

GATEKEEPERS' ROLES AS A FUNDAMENTAL KEY IN MONEY LAUNDERING

Paku Utama*

* China University of Political Science and Law

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Corresponding author's e-mail : paku.utama@yahoo.co.id

Abstract

This study examines problem of money laundering and identifies role of gatekeepers in utilising their expertise to conceal the proceeds of crime. In order to successfully prevent and investigate money laundering, we need to understand the development of anti-money laundering regime and how country like Indonesia adopts this development into its domestic regulations. Nevertheless, it is crucial to comprehend gatekeepers utilising various money laundering mechanisms and offshore financial centres. Scrutinised cases from Indonesia and corporate practices from Singapore on this study highlight how gatekeepers operate in the private sector, wittingly or unwittingly, use their expert knowledge of the international financial system to facilitate criminals and to secure the movement of the proceeds of crime globally.

Keywords: financial crime, gatekeepers, money laundering

Abstrak

Tulisan ini akan membahas permasalahan pencucian uang dan mengidentifikasi peranan dari gatekeepers dalam menggunakan kepakaran mereka untuk menyembunyikan tindak kejahatan. Agar berhasil mencegah dan menyelidiki pencucian uang, perlu memahami perkembangan dari rezim antipencucian uang dan bagaimana negara seperti Indonesia mengadopsi perkembangan tersebut ke dalam peraturan nasionalnya. Namun demikian, penting untuk memahami gatekeepers memanfaatkan berbagai macam mekanisme pencucian uang dan pusat keuangan di luar negeri. Kasus yang menjadi perhatian di Indoensia dan praktik korporasi dari Singapura dalam tulisan ini menyoroti bagaimana gatekeepers beroperasi di sektor privat, baik secara sadar ataupun tidak sadar, menggunakan keahlian dan pengetahuan mereka tentang sistem keuangan finansial untuk memfasilitasi kejahatan dan mengamankan pergerakan kejahatan secara global.

Kata kunci: kejahatan keuangan, gatekeepers, pencucian uang

I. Introduction

The proceeds of crimes¹ that are laundered and concealed in money laundering schemes undermine democratic institutions, slow economic development and contribute to governmental instability.² *The Globalisation of Crime: a Transnational Organised Crime Threat Assessment Report* produced by United Nations Office on Drugs and Crime (hereinafter, UNODC) explains that economic globalisation has progressed without symmetrical growth and expansion of global governance practices since the end of the Cold War.³ The development of technologies, in particular within financial institutions, offers broader opportunity for criminals to launder their money derived from illegal activities. Contemporary banking institutions are able to move ill-gotten gains by transferring them to multiple jurisdictions. Thus, the expansion of new global markets, trade and finance, as well as telecommunications and travel, not only have fostered economic growth and allowed many to prosper, but have also presented criminals and corrupt opportunists with the ability to exploit globalisation's gains to conduct greater crimes.⁴

This circumstance allows money laundering as the “wheel greases” for these illegal activities, where money laundering obscures the origin of money derived from crimes to become untraceable, so the criminals can keep carrying out the illegal business and enjoying the profit.

¹ Proceeds of crime are any property or assets derived from illegal act. See Article 2 of United Nations Convention against Corruption. Proceeds of crime consist of any revenue derived from a criminal activity. Cambridge Dictionary defines revenue as generally the income of business obtained from its legal activity. Normally, business activities range from the sale of goods and/ or services to customers. Another term revenue is also defined as turnover or sales, and company may obtain revenue from fees, royalties, interest, and selling. See Cambridge Dictionary, “Revenue,” <http://dictionary.cambridge.org/us/dictionary/english/revenue>, accessed 8 February 2016. See also Investopedia, “Definition of Revenue,” <http://www.investopedia.com/terms/r/revenue.asp>, accessed 8 February 2016. According to Michelle Gallant, the range of this ‘revenue’ from the modest sum can be obtained from the sale of stolen vehicles to the numerous financial transactions sourced from tax evasion. She, moreover, emphasises the term of ‘proceeds’ as a figure the financial component in a criminal activity and proceeds of crime can be also be identified by its underlying profit motivation. See M. Michelle Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (UK: Edward Elgar Publishing Ltd, 2006), p. 2. However, proceeds of crime shall be distinguished from the profit of crime. According to a business dictionary, a profit of crime is the general revenue of illegal activities or crimes minus its activities’ expenses. See Business Dictionary, “Profit,” <http://www.businessdictionary.com/definition/profit.html>, accessed 8 February 2016.

² UNODC, *Thematic Programme: Action against Corruption and Economic Crime* (Vienna: UNODC, 2011). See also UNDP, *Pacific Human Development Report: Tackling Corruption, Transforming Live* (Washington D.C.: UNDP, 2008), pp. v-vi.

³ A convenient transportation system through air, land and sea that enabled a person to travel from one country to another in a different continents in a matter of hours, without burdened by technical or financial considerations; trading activities; opening of accounts, transfer of money can be done from one continent to another in a matter of minutes (even seconds). UNODC, *The Globalisation of Crime: a Transnational Organized Crime Threat Assessment*, (Vienna: UNODC, 2010), p. ii (hereinafter *Globalisation of Crime*).

⁴ Criminal activities have spread to many countries, crossing many jurisdictions and have transformed into a global money machine. Unlawful activities such as illegal prostitution, illicit arms trade, illicit drugs trade and timber smuggling that previously only occurred in small sectors in a country, now have turned into a separate “free trade”, where a developed country will be the party that makes the demand and the developing country will be supplying that demand or vice versa. The advancement in human civilisation has also generated a more complex, more sophisticated, faster and global reaching form of criminal activities. UNODC, *Globalisation of Crime* Vienna: UNODC, 2010, p. ii. See also Davinder Billing from the Australian Transaction Reports and Analysis Centre (AUSTRAC), concerning *SWIFT: Overview*, delivered at the Jakarta Centre for Law Enforcement Cooperation (JCLEC) Financial Investigation Course, Semarang, Indonesia, 14th of August 2007

This development, along with other available mechanisms, however, can be manipulated by gatekeepers,⁵ a term denoting various financial or legal professionals with specific skills, knowledge, and access to the global financial institutions in assisting criminals to obscure their illegal assets.⁶

To curb these illicit activities assisted by gatekeepers, nevertheless, the international anti-money laundering community has developed many measures targeting money laundering and gatekeepers in particular.⁷ Among the measures are the Know Your Customer procedure in banks, and Customer Due Diligence, which were established by the 40+9 Recommendations of the Financial Action Task Force (hereinafter, FATF),⁸ and designed for the implementation on a global scale. In addition, there are many other technical measures available, such as the United Nations Conventions against Corruption (hereinafter, UNCAC)⁹, which have been ratified by the majority of nations, and serve as valuable standards and framework for the development, and refinement of standard practices and instruments.¹⁰ International anti-money laundering measures are persistently improved to meet the changing needs, but recent cases demonstrate that criminals can still effectively hide and protect their illegal assets using offshore banks, which are only in partial compliance, or a *de facto* state of non-compliance, with such measures.¹¹

However, while its effects are often most evident at the national level, money laundering also constitutes a transnational problem. Its effects spread throughout the globe, penetrating countless jurisdictions, while no national instruments have

⁵ There is no single definition of gatekeepers, but the FATF briefly defines gatekeepers as 'designated non-financial businesses and professions', including lawyers, notaries, real estate agents, trust, casino, accountants, and other independent legal professionals who perform the role of a trusted third party. Kevin L. Shepherd, "Guardians at the Gate: The Gatekeeper Initiative and the Risk-Based Approach for Transactional Lawyers," *Real Property, Trust, and Estate Journal*, (2009), p. 611. See Financial Action Task Force (FATF), *FATF 40 Recommendations* (France: OECD, 2003), Recommendation 12 (hereinafter, *FATF 40 Recommendations*). See also FATF, *Risk-Based Approach Guidance for Legal Professionals* (France: OECD, 2008), para. 11.

⁶ As highlighted by the United States Department of State, money laundering penetrates global financial institutions and its movement distorts every national's financial stability. Corrupt regimes, officials and business practices, as well as common crimes, sustain and enable each other to further retard development and entrench ever more complex forms of money laundering, forming a positive feedback loop with decidedly negative consequences. Bureau of International Narcotics and Law Enforcement Affairs, "Money Laundering and Terrorist Financing: A Global Threat, International Narcotics Control Strategy Report," *U.S. Department of State, 2004*, <http://www.state.gov/j/inl/rls/nrcrpt/2003/vol2/html/29843.htm>, accessed 6 February 2016.

⁷ Robert Leventhal, "International Legal Standards on Corruption," *Proceedings of the Annual Meeting (American Society of International Law)* 102 (2008): pp. 203-07, <http://www.jstor.org/stable/25660291>.

⁸ FATF, *FATF 40 Recommendations*, Recommendations 5, 6, 8, to 11. See also FATF, *Risk-Based Approach Guidance for Legal Professionals* (France: OECD, 2008), para. 5-11.

⁹ UNCAC, adopted by the United Nations General Assembly on 31 October 2003 and signature in Merida, is a multilateral convention to fight corruption. UNCAC, however, regulates important measures to prevent and to fight money laundering. *Convention Against Corruption*, New York 31 October 2003. United Nations Treaty Series, vol. 2349, p. 41, doc. Doc. A/58/422.

¹⁰ American Society of International Law, "Adoption of UN Convention against Corruption, The American Journal of International Law," *American Society of International Law* 98, no. 1, (2004), p. 184, accessed 19 August 2011, <http://www.jstor.org/stable/3139275>.

¹¹ Money laundering stunts economic development as foreign direct investment is discouraged and local businesses often find it impossible to overcome the unfair business competition when competitor's money is vastly sourced from money laundering, and extortive fees for licenses or 'protection' are imposed by corrupt officials. UNDP, *Pacific Human Development Report: Tackling Corruption, Transforming Lives, Accelerating Human Development in Asia and the Pacific* (Delhi: Macmillan India, 2008), pp. v-vi.

proven capable of eradicating it.¹² This necessitates the development of more effective international mechanisms, aiming to mitigate and eventually stamp out money laundering and illicit transnational financial flows and transactions.

This simple overview of money laundering and the roles of gatekeepers compels this study to examine the roles of gatekeeper in money laundering activities. This study will specifically focus on the roles of gatekeepers in securing the money derived from illegal activities in order to obstruct investigators from tracing the illegal money. Comparative studies, which observe cases and practices in Indonesia and Singapore, will be utilised to highlight practical examples of gatekeepers abusing their skills. Conclusively, this study triggers discussion to formulate an approach to curb gatekeepers in assisting money laundering schemes.

II. Money Laundering Goal and Methods

The fundamental goal of money laundering is to disconnect the proceeds of a crime from its source and the process aims to turn the proceeds of crime into assets that appear legitimate.¹³ However, this broad goal can be achieved by a variety of methods, although gatekeepers have identified best practices and methods that constitute a common *modus operandi*, broadly examined by the Board of Governors of the Federal Reserve System (hereinafter, FRS).

According to the FRS examination, money laundering at least involves three principal stages. The placement stage, where money gained from illegal activity or money used to assist and to instrument the illegal activity is introduced into the financial system. The layering stage is the next stage after the placement, where it aims to further distance and conceal the money's origin from the illegal source or illegal activity. The layering stage utilises a series of individuals, banking accounts, business structures, and complex money laundering schemes to disguise the illegal money and make it untraceable. The integration stage is the last stage of money laundering after the placement stage and the layering stage. FRS further examines that after the application of complex money laundering schemes in the layering stage, the illegal money will be considered laundered.¹⁴

¹² From this circumstance we can examine that the blending of illegal money within financial institutions demoralises public trust and confidence on the financial system in a country. This situation generates public perception that legitimate financial institutions in a country are contaminated by the existence of dirty money, and moreover, it triggers the public distrust and cause people to rush to move their money somewhere else. The global efforts to suppress global criminal activities and money laundering are continuously updated and maximised; however, these efforts have not yielded the intended results. Money laundering activities are not an easy subject to understand and learn. The trend of money laundering continues to fluctuate and the countries' capacity to confront and overcome them never reached its fullest. See Patrick Glynn, Stephen J. Kobrin, and Moises Naim, *Institute for International Economic*, (1997), p. 1, http://www.iie.com/publications/chapters_preview/12/1iie2334.pdf, accessed 30 September 2011. See Bureau of International Narcotics and Law Enforcement Affairs, "Money Laundering and Terrorist Financing: A Global Threat, International Narcotics Control Strategy Report," U.S. Department of State, 2004, <http://www.state.gov/j/inl/rls/nrcrpt/2003/vol2/html/29843.htm>, accessed 6 February 2016. See Leventhal, *op. cit.*, p. 203. See also J. P. Olivier de Sardan, "A Moral Economy of Corruption in Africa?," *The Journal of Modern African Studies* 37, no. 1, (1999), p. 50, <http://www.jstor.org/stable/161467>, accessed 19 August 2011. See also Robert S. Leiken, "Controlling the Global Corruption Epidemic," *Foreign Policy* 105 (1997), p. 61, <http://www.jstor.org/stable/1148973>, accessed 19 August 2011.

¹³ Peter Reuter, and Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Washington: Institute for International Economics, 2004), pp. 25-27.

¹⁴ See *Ibid.* See also Federal Reserve System, "Amendments to Money Laundering Laws and Related

Gatekeepers will integrate the money into the financial system or other integration schemes in order that the criminal may enjoy the money that appears legitimate. The integration schemes may vary. Gatekeepers can integrate the laundered money, after being slushed in multiple jurisdictions' various accounts, into the financial system in foreign countries using other people's names, or the money can be integrated into legal business activities elsewhere.

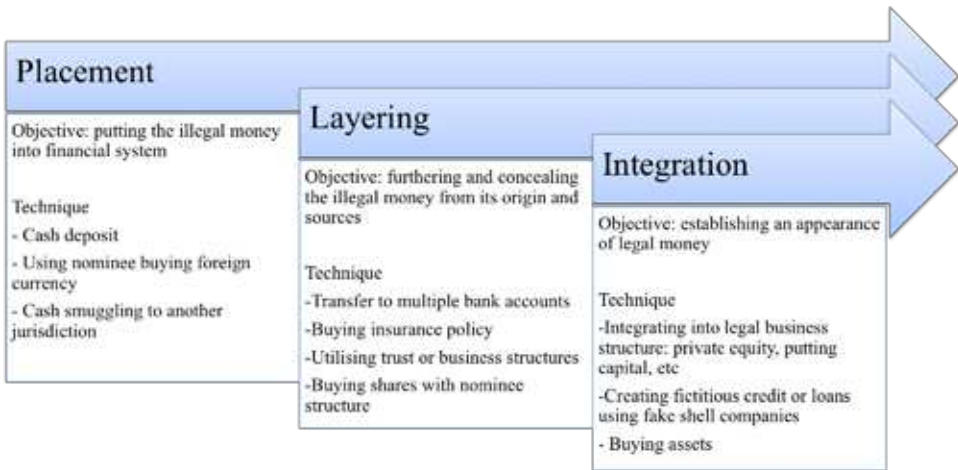


Figure 1: Stages of Money Laundering¹⁵

In practice, not all money-laundering transactions follow these three steps rigidly, but they are largely accurate in the majority of cases. Gatekeepers can modify money laundering schemes to apply the first and second stages, or to combine some stages repetitively.

A. Disconnecting the Link

Conceptually the foremost goal facilitated by gatekeepers in money laundering is to disconnect the link between a) the criminal and the proceeds of crime; b) the proceeds of crime and the illegal activities; c) the criminal and access to their proceeds of crime.¹⁶ Criminals responsible for the predicate crime always attempts to disconnect themselves from any evidence or proceeds of crime that could incriminate them, while maintaining control and access to those gains. Gatekeepers assist the criminals in disconnecting this entire link, showing no connection between criminals and crimes, and/ or proceeds of crime, but still have control over their assets. Complex money laundering schemes are often utilised by gatekeepers to successfully

Legislation and Federal Reserve 1992 Report to Congress Regarding Administrative Enforcement and Criminal Investigatory and Prosecutorial Activities," <http://www.federalreserve.gov/boarddocs/srletters/1993/SR9351.HTM>, accessed on 12 December 2015.

¹⁵ This source is taken and modified from UNODC, "International Money Laundering Information Network/ Anti-Money Laundering International Database," <https://www.unodc.org/unodc/en/money-laundering/imolin-amlid.html>, accessed on 20 March 2016.

¹⁶ These disconnects allow the criminals to safely enjoy of fruits of their crime. See Stephen Baker, and Ed Shorrock, "Gatekeepers, Corporate Structures and Their Role in Money Laundering," in *Tracing Stolen Assets: A Practitioner's Handbook*, ed. Phyllis Atkinson (Basel: Basel Institute on Governance, 2009), p. 81.

accomplish this goal.¹⁷

From this perspective, we can see that the goal of the gatekeepers is to maintain the illusion of innocence for their clients. The gatekeepers' most important duties are to allow their illegal clients to utilise their wealth and assets as if they were legitimate, and to obstruct any potential investigators from linking the proceeds of any criminal activities to the criminals or crimes .

Relevant anti-money laundering authorities follow the money. By tracing and following the money, investigators can ascertain the: 1) predicate crime; 2) the actual beneficial owner of the assets; and 3) accomplices or individuals connected in other related criminal activities. In the larger schemes, organised crimes and corruption not only involve criminals, but also public officials, and gatekeepers providing money laundering services. These people will do any preventive mechanism to obstruct the investigation process. Thus, in money laundering it is very essential to protect these relevant parties, involved in the crime, and the proceeds of crime for not being disclosed.¹⁸

B. Criminals Need Gatekeepers to Launder Their Money

Advice is the most important thing given by the gatekeepers to criminals dealing with a money-laundering scheme. The advice can vary from a simple method to a complicated method, such as purchasing property, manipulating trusts and corporate vehicles, and manipulating mergers and acquisitions of companies' schemes.

These functions are highlighted in R.E. Bell's article, *The Prosecutions of Lawyers for Money Laundering Offences*, which overviews numerous cases involving lawyers who served as gatekeepers in American cases and who effectively masterminded the money laundering schemes in question.¹⁹ The first case mentioned is *United States v. Arditti*,²⁰ in which Arditti, an El Paso criminal lawyer, was convicted after advising an undercover agent on how to structure transactions for purchasing real estate without creating suspicion surrounding the origin of his assets.²¹ In *United States v. Steinhorn*,²² Steinhorn devised a scheme to route dirty money from his accounts, in amounts under USD 10,000, to a Caribbean bank and then back to the United States (US).²³ In *United States v. Foster*,²⁴ Foster laundered money for his client through the client's trust account, transferring the funds to a non-existent corporate entity in the Cayman Islands.²⁵ Foster also advised his client that the US did not have tax treaties with the Cayman Islands and that the Internal Revenue Service would not be able to trace the money to accounts there.²⁶ Finally, Foster advised his client to establish

¹⁷ *Ibid.*

¹⁸ Criminals from developing countries need professionals to transfer their proceeds of crime out of their borders and jurisdiction. Dealing with the sophisticated standards and practices of financing institutions, overcoming the internal compliance methodology, and avoiding Customer Due Diligence rules, require at least a financial consultant or a lawyer to be successful. Mark Pieth and Gemma Aiolfi, *Anti-Money Laundering: Leveling the Playing Field*, (Basel: Basel Institute on Governance, 2003), pp. 8-10.

¹⁹ R.E. Bell, "The Prosecutions of Lawyers for Money Laundering Offences," *Journal of Money Laundering Control* 6, no. 1, (2003), p. 19.

²⁰ *The United States v Arditti*, 955 F. 2d 331 (5th Cir. 1992).

²¹ Bell, *loc. cit.*

²² *The United States v Steihorn*, 739 F. Supp. 268 (1990).

²³ Bell, *loc. cit.*

²⁴ *The United States v Foster*, 835 F. Supp. 360 (1993).

²⁵ Bell, *loc. cit.*

²⁶ *Ibid.*

a company associated with the account in Liechtenstein.²⁷ However, despite clear evidence and numerous cases of gatekeepers abusing their expertise in the US, Bell notes a disturbing trend as solicitors in the United Kingdom (UK) are being identified as participants in conspiracies to defraud and money laundering in increasing numbers.²⁸

Based on a paper presented at *Liechtenstein Trusts & Estate Practitioners International Forum* held on 6 May 2010, Monty Raphael, by referring to a FATF Report, stated that there are two main reasons for people to seek the help of a gatekeeper to launder the money: First, anti-money laundering measures have increased the risk of money laundering being detected by financial institutions.²⁹ Second, the enhanced measures applied and efforts of governments in fighting money laundering have made launderers face significant obstacles in laundering money.³⁰ Money laundering requires at least more sophisticated and complex schemes to be uncovered by law enforcers. These situations force the criminals to utilise legal professionals, including notaries, tax consultants, accountants, and other professionals to assist them in obscuring such proceeds.³¹ In this regard, the FATF sees legal professionals as gatekeepers.³²

According to a *Lawyer's Guide to Detecting and Preventing Money Laundering*, made and published collaboratively by the International Bar Association³³, the American Bar Association³⁴, and the Council of Bars and Law Societies of Europe, gatekeepers in particular lawyers have in fact a fundamental role in facilitating the money laundering through the financial systems. Thus, as a result, FATF anti-money laundering recommendations give measures to gatekeepers in the same way as banks.³⁵

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Monty Raphael, "What is Really Changing for the Intermediaries in the World Post G20?" (paper presented at the Liechtenstein Trust & Estate Practitioners International Forum, Vaduz, Liechtenstein, May 6, 2010), pp. 8-9.

³⁰ *Ibid.*

³¹ The eminent Bar Associations around the world indicate that The FATF Forty Recommendations are the remarkable framework of measures for countries to combat money laundering and terrorist financing, and The 2003 Revision, moreover, is the absolutely key from lawyer's perspective to fight money laundering. *Ibid.* These recommendations focus on preventing illicit money from flowing through the financial system by monitoring the activities of gatekeepers. See also Working Group of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe, *A Lawyer's Guide to Detecting and Preventing Money laundering* (London: International Bar Association, 2014), p. 6.

³² FATF examines the issues of gatekeepers as very fundamental in combating money laundering. A further revision of the FATF Forty Recommendations 2003 has broadened and improved the extent of the recommendations to individuals and agencies, or bodies facilitating access to the financial system. *Ibid.*

³³ To illustrate the seriousness of IBA having a concern on lawyers' role as gatekeepers in money laundering, IBA has been actively managing the Anti-Money Laundering Legislation Implementation Working Group in United States of America to focus on challenges for lawyers complying with anti-money laundering measures. See further Anti-Money Laundering Forum, "Global Chart," <http://www.anti-moneylaundring.org/globalchart.aspx>, accessed 20 January 2016.

³⁴ To illustrate the seriousness of ABA having a concern on lawyers' role as gatekeepers in money laundering, ABA operates the Task Force on Gatekeeper Regulation and the Profession, which has around 400,000 members, to scrutinise domestic and international anti-money laundering measures to be effectively adopted and implemented by lawyers.

³⁵ The current revision of FATF Forty Recommendations, published in February 2012, focuses on preventive measures such as the customer due diligence and identification mechanism. The revised FATF Forty Recommendations urge gatekeepers such as lawyers to report suspicious activities to the relevant agencies. Gatekeepers shall identify and verify their clients and the clients' sources of fund. See Working Group of the International Bar Association, the American Bar Association, and the Council of Bars and Law

III. Indonesian Anti-Money Laundering Regime Tackling Gatekeepers

Money laundering is a significant challenge in Indonesia due to lack of effective law enforcement and widespread of crimes, and corruption. Indonesia anti-money laundering regime was established based on Law No. 15 of 2002. This 2002 law was amended by Law No. 25 of 2003, which made improvement in imposing anti money laundering and anti terrorist financing into financial institutions, and later amended by Law No. 8 of 2010 (hereinafter, Indonesian AML Law).³⁶ According to the second Mutual Evaluation Report on Indonesia Anti-Money Laundering Measures, 2008,³⁷ Indonesia was only partially compliant with the recommendations. However, Indonesia was removed³⁸ from the non-compliant countries list of FATF after having been identified to have strategic anti-money laundering, 26 June 2015.³⁹

Significant development in Indonesia anti-money laundering⁴⁰ regime has been established, in particular after Indonesia the amended AML Law urged a significant turning point to the development of more aggressive anti-money laundering regime in Indonesia. This amendment gives the broader power to relevant anti-money laundering and anti-corruption authorities.⁴¹ The significant improvements within

Societies of Europe, *op. cit.*, p. 5.

³⁶ Indonesian House of Representatives passed the amended Anti-Money Laundering Law No. 8 of 2010, amending the 2002 Anti-Money Laundering Law. Indonesia started investigating and prosecuting money-laundering cases in 2004. Indonesia currently is in the process of developing relevant laws and regulations on anti-money laundering and anti-terrorist financing such as regulations on non-conviction based forfeiture, asset management, and other technical implementing instruments.

³⁷ Indonesia was among the non-compliant countries list of FATF because it did not apply and comply with anti-money laundering measures as recommended by FATF. Asia Pacific Group on Money Laundering, *APG Second Mutual Evaluation Report on Indonesia against the FATF 40 Recommendations (2003) and 9 Special Recommendations* (Sydney: APG, 2008), pp. 5 -8.

³⁸ FATF gives official statements by saying the FATF welcomes Indonesia's significant progress in improving its anti-money laundering and counter financing terrorism regime. Indonesia has progressed its commitment to establish a strong legal and regulatory framework to combat money laundering. As a result, Indonesia is no longer subject to FATF's monitoring process in regard to its effort in combating money laundering. FATF, "Jurisdictions no Longer Subject to the FATF's on Going Global AML/CFT Compliance Process," http://www.fatf-gafi.org/countries/j-m/kuwait/documents/_fatf-compliance-june-2015.html, accessed 6 February 2016.

³⁹ This decision was made during the International Cooperation Review Group, on 22-23 June 2015, held in Brisbane, Australia. This decision stated that Indonesia is clean and complies with the implementation of the United Nations Security Council Resolutions No. 1267 and 1373, and FATF Recommendations.

⁴⁰ Indonesian AML Law describes predicate crimes comprehensively. Predicate crimes encompass corruption, bribery, narcotic drugs, psychotropic substances, labour smuggling, immigrant smuggling, banking crime, capital market crime, insurance crime, customs, excise, human trafficking, trade of illegal fire arms, terrorism, kidnapping, burglary, embezzlement, fraud, money counterfeiting, gambling, prostitution, tax crime, forestry crime, environment crime, marine and fishery crime, and other crimes which are punishable by a minimum imprisonment for four years. Indonesia, *Undang-Undang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang (Law on Anti-Money Laundering)*, UU No. 8 Tahun 2010, LN No. 122 (Law Number 8 of 2010, S No. 122 of 2010), Article 2; (hereinafter *Indonesia AML Law*).

⁴¹ According to Articles 39, 40, 41 (1), 42, 43, and 44 of Indonesia AML Law, some of the important responsibilities of INTRAC are to prevent and to eradicate money laundering crimes, such as to request and to obtain data of relevant information from the government and private agencies; to establish guidelines for identifying suspicious financial activities; to establish coordination among relevant government agencies in preventing and fighting money laundering; to provide recommendations on how to prevent money laundering to the government; to represent the government in international cooperation and relations related to anti-money laundering; to carry out anti-money laundering training and education programs; to disseminate information about the awareness of anti-money laundering measures; to examine financial intelligence information; and to supervise and to monitor the reporting parties with anti-money launder-

the amended Indonesian AML Law expand the definition of financial transaction.

The amended Indonesian AML Law also imposes more severe punishment on money launderers. Indonesia criminalises money laundering under Articles 3, 4, and 5 of Law No. 8 of 2010. This Law distinguishes the criminalisation mechanism into two approaches. First is criminalisation for active⁴² money laundering and second is for passive⁴³ money laundering. However, these articles provide safeguard for person(s) before performing passive money laundering. If the person(s) disclose or report the activity, then he or she will be exempted from any criminalisation.⁴⁴

A. Gatekeepers as Reporting Parties in Indonesian AML Law

The Indonesian government enacted Government Regulation No. 43 of 2015 on Reporting Parties. This regulation basically broadens the scope of reporting parties that has already been stipulated in Law No. 8 of 2010 on the Anti-Money Laundering. Article 17 (2) of Law No. 8 of 2010 is the basis of the establishment of this Government Regulation. Gatekeepers that involve lawyers, accountant, notaries, and other independent legal service providers are the main reason why the government enacted this regulation.

The basis for the enactment of the Regulation is Article 17 of Indonesian AML Law where it stipulates that the government shall make a specific regulation to regulate more reporting parties, in particular lawyers, notaries, accountants, public accountants, land deed officials (PPAT), and financial consultants.⁴⁵ This new regulation on the reporting parties also obligates gatekeepers to report suspicious transactions if they act or perform one in business activities on behalf of their clients, such as buying and selling property; managing the fund or other forms of assets; managing the accounts, deposits, or other forms of savings or accounts; operating and managing the company; and establishment, buying, acquisition, or selling of any legal

ing measures. See *Ibid.*, Article 39-44.

⁴² Active money laundering is an offence in which the person actively performs the money laundering. Article 3 of Indonesian AML Law stipulates that anyone who places, forwards, transfers, pays, deposits, grants, spends, takes or sends to abroad, changes the currency, changes the form or security or other activities of the assets that are reasonably alleged or suspected as derived from illegal activities, with the aim to conceal or to hide the origin of the assets, shall be sentenced for money laundering crime to imprisonment for maximum of 20 years and a fine for maximum of Rp. 10,000,000,000. Article 4 of this Law stipulates the similar measures for active money laundering as it stipulates anyone who hides or conceals the origin, location, source, purpose, or the actual beneficial owner of the assets as stipulated in Article 3, shall be sentenced for money laundering crime to imprisonment for a maximum of 20 years and a fine for maximum of Rp. 500,000,000. From these two articles, we can examine the meaning of active is someone who is the offender of the predicate crime, knowing the origin and source of the money, and also performs the money laundering activities to hide the origin of the money.

⁴³ Passive money laundering, according to Article 5 of Indonesian AML Law, is an offence where the person(s) passively assist the crime of money laundering. This article stipulates anyone "who accepts or who takes control" on the transfer, payment, placement, deposit, grant, exchange, or operation of the assets that are reasonably alleged as derived from illegal activities shall be sentenced to imprisonment for maximum of five years and a fine for maximum of Rp. 1,000,000,000. The term of "who accepts or who takes control" within this Article is considered as a person who is not the actual owner or beneficial owner. From this perspective, passive money launderer is someone who enjoys or benefits from the illegal activities and assists in the money laundering to conceal the origin of proceeds of crime.

⁴⁴ Article 5 (2) of Indonesia AML Law.

⁴⁵ Indonesia, *Peraturan Pemerintah tentang Pihak Pelapor dalam Pencegahan dan Pemberantasan Tindakan Pidana Pencucian Uang (Government Regulation on Reporting Parties of Anti-Money Laundering)*, PP No. 43 Tahun 2015 (GR No. 43 of 2015), Article 3.

entities.⁴⁶ However, for lawyers, the obligation to report is waived if they are handling cases such as proceedings, arbitration, or alternative dispute resolution representing the clients.⁴⁷ These cases below will illustrate the cases in Indonesia.

B. Adrian Waworuntu Case⁴⁸

On 12 September 2005, the Indonesian Supreme Court⁴⁹ concurred with the rulings of both the District Court of South Jakarta, dated 30 March 2005,⁵⁰ and the Appellate Court, dated 18 July 2005,⁵¹ affirming that Adrian Herling Waworuntu,⁵² an investment advisor for the Gramarindo Group, an IBC, was guilty of corruption charges.⁵³ A criminal investigation of the Indonesian Police and the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC or PPATK), in 2003 uncovered a banking scheme “involving fraud, the falsification of documents, banking corruption, and money laundering.”⁵⁴

Modus operandi:

“The GRAMARINDO GROUP is an export business entity holding 41 export letters of credit (L/C) which were issued by several overseas banks such as the DUBAI BANK KENYA, ROSBANK SWITZERLAND SA, MIDDLE EAST KENYA LTD and the WALL STREET BANKING CORP, COOK ISLANDS with an outstanding amount of US\$ 76,943,095.30 and an equivalent of Euro 56,114,446.50. The GRAMARINDO GROUP requested that Bank BNI, Kebayoran Main Branch, offer for negotiation of its 41 export L/Cs at a discount.”⁵⁵

During the negotiation of the L/Cs, Mr. Koesadiyuwono and Mr. Edy Santoso arranged the three of the L/C slips to be declared “unpaid”, which in result caused a loss to Bank BNI in total of US\$ 5,416,500.⁵⁶ Subsequently, it was suspected, given the pattern, that the remaining 38 export L/C slips would also be declared “unpaid”,

⁴⁶ *Ibid.*, Article 8.

⁴⁷ *Ibid.*, Article 8 (2).

⁴⁸ The sources relating to this chapter are mainly taken from official documents from the Workshop on Mutual Legal Assistance, International Cooperation and Case Management to Facilitate Recovery, in collaboration between United Nations Office on Drugs and Crime and World Bank. Yogyakarta, Indonesia, 14 April 2008 (hereinafter *the Workshop on Mutual Legal Assistance 2008*).

⁴⁹ Supreme Court of Republic Indonesia, “Decision No. 1348K/Pid/2005.”

⁵⁰ District Court of South Jakarta, “Decision No. 1982/Pid.B/2004/PN-Jak-Sel.” (hereinafter, *Indonesia v. Adrian Waworuntu*).

⁵¹ Higher Appellate Court of Jakarta, “Decision No. 79/Pid/2005/PTDKI”.

⁵² Adrian Herling Waworuntu (male), an Indonesian citizen, was born in Indonesia, on 26 June 1951.

⁵³ The evidence presented within this analysis is from an investigation conducted by the Indonesian Transaction Reports and Analysis Center (. The investigation uncovered a scheme to launder the proceeds of corrupt activities at the Kebayoran Main Branch (KCU) of Bank BNI. The Treasury of the Republic of Indonesia sustained a considerable loss as a result of the said criminal acts. See Verdict of Indonesia Supreme Court no: 1348 K/Pid/2005, dated 12 September 2005.

⁵⁴ These crimes utilised an import-export scheme executed by the Gramarindo Group and also involved officers from Bank Negara Indonesia (Bank BNI), including the former Head of the Bank Mr. Koesadiyuwono, and the former Head of International Customer Service Mr. Edy Santoso, both of whom worked at Bank BNI’s main branch in Kebayoran Baru. The list of export companies that make up the GRAMARINDO GROUPS are PT. Pan Kipros; PT. Gramarindo Mega Indonesia; PT. Tiranu Caraka Pacific; PT. Bhinekatama Pacific; PT. Maquetique Usaha Esa Indonesia; PT. Basomasindo; PT. Metrantara; and PT. Ferry Masterindo. *Indonesia v. Adrian Waworuntu*.

⁵⁵ *The Workshop on Mutual Legal Assistance 2008. Indonesia v. Adrian Waworuntu*.

⁵⁶ *Ibid.*

causing Bank BNI to sustain potential losses of US\$ 76,943,095.30.⁵⁷

1. Illegal Transfer to the United States

Following the results of the investigation initiated by the Indonesian Police and INTRAC, it was revealed that Waworuntu transferred funds to accounts in the US on four different occasions, which are listed below. These transfers were from the accounts held by the President Director of PT. Aditya Putra Pratama Finance, Yoke Yola Sigar, Waworuntu's younger sister, from Indonesia to the account of Melanie Goodman in the US.⁵⁸

Date	Recipient	Bank	Account No.	Amount of Funds
31.07.2003	Melanie Goodman	Union Bank of California	0650019369	US\$2 million
01.08.2003	Melanie Goodman	Union Bank of California	0650019369	US\$4 million
04.08.2003	Melanie Goodman	Union Bank of California	0650019369	US\$3 million
05.08.2003	Melanie Goodman	Union Bank of California	0650019369	US\$3 million

Table 1: The Transfers⁵⁹

The funds sent from PT. Aditya Pratama Finance were derived from illicit transactions at Bank BNI via the Gramarindo Group. After the funds were received in the US, they were used to invest in the "Queen Mary" shop project in Long Beach, California.⁶⁰

2. Analysing the Money Laundering Scheme⁶¹

Having position as an adviser of the Gramarindo Group, had given a big opportunity for Adrian H. Waworuntu, as the key player, in structuring the crime scheme. The fraud within Bank BNI, Kebayoran Baru Main Branch, and the illegal transfer of its illegal proceeds involving him had proved that he has a significant role, by advising and structuring the money laundering scheme, to conceal the origin of the money, thereby acting as a gatekeeper.⁶²

The scheme below will explain the flow of the money and persons who are associated with the gatekeeper.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Indonesia v. Adrian Waworuntu*. Verdict of Indonesian Appellate Court No: 79/Pid/2005/PT.DKI, dated 24 June 2005. Verdict of the Indonesian Supreme Court No: 1348 K/Pid/2005, dated 12 September 2005.

⁶⁰ The District Court of South Jakarta sentenced Mr. Waworuntu to lifetime imprisonment, to a fine of Rp. 1 billion (approximately US\$ 100,000), ordered him to pay the compensations up to Rp. 300 billion (approximately US\$ 30,000,000), and confiscated his ill-gotten assets secured in Indonesia and /or abroad. The Supreme Court of the Republic of Indonesia, granted its final judgment No. 1348 K/Pid/2005 dated 12 September 2005, providing its final and binding verdict, which reconfirmed the verdict rendered by the Appeal Court of Jakarta and the District Court of Jakarta Selatan. *Indonesian v. Adrian Wawotuntu*.

⁶¹ This analysis will be focused on the money laundering activity within the case and the scheme used by the gatekeeper and the way to trace. This analysis does not focus on how the proceeds were obtained.

⁶² Adrian was engaged in the criminal act of money laundering by concealing the source of origin, proceeds resulting from banking crimes, corruption, and fraud, by transferring and securing the proceeds of crimes overseas.

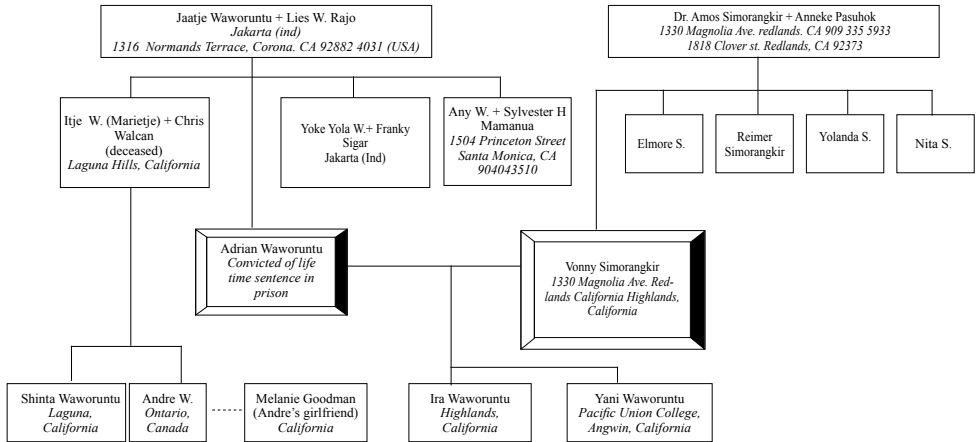


Figure 2: The Family Tree⁶³

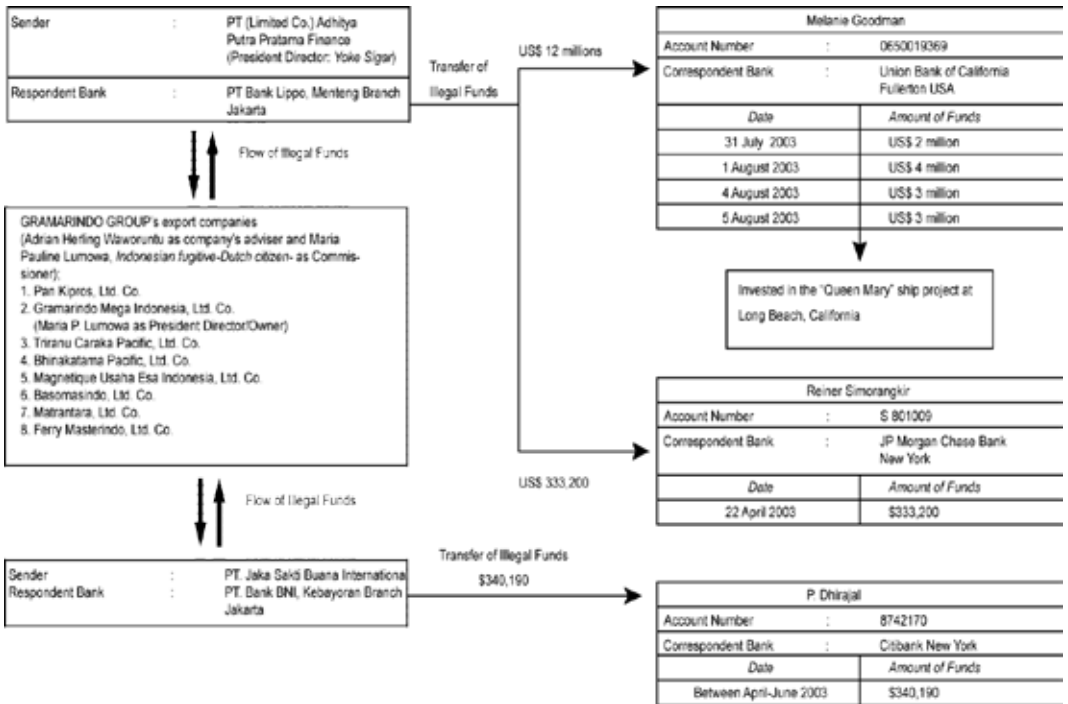


Figure 3: The Flow of the Money⁶⁴

⁶³ Source: Indonesian Financial Transaction Reports and Analysis Center (). See also *Indonesia v. Adrian and the Workshop on Mutual Legal Assistance 2008*.

⁶⁴ *Ibid.*

From these scheme we can see:

Nominees

Waworuntu served as the nominee and gatekeeper, controlling the flow of the money and dispersing it into multiple accounts and jurisdictions.

Other nominees were from Waworuntu's family and connections, including his nephew's girlfriend, Melanie Goodman.

This scheme is relatively centralised around Waworuntu, his associates and his family networks. As the gatekeeper, Adrian created a complex structure involving front companies in another jurisdiction where he exploited the use of a nominee in the corporate activity as a camouflage to establish a route in transferring the funds.

Front companies and Investments

The funds transferred to Melanie Goodman's account were invested to fund the Queen Mary project.

Utilising Banks

The scheme utilised several prominent banks including Citibank and J.P. Morgan. These banks, which maintain anti-money laundering measures, Know Your Customer, and other measures, still accept illegal transfers from Indonesia. Citibank and J.P. Morgan have also been recognised for their involvement in numerous other high-profile scandals.⁶⁵

3. Conclusion of Adrian Case

This case shows the significant role of Adrian as the gatekeeper to conceal the dirty money derived from banking fraud and corruption by using his networks. Multiple accounts and multiple jurisdictions were used to launder the money, even though these were not ultimately exploited. By tracing the money trail and pattern of the gatekeeper, i.e., transferring the money to accounts, which are associated to his family members, the investigators managed to find out the real beneficiaries in order to identify and to allocate the stolen assets.

C. Case of Edward Cornelis William Neloe⁶⁶

This case involving Edward Cornelis William Neloe (herein after, ECW Neloe)⁶⁷

⁶⁵ Citibank and J.P Morgan paid \$135 million and \$120 million, respectively, in accordance with SEC charges for aiding Enron in fraudulent activities. Howard Rockness and Joanne Rockness, "From Enron to Sarbanes-Oxley, the Impact on Corporate America," *Journal of Business Ethics* 57, no. 1, (2005), p. 39.

⁶⁶ The details of information taken in this case study are obtained from the District Court of South Jakarta, "Decision No. 1144K/PID/2006," 13 September 2007, in the name of Edward Cornelis William Neloe. (hereinafter, *Indonesia v. Edward Cornelis William Neloe*)

⁶⁷ ECW Neloe was born on 7 November 1944 in Makassar, Indonesia. He was the President Director of PT. Bank Mandiri (Persero) Tbk, from May 2000 until May 2005. PT. Bank Mandiri is the largest state owned company in Indonesia. The directors are public officials according to Indonesian laws and regulations. This case, besides ECW Neloe, also involved other employees of PT Bank Mandiri, as the accused, such as I Way-an Puged (former Risk Management Director), M Sholeh Tasripan (former EVP Coordinator Corporate and Government), and other individuals from other different entities. The accused, upon the verdict no. 1144K/PID/2006, were already in the detention of several times: the extensions by the investigator from 17 May 2005 to 5 June 2005; extension by the Public Prosecutor from 6 June 2005 to 15 July 2005; extension I by the Chief of the District Court from 16 July 2005 to 14 August 2005; Extension II by the Chief of the District

as the prominent actor, was a buy-back scheme, which occurred during the financial crisis in Indonesia from 1997 to 1998.⁶⁸ The Indonesian Bank Restructuring Agency (IBRA-BPPN (*Badan Penyehatan Perbankan Nasional*)) took over non-performing loans, including one from Bank Central Asia (a private bank), a Rp. 300 billion claim against PT. Tahta Medan, a subsidiary of PT. Bank Mandiri. ECW NELOE had played an important role in providing the loan (credit) to a private company, PT. CGN (Cipta Graha Nusantara Company), rather than restructuring PT. Bank Mandiri's subsidiary debts.

1. Chronology of the Predicate Crime

On 23 October 2002, he, intentionally, instructed the granting of the loan of Rp. 160,000,000,000. (US \$ 18,000,000) to PT. CGN (Cipta Graha Nusantara Company), a new and small company, to buy the debts of PT. TM (Tahta Medan Company) from PT. TMMP (Trimanunggal Mandiri Persada) amounting approximately US \$ 31 million. PT. TM had been put under IBRA (BPPN/Indonesian Restructuring Bank Agency) scheme because of its inability to repay the debts to the Bank Central Asia and its status of non-performing loans. The loan from PT Bank Mandiri unlawfully benefited others, as the safety for this loan was significantly risky, those were: the debts of PT. TM and 3 (three) houses of PT. CGN Directors amounting approximately Rp. 3 billion.⁶⁹

As a result of an extremely unprecedented rapid process of granting the loan (the decision was made within one day), there was no diligence analysis conducted on the assets and debts of PT. Tahta Medan. In 2002, PT. TMMP bought the debts of PT. Tahta Medan at the value of US \$ 10,885,289.52 or equal to Rp. 97 Billions, while the loan granted by Bank Mandiri to PT. CGN to buy the same one was Rp. 160 Billion or equal to US \$ 18,500,000.00. It was clear that PT. CGN paid excessive differential costs of approximately Rp. 63 Billion or equal to US \$ 7,114,000.⁷⁰

2. Involvement of the Gatekeeper

In relation to his account, ECW Neloe has had an overseas account with Deutsche Bank, since 1980. H. Sherer, an account officer of Deutsche Bank, was the manager of

Court from 15 August 2005 to 13 September 2005; the Public Prosecutor' as of 13 September 2005 through 2 October 2005; by the Judge of the District Court from 3 October 2005.

⁶⁸ The sources relating to this chapter are mainly taken from official documents from the Workshop on Mutual Legal Assistance, International Cooperation and Case Management to Facilitate Recovery, collaboration between the United Nations Office on Drugs and Crime and the World Bank. Yogyakarta, Indonesia, 14 April 2008.

⁶⁹ According to Article 520 of the Credit Policy of PT. Bank Mandiri [*KPBM*] of February 2000, which states: "Bearing in mind that the responsibility of the above mentioned credit decision maker is closely related to the possibility of a debtor to continue performing properly, or to become problematic, the credit decision making officers are requested to carry out the following: to ascertain that each credit granted has complied with the general banking norms and is in accordance with sound credit principles, namely: a) to ascertain that the credit approval implementation is in accordance with the provisions in the Credit Implementation Manual [*PPK*]; b) to ascertain that the credit approval is based on an honest, objective, thorough and accurate evaluation and is free from influences of parties that have interests in the credit applicant; c) to make sure that the credit to be approved can be repaid on time and that it will not develop to become a bad loan". However, there was no any due diligence or examination conducted prior to the transaction.

⁷⁰ As the projects had never been carried out and completed, the granting of loans by Mr. Neloe, Mr. Pugeg and Mr. Tasripan (all convicted in the Supreme Court decision dated 14 September 2007 and sentenced to 10 years' imprisonment) caused losses to the State budget amounting Rp. 160 billion, since there has not been any payment of the outstanding loan until now. The decision is final and binding, as well as definitive. See also the Verdict of Criminal Case No. 1144K/PID/2006, 13 September 2007, in the name of Edward Cornelis William Neloe, District Court of Jakarta Selatan.

his account. H. Sherer transferred the account from Singapore to Switzerland in 1992. Following the transfer, ECW Neloe also moved his account from Deutsche Bank in Singapore to Deutsche Bank in Zurich, Switzerland.⁷¹

In investigating the proceeds of corruption, in relation to the charge upon ECW Neloe, the Police has started Money laundering investigation by examining ECW Neloe and his wife, as well as his secretary, and relevant officers of Bank Mandiri. It was later found out that ECW Neloe has never reported his overseas account.⁷² Therefore, it is suspicious that the fund in the account was unlawfully obtained.

3. Analysis of Money Laundering

This case involving ECW Neloe is a corruption case, based on the court judgment. However, the investigations have discovered more development. Some accounts in Switzerland and other jurisdictions were found, allegedly opened to accommodate illegal transactions. Former Indonesia Attorney General, Basrief Arief highlighted that there is 5.2 USD million deposited in Swiss accounts, having connection with ECW Neloe.⁷³

Article 3 of Law No. 8 of 2010 on Indonesian Anti-Money Laundering stipulates that anyone, who places, forwards, transfers, pays, grants, deposits, or otherwise brings abroad, changes the form, exchanges into a different currency or securities or other acts Assets which are reasonably suspected to have been derived from illegal activities will be considered as money laundering offence. Furthermore, Article 71 of this law compels the investigator, prosecuting attorney, or judge to command the reporting party to block the assets reasonably suspected to have been derived from illegal activities. Thus, by observing this Article, the relevant anti-money laundering authorities Indonesia have the power to perform investigation and prosecution, including the suspension and blocking of the accounts. ECW Neloe fulfilled the elements of money laundering, as constructed within Indonesia Anti-Money Laundering Law, stating that anyone who transfers (to abroad) the money that is allegedly derived from an illegal activity. The court verdict stipulated that ECW Neloe has committed corruption, and furthermore this alleged proceeds of crime are deposited in a bank account in Switzerland.

IV. Utilising Legal Due Diligence and Audit Forensic to Fight Money Laundering in Singapore Legal Practice⁷⁴

This part of study will in general explain the discourse of legal due diligence as a need to improve the investigative mechanism types of corporate transactions in

⁷¹ See the Workshop on Mutual Legal Assistance, International Cooperation and Case Management to Facilitate Recovery, collaboration between the United Nations Office on Drugs and Crime and the World Bank. Yogyakarta, Indonesia, 14 April 2008.

⁷² See *Ibid.*

⁷³ "Graft Team Probes Neloe Account in Switzerland," *The Jakarta Post*, <http://www.thejakartapost.com/news/2006/03/04/graft-team-probes-neloe-account-switzerland.html>, accessed 12 February 2016.

⁷⁴ The part of this study is made based on discourses, problems, and investigative experiences among investigators from the Indonesian Financial Intelligence Unit and the Indonesian Anti-Corruption Commission in handling corruption, asset recovery, and money laundering cases which involve proceeds of Indonesian crimes located in Singapore. This scrutinises how legal services in Singapore obstruct the investigative process carried out by the Government of Indonesia, and this issue was delivered and discussed in investigative training for the Indonesian Anti-Corruption Commission on 21-23 October 2015.

Singapore.⁷⁵ In 2013, the International Consortium of Investigative Journalists, the Washington-based Investigative Journalism body, obtained undisclosed records explicating a Singapore⁷⁶ based Portcullis TrustNet set up offshore companies and trusts and hard-to-trace banks accounts in Singapore, and other offshore financial centers around the world.⁷⁷ Singaporean lawyers, nevertheless, acclaimed that the most popular Singaporean secrecy facility is the private trust company, which performs as a trustee for secretive trusts.⁷⁸

According to the circumstance explained above, Singapore as one of the best destinations for performing foreign investment and financial-business related transactions is associated with lucratively fraudulent transactions comprising fraud activities. This condition urges the relevant anti-money laundering authorities in Indonesia to develop their capacity by optimising audit forensic and enhancing their due diligence on documents investigation.

A. Legal Services in Singapore

According to the analysis made by Legal500,⁷⁹ there are distinguished services offered by law firms practiced in Singapore, such as, admiralty and shipping, appeals and issues, banking and finance, business finance and insolvency, capital markets, commercial litigation, competition and antitrust and trade, compliance and risk management, construction and projects, corporate commercial, corporate real estate, employment and executive compensation, energy and resources, entertainment and media, family, probate and trusts, financial institution, funds and investment management, hospitality, insurance and reinsurance, integrated regulatory, intellectual property, sports and gaming, international arbitration, medical law, mergers and acquisitions, private client, project finance, tax, technology, media and telecommunications, and white collar crimes.⁸⁰

Every business transaction in connection to each services mentioned is vulnerable to fraud, abuse, and scam. Hence, business investigations services are needed

⁷⁵ Transactions will be at briefly discussed according to the types of transactions regulated within the Singapore Companies Act. See Accounting and Corporate Regulatory Authority, "Companies Act Reform," https://www.acra.gov.sg/Legislation/Companies_Act_Reform/, accessed 2 October 2014.

⁷⁶ Singapore is possibly the world's fastest growing private wealth management center which is expected to overtake Switzerland in 2020 as the world's largest offshore wealth center. Private Banker International, "Singapore to overtake Switzerland as leading Offshore Hub by 2020," <http://www.privatebankerinternational.com/pressrelease/singapore-to-overtake-switzerland-as-leading-offshore-hub-by-2020/>, accessed 6 October 2014.

⁷⁷ According to Bloomberg, by the end of 2010 Singapore had over 600 local and foreign financial institutions, including 36 offshore banks that had assets under management of US\$ 1.33 trillion. Much of the business, however, does not involve the flow of assets to Singapore, but instead it involves the business of handling assets located elsewhere held via Singapore offshore trusts and other secrecy facilities. See Bloomberg, "Millionaires Help Asia Private Bankers Earn More Than Bosses," <http://www.bloomberg.com/news/2011-09-07/millionaires-help-asia-private-bankers-earn-more-than-their-boss.html>, accessed 30 September 2014. See also <http://www.financialsecrecyindex.com/PDF/Singapore.pdf>, accessed 6 October 2014.

⁷⁸ Additionally, public records in Singapore do not show any business activities for most of these offshore entities, which are believed to be involved in various offshore accounts scandals of public officials and wealthy individuals and families based in Indonesia. *Ibid.*

⁷⁹ Legal500 is a website that analyses the capabilities of law firms all around the world, ranking each firm in each area of practice, Legal500, "About Us," <http://www.legal500.com/assets/pages/about-us/about-us.html>, accessed on 5 October 2015.

⁸⁰ *Ibid.*

to assist such transactions. By further examining the Legal500 database, there are some more specific transactions in Singapore that are more vulnerable to money laundering and more secretive, such as, acquisition and divestment of companies, business and asset acquisition (hostile, contested, and uncontested), reverse acquisition, amalgamation and scheme arrangement, delisting, privatisation, demerger and corporate restructuring, private equity investment, establishment and restructuring of trusts, set up of private trust companies, tax planning and asset protection, local and offshore succession disputes.

B. Some Business Transactions are Vulnerable to Money Laundering in Singapore

Some transactions, however, are common like acquisition, business and asset acquisition, and merger transactions, but why are these vulnerable to money laundering? Remarkably, there are some companies that are exempted from having their accounts audited. According to the Accounting and Corporate Regulatory Authority of Singapore (ACRA), these companies are exempted from:⁸¹

Having their profit and loss accounts, or consolidated accounts and balance sheets audited by an approved company auditor.

1. The company does not need to compulsory provide members of the company with copies of the auditor's report.
2. The company does not need to present copies of the auditor's report at the Annual General Meeting.
3. Accordingly, the companies exempted from having their accounts audited are:⁸²
4. An exempt private companies (EPC)⁸³ with revenue not more than S\$5 million for the financial year starting on or after 1 June 2004.
5. An EPC with revenue not more than S\$2.5 million for the financial year starting on or after 15 May 2003 but before 1 June 2004.
6. Any company, including an EPC, which is dormant⁸⁴ for the financial year starting on or after 15 May 2003.

Henceforth, from this circumstance we can conclude that some transactions in Singapore can be vulnerable to money laundering and fraud because these companies (EPC and dormant) are shielded from audit. The companies can manipulate their reports and any related transactions activities without having adequate audits.

In handling money laundering cases, the relevant anti-money laundering authorities in Indonesia need to utilise mutual legal assistance, as an international

⁸¹ Accounting and Corporate Regulatory Authority, https://www.acra.gov.sg/uploadedFiles/Content/Publications/Information_Brochures/Company/AuditexemptionFeb2013.pdf, accessed 5 October 2014.

⁸² *Ibid.*

⁸³ An exempt private company (EPC) is a company that has 20 or fewer shareholders, and its shares are not held by any corporation as defined under Section 4 (1) of the Companies Act. Surprisingly, the Minister can, however, also gazette a company as an EPC.

⁸⁴ Dormant company is a company in which there is no accounting transaction occurring. Its status is not affected by the following transactions: the appointment of a secretary, the appointment of an auditor, the maintenance of a registered office, the keeping of registers and books, the payment of fees, fines or default penalties of any amount to the registrar, and the taking of shares in the company by a subscriber to the memorandum in pursuance of an undertaking of his in the memorandum. See *ibid.*

cooperation instrument, to carry out the investigation in another jurisdiction. However, investigators dealing with this situation, when investigating the case in Singapore, are often frustrated. If the company does not have the obligation to be audited, then the Singapore authority does not have a regular update on the factual information of the company, such as the detailed information about the actual beneficial owner.

However, the counterparts, for example, the buyer or acquirer can conduct a legal audit and/ or legal due diligence upon transactions. Thus, the investigation process together with due diligence has a vital role in scrutinising the factual information of the company.

According to the interview with the Head of Indonesian Financial Transaction Reports and Analysis, Mr. Muhammad Yusuf,⁸⁵ the role of gatekeepers is very crucial to obstruct the investigation process. Gatekeepers have the expertise in and knowledge about money laundering involving corporate and financial structures, with multiple jurisdictions, which are often better than those of the investigators. Gatekeepers have patterns to obscure the proceeds of crime in Singapore. The circumstance examined above on the types of company that do have to be audited will be exploited by gatekeepers as a money laundering structure to hinder the proceeds of crime within this company's structure.

In the case of Singapore, due diligence is compulsory for some transactions. According to Singapore Securities and Futures Act (Cap. 289) (SFA), any investment transactions shall promote adequate, accurate, and sensible disclosures to enable investors to gain adequate investment decisions.⁸⁶ Accordingly, Section 243 of SFA obliges a prospectus to contain all the relevant information. This will provide third parties sufficient information to assess the offered securities, as well as other information specified by the Monetary Authority of Singapore in the Securities and Futures Regulations 2005.⁸⁷

Having examined this circumstance, the relevant anti-money laundering authorities in Indonesia will be able to implement a creative approach in obtaining information from Singaporean companies. The authorities can hire a local law firm to pretend as a prospective buyer. Schemes like merger or acquisition can also be utilised.

V. Conclusion

Some studies note that even when the obligation exists for gatekeepers to report suspicious transactions, the number of reports is often low.⁸⁸ This trend suggests that self-regulation alone, while important, is an insufficient safeguard to guard against the abuse of financial institutions and regulations. Gatekeepers are essential to any effort to secure and to legitimate large sums of illegal money, transferred beyond

⁸⁵ The interview with the Head of Indonesian Financial Transaction Reports and Analysis, Mr. Muhammad Yusuf, was conducted on 19 October 2015, 2 pm at his office, Jakarta.

⁸⁶ The Association of Banks in Singapore, *ABS IPO Due Diligence Guidelines* (Singapore: ABS, 2013), p. 1.

⁸⁷ *Ibid.*

⁸⁸ It is possible that compliance may increase over the next several years, as many rules regarding reporting and compliance have only been recently implemented. However, without the assistance and cooperation of gatekeepers, efforts to detect and understand money laundering schemes will continue to lag behind the criminal activities themselves. See FATF, *Report on Money Laundering Typologies 2003 - 2004* (France: OECD, 2004), pp. 4-27.

its country of origin. As such, criminals in need of their services will seek out these gatekeepers. Gatekeepers will also be available to assist crimes, corruption, and embezzlement in maintaining a 'victimless' façade, and secrecy jurisdictions exist in the form of unregulated offshore financial centers.⁸⁹ Unless these circumstances change, passive self-regulation among gatekeepers will continue to lag far behind the flow of illicit wealth and assets.

By examining the money laundering activities in their entirety, it is obvious that gatekeepers play significant and varied roles, including the obstruction of investigators. As such, it is critical for the relevant anti-money laundering authorities to understand the methods and motivations of gatekeepers in order to identify and to trace money laundering effectively. The success of a preliminary investigation in any money laundering cases is dependent on locating the proceeds of crime successfully, and thinking like the perpetrators of these financial crimes is often essential in this effort. Nonetheless, one of the main questions relied on in this study is how to create an upright approach to curb gatekeepers' activities in money laundering. Thus, the authorities can follow the money, since the investigative mechanism only is not sufficient to fight money laundering. This mechanism needs to be complemented by the understanding of follow-the-gatekeeper approach.

It is obvious after examining the investigative mechanism that understanding the legal-business investigative mechanism, such as, due diligence in Singapore practices plays significant and varied roles. As such, it is critical for legal, business, or financial authorities to understand the method of corporate structuring and its complex documentation in order to identify and prevent any potential risks, and perform the investigative mechanism effectively.

It is also fundamental to build the capacity of law enforcement and investigative bodies to deal with financial crimes, given the indispensable role that gatekeepers play in the initiation and management of illicit financial transactions. Without willing and able gatekeepers, criminals would be incapable of concealing their illegal transactions, and unable to secure their assets from repatriation.

However, we must also examine new alternatives, approaching new solutions with the same creativity demonstrated by gatekeepers if we are to achieve lasting success. Exercising the stringent reporting party mechanism, such as in Indonesian regulation, is very crucial to prevent and to detect some specific professionals like lawyers, notaries, accountants, and others involved in money laundering. Improved training regimens for the relevant anti-money laundering authorities and the implementation of management structures that offer meaningful rewards and opportunities for gatekeepers that stand against corruption and money laundering, rather than merely

⁸⁹ Even if the number of gatekeepers willing to facilitate illicit financial transactions moderately decreased, corrupt officials would have to go to a greater length to find willing agents. More deliberate efforts on the part of corrupt officials would present an opportunity for law enforcement and would be in stark contrast to present circumstances, as the reported findings of the *Anti-Corruption Strategy for the Legal Profession Survey* show that the majority of lawyers do not comply with international anti-corruption and anti-money laundering measures. This survey focused on the role that lawyers play in fighting corruption in international business transactions, as well as the impact of international anti-corruption instruments, both on the legal practice and the implementation of associated national legislation with extraterritorial application. It also suggests that many lawyers are unaware of the implications of current regulatory frameworks and measures regarding anti-corruption efforts on both their legal practice and on the legal profession. The International Bar Association (IBA), in cooperation with the OECD and UNODC, in April 2010, conducted the survey. See IBA, OECD, and UNODC, *Anti-Corruption Strategy for the Legal Profession: Risks and Threats of Corruption and the Legal Profession Survey* (Vienna: UNODC, 2010), p. 6.

giving them the title of ‘whistleblower,’ are small steps that could be independently implemented even today.

The study in this paper, which examines the gatekeepers’ roles in money laundering activities, is still far from faultlessness. Further deeper examination is needed to develop this study.

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