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### Daftar Artikel

No.	Judul	Detail
1.	Ethic and Social Responsibility in the Competition Law	
2.	Ibn Rushd And The Good Of Friendship In Marriage	
3.	Promoting Human Rights By Local Government To Implement State Responsibility: A Study Of Victim Reparations Of Gross Human Rights Violations In Palu Central Sulawesi Indonesia	
4.	Legal Protection On Batik Created Works Based On The Legal Certainty And Utility Value	
5.	Lethal Autonomous Weapons System (â€œLawsâ€•) As The Challenge	

<b>No.</b>	<b>Judul</b>	<b>Detail</b>
	For Principles Of International Humanitarian Law	
6.	Penerapan Ajaran Turutserta Dalam Tindak Pidana Korupsi	
7.	Efektivitas Pengangkutan Melalui Tol Laut Untuk Mendukung Kesejahteraan Masyarakat Papua (Effectiveness Of Sea Freight Transport To Support The Welfare Of The Papuan People)	
8.	Designing Participation Model For Legal Practitioners To Strengthen Anti Money Laundering Regime	
9.	Board Of Director's Position Of Perseroan Terbatas And Company Limited By Share: A Comparative Indonesian And Malaysian Law	
10.	Comparison Of Mandatory-Based Corporate Social Responsibility (Csr) Setting In Indonesia And India	
11.	The Implementation Of Punishment Theories In The Verdict Of Narcotics Case By Judge In Indonesia	
12.	Konsepsi Negara Hukum Kesejahteraan Berdasarkan Pancasila Dan UUD Negara RI Tahun 1945	
13.	Legal Culture and the Rule of Law in Indonesia: Religious deference and the blasphemy law	
14.	National law development for social welfare	

**DESIGNING PARTICIPATION MODEL OF LEGAL PRACTITIONERS TO  
STRENGTHEN ANTI MONEY LAUNDERING REGIME**

BY

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**ABSTRACT**

Accomplishing social welfare is a responsibility of every citizen and country. One of the serious obstacles to achieving that goal is the development of serious crimes such as money laundering regime. International society through many approaches and instruments are trying to make serious fighting against predicate crimes and proceeds of crimes regarding with economic crime offenders such as asset Forfeiture and compliance engagements of reporting party. As it is promoted, the involvement of reporting parties on money laundering activities can be reduced through the Risk Based Assessment (RBA) approach, including Legal Practitioners, that will utterly implement Client due Diligence. It needs the innovative design of participation model input of information process until reporting without violating their ethics. It needs the involvement – restraint – result – and empowerment of question does legal practitioner participation effectively contributed for AML regime or not.

This is a qualitative research which will conduct through normative legal studies and elaborate through discussion with the key informant. Some cases in practices field will be instruments to be analyzed and constructed as input in the involvement and attachment perspectives. The hypothesis developed in this research is through proper development of participation model of legal practitioners and innovations through software detection will strengthen AML regime.

**Keywords:** Legal Practitioners, model of participation, privileges, and confidentiality

## INTRODUCTION

Money laundering is a specific crime as associated as a specific way to forfeit all the result of predicate crimes, to stop all the bad intention of a perpetrator to own and to possess property derived from their criminal activities. Money laundering in its process will play an important role to cut the circulation of money in further legitimate and illegitimate activities. Legitimizing illicit profits is a problem for predicate crime's offender. Money laundering then takes parts as a process to facilitate that legitimization of illicit gain from predicate crimes. As it is taught in the literature, there is three processes called as Placement, layering, and integration. In old theory, it should be simultaneous between those three processes. But in its development, there are some excuses to start an investigation during in one and/or more processes. D. Mulligan then explains:

Although the money laundering process has three steps, it is generally agreed by law enforcement and regulatory officials that point at which criminals are most vulnerable to detection is the placement stage. Cash accumulated at the initial point of sale is delivered to intermediary sites controlled by the criminal organization known as safe houses, then to brokers who often distribute the cash to import/export businesses.<sup>1</sup>

In another word, money laundering will be accepted in every stage as long as it meets with the elements of money laundering crime. Money laundering is just a step to launder the result of the predicate crime, and sometimes did not directly relate to predicate crime. P. Utama explains: "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".<sup>2</sup>

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<sup>1</sup>Daniel Mulligan. 1999. "Know Your Customer Regulations and The International Banking System: Towards A General Self-Regulatory Regime", Fordham University School of Law, Fordham International Law Journal 22Fordham Int'l L.J 2324

<sup>2</sup>Paku Utama. 2016. "Gatekeepers' Roles As A Fundamental Key in Money Laundering". Indonesian Law Review Journal (2016), ISSN: 2088-8430 | e-ISSN: 2356-2129, p. 181

In traditional scheme, money launderers commonly used the banking system as a safe place to put illicit money to be hiding. Technology expansion nowadays, in regarding with financial institution for specifically, has been offering an opportunity for an offender in conducting their intention to conceal the nature of illicit money derived from crime. However, banking institutions are remaining become the most favorite destination for money launderers. In this regards, the development of technology will be assisting in fostering economic growth and another positive side of technology development, but it will providing an opportunity for money launderers exploring technology to gain benefit through conducting crimes. After knowing the risk that they may be faced, Banking institutions have been completing and strengthening with strong Know Your Customer principles implementation. In this regards, D. Greenburg, B. Sims and E. Volkman strengthening that:

In recent years, banks and other financial institutions operating in the United States have faced unprecedented scrutiny from prosecutors and regulators for allegedly failing to meet their legal obligations to detect and report criminal activity taking place through their accounts. This scrutiny has direct and potentially far-reaching consequences—not only for financial institutions, but for their customers who are commonly seeing the risks and burdens of anti-money laundering (AML) compliance passed on to them.

These customers increasingly should expect the institutions to scrutinize their accounts and report suspicious transactions to law enforcement. And, as financial institutions seek to “de-risk” their customer base, they increasingly will close customer accounts and deny other privileges, such as the ability to make payments to account holders at the bank or execute international wire transfers that use the bank as an intermediary....

The costs of these enforcement actions have extended beyond the direct financial penalties the government has assessed. In the last three years alone, BSA actions were responsible for billions more spent in compliance and legal costs, dramatic losses of shareholder value in public banks under investigation, multiyear delays in corporate transactions and, in one case, the revocation of a bank’s charter, ultimately leading to that institution’s dissolution. Banks have responded to these developments in a number of ways. First, banks have dedicated a tremendous amount of resources to AML compliance, both in terms of financial resources and manpower. As a result, banks are prioritizing this issue and scrutinizing the sources of their customers’ funds to a far greater degree. “Know Your Customer”—the catchphrase that traditionally summarized a financial institution’s AML obligations—has in many cases been replaced by “Know Your

Customer's Customer.” This evolution has resulted in increased demands on nonfinancial institutions to keep informed about their customers' identities and businesses.<sup>3</sup>

Then, it is important to understand that money laundering creates many difficulties for every sector that can be a place to hide, to conceal, and to seek legal justice for money laundering problems. As it is understood, Money laundering is not a simple process. In its nature, money laundering is proceeds of crime, but it is not the same of proceeds of crime. It has its own characteristic as Sui Generis crime. Proceeds of crime depend on the predicate crime prove, while sui generis is in contrary. Unfortunately, in its practice in court, it is not easy to charge someone with money laundering without a verdict in his and/or another predicate crime charge. Another difficulty faced by money laundering charge is that the broader party who can be involved in its process, variety modes are taken by money launderers, but unfortunately it lost the core of money laundering intention itself. Money laundering should be conducted with intention, not through “should have known” mens rea. But the variety of money laundering schemes forces law enforcement and legal drafter broaden the subjective element of a crime.

In this context, it can be said that money laundering nowadays needs more effort to take care all the issues. It needs more commitment to find the solution and develop any tools to prevent and eradicate money laundering. The designs of prevention are touching the professionals' responsibility as well.

The Financial Action Task Force (FATF) has concerns to strengthening methods of handling the vulnerability of professions, including legal professions, in the money laundering violation. In 2013, the FATF reports as below:

Since the inclusion of legal professionals in the scope of professionals in the FATF Recommendation in 2003, there has been extensive debate as to whether there is evidence that legal professionals have been involved in ML/TF and

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<sup>3</sup>Douglas Greenburg, Bob Sims and Eric Volkman. 2015. “Money-Laundering Risk: It's Not Just for Banks Anymore”. Corporate Counsel, retrieved from [www.corpcounsel.com](http://www.corpcounsel.com)

whether the application of the recommendations is consistent with fundamental human rights and the ethical obligations of legal professionals...<sup>4</sup>

In short, there are several indicators and evidence that legal practitioners involved in Money laundering activity as well as it is in Terrorist Financing. Further, FATF mentions:

The report identifies a number of ML/TF methods that commonly employ or, in some countries, require the services of a legal professional. Inherently these activities pose ML/TF risk and when clients seek to misuse the legal professional's services in these areas, even law abiding legal professionals may be vulnerable. The methods are:

- misuse of client accounts;
- purchase of real property;
- creation of trusts and companies;
- management of trusts and companies;
- managing client affairs and making introductions;
- undertaking certain litigation; and
- setting up and managing charities.

In this report, over 100 case studies referring to these and other ML/TF methods were taken into account. While the majority of case studies in this report relate to ML activity, similar methodologies are capable of being used for TF activity. <sup>5</sup>

The report of FATF above shows how vulnerable is the legal practitioner in ML/TF. It needs more compliance of legal practitioners to reduce their risks used by their client to give protection against their nature as a legal practitioner. Thus Risk Based Approach was developed for legal professionals. Financial Action Task Force developed Risk Based Approach for every reporting party which may touch by money launderers to exploits them as a vehicle. Then legal practitioners called as "Gatekeeper" for their clients. In further, Australian Government Attorney General's Department states:

Legal practitioners and conveyance's provide certain services that operate as a gateway to property and financial markets, financial institutions and other

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<sup>4</sup>Financial Action Task Force Report on Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals. 2013. FATF/OECD, retrieved from [www.fatf-gafi.org](http://www.fatf-gafi.org), p.4

<sup>5</sup>Ibid



regulated professionals. These ‘gatekeepers’ provide financial and business services that can be abused to disguise beneficial ownership, conceal the origins and purposes of financial transactions, facilitate tax evasion and, ultimately, launder the proceeds of crime. Operating through or behind a professional adviser can provide a veneer of legitimacy to criminal activity.

Legal practitioners can be used to create complex (but legal) structures that can create distance between criminals and their illicit wealth and conveyance’s facilitate a process that allows for the transfer of ownership of property, a high-value asset that provides ideal opportunities for laundering large volumes of illicit funds. In the absence of an AML/CTF regulatory framework, legal practitioners and conveyance’s that provide these types of services may be at risk of being targeted and exploited by criminals.<sup>6</sup>

Thus, it can be understood the vulnerability of legal professionals in the money laundering scheme in practice, and it needs their participation for protecting themselves from any vulnerability resulting from their position when they conduct profession to a client. They have to measure the risks that they may face carrying with all the client’s profiles. Anyhow, in practice, legal practitioners are seemed difficult to fully comply with the idea of being a reporting party in this regards since in practice they do not conduct any “diagnostic” thing to their client. Client due diligence may face its challenges to be implemented directly. Thus, it needs a constructive method to create their participation in the process of conducting due diligence for their own risks.

This paper is actually will elaborate the difficulties find in the practice, especially in the perspective of Indonesian legal practitioners practice, to raising the awareness of legal practitioners and clients (potential client from society) in giving support to comply with anti money laundering regime. In the end, this paper will give

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<sup>6</sup>Australian Government Attorney General’s Department. 2016. Legal Practitioners and Conveyancers: a Model for Regulation Under Australia’s anti-Money Laundering and Counter-terrorism Financing Regime”, **Consultation Paper**, p. 4, retrieved from: <https://www.ag.gov.au/.../AML-CTF/legal-practitioners-model-for-regulation.pdf>

suggestion to develop a tool for the effectiveness and efficiency of legal practitioner's participation.

### **RESEARCH METHODOLOGY**

This paper is a part of research result that conducted using the normative legal methodology in collaborative with socio legal methodology. It will be analyzing the International standards on due diligence for legal professionals, how the national law of Indonesia designs this participation model, and how it conforms with the duty and responsibility of legal professionals to accompany their clients about legal problems. Thus it finds the difficulties and obstacles faced by legal practitioners in practices to fully comply with the International standards and National legislation requirements. In its result, it will get a complete capture of the gap in practice, and then analyze it to be a solution in the future designs.

In conducting this research, researchers using the interview with key informants from representative experts organizations such as Indonesian Financial Intelligence Units or INTRAC, The Indonesian Notary Association, Indonesian Bar Association, Indonesian Official Certifiers of Title Deeds Association. The researcher gathers all the pieces of informations giving by the expert as a supporting result for this research.

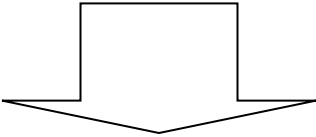
### **RESULTS**

Legal practitioners are an actually professional profession which is willing to comply with any laws addressed to them as a part of the citizen. In their professionals, they are tied with ethical standards and legal regulations that should comply with. In other hands, legal professionals tied with other laws such as money laundering law itself. On contrary, they meet up with obstacles to be a fully comply party due to conflict of interest in those laws.

Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering (further will called as Indonesian Law on Money Laundering) has established since November 2010 with a specific purpose in replacing the old regulation. It needs adjustment to any International Standards developed by International community

society, law enforcement requirement, and many International best practices. It needs to be adjusted since the number of money laundering is increases as well. The new law of Indonesian anti money laundering itself has specifically appointed many parties to be in charge in the prevention of money laundering mechanism. The law has created standards for compliance for the party. In Article 1 number 11 of Indonesian Law on Money Laundering define reporting party as:” Anyone who under this Law shall be obliged to submit the report to the INTRAC” (=Indonesian Financial Unit). Then Article 17 defines who are those reporting party as appointed in Indonesian Law on Money Laundering. Those reporting parties are:

Financial Services Providers (Article 17 subparagraph (1a))	Goods and/or Other Services Providers (Article 17 subparagraph (1b))
<ol style="list-style-type: none"> <li>1. bank;</li> <li>2. finance company;</li> <li>3. insurance company and insurance broker company;</li> <li>4. financial institution pension fund;</li> <li>5. securities company;</li> <li>6. investment manager;</li> <li>7. custodian;</li> <li>8. trustee;</li> <li>9. postal service as the current account service provider</li> <li>10. trader of foreign currency;</li> <li>11. card-basis payment device service provider;</li> <li>12. e-money and/ or e-wallet service provider;</li> <li>13. cooperation that performs activity of saving and loan;</li> <li>14. pawn shop;</li> <li>15. company that runs in the field of commodity future trading; or</li> <li>16. remittance service provider. .</li> </ol>	<ol style="list-style-type: none"> <li>1. property company/ property agent;</li> <li>2. motor vehicle dealers;</li> <li>3. gems, jewelry, and precious metal dealers;</li> <li>4. antique and artistic stuff dealers; or</li> <li>5. auction house.</li> </ol>



Article 17 subparagraph (2) mentions: “Provision regarding on the Reporting Party other than as set forth in section (1) above, shall be set with the Government Regulation”

Government Regulation Number 43 of 2015 concerning Reporting Party in the Prevention and Eradication of Money Laundering has been enacted to implement the Article 17 of Indonesian Law on Money Laundering itself. In Article 3 of the Government Regulation then expanding the reporting parties in the prevention and eradication on money laundering are including:

1. Advocate;
2. Notary;
3. Official certifier of title deeds;
4. Accountant;
5. Public accountant;
6. Financial planner

According to the Regulation, legal practitioners in its duty shall carry new task as reporting party. In this regards, problems are appearing. The legal practitioners find obstacles due to their primary law on their professions that required to act in some matters, and new task as reporting party also request them to do some matters. From this perspective, the unequal legal law position becomes the most factors. One is regulated by Law, and other is by Government Regulation. For Advocate and Notary, there is insufficient for Government Regulation to request and required to be reporting parties since it just a Government Regulation (lower degree than Law itself).

Advocate is regulated by the Law number 18 of 2003, and Notary is regulated by Law Number 2 of 2014 concerning the amendment of Law Number 30 of 2004 concerning Positions of Notary. While Official certifier of title deeds is regulated by Government Regulation Number 24 of 2016 concerning the amendment of Government Regulation Number 37 of 1998 concerning Official certifiers of title

deeds regulation. In short, legal practitioners need more strong legal position as it law on money laundering shall be regulated them either.

Other gap or obstacle found in this research is that primary laws of legal professions in Indonesia required them to act not in accordance with the law on money laundering. The explanations found in their laws as below:

Law number 18 of 2003 concerning Advocates	Law Number 2 of 2014 concerning the amendment of Law Number 30 of 2004 concerning Positions of Notary	Government Regulation Number 24 of 2016 concerning the amendment of Government Regulation Number 37 of 1998 concerning Official certifier of title deeds regulation in conjunction with the Regulation of Land Ministry/Head of National Land Number 4 of 1999
Article 1 number 1: An Advocate shall be a person who has a profession to provide legal services, both inside or outside the court in <u>accordance with provisions of this Law.</u>	Article 16: <b>a. act trustworthy, honest, thorough, independent, and safeguard the interests of the parties involved in legal actions;</b>	Article 2 in conjunction with Article 7 of Regulation of Land Ministry/Head of National Land Number 4 of 1999 that there are several kinds of PPAT
Article 1 number 2: Legal Services shall be services given by an advocate in forms of providing legal consulting, legal aids, executing the power at an attorney, representing, accompanying, defending, and <u>other a legal conducts for legal interest of a client.</u>	b. Deed in Minuta Deed form and save it as part of a Notary Protocol; c. attach a letter and documents and fingerprints of the party on Minuta Deed; d. Grosse issued Deed, Deed copy, or citation based Minuta Deed Deed; e. provide services in	Article 11 of Regulation of Land Ministry/Head of National Land Number 4 of 1999 regarding with the oath to keep secret the deeds and its protocols they made which are according to the characteristic and regulations require it secrecy
Article 1 number 7:		

<p>Honorarium shall be compensations given over legal services obtained by an advocate in accordance with an agreement with a client.</p>	<p>accordance with the provisions of this Act, unless there is a reason to reject it;</p>	
<p>Article 6: Advocates may be imposed with measures with reasons of:</p> <ul style="list-style-type: none"> <li>a. ignoring or neglecting the interest of clients;</li> <li>b. acting or behaving improperly against the opponent or partners;</li> <li>c. having dishonor attitude, behavior, talk, or statement against the law, prevailing law, and regulation, or the court;</li> <li>d. conducting matters that are contrary to obligations, honor, or dignity of their profession;</li> <li>e. committing violations of laws and regulation and or improper acts;</li> <li>f. <u>violating the oath/affirmation of an advocate and/or code of ethics of advocate's profession.</u></li> </ul>	<ul style="list-style-type: none"> <li>f. keep everything on the deed he made and all information obtained in order to manufacture in accordance with the Deed of oath/pledge of office, unless the statute otherwise provides;</li> <li>g. binding deed he made in 1 (one) month into a book that contains no more than 50 (fifty) Act, and if the number of deeds can not be loaded in a single book, the deed can be bound to more than one book, and record the number of Minuta Deed, month, and year of manufacture on the cover of each book;</li> <li>h. make a list of the Deed of protest against not being paid or non-receipt of securities;</li> <li>i. make a list Deed relating to wills chronological Deed manufacture each month;</li> </ul>	
<p>Article 17: In performing their profession, advocates are entitled to obtain information, data, and other documents, <u>both from government</u></p>	<ul style="list-style-type: none"> <li>j. send list deed referred to in the letter i or register zero with respect to the center of the will to the will list the ministry held</li> </ul>	

<p><u>institutions or other parties related to such interest required for defending the interest of</u> their client in accordance with laws and regulation → in contrary, it mentions that Advocate is not needed to be reporting party. They should get information from Government and another party</p>	<p>government affairs in the field of law within 5 (five) days in the first week of the next month;</p> <p>k. repertorial delivery dates noted in the list of probate at the end of each month;</p> <p>l. have a seal or stamp which contains the symbol of the Republic of Indonesia and the space encircling written the name, position, and the locus in question;</p> <p>m. Deed read before the party in the presence of at least two (2) witnesses, or four (4) witnesses specifically for the manufacture of testamentary deed under the hand, and signed at that time by the party, witnesses, and Notary; and</p> <p>n. Notary accepts internship candidates.</p>	
<p>Article 19 (1): Advocates shall be <u>obliged to keep all matters known or obtained from their client</u> secret due to their profession <u>unless stipulated by Law</u> otherwise herein.</p>		
<p>Article 19 (2): Advocates <u>shall have the right to confidentiality of relationship with clients, including protection of materials and its documents</u> against seizure or examination measures and protection against taking recording or electronic communication of advocates.</p>		



Article 8 (1) of Government Regulation Number 43 of 2015 mentions:  
Reporting party shall report STRs to Intrac for the interests of and/or on behalf of Users concerning:

- a. Buying and selling property;
- b. Management of assets, obligation, and/or other financial product;
- c. Management of giro account, saving account, deposits account, and/or obligations account;
- d. Management and operation of company; and/or
- e. Setting up, buying, and selling a company.

Then subparagraph (2) of Article 8 explains: **Advocates** who act on behalf of users are excluded to give reports in the term of:

- a. ascertaining the positions of users;
- b. undertaking certain litigation, arbitration, or alternative dispute resolutions.

Thus, there is two exclusion for advocates to do report. In practice, Advocate as a profession did not conduct any kinds of things as mentioned in the Article 8 of (1) above. In this matter, Advocates mentioned that they do not have any obligatory things to be a reporting party.

### ANALYSIS

The requirement given by Government Regulation is a bit different from what International Standards require. Financial Action Tasks Force explains that as reporting party, legal professionals must be aware of their vulnerability in the methods of misuse of client accounts; purchase of real property; creation of trusts and companies; management of trusts and companies; **managing client affairs** and making introductions; **undertaking certain litigation**; and **setting up and managing charities**.

The researcher strengthening in the bold words in above to criticize how legal practitioners shall be bound off. In Indonesian law, it is not required for Advocate to report when he/she acts on behalf or for the interest of users (=clients) to undertaking certain litigation, to ensure the position of clients. In other words, managing client affairs will be sufficiently tied legal professionals to comply with the law on money laundering.



It is believed that the legal practitioners participation in the process of money laundering is a continuous process, not in short terms. But it should be fixed in mind that professions are bounding with the ethical code of conduct to act as good professions. In this sense, those legal practitioners who are involved in the money laundering process of their clients need “mens rea” to be proved.

Financial Action Tasks Force then shows the vulnerability of legal professions as below:

Graphic 1: The involvement of Legal Professionals in Money Laundering and Terrorist Financing (ML/TF)



That graphic shows legal practitioners as one of new reporting party shall adopt the minimum standards for Anti Money Laundering/Counter Financing Terrorist duties, including:

- customer due diligence (customer identification and verification, ongoing due diligence, transaction monitoring and enhanced due diligence)
- applying enhanced due diligence to politically exposed persons
- assessing and mitigating the ML/TF risks associated with new technologies
- specific measures for relying on customer due diligence performed by third parties
- suspicious matter reporting
- internal controls and special measures for mitigating risks for foreign branches and subsidiaries, and

- enhanced due diligence when dealing with higher risk countries.<sup>7</sup>

In regards with the legal practitioners, Recommendation Number 22 of FATF has recommended:

Lawyers, notaries, other independent legal professionals, and accountants – when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organization of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

Recommendation 23 of FATF giving specific terms regarding with legal professionals (Lawyers, notaries, and other independent legal professionals). In its interpretative note Recommendation 23, FATF explains:

1. Lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals, **are not required to report suspicious transactions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.**
2. It is for each country to determine the matters that would fall under legal professional privilege or professional secrecy. **This would normally cover information lawyers, notaries or other independent legal professionals receive from or obtain through one of their clients: a) in the course of ascertaining the legal position of their client, or b) in performing their task of defending or representing the client in, or concerning judicial, administrative, arbitration or mediation proceedings.**
3. Countries may allow lawyers, notaries, other **independent legal professionals** and accountants **to send their STR to their appropriate self-regulatory organizations**, provided that there are appropriate forms of cooperation **between these organizations and the FIU.**
4. Where lawyers, notaries, other independent legal professionals and accountants acting as independent legal professionals seek to dissuade a client from engaging in illegal activity, this does not amount to tipping off.

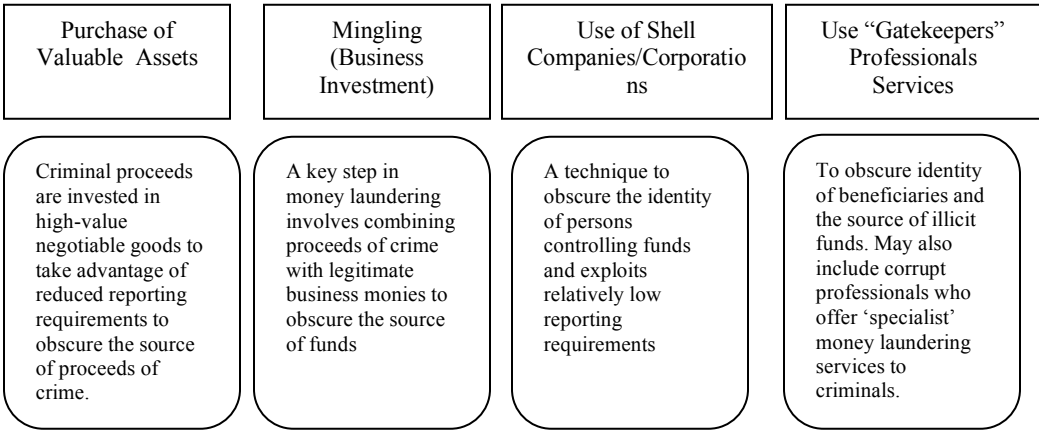
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<sup>7</sup>Ibid

It is important to note, in the perspective of International standards, professional privilege or professional secrecy is the limited reason for legal practitioners in reporting the money laundering process of their client. But it does not mean that all legal practitioners hide under these obligations. According to the FATF standards also, the existence of Self-Regulatory organization can be very effectively regulated these obligations to legal practitioners.

Dian Erdiana Rae<sup>8</sup> in his paper explains about the typology of money laundering through professions as below:

Figure 2: Typology of Money Laundering Through Professions



Those typologies described by Dian Ediana Rae above explicitly mention that money launderers have many ways to hide and conceal illicit assets derived from crime. Legal professions in its vulnerable can be a way to launder money as Gatekeepers. In International best practices, Due Diligence and Risk Based Approaches are used to show compliance of parties. It should take care the issues of the red flag in money laundering activities. It can be considering the country risk, client risk, and service risk. Legal practitioners are important to consider to assess all these things before he/she engages with a client to give their legal services.

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<sup>8</sup>Dian Ediana Rae. 2017. "Rahasia jabatan vs Keterbukaan Informasi", *Presentation paper*, presented in National Seminar "Keterbukaan Transaksi keuangan batasan dan Implikasinya: Perspektif Undang Undang Nomor 8 Tahun 2010, 29 July 2017, p. 8

E. E. Esoimeme explains further about Standard Due Diligence shall be applied to reduce risks, as:

- Country risk can be included to countries subject to sanctions, embargoes, or similars by United Nations; Countries identified by credible sources as lacking appropriate AML/CFT Laws, regulations, and other measures; Countries identified by credible sources as providing funding or support for terrorist activities that designated terrorist organizations operating within them.<sup>9</sup>
- Customer risk can be identified from the nature of the business of the customer (and/or called then as Client), occupation or anticipated transaction activity, certain customers and entities may pose specific risks.<sup>10</sup>

Other best practices that can be learned is Australian Anti Money Laundering Guidelines for Legal Practitioners. It is strengthened to the legal practice, as defined as: (1) a legal practitioner (however described) that supplies professional legal services; or (2) a partnership or company that uses legal practitioners (however described) to supply professional legal services.<sup>11</sup> Australian Anti Money Laundering Law is imposing for the involvement of lawyers under Criminal Laws. There are several provisions under Australian Criminal Laws:

- knowingly dealing with the proceeds of crime
- recklessly dealing with the proceeds of crime
- negligently dealing with the proceeds of crime

Thus, it needs more emphasizes on “Mens Rea” subjective guilt from Legal Practitioners when the client comes to seek their professionals’ assistance and advice. In this regards, legal professionals are needs more efforts too assessing any risks as they may face. To do client identification is important for all reporting parties, and it

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<sup>9</sup>Ehi Eric Esoimeme. 2015. **The Risk-Based Approach to Combating Money Laundering and Terrorist Financing**. United States of America: Eric Press, pp. 19 - 20

<sup>10</sup>**Ibid**, p. 27

<sup>11</sup>Law Council of Australia. 2016. **Anti Money Laundering Guidelines For Legal Practitioners**. Law Council of Australia, Australia, p. 10

is including legal professions. The legal professions through its Self Regulatory Body (SRB) could be more active in anti money laundering regime. Inter alia with that, Article 1 number 17 Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering defines about Self Regulatory Body as: “Supervisory and Regulatory Body shall be the agency that possesses the authority to supervise, to regulate, and/ or to impose the punishment to the Reporting Party”. For legal practitioners in Indonesia remains trying to fix who will be the SRB (on process). Indonesia is trying to implementing the mechanism of Compliance, through Supervisory compliance as defined in Article 1 number 18, as:

Supervisory Compliance means the series activity of the Supervisory and Regulatory Agency as well INTRAC to ensure the compliance of the Reporter Party on the report obligation under this Law, through issuing the provisions or guidelines of the report, performing compliance audit, observing the obligation of the report, and imposing the punishment.

It needs more effort to reminder how important is compliance nowadays. It can be used to prevent the potential of money laundering. The supervisor compliance will not succeed if all parties could not realize how important to be comply.

Law Number 8 of 2010 has put an International standard on how the party should comply with the Laws and regulations on preventing and eradicating money laundering. Legal practitioners as one of the party appointed by Article 17 of the Laws in conjunction with Article 3 of the Government Regulation, shall be aware of Suspicious Transaction Report, that may explains as:

Suspicious Financial Transaction means:

- a. Financial Transaction of which is diverging from its profile, characteristic, transaction pattern habits of the User in question;
- b. Financial Transaction of which is made by the User that is reasonably suspected to be made for the purpose of avoiding the report of the Transaction in question of which is mandatory performed by the Reporting Party in accordance with the provision herein;
- c. Financial Transaction of which is made or aborted to be made using Assets that are alleged comes from the criminal action; or

- d. Financial Transaction of which is required by the PPATK to be reported by the Reporting Party due to involving the Assets that are alleged comes from the criminal action.

Suspicious Financial Transaction categories mentioned above actually need a precise tool to identify and understand it well. It needs more legal professions expertise and knowledge and heart consideration to know their client who asks for legal advice in the specific terms as mentioned in the Article 8 (1) of Government Regulation Number 43 of 2015. The Government has given guidelines on a process to diagnose customers, and inter alia with that regulation, legal practitioners can elaborate the lists to diagnose client and/or potential client who may ask their assistance. Ministry of Finance Regulation Number 30/PMK.010/2009 concerning the implementation of knowing your customers' principles for non-finance institutions gives lists of parties who categorized as Politically Exposed Person, High-Risk Customer, High-Risk Business Customer, and High-Risk Countries customers. Inter alia with Head of INTRAC Regulation Number Per-02/1.02/PPATK/02/15 concerning potential money laundering customers category, it should implemented Customer Due Diligence and Enhance Due Diligence for any customer and/or client profiling through their potential high risks (vide Article 4) should consider the factor of a. Customer profile; b. Country; c. Business; and d. Product and/or services. Other high-risk business is related with a beneficial owner. All party, including legal professions, should give analysis on this matter. Due to the risks that may be faced as a gatekeeper, legal professions should notice and concern about this. Legal professions can be a gatekeeper anyhow if they ignore the reality.

The crime of money laundering itself is criminalized in the Article 3, 4, and 5 Law Number 8 of 2010, constructed well with the subjective guilt of intentionally and/or should have known. In related with Legal Professions in money laundering activity, it can be constructed through Article 4 and 5 as below:

Article 4:

Anyone, who hides, or disguises the origin, source, location, purpose, transfer of right or the truly ownership of the Assets that are known by him or of which are reasonably alleged as the result of criminal action, as set forth in Article 2 section (1), shall be subject to be sentenced due to the criminal action of Money Laundering with the imprisonment...

Article 5:

Anyone, who accepts or who takes the control of placement, transfer, payment, grant, deposit, exchange, or utilizes the Assets of which are known by him or of which are reasonably alleged as the result of the criminal action, as set forth in Article 2 section (1), shall be subject to be sentenced to the imprisonment....

R. Wiyono strengthening the subjective guilt in the Article 4 is: intentional (=known) or should be known (reasonably alleged) as define above.<sup>12</sup> This particular subjective guilt will be the important element to prove legal practitioners involved as a facilitator of money laundering violation in his/her client cases or not. Related with Article 4, then we know about “Gatekeeper”. Further, M. Yusuf explains that from the structural perspective, gatekeeper as an instrument to conduct the financial crime and money laundering. Without their assistance, corrupted officers and criminals would not able to abuse financial institutions for fraud. From Utilitarianism perspective, those financial institutions itself has a function as a mechanism to do financial crimes.<sup>13</sup>

As it is understood, money laundering is one of trans organized crime. It needs absolute public participation. INTRAC is an urge to gather data and implementing their function related with data and information. It needs participation from all parties, including here is Legal Professions. There is a system called GRIPs already provide by INTRAC. Unfortunately, legal professions remain find difficult to do reporting duty as required by the laws. One reason is due to their primary law that limited their

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<sup>12</sup>R. Wiyono. 2014. **Pembahasan Undang-Undang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang**. Sinar Grafika, Jakarta, p. 69

<sup>13</sup>Muhammad Yusuf. 2014. **Mengenal, Mencegah, Memberantas Tindak Pidana Pencucian Uang**. Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), Jakarta, p. 97

contribution to do a reporting party (as explained above). Other is about the limited information about that systems.

As a result of our research, we are promoting a software which may assist to be used by legal practitioners in diagnosing their client risk without violating their secrecy compliance to the primary laws such as the Law on Advocates, Law on Notaries, and Government Regulation on Official Certifiers of Title Deeds Association. The software will be linked to Self Regulatory Bodies (SRBs) of each legal professions.

The software will contain Customer Due Diligence and Identification process, red flags of money laundering, types of activities, and indicators of suspicious financial transactions. Interalia with the explanatory note of recommendation 22, it is only reported when legal practitioners conduct on behalf and/or for clients for transactions as mentioned in the Article 8 of Government Regulation Number 43 of 2015 and/or Recommendation 22 of FATF. Legal practitioners have important role nowadays.

The goal of this research result is actually to promote the idea of public participatory, in this research is legal professions participatory, without violating their primary laws with the respect as a mandatory and rigid provision entailed their professions. Otherwise, legal practitioners can remain giving contributions as a party who analyzed their potential risks that may faced, and actively and freely report when they act on behalf and/or for their client for an object of transactions required by laws to be reported. As an ultimate goal, the research can give a contribution to achieve social welfare of Indonesia, through what J. Sachs mentions as an ideal goal to be realized, (1). Efficiency (prosperity); (ii). Fairness (opportunity), and (iii) sustainability (a safe environment for today and the future).<sup>14</sup> The conflict of laws between primary laws of legal professions in Indonesia, code of conduct obligations versus the law on money laundering (and its Government Regulations) could create inefficiency in its prevention and eradication of money laundering process.

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<sup>14</sup>Jeffry D Sachs. 2011. **The Price of Civilization: Reawakening American Virtue and Prosperity**. Random House Inc., New York, pp. 38 - 39



## CLOSING REMARKS

The role of legal professions (or called also as Legal Practitioners) in the prevention and eradication of money laundering should be promoted more. Due to conflict of laws among the laws (in the context of perspectives of the regulations that put legal practitioners as reporting party in Indonesia), it should not a big problem as long as all parties see from the perspective of ultimate goal that should be achieved in Indonesia. With the perspectives of social welfare of Indonesia and progressive, all parties can give contribution in public participation. If we have to change the Law, it is not easy. Thus, it needs to create a way to achieve the goal of social welfare of Indonesia (in this matter is related with anti money laundering regime).

To bridge the gaps, it needs to promote a software of reporting and analyzing that may be applicable for legal professions in every region in Indonesia.

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