

THE CURRENT SITUATION AND CHALLENGES OF MONEY-LAUNDERING IN INVESTIGATING, PROSECUTING AND ADJUDICATING IN VIET NAM

*Nguyễn Thị Quỳnh Châu**

I. THE CURRENT SITUATION OF MONEY-LAUNDERING IN VIET NAM

A. General Situation

Money-laundering and terrorist financing are global issues that cause immeasurable harm to the economy, society and global security. In newly developed or developing countries, money-laundering can impact the government's budget, leading to tax revenue losses and resulting in a loss of control over economic policies. Viet Nam is prone to becoming a target of money-laundering because the economy relies heavily on cash and commercial activities and investments are steadily increasing.

Since 2013, the number of suspicious transactions detected by the Anti-Money-Laundering Department has continuously increased each year. Based on the information provided by the department, relevant authorities have conducted investigations, inspections and audits. As a result, 21 cases have led to prosecution decisions, 15 cases resulted in tax recoveries totalling more than 257 billion VND, 159 cases required additional information requests, one case received an administrative penalty decision and five cases had other forms of resolution.

Viet Nam is facing an increasing risk of money-laundering crimes due to increasingly sophisticated and difficult-to-detect laundering techniques. Some identified money-laundering methods in the current period include: Establishing "shell" companies for fraudulent trade; Money-laundering through online gambling; Online investment scams through fraudulent projects; Money-laundering through real estate transactions; Money-laundering through stocks and bonds; Money-laundering through virtual currencies and digital assets.

B. The Current Situation at Our Organization of Handling Money-Laundering Crimes and Predicate Offences Related to Money-Laundering

1. Viet Nam's Legal Regulations on Money-Laundering

The Anti-Money-Laundering Law in Viet Nam was first introduced in 2012 and later amended in 2022. With the enforcement of the 2015 Penal Code, a more comprehensive legal framework has been established to address money-laundering crimes.

The current definition of money-laundering, as stated in the 2022 Anti-Money-Laundering Law, is as follows:

Money laundering is the act of an organization or individual aimed at legitimizing the origin of assets obtained from criminal activities. Assets obtained from criminal activities are those acquired directly or indirectly through criminal acts, including income, profits, interests, and proceeds generated from such assets. (Article 3, Anti-Money-Laundering Law, 2022).

According to Viet Nam's National Risk Assessment (NRA), money-laundering crimes originate from 17 predicate offences, ranked based on their money-laundering risks, including:

- (a) Embezzlement of assets (Article 353)
- (b) Organizing gambling (Article 322)
- (c) Illegal possession, transportation, trading, or appropriation of narcotics (Articles 249-252)
- (d) Receiving bribes (Article 354)

* Judge, General Division, The People's Court of Huong Thuy District, Hue City, Viet Nam.

- (e) Abuse of trust to appropriate property (Article 175)
- (f) Abuse of position and power to appropriate property (Article 355)
- (g) Gambling (Article 321)
- (h) Tax evasion (Article 200)
- (i) Violations of regulations on wildlife protection (Article 234)
- (j) Fraudulent appropriation of property (Article 174)
- (k) Illegal transportation of goods and money across borders (Article 189)
- (l) Human trafficking (Article 150)
- (m) Counterfeiting, possessing, transporting, or circulating counterfeit money (Article 207)
- (n) Manufacturing and trading counterfeit goods (Article 192)
- (o) Producing, possessing, transporting, or trading prohibited goods (Articles 190, 191)
- (p) Illegal manufacturing, possession, transportation, use, or trade of military weapons and technical equipment (Article 304)
- (q) Smuggling (Article 188).

2. Practical Experience in Handling Predicate Crimes and Money-Laundering

At our unit, the handling of predicate crimes and money-laundering cases has been carried out in accordance with the legal framework set forth by the 2015 Penal Code and the 2022 Anti-Money-Laundering Law. However, the process faces several challenges, including the complexity of financial transactions, the use of sophisticated technology by criminals and the difficulty in tracing illicit funds.

Money-laundering cases typically stem from fundamental predicate offences such as drug trafficking, fraud, abuse of trust to appropriate property, embezzlement, gambling, smuggling and other related crimes. These offences involve various sophisticated methods and tactics, including:

(a) Drug Trafficking, Illegal Transportation and Organizing Drug Use

Illegal drug use and distribution often occur in entertainment venues such as bars, nightclubs, karaoke lounges and other late-night establishments. Owners of these venues frequently facilitate or tolerate drug use by providing the necessary tools and spaces for customers. The illicit profits generated from these activities are then funnelled into legitimate business revenues, with portions reinvested in real estate, stock and bonds to launder the illicit funds.

On the other hand, individuals involved in the illegal sale or transportation of narcotics often lack stable employment and have low educational backgrounds. Once these individuals become addicted to drugs, they gradually develop the intention to earn money through illicit means. Many drug-related cases stem from the need to repay debts or acquire assets such as cars, houses, motorcycles or mobile phones.

Criminals use the illicit proceeds from drug-related offences to convert them into legitimate assets for themselves or to conduct legal transactions with others. When adjudicating these crimes, courts rarely impose asset confiscation measures due to the difficulty in proving that the assets possessed by the defendants were acquired through specific offences being prosecuted. As a result, courts primarily impose strict prison sentences as the main punishment and rarely apply additional penalties such as asset confiscation.

(b) Gambling Offences

This type of crime is currently most prevalent in the form of online betting on football matches, dice games, online gaming etc. Gamblers use online accounts and access websites provided by bookmakers. They deposit money into their accounts and place bets, with winnings converted and received through personal transactions or designated card exchange locations. By profiting from illegal gambling or organizing gambling activities, criminals use these funds to purchase other assets through legal transactions. This has also become a significant financial channel linked to drug-related crimes and terrorism financing.

(c) Fraud and Abuse of Trust to Misappropriate Assets

Fraudulent activities and trust-based asset misappropriation rely on gaining the victim's trust so that they voluntarily hand over their properties. Their typical targets include friends, neighbours, business partners and even family members. Criminals often use deceptive information or seemingly legal transactions, such as car rental agreements or investment contracts, to gain the victim's trust. Once assets are acquired, they are quickly converted into legally recognized property, such as real estate, gold, cars or stocks. A

significant challenge in tracing and recovering stolen assets is that criminals often transfer them to relatives, registering ownership under different names or hiding cash and gold. In Viet Nam, where cash and gold transactions remain common, tracking these assets is extremely difficult, making the recovery of illicit funds highly ineffective.

(d) Money-Laundering

In recent trials at our court, several money-laundering cases have involved criminals using fake identity documents and disposable SIM cards to open bank accounts. These bank accounts are used to receive illicit funds, which are then withdrawn in cash and transferred into legitimate accounts to launder the money. Criminals often hire unemployed individuals or those unaware of legal risks to open these accounts in exchange for high salaries or large bonuses, preying on their financial needs. The use of multiple fake bank accounts and many accomplices withdrawing funds significantly complicates law enforcement efforts to trace the real masterminds behind the crimes. Furthermore, the layering of transactions through multiple intermediaries makes tracking and recovering illicit funds an extremely challenging task for authorities.

II. CHALLENGES IN INVESTIGATING, PROSECUTING AND ADJUDICATING MONEY-LAUNDERING CRIMES

1. Criminals often use foreign IP addresses and fake identities on social media platforms to approach and defraud victims. This makes it difficult to verify their true identities and track the predicate crimes, leading to 10 challenges in prosecuting the primary offenders.
2. Investigative agencies spend significant time and effort tracing illicit funds because criminals withdraw and transfer money through multiple intermediaries and various bank accounts to obscure the money trail.
3. Viet Nam has not yet recognized virtual currency as a legal means of transaction. However, individuals still buy and sell cryptocurrencies through international exchanges. Crimes involving cryptocurrency theft have already occurred in Viet Nam. Since virtual currencies are not legally recognized, there are no regulations or legal sanctions for managing them, leaving transactions in this asset class an unregulated loophole exploited by money launderers.
4. Online gambling and betting networks are widely advertised and promoted on the Internet. Completely dismantling these networks is challenging because criminal organizations often use international IP addresses and implement automatic data deletion mechanisms when they suspect external intrusion. As a result, investigations often only capture individual gamblers, while the gambling organizers remain at large and continue their operations.
5. Viet Nam's economy still heavily relies on cash transactions, making it difficult to track the flow of money. Criminals exploit this by transferring illicitly obtained assets to family members—such as parents, siblings, or relatives—who then use the money to purchase high-value real estate or other assets.
6. Drug offenders are often repeat criminals with extensive experience in evading law enforcement. During prosecution and trial, they frequently collude in advance to align their testimonies, making it more difficult to dismantle the organized criminal networks behind them.

III. MAIN CAUSES OF CRIME

1. Subjective Causes from Offenders:
 - a) *Low Education Levels:* Many criminals lack proper education, have limited awareness of crime trends, criminal methods and legal regulations on money-laundering, making them more susceptible to criminal activities.

- b) *Difficult Family Circumstances*: Financially motivated offenders are often individuals without stable jobs or incomes, leading to greed for quick and easy financial gains through criminal activities.
 - c) *Recidivism After Release from Prison*: Many offenders struggle to find employment and a supportive environment for reintegration into society, causing them to become even more cunning and involved in organized crime networks.
2. Causes from the Management Mechanism
- a) *Loopholes in Financial and Banking Regulations*: Weak financial management laws create opportunities for criminals to exploit.
 - b) *Ineffective Cash Transaction Oversight*: The State has not yet fully controlled cash transactions, making the market fertile ground for criminal activities.
 - c) *Challenges in Regulating International Trade and Transactions*: The increasing trend of global trade and new transaction methods make financial oversight difficult due to incomplete or non-existent legal frameworks.
 - d) *Lack of Regulations for Cryptocurrency Transactions*: The absence of legal sanctions for managing virtual currencies allows criminals to exploit the system for laundering money.
 - e) *Ineffective Legal Awareness Campaigns*: Public awareness efforts on legal matters have not been highly effective in preventing crimes.
 - f) *Lack of Employment and Reintegration Support for Ex-Offenders*: The absence of proper social reintegration programmes leaves former criminals without stable livelihoods, increasing the likelihood of reoffending.

IV. PROPOSED SOLUTIONS TO IMPROVE ANTI-MONEY-LAUNDERING EFFORTS

1. *Raise Public Awareness*: Educate people about criminal tactics and deceptive benefits used to lure victims into illegal activities.
2. *Strictly Regulate Bank Account Registration*: Strengthen oversight to prevent the use of fake IDs and unregistered SIM cards for opening bank accounts.
3. *Reduce Cash Transactions*: Minimize the use of cash in the market while improving foreign exchange and gold trading management among the public.
4. *Tax Unclear or Abnormally Acquired Assets*: Impose taxes on properties obtained from unverified income sources or those with sudden, suspicious value increases.
5. *Enhance Education and Social Awareness*: Improve education among youth, increase awareness of social issues and legal consequences, and provide employment opportunities for former offenders.
6. *Stricter Penalties for Money-Laundering Crimes*: Increase prison sentences and additional penalties to deter current and potential offenders.
7. *Confiscate Unjustified Assets*: Seize assets that criminals and their relatives cannot prove were obtained legally.
8. *Dismantle Online Gambling Networks*: Strengthen efforts to shut down illegal online betting platforms and regulate online gambling effectively.

9. *Improve Anti-Money-Laundering Regulations:* Enhance domestic and international cooperation in sharing anti-money-laundering information among relevant agencies.
10. *Investigate Suspicious Transactions:* Ensure that suspicious financial transactions are reported to law enforcement, treated as crime reports and subject to account freezing when necessary.
11. *Strengthen International Cooperation:* Collaborate with other countries and territories on extradition, information sharing, asset tracing and the recovery of illegally obtained funds.

V. CASE STUDY: JUDGMENT NO. 17/2022/HS-ST DATED 23 FEBRUARY 2022, OF THE PEOPLE'S COURT OF THUA THIEN HUE PROVINCE

The case involved defendant Pham Ngoc Duy and accomplices, who were prosecuted for the crime of "Money Laundering" as stipulated in Article 324 of the 2015 Penal Code.

A. Case Details

On 21 February 2020, Ms. Châu Thị Ngọc Hải, residing at 12/8 Luong Y Street, Thuan Loc Ward, Hue City, befriended a man on Facebook who identified himself as Frederik Hannes (whose real identity, background and address have not yet been determined).

After a period of acquaintance, on 23 March 2020, Frederik Hannes told Ms. Hải that he was involved in a project to build a shopping centre in Phuket Province, Thailand. However, due to procedural obstacles and other issues, he asked to borrow money from Ms. Hải. Hannes promised that if she lent him money, he would fully repay her once the project was approved and would add a 10 per cent bonus as a token of appreciation.

Believing his claims, Ms. Hải agreed and transferred money to Frederik Hannes five times. On 8 April 2020, Frederik Hannes contacted Ms. Hải again to borrow more money. Since she no longer had funds, she provided him with the phone number of Mr. Trần Nguyên Hùng, who resided at Apartment 616-CTI, Aranya Condominium, Xuân Phú Ward, Hue City. Mr. Hùng, a friend of Ms. Hải, had previously helped transfer money to Frederik Hannes multiple times.

Mr. Hùng agreed to lend money and, along with Ms. Hải, made four additional transfers to Frederik Hannes. After nine money transfers, Ms. Hải and Mr. Hùng had transferred a total of 3,933,493,716 VND to Frederik Hannes, in which Ms. Hải transferred 1,474,130,000 VND, and Mr. Hùng transferred 2,459,363,716 VND.

The investigation agency examined Frederik Hannes' personal Facebook account and found that the account's IP address (Internet Protocol) originated from an unidentified foreign location, and the person managing and using the account could not be determined. Additionally, all communication data related to the case on WhatsApp had been deleted. Based on the money transfer transactions, the investigation could not identify the specific individual who directly committed the fraud and misappropriated Ms. Hải and Mr. Hùng's money. However, the authorities discovered a group of individuals involved in withdrawing money obtained through criminal activities for illegal profits. The specific details are as follows:

Between early 2020 and 17 April 2020, in Ho Chi Minh City, the defendants Nnaka Chibuzor Frankline, Nnameka Samuel Ugochukwu, Umeh Stanly Chidiebere, Ngô Hải Nghi, Vũ Ái Linh and Pham Ngoc Duy used the Internet to purchase fake identification documents (citizenship ID cards). They then used these fake IDs to open multiple bank accounts at various banks and utilized these accounts to receive and withdraw money obtained through criminal activities for unlawful profits.

- The total amount of illicit money withdrawn by Nnameka Samuel Ugochukwu and Ngô Hải Nghi was 270 million VND.
- Nnameka Samuel Ugochukwu made an illegal profit of 21.6 million VND, and Ngô Hải Nghi made an

illegal profit of 10 million VND.

- The total amount of illicit money withdrawn by Umeh Stanly Chidiebere and Vũ Ái Linh was 200 million VND, with both making an illegal profit of 6 million VND.
- Nnaka Chibuzor Frankline, who orchestrated the withdrawals by instructing Nnameka Samuel Ugochukwu and other accomplices, was held criminally responsible for 470 million VND.

The People's Procuracy of Thừa Thiên Huế Province prosecuted the defendants Umeh Stanley Chidiebere and Vũ Ái Linh for the crime of "Money Laundering" under Point e, Clause 2, Article 324 of the Penal Code.

The defendants Nnaka Chibuzor Frankline, Nnaemeka Samuel Ugochukwu and Ngô Hải Nghi were prosecuted for "Money Laundering" under Points c and e, Clause 2, Article 324 of the Penal Code.

Defendant Pham NgQC Duy was prosecuted for "Money Laundering" under Point a, Clause 3, Article 324 of the Penal Code.

B. Penalties Imposed by the Court

1. Principal Penalties

Based on Point a, Clause 3, Article 324; Points b, s, t, Clause 1, Article 51; Point g, Clause 1, Article 52; Article 38 of the 2015 Penal Code (amended and supplemented in 2017):

- Defendant Pham Ngqc Duy was sentenced to 10 years in prison. The prison term was calculated from 1 June 2020, the date of detention.

Based on Points c and e, Clause 2, Article 324; Point s, Clause 1, Article 51; Article 38 of the 2015 Penal Code (amended and supplemented in 2017):

- Defendant Nnaka Chibuzor Frankline (alias: Tony) was sentenced to 7 years in prison, starting from 18 May 2020 (date of detention).
- Defendant Nnaemeka Samuel Ugochukwu (alias: Richard) was sentenced to 6 years and 6 months in prison, starting from 18 May 2020.
- Defendant Ngô Hải Nghi was sentenced to 6 years in prison, starting from 18 May 2020.

Based on Point e, Clause 2, Article 324; Point s, Clause 1, Article 51; Article 54; Article 38 of the Penal Code:

- Defendant Umeh Stanley Chidiebere was sentenced to 4 years in prison, starting from 18 May 2020.
- Defendant Vũ Ái Linh was sentenced to 3 years and 6 months in prison, starting from 18 May 2020.

2. Additional Penalties

Based on Article 37 of the 2015 Penal Code (amended and supplemented in 2017), Defendants Nnaka Chibuzor Frankline (Tony), Nnaemeka Samuel Ugochukwu (Richard) and Umeh Stanley Chidiebere were expelled from the Socialist Republic of Viet Nam upon completing their prison sentences.

C. Case Study Analysis

Taking advantage of loopholes in the management of unregistered SIM cards (also known as "trash SIMs" which are phone SIMS without registered owners or activated through dealers or the Internet without proper registration), fake identity document services on the Internet (which are often advertised on Facebook or websites), and lax banking account opening procedures (where customers only need to submit an application, present their identity card and provide a phone number to open an account), the defendants were able to easily order fake identity cards online, purchase unregistered SIM cards and visit different banks to open multiple transaction accounts for the purpose of money-laundering.

PARTICIPANTS' PAPERS

The defendants used these bank accounts to receive and withdraw money derived from criminal activities and then transferred it to other individuals in exchange for a commission. Their illicit profits were based on the number of transactions and the amounts withdrawn and transferred.

The source of the funds transferred into these fraudulent bank accounts originated from predicate crimes, which law enforcement agencies have yet to identify due to the sophisticated and hard-to-trace methods used by the perpetrators. These criminals typically:

- Create accounts with IP addresses from foreign countries, making it impossible to determine who manages or operates them.
- Delete all communication records on platforms such as WhatsApp after defrauding victims and receiving their money.
- Transfer the illicit funds into fake bank accounts set up by the defendants and instruct them to withdraw cash.
- Pass the money through multiple intermediaries, conducting numerous withdrawals and transfers to make it difficult for investigators to trace the money's origin.

As a result, thoroughly investigating and dismantling these criminal networks is extremely challenging. Prosecuting authorities often must handle each offence separately at different stages based on the evidence available.

The acts of opening and withdrawing money from these bank accounts were determined to constitute:

Directly or indirectly participating in financial or banking transactions, including carrying out, assisting in, or using others to perform or assist in actions such as opening accounts, depositing or withdrawing money at credit institutions or foreign bank branches to conceal the illegal origin of money or assets obtained from crimes or that they knew or should have known were derived from criminal activities.

This definition is outlined in Resolution No. 03/NQ-HĐTP of the Supreme People's Court of Viet Nam, which provides guidance on identifying money-laundering offences under Article 324 of the 2015 Penal Code. Therefore, the prosecution and adjudication of the defendants for money-laundering was fully in accordance with Vietnamese law.

In addition, in this case, the court could not adjudicate the predicate crime (fraud) of money-laundering because the investigative agency was unable to identify the identity of the criminals and trace the origin of the IP addresses or the information of the offenders. Therefore, the court faces many difficulties in thoroughly handling and solving this type of crime.

D. Measures to Prevent Money-Laundering Crimes

- *Strictly Regulate Bank Account Opening:* Strengthen controls to prevent the use of fake national IDs and unregistered SIM cards for opening bank accounts.
- *Monitor Suspicious Financial Transactions:* Track and investigate accounts involved in unusual or illegal transactions.
- *Dismantle Fake ID Trading Networks:* Crack down on online networks selling forged identification documents.
- *Enhance Public Legal Awareness:* Educate citizens about the risks of transactions with unclear origins and assets suspected of being linked to criminal activities such as: inform the public about common tactics used by criminals, such as online or phone scams involving investment schemes, high-interest loans or stock market fraud. Criminals often exploit victims' greed to commit fraud, which in turn

leads to predicate offences for money-laundering.

- *International cooperation:* related to providing information on IP addresses or identity suspected of money-laundering.