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Paradigm Reconstruction of the Protected Legal Interests in China's Crime of Money Laundering

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Abstract

Since the Criminal Law Amendment (XI) established the punishability of self-laundering, the systemic dilemmas faced by traditional legal interest theories in interpreting the constitutive elements of the Crime of Money Laundering have become increasingly evident. The understanding of the legal interests protected by the Crime of Money Laundering serves as the foundation for interpreting its constitutive elements and the guiding principle for its judicial application. Through a critical analysis of the deficiencies in existing doctrines, this paper proposes a dual-structure theory of protected legal interests: "result-oriented financial management order" and "control rights over proceeds derived from predicate offenses." The former, grounded in the consequence of regulatory failure, emphasizes transcending the traditional paradigm that narrowly equates Money Laundering with the instrumentalization of financial tools. The latter, by synthesizing the rational core of the "judicial function theory" and the "protected legal interests theory of predicate crimes," reconstructs the independent legal interest boundaries distinguishing Money Laundering from traditional crimes involving proceeds of crime. This theoretical framework not only rationally explains the regulatory logic of judicial interpretations governing non-financialized laundering behaviors but also provides substantive criteria for differentiating Money Laundering from crimes involving proceeds of crime. It holds methodological significance for refining China's criminal governance system against money laundering.

Keywords: Crime of Money Laundering, protected legal interest, criminal law interpretation, financial crime, crime involving proceeds of crime, result-oriented standard

1. Introduction

Among the series of offenses revised under Criminal Law Amendment (XI), the Crime of Money Laundering stands out as one of the most substantially revised offenses. The most notable reform lies in its structural transformation from a historically accessory-type framework to a stand-alone offense that now encompasses self-laundering. This legislative shift reflects imperatives driven by both domestic and international contexts. Domestically, China's national top-level institutional design has prioritized the establishment of anti-money laundering mechanisms, elevating AML to a critical component of safeguarding national security. Internationally, the Financial Action Task Force (FATF), the global standard-setter for AML

compliance, issued evaluative recommendations on China's "criminalization of money laundering," with its critiques directly informing the trajectory of China's criminal legislative reforms.

However, the revisions under Criminal Law Amendment (XI) have not resolved longstanding theoretical and practical controversies surrounding the Crime of Money Laundering. On the contrary, the inclusion of self-laundering and modifications to the definitional scope of laundering methods have intensified interpretative and applicative challenges. Consequently, the focal point of scholarly and judicial debates has shifted from the prior question of whether self-laundering merits punishability to foundational issues such as the interpretation of the protected legal interests underlying the Crime of Money Laundering, the concrete application of self-laundering provisions, and the hermeneutics of the offense's constitutive elements. Among these, the interpretation of the legal interest of Money Laundering Crime is the most important one.

2. Raising the Issue of Legal Interests Protection in Money Laundering Crimes

The concept of protected legal interests plays a pivotal guiding and orienting role in interpreting the constitutive elements of a crime, serving as the foundation for understanding the protective purpose of a criminal offense and the scope of its prohibited conduct. The interpretation of the legal interests underlying the Crime of Money Laundering directly determines both the hermeneutics of its specific constitutive elements and the critical distinction between Money Laundering and crimes involving proceeds of crime.

Originating as a legal tool to combat drug-related crimes, the Crime of Money Laundering initially bore strong characteristics of offenses involving illicit proceeds, naturally inheriting the traditional legal interest of safeguarding the normal operations of judicial authorities — a core protective aim shared with crimes involving proceeds of crime. However, as the societal harm of money laundering has grown increasingly pronounced, greater attention has been accorded to its dynamic structural attributes and distinctive harm profile, which diverge fundamentally from those of static proceeds-of-crime offenses. Consequently, clarifying the protected legal interests specific to Money Laundering has become indispensable for both interpreting its constitutive elements and delineating its boundaries from traditional proceeds-of-crime offenses.

3. Existing Paradigmatic Views on the Protected Legal Interests of the Crime of Money Laundering

Regarding the protected legal interests of the Crime of Money Laundering, current academic discourse centers on three primary theories:

3.1 Monistic Theory of Legal Interests

First is the theory of unitary legal interest. This doctrine maintains that the protected legal interest of the offense exhibits exclusivity, yet internal divergences persist within this perspective regarding the precise nature of such legal interest. The principal division lies in two strands: the first is the theory of national financial management order, which bases its arguments on the criminal law chapter where Money Laundering is codified and the legislatively predefined behavioral typologies.[1]Within this school, certain scholars contend that the "national financial management order" requires further restrictive interpretation, asserting that the generic legal interest common to offenses within a specific section of the Criminal Code should not be mechanically equated with the specific legal interest protected by an individual crime.

The alternative viewpoint is the theory of judicial authorities' normal operations, primarily grounded in the global and domestic legislative evolution of Money Laundering offenses.[2] Simultaneously, some academics emphasize that, in accordance with the precision mandate inherent in the principle of legality, the "normal operations of judicial authorities" ought to be strictly delimited as "the normal investigative activities of judicial authorities targeting criminal conduct." This interpretative refinement ensures doctrinal coherence with statutory clarity while preserving the functional integrity of judicial mechanisms.[3]

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[1] Liu Xianquan. (2008). *Theory and Practice of Criminal Law Concerning Financial Crime*. Peking University Press, 417.

[2] Li Yunfei. (2013). The Dual Dimensions of Money Laundering Harm and Its Impact on the Classification of Legal Interests. *Criminal Science*, (11).

[3] Zhang Xiangfei. (2001). An Analysis of the Constitutive Elements of the Crime of Money Laundering. *Journal of Ningbo University*, (3).

3.2 Traditional Composite Legal Interests Theory

Another perspective, now widely accepted as the predominant view, is the doctrine of composite legal interests. This theory contends that the protected legal interests of Money Laundering offenses need not be confined to a binary choice between judicial functionality and financial regulatory order; rather, both constitute integral and coexisting legal interests safeguarded by this offense. A substantial body of scholarly work endorses this proposition, with near-consensus emerging in contemporary jurisprudence. Nevertheless, significant academic disagreements persist regarding the hierarchical primacy of these dual legal interests.

3.3 Emerging Perspective

Additionally, a recently developed theory posits that the protected legal interests of the Crime of Money Laundering encompass both financial management order and the protected legal interests of predicate offenses. This doctrine typically explicates the legal interest of financial management order through a two-tiered normative framework: primarily, establishing the fundamental order to prevent the financial system from being exploited as a conduit for legitimizing criminally derived assets and proceeds; secondly, safeguarding public trust in the financial system and ensuring national financial security.[1] The theory's reference to the "protected legal interests of predicate offenses" pertains specifically to the legal interests inherently safeguarded by the seven categories of predicate offenses listed under China's Money Laundering provisions.

4. Theoretical Dilemmas of Existing Doctrines on the Protected Legal Interests of the Crime of Money Laundering

Among the three aforementioned theories, the Monistic Theory of Legal Interests suffers from evident deficiencies, as it fails to comprehensively interpret the legal interests of Money Laundering through the crime's statutory placement, legislative context, or protective purpose. This section thus focuses on analyzing the strengths and weaknesses of the Composite Legal Interests Theory and the Emerging Perspective, synthesizing their insights to propose a generalized and holistic conclusion.

4.1 Dilemmas of the Traditional Composite Legal Interests Theory

The primary critique of the prevailing view lies in its inability to explain why identical laundering behaviors and outcomes receive divergent legal evaluations based solely on the category of the predicate offense. For instance: perpetrator laundering proceeds from insurance fraud (listed among the seven predicate offenses) is charged with Money Laundering. Yet, laundering proceeds from ordinary fraud (excluded from the seven predicate offenses) is classified merely as a crime involving proceeds of crime. Both acts ostensibly infringe upon the financial management order and normal judicial activities posited by the Composite Theory, yet their legal consequences diverge fundamentally. This inconsistency suggests that the legal interests violated by these acts are not wholly identical.

If proponents of the Composite Theory resort to a formalistic explanation — "because the Crime of Money Laundering statutorily limits predicate offenses to seven categories" — their reasoning remains superficial, failing to address the substantive rationale behind this legislative choice: why does the Criminal Law exclusively designate seven types of crimes as predicate offenses? This omission implicitly validates the Emerging Perspective's critique that the Composite Theory neglects the specific protective purpose underlying the statutory selection of predicate offenses, which the Emerging Perspective frames as the "protected legal interests of predicate crimes."

A further critique arises from the tension between the judicial function doctrine and the legislative inclusion of self-laundering under Criminal Law Amendment (XI). To contextualize this contradiction, it is essential to examine the historical relationship between Money Laundering and traditional crimes involving proceeds of crime: Money Laundering emerged as a tool to dismantle the economic foundations of predicate offenses (e.g., drug trafficking). Historically, its criminal liability was derivative and dependent on the gravity of the predicate offense — the more severe the predicate crime, the greater the harm attributed to laundering. Early legislation treated Money Laundering as a natural extension of predicate offenses, akin to traditional acts of concealing or disguising

[1] Zhang Mingkai. (2022). The Legal Interests Protected by the Crime of Money Laundering. *Law Science*, (5).

proceeds of crime. Under the principle of non-repetitive evaluation and absence of expectation of compliance, perpetrators of predicate offenses were exempt from liability for laundering their own proceeds, as such acts were deemed non-autonomous and lacking independent culpability. If the Composite Theory's inclusion of "normal judicial activities" as a protected legal interest necessitates adherence to traditional proceeds-of-crime logic, it directly conflicts with the criminalization of self-laundering under Criminal Law Amendment (XI) — a legislative shift predicated on recognizing Money Laundering's independent culpability and distinct harm profile.

The above critiques, however, are not impervious to rebuttal. In recent years, Money Laundering has increasingly demonstrated harms independent of — and even exceeding — those of predicate offenses. Theoretical and practical circles now widely acknowledge that the protected legal interests of Money Laundering are distinct from those of predicate crimes. Perpetrators possess realistic expectation of compliance — they can and should refrain from laundering acts, which inflict independent legal harm. Money laundering involves a dynamic process of 'whitening' illicit proceeds, fundamentally differing from the passive concealment characteristic of traditional proceeds-of-crime offenses. This evolution marks a doctrinal rupture with traditional jurisprudence. Thus, criticizing the "normal judicial activities" doctrine by invoking incompatibility with traditional proceeds-of-crime principles is increasingly untenable. While Money Laundering originated within the theoretical framework of proceeds-of-crime offenses, it has since evolved into a discrete legal construct with autonomous normative foundations.

4.2 Dilemmas of the Emerging Perspective

In reality, emerging perspectives have precisely emerged to address the aforementioned issues by substituting "the normal activities of judicial authorities" with "the protected legal interests of predicate offenses," while retaining financial management order as the primary protected legal interest. However, this predicate offense theory remains debatable, as it once again denies the independent characteristics of Money Laundering offenses by inextricably linking them to predicate crimes. This approach manifests dual deficiencies: firstly, it overlooks the autonomous legal interest protection content inherent to Money Laundering offenses distinct from predicate crimes; secondly, it risks creating jurisprudential complexities in determining the numerosity of offenses between Money Laundering and its predicate crimes.

5. Paradigm Reconstruction: The Dual Legal Interest Structure of "Result-Oriented Financial Management Order" and "Control over Proceeds from Predicate Crimes and Their Benefits"

Through the preceding analysis, we can preliminarily construct the theory that the legal interests protected by the Crime of Money Laundering encompass financial management order and control over proceeds from predicate crimes and their benefits. The rationale is as follows:

5.1 Judicial Practice Provides Theoretical Possibilities for Expansion

First, given the enduring presence of offenses involving illicit proceeds within China's criminal legislation, the deliberate codification of Money Laundering as a distinct offense under the chapter "Crimes of Disrupting Financial Management Order" inherently implies — through its systemic legislative positioning and considering China's statutory objectives in enacting anti-money laundering laws — that the protected legal interest of Money Laundering offenses necessarily encompasses financial management order. The critical inquiry lies in the proper interpretation of "financial management order" within this context. Both predominant and emerging doctrinal interpretations engage in distinct conceptualizations of "financial management order," yet converge on a shared conclusion premised on their respective analyses: "to protect financial management order, the offense of Money Laundering should be strictly construed as acts committed either by financial institutions or through financial instruments by non-financial institutions, targeting proceeds from the seven specified predicate offenses. Acts employing non-financial institutional frameworks or non-financial methodologies cannot be legally characterized as Money Laundering." This interpretive stance, however, engenders an irresolvable paradox:

The Supreme People's Court's *Interpretation on Several Issues Concerning the Specific Application of*

Law in the Trial of Money Laundering and Other Criminal Cases (hereinafter "the Interpretation"), the sole judicial interpretation directly addressing Money Laundering in China, enumerates under Article 2 various behavioral patterns constituting "other methods" under Article 191(5) of the Criminal Law. Notably, several listed methods — such as converting proceeds through gambling — clearly involve non-financial institutions and instruments. This challenges the traditional view that Money Laundering must utilize financial systems. Scholars advocating the "judicial function theory" consequently argue that if the protected legal interest of a crime is not necessarily infringed by the acts it regulates, the legitimacy of such legal interest becomes questionable. Indeed, the specific behavioral modalities enumerated in the Judicial Interpretation — particularly the second and fifth categories — resist plausible characterization as employing so-called "financial instruments." However, whether this constitutes legislative oversight or reflects conceptual deviations in either the predominant or emerging interpretations of the "financial management order" legal interest remains a matter for critical examination.

Furthermore, the *Summary of the Special Symposium on Combating Smuggling of Refined Oil Products at Non-Customs Checkpoints* jointly issued by the Supreme People's Court, Supreme People's Procuratorate, and General Administration of Customs stipulates that "knowingly purchasing smuggled refined oil products from non-direct smugglers constitutes the offense of Money Laundering." Evidently, the transactional methods involved here cannot reasonably be construed as "financial instruments," nor do the subjects qualify as "financial institutions." From both behavioral means and subjectum perspectives, such conduct does not inherently infringe upon financial management order. Under doctrinal principles of legal interest specificity, such acts should instead be classified under the crime of concealing or disguising criminal proceeds and their benefits (Article 312 of the Criminal Code). Nevertheless, such conduct is still legally defined as Money Laundering, which raises the question of whether the legal interests protected by this crime encompass the financial regulatory order.

Existing doctrinal responses to this expansive trend in judicial interpretation fail to provide cogent rebuttals. Scholars arbitrarily accuse legislators of violating the principle of legality through their open-textured interpretation of "other methods," contending that the statutory overbreadth in defining "alternative means" constitutes legislative malpractice. Consequently, grounded in their orthodox understanding of financial regulatory order, they maintain that conduct demonstrably unrelated to financial systems or instruments should categorically be classified as receiving stolen property. [1]Such interpretative approaches fundamentally miss the crux of the issue — the criteria for identifying the legal interests protected by financial regulatory order urgently require a paradigm shift from behavioral modality-focused analysis to outcome-oriented evaluation. Moreover, in addressing criminal law issues, primary emphasis should be placed on interpreting existing law rather than criticizing or legislating law. Consequently, a reconceptualization of the "financial management order" legal interest from an alternative perspective becomes imperative to resolve conflicts between statutory instruments and doctrinal understandings of protected interests.

As evidenced by the 2009 Judicial Interpretation governing the application of Article 191(5)'s residual clause, the legal interest of financial order protected by the legislator at the beginning of the establishment of this crime has gradually deviated from the identification of money laundering behavior. Determining whether Money Laundering infringes upon the legal interest of financial regulatory order can no longer be exhaustively ascertained through behavioral methodologies alone. A novel identification framework must be established — the financial order interest in Money Laundering offenses should be grounded in the regulatory failure resulting from the transformation of proceeds from specified predicate crimes into legitimized funds.[2]

5.2 Primary Legal Interest: Result-Oriented Financial Management Order

The essence of Money Laundering's infringement on financial order should shift from a focus on financial-instrument-based

[1] Zhang Mingkai. (2022). The Legal Interests Protected by the Crime of Money Laundering. *Law Science*, (5).

[2] Shi Fang. (2022). The Dilemma of Applying the Money Laundering Offense System in China and the Identification of Legal Interests. *Global Law Review*, (2).

means to regulatory-failure-based outcomes. Traditional interpretations grounded the infringement in the financial instrumentalization of laundering methods. However, contemporary judicial interpretations have expanded the scope to include non-financial methods — such as physical cross-border transfers or economic activities like pawnshops, leasing, and gambling—that achieve fund "whitening" while evading supervision. [1]The substantive essence of this transformation lies in recognizing that the legitimization of illicit funds through any economic activity, coupled with their detachment from regulatory oversight, constitutes per se a material violation of financial management order. Such conversion of tainted assets into ostensibly legitimate forms—effectively escaping effective financial supervision—undermines the normative functioning of capital flow regulation. Consequently, the determination of infringements upon financial regulatory order should not be predicated solely on whether laundering methods employ financial channels. More critically, the regulatory disengagement resulting from transforming "black money" into "white money" permits the unrestricted circulation of criminally derived funds within economic spheres from which they should be excluded, thereby equally violating the legal interest of financial regulation. This jurisprudential shift logically extends the scope of money laundering methodologies to encompass all economic transactional activities—including pawnbroking, leasing, investment, gambling, etc. — provided such acts achieve the functional effect of laundering by circumventing financial monitoring of illicit proceeds.

Similarly, when illicit proceeds are transported, carried, or mailed across borders, the physical relocation of criminal funds transcends mere spatial displacement. The illicit nature of these funds undergoes a "identity transformation" upon crossing national boundaries, effectively laundering them into legitimate circulating capital. From the perspective of regulatory failure, the core element of legal interest infringement lies in the uncontrolled circulation of criminal proceeds. Whether through international trade, cryptocurrency transactions, or physical asset swaps, any mechanism that enables "dirty money" to enter economic circulation through legitimate channels creates a regulatory vacuum. This illegal conversion of fund attributes not only evades anti-money laundering monitoring systems but also undermines financial regulators' capacity to track capital flows. Particularly in cross-border transfers, criminal proceeds escape both source country supervision and destination country scrutiny, forming dual regulatory blind spots that essentially complete the "legitimization process" of illicit funds.

The systemic risks arising from such regulatory failures exhibit dual hazards: firstly, the exponential expansion of underground finance significantly weakens national financial security defenses. When unregulated capital reaches critical mass, it may trigger systemic financial risks. Secondly, illicit fund flows provide economic foundations for derivative crimes including terrorist financing and transnational organized crime. From the cumulative legal interest infringement perspective, this phenomenon constitutes a gradual erosion of financial security interests protected by law. Therefore, based on the substantive criteria of legal interest infringement, the expansion of illegal financial systems induced by money laundering has already caused tangible harm to the financial security interests safeguarded by criminal law. In establishing the paradigm for determining legal interest infringement, a results-oriented analytical framework centered on the "regulatory vacuum effect" should be constructed. This framework evaluates the degree of detachment between capital circulation chains and formal financial regulatory systems to ascertain actual damage to financial management order. The establishment of this functional regulatory perspective transcends traditional singular judgment models that rely on formal behavioral assessments or capital flow path dependencies.

Regarding the typology of predicate offenses, China's legislation adopts a selective regulatory approach, prioritizing the suppression of crimes requiring large-scale fund laundering. The regulatory failure effects arising from laundering activities involving massive illegal proceeds derived from specific crimes such as graft, bribery, and financial offenses demonstrate particularly destructive potential.

[1] Luan Li, Sun Qianhui. (2023). The Dilemma, Reflection, and Countermeasures in the Judicial Application of the Crime of Money Laundering. *Journal of Law Application*, (10).

In contrast, while ordinary stolen property offenses also involve fund attribute alteration, their limited transaction volumes inherently restrict capacity to generate systemic impacts on financial regulatory frameworks. This differentiated regulatory strategy reflects legislators' graded protection philosophy towards financial security interests.

Consequently, the demarcation standard between Money Laundering and stolen property offenses should focus on the degree of regulatory failure induced by fund cleansing activities, rather than mechanically examining whether financial instruments are involved. When illicit funds achieve regulatory evasion through economic activities and reach scales threatening financial security, such conduct constitutes the core illegality of Money Laundering offenses. This results-oriented determination approach aligns with the substantive risk prevention requirements of modern financial regulatory systems.

5.3 Secondary Legal Interest: Control over Proceeds from Predicate Crimes and Their Benefits

Complementing financial management order, the crime's secondary legal interest is the state's control over proceeds from predicate crimes. This concept synthesizes the strengths of the "judicial function theory" and "predicate crime interest theory." Since Money Laundering offenses originate from traditional "stolen property offenses", their core manifestation lies in concealing and disguising the origin and nature of proceeds derived from predicate crimes, thereby achieving their "legitimization".[1] The statutory purpose of criminalizing money laundering is to ensure the confiscation or recovery of criminal proceeds and their benefits, explicitly "prohibiting the conversion of illicit criminal proceeds into legitimate property". Money Laundering inherently obstructs the state's control over proceeds from predicate crimes and their benefits. Therefore, it is appropriate to recognize "control over predicate offense proceeds and their benefits" as one of the protected legal interests of Money Laundering offenses. Furthermore, from the perspective of absorbing the "protected legal interests of predicate offenses", the control theory accentuates the critical element of "control over proceeds and their benefits", effectively avoiding potential overlaps with the legal interests protected by predicate offense provisions.

6. Conclusion

The inclusion of self-laundering under Article 191 has complicated the interpretation of Money Laundering's legal interests and constitutive elements. This article advocates for explicitly defining the protected legal interests of Money Laundering offenses as financial management order and control over proceeds derived from predicate offenses and their benefits. This dual formulation resolves the compatibility pathway between the criminalization of self-laundering and the doctrine of anticipated possibility, while concurrently accomplishing two objectives: first, establishing the legal interest nexus for the typological regulation of predicate offenses to enhance explanatory power—encompassing non-financialized money laundering acts addressed in judicial interpretations; second, clarifying the demarcation criteria between Money Laundering offenses and stolen property offenses.

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