

# Analisis yuridis terhadap pengetahuan pelaku mengenai asal usul harta kekayaan dalam tindak pidana pencucian uang = Legal analysis of perpetrator's knowledge of the origin of assets in crime of money laundering

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## Abstrak

[<b>ABSTRAK</b><br>

Penjelasan dalam M.v.T (Memorie van Toelichting) menyebutkan bahwa semua unsur-unsur lainnya yang terdapat di belakang unsur opzettelijk, turut diliputi oleh opzet. Begitu juga pada unsur culpa, berlaku ketentuan yang sama seperti pada opzet. Ketentuan ini dapat pula diterapkan pada unsur kesalahan pro parte dolus

pro parte culpa, dimana penempatannya berpengaruh pada pengetahuan pelaku mengenai keadaan-keadaan yang disebutkan dalam unsur-unsur yang

mengikutinya. Dalam rumusan tindak pidana pencucian uang, unsur pro parte dolus pro parte culpa diikuti oleh unsur hasil tindak pidana, dimana definisi unsur hasil tindak pidana mencakup predicate crimes dan double criminality principle.

Dengan perumusan yang demikian, secara teoritis unsur pro parte dolus pro parte culpa turut meliputi predicate crime dan double criminality principle. Artinya, harus dibuktikan bahwa terdakwa mengetahui atau patut menduga predicate crime-nya dan terpenuhi tidaknya double criminality principle. Akan tetapi, jika melihat tujuan pembentuk undang-undang, perumusan predicate crimes dan double criminality principle tidak ditujukan untuk dikaitkan dengan pengetahuan pelaku, karena pada terdakwa tidak dituntut pengetahuan semacam itu, melainkan sekedar pengetahuan bahwa harta kekayaan tersebut berasal dari kejahatan/pelanggaran hukum. Dalam praktik peradilan di Indonesia, pembuktian pengetahuan pelaku mengenai asal-usul harta kekayaan ternyata masih menunjukkan belum adanya keseragaman pola.

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<b>ABSTRACT</b><br>

Elucidation of Memorie van Toelichting (M.v.T) states that all other elements behind the element

opzettelijk, are also influenced by opzet. Likewise on the element culpa, the same provision on opzet applies. This provision can also be applied on the element of pro parte dolus pro parte culpa, where its placement

affect on perpetrator's knowledge of conditions mentioned in the following elements. In the formulation of money laundering crime, pro parte dolus pro parte culpa element is followed by elements of proceeds of crime, while proceeds of crime are defined covering predicate crimes and double criminality principle.

With such definition, theoretically pro parte dolus pro parte culpa element influences predicate crime and double criminality principle. That is to say, it has to be proven that the perpetrator knows or should suspect the predicate crime and

whether or not double criminality principle fulfilled. However, if we consider legislator's intention, the formulation of predicate crimes and double criminality principle are not intended to be associated with

perpetrator's knowledge, because perpetrator is not supposed by that sort of knowledge, but mere knowledge that the proceeds of crime derived unlawfully/from crime. In Indonesian judicial practice, the process of proving on perpetrator's knowledge of deprivation of proceeds of crime still doesn't have a uniformed pattern., Elucidation of *Memorie van Toelichting (M.v.T)* states that all other elements behind the element *opzettelijk*, are also influenced by *opzet*. Likewise on the element *culpa*, the same provision on *opzet* applies. This provision can also be applied on the element of *pro parte dolus pro parte culpa*, where its placement affect on perpetrator's knowledge of conditions mentioned in the following elements. In the formulation of money laundering crime, *pro parte dolus pro parte culpa* element is followed by elements of proceeds of crime, while proceeds of crime are defined covering predicate crimes and double criminality principle. With such definition, theoretically *pro parte dolus pro parte culpa* element influences predicate crime and double criminality principle. That is to say, it has to be proven that the perpetrator knows or should suspect the predicate crime and whether or not double criminality principle fulfilled. However, if we consider legislator's intention, the formulation of predicate crimes and double criminality principle are not intended to be associated with perpetrator's knowledge, because perpetrator is not supposed by that sort of knowledge, but mere knowledge that the proceeds of crime derived unlawfully/from crime. In Indonesian judicial practice, the process of proving on perpetrator's knowledge of deprivation of proceeds of crime still doesn't have a uniformed pattern.]