IMPROVING THE LEGAL REGULATION TO COMBAT MONEY LAUNDERING

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Abstract: The article examines the constructive features of the legalization of funds and property obtained by criminal means in Mongolian criminal legislation. The relevance of the chosen topic is due to the high latency of this crime and the presence of contradictory law enforcement practices that do not ensure effective counteraction to criminal behavior. Legalization of funds and property obtained by criminal means destroys the normal order of economic activity and causes significant damage to the national economy. As a result, optimization of law enforcement activities is an important area of the state's criminal law policy. In recent years, the nature and characteristics of money laundering have changed, negatively affecting all sectors of society, including the international economy, banking, finance, and business, and the expansion of this type of crime.

This article discusses the need to improve Mongolia's legal traditions and legal regulations in combating money laundering, bringing national laws in allignment with international treaties and conventions, increasing the resolution of this type of crime, improving international cooperation, and properly defining the underlying crime.

Keywords: Money laundering, crimes, basic crimes, international agreements, conventions, criminal Law, FATF .

Introduction

Problem: The problem studied in the article is that in Mongolia, the structure of economic crime, whose representatives are engaged in financial transactions and other transactions with money and property acquired by criminal means, has been studied in relation to acts, and much less attention is paid to the personality of the criminal.

Money laundering is a crime that causes serious damage to the country's economy and negatively affects the country's reputation at the international level. In Mongolia, the majority of cases resolved for money laundering are low-cost, domestic crimes such as theft, fraud, and cattle theft. In other words, there are few cases of serious money laundering that have been brought to court and resolved. Therefore, there is a need to

amend the criminal legislation and properly define the underlying crime of money laundering.

Overview of the research: This article analyzes criminal law and other laws that regulate money laundering and develops recommendations on how to correctly and efficiently define the underlying crime of money laundering.

Purpose of the study: The purpose of this research is to gain new knowledge in the field of criminal law, develop scientifically based proposals and recommendations aimed at intensifying the fight against money laundering, and improve legislation.

Methodology of the study: Research methods are based on the principles of materialistic dialectics and include a number of general scientific and private scientific research tools. In particular, the author used analysis and synthesis, as well as a comparative legal method based on a comparative study of Russian and Mongolian law enforcement practice.

This article discusses the methods for legalizing the predicate crime of money laundering in the context of FATF recommendations and criminal law theory. Two approaches to legalizing the predicate crime of money laundering are considered, including all crimes and specifying particular crimes.

Hypothesis and results: As a result of this article, the traditions and characteristics of Mongolian legislation in combating money laundering have been studied. Reasonable proposals and recommendations have been developed to bring national legislation into line with international treaties and conventions, improve legal regulations, improve international cooperation, and rationally define predicate crimes.

Research scope: The scope of the research was limited to an analysis of Mongolian legislation and international treaties regulating money laundering.

Article 16, Section 3 of the Mongolian Constitution states that "A citizen of Mongolia has the right to acquire, possess, own, and inherit movable and immovable property fairly." Article 89 of the Civil Code states that "Ownership shall be established through lawful acquisition of rights and property." Article 83 states that "Any person may acquire property as economic wealth and intellectual property as non-economic wealth, insofar as it is not prohibited by law and does not contradict generally accepted moral standards, and in such cases, the aforementioned wealth shall be considered property."

Article 19, Section 1 of the Mongolian Constitution also states that "The State shall be responsible to its citizens for the creation of economic, social, legal, and other guarantees that ensure human rights and freedoms, for combating violations of human rights and freedoms, and for restoring violated rights."

Consequently, the state is working to protect the rights and legitimate interests of citizens and legal entities, restore violated rights, combat certain types of crimes that threaten the development and

economic system of the state, and protect national security.

Since 2001, Mongolia has joined and ratified international treaties and conventions to combat transnational and organized crime (the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1999 Convention against the Financing of Terrorism, the 2000 Convention against Transnational Organized Crime, UN Security Council Resolutions 1267 and 1373, and the 2003 United Nations Convention against Corruption), thereby joining the international fight against money laundering which negatively affects the domestic economic system and economic security of many countries and states and is the basis for the development of the underground economy.

Article 3(b) of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances states: "Money-laundering shall be the act of converting, transferring, disguising or disguising the physical nature, source, location, disposition, movement, rights in respect of, or ownership of property, knowing that it is property derived from the commission of any offence ... or acquired through participation in such an offence, for the purpose of disguising or disguising the illicit origin of such property or of assisting any person who has committed such an offence to evade the legal consequences of his or her offence."

In addition, the United Nations Convention against Transnational Organized Crime, adopted in 2000, defines money laundering as:

1. The alteration or transfer of property, knowing that the property is the proceeds of crime, with the intention of concealing or disguising the illicit origin of the property or of assisting any person involved in the commission of a fundamental crime to evade liability for his or her actions;

2. The concealment or disguise of the true nature, source, location, disposition, transfer, ownership or rights of the property, knowing that the property is the proceeds of crime;

3. The acquisition, possession or use of the property, knowing at the time of acquisition that the property is the proceeds of crime;

4. Participation in, complicity in, conspiracy to commit, abetting, aiding and abetting, aiding and abetting the commission of the crime of money laundering.

Article 69 of the Convention states that "predicate offences shall include both property and money-generating offences committed within the territory of a State Party."

Article 2 of the United Nations Convention against Corruption defines "proceeds of crime" as "any property acquired or obtained directly or indirectly through the commission of a crime" and "predicate offence" as "any offence that gives rise to unlawful proceeds of crime" as defined in article 23 of this Convention, namely "laundering of proceeds of crime." It also defines the nature of money laundering and money-laundering offences related to corruption offences as those offences that are criminalised

under the law of the country in which they are committed and that constitute predicate offences if they are committed in that country.

The Financial Action Task Force (FATF) has developed the 40+9 Recommendations, which set out minimum requirements and standards for combating money laundering and the financing of terrorism. The document issued by the organization covers a wide range of areas, including law enforcement, the financial system, its legal regulation, criminal liability, and international cooperation, and is open to all countries in the world to join.

This document:

- Each country shall criminalize money laundering in accordance with the Vienna Convention;
- Confiscate the proceeds of crime without prejudice to the rights of third parties who have not violated the law;
- Financial institutions shall maintain all records of domestic and foreign transactions for at least the last five years in order to respond promptly to requests for information from competent authorities;
- If financial institutions suspect that the money in circulation is of a criminal nature, they shall immediately notify the competent authorities.

According to the content of the above international documents, the main characteristics of money laundering are:

1. The predicate offences must be committed intentionally;
2. The predicate offences must be considered a crime under the law of the country;
3. Illegal proceeds must be generated as a result of the predicate offences;
4. Knowingly possessing, using, or disposing of illegal income;
5. Taking actions aimed at concealing the source and owner of illegal income.

Mongolia has joined international treaties and conventions to combat transnational and organized crime, and has continuously organized efforts to bring national legislation into line with international treaties and conventions and improve the legal framework for combating money laundering. For example, Article 163 of the 2002 Criminal Code of Mongolia legalizes the crime of "Using illegally obtained funds and money." Since this crime does not fully define the nature of financial transactions and other property-related transactions, criminal law methods and tools for combating money laundering have not been sufficiently developed.

Mongolia joined the "International Convention for the Suppression of the Financing of Terrorism" in 2003, and in 2004, it joined the Asia-Pacific Group on Combating Money Laundering, a branch of the Financial Action Task Force (FATF), which defines international policies to combat and prevent money laundering and the financing of terrorism, and has undertaken to comply with international standards to combat money laundering and the financing of

terrorism. As a result, the Parliament adopted the Law "On Combating Money Laundering and the Financing of Terrorism" on July 8, 2006, which was revised in 2013 and amended 7 times between 2018-2024. This expands the scope of this law and adds real estate brokerage organizations, traders of precious metals, precious stones, and articles made of them, notaries, lawyers, and accounting and financial advisory service providers as entities required to report in accordance with international standards and requirements.

The adoption by the Parliament of the Law on Combating Money Laundering and the Financing of Terrorism has had a significant impact on establishing a system for combating money laundering and improving legal regulations for combating this type of crime.

Subsequently, based on the need and requirement to report suspicious transactions that may be related to money laundering and terrorist financing by financial and non-financial institutions and to centralize them in a unified database, the Financial Intelligence Unit was established under the Bank of Mongolia on November 29, 2006. This laid the foundation for activities to combat money laundering and terrorist financing, and significant progress was made in this direction.

On February 1, 2008, the Parliament adopted the Law on Amendments to the Criminal Code, repealing Article 163 of the Criminal Code and legalizing the crime of "Money Laundering" for the first time in Article 268[1] of the Criminal Code.

Article 268[1] of the Criminal Code defines the subject matter of the crime, the method of action, the purpose of the crime, the form of guilt, and the nature of the crime as "the proceeds of arms, drugs, human trafficking, or the production of counterfeit currency, as well as the proceeds of organized crime, organized crime, or terrorism, knowingly concealing or disguising the source of the proceeds, or putting the proceeds into circulation for the purpose of legalizing the proceeds."

Subsequently, on December 24, 2009, the Parliament amended the Criminal Code again, repealing Article 268[1] of the Criminal Code and legalizing the crime of "Money Laundering" in Article 166[1].

Article 166[1] states that "any person who intentionally receives, stores, uses, transfers, or converts property, non-monetary assets, or money obtained through the commission of a minor, serious, or especially serious crime other than those specified in Article 166 of this Code, with the aim of concealing or concealing the illegal source of the proceeds, or helping any person evade legal liability shall be subject to criminal liability."

The fact that no criminal cases were opened or resolved by the police or courts in 2009-2011 indicates that the legal framework for combating this type of crime was not in place, and that the judiciary and law enforcement agencies lacked the knowledge and

experience to investigate and resolve this type of crime.

The provision of Article 166 of the Criminal Code legalizes the illegal use of assets and proceeds obtained through crime, which coincides with the elements of the crime of receiving and selling property obtained through committing a crime specified in Article 155 of the Criminal Code, creating a situation of uncertainty in the classification in practice.

On January 16, 2014, the Parliament amended Article 166 of the Criminal Code, defining the crime as "knowingly receiving, possessing, using, or concealing the illegal source of funds, money, or income derived from a crime, or changing or transferring it with the intention of helping any person involved in the commission of the crime to evade legal liability, or concealing or disguising its true nature, source, location, method of disposal, owner, or property rights," and adding the new crime of concealing the illegal origin of funds and other property.

Article 18.6 of the revised Criminal Code approved by the Parliament in 2015 legalized the criminality of "Money Laundering." The specific nature of the crime of money laundering, as set forth in Article 18.6 of the Criminal Code, is that the subject matter of the crime, the method of action of the objective side, the purpose of the crime, the form of guilt, and the nature of the crime are changed to mandatory characteristics of this crime and are legislated to impose criminal liability on legal entities.

Countries around the world use a variety of approaches to define predicate offences for money laundering, including all serious crimes, setting a "threshold" to cover specific types of crimes, making them dependent on the length of the sentence for the predicate offence (the threshold approach), creating a list of predicate offences, or a combination of all of the above (Tumurbat.B, 2013).

According to the 2008 and 2009 laws on amendments to the Criminal Code, the predicate offenses of money laundering are defined by using the above-mentioned threshold method to specify the category of crimes and specific types of crimes. However, Article 18.6 of the 2015 Criminal Code does not define the predicate offenses of money laundering.

Money laundering is closely related to the predicate criminal activity that generated the funds This in itself creates the opportunity to continue the criminal activity.

The Financial Action Task Force (FATF) 40+9 Recommendations consider the act of monye laundering8 the illegal proceeds obtained by committing any of the crimes listed below as a money laundering offense and defines its predicate offenses. It includes (FATF, 2003):

– Formation, membership, and harassment of organized crime groups;

– Terrorism and financing of terrorism;

– Trafficking in persons and smuggling of migrants;

– Sexual exploitation (including sexual exploitation of children);

– Illicit trade in narcotic drugs and psychotropic substances;

– Illicit arms trafficking;

– Theft and other illicit trade in goods;

– Corruption and bribery;

– Fraud;

– Counterfeiting of currency;

– Counterfeiting of goods and products and infringement of copyright;

– Crimes against the environment;

– Murder, serious harm to health;

– Kidnapping, unlawful imprisonment, hostage-taking;

– Theft, robbery;

– Illegal importation of goods across the state border (including issues related to customs and value-added tax);

– Tax crimes (including direct and indirect taxes);

– Extortion;

– Forgery of documents;

– Piracy;

– Illegal use of insider trading information and illegal activities in the securities market..

It also states that a country may determine, in accordance with its national legislation, the type of crime and the elements of the crime that constitute a particularly serious crime when including it in this list.

FATF Recommendation 3 establishes other standards in relation to the criminalization of money laundering, in addition to the definition of the crime of money laundering based on the UN Vienna Convention and the Palermo Convention. Specifically,

1. Identify the predicate offenses that constitute money laundering. This definition should not only include all serious crimes but should also be considered in the broadest possible way. In addition, the possession of equipment, objects and substances listed in Tables I and II of the Annex to the Vienna Convention, knowing that they are used for the illicit cultivation or production of narcotic drugs and psychotropic substances, or are intended for such use, and the incitement or incitement of the public to the illicit use of narcotic drugs and psychotropic substances in any form, shall be deemed to constitute a predicate offence for the offence of money laundering, provided that the State in which the offence was committed considers such conduct to be a predicate offence and that such conduct is a predicate offence under national law.

In order to identify and prove classic money laundering crimes, which are not of a commercial nature, which would be a major impetus for improving the fight against money laundering, it is necessary to define in detail the predicate crimes of this type of crime and legalize them in the Criminal Code.

Crimes against property rights account for the majority of the predicate crimes classified as money

laundering and resolved by courts in Mongolia.

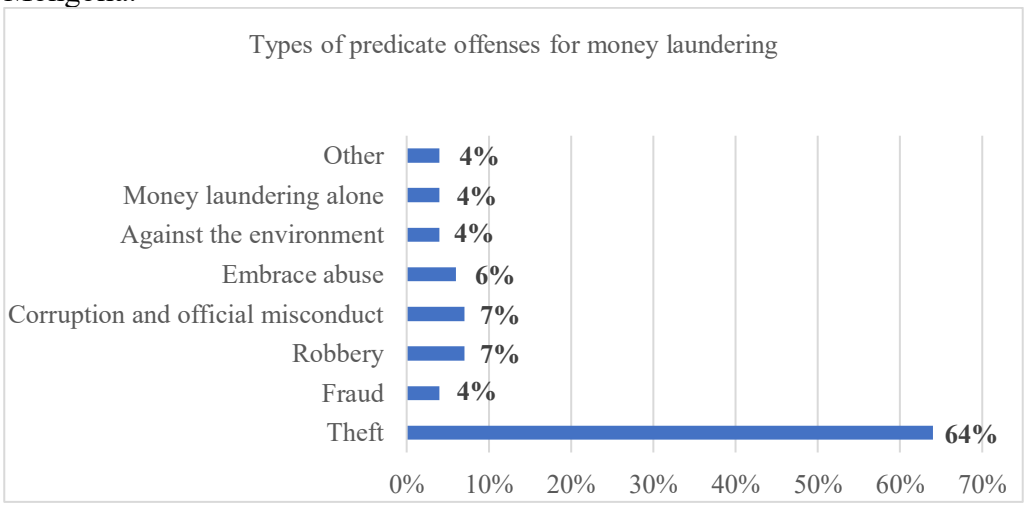

Chart №1. Types of predicate offenses for money laundering

In 2019, one of the main reasons why the Financial Action Task Force (FATF) placed Mongolia on its watch list, or "Grey List," was the insufficient number of criminal cases resolved by the courts, namely, the insufficient number of "investigating crimes and acts related to money laundering and imposing effective, proportionate, and dissuasive penalties on criminals."

An analysis of the criminal cases investigated and resolved for money laundering in 2020 shows that the predicate offences of this type of crime often include theft, fraud, environmental crimes, including illegal mining of minerals, and corruption. In particular, more than 80 percent of cases resolved by the courts are theft, including the theft of someone else's mobile phone, which is a crime that involves knowingly receiving, possessing, or using assets obtained through crime, and the majority of money laundering crimes in our country.

In the case of the first and appellate courts, when considering money laundering crimes, there are violations such as returning the grounds for rejection to the court of the relevant instance or to the prosecutor without providing a legal explanation when evaluating the evidence and documents collected in the case, or not discussing the guilt of committing the crime of money laundering by the supervisory court. In other words, there are many cases where the case is returned on the grounds that the crime of money laundering cannot be solved because the crime of money laundering has not been utimately determined.

According to the decisions of the appellate and supervisory courts, the criminal case was returned to the first instance court for retrial on the grounds that it was impossible to conclude whether the crime of money

laundering was committed while the participants in the case were arguing about whether the crime of money laundering was committed or not, or to the prosecutor to determine whether they were complicit in the crime of property rights.

This is understood to mean that, in accordance with the principle stated in Article 1.4 of the General Chapter of the Criminal Code, "A person who has been found guilty of committing a crime specified in this law shall be held criminally liable," after the person who committed the predicate crime has been convicted by a court, or after the court has determined that the assets, money, or income were obtained through the crime, the person who has received, possessed, used, concealed, altered, transferred, or disposed of the assets, money, or income obtained by the crime, is held criminally liable, which is one of the conditions that will delay the final resolution of the crime of money laundering (Batjargal.B, 2018).

The above situation indicates that there is no unified understanding of the nature of the elements of money laundering and that judicial practice has not been established.

However, although the number of cases referred to court for consideration is a small percentage compared to the number of cases investigated for money laundering, this indicator has increased steadily over the past five years. For example, this indicator increased by 22 cases in 2018, or 8.3 times; by 12 cases in 2019, or 48%; and by 16 cases in 2020, or 30.2%. This indicates that judges, prosecutors, and investigators have gained experience in handling money laundering crimes, investigators' investigation methods have improved, and cooperation between law enforcement agencies and banking and financial institutions has expanded. However, in 2021, this indicator decreased by 30 cases, or 56.6%, which may be related to the global pandemic. However, it increased by 2 times in 2022 and 2.5 times in 2023.

Among the problems, causes, conditions, and influencing factors in the investigation and resolution of money laundering, a significant proportion are the errors and shortcomings made by investigators during the investigation. For example, investigators lack knowledge and methods of understanding and following up on money laundering, are not fully qualified, have not developed a perfect legal framework, and lack of cooperation between law enforcement and banking and financial institutions.

Due to these circumstances, while allowing those involved in money laundering to evade punishment, the fight against and detection of this type of crime is slowing down. Therefore, organizations responsible for combating this type of crime need to educate their officers about the nature and characteristics of money laundering, improve their professional skills, expand cooperation between international and domestic law enforcement and banking and

financial institutions, improve the legal framework for combating this type of crime, and properly define the predicate crime.

According to judicial practice, there are no cases where money laundering has been solved separately. It has always been combined with the predicate crime and criminal liability imposed. This does not comply with the international recommendation to "solve solely as money laundering" and requires the establishment of the predicate crime. Some criminal cases are returned to the prosecutor and the court of first instance thereby giving the perpetrator the opportunity to evade punishment and delaying the resolution of criminal cases.

Solving money laundering crimes separately is likely to produce results faster because it is 'easier' than detecting and proving the predicate crime.

Conclusion

Despite the adoption of numerous international treaties and conventions by the United Nations and international organizations to combat money laundering, this type of crime remains a global problem. Money laundering undermines the country's economic security and financial system, causing serious damage to society and the economy.

The Mongolian Parliament and the Government have paid special attention to ensuring economic security and combating money laundering, and have paid attention to improving the legal regulations and creating a system to combat this type of crime, and have implemented step-by-step and multifaceted measures. As a result, the legal environment for combating this type of crime has been established to a certain extent, but there is still a need to further improve it and define the predicate crimes in accordance with international standards and methods.

Although Mongolia has brought its national legislation into line with international treaties and conventions adopted in the fight against money laundering, and in accordance with the recommendations of international organizations the incidence of predicate crimes such as corruption illicit trafficking in narcotic drugs and psychotropic substances, and crimes against the environment has increased, and the level of hidden crimes is high due to the insufficient resolution of money laundering crimes.

In Mongolia, over 80% of the money laundering crimes resolved by courts in the last five years have been crimes against property rights with low damage. Although the lack of detailed definition of the predicate crime of money laundering and the general formulation of 'crime' as a 'crime' have had a positive impact on the resolution of such crimes, the insufficient resolution of predicate crimes committed across state borders and in an organized manner, the unclear movement and circulation of assets and income obtained from crimes and weak control have allowed citizens and legal entities to evade punishment.

Considering that money laundering is a multi-stage,

transnational, and organized crime, and is extremely complex and time-consuming to investigate and resolve, it is necessary to increase the statute of limitations for this type of crime, classify money laundering as a separate crime from the predicate crime, and conduct prompt investigation, review, and adjudication.

Recommendatons

Based on the above conclusions, the following proposals are made to improve the legal regulation and system for combating money laundering. These include:

1. Increase the statute of limitations for money laundering, based on the fact that Article 11, paragraph 5 of the "United Nations Convention against Transnational Organized Crime" stipulates that the statute of limitations for money laundering is long and that the statute of limitations should not be an opportunity or condition for the perpetrator to avoid the trial and judgment of the court;

2. Tighten the sentencing policy for money laundering;

3. Introduce legal regulations and practices to investigate and resolve money laundering separately from the predicate crime in accordance with the recommendations issued by the international financial sanctions organization FATF;

4. Consider the acquisition, storage, and sale of property obtained through criminal acts as separate crimes from money laundering;

5. Study and introduce the experience of foreign countries on asset management in investigative activities;

6. The FATF Recommendations, the Vienna Convention, and the Palermo Convention stipulate that "the possession of narcotic drugs and psychotropic substances, knowing that they are being used for the illicit cultivation or production of narcotic drugs and psychotropic substances, or that they are intended for such use, or the incitement or incitement of the public to the illicit use of narcotic drugs and psychotropic substances, in any form, shall be considered as a "serious crime", "formation of or participation in an organized criminal group", "corruption offence", "obstruction of justice" and all types of crimes involving an organized criminal group shall be considered as predicate crimes in accordance with Article 6(2) of the Palermo Convention.

7. For countries that use the "threshold method" or "mixed method including the threshold method" to determine the predicate offense, the threshold shall be set to include "all serious crimes" and "all crimes specified in the Criminal Code with a maximum term of imprisonment of more than one year or a minimum term of imprisonment of more than six months."

8. Correct the fact that the definition of the crime of "unjust enrichment" specified in Article 22.10 of the Criminal Code also includes the crime of money laundering, which violates Article 20 of the United Nations Convention against Corruption, and therefore comply with

FATF Recommendation 3, Vienna Convention 3, Palermo Convention 6, and the United Nations Convention against Corruption.

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