can change people's mindset about law in general. The level of community compliance with the law can be used as the main indicator of the extent to which the law can function properly.⁶⁵ In tax law, the imposition of criminal sanctions is known as the last alternative that is applied as a last resort in increasing taxpayer compliance. This criminal sanction is applied to guide so that taxpayers are more compliant. However, criminal sanctions are only implemented if administrative law is no longer effective in achieving its goals.⁶⁶ According to Sudarto, criminal sanctions in tax law are considered more cruel than sanctions in other laws, but these criminal

⁶¹ Ruben Achmad, "Criminal Law Aspects in Tax Crimes (Indonesian:Aspek Hukum Pidana Dalam Tindak Pidana Perpajakan)," *Jurnal Hukum Doctrinal* 1, no. 2 (2016): 6.

⁶² Achmad, "Criminal Law Aspects in Tax Crimes (Indonesian: Aspek Hukum Pidana Dalam Tindak Pidana Perpajakan)."

⁶³ Mudzakkir, "Criminal Law Regulation in the Field of Taxation and Its Relationship with General and Special Criminal Law (Indonesian: Pengaturan Hukum Pidana Di Bidang Perpajakan Dan Hubungannya Dengan Hukum Pidana Umum Dan Khusus)," *Jurnal Legislasi Indonesia* 8, no. 1 (2011): 48.

⁶⁴ Erly Suandy, *Tax Planning (Indonesian: Perencanaan Pajak)* (Jakarta: Salemba Empat, 2003).

⁶⁵ Mustafa Bola dan Romi Librayanto, "Correlation of the decision of the judge of the first instance, the appellate level, and the cassation level (a study of the school of legal thought) (Indonesian: Korelasi Putusan Hakim Tingkat Pertama, Tingkat Banding, Dan Tingkat Kasasi (Suatu Studi Tentang Aliran Pemikiran Hukum))," *Hasanuddin Law Review* 1, no. 1 (2015): 40.

⁶⁶ Nurchalis, "Effectiveness of Criminal Sanctions in the Law on General Provisions of Taxation in Overcoming Corporate Tax Evasion (Indonesian: Efektivitas Sanksi Pidana Dalam Undang-Undang Ketentuan Umum Perpajakan Dalam Menanggulangi Penghindaran Pajak Korporasi)," *Jurnal Hukum Dan Peradilan* 7, no. 1 (2018): 39.

sanctions are still a tool of social control that is used as a last resort after all other efforts outside the criminal law have failed.⁶⁷

The tax criminal law in doctrine is called *ius singular* because it has characteristics and characteristics that are more oriented to the economic aspect to obtain the maximum state revenue.⁶⁸ The tax criminal law itself is also included in economic crimes which have unclear definitions both at the national and international levels.⁶⁹ At the international level, there are many proposals regarding the terminology used, such as white-collar crimes, commercial crimes, corporate crimes, economic crimes, business crimes, and other terminology.⁷⁰ In addition, in the economic context, there is also a terminology for the parent of financial crime, namely financial abuse, where there is financial crime. However, the terminology of financial abuse is not so clear and quite broad.⁷¹

The definition of financial abuse includes not only illegal activities that can damage the financial system but also activities related to taxes and other economic regulations.⁷² In the field of criminal law, tax criminal law is known as *ius singulare* because it has rules and sanctions that are different from criminal law in general.

If we look at the provisions of the tax criminal law, then the material provisions related to tax crimes are specifically regulated in the Law on General Provisions and Tax Procedures. The Criminal Code regulates formal provisions that govern violations of procedural law provisions. The legal subjects who are subject to tax criminal sanctions are very special, namely taxpayers and tax officers.⁷³ Tax criminal law has a very specific character. In addition to containing administrative and criminal legal norms and sanctions, tax criminal law is also based on principles of an economic and financial nature.⁷⁴

When viewed from the division of special criminal law, namely internal special criminal law and external special criminal law. Tax criminal law is included in the category of special external criminal law. Meanwhile, other special external criminal laws are included in the category of administrative law that are subject to criminal sanctions. Administrative sanctions are used as a substitute for criminal sanctions based on the principle of *una via*. This means that if a case has been resolved through administrative channels, then there is no longer an opportunity to resolve the case through other legal channels.⁷⁵ However, in matters of tax regulation, administrative and criminal sanctions are both enforced, but initially, criminal sanctions are considered a last resort. Criminal is used only when other law enforcement actions are unsuccessful, following the nature of the tax criminal law mentioned earlier.

Fundamental changes to the KUP Law must be considered if the tax criminal law is only used for administrative laws that are given criminal sanctions. The substance of the amended tax criminal law must follow the nature and characteristics of the special criminal law that

⁶⁷ Tongat Sudarto, *Fundamentals of Indonesian Criminal Law in the Perspective of Reform* (Indonesian: *Dasar-Dasar Hukum Pidana Indonesia Dalam Perspektif Pembaharuan*) (Malang: UMM Press, 2009).

⁶⁸ Edward Omar Sharif Hiariej, "Lex Specialis in Criminal Law (Indonesian: Lex Specialis Dalam Hukum Pidana)," *KOMPAS* (Jakarta, 2018).

⁶⁹ Bengt Larsson, "What Is 'economic' about 'Economic Crime'?" in *White-Collar Crime Research. Old Views and Future Potentials*, *The National Council for Crime Prevention* (Sweden, 2001).

⁷⁰ Larsson.

⁷¹ International Monetary Fund, "Financial System Abuse, Financial Crime and Money Laundering," *Background Paper*, 2001.

⁷² International Monetary Fund.

⁷³ Edward Omar Sharif Hiariej, "Principles of Lex Specialis Systematis and Criminal Law (Indonesian: Asas Lex Specialis Systematis Dan Hukum Pidana)," *Jurnal Penelitian Hukum De Jure* 21, no. 1 (2021): 7.

⁷⁴ Hiariej, "Principles of Lex Specialis Systematis and Criminal Law (Indonesian: Asas Lex Specialis Systematis Dan Hukum Pidana)."

⁷⁵ Hiariej, "Principles of Lex Specialis Systematis and Criminal Law (Indonesian: Asas Lex Specialis Systematis Dan Hukum Pidana)."

places criminal sanctions as a last resort, with administrative sanctions as its replacement.⁷⁶ If the application of criminal law as a last resort can only be carried out after previous administrative efforts have not solved the problem. In other words, criminal law actions should only be taken as a last resort through the criminal justice process.⁷⁷

Expiration of Tax Criminal Prosecution

The regulations regarding taxation that apply in Indonesia have the same time limit for prosecuting tax crimes both in the law that regulates crimes in central and regional taxes. Article 40 of Law No. 6 of 1983, Article 26 of Law No. 12 of 1985, and Article 38 of Law No. 18 of 1997 expressly explain that criminal acts in the field of taxation cannot be prosecuted after ten (10) years since the tax is owed, the expiration of the tax period, the end of the tax year, or the end of the tax year concerned.⁷⁸

The Influence of Mutual Legal Assistance as an Instrument for the Eradication of International Crime in the Field of Taxation

Efforts to overcome CAML, which has a transnational nature, require strong international cooperation to prevent and combat CAML. If a country has an effective CAML instrument but other countries do not, the consequences will reduce the prevention and eradication of CAML as a whole. A logical consequence is that FATF member countries will isolate countries that do not handle TPPU effectively through countermeasures to prevent such leaks.⁷⁹

Steps taken to crack down on international crimes include bilateral or multilateral cooperation efforts in preventing and eliminating international crimes. An example of the implementation of law enforcement through long-standing cooperation in international legal practice is extradition.⁸⁰ A legal institution that is considered capable of overcoming crimes on an international scale is extradition. Extradition institutions are becoming increasingly important as an effective legal means of resolving them.⁸¹ The implementation of Law Number 1 of 2006 concerning Mutual Legal Assistance in Criminal Matters states that Mutual Legal Assistance in Criminal Matters (MLA Law) is one of the five forms of international cooperation enshrined in the United Nations Convention Against Transnational Organized Crime (UNTOC). Indonesia has ratified the United Nations Convention Against Transnational Organized Crime through Law Number 5 of 2009. The convention does not provide a definitive definition of transnational organized crime but does explain if the crime is carried out by organized crime groups that cross national borders. Article 7 of the UNTOC already describes measures to combat money laundering as one of the international organized crimes that:

“To prevent and uncover all types of money laundering, an extensive regulatory and supervisory system for both banks and non-bank financial institutions, as well as other

⁷⁶ Hiariej, “Principles of Lex Specialis Systematis and Criminal Law (Indonesian: Asas Lex Specialis Systematis Dan Hukum Pidana).”

⁷⁷ Yoserwan, “Secondary Functions of Criminal Law in Countering Tax Crimes (Indonesian: Fungsi Sekunder Hukum Pidana Dalam Penanggulangan Tindak Pidana Perpajakan),” *Jurnal Penelitian Hukum DE JURE* 20, no. 2 (2020): 175.

⁷⁸ Marihot Pahala Siahaan, *Formal Tax Law (Indonesian: Hukum Pajak Formal)* (Yogyakarta: Graha Ilmu, 2010).

⁷⁹ Law Number 1 of 2006 concerning Mutual Assistance in Criminal Matters (Indonesian: Undang-Undang Nomor 1 Tahun 2006 tentang Bantuan Timbal Balik Dalam Masalah Pidana).

⁸⁰ Noer Indriati, “Mutual Legal Assistance Treaties (MLATS) as an Instrument for the Eradication of International Crime (Indonesian: Mutual Legal Assistance Treaties (Mlats) Sebagai Instrumen Pemberantasan Kejahatan Internasional),” *Jurnal Dinamika Hukum*, Vol. 9, no. 2 (2004): 106.

⁸¹ I Wayan Parthiana, *International Criminal Law and Extradition (Indonesian: Hukum Pidana Internasional Dan Ekstradisi)* (Bandung: Yrama Widya, 2004).

vulnerable entities, will be established within its jurisdiction. The system will prioritize customer identification, record-keeping, and the reporting of suspicious transactions”.

Until 2022, Indonesia has approved several bilateral and multilateral agreements related to MLA cooperation, namely:⁸²

- 1) On December 20, 1997, ASEAN presented on transnational crime.
- 2) Law Number 8 of 2006 is an agreement between Indonesia and China that contains mutual legal assistance in criminal matters.
- 3) The ASEAN MLA Treaty is a cooperation agreement between ASEAN countries, such as Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, and Vietnam, which was signed on November 29, 2004, in Kuala Lumpur, Malaysia, and regarding mutual assistance in criminal matters.
- 4) Law No. 3 of 2012 is an agreement between the Government of Indonesia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China regarding Mutual Legal Assistance in Criminal Matters;
- 5) Through Law Number 8 of 2014, the Governments of the Republic of Indonesia and Korea have agreed on mutual legal assistance in criminal matters.
- 6) The governments of the Republic of Indonesia and India have agreed on an agreement on mutual legal assistance in criminal matters which was inaugurated through Law Number 9 of 2014.
- 7) On June 27, 2013, the Government of the Republic of Indonesia signed an agreement on Mutual Legal Assistance in Criminal Matters between the Republic of Indonesia and the Socialist Republic of Vietnam.
- 8) On February 2, 2014, the Government of the Republic of Indonesia signed an Agreement with the United Arab Emirates on Mutual Legal Assistance in Criminal Matters. This agreement was ratified through Law Number 6 of 2019 on March 13, 2019.
- 9) In 2020, Law No. 5 on the Ratification of the Agreement on Mutual Legal Assistance in Criminal Matters between the Republic of Indonesia and the Swiss Confederation was passed.
- 10) In 2021, Law of the Republic of Indonesia No. 5 on the Ratification of the Agreement between the Republic of Indonesia and the Russian Federation on Mutual Legal Assistance in Criminal Matters was passed.

The basis of crime in the field of taxation that allows the perpetrators to act across countries is natural when applying MLA instruments in law enforcement. Information issued by the National Center for Legal Analysis and Evaluation of the National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia, Indonesia has implemented ten reciprocal agreements in criminal matters with external parties since the enactment of Law of the Republic of Indonesia Number 1 of 2006 concerning Mutual Assistance in Criminal Matters. From a normative perspective, the problems that arise in the MLA Law are related to terms that need to be explained in more detail and adjusted to other laws and regulations such as the Criminal Procedure Code and the Law. The biggest challenge in implementing the MLA Law lies in the coordination between the Ministry of Law and Human Rights as the central authority, the Police, and the Attorney General's Office. Therefore, it is important to set a period for providing mutual assistance in criminal matters and to develop clear implementation and technical instructions.⁸³ One of the common problems faced is when

⁸² Pusat Analisa dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM Republik Indonesia, “Legal Evaluation Analysis Related to Global and Regional Cooperation in the Context of Law Enforcement (Indonesian: Analisa Evaluasi Hukum Terkait Dengan Kerjasama Global Dan Regional Dalam Rangka Penegakan Hukum).”

⁸³ Pusat Analisa dan Evaluasi Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM Republik Indonesia, “Legal Evaluation Analysis Related to Global and Regional Cooperation in

the requesting country considers the system of investigation, prosecution, and court as a unit, while in Indonesia, there is a separation between the three systems. This is often an obstacle in requesting legal assistance from foreign countries.⁸⁴ MLA instruments can run effectively with several improvements in terms of regulation and implementation.

Conclusion

One of the practices that is detrimental to the State of Indonesia is tax evasion. Taxpayers carry out tax evasion with the intention of reducing taxes that should be paid by violating tax regulations such as providing false data or hiding data. Criminal practices in the field of taxation are one of the original CAML, which then makes law enforcement on criminal acts in the field of taxation and anti-money laundering be carried out as a unit. This affects criminal enforcement in taxation, especially in criminal acts with the flow of funds in various countries.

The crime of tax evasion, followed by the crime of money laundering, is a sophisticated crime that requires special treatment in its enforcement. Moreover, when these two types of criminal acts are carried out across jurisdictions or transnational, law enforcement in both needs to be supported by strong cooperation and coordination between countries. MLA, as one of the instruments of cross-border law enforcement, is the key to preventing and eradicating criminal acts involving cross-country, one of which is tax evasion and money laundering.

However, the implementation of MLA in various countries, including Indonesia, faces challenges caused by differences in the legal system and the law enforcement system adhered to. The MLA instrument can run effectively with several improvements in terms of regulation and implementation. In the Indonesian context, the challenge of implementing MLA occurs because of the incomplete regulation regarding asset confiscation regulations, especially those regulating cross-border cooperation. This needs to be an important concern for all stakeholders in the AML regime in Indonesia so that the implementation of MLA to prevent and eradicate tax evasion and anti-money laundering crimes in Indonesia is more effective.

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⁸⁴ Mudzakkir, "A Study of Law No. 1 of 2006 concerning Mutual Assistance in Criminal Matters (*Indonesian: Kajian Terhadap UU No 1 Tahun 2006 Tentang Bantuan Timbal Balik Dalam Masalah Pidana*)," 2012.

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