# ANTI-MONEY LAUNDERING MEASURES TO FREEZE, CONFISCATE AND RECOVER PROCEEDS OF CORRUPTION IN THE INDONESIAN PERSPECTIVE

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## I. INTRODUCTION

Combating money laundering has been a primary concern for Government of Indonesia (GOI) since the economic and political crises erupted in 1997. The GOI paid more attention in eradicating such criminal activities, both because of our domestic needs and to meet our international commitments. It is deemed necessary to eradicate those criminal acts because the domestic crises occurred mainly due to corruption, collusion and nepotism -- fundamental weaknesses that are basically homegrown problems.

Moreover, money laundering is not only a national crime but also a transnational crime, therefore it has to be eradicated, among other things by engaging in regional or international cooperation through bilateral or multilateral forums. Internationally, the prevention of the criminal offenses of money laundering has been promoted by the establishment of a task force known as The Financial Action Task Force (FATF) on Money Laundering by the G-7 Summit held in Paris on July 1989. Indonesia is yet a member of FATF, but has been a member of the Asia Pacific Group on Money Laundering (APG), an international cooperation organization established in 1997 to cooperate with FATF in the Asia Pacific regions.

With regards to the links between corruption and money laundering issues as mentioned above, many initiatives have been developed. Several initiatives and products of the United Nations in general and of *United Nation Office on Drugs and Crime* (UNODC) in particular are relevant to the links between corruption and money laundering. As it may be aware that the UNODC has developed the *United Nations Convention against Corruption* (UNCAC), which has been signed by 106 countries.

The UNCAC obliges Member States in its Article 14 to institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions, and other bodies particularly susceptible to money laundering to deter and detect all forms of money laundering. Moreover, UNCAC obliges Member States to establish as criminal offences the laundering of the proceeds of corruption, as well as to consider the establishment of the offence of concealment or continued retention of property, which is the result of any of the offences established in accordance with UNCAC.

This paper will present the nature of the crime of money laundering, the anti-money laundering measures, the Indonesia's perspective on anti money laundering measures, and the links between corruption and money laundering.

## II. THE CRIME OF MONEY LAUNDERING

In plain words, money laundering is a process where cash or property that has been obtained or derived from illegal or criminal activities is converted into a seemingly legitimate source.

Money Laundering is then a process used by people (usually criminals) to conceal the illegal origin of money derived from criminal activities, like corruption, drug trafficking, smuggling, fraud, embezzlement, and so on. Money launderers attempt to conceal or disguise the source or origin of their illegal money with the gainful and commercial intent of legalising them so that these proceeds can be seen as legitimate sources.

Why do people launder money then?

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The money launderer wants to distance or separate himself from the criminal activity that generates illegal profits that it will be hard to prosecute the key organizers who are involved in the illegal activities.

**A. Money Laundering Processes**

Money laundering involves three stages:

1. Placement

This process involves the physical disposal of the illegally obtained cash or property proceeds. The physical entry of bulk cash or illegally obtained funds is achieved via placement into the financial or trading systems.

2. Layering This process separates the illegal proceeds from their illegitimate source through a series of transactions (banking or payment transaction), where such transactions create the appearance of anonymity, and obscure the audit trail.

3. Integration

Integration is last stage of cleaning the "dirty" money. In this process, the illegal proceeds are placed or 'mixed' with the other normal, legitimate transactions or deposits. Such transactions now become normal business or legitimate funds/proceeds circulating and in use in the actual economy

## III. THE ANTI-MONEY LAUNDERING MEASURES

**A. Reporting Parties**

1. Revised FATF Recommendation 13 & 16:

If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).

The report requirements also apply to all designated non-financial businesses and professions, subject to the following qualifications:

(i) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d).
Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.

(ii) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.

(iii) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e). Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.

2. Indonesian Context

Law No.15 year 2002 concerning the Crimes of Money Laundering as amended by Law No.25 year 2003 (AML Law) says Reporting Parties shall be Financial Service Providers (FSP), which are any person providing services in the financial field or other services in relation to finance, including but not limited to banks, financial institutions, securities companies, mutual fund managers, custodians, trust agents,

depository and settlement agencies, foreign exchange traders, pension funds, insurance companies and the post office.

In the near future, they will be expanded to include DNFBPs, such as lawyers, notaries, accountants, real estate agents, and so on.

**B. Exception of Bank Secrecy**

1. Revised FATF Recommendation 4

Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations

2. Indonesia Context

Article 14 AML Law clearly stipulates that the reporting obligations of Providers of Financial Services which are banks shall be exempted from bank secrecy provisions as contained in laws regulating bank secrecy.

**C. Safe Harbour**

1. Revised FATF Recommendation 14

Financial institutions, their directors, officers and employees should be:

(i) Protected by legal provisions from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

(ii) Prohibited by law from disclosing the fact that a suspicious transaction report (STR) or related information is being reported to the FIU.

2. Indonesian Context

Article 15 AML Law stipulates that no civil or criminal action can be brought against Providers of Financial Services, their officials and their employees for carrying out of reporting obligations as required by Law

**D. Special Protection for Witnesses and Reporting Parties**

Article 40 Indonesian AML Law stipulates that any person reporting a suspicion that the crime of money laundering may have occurred shall be provided with special protection by the state against possible threats endangering the person, their life, their family and/or their assets.

The Government Regulation No.57 Year 2003 and Chief of Indonesia National Police Decree No.17 Year 2005 shall be implementing regulations.

**E. Financial Intelligence Unit (FIU)**

1. Revised FATF Recommendation 26 & UNCAC Art.58

Countries should establish an FIU that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR.

2. The Egmont Group definition of FIUs

A central, national agency responsible for receiving, (and as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information concerning suspected

proceeds of crime and potential financing of terrorism or required by national legislation or regulation, in order to combat money laundering and terrorism financing.

**F. Financial Analysis**

*Financial analysis* is the second element of the core functions of an FIU after receiving report.

The main purpose of analysis is to establish whether the data contained in the reports, substantiated as necessary by the FIU, provide a sufficient basis to warrant transmitting the file for further investigation or for prosecution (as the case may be).

The analytical process starts with the receipt of a report, continues with the collection of additional related information, goes through different forms of analysis, and ends with either a detailed file concerning a money-laundering case that is forwarded to the law enforcement authorities or prosecutors or the reaching of a conclusion that no suspicious activity was found.

**G. Investigation**

*Investigation* is obtaining of information that has relevance in criminal proceedings.

1. Revised FATF Recommendation 27

Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations. Countries are encouraged to support and develop, as far as possible, special investigative techniques suitable for the investigation of money laundering, such as controlled delivery, undercover operations and other relevant techniques.

2. Indonesia Context

*(i) Proactive Data Gathering (Pre-Investigation)*

With its initiative, INTRAC would gather the financial information involving the suspected persons in particular cases. The provided information may lead to the Proactive Investigation.

*(ii) Proactive Investigation*

The police investigators or the prosecutors would then conduct the investigation based on the PPATK's referrals.

**H. Access to Customers' Information**

1. Revised FATF Recommendation 28

When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.

2. Indonesia Context

When conducting investigation, prosecution and examination before the courts of money laundering crimes, Article 33 Indonesian AML Law authorizes investigators, public prosecutors or judges request information from Providers of Financial Services regarding Assets of any persons reported by the PPATK, a suspect, or a defendant for the purpose of the court proceedings.

**I. Asset Tracing**

Asset tracing is an essential part of financial investigation. The objectives of this activity are:

- To trace the proceeds of crime, Analysis of legal sources of wealth compared to the assets;
- To secure the order of value based confiscation;

- To determine what the suspected person has to prove that has been legally obtained (when reversed burden of proof);
- To calculate the size of the proceeds;
- To determine the level of the fine

**J. Asset Recovery**

1. Revised FATF Recommendation 38

There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value. There should also be arrangements for coordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.

2. UNCAC Art. 51, 55 & 57

The return of assets is a fundamental principle of anti-money laundering regime, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

3. Special Cooperation

UNCAC Art.56 allows State Party to forward information on proceeds of offences without prior request (spontaneous), which might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings.

4. Forfeited Asset Sharing

UNCAC Art.57 stipulates that States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

5. Indonesian Context

Law No.1 year 2006 concerning Mutual Legal Assistance art. 57 clearly stipulates the arrangement of forfeited asset sharing with other State Party on bilateral basis.

In line with UNCAC art.58, INTRAC/PPATK was established at 2002 as Indonesian FIU. The PPATK became the Egmont FIU since June 2004 and has been conducting the international cooperation on the basis of either MoU or reciprocity.

The well-known case of Hendra Rahardja gives us an example of facilitating a MLA. In the case of the exhaustion of legal remedies in Australia with regard to the Extradition request and the fact that Hendra Rahardja died in Sydney on 26 January 2003, Indonesia and Australia agreed to develop other cooperation under the Treaty of Mutual Legal Assistance in Criminal Matter between the two countries and to create a Joint Task Force to identify and recover proceeds of the money laundering crimes of Hendra Rahardja and his associates in Australia. The recovered asset brought back to Indonesia was in amount of +/- AUD600,000.

## IV. MUTUAL LEGAL ASSISTANCE

**A. Revised FATF Recommendation 36-37**

Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings.

Countries should, to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality. Where dual criminality is required for mutual legal assistance or extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.

**B. Article 14 & 46 UNCAC**

Administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering have the ability to cooperate and exchange information at the national and international levels.

Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings.

**C. Indonesia Context**

Article 44 & 44A Indonesia AML Law:

For the purpose of preventing and eradicating money laundering, MLA can be undertaken with other countries through bilateral or multilateral forums in accordance with prevailing laws and regulations.

MLA Agreement/Treaty with Government of the Republic of Indonesia or under principles of reciprocity.

MLA includes, among other things, collecting evidence and statements from person, providing evidence in the form of documents, searching for and freezing the proceeds of crime, and others.

Indonesia MLA Law:

Law No.1 Year 2006 concerning Mutual Legal Assistance enacted by 3 March 2006:

- Legal basis for MLA request
- Central authority : Dept. of Law & HR
- Technical Procedure for MLA request
- Forfeited asset sharing arrangement

## V. LINKS BETWEEN CORRUPTION AND MONEY LAUNDERING

In general, three principle areas of cross-over between corruption and money laundering have been identified:

- Corruption generates enormous profits to be laundered;
- Corruption facilitates many money laundering and terrorist financing methods and supports predicate criminal activities; and
- Systemic corruption undermines the effectiveness of legislative, regulatory and enforcement anti money laundering measures.

Given the condition above-mentioned, several initiatives and products of the United Nations in general and of *United Nation Office on Drugs and Crime* (UNODC) in particular are relevant to the links between corruption and money laundering. As it may be aware that the UNODC has developed the *United Nations Convention Against Corruption* (UNCAC), which has been signed by 106 countries.

The UNCAC obliges Member States in its Article 14 to institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions, and other bodies particularly susceptible to money laundering to deter and detect all forms of money laundering. Moreover, UNCAC obliges Member States to establish as criminal offences the laundering of the proceeds of corruption, as well as to consider the establishment of the offence of concealment or continued retention of property, which is the result of any of the offences established in accordance with UNCAC.

**A. Indonesia Context**

- Corruption and money laundering are criminalized under Indonesian Law.

- AML Law clearly stipulates that corruption is one (and the first) of predicate crimes, which its proceeds of crime to be laundered.
- Anti corruption agency (KPK) and Financial Intelligence Unit (PPATK/INTRAC) have been established and have very close cooperation.
- The INTRAC/PPATK and the KPK have signed the Memorandum of Understanding (MoU) in 29 April 2004. The coverage of MoU includes, among other things, sharing information, Liaison Officer assignment, and joint training.
- Most of the essential investigating cases by KPK rely on the financial information provided by PPATK. Some of those cases have been charged by the court.

## VI. FINAL WORDS

The anti money laundering measures should be established and strengthened to reduce the degree of crimes in general and corruption in particular.

For country that corruption is a serious problem, anti corruption law as well as anti money laundering law must be available. The nation shall criminalize both corruption and money laundering offence. In addition, in AML Law, corruption shall be one of predicate crimes, which its proceeds of crime to be laundered. In addition, to effectively eradicate the crime of corruption and money laundering, country shall have anti corruption agency and financial intelligence unit, in which both agencies shall have very close cooperation.

## VII. THE INDONESIAN FINANCIAL TRANSACTION REPORTS AND ANALYSIS CENTRE ("PPATK")

The PPATK (Indonesian Financial Transactions Reporting and Analysis Centre) is an independent body that reports directly to the President and became fully operational on 20 October 2003. The PPATK is Indonesia's Financial Intelligence Unit (FIU) and as such will be the pivotal agency in the anti-money laundering regime. PPATK is lead by a Head appointed under the authority of the Act. The Head is assisted by four Deputy Heads comprising Deputy Head of Analysis, Research and Inter Agency Cooperation, Deputy Head of Legal and Compliance, Deputy Head of Technology and Information, and Deputy Head of Administration. The responsibilities of the Head and Deputy Heads have been set out at a high level in Presidential Decree No. 81 Year 2003 concerning the Organizational Structure and Working Procedure of the PPATK.

### A. Duties and Powers

Article 26 of Law No. 15 Year 2002 concerning the Crime of Money Laundering as amended by Law No. 25 Year 2003 states that in implementing its functions, the PPATK shall have the following duties:

1) To collect, maintain, analyse and evaluate information obtained by the PPATK in accordance with this Law;
2) To monitor records in the exempt registry prepared by Providers of Financial Services;
3) To prepare guidelines of procedures for reporting of suspicious financial transactions;
4) To provide advice and assistance to relevant authorities concerning information obtained by the PPATK in accordance with the provisions of this Law;
5) To issue guidelines and publications to Providers of Financial Services concerning their obligations as set forth in this Law or in other prevailing laws and regulations, and to assist in detecting suspicious customer behavior;

6) To provide recommendations to the Government concerning measures for the prevention and eradication of money laundering;
7) To report to the Police and the Public Prosecutor's Office the results of analyses of financial transactions which indicate money laundering;
8) To prepare and provide reports regarding the results of analyses of financial transactions and other activities once every 6 (six) months to the President, the House of Representatives (DPR) and to agencies authorized to supervise Providers of Financial Services.
9) To provide information to the public concerning its institutional performance, to the extent that such disclosure is not contrary to the provisions of this Law.

Article 27 of Law No. 15 Year 2002 concerning the Crime of Money Laundering, as amended by Law No. 25 Year 2003, states that in executing its duties, the PPATK shall have the following powers:

1) To request and receive reports from Providers of Financial Services;
2) To request information concerning the progress of investigations or prosecutions of money laundering that have been reported to investigators or public prosecutors;
3) To audit Providers of Financial Services for compliance with the provisions of this Law and guidelines for reporting financial transactions;
4) To grant exemptions from the reporting obligation for Cash Financial Transactions referred to in Article 13(1)(b).

To implement its duties and powers, Presidential Decree No. 81 Year 2003 concerning the Organizational Structure and Operational Procedures of the PPATK and the Presidential Decree No. 82 Year 2003 concerning the PPATK's Authorities were enacted, both of which were issued on 3 November 2003.

**B. Attribution**

It is commonly acknowledged that FIU may range from units conducting a sort of intelligence tasks (such as tapping phone calls) to units that just do some paper work (documentation review). In this regards, as mandated by the money laundering Law and the Presidential Decree No. 82 Year 2003 concerning the PPATK's Authorities, PPATK is attributed by administrative power only, among other things are as follows:

- To request and receive reports, Suspicious Transaction Reports and Cash Transaction Reports, from Financial Service Providers;
- To request additional information from Financial Service Providers, in case reports provided by Financial Service Providers are not reliable enough;
- To request assistance and information from domestic and foreign agencies for its purposes in analyzing any suspicious financial transaction in preventing and eradicating the crimes of money laundering;

and many other administrative powers.

Therefore, in term of conducting its function as FIU, PPATK is not attributed by investigative powers and other intelligence duties, such as tapping phone calls, doing under cover, on-site investigative, and others.

**C. Type of Reports Filed to INTRAC/PPATK (Indonesian FIU)**

1. Suspicious Transaction Reports (STRs)

Suspicious Financial Transactions shall be financial transactions:

- deviating from the profile, characteristics or the usual transaction patterns of the customer concerned;
- by customers that can be reasonably suspected to be conducted for the purpose of avoiding reporting of the transactions; or
- whether or not completed using assets that are reasonably suspected to constitute the proceeds of crime.

2. Cash Transaction Reports (CTRs)

Cash Financial Transactions shall be withdrawals, deposits or entrustments on a cash basis or using other monetary instruments, utilizing Providers of Financial Services, to a cumulative total of Rp.500,000,000.00 (five hundred million rupiah) or more or an equivalent amount in another Currency (approx.USD55,000), made either in one transaction or in several transactions within 1 (one) business day.

**D. Cross Border Cash Carrying Reports (CBRs)**

Any person taking cash into or out of the territory of the Republic of Indonesia in the amount of Rp 100 million or more, or the equivalent in another currency (approx.USD11,000), must report to the Directorate General of Customs and Excise.

The Directorate General of Customs and Excise must report the information received within 5 (five) days to the PPATK/INTRAC.