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## CUSTOMER DUE DILIGENCE AND ITS ROLE TO PREVENT THE GLOBAL ECONOMIC THREAT: INDONESIAN ANTI MONEY LAUNDERING PERSPECTIVES

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### ABSTRACT

*Money laundering and financing of terrorism is one of the global threats which may occur problems for the economics of the world. The effect of Money Laundering and financing of terrorism have been manifested in the life of the nations. According to its characteristic as a transnational crime, Money laundering and financing of terrorism have been a major concern of all the countries and law enforcement agents. In this situation, law shall be a major instrument to tackle money laundering and financing of terrorism, but Customer Due Diligence and Enhance Due Diligence plays a great part to prevent money laundering and other variant of crime. The effective and efficient measure to recognize the customer who has a suspicious character of money laundering and financing of terrorism is using the method of knowing correctly and precisely their customer's profile. Customer Due Diligence is the first resort which may operate as the first procedure which should be taken by all Financial Services Provider and also Goods and Services Providers. As a tool, Customer Due Diligence should be followed by the professionalism and awareness of the parties involved, such as bank and goods and service providers, since it is not easy to recognize the money laundering and also financing of terrorism. The presence of Law Number 8 of 2010 of Republic of Indonesia actually tries to strengthen the implementation of the Principle of Know Your Services Users or also known as the Know Your Customer Principle.*

Keywords: Customer Due Diligence, Prevention of Crime, Money Laundering

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### INTRODUCTION

Money Laundering and the Financing of Terrorism are some of the major crimes which now have been transformed and manifested into a very high and costly crime to prevent and eradicate of crime. Its transformation into a serious and extra ordinary crime has been attracting attention for prevention and eradication. The cost of the crime itself has been attracting people's attention. As could be understood, the increasing number of money laundering and the financing of terrorism will depend on how public will participate in order to fight against those crimes.

Min Zhu, Deputy Managing Director of the IMF, mentioned as below:

Money laundering and the financing of terrorism are financial crimes with economic effects. They can threaten the stability of a country's financial sector or its external stability more generally. Effective anti-money laundering and combating the financing of terrorism regimes are essential to protect the integrity of markets and of the global financial framework as they help mitigate the factors that facilitate financial abuse. Action to prevent and combat money laundering and the financing of terrorism thus responds not only to a moral imperative, but also to an economic needed.

According to that opinion, it is understandable that the major concern nowadays is how to eradicate money laundering crime and also the financing of terrorism. Fighting against money laundering and the financing of terrorism would show that the International community is choosing to fight all crimes which may appear. In this sense, International Monetary Funds (herein after called as IMF) mentioned that international society has already put eradicating or fighting money laundering and the financing of terrorism as a priority. The explanation of IMF is below:

The International community has made the fight against money laundering and terrorist financing a priority. The IMF is especially concerned about the possible consequences of money laundering and terrorist financing on its member' economies and on financial and external stability.

Money laundering and terrorist financing activities can undermine the integrity and stability of financial institutions and systems, discourage foreign investment, and distort international capital flows. They may have negative consequences for a country's financial stability and macroeconomic performance, resulting in welfare losses, draining resources from more productive economic activities, and even having destabilizing spillover effects on the economies of other countries. In an interconnected world, the problems presented by these activities are global, as are the links between financial stability and financial integrity. Money launderers exploit both the complexity inherent in the global financial system as well as differences between national anti-money laundering laws and systems, and they are especially attracted jurisdictions with weak or ineffective controls where they can move their funds more easily without detection. Moreover, problems in one country can quickly spread to other countries in the region or in other parts of the world. Strong AML/CFT regimes enhance financial sector integrity and stability, which in turn facilitates countries' integration into the global financial systems is essential to financial sector and macroeconomic stability both on a national and international level. (IMF, 2012)

According to the explanation above, can be understood that the scheme of money laundering and financing of terrorism eradication will be effective by using the scheme of strengthening the financial sectors of Anti Money Laundering/Counter Financing of Terrorism (AML/CFT). It will bring the stability on the financial and economic sectors, not only for domestic level, but also on international level. The battle against Money Laundering and the Financing of Terrorism itself will remain in process and need the best effort to eradicate it.

All offenders are now trying to hide their assets from their criminal activity, and therefore financial service provider will be the first place to hide that illicit money. The offenders will relocate their assets and move them smoothly. The financial institution could be a good place make all things happen. Hence, the financial institution should be able to understand, to recognize and to identify all the potential risks which come from money laundering and financing of terrorism activity.

Money laundering has no international definition until now. Each scholars and countries could make their own definition. Basle committee in 1988, as quoted by N.H.T Siahaan, putting the bottom lines for the element of money laundering as below:

Criminal and their associates use the financial system to make payment and transfers of funds from one account to another; to hide the source and beneficial ownership of money and to provide storage for bank-notes through a safe-deposit facility. These activities are commonly referred to as money laundering (IMF, 1994).

Money Laundering can be understood as the process for concealing and hiding the origin of assets sources which usually obtained from the criminal activity such as terrorism, financing of terrorism, corruption, drugs/narcotics and psychotropic, illegal logging, trafficking, illegal arms smuggling, embezzlement, prostitution, robbery, etc.

Guy Stressen explains that the goals of money laundering activity, as below:

Criminals who, through their criminal activities, dispose of huge amounts of money, need to give this money a legitimate appearance: they need to 'launder' it. The phenomenon of money laundering is essentially aimed at two goals: preventing 'dirty money' from serving the crimes that generated it, and ensuring that the money can be used without any danger of confiscation. The interest of law enforcement authorities in detecting the link between and offender and the proceeds of the crimes he has allegedly committed, is consequently also twofold: detecting the crimes that were committed in order to bring the illegal perpetrators to trial, and identifying the proceeds from crime so that they can be confiscated (Guy Stressen, 2000).

In this situation, John. C. Keeney (Deputy assistant Attorney General, Criminal Division, United States Department of Justice), as quoted by Munir Fuady, explained the goal of doing money laundering especially by using the financial system is actually to avoid the creation of paper trail which may be traced by law enforcement. In complete, John C. Keeney explained as below:

If the money can be gotten into a bank or other financial institution, it can be wired to any place in the world in a matter of seconds, covered to any other currency, and used to pay expenses and recapitalize the corrupt business. The problem for the drug trafficker, aims merchant or tax evader then, is how to get his money into form in which it can be moved and used most efficiently without creating a 'paper trail' that will lead law enforcement authorities to the illegal business. The process of doing that is what we call money laundering. There are many ways in which it is done.

From the definition mentioned above, it can be understood that money laundering is the main scheme now to choose in order to hide and conceal the original sources of their crime (or predicate crimes). In its development, Money laundering becomes a high level of crime.

Other serious crime nowadays is the Financing of Terrorism. The nature of Financing of Terrorism itself is as dangerous as Terrorism. Terrorism could be seen as a crime which threatens the sovereignty of nations. From the perspective of Social Policy, it can easily be understood that a State shall protect its citizen from the activity of terrorism and it's variant. The financing is the major part which plays the important part of terrorism itself. Yunus Husein comment:

The Financing has become the major factor of the terrorism action. Therefore the eradication of terrorism shall be follow by the prevention and eradication of the financing of terrorism. As a signed party of the International Convention for the Suppression of the financing of terrorism, Indonesia shall making or harmonizing their legislation related to the provision as mentioned in the Convention (Yunus Husein, 2011).

Inter alia with comment above, the International Convention for the Suppression of the Financing of Terrorism has mentioned, General Assembly Resolution actually asked upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorism, and terrorist organizations. The financing actually is directly or indirectly used and claimed as charitable funds, social or cultural destinations of goals. Some terrorists are also engaged in unlawful activities and exploit people to fund some terrorist activities. The unlawful activities which may be committed by the terrorists for examples are illegal arms trafficking, racketeering, drug trafficking, etc.

According to the International Convention for the Suppression of the Financing of Terrorism, the definition of Terrorist Financing inter alia with Article 2 point 1 which is mentioned as below:



Any person commits an offence within the meaning of this Convention if that person by means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used or in full or in part, in order to carry out a terrorist act

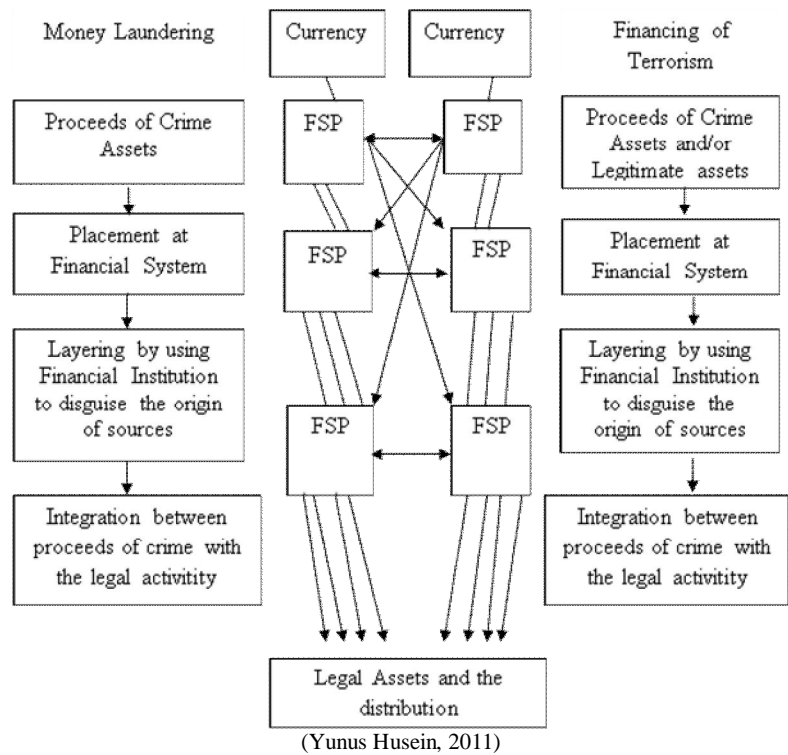
Here, the Financing of Terrorism occurs when a person provides and/or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to commits terrorist activities. In order to provides and/or collects that funds, the person use any means, direct or indirect, unlawfully and willfully.

Both Money Laundering and the Financing of Terrorism have similarity as a form of crime which uses the same technique to conceal or hide the sources of funds. The sources of money laundering as a proceed of crime came from predicate crime, including the Financing of Terrorism, while the sources of terrorist financing came from proceeds of crime and/or other legal activities, such as charity, etc. It could be understood that money laundering derived from the illegal activities, but terrorist financing could derived from legal and illegal activities. Article 2 paragraph 2 of Law of the Republic of Indonesia Number 8 of 2010 concerning The Prevention and Eradication of the Crime of Money Laundering (hereby called as Law Number 8 of 2010) mention:

Assets known or reasonably suspected to be used and/or being used, directly or indirectly, for acts of terrorism, organized terrorism or individual terrorism, shall be considered equal to proceeds from criminal acts as referred to in paragraph (1) sub-paragraph n.

Article 2 above explains that the financing of terrorism which appear into a form of assets will be used or suspected to be used directly or indirectly for the terrorism commission both by individual terrorism and/or organized terrorism. The process of Money Laundering and the Financing of Terrorism could be seen from the chart below:

**Chart 1: money laundering and financing of terrorism process**



Both Money Laundering and the Financing of Terrorism have been endangering the world economic and have become financial crime. Both of them are criminal activities in attempt to conceal and hide the origin sources of the funds, and also the destination of the recipients of the funds. The offender of both crimes tries to change the form of funds, or to move the funds to a place where the money would not attract attention of the law enforcement agents. Therefore, all nations shall participate hand in hand to tackle the crimes. The financing of terrorism have multiple similar characteristics with money laundering in the context of the sources, process, risks assessment, and adaptability.

This paper will assess how the prudent ways for Financial Institution such as Know Your Customer Principles, Customer Due Diligence and Enhance Due Diligence plays important roles to prevent and tackle financial crimes caused by Money Laundering and/or the financing of terrorism.

## FINANCIAL CRIME AND THE POTENTIAL ECONOMIC LOSS DERIVED FROM MONEY LAUNDERING AND THE FINANCING OF TERRORISM

The crime of money laundering and the financing of terrorism does not only create public threat but also the reputation of the financial system such as Financial Institution (bank and/or non bank), and also government. The consideration of Law Number 8 of 2010 concerning The Prevention and Eradication of the Crime of Money Laundering mention:

Whereas money laundering is a crime that not only threatens the economic stability and integrity of the financial system, but can also endanger our foundations of life as a society, nation, and state based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

The development of ICT itself has been encouraging the appearance of anonymous, invisible, and sophisticated economic crime. V.D. Dudeja explains as below:

The new technology change many of the fundamental principles associated with a chaos oriented society. Transaction do occur via the internet or through the use of smart cards contain a designed to provide the transacting parties with immediate, convenient, secure and potentially anonymous means by which to transfer financial value or the card. Cyber payment systems use that both. The systems technology impact users worldwide and provide readily benefits to legitimate commerce have the potential to facilitate the international movement of illicit funds. The speed which makes the system efficient and the anonymity which makes them secure are positive points from the public perspective as well as law enforcement in protecting the systems...

Money laundering is the processing criminal proceeds to disguise illegal origin. The process is of critical importance as it enables the criminal enjoy profits without jeopardizing their source.

Both Money Laundering and Financing of Terrorism actually attack the financial sector or economic sector, not only the Government, but also to all environments. They have potential to destabilize national economies and threaten global security. These activities could be used by terrorists and other dangerous criminals to fund some activities of terrorism and disguise their illicit profits or gains. The laundering of criminal funds aims at giving a legal appearance to illicit money, IMF in its Working paper states:

The direct economic costs of terrorism, including the destruction of life and property, responses to the emergency, restoration of the systems and the infrastructure affected, and the provision of temporary living assistance, are most pronounced in the immediate aftermath of the attacks and thus matter more in the short run. Direct economic costs are likely to be proportionate to the intensity of the attacks and the size and the characteristics of the economy affected. While the September 11 attacks on the United States caused major activity disruption, the direct economic damage was relatively small in relation to the size of the economy. The direct costs resulting from the terrorist attacks were estimated by the Organization for Economic Cooperation and Development at \$27.2 billion (Bruck and Wickstorm, 2004), which represented only about ¼ percent of the U.S annual GDP.

The indirect costs of terrorism can be significant and have the potential to affect the economy in the medium term by undermining consumer and investor confidence. A deterioration of confidence associated with an attack can reduce the incentive to spend as opposed to save, a process that can spread through the economy and the rest of the world through normal business cycle and trade channels... the size and distribution of the effects over countries, sectors, and time would depend on a range of factors, including the nature of the attacks, the multiplier effects, the type of policies adopted in response to the attacks, and the resilience of the markets. (R. Barry Johnston and Oana M. Nedelescu, 2005).

Financial crime could be categorized as White Collar Crime. Pickett and Pickett, as quoted by Petter Gottschalk, mention that white collar crime contains several clear components, which are:

- It is deceitful. People involved in white collar crime tend to cheat, lie, conceal, and manipulate the truth.
- It is intentional. Fraud does not result from simple error or neglect but involves purposeful attempts to illegally gain an advantage. As such, it induces a course of action that is predetermined in advance by the perpetrator.
- It breaches trust. Business is based primarily on trust. Individual relationships and commitments are geared toward the respective responsibilities of all parties involved. Mutual trust is the glue that binds these relationships together, and it is this trust that is breached when someone tries to be defraud another person or business.
- It involves losses. Financial crime is based on attempting to secure an illegal gain or advantage and for this to happen there must be a victim. There must also be a degree of loss or disadvantage. There losses may be written off or insured against or simply accepted. White-collar crime nonetheless constitutes a drain on national resources.
- It may be concealed. One feature of financial crime is that it may remain hidden indefinitely. Reality and appearance may not necessarily coincide. Therefore, every business transaction, contract, payment, or agreement may be altered or suppressed to give the appearance of regularity. Spreadsheets, statements, and sets of accounts cannot always be accepted at face value; this is how some frauds continue undetected for years.

- There may be an appearance of outward respectability. Fraud may be perpetrated by persons who appear to be respectable and professional members of society, and may be even be employed by the victim. (Petter Gottschalk, 2009).

Referring to the opinion above, it can be shown that the perpetrator of money laundering and the financing of terrorism will try to use illegal gain or profit as smooth as they can, and will use the easy way to get benefit from the complicated stages of the crimes.

As understood that all criminals and terrorist organizations use legitimate financial institutions to move and store assets. Profit generated by some organized criminal activities cause a threat not only to public safety, because of the huge economic power accumulated by a number of criminal organization, but also financial systems themselves and to economic development. (Jean-Francois Thony, 2002). It means that not only the public safety which is threatened by Money Laundering and the financing of terrorism, but also the whole of the financial system of nations. In this sense, financial institutions should be aware and protect themselves from money laundering and the financing of terrorism exploitation possibility.

In the perspectives of operational risks, the Basel Committee in 2003 warned:

... Supervisors must require that all banks have in place effective frameworks to identify, assess, monitor, and control or mitigate material operational risks resulting from terrorism as part of the overall approach to risk management.

Furthermore, banks themselves should take all necessary steps to ensure their ability to operate on a going basis and limit losses in the event of severe business disruption, through adequate contingency and business continuity plans. The terrorist attacks of September 2011 highlighted the importance of having operative business continuity plans across the financial systems. At the same time, these attacks uncovered a number of important vulnerabilities...

Besides the multiple common characteristics shared with money laundering, terrorist financing presents a number of specific features, which in practice tend to raise the complexity of countering measures. A distinct trait of terrorist financing is that it includes-besides illegal sources of funds – legally earned funds. This adds the difficulty of tracking terrorist funds and enforcement, since regulatory and law enforcement authorities have to prove that the use of the funds is for terrorist activities. (R. Barry Johnston and Oana M. Nedelescu, 2005)

Money laundering and/or the financing of terrorism, as understood as a financial crime, shall be eradicate and tackled since money laundering and financing of terrorism could increase the number of crimes, weaken financial institutions, and threaten other institutions as categorized as vendors of good and/or other services as mentioned in Article 17 of the Law Number 8 of 2010.

Money laundering and financing of terrorism could bring economic distortion where the offender of money laundering and financing of terrorism in many ways tried to hide or conceal the origin of the sources of the funds, and protect the proceeds. In this sense law enforcement approach and anti money laundering approach as needed will lead toward two goals, which are the increasing of integrity and stability of financial institution and also the decreasing number of crimes through prevention and eradication of crimes.

#### **CUSTOMER DUE DILIGENCE AND RISK BASED APPROACH OPTIMIZED UNDER LAW NUMBER 8 OF 2010**

Based on the general elucidation of the Republic of Indonesia Law Number 8 of 2010, paragraph 3 and 4, it is clear that banking system and goods and services provider have the important roles in the prevention and eradication of money laundering. In completely, paragraph 3 and 4 mention:

The treasuring process of assets derived from criminal acts in generally conducted by Financial Institutions through certain mechanism arranged by law and regulation. Financial Institutions plays the important roles, especially in implementing the principle of customer due diligence and in reporting certain transaction to financial intelligence unit as analyze material and proceeds to investigator.

Financial institution not only assist law enforcement process, but also protect themselves from all risks caused by criminal offender which used financial institution as a vehicle and target to launder the money derived from criminal act, such as operational risks, legal, transaction, and reputation. Good risks management will brings financial institution to optimized their role, and then make the stabled and trusted financial systems.

Based on the explanation above, it can understood that Banking systems and other financial institutions play important roles in the process of prevention and eradication of money laundering, and also of financing of terrorism. Banking system and financial system shall implement the risk based approach to prevent economic loss of the state caused by the crimes mentioned before.

To show the important role of banking system and financial institution to pay attention for the risks which could appear from Money laundering and financing of terrorism, Tim Goodrick add perspectives as below:

Moving terrorist funds:

- Formal financial sector
- Physical movement of cash

- International trade system
- Alternative remittance sector
- Charities and non-profit organizations

Formal Financial Sectors:

- Financial institutions and financial service providers
- Vehicles for moving funds efficiently between jurisdictions to support terrorist organizations and funds acts of terrorism (Tim Goodrick, 2011)

From above, it is clearly seen that once again banking system and financial institution should be aware and secure their systems from the exploitation from offenders of money laundering and financing of terrorism.

According to the FATF Recommendation 2012 (International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation), it has been strengthening that:

Countries should identify, assess, and understand the money laundering and terrorist financing risks for the country, and should take action, including designating an authority or mechanism to coordinate actions to assess risks, and apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendation. Where countries identify higher risks, they should ensure that their AML/CFT Regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions.

From the explanation above, Financial Institution shall be implementing Customer Due Diligence, and Enhance Due Diligence for special high risks like Politically Exposed Persons (PEPs).

The Republic of Indonesia Law Number 8 of 2010 explains Know Your Customers Principle and Customer Due Diligence – Enhance Due Diligence in complex ways. Under chapter IV: Compliance Reporting and Monitoring, there are 2 categories of reporting parties in this law: Providers of Financial Services and Vendors of goods and/or other services. Article 17 (1) of the Law Number 8 of 2010 states:

Reporting parties shall include:

a. Providers of financial services:

- (1). Bank;
- (2). Financing Company;
- (3). Insurance company and insurance brokerage company;
- (4). Pension fund financial institution;
- (5). Securities company;
- (6). Investment manager;
- (7). Custodian;
- (8). Trustee;
- (9). Postal service as provider of funds transfer services;
- (10). Foreign currency trader (money changer);
- (11). Provider of instrument of payment using cards;
- (12). Provider of e-money and/or e-wallet;
- (13). Cooperative doing business in savings and loans;
- (14). Pawnshops;
- (15). Companies doing business in commodity futures trading; or
- (16). Providers of money remittance

b. vendors of goods and/or other agents:

- (1). property companies/property agents;
- (2). Car dealers;
- (3). Dealers of precious stones and jewelry/precious metals;
- (4). Art and antique dealers;
- (5). Auction houses

The obligation of reporting party is implementing Know Your Customer principle (hereinafter called as KYC). In its working paper, Basel Committee mentioned that:

... KYC procedures have particular relevance to the safety and soundness of bank, in that:

- they help to protect bank's reputation and the integrity of banking systems by reducing the likelihood of bank becoming a vehicle for or a victim of financial crime and suffering consequential reputational damage
- they constitute an essential part of sound risk management (e.g. by providing the basis for identifying, limiting and controlling risk exposures in assets under management)

Therefore, KYC standards will avoid risks, such as:

- a. Reputational risks, as the potential that adverse publicity regarding a bank's business practices and associations, whether accurate or not, will cause a loss confidence in the integrity of the institutions. In this sense, Sutan Remi Sjahdeini reminds that: "bank needs to protect themselves by always implementing the effective KYC program" (Sutan Remi Sjahdeini, 2004). By the meaning of the reporting parties as mentioned in the Article 17 of the Law Number 8 of 2010, not only banks here needs to protect themselves, but also all reporting parties, both Financial Services Providers and Vendors of goods and/or other services.

- b. Operational Risks, as the risks of direct or indirect loss resulting from inadequate or failed internal processes, people and systems or from external events.
- c. Legal risks, as the possibility, the possibility that lawsuits, adverse judgment or contracts that turn out to be unenforceable can disrupt or adversely effects the operation or condition of a bank.
- d. Concentration risk.

Hence KYC become the primary tool to prevent money laundering and the financing of terrorism. Reporting parties shall implement Know Your Customers Principles as regulated by the regulation and supervision institution. As mentioned in Article 18 (3), KYC is applied in 4 (four) condition as below:

- establishing a business relationship with a Service User;
- there is a Financial Transaction using Rupiah currency and/or other foreign currency minimum in the amount of or in equivalent with Rp. 100.000.000,00 (one hundred million rupiah);
- there is a Suspicious Transaction related to the crime of money laundering and financing of terrorism;
- the reporting party doubts the accuracy of information reported by the Service User.

KYC principles shall comprise of:

- the identification of the Services Users;
- verification of the Services Users; and
- monitoring transactions of the Services Users (vide Article 18 (5)).

KYC here shall include Customer Due Diligence (CDD) and Enhance Due Diligence (EDD) as mentioned in the 5 recommendation of FATF on money laundering. For the identification of the Services Users, it shall include the newest data update of the users. KYC must operate with full commitment and high integrity in order to preserve the reporting party's reputation. CDD must be conducted before users/customers entering business relationship. Reporting party must be assessing their potential risks in that business field. All the reporting parties must obtain information from their customers and all the sources of identity, such as name, address, identification, does he or she carried out the transaction on behalf of himself or herself or other party. Regulation of Bank Indonesia Number 12/3/PBI/2010 concerning the application of anti money laundering and prevention of terrorism financing programs for non bank foreign exchange traders, Article 1 number 5 and 6 mentioned CDD and EDD as:

Customer Due Diligence, hereinafter referred to as CDD shall be activities in the form of identification, verification and updating of information conducted by Non-bank PVAs for that ensuring that the aforementioned transactions fits the Customer's profile.

Enhance Due Diligence, hereinafter referred to as EDD shall be a more comprehensive action conducted by Non-bank PVAs when performing transactions with and/or providing services to clients classified as high-risk clients, including politically exposed persons, against the possibility of money laundering and terrorism financing.

From the definition above, it is clear that EDD is only used as the prudent for high risks of customers, such as politically exposed person (PEPs), and/or customers who are suspected to be involved in the activity of money laundering and financing of terrorism. Article 19 of the Law Number 8 of 2010 states:

- (1). Any person performing a Transaction with a reporting party must provide his/her identity and correct information as requested by the reporting party and shall at least comprise his/her personal identity, the source of funds and the purpose of the transaction by completing a form provided by the reporting party and attach its supporting documents.
- (2). In the event that a transaction is performed on behalf another party, each person as referred to in a paragraph (1) must provide information regarding the other's party personal identity, the source of funds, and the purpose of the transaction.

Article 20 of the Law Number 8 of 2010 states:

- (1). The reporting party is obligated to identify that the Services Users is carrying out a transaction with the reporting party for himself/herself or for and on behalf of another person.
- (2). In the event that a transaction with the reporting party is carried out for himself/herself or for and on behalf of another person, the reporting party must request information regarding the identity and supporting documents of the services user and other person concerned.
- (3). In the event that the identity and/or supporting documents submitted as referred to in paragraph (2) are not complete, the reporting party must reject a transaction with a person concerned.

From the Article 19 and Article 20 of the law Number 8 of 2010 above, both customers or services users whom on behalf of themselves or other parties are bounded with the obligation to provide the truthful information and personal data as requested by reporting party, as a prudent of KYC and/or CDD. Article 21 (1) of the Law Number 8 of 2010 then states that:

The identity and supporting documents requested by the reporting party must in accordance with provisions of prevailing laws and regulations stipulated by the respective regulating and monitoring institution.

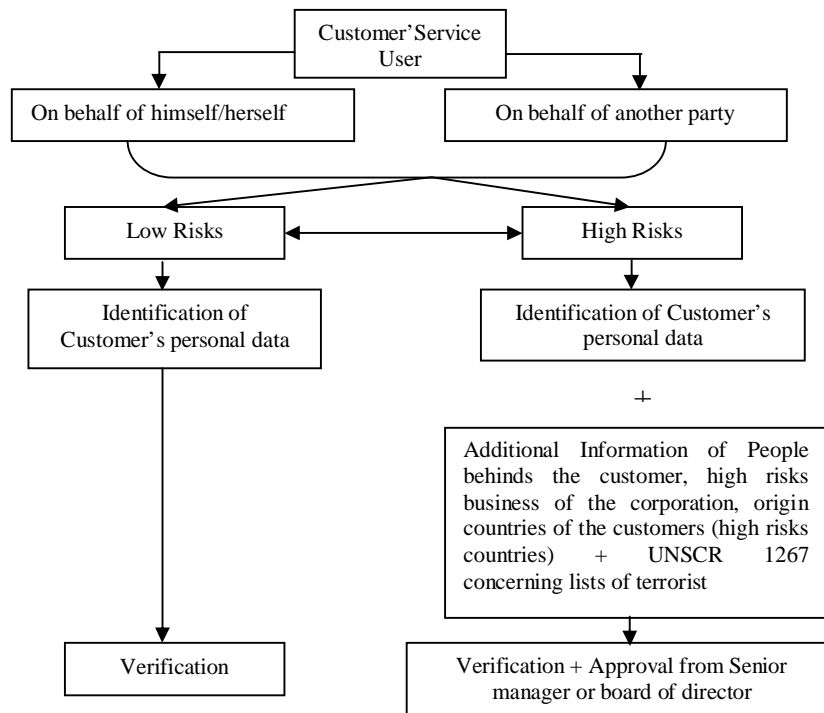
CDD could be conducted as an identification and verification through the information and additional supporting documents, while EDD will be conducted as a strict verification to high risks customer. PPATK explain that in order to conduct CDD, reporting party shall:

- a. ensuring the truth of identity, information, and documents of the customer's nominee, by:
  1. conducting interview
  2. requesting other identity documents
  3. confirming the authority of customer which representing other party or beneficial owner
- b. cross check to ensuring the information consistency
- c. reviewing the controlling party behind the customer (PPATK, 2012)

EDD could be conducted by doing a holistic verification of information and documents; verify the business relation between customer's nominee and third party, and the opening of customer's nominee account shall be approved by board of direction or senior manager.

Hence, the obligation of Reporting parties to conduct KYC, CDD and EDD according to the Law Number 8 of 2010 could be shown by the chart below:

**Chart 2: implementation of CDD and EDD**



**COMPLIANCE MONITORING AND ROLES OF REGULATION AND SUPERVISION INSTITUTIONS**

The obligation of Banking Institution and other financial institution are comprises into 2 things:

1. Identification of Customer
2. Identification of the transaction

Try Widiyono mention that “in relating with the identification of customer, banking institution shall implement the Know Your Customer Principles as requested by the law” (Try Widiyono, 2006). Article 23 of the Law Number 8 of 2010 states:

A Financial Services provider as referred to in Article 17 paragraph (10 subparagraph a must submit a report to PPATK which covers:

- a. Suspicious Financial Transactions;

- b. Cash Financial Transactions in an amounts of at least Rp. 500.000.000,00 (five hundred million rupiah) or in foreign currency of equal value, either carried out in one transaction or in several transaction during one (1) business day; and/or
- c. Financial transactions of funds transfer from or sent overseas

A Suspicious Financial Transaction report shall be submitted immediately at the latest within three (3) workdays after the reporting party has acknowledge elements of a suspicious financial transaction. While a Cash Financial Transaction and a Funds Transfer Transaction to or from overseas report must be submitted at the latest within fourteen (14) workdays following the date of such transactions. (vide Article 25 of the Law Number 8 of 2010). In order if the Financial Service Provider failed to submit such reports to PPAATK, administrative sanction will be imposed. Administrative sanctions will be imposed by the Regulation and supervision institutions, in accordance with provisions of prevailing laws and regulation. But in the event that the Regulation and Supervision Institutions has not been established yet, administrative sanctions will be imposed by PPAATK. Article 30 paragraph 3 mentions the kinds of administrative sanctions which include: a. A Reminder; b. A written reprimand; c. A Public announcement about the action or the sanction; and/or d. Administrative fine.

Other obligation which may conducted by Financial Service Provider is as arrange in Article 26 of the Law Number 8 of 2010, as below:

- (1) The financial services provider may postpone to execute a transaction within no longer than 5 (five) workdays as of the date of postponement
- (2) A postponement of a transaction as referred to in paragraph (1) shall be performed where the services users:
  - a. Is carrying out a transaction which is reasonably suspected of using assets originating from proceeds of criminal acts as referred to in Article 2 paragraph (10)
  - b. Owns an account used to receive assets originating from proceeds of criminal acts as referred to in Article 2 paragraph (1), or
  - c. Known or reasonably suspected is using falsified documents.

Provider of Goods or other services also has a duty as arranged in Article 27 of the Law Number 8 of 2010, which is to submit a report to the PPAATK regarding transactions undertaken by the service user in Rupiah currency and/or foreign currency whose value is at least equivalent to Rp. 500.000.000,00 (five hundred million rupiah). So, in this event, it needs to implement KYC and/or CDD or EDD.

Monitoring of compliance is defined by Article 1 number 18 of the Law Number 8 of 2010 as:

Monitoring of compliance shall be a series of actions by the Regulation and Supervision Institution and PPAATK to ensure compliance of Reporting Parties on the reporting obligations in accordance with this Law by issuing regulations or reporting guidelines, performing compliance audits, monitoring the reporting obligations and imposing sanctions.

The compliance monitoring as arranged in Article 31 of the Law Number 8 of 2010 will be carried out by the Regulation and Supervision Institution and/or PPAATK. Regulation and Supervision Institution shall be an institution that is vested the authority to monitor, regulate and/or impose sanction upon reporting parties. Thus, the existence of Regulation and Supervision Institution is important in order to monitoring reporting parties' compliance. PPAATK will be the authoritative institutions of compliance monitoring when the special institution as requested is not yet established. The result of compliance monitoring carried out by the Regulation and Supervision Institutions shall be reported to the PPAATK.

Republic of Indonesia Law Number 21 of 2011 concerning the Financial Services Authority has been appointed that special institution named Financial Services Authority (in Indonesia called as Otoritas Jasa Keuangan) to be the Regulation and Supervision Institution as requested by the law. More, Article 32 of the Law Number 8 of 2010 states:

In the event that the Regulation and Supervision Institutions finds a Suspicious Financial Transaction that was not reported to the PPAATK by the reporting party, the Regulations and Supervisions Institution shall inform immediately to PPAATK of such finding.

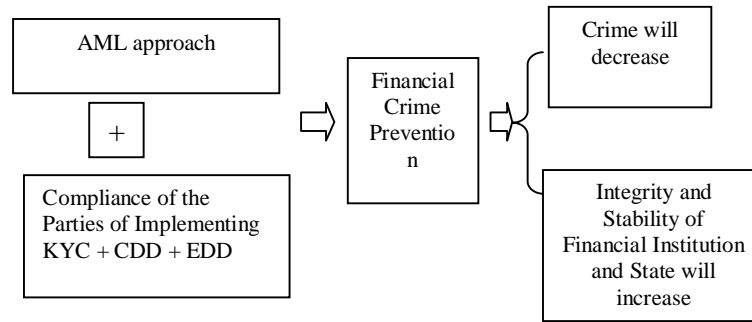
By this Article 32 it can be understand that the position between the Regulation and Supervision Institution and PPAATK is coordinative. But by the Article 33 of the Law Number 8 of 2010 shows that in special case, position between the Regulations and Supervisions Institution and the PPAATK is super ordinates. Article 33 states:

The Regulations and Supervisions Institution shall be obliged to inform the PPAATK on any activity or transaction of the Reporting party known or reasonably suspected to have been carried out, either directly or indirectly, for the purpose of committing money laundering crimes as referred to in Article 3, Article 4, and Article 5.

Actually the position between Regulations and Supervisions Institution and PPAATK is in mutual coordination for the data and information exchanges of such finding, transaction of the suspected party of committing money laundering. In other words both of them are benefit mutual party to each other.

In a whole, the process to prevent and eradicate financial crime caused by Money Laundering and/or the Financing of Terrorism Regime under the Law Number 8 of 2010 could be reviewed from the chart below:

Chart 3: compliance approach



## CONCLUSION

The global economic threats nowadays have been manifested in so many crimes, such as economic or financial crime. The recent crimes which appear as global threat are Money Laundering and/or the Financing of Terrorism which are conducted by breaching the integrity of the system by hiding or concealing the nature of the funds in many ways. In this case, the integrity of the Financial Institutions is challenged. Law Number 8 of the 2010 give guidelines and framework to the Financial Institutions and the Vendor of goods or other services as reporting party to take prudent procedures in recognizing offenders of money laundering and the financing of terrorism from exploiting the financial of states or financial institution more and more. Here, Know Your Customer Principles shall be implemented with full respect, including Customer Due Diligence and Enhance Due Diligence shall be strictly implemented. To prevent and eradicate money laundering and the financing of terrorism needs good will and best effort from law enforcement agents and all reporting party to conduct all the prudent procedures. Beside those parties, the Regulations and Supervisions Institution and PPATK also play important roles to always do monitoring, supervising, regulating and imposing sanctions to any financial services providers which do not comply with the Law.

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