



Countering Transnational Shadow Economy Crime: Mutual Legal Assistance Mechanism

Wita Setyaningrum^(✉), Ridhayana Andi Baso, Muhammad Nur, and Mufti Khakim

Faculty of Law, Ahmad Dahlan University, Yogyakarta, Indonesia
wita.setyaningrum@law.uad.ac.id

Abstract. The Shadow economy refers to economic transactions that are not reported to government institutions for a variety of reasons, including tax avoidance and social protection, evasion of predetermined standards such as minimum wages, maximum working hours, and safety standards, and evasion of approval of established administrative procedures. This study aims to identify shadow economy activities and their impact on state losses as transnational crimes. This study employs a qualitative methods and library data as secondary data sources. Secondary data are used to supplement primary data obtained from library materials, literature, previous research, books, and journals, which are then analysed using a descriptive qualitative method. This study shows that there are numerous shadow economy activities, such as trafficking, crimes in the banking sector, violations in the trade sector, fraud in the customs sector, computer crimes, and crimes in the field of intellectual property, that aim to circumvent tax laws. The shadow economy can be resolved in a various ways, including through a multi-lateral mechanism with an international agreement known as the United Nations Convention on Transnational Organized Crime-UNTOC. Furthermore, the shadow economy can be resolved through extradition agreements, which are one of the solutions used to eradicate transnational crimes, specifically in terms of legal assistance between countries in the field of crime and for the implementation of criminal trials in different countries. Mutual legal assistance is an alternative approach that can be taken to combat this shadow economy crime.

Keywords: Shadow Economy, UNTOC, Transnational

1 Introduction

Shadow economy is a new term in economics and only emerged in the 1970s. There is an article published by the International Monetary Fund (IMF) in 2018, this finding describes the study of Leandro Medina and Friedrich Schneider entitled "Shadow Economy Around the World: What We Have Learned Over 20 Years". These findings contain the term shadow economy which is often equated with, black economy, unobserved economy, informal economy, or cash economy. This informal economy is a productive activity which in reality sells legal goods and services, but these activities are not recorded and registered at the tax office, have nothing to do with labor regulations, and are social in nature [1].

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The terminology shadow economy/underground economy includes both legal and illegal activities. Illegal means contrary to or against the applicable law while what is meant by legal is that the activity is not contrary to existing law, but the income from this activity is not reported to government institutions, with reasons, namely to avoid paying taxes, to avoid paying social protection contributions, avoid predetermined standards such as minimum wages, maximum working time, safety standards, and also avoid agreeing to established administrative procedures.

This activity has become one of the most crucial problems for several countries due to the large influence that has been harmed by various aspects, especially in the economic sector. This economic activity is also not measured by the GDP national income measurement method and makes it very detrimental to state revenues where it has an impact on decreasing the production or quality of public goods and services provided by the government to the community. This tax avoidance, which is carried out by shadow economy, automatically reduces state revenue for the benefit of the community [2].

Shadow economy/underground economy does not only involve one country, but several cases involve several countries, for example smuggling goods abroad such as wood, fuel oil (BBM), endangered protected animals, and imports of goods from inter-countries for example China to Indonesia. without going through customs. This phenomenon causes state losses in terms of non-collecting import taxes and unstoppable imported goods entering Indonesia, so Indonesia should urge countries to work together in forming international legal rules in order to specifically regulate this activity which will not only realized only in the international realm, but each country has the same responsibility for the perpetrators of crimes committed by citizens in other countries, because the different rules in each country will hinder the implementation of international business transactions that require speed and legal certainty [3].

In accordance with the principles in international law that apply to countries is the principle of international responsibility regarding public accountability for natural resources (natural resources). This principle is a derivation of the provisions of Article 1 of the International Covenant on Civil and Political Rights, 1966 and Article 1 of International Covenant on Economic, Social and Cultural Rights which affirms that "All peoples may, for their own ends, freely dispose of their natural wealth and resources.", which is based on three fundamental provisions in international law, namely: the principle of freedom of self-determination, the principle of protection of human rights, and the principle of protection of property rights. It is clear that the international legal system against shadow economy will have an impact on every country to ratify the rules in their country.

2 Method

This study uses qualitative methods that emphasize more on observing phenomena and examining more into the substance of the meaning of these phenomena. The analysis and acumen of qualitative research greatly affect the strength of the words and sentences used because the attention of qualitative research is more focused on human

elements, objects and institutions, as well as the relationships or interactions between these elements, in an effort to understand an event, behavior or phenomenon.

The data source in this study uses secondary data sources that use library data collected by researchers from existing sources, this data is used to support primary information that has been obtained from library materials, literature, previous research, books, journals and so on.

The data collection method in this study was carried out by means of document studies (library research) or literature studies carried out by research and recording of various reading sources and tracing reference sources such as books, journals, research reports, and other supporting documents as related reference materials. with research written by the author. The data that has been collected was analyzed in a qualitative descriptive way, namely the data obtained was presented descriptively and analyzed qualitatively.

3 Result and Discussion

Based on the following authors Tanzi, Smith, Feige, Thomas, Schneider, Bagachwa can be divided into four groups namely:

- a. Illegal economy, namely activities that produce goods or services that violate the law, such as drugs, prostitution, smuggling, and theft.
- b. Shadow economy, activities aimed at circumventing established tax laws, such as customs tax evasion, and profit fraud. The cumulative measure of undeclared income is the amount of income that should have been reported to the tax authorities but not earned.
- c. The economy is not covered (uncovered), that is, activities that are not covered by official statistics when they should be. This creates a difference between the actual total income and the income registered in the state system.
- d. Informal economy, namely activities that reduce business costs and violate administrative rules regarding property rights, employment contracts, credit contracts, and social security systems [4].

Level measurement underground economy not an easy thing with such a complicated level of accuracy. There needs to be an optimal fiscal policy related to tax collection, administration that is more supportive, and in favor of these economic actors so that they turn into business actors that can be recorded and have a contribution to GDP that can develop the Micro, Small and Medium Enterprises (MSMEs) sector with a tax subsidy policy income.

Activity underground economy is an activity that generates income without the knowledge of the tax authorities with the aim of tax evasion, which includes the informal sector and black market which is generally referred to as the parallel market, it is necessary to have different policies in implementing them because the two markets have different implications. The parallel market formed because of government regulations that are too tight and restrictions on goods entering the market. The informal sector market in terms of production is illegal with legal distribution of sales and market

share, while for black market the process of production and distribution of goods is illegal and violates state law. The description of the informal sector is small-scale business units, independent workers, unregistered businesses, access to minimal credit facilities and locations in border and suburban areas [1].

In this paper, shadow economy or economic crimes in general involving inter-state crimes are crimes whose elements and categories do not only cover one country but involve several countries, the activities of which include:

- a. Smuggling;
- b. Crimes/violations in the banking sector;
- c. Crimes/ violations in the field of commerce;
- d. Customs fraud;
- e. Computer crime;
- f. Crimes/violations in the field of IPR (Intellectual Property Rights) [2].

The crimes above were committed in one country or outside a country, which resulted in several regions of the country, so that these crimes became international crimes. In general, the perpetrators of shadow economy try to escape to the closest and easiest to reach countries, but due to advances in aviation technology, and the increasingly diverse types of economic crimes, escape has reached several countries, thus the nature of the crime has given rise to international nature because it has crossed the jurisdictional boundaries of a country. Broadly speaking, these customs activities are included in economic crimes and certainly fall into the scope of the shadow economy where these activities also have the effect of tax fraud in terms of state revenues which should be included in the GDP calculation but are not detected [5].

There are several serious policy issues that may arise as a result of the growth of shadow economy, namely:

- a. Tax avoidance in the shadow economy certainly affects state revenue, if state revenue decreases it will certainly have an impact on decreasing the production or quality of public goods and services provided by the government to the public.
- b. In the economic realm, the bigger the shadow economy, the greater the potential for lost taxes, this means reducing government revenue from taxes and will reduce infrastructure investment in the public sector which is the basis of economic growth. If the government makes the wrong decision, for example by increasing tax rates with the aim of increasing tax revenue, what will happen is that the shadow economy will get bigger and government revenue will not increase significantly.
- c. Shadow economy also makes official government statistics on economic growth less consistent (unreliable), and this information can lead to inappropriate economic policy decisions [6].

The informal economy has become a new focus in recent years, attracting more and more attention from policy makers, politicians and economists. Say "shadow economy" is still rarely heard of but its presence is always there but undetected. No country is free from its existence shadow economy, from poor countries to developed countries. The

difference lies in the size of attendance shadow economy in the economy. The higher up a country is, the less likely it is to become a shadow economy, given better monitoring of economic activity. In contrast to developing countries such as Indonesia, Indonesia is an area that allows the development of activities shadow economy.

Shadow economy or an economy that becomes a shadow and is not detected by the government and the state is a problem that clearly harms the state from a financial aspect because tax collection is not optimal. Mike hammer parses in his paper entitled "Tax Ghost: Spectres of the Shadow Economy" how unfulfilled tax obligations and hiding in the shadows of the sector. Term tax ghost refers to the individual or business hiding behind shadow, tax ghost It's hard to prove their existence but we know they really exist. Shadow economy become a favorite habitat for these ghosts, because they use their untraceable presence to evade tax obligations. As a result, the need for tax revenues piles up in the formal sector alone. In the first part, Mike Hammer first outlines the definition and scope shadow economy referred to in the analysis. The author chooses to refer to the definition used by OECD Forum on Tax Administration in 2017, namely "Economic activities, whether legal or illegal, which are required by law to be fully reported to the tax administration, but which are not reported, and which therefore go untaxed unlike activities which are so reported".

Mike Hammer describes how the perpetrators shadow economy in general can only be estimated in aggregate. In fact, there are various forms of activity there. Tax ghost who takes shelter in it also vary so that to attract them requires different efforts. As for Mike Hammer's solution in his research, it is poured into the paper, which refers to how the government must eradicate activities shadow economy through the effective exchange of information and the use of various data sources to perform data matching.

Administratively, according to Mike Hammer, by using examples of implementation in various countries to tighten registration, recording, and monitoring of economic activities that are at risk of becoming tax ghost. If it is done optimally, it is believed that it will create a wider tax base and reduce the appearance of tax tax ghost the new one. The above activities tend to involve two or more countries which are the perpetrators shadow economy this is detrimental to one country and takes refuge in another country to hide the actions committed [7].

In general, international law functions as a national legal system which is an autonomous legal system, independent of international legal politics, with its main function being to serve the needs of the international community including an authentic state system and affirm its duties as a relatively independent formal technique (as a relatively autonomous formal technique) and also as an instrument in enhancing its special agenda and struggle for the benefit of the international order.

According to Charles Cheny Hyde, by J.G Starke [8]: "International law may be defined a body of law which is composed for its greater part of principles and rules of conduct which states feel themselves bound to observe, and therefore, do commonly observe in their relation with each other, and which includes also: The rules of law relating to the functioning of international institutions of organizations, their relations with each other, and their relations with states and individual and Certain rules of law relation to individuals and non-states entities so far as the rights or duties for such individuals and non-states entities are the concern of international community" [9].

Crimes Shadow economy committed by a person or group do not only involve the interests of two countries, but often occur in more than two countries. This can happen, for example, because someone has repeatedly committed a crime in the territory of several countries or a crime committed in the territory of one country or outside the territory of a country has consequences for the territory of other countries.

This shadow economy crime involves many parties, so uniformity is needed in understanding ratification regarding the legal systems of many countries with different legal systems (common law and civil law, including countries that are not the same as the two systems, for example Thailand, Russia, Japan, China). It is not impossible that this difference in perspective and system will lead to debate in the future from the parties. Indonesia as an independent and sovereign country requires international cooperation with countries in various parts of the world. The main agenda of a country is to carry out international agreements for the sake of the national interests of these countries.

Related to safety requirements such as fire hazard, health or environment. Some have ceilings on the interest rates that borrowers must pay to lenders. Obviously, many of these regulations increase the operating costs of some activities and make it impossible or difficult to operate legally. As a result, many activities are hidden to avoid compliance with these regulations and to avoid paying taxes. But even without taxes, some regulations encourage shadowy activity.

Specific crimes involving avoidance of tax compliance, criminal acts in the field of taxation affect stability and sustainability if the consequences of these crimes are very important in relation to state revenues and are allowed to go unchecked, for this reason they must be treated seriously and specifically. That interferes with government administration, in the field of taxation, this means that there are rights and obligations that are regulated and stipulated by statutory regulations. This is, of course, unique to both compliance and non-compliance behavior. Non-compliance in paying taxes, both legal and illegal, is a common phenomenon in almost every country. The exact numbers for tax evasion and tax evasion have been debated, but at least some countries' tax systems indicate a degree of tax evasion [9].

These types of shadow economy already have provisions in the national criminal law of Indonesia and other countries. It's just that the meaning and scope of the arrangement are not entirely the same as what happens in real life. Article 4 paragraphs 1 and 2 concerning Sovereignty Protection are declarative in nature, that is, stating something that actually already exists. Even without being explicitly stated, countries in international relations must act in this way because all countries in the world have an equal position or the same degree. Based on this, countries must respect each other's sovereignty and independence, may not intervene, may not take actions in the form of exercising sovereignty or jurisdiction in the territory of other countries without their consent. All of these are general principles of modern international law [10].

However, in practice, not all countries in the world comply with these general principles of international law. There are countries that, under the pretext of preventing and eradicating transnational (transnational) crimes, actually carry out direct searches and arrests.

Based on Article 2 paragraph 1 letter a of the 1969 Vienna Convention, an international agreement is an international agreement signed between countries in written form and governed by international law, whether made in the form of a single instrument or in two or more instruments, which are interconnected and whatever being a marking specifically related to the recognition of international organizations as subjects of international law, international agreements are defined as international agreements, regulated by international law, and signed in written form between one or more countries and one or more international organizations or between international organizations.

Based on general principles in international law, every state has supreme power or sovereignty over people and objects within its own territory. Therefore, a country may not carry out acts of sovereignty in the territory of other countries, except with the consent of the country itself, because these actions cause the country to be seen as intervention or interference in other countries' internal problems which is prohibited under international law.

One way to shadow economy is to create a multilateral mechanism through an international agreement called the United Nations Convention on Transnational Organized Crime-UNTOC. The United Nations Convention on Transnational Organized Crime was formed in 2000 and has become a basic guide for countries in efforts to tackle transnational crime.

In relation to criminals who have fled or are in the territory of other countries because in this case the shadow economy is an activity whose existence is difficult to detect even though the impact of this activity is very real, then the country that has jurisdiction or the perpetrator of the crime, or the crime, for example the country where the crime was committed or the countries which suffered as a result of the crime, may not carry out the arrest and detention directly in the territory of the country where the perpetrator of the crime is located.

Because countries that have jurisdiction over the perpetrators of crimes cannot arrest directly in the territory of the country where the perpetrators of these crimes are located, these countries must take legal methods to be able to try and punish the perpetrators of these crimes. Countries that have jurisdiction can request the country where the perpetrator of the crime is located, to arrest and surrender the person. Meanwhile, the country where the perpetrator of the crime is located, after receiving a request to hand over, can hand over the perpetrator of the crime to the state or one of the countries submitting the request for surrender. This kind of method or procedure has been recognized and is a procedure that has been generally adopted in both national law and international law which is better known as extradition.

Extradition is the most important aspect in terms of legal aid between countries in the field of crime. In contrast to expulsion or deportation, the motivation for returning suspects or convicts is not to maintain public order or domestic security, but to carry out criminal trials in different countries. Extradition is intended to ensure that perpetrators of serious crimes cannot escape prosecution or punishment [5].

With regard to extradition, commercial crimes between countries can occur if it is committed by a foreign national, before the court process is carried out or during the trial process, the person flees, hides in a country where he has citizenship, or to a third

country, if the perpetrator is a citizen himself, it can also happen when he manages to escape to a foreign country [11].

The case of the perpetrator fleeing to another country that has jurisdiction to try the perpetrator faces problems in the court process. This problem starts from an examination by law enforcement officials to a court that will try him because of the existence of the perpetrator in the territory of another country that has jurisdiction, this is where an institution of international law is needed that can resolve this problem in the form of cooperation, which is set forth in the form of an international agreement [12].

There are several conditions for a crime to be extradited. According to the dual criminality rule, a crime that can be extradited is an act which according to the law of both the requesting country and the requested country constitutes a crime. No country is obliged to extradite a person for committing an act that is not recognized as a crime by the standards of the country itself.

Under the rules of specialization, which are the general rules of international law, a fugitive may not be detained, tried or punished in the requesting extradition country for any crimes committed prior to his surrender. He can only be detained, tried or convicted of the crime on which extradition is granted.

The weakness of this extradition agreement is that the scope of activities categorized as transnational crimes is limited and the category of shadow economy itself is very broad, so there are several activities that do not cover the settlement and also the countries involved in the extradition agreement are also very limited, in order to be able to Even if extradition is carried out, the person concerned must already have the status of a suspect or convict at large. Before the extradition process can begin, a process must be carried out according to national law so that it can be proven that the person being extradited is really a suspect or convict. it is not enough for the international community to enter into an extradition treaty. It is also necessary to review the tendency of countries in eradicating international crimes to prefer to use other agreements that are no less important and closely related to the cases that occurred. Based on the background above, the problem can be formulated as follows: countries' efforts to eradicate international crimes through Mutual Legal Assistance Treaties (MLATs) [13].

Mutual legal assistance which is a forum for countries to request assistance from other countries in carrying out investigations, prosecutions and examinations in a case involving two or more country. Mutual Legal Assistance (MLA) highly recommended at various international meetings and UN conventions, in which signatory countries are encouraged to establish international cooperation with other countries. Mutual Legal Assistance involves a legal process and will impact each country's self-interest [14].

This also relates to matters such as confiscation of collateral assets, taking over witnesses, and detaining perpetrators of crimes. The advantages of Mutual Legal Assistance (MLA) are that the government being requested allows the requesting country to apply law enforcement rules and obtain evidence to carry out the prosecution process, what is meant by mutual assistance in criminal matters is a request for assistance to a foreign country related to an investigation, prosecutions, and examinations at court hearings, in this case, shadow economy cooperation agreements Mutual Legal Assis-

tance (MLA) which are members of ASEAN countries include the Governments of Brunei Darussalam, Cambodia, Laos, Malaysia, the Philippines, Singapore and Vietnam which are contained in Law Number 15 of 2008.

Indonesia already has regulations regarding this Mutual Legal Assistance (MLA) contained in the law that becomes the legal umbrella namely the Law of the Republic of Indonesia Number 1 of 2006 concerning Mutual Assistance Agreements which has been in effect since March 3, 2006. This law regulates the scope of Mutual Legal Assistance (MLA), mutual assistance request procedures (MAR) and distribution of proceeds of criminal acts committed confiscated to the assisting state. In essence, Mutual Legal Assistance (MLA) can be made bilaterally or multilaterally. Bilateral can be based on a Mutual Legal Assistance (MLA) agreement or on the basis of good mutual relations between the countries concerned. The object of the Mutual Legal Assistance (MLA) agreement includes taking and giving evidence, including statements, documents, notes, identifying the location of a person's whereabouts, carrying out requests to search for evidence and confiscation, searching for freezing, and confiscating proceeds of crime, seeking approval of persons willing to give testimony or assist with investigations in the country requesting MLA (Mutual Legal Assistance) assistance.

Still in the framework of prevention and eradication, Indonesia has also entered into bilateral and multilateral agreements as a means of preventing and eradicating international/transnational crimes, such as agreements on extradition, agreements on mutual cooperation in criminal matters. Likewise, the involvement of the Indonesian National Police in INTERPOL (International Criminal Police Organization) or ASEAN nation police or police cooperation in border areas.

Magnitude Shadow economy In Indonesia, as with other crimes, economic crimes between countries, which are now dominant, are white-collar crimes (white colour crime) while white-collar crime is a crime that is well organized and also a crime syndicate, if a crime occurs, it is very difficult to catch the perpetrators, establishing him as a fugitive suspect, let alone convicts have many obstacles. To carry out an investigation at the national law level is very difficult, it requires hard work and high commitment. If at the national legal level, it is not caught, the extradition process is impossible. These economic crimes can be committed by corporations, so they are corporate crimes, until now it is still rare for corporations to be criminally charged. Even more so if it is a giant corporation that is doing it.

One of the efforts that have been made by the Indonesian state in eradicating money laundering efforts can also be used in eradication efforts shadow economy in the field of national law namely through penal and non-penal efforts, involving various components, as stipulated in Law Number 15 of 2002 Juncto Law Number 25 of 2003 concerning the Crime of Money Laundering [15].

4 Conclusion

The shadow economy, which includes both illegal and legal activities/activities, has many broad definitions, the essence of which is economic activity that is not recorded

and its tax reporting is not reported to the tax authorities. Various types of these activities include illegal fishing, illegal mining, illegal logging, smuggling, activities that produce goods or services that violate the law, such as drugs, prostitution, theft. such as customs tax evasion, profit fraud and other activities.

This writing describes shadow economy activities or economic crimes in general that involve between countries, namely crimes whose elements and categories do not only cover one country but involve several countries. Because it is transnational in nature, this activity requires international law as a basis to suppress the development of this activity and unify countries in capturing shadow economy actors.

One way to deal with this shadow economy crime is the creation of a multilateral mechanism through an international agreement called the United Nations Convention on Transnational Organized Crime-UNTOC, with the participation of more than one-hundred-member countries in negotiations regarding this convention, reflecting the fact that organized crime is a global problem. everyone and requires international cooperation for its settlement.

Extradition is also one of the solutions in eradicating transnational crime, namely in terms of legal assistance between countries in the field of crime and for the implementation of criminal trials in different countries.

Another solution that can be done in dealing with this shadow economy crime is mutual legal assistance or mutual legal assistance which is a forum for countries to request assistance from other countries in carrying out investigations, prosecutions and examinations in a case involving two or more countries.

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