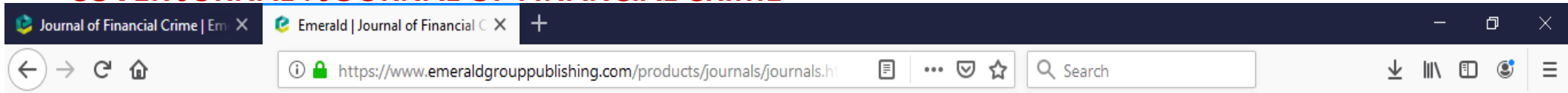


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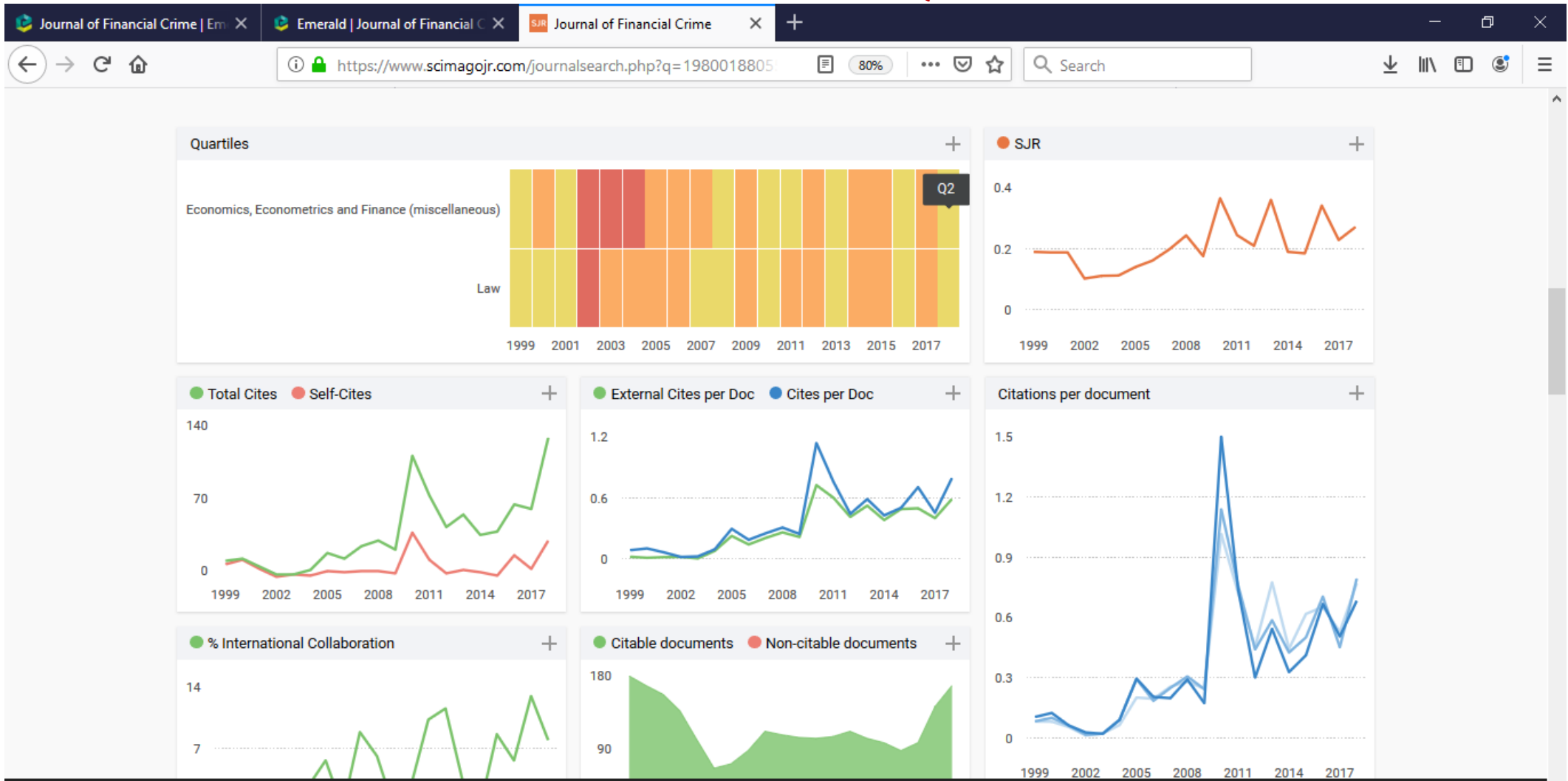
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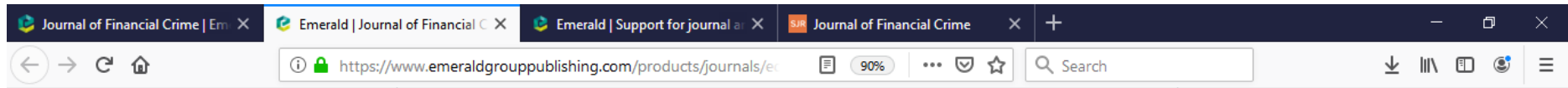
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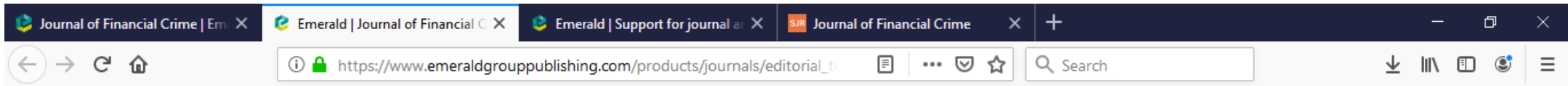
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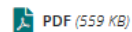


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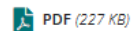


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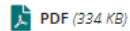


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This paper aims to explain the regulations in Indonesia that apply to lawyers and other professional advisers in terms of their obligations as reporting parties of suspicious financial transactions with respect to money laundering and other financial crimes. As lawyers and other professional advisers offer services to the business community in Indonesia, they are vulnerable to becoming parties to illegal business transactions. The results could lead to bribery, graft, tax crime and corruption in Indonesia.

Design/methodology/approach

This paper explores and analyzes the obligations of lawyers and other professional advisers under Indonesian law, with particular reference to their obligations as reporting parties in efforts to prevent economic crime within the country's business community.

Findings

Lawyers and other professional advisers, as reporting parties, can be viewed as the gatekeepers that inhibit economic and financial crimes. Consequently, a new perspective is needed for all of the legal professions so that they can protect themselves from the risks of

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Findings

Lawyers and other professional advisers, as reporting parties, can be viewed as the gatekeepers that inhibit economic and financial crimes. Consequently, a new perspective is needed for all of the legal professions so that they can protect themselves from the risks of being targeted by nefarious clients/offenders. To strengthen the role of these advisers, it is recommended that both a code of ethics and know your customer principle to be implemented.

Practical implications

This paper can serve as a resource that explores the functions of lawyers and other professional advisers as reporting parties whose aim is to prevent financial and economic crime in Indonesia.

Originality/value


This paper encourages lawyers, other professional advisers, and public and private institutions to implement a code of ethics, and also integrity and professionalism, with a view to preventing economic and financial crimes. According to the code, the functions and obligations of lawyers and other professional advisers include discouraging such offenses. The code becomes effective when legal professionals adhere to legal ethics and integrity.

Keywords

Financial crime Reporting parties Code of ethics Lawyer Professional advisers

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Faculty of Law, University of Surabaya, Surabaya, Indonesia

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Keywords Financial crime, Reporting parties, Code of ethics, Lawyer, Professional advisers

Paper type Viewpoint

Introduction

The Government of Indonesia places a high priority on strengthening its country's economic and business climate. As part of those efforts, governmental agencies, public institutions, the private sector and other related entities are urged to support this policy. Legal practitioners, together with other professional advisers who work within legal services, play a significant role in maximizing economic development in Indonesia. Lawyers who hold professional, independent and responsible positions have strict codes of conduct, both inside and outside the court. The Indonesian government's tax amnesty 2016 program requires cooperation from every aspect of the business world. Consequently, the cooperation of legal practitioners and other professional advisers is important to the success of the program. The aim of the program is to reduce tax and other financial crime, and thereby, it will become a



positive impact such as increase national income. Legal practitioners/advisers who deal with corporate/business clients are required to give legal or financial advice that encourages compliance with the program.

By definition, a legal practitioner is a lawyer and in the traditional English legal system, it is also a person who is a member of one of the recognized branches of the practice of law^[1]. Lawyers have a specific responsibility to promote the upholding of the law. This is because they have an elite level of knowledge of the international legal regime and they know how the law works in practice. Their daily practice equips them to consider what is fair and just, and not only is what functionally useful. They deal with emotions. They apply morality, whether trivial or grand, every day. Although they may not inhabit all of the areas within the political spectrum, they are servants of a higher and more-noble ideal: the rule of law (Wood, 2016, p. 159).

In many ways, the important role a legal practitioner plays in terms of ethically carrying out legal matters may not always reflect reality. At times, the principle priorities of client first, client confidentiality and acting on behalf of the client have caused lawyers and legal advisers to ignore the regulations, as is illustrated in several economic and financial crime cases concerning bribery, graft, tax crime and corruption. The 2015 annual report of the Indonesian Financial Transaction Reports and Analysis Center states that the five highest-ranking money laundering crimes in Indonesia are those involved in:

- (1) buying property assets (14.9 per cent);
- (2) buying gold/jewelry (12.6 per cent);
- (3) the placement of funds within or outside the country (12.2 per cent);
- (4) the entrustment of funds to family members or other parties (11.9 per cent); and
- (5) keeping cash in a house or elsewhere (11.7 per cent) (INTRACT, 2015, p. 35).

These methods can be used with the knowledge of the offenders' legal practitioners or other professional advisers such as accountants, tax consultants, financial planners and so forth. Moreover, it is known that some legal/financial advisers even suggest that their clients undertake illegal schemes for profit or advise them on how to conceal illegal funds. In some cases, lawyers and other professional advisers are even the nominees of the funds or property assets being placed within or outside the country and are, therefore, instrumental in tax avoidance.

Although the Government of Indonesia has promulgated several regulations for legal practitioners such as the Advocates Law and the Notary Law, financial and economic crimes involving these professionals still occur. Furthermore, the Indonesian government also enacted regulations that oblige lawyers and other professional advisers to act as reporting parties on any suspicious financial transactions that include money laundering. Even though these regulations have been promulgated, it is useful to analyze their implementation, and the existing obstacles and how to overcome them. This paper explores the obligations of lawyers and other professional advisers within Indonesia's current laws with particular reference to their obligations as reporting parties in preventing economic crimes that can take place during business transactions.

Indonesia's current regulations on lawyers and other professional advisers

Under [Indonesian Law Number 18 \(2003\)](#), "advocate" is the term used to define a practicing lawyer. In accordance with Article 1, Point 1, of Indonesian Law Number 8, Year 2003, an advocate is a person whose profession is to provide legal services, both inside or outside the court.

An advocate is prohibited from holding or possessing any other position or from having any other profession that could cause a conflict of interest with or prejudice their duties toward and the dignity of their profession or position or interfere with or diminish their independence and freedom as an advocate in performing their duties and responsibilities. This particular Advocates Law clearly stipulates that if an advocate accepts a state office appointment or the like, then they are not permitted to continue their practice as an advocate until they resign from such appointment. Several rights are described in this particular law (Articles 14-19 Indonesian Law Number 18 Year 2003), as follows:

- advocates are free to provide opinions or statements, in defending a case that is under their responsibility in a trial, by referring to the professional code of ethics, laws and regulations;
- advocates are free to perform their professional duties of defending a case that is under their responsibility, by referring to the professional code of ethics, laws and regulation;
- advocates may not be prosecuted, civilly or criminally, if they perform their profession in good faith and act in the best interests when defending a client at trial;
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- advocates are prohibited from discriminating against clients on the basis of gender, religion, political views, ethnicity, race or social and cultural background;
- advocates may not be identified with their clients in defending the case of the client by the competent party and/or society;
- advocates are obliged to keep confidential all matters known or obtained from their client unless stipulated otherwise by law; and
- advocates have the right to a confidential relationship with their clients, including the protection of materials and documents against seizure or examination measures and protection against taking recording or electronic communication of advocates.

Along with the above rights, there are also several prohibitions and obligations in Article 20 [Indonesian Law Number 18 \(2003\)](#), such as:

- advocates are prohibited from holding any other position that is contrary to the interests of their professional duties and the dignity of their office;
- advocates are prohibited from holding any other position, whatsoever that harms the profession or may prejudice their freedom and independence in performing their professional duties; and
- advocates who hold public office cannot perform duties, within the advocacy profession, while holding such a position.

Under the law, an advocate is obliged to maintain the confidentiality of all matters that come to their knowledge or any information given by a client that is based on their professional relationship. Article 19, [Indonesian Law Number 18 \(2003\)](#), specifically states that:

- every advocate is obliged to keep secret all matters known or obtained from their clients because of their professional relationship unless otherwise stipulated by this law; and

- an advocate has the right to keep confidential anything pertaining to their relationship with their client, including protecting the client's files or documents from confiscation and investigation and protection against take recording or electronic communication of advocates.

It is clear that under the law, an advocate has an obligation to not disclose confidential communications made between or information obtained from their client. It is important to note that the law protects the confidentiality of not only advocate-client communications but also any information obtained by the advocate from the client (including non-written information) that pertains to their relationship and is for the purpose of providing legal assistance or services to the client.

Similar to the Indonesian Law on Advocates, in 2009, under [Indonesian Law Number 48 \(2009\)](#), concerning Judicial Power, Article 38 clearly states that advocate is one of the law-enforcement agencies or functions that is related to judicial power. Providing appropriate legal services is one of the functions of judicial power. Every person involved in a criminal case has the right to receive legal services. Therefore, the function of the legal profession, particularly of advocates, in inhibiting any economic crimes, is very important.

The public notary, as one of these legal practitioners, has been promulgated under Indonesian Law Number 30, Year 2004 and Indonesian Law Number 2, Year 2014. Indonesian Law Number 2, Year 2014, clearly states that a notary, as a public official whose profession is to provide legal services to the public, must have protections and guarantees to achieve legal certainty. Therefore, under Article 16, subsection (1) Indonesian Law Number 2, Year 2014, states that a Notary shall act in a trustworthy, honest, thorough, independent and impartial manner, and safeguard the interests of the parties involved in legal actions.

With reference to public accountants as professional advisers, the Indonesian government has enacted Indonesian Law Number 5 (2011) on public accountants. This particular law mentions the importance of the public accountant in relation to the national economy. The public accountant is inextricably linked to economic decision-making, and therefore, this profession carries much weight in the era of globalization. That is, to say, this profession has a significant role to play because the very nature of the job means that it is directly related to the national economy. The Indonesian government has a responsibility to preserve and create healthy economic conditions and economic efficiency; it must also increase transparency and provide high-quality financial information. Therefore, public accountants are crucial in assisting the Indonesian government in carrying out these duties.

As part of helping the government meet these requirements, public accountants must maintain a level of competence by undertaking continuing professional training; they must be professional, honest, responsible and have the highest possible level of integrity (Indonesian Law Number 5, 2011, Article 25, subsection (1), e and f). While providing these services, public accountants are obliged to comply with and implement The professional standards and professional ethics code and rules and regulations in accordance with the services they provide (Indonesian Law Number 5, 2011, Article 25, subsection (2) b). Public accountants are obliged to maintain the integrity of their office and must be free from conflicts of interest [Indonesian Law Number 5, 2011, Article 28 subsection (1)]. Conflicts of interest may possibly occur in the event that:

- a public accountant or an associated party has a financial interest in or has significant control over the client or may obtain a financial benefit from the client;
- a public accountant or an associated party has a family relation who is a director, an official or a person who has a key position in a financial or accountancy business of the client; and/or

- a public accountant provides services as set forth in Article 3, Section (1) or other services, such as: an audit service on the information related to historical finance; reviews the information contained in a statement or statements related to historical finance; and other insurance services within the same period or for the same accounting year[2].

The role of lawyers and other professional advisers as reporting parties

When carrying out their professional duties, lawyers and financial advisers are vulnerable to corruption. This can have large consequent negative impacts on the economy – both national and international. These professions can also have significant positive impacts on a national economy or even greater impacts on the global economy. It is accepted that international financial institutions were designed to maintain economic growth and stability of the world's economies (Rothe and Friedrichs, 2015, p. 31). Nevertheless, protections must be in place to ensure these financial institutions and related professions continue to act in the interests of those objectives.

To protect the nation from economic and financial crimes, particularly in the context of money laundering, the Government of Indonesia has enacted Indonesian Law Number 8, Year 2010, on the prevention and eradication of money laundering crime. This law has set forth the reporting parties who have the obligation of reporting suspicious financial transactions. One of those reporting parties is the provider of goods or services, such as property companies/property agents; motor vehicle dealers; gems, jewelry and precious metal dealers; antique and art dealers; and auction houses [Article 17, subsection (2)]. Moreover, the law also stipulates that other reporting parties shall be stipulated with the Government Regulation [Article 17, subsection (3)]. The aforementioned Law is [Government Regulation Number 43 \(2015\)](#), which states that lawyers and other professional advisers are part of the reporting parties as set forth in this law; several further parties also became reporting parties as follows:

- advocates;
- notaries;
- land – deed officers;
- accountants;
- public accountants; and
- financial planners[3].

Lawyers and other professional advisers must report to the relevant authority any suspicious financial transactions. This means the reporting parties are obliged to apply the know your customer (KYC) principle, as set forth under Indonesian Law Number 8, Year 2010, in the following situations:

- while performing a business relationship with a customer;
- if there is any suspicious financial transaction, using Indonesian Rupiah or foreign currency whose value is at least or equal to IDR 100,000,000,00[4];
- if there is any suspicious financial transaction associated with the crime of money laundering and the crime of financing terrorism; and
- the reporting parties have questions about the information provided by the customer [Article 18, subsection (3)].

In the anti-money laundering-crime regime, the reporting parties are on the front line, which means they play a strategic role in detecting any suspicious financial transaction. Therefore, the KYC principle should be applied and include user identifications, user verification, and the monitoring of user's transactions.

[Government Regulation Number 43 \(2015\)](#), concerning reporting parties in the prevention and eradication of money laundering crime states that reporting parties include not only financial service providers such as banks, leasing companies, insurance agencies and so on but also legal professions such as advocates, notaries, land-deed officers and other professional advisers such as tax accountants, public accountants, auditors and financial planners (Article 3). All of the aforementioned reporting parties are to apply the KYC principle.

Reporting parties have an obligation to report any suspicious financial transaction to the Indonesia Financial Intelligence Unit, in the interests of or on behalf of their client, regarding the following:

- property trade transactions;
- the management of money, effects and any or other financial services plan;
- the management of a general internet recurring order account, a deposit account or an effects account;
- the management and operations of companies; and
- the establishment, buying or selling of a company.

However, advocates are exempt from these obligations when acting in the best interests of the client or on behalf of the client, to conduct legal due diligence, case handling, arbitration or alternative dispute resolution (Gov. Regulation Number 43, Year 2015, Article 8).

When professional advisers apply the KYC principle and legal ethics, when providing legal and financial services, they are assisting in the prevention of economic and financial crimes. To prevent crimes from being committed, lawyers and other professional advisers must show good leadership and steer their clients away from illicit financial behavior. Much of the corruption literature has illustrated that leadership is important in shaping attitudes toward corruption and also the sanctions sought for such crimes. Part of an anti-corruption strategy is to have on-going risk assessment of all those used by an organization and those it seeks to trade with it, regardless of the sector ([Brooks *et al.*, 2013](#), p. 171).

An infringement of these obligations can lead to administrative or even criminal sanctions. The regulations stipulate the risks and responsibilities of the lawyers and other professional advisers who participate in transactions that involve money or items of financial value. When reporting parties are exercising their reporting obligations, they are excused from the legal provision of confidentiality (Article 28, Indonesian Law Number 8, Year 2010).

As previously mentioned, Article 19 of [Indonesian Law Number 18 \(2003\)](#), requires that advocates keep secret all matters known or obtained from their client, unless otherwise stipulated by law. Moreover, advocates have the right to confidentiality in their relationships with their clients, including the protection of their materials and documents against seizure or examination measures and also protection against the recording of communications or the seizure of electronic communications with their clients.

Even though the Indonesian government has enacted several regulations as guidance for lawyers and other professional advisers, some obstacles that are burdensome to the functions of the profession remain, such as:

- lawyers and other professional advisers are vulnerable to being used, by a client, to assist in transferring or hiding illegal funds;
- the lack of professionalism, integrity and good leadership within the profession;
- a low compliance level of the code of ethics;
- giving more priority to client confidentiality and clients' personal interests, than to reporting any suspicious financial transaction; and
- the KYC Principle has not been optimized.

Legal ethics and integrity in the professions. Although several regulations clearly stipulate the duties, functions and obligations of lawyers and other professional advisers in preventing economic crimes, these regulations will only work if the profession adheres to legal ethics and integrity. The implementation of the code of ethics is critical to ensuring compliance.

Article 26, of [Indonesian Law Number 18 \(2003\)](#) states that to maintain the honor and dignity of an advocate's profession, the code of ethics should be drafted by an advocates' organization. Advocates must be subject to and comply with the code of ethics of the advocate profession and the provisions of the honorary council of the advocates' organization. This code of ethics should not be contrary to existing laws and regulations.

Demanding integrity from lawyers and other professional advisers is, undeniably, in the best interests of the client. At the same time, however, exercising professional integrity also prevents financial and economic crime. Indeed, as mentioned earlier, lawyers and other professional advisers are vulnerable to being used to conduct a financial and economic crime. Therefore, these professional advisers must assume the role of reporting party with the obligation of applying the KYC principle and incorporating into their professions the prudential principle. Any inappropriate action will result in administrative or criminal sanctions. Therefore, lawyers and other professional advisers must apply due diligence and enhanced due diligence when providing legal or other financial services to their clients.

Pursuant to the law on advocates, the duties, rights and privileges of an advocate are set out in the code of ethics of Indonesian advocates and are applicable to advocates who are admitted under the law. This code of ethics is the ultimate governing rule for a lawyer to uphold in practicing their legal profession. The code sets out, among others, the minimum standard of conduct that Indonesian advocates should seek to observe. This code imposes an obligation, on every advocate, to act sensibly, responsibly and in a proper manner in performing their legal duties toward their clients, the court, the state, society and themselves.

Advocates are supervised by the honorary council, as stipulated in Article 9 of the code of ethics. Advocates are also supervised by the government, specifically by the Minister of Law and Human Rights, and the Supreme Court of the Republic of Indonesia, based on a Joint Statement Letter of the Head of the Supreme Court and the Minister of Justice No. KMA/005/SKKB/VII/1987. Under the applicable code of ethics, the advocate's duty to maintain confidentiality must continue until after the advocate-client relationship ends.

To prevent economic and financial crimes from being committed, the legal profession and financial advisers are tasked with the following:

- Fostering the proper understanding of the risks of a financial crime that could occur during any business activity.

Here, an awareness of the vulnerability of those who work as lawyers and other professional advisers is fundamental to arresting economic and financial crimes. A proper understanding of the risks of financial crime will lead these professionals to

give better legal advice and to provide financial services, to their clients that are based on the regulations.

- Creating a good system and internal controls to mitigate the risks of financial and economic crime.

Such a system would entail the implementation of internal controls that establish and create a good corporate culture and good corporate governance within the institution, itself. It would also direct the corporate and business world down the right path, so as to prevent any financial crime and internal fraud.

- Complying with any governmental regulations to eliminate any potential economic and financial crime.

Compliance of the regulations is significant for both professional advisers and their clients. Complying with governmental regulations would have a positive impact on business activities; it would also extend this positive and ethical behavior to the economic life of the nation.

A breach of engagement in an agreement or a violation of a statutory provision or ethical rule may be used to establish an advocate's liability. Legal practitioners and other professional advisers need to raise the compliance level. A substantial amount of blame for the facilitation of international corruption can be placed on poor levels of compliance within the regulatory standards, including substandard customer due diligence and the incorrect risk rating of clients and accounting activity (Platt, 2015, p. 86).

- Monitoring and evaluating the relationship between the professionals and their clients.

As previously mentioned, lawyers and other professional advisers perform their duties based on their code of ethics. As such, the KYC principle, customer due diligence and even enhanced due diligence should apply.

- Encouraging clients' awareness of any financial and economic crime.

Raising client awareness of the risks of economic and financial crime should be the first priority for those who provide legal consultancy or legal services.

The aforementioned tasks of professionals in these occupations will play a significant role in contributing to a booming economy and in curtailing the types of economic and financial crimes that can cause great economic and moral damage to the nation.

Most people obey the law most of the time. The risk of incurring legal sanctions, criminal or otherwise, is unwelcome to most people. Added to these are numerous other "social sanctions;" and although they affect different people in different ways and to different degrees, nonetheless, the impact on most people is considerable. Furthermore, all of these reasons are the right reasons for adhering to the law. These reasons go beyond the mere fact that the law sets forth this requirement (Raz, 2009, pp. 242-243).

Moreover, it is a mistake to think that all instances of economic crime are clear-cut and can be easily remedied through simple legislation and punishment. In some countries, persistent petty corruption is deeply enmeshed in the culture of both commercial and municipal transactions. Further, they may be beyond the reach of a police force that is, itself, likely to be compromised and reliant on its own hierarchically based bribery. In others, the personal enrichment of the top officials who squirrel away millions in foreign banks and property investments, while the rest of the country's population continues to live in poverty, is linked to the pervasive power of those few officials who make it impossible to investigate their conduct. In some of the most subtle cases, national interests are traded between states, often with financial incentives attached; cases of corruption can be found on paper, but are

arguably explained away and justified by the pragmatic demands of national security and public safety. The harder it is to prevent corruption internally, the more important it is to take steps to prevent it from being profitable externally (Platt, 2015, pp. 88-89).

A common factor in many of these cases of bribery and corruption is the use of the financial system to harbor the proceeds of these illicitly gained funds. Financial institutions assist corruption in two ways. The first is through the provision of banking services to companies or persons that are a high risk of either making or receiving bribery payments and knowingly or negligently, permitting the transfer of this money. This may happen when a bank assists a construction or defense company, with a presence in a high-risk country, to make a payment to a state employee in that country. Not only will the bank have potentially aided the commission of an offense under primary anti-bribery legislation but also it would likely have occasioned a breach of the regulatory requirements of its own home jurisdiction (Platt, 2015, p. 93). This particular condition, which commonly involves legal practitioners or professional advisers, can be overcome by applying the KYC principle, customer due diligence and enhanced due diligence.

Conclusion

Lawyers and other professional advisers not only have a role to play in law enforcement and financial matters but also have a greater responsibility with respect to the national economy. Therefore, it is necessary to protect them from the risks of being targeted by clients/offenders of financial and economic crime. The function of legal practitioners, particularly as advocates, to prevent any economic crimes is particularly important.

Compliance, integrity, professionalism, and a good legal culture will improve to be good risk management within the professions. Implementing the code of ethics and the KYC principle, in dealing with their clients, will strengthen the role of lawyers and other professional advisers. As reporting parties, lawyers and other professional advisers adopt the role of gatekeeper in preventing the types of financial and economic crimes that can cause economic and social damage to the nation.

In reducing the potential for economic and financial crimes, the legal profession and other professional advisers have several tasks, including the following:

- foster a proper understanding of the risks associated with the types of financial crimes that might occur during business activities;
- create a good internal control system to mitigate the risks of financial and economic crime;
- comply with any governmental regulations;
- monitor and evaluate the relationship between the financial professions and their clients; and
- encourage the client to understand what constitutes a financial or economic crime.

Economic and financial crimes occur in many ways and can have devastating effects on the national economy. Lawyers and other professional advisers must show good leadership in directing their clients away from these types of nefarious financial activities. Introducing a strong code of legal ethics for professional advisers in financial services will assist in this type of crime prevention. When professionals adhere to legal ethics and practice with integrity, they serve to inhibit such offenses. The implementation of a strong code of ethics is an important element to ensuring the compliance of lawyers and any other legal and financial professions and also their clients.

Notes

1. Garner (2009, p. 978). Legal practitioners may be either barristers, special pleaders not at the bar, certified conveyancers or solicitors. The latter three may recover their fees, but the first may not, their acting being deemed of a voluntary nature, and their fees merely in light of honorary payments; and it follows, from this that no action lies against them for negligence or unskillfulness." John Indermaur, *Principles of the Common Law* 169 (Edmund H. Bennett ed., 1st Am.ed. 1878).
2. Article 28 subsection (2) Indonesian Law Number 5 (2011).
3. Government Regulation Number 43 (2015) Article 3.
4. Equivalent to GBP 5,882.

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