

Challenges in Proving the Element of “Knowing or Reasonably Suspecting” in Criminal Liability of Passive Money Launderers in Narcotics Cases

Based on Law No. 8 of 2010

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Abstract

Money laundering, a sophisticated financial crime designed to obscure the illicit origins of assets, frequently has narcotics trafficking as a significant predicate offense in Indonesia, often orchestrated by organized criminal syndicates. Indonesian Law No. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (AML Law) delineates culpability for passive perpetrators. Specifically, Article 5 criminalizes individuals who receive or control assets derived from criminal activities when they are "knowing or reasonably suspecting" their illicit nature. This normative legal research critically analyzes the profound evidentiary challenges inherent in substantiating this crucial men's rea element—"knowing or reasonably suspecting"—in cases of passive money laundering linked to narcotics offenses. The study scrutinizes the AML Law, ancillary narcotics legislation, established legal doctrines (differentiating *dolus* for "knowing" from *culpa* for "reasonably suspecting," often approached via the *pro parte dolus pro parte culpa* doctrine), and relevant judicial precedents. Principal difficulties arise from the subjective nature of proving the accused's mental state, necessitating prosecutorial reliance on circumstantial evidence and objective indicators such as unusual transactions. While Article 69 of the AML Law obviates the need for prior conviction of the predicate offense, and Article 77 introduces a reversed burden of proof concerning asset legitimacy, the prosecutor retains the fundamental onus of establishing the defendant's requisite knowledge or reasonable suspicion. Consequently, the adjudication of this men's real element presents a formidable jurisprudential challenge, frequently contingent upon judicial interpretation of indirect evidence and the totality of circumstances.

Keywords: *Money Laundering, Passive Perpetrator, Knowing or Reasonably Suspecting, Narcotics Offense.*

INTRODUCTION

Money laundering is a complex crime involving various efforts to hide or obscure the origin of criminally obtained assets, so that it appears to come from a legitimate source. In Indonesia, one of the significant predicate offenses related to money laundering is drug trafficking. Drug crimes and money laundering are often closely related, involving organized groups or syndicates that operate neatly and secretly. The high prevalence of drugs as a predicate offense indicates that many money laundering cases will involve this basic violation, so a thorough understanding of the proof of the element of "knowing or reasonably suspecting" in this context is crucial. The involvement of organized groups in both types of crimes also has the potential to create sophisticated money laundering schemes and the use of intermediaries, which further complicates the process of proving the knowledge or suspicion of passive perpetrators.

Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (UU TPPU) distinguishes between active and passive perpetrators in money laundering crimes. Article 5 of this law specifically regulates passive money laundering crimes. A very important element in this article is "knowing or reasonably suspecting" that the assets received or controlled are the result of a crime. This element is a requirement of *mens rea* (evil intent)

that must be met in order for someone to be held criminally responsible as a passive money launderer. The distinction between the roles of active and passive perpetrators shows the legislative intention to reach a broader spectrum of individuals involved in the money laundering process, including those who may not have directly hidden the funds. However, this also poses its own challenges in proving the mental condition of those whose involvement appears less direct.

Although the role of passive perpetrators may seem indirect, they can still be subject to criminal charges because they are considered to have participated in enjoying the proceeds of the crime. However, proving the element of "knowing or reasonably suspecting" in cases of passive perpetrators is a challenge in itself. Proving this subjective mental condition requires concrete evidence that goes beyond mere suspicion. The subjective nature of the element of "knowing or reasonably suspecting" means that direct evidence regarding the defendant's mental condition is often unavailable, so law enforcement must rely on indirect evidence and inferences, which can be complicated and contested. This has the potential to create legal uncertainty and challenges in the application of fair law. Therefore, this literature review aims to analyze in depth the challenges in proving the element of "knowing or reasonably suspecting" in cases of criminal liability of passive money launderers related to narcotics crimes based on Law No. 8 of 2010.

METHOD

The normative legal research method in this study will focus on the legal analysis of laws and regulations, especially Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, as well as laws and regulations related to narcotics crimes. This study will explore and analyze legal doctrines, jurisprudence, and the views of legal experts related to proving the element of guilt in the form of "knowing or reasonably suspecting" in the context of criminal liability for passive money launderers originating from narcotics crimes. The approach used is qualitative by relying on literature studies to collect and analyze secondary data relevant to the legal issues studied, thus producing a deep understanding of the challenges of proving the mens rea element.

RESULTS AND DISCUSSION

Passive Money Laundering Legal Framework and the Element of Knowing or Reasonably Suspecting

Article 5 of Law No. 8 of 2010 specifically regulates the crime of passive money laundering. This article states that "Any person who receives or controls the placement, transfer, payment, grant, donation, deposit, exchange, or other proceeds of a crime that he knows or should suspect are used as a means or proceeds of a crime, shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah)". This article clearly divides the elements of a crime into objective and subjective elements. The objective element includes the act of receiving or controlling the proceeds of a crime, while the subjective element is "what he knows or should suspect" the proceeds of the crime are used as a means or proceeds of a crime. The structure of Article 5 clearly stipulates the actions included in passive money laundering and the specific mental conditions required for criminal liability, emphasizing the importance of proving this mental element in order to obtain a guilty verdict.

Table: Comparison of “Know” and “Should Suspect”

Feature	Knowing	Having Reason to Suspect
Mental Condition	Direct awareness, understanding, intention (dolus)	Lower threshold, should have been aware, negligence (culpa)
Focus of Proof	Direct evidence (rare), strong indirect evidence	Circumstantial evidence, unusual transaction patterns, relationships
Legal Standards	Higher burden of proof	The burden of proof is lower, based on reasonableness

In Indonesian criminal law, there is a fundamental distinction between “knowing” and “reasonably suspecting”. “Knowing” implies direct awareness or understanding of the illicit origin of the assets. Meanwhile, “reasonably suspecting” indicates a lower standard, where a person should have been aware or had sufficient reason to suspect the illicit origin of the assets based on the circumstances. The inclusion of the phrase “reasonably suspecting” broadens the scope of criminal liability for passive money launderers, with the aim of ensnaring individuals who may have intentionally avoided direct knowledge but should have been suspicious given the circumstances. This poses a challenge in defining the threshold for “reasonable suspicion”.

In the context of criminal law, “knowing” is often associated with the concept of *dolus* (intention or malice). On the other hand, “reasonable to suspect” is more closely related to *culpa* (negligence or lack of care). The doctrine of *pro parte dolus pro parte culpa* (partly intentional, partly negligent) is often used as an interpretation of the phrase “reasonable to suspect”. Understanding the relationship between “knowing or reasonable to suspect” and the principles of *dolus* and *culpa* is crucial to interpreting the degree of culpability required to obtain a guilty verdict. The doctrine of *pro parte dolus pro parte culpa* suggests a more nuanced approach in which criminal liability can arise even from a degree of negligence in suspecting the illicit origin. Criminal law distinguishes between intentional and negligent acts. Applying these concepts to money laundering helps determine the degree of awareness that the defendant should have had regarding the funds. The notion of *pro parte dolus pro parte culpa* recognizes that in some cases, a lack of care in questioning the source of the funds can be considered a form of fault.

The explanation of “reasonably suspected” based on legal interpretation and jurisprudence provides practical guidance on how this element is assessed in court. In the explanation of Article 5 of the TPPU Law, it is stated that what is meant by “reasonably suspected” is a condition that meets at least the knowledge, desire, or purpose at the time of the transaction that is known to him which indicates a violation of the law. Courts often interpret “reasonably suspected” based on unusual transactions, procedures, or norms. For example, in the Rinal Kornial case, the court took the meaning of “reasonably suspected that the assets originated from criminal acts” based on indicators of unusual transactions or processes, transactions that were not in accordance with procedures, transactions that were not in accordance with existing regulations, and transactions that were not in accordance with the norm. Although Rinal Kornial helped his grandfather open an account and provided the facilities, the court was of the opinion that he should have suspected that the account was used for unusual or criminal purposes, especially because of the large initial deposit amount and the fact that his grandfather requested the account to be opened on the grounds that his identity card had been left behind. Legal interpretation and jurisprudence provide practical guidance on how “reasonable suspicion” is

assessed in court, often focusing on the objective characteristics of the transaction and its surrounding circumstances rather than simply on the alleged defendant's state of mind. Because direct evidence of reasonable suspicion is difficult to obtain, courts look for objective indicators that would reasonably cause a person to suspect the origin of the funds.

Challenges in Proving “Knowledge or Reasonable Suspect” in Passive Money Laundering Cases Related to Drugs

One of the main challenges in proving the element of “knowledge or reasonable suspicion” is the difficulty in ascertaining the defendant's mental state. It is very difficult to prove what a person actually knew or suspected. Accused individuals often claim ignorance or lack of reasonable suspicion. The main challenge lies in the fact that “knowledge” and “reasonable suspicion” are internal mental states. The prosecution must rely on external evidence to demonstrate these internal states, which can be difficult and may not always provide conclusive evidence. Unless the defendant admits knowledge or reasonable suspicion of the source of the funds, the prosecution must build a case based on circumstantial evidence and logical inferences about what the defendant should have known or suspected.

In many cases, direct evidence of the perpetrator's knowledge is lacking, so law enforcement often must rely on circumstantial or circumstantial evidence. The burden of proof is on the prosecutor to show that there was sufficient evidence to establish that the defendant “knew or reasonably suspected” the origin of the proceeds. This requires establishing a chain of evidence connecting the drug offense to the laundered funds and the defendant. Proving “reasonably suspected” often involves presenting evidence of suspicious circumstances surrounding the transaction or the defendant's relationship to the principal perpetrator. The strength of the case depends on the accumulation and interpretation of this circumstantial evidence. The prosecutor must present a compelling narrative based on the available facts that leads the court to conclude that the defendant, despite having no direct knowledge, should have reasonably suspected the funds came from an illicit source due to the circumstances.

Another element that needs to be proven is that the funds received or controlled by the passive perpetrator are the result of the predicate crime, namely narcotics crimes. Tracing the flow of funds from narcotics activities to passive perpetrators is often a challenge in itself. Although Article 69 of Law No. 8 of 2010 states that investigations, prosecutions, and examinations in court of money laundering crimes do not require prior proof of the predicate crime, proving a credible link between the funds handled by the passive perpetrator and the proceeds of narcotics trafficking remains an important part of proving the element of “illegal origin”. Although separate penalties for narcotics crimes are not strictly required beforehand, the public prosecutor still needs to show that the funds involved in the money laundering charge are indeed the result of narcotics crimes. This often involves financial investigations and tracing the movement of money.

Article 77 of Law No. 8 of 2010 imposes a reverse burden of proof system, where the defendant has the burden of proving that his/her assets are not the proceeds of a crime. However, this reverse burden of proof system does not eliminate the obligation of the public prosecutor to prove the element of “knowing or reasonably suspecting”. The defendant may face difficulties in showing the legitimate origin of the funds, especially if the initial transaction was suspicious. The reverse burden of proof system shifts the responsibility to the defendant to explain the legitimate source of their assets. However, the public prosecutor still needs to present a *prima facie* case that the defendant “knew or reasonably suspected” the illegitimate origin, although the ultimate burden of proving legitimacy lies with the defendant. The public prosecutor cannot simply accuse someone without any initial basis. They need to show some evidence that shows the defendant was aware or should have been aware of the illegal source of the funds, which then triggers the defendant's obligation to provide a legitimate explanation.

CONCLUSION

Proving the element of “knowing or reasonably suspecting” in passive money laundering cases related to narcotics under Law No. 8 of 2010 is a significant legal challenge. The subjective nature of this element, coupled with the need to link funds to the predicate crime and overcome potential claims of ignorance, requires a careful investigative and evidentiary approach. Analysis of the literature and jurisprudence shows that courts often rely on circumstantial evidence and interpretation of circumstances to assess whether a passive perpetrator should have suspected the illicit origins of funds. To improve the effectiveness of law enforcement in these cases, legal reforms aimed at providing greater clarity on the definition of “reasonably suspecting”, strengthening the role of financial intelligence units, and improving investigative techniques and inter-agency cooperation are essential. Further research could be conducted to explore the impact of different interpretations of this element and to develop best practices in proving it in the context of narcotics crimes.

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