THE ADVOCATE'S ROLE IN INDONESIA'S ANTI-MONEY LAUNDERING REGIME: A GAME THEORY ANALYSIS

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ABSTRACT

In the Anti-Money Laundering framework, Advocates will engage directly with the Client's interests. The rights of clients that professionals are obligated to protect may conflict with their required duties. In this context, professionals are positioned within the framework of the prisoner's dilemma as a part of game theory. This strategy delineates the method by which professionals adeptly address challenges associated with clients and legal obligations. It is a conceptual article that employs the qualitative legal research methodology to examine this issue and provide a proposed solution. The research process begins by evaluating the Advocate's involvement in the regime's anti-money laundering initiatives and the implications of the Advocate's compliance for both the profession and the Nation, beyond just the client. As a result, professionals must prioritise the protection of their *"officium Nobile"* and uphold their dignity in accordance with ethical standards through consistent implementation of the obligations as a reporting party in the Anti-Money Laundering Law. The design of compliance is crucial from the perspective of business rules for both the client and the opposing positions. The participation of an advocate in money laundering activities may jeopardise the client and their business. The reverse condition applies if the client poses a danger to the Advocate. This article analyses the Advocate's participation in two roles based on qualitative research: first, as a professional representing clients, and second, as a professional adhering to rules, regulations, and International Standards. Money laundering in advanced societies requires heightened societal involvement and spans across all professional sectors.

Keywords: Advocate, Anti-Money Laundering Regime, Reporting Party, Prisoner's Dilemma.

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INTRODUCTION

From an International standpoint, money laundering has evolved since the enactment of the United Nations Convention against Illicit Traffic in Narcotics, Drugs, and Psychotropic Substances, commonly referred to as the Vienna Convention of 1988. The Anti-Money Laundering framework established by International law aims to prevent and eliminate the proceeds of crime originating from predicate offences. The predicate or original offence may encompass narcotics, tax evasion, illegal logging, corruption, bribery, and gun trafficking, among others. Indonesia, cognizant of its susceptibility to money laundering stemming from criminal activities, has been classified into 25+1 categories of predicate crimes. The final category constitutes another serious crime, carrying a minimum penalty of four years' imprisonment. F. Sukarinaldo explains that Money laundering is characterised as a double crime because the form of money laundering is a follow-up crime. In contrast, the initial crime is called a predicate crime to generate money, which is then carried out by the laundering process.[1]

According to international consensus, money laundering is a crime. In an Indonesian perspective, it is no longer "*Bedrifsrisico*"[2] . All money and/or assets derived from crime should be understood as proceeds of crime, that is, as dangerous as its predicate crime. From the money laundering perspective, money is the lifeblood of crime. Then, to tackle money laundering, it uses the follow the money approach and not the follow the offender approach. Kirana Ardhelia Putri and Bambang Waluyo explain that the follow-the-money approach is based on the idea that the proceeds of crime, or the assets resulting from laundering, are the mainstay of the crime and the weakest link in the chain of crime that is easiest to detect. The

[1] F Sukarinaldo, 'Accountability for the Crime of Money Laundering with the Predicate Crime of Narcotics' (2023) 2 Ratio Legis Journal 822 <https://jurnal.unissula.ac.id/index.php/rlj/article/view/32829%0Ahttps://jurnal.unissula.ac.id/index.php/rlj/article/download/32829/9147>.

[2] The term *Bedrifsrisico* was introduced in Indonesian Law Number 7/drt/1955 concerning the Investigation, Prosecution and Adjudication of Economic Crimes, which is derived from the *Wet op de Economische Delicten* of the Netherlands. The general elucidation of the law states that economic crimes are not extraordinary, and that the prosecution and investigation of such acts are just a normal 'bedrifsrisico' that can be taken into account in 'calculatie'. In commercial circles, many elements will not stop these malicious practices as long as they still have the opportunity to do so. Thus, *bedrifsrisico* concluded from that explanation, which refers to a meaning where money laundering is a risk for a company, and it can be calculated by the offender. As it is understood, money laundering has evolved as an economic crime as well.

money laundering approach differs from the traditional approach. It focuses on finding the offender when the first evidence is found. Therefore, proof is provided by proving whether the offender is involved in money laundering. Thus, if the lifeblood of the crime can be detected and seized by the state, the opportunity to reduce the crime rate will be even higher.[3] Money laundering must be prevented and eradicated.

Money laundering undermines the credibility of a nation's financial institutions, non-financial institutions,[4] and designated professionals.[5] A high degree of capital market integration can influence a country's economic stability. Ultimately, illicitly obtained funds infiltrate the global systems, posing risks to the stability of national economies and currencies. Money laundering represents a multifaceted issue that extends beyond mere legal implications.

Thus, anti-money laundering regulations have rapidly evolved, continually improving to enable a more effective approach to prevention and eradication. The strategy for anti-money laundering encompasses compliance mechanisms and the enhancement of systems utilised by entities potentially involved in money laundering activities. In Indonesia, this is reflected in Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering (so-called the Indonesian AML Law). It complies with the adjustment by providing a specific article on the Self-Regulatory Body to supervise (so-called SRB) the reporting parties in implementing Customer Due Diligence and/or Enhanced Due Diligence (so-called CDD/EDD), and the compliance mechanism.

In Indonesian AML Law, the reporting parties have been broadened by the Indonesian AML Law, which not only covers Financial Service Providers but also Designated Non-Financial Business and Professions (DNFBPs), including Providers of Services and other Goods, and other professionals as

[3] Kirana Ardhelia Putri and Bambang Waluyo, 'Analysis Of The Urgency Of Proving Predicate Crime In Money Laundering Cases (Predicate Crime: Human Trafficking Crime)' (2024) 18 Krtha Bhayangkara 716.

[4] In consideration of letter a of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, as well as elaborated in the general explanation of Government Regulation Number 43 of 2015 concerning Reporting Parties in the Prevention and Eradication of Money Laundering, paragraph 1. In short, money laundering not only threatens the stability and integrity of the financial and economic systems but can also endanger the foundations of national and state life.

[5] FATF, 'Professional Money Laundering' (2018).

mentioned in Article 17 of the Indonesian AML Law.[6] TheGovernment of Indonesia has been aware of the InternationalRecommendation on those matters and complies with the International Standards as Financial Action Task Force (so-called FATF) Recommendation.

The FATF Recommendation of 2012 (updated in October 2025), in Section F, concerning Powers and Responsibilities of Competent Authorities, and Other Institutional Measures, Number 28 on Regulation and Supervision of DNFBPs, states that countries should ensure that the categories of DNFBPs are subject to effective systems for monitoring and ensuring compliance with AML/CFT Requirements, and perform on a risk-sensitive basis. According to FATF Recommendation, countries ought to mandate financial institutions and designated non-financial companies and professions (DNFBPs) to develop, evaluate, and implement effective, risk-based measures to manage risks related to money laundering, financing of terrorism, and proliferation financing. Further, countries may be supervised by (a) a supervisor or (b) by an appropriate self-regulatory body (SRB).[7] DNFBPs itself has been put as a Recommendation number 22, and especially for the legal professions (lawyers, notaries, or other independent legal professionals) arranged as recommendation number 23.

Related to the FATF Recommendation above, Indonesia has regulated, and coverage of the DNFBPs is as follows: a. Provider of Service and other Goods, including: agents of property;dealers of cars, jewellery, precious stones, and other precious metals; antique and art dealers; and auction houses; b. Other reporting parties which have not been regulated in the Law shall bestipulated in the Government Regulation[8]. Further, Indonesia has already regulated the Government Regulation Number 43 of 2015 concerning the Professions, as amended by Government Regulation Number 61 of 2021, which includes the professions of Advocate, Notary, Land Deed Officers, Accountant, Public Accountant, and Financial Planner. They are obliged to report on certain client activities for which they are asked to assist.
This research is related to the legal professions, and in this article, a

[6] Read the General Elucidation of the Indonesian AML Law.
[7] Thomas Hardjono, Alexander Lipton and Alex Pentland, 'Toward a Public-Key Management Framework for Virtual Assets and Virtual Asset Service Providers' (2021) 01 The Journal of FinTech 2050001.
[8] Vide Article 17 of the Indonesian AML Law

specific mention is made of an Advocate.[9] As a profession, Advocates are regulated by Law Number 18 of 2003 concerning Advocates, and ethics cover Advocates by a code of ethics that serves as the law for them. In this regard, it appears to be a barrier to execution, since the code of conduct obligates them to keep all matters known or obtained from the client secret, in line with their professionalism. As an honourable position *(officium nobile)*, Advocates are obliged by the code of ethics, unless the law requires them to reveal it. In this matter, there is a conflict. The advocate as *officium nobile* shall report the client's activity in a particular area under the law of anti-money laundering.

The money laundering cases show how the legal professions, especially advocates, are involved. It is interesting that Ron Pol, in the article titled "Five Money Laundering Myths for Lawyers to Avoid", mentions that there are at least five myths amongst lawyers and their legal services regarding the impossibility of being involved in money laundering cases. The grounds were that no evidence showed that lawyers were engaged in money laundering. Thus, law enforcement may face such an obstacle.[10]

Advocates are susceptible to money laundering due to their role in managing substantial, complex financial transactions for clients, which may obscure the origin of illicit assets. A professional's secrecy may be misused to conceal criminal activities, even in the face of the duty to report suspicious transactions. According to Article 17 of the Indonesian AML Law, as followed by Indonesian Government Regulation Number 43 of 2015, as amended through Government Regulation Number 61 of 2021 concerning Reporting Parties in the Indonesian AML Law, the Advocate is assigned as one of the reporting parties that are obliged to comply with the Anti-Money Laundering regime fully.

To analyse this condition, this article uses the game theory developed by John Nash. One of the theories was about the prisoner's dilemma. Game Theory is about decisions made in the context of a conflict of interest. In the prisoner's dilemma, individuals might not cooperate even though they can do so in their own best interests. This article is proposed to be analysed

[9] In this article, the word of Lawyers as a terminology is used interchangeably with Advocate (due to its original terminology used in the references).

[10] Ron Pol, 'Five Money Laundering Myths for Lawyers to Avoid, Article, Retrieved From': (2017) <https://www.lawsociety.org.nz/practice-resources/practice-areas/aml-cft/five-money-laundering-myths-for- lawyers-to-avoid> accessed 1 September 2022.

through the Prisoner's dilemma to make it effective when there is a conflict with clients related to the implementation of the Advocate's obligation as a reporting party under the AML Law. Through the analysis, the Advocate plays an important role and must be supported in anti-money laundering prevention. It is to avoid, as a professional with a code of ethics, being involved in the turbulence of money laundering.

TYPE OF PAPER

It is a conceptual article that developed from the previous research conducted by the researcher on reporting parties and their obligations under the Anti-Money Laundering Law. It is qualitative legal research with normative legal research, based on the normative tools called legal sources (the Law, Regulation, secondary legal sources), that: Law Number 8 of 2010 concerning Prevention and Eradication of Money-laundering, and Government Regulation Number 43 of 2015, as amended through Government Regulation Number 61 of 2021 concerning Reporting Parties in Money Laundering. The secondary legal sources comprise: academic literature, peer-reviewed journals related to Anti Money Laundering and legal professionals' involvement, AML and other issues, financial crime issues and regulations, and Game Theory (A Prisoner's Dilemma). Both are collected through systematic document and literature reviews, then interpreted through a descriptive-analytical approach. It assesses how the Advocates relate to an Anti-Money Laundering Regime, which can be analysed from a Prisoner's Dilemma (duty of a reporting party versus duty as a legal Advocate under the Law from the perspective of the Client). This article has its limitations in that the writing was concerned with the role of Advocates, while there are other legal professionals mentioned in the regulations. Thus, it needs further elaboration to give a better understanding of the involvement of legal professionals and their vulnerability to the AML Regime.

DISCUSSIONS

The Approaches to Anti-Money Laundering Regime and Indonesian Experiences

Money laundering is a criminal act in which individuals endeavour to obscure or mask the origins of assets derived from illicit activities through various methods, thereby complicating law enforcement agencies' efforts to trace the proceeds of crime. Consequently, money laundering poses a significant risk to the stability and integrity of the financial and economic system. At the same time, it is jeopardising the very foundations of national life and statehood. (General Elucidation Note of Government Regulation Number 43 of 2015).

Peter Lilley, as quoted by Fauziah Lubis, once explained that money laundering is the practice of converting revenues derived from illegal activities into financial assets that appear to originate from legitimate sources. In this process, a sequence of actions undertaken by an individual or organisation to obscure the origins of illicit funds from governmental or authoritative entities, intending to integrate these funds into the financial system, thereby enabling their subsequent withdrawal as legitimate money.[11] Elissavet-Anna Valvi introduces Money laundering by explaining that all forms of illegal acts share a similar element: the pursuit of profit for the individual or organisation perpetrating the act. Commonly referred to as "dirty money," this term denotes the proceeds obtained by criminals engaged in operations such as illicit arms trafficking, drug dealing, human trafficking, smuggling, organised crime, extortion, insider trading, bribery, and cyber fraud.[12] Further, Martina Nilamsari and I Made Wirya Darma explained that, in order to commit crimes, criminals engage in money laundering, which involves masking the revenues they obtain from unlawful activities or enterprises.[13]

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[11] Fauziah Lubis, 'Advocate Anomalies in Money Laundering Practices in Indonesia: Analysis of Legal System Theory to Reporting Function in Government Regulation No. 43 Year 2015' (2020) 24 International Journal of Psychosocial Rehabilitation.

[12] Elissavet-Anna Valvi, 'The Role of Legal Professionals in the European and International Legal and Regulatory Framework against Money Laundering' (2023) 26 Journal of Money Laundering Control.

[13] Martina Nilamsari and I Made Wirya Darma, 'Legality of the Position of Advocates as Reporting Parties in the Prevention and Eradication of Money Laundering Crimes' (2024) 4 Journal of Law, Politics and Humanities (JLPH).

Money laundering also involves large corporations, including gambling enterprises, credit institutions, and investment banks, that may derive illicit income from obscure illegal activities. Utilising this capital without revealing the identities of its proprietors is a significant challenge. The sole prevalent issue affecting all the aforementioned participants in both the legal and illegal markets is commonly referred to as money laundering. As a simple way to understand what money laundering is, it can be described as money or assets derived from a criminal act. This money or asset is then categorised as dirty, illegal, or illicit. To use this dirty asset or money for legal or illegal activities, it must be hidden. It avoids legal tracing by law enforcement. Then, simple money laundering is understood as any effort to hide or conceal the trustworthy source of illicit funds by presenting them as "seemingly" legal funds.

Money laundering has been approached through various perspectives. One important development is the fundamental change in the stages of money laundering. At the beginning of anti-money laundering development, it was well known that the three stages of money laundering are placement, layering, and integration. To understand this, Varun Chadna mentioned that all money laundering forms pass through the following three stages: [14]

- Placement Stage, where the illicit funds are converted from physical to nonphysical form.
- The Layering Stage is used to make the placement stage more complex to disguise the transaction conducted in the 1st stage.
- Integration Stage. It is called the final stage, in which illicit funds are legitimised as white money through legal transactions and business activities.

From the stages described above, it will be completely understood how the money laundering process works. It will provide knowledge that money laundering involves three stages.

The Indonesian AML Law changed the way money laundering is conducted. The Placement, Layering, and Integration, but not as a stage that must be completed. It now appears to be a money laundering process. It means that each process can be considered as money laundering. The

[14] Varun Chandna, *The Curious Case of Black Money and White Money: Exposing The Dirty Game of Money Laundering* (Notion Press 2017).

Indonesian AML Law gave a different approach to money laundering compared to the previous laws, numbers 15 of 2002 and 25 of 2003. The process is understandable from the criminalisation of money laundering in Articles 3, 4, and 5 of the Indonesian AML Law. There is no longer a stage of money laundering. Article 3 of the Indonesian AML Law regulates that: ... places, transfers, diverts, purchases, pays, donates, entrusts, takes abroad, changes the form, exchanges with currency or securities, ... for the purpose of hiding or concealing the origin of the Assets shall be sentenced for the crime of money laundering.... Article 3 shows that anyone who conducts placement, layering (transfers), or integration can do so as a standalone or integrated process. It is an alternative rather than a cumulative process, if it is conducted through fault elements as mentioned in Intention (in the form of known or reasonably suspected).

Article 4 regulates the hiding or concealing of the origin, source, location, designation, transfer of rights, or actual ownership ... This Article 4 does not explicitly mention whether it requires placement, layering, and/or integration. It is only mentioned that the middleman or facilitator hides or conceals the origin, source, location, and any other actions related to assets derived from crime. Article 4 is different from Article 3. Article 3 is conducted by the offender of the initial crime and the money laundering. Article 4 is the offender of money laundering, but he is not the offender of the predicate crime. Both articles are categorised as active money launderers.

Then Article 5 regulates: ... receives or controls the placement, transfer, payment, donation, contribution, placement into custody, exchanges or uses the Assets... Article 5 is categorised as passive money laundering. Someone who knows, or reasonably suspects, of receiving and/or controlling the placement, layering, and integration of the asset derived from crime.
From those three articles in the Indonesian AML Law, it can be seen that money laundering is no longer a stage but a process that may consist of one process—placement, layering, or integration —or a combination of one, two, or three processes.

Another approach developed in the regime of money laundering is called compliance. The regime not only introduced criminalisation and law enforcement approaches, but also required significant reporting parties to comply and strengthened the compliance mechanism by establishing a self-regulatory body. The mechanism for compliance is regulated in Articles

31–33 of the Indonesian AML Law. It shows the relationship between the supervisory and regulatory body and the Indonesian Financial Intelligence Units (PPATK).

Regarding the reporting parties, the Government Regulation Number 43 of 2015 concerning Reporting Parties in Prevention and Eradication of Money Laundering (so-called Government Regulation Number 43 of 2015), as mandated by Article 17, subparagraph (2) of the Indonesian AML Law, has been regulated. The other reporting parties are called in Article 3 of the Government Regulation Number 43 of 2015. Those reporting parties are the professions, which consist of:

- Advocate;
- Notary;
- Land Deed Official;
- Accountant;
- Public Accountant; and
- Financial Planner.

Those professionals are obliged to report the activities of specific areas. Article 8 of Government Regulation Number 43 of 2015 mentions that a profession shallgive a report whenever there is a suspicious transaction on behalf of a client, related to these five activities, as follows:

a. the buying and selling of property
b. money, security, and or other financial services products;
c. checking, savings accounts, and or other security accounts management;
d. operation and management of a company; and or
e. establishment, buying, and selling of a company

Thus, the report is a special occasion, not a routine activity. It is to be reported whenever 3 (three) requirements are fulfilled. The requirements are:

- It must be a suspicious transaction. The indicator of suspicious transactions has been regulated in Article 1, number 5 of the Indonesian AML Law, inter alia, with Article 1, number 8 of the Government Regulation Number 43 of 2015;
- The profession is conducting the transaction on behalf of the client's interest.
- The transactions are limited to those five certain activities.

As mentioned before, the Advocates and other professionals, as part of those extended reporting parties, are facing vulnerability in their profession. The Advocate can be a Gatekeeper. In this regard, Martina Nilamsari and I Made Wirya Darma mention that Money Laundering offenders usually use the services of professionals (gatekeepers).[15] Gatekeeper can be a positive gatekeeper to preventmoney laundering and, on the other hand, a negative gatekeeper that can be a party to the client's criminal assets. In this matter, the vulnerability of the legal professionals can be exploited by the client for the reason that:

- Code of Ethics reason. In this situation, the legal professions fear being sued by clients if they know the legal profession is reporting them.
- Conducting legal services to establish a company. In this matter, the client willexpect the reported activities above to be an extension of the legal service.
- The authority of the legal profession is abused to hide or conceal illicit money.
- The exploitation of professional supervision weaknesses by professional organisations.
- Using Fee payment as the underlying transaction[16]

Inter alia, with that opinion, the reporting done by the legal professionals will protect them from the money laundering charge. In that regard, it is also important to examine real cases involving legal professionals in money laundering that do not comply with the law.

The professionals face a significant risk of exploitation by money launderers who seek to obscure the origins of assets derived from criminal activities. This exploitation often occurs under the guise of professional confidentiality, as outlined in the relevant legal framework and regulations governing interactions with service users.[17] There needs to be more confidence in suspicion than in simple speculation, but there does not have to be a solid factual basis. Money laundering rules state that Advocates can be charged if they participate in transactions involving criminal proceeds,

[15] Martina Nilamsari and I Made Wirya Darma (n 13).
[16] Fithriadi Muslim, 'Peran Penting Profesi Hukum Dalam Rezim Anti Pencucian Uang'.
[17] The Principle of Know Your Service User is a principle applied for Reporting Parties, non-Banking, to know who their users are as a Customer Due Diligence and/or Enhanced Due Diligence under Article 18 of the Indonesian AML Law. For the banking sector, the Know Your Customer principle has been implemented.

provided they knew and were willing that the transactions might constitute money laundering. The truth, even if Advocates do not have any facts or evidence to back the suspicion, knowledge of the crime, or proof that money was indeed the proceeds of crime.

FATF Recommendation 2012 (updated June 2025) requires DNFBPs to comply with CDD/EDD on an equal basis within the AML Regime, for legal professionals when preparing for or executing transactions for their clients related to the following activities: the purchase and sale of real estate; the management of client funds, securities, or other assets; the administration of bank, savings, or securities accounts; the organisation of contributions for the establishment, operation, or management of companies; the creation, operation, or management of companies, the creation, operation, or management of legal entities or arrangements; and the buying and selling of business entities.

Professions are expected to take responsibility for tackling money laundering. Related the issue of profession, Fauziah Lubis, explained that according to the findings of the Indonesian Financial Intelligence Units (PPATK), the profession is vulnerable to being used by money launderers to conceal or disguise the origin of assets resulting from criminal acts by hiding behind the provisions of professional relations with service users that are regulated in accordance with the provisions of the legislation. In this situation, the offenders of money laundering use the aforementioned professions as gatekeepers.[18]

Further, an Advocate is susceptible to playing a facilitator in money laundering activities. This Advocate, as part of the legal profession, can enhance efforts to prevent the proliferation of money laundering. Advocates must take responsibility to mitigate money laundering offences. Moreover, due to the globalisation and liberalisation of trade and finance, the battle against money laundering has been unequivocally recognised as a global concern. In this context, the involved legal professions (advocates) are crucial to preventing and eradicating money laundering.

According to the 2024 report from the PPATK, the expansive financial ecosystem contains numerous vulnerabilities that can be manipulated by

[18] Fauziah Lubis, 'Effectiveness of the Advocate's Professional Settings and Responsibilities in Preventing and Eradicating Money Laundering in Indonesia' (2019) 6 International Journal of Humanities, Social Sciences and Education (IJHSSE).

interests and exploited by the system. Compliance is a must. Integrity is important. The research shows that PPATK enacted sanctions that included written warnings issued to 245 reporting parties, administrative fines levied against 217 reporting parties, and public announcements directed to three reporting parties.[19]

Michael Levi explained that in recent years, there has been a growing interest among academics, asset recovery professionals, investigative journalists, NGOs, the FATF and certain law enforcement agencies in the role of Advocate and other professions as facilitators of crime. Previously, the primary focus of money laundering research centred on criminal organisations, the financial sector, and the political aspects of AML. This oversight is unexpected. Since the 1960s, legal professionals, financial experts, and policy innovators have developed strategies to enhance their jurisdictions and personal wealth by outmanoeuvring competitors through secrecy and tax avoidance, regardless of the ethical implications of the wealth they accumulate.[20]

Hence, addressing the challenges of money laundering is complex. Criminals are increasingly devising new methods. Due to their established relationships with acquaintances, individuals frequently engage the services of advocates and other legal professionals, who are obligated to maintain client confidentiality and adhere to ethical standards. To obscure their activities, they participate in money laundering, occasionally concealing it through the transactions they conduct.

The Advocate's Role under the Anti-Money Laundering Law, Obligations and Limitations

As one of the legal professions categorised as a reporting party, an Advocate is called an *Officium Nobile*. The Indonesian Law Number 18 of 2003 concerningAdvocates (so-called Law Number 18 of 2003) was enacted to recognise advocates' justice proceedings as a free, independent, and responsible profession.Advocates must maintain honesty and fairness

[19] Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), 'Laporan Tahunan: Integritas PPATK Mengawal Asta Cita Indonesia. (PPATK Integrity To Guard Indonesia's Asta Cita)' (2024).

[20] Michael Levi, 'Lawyers as Money Laundering Enablers? An Evolving and Contentious Relationship' (2022) 23 Global Crime 126 <https://doi.org/10.1080/17440572.2022.2089122>.

while ensuring legal certainty for those seeking justice, thereby facilitating the proper enforcement of law, truth, and human rights.
The law has already granted Advocate Law Enforcement status. Further, Article 5of the Law Number 18 of 2003 regulates that: "Advocate shall have a status aslaw enforcer, free and independent, assured by laws and regulations". It means Advocates, together with the Police, the Prosecutor, and the judge, are responsible for enforcingthe law. T.Y. Parera explains that, although each law enforcement agency has its own primary duty, law enforcers share the same ideology. That ideology is to put law enforcement and justice above all things.[21] Thus, each institution shall control and correct the others to prevent manipulation and disharmony in law enforcement. In thissense, advocates shall participate in the prevention and eradication process of money laundering.

From a philosophical perspective, Advocates' involvement in preventing money laundering stems from their professional duty as law enforcers and their commitment to an esteemed role that prioritises the interests of the state and society over personal interests, occasionally surpassing the obligation to maintain client confidentiality. The legal profession plays a crucial role in safeguarding the integrity of the state's financial system against the misuse of criminal assets.

The Rights and Obligations of Advocates are set out in Articles 14 to 20 of Law Number 18 of 2003. Related to this issue discussed in this article are those rights and obligations, which are: a. Article 14, strengthening the right and obligation of giving legal opinions or statements in defending a case in a trial, the case that is under his responsibility, by referring to the profession code of ethics and laws and regulations; b. Article 15, strengthening the right and obligation to perform their professional duties for defending a case that is undertheir responsibility by referring to the professional code of ethics, laws, and regulations; c. Through Article 16, Advocates have a right not to be prosecuted civilly or criminally if they perform their Profession in good faith for the interest of defending a client in the trial; d. As mentioned in Article 18, subparagraph 2, Advocates may not be identified with their clients in defending the case ofaclient by the competent party and/or society; e. Article 19, subparagraph 1, gives an obligation to keep all matters known or obtained from their client secret due

[21] Theodorus Yosep Parera, *Advokat Dan Penegakan Hukum* (Genta Press 2016).

to their Profession, unless stipulated by law otherwise herein; f. the right to confidentiality of the relationship with clients, including protection of materials and their documents against seizure or examination measures, and protection against the recording or electronic communication of advocates (vide Article 19, subparagraph 2).

From the articles above, Advocates have significant obligations and also rights. An advocate must obey the rule. Further, the Code of Ethics of the Advocate is regulated by the Indonesian Advocates' Code of Ethics, which has been authorised by the Indonesian Advocates' Work Committee, comprising six former Indonesian Advocates' Organisations, since 23 May 2002. The code of ethics has been recognised as the highest law in conducting the Profession. It is not only to provide a guarantee and protect the Advocates, but also to place a burden on the Advocates to be honest and responsible in their profession, both to Clients, the Court, the Government, and society. Advocates are required to provide protection not only to the client but also to the Court, Government, and Society.

PPATK has described the Morale Value of Advocate:

1. Values of humanity (humanity)
2. Values of justice (justice)
3. Value of compliance or fairness (reasonableness)
4. Value of Honesty (Honesty)
5. Value of Public interest services (to serve public interest). [22]

In Article 4, subparagraph h of the Indonesian Advocates' code of ethics, it states that: An Advocate is obliged to firmly maintain the Profession's secrecy regarding anything (any information) given by the client based on trust and to keep the Client's secret even after the Advocate–client relationship ends. Any offence to that regulation will affect the legal process conducted by the Ethics Councils and/or legal proceedings. The sanctions that may appear include ethics sanctions, as well as penal and administrative sanctions.

In Indonesia, advocates are required to report suspicious financial transactions to PPATK, except when the reports pertain to the management of a legal case. Advocates are obliged to set aside client confidentiality

[22] Pusat Pelaporan dan Analisis Transaksi Keuangan (PPATK), 'SECTORAL RISK ASSESSMENT ON MONEY LAUNDERING AND TERRORISM FINANCING: ADVOCATE PROFESSION' (2019).

while also being required to report any signs of money laundering in the financial activities conducted on behalf of their clients, particularly when such activities are not directly linked to a case defence.
Fundamental responsibilities of an Advocate, based on Government Regulation Number 43 of 2015, as amended through Government Regulation Number 61 of 2021, mandate reporting the suspicious transaction to PPATK. It is to facilitate the prevention and eradication of money laundering. Client confidentiality in instances where there is suspicion of a financial transaction potentially linked to money laundering, while serving the broader interests of the state and society.

Thus, Advocates must exercise caution to avoid participating in money laundering by ensuring they do not inadvertently facilitate the concealment of criminal proceeds, which may be deemed complicit in the crime itself. Hence, pursuant to Government Regulation Number 43 of 2015, as amended by Government Regulation Number 61 of 2021, the Advocate is exempt. It is applicable that Advocates are ethically obligated to uphold client confidentiality in their professional conduct, except as mandated by the law.

An Advocate possess a noble obligation, grounded in the principles of justice and fairness, which constitutes a noble duty *(officium nobile)*. Although safeguarding client confidentiality is an important principle, it may be waived when there are significant indications of illegal conduct affecting the state, such as money laundering, which jeopardises the financial system and economic stability. It is also to prevent professional abuse. The responsibility to report is a form of recognition and reinforcement for the Advocates, ensuring that it is not misused by clients while also maintaining its own integrity.

From a justice perspective, money laundering harms society as a whole by disrupting the economic and social order. Advocates, as law enforcers and advocates for justice, have a moral and ethical obligation to assist in averting this harm by reporting questionable transactions in the sake of broader justice, not just justice for their clients. When money laundering is suspected, the interests of the state and the broader community take precedence. It indicates that the duty to maintain client confidentiality may be waived in order to defend the public interest. The responsibility to report ensures that the advocate will remain in an objective position. Advocates will not only defend their clients but also proactively act as law enforcers to

fight against crime.

Based on Article 8, paragraph (1), of Government Regulation Number 43 of 2015, as amended by Government Regulation Number 61 of 2021, there is an obligation, but also a limitation. The regulation mandates that each reporting party (including Advocates) submit reports on suspicious financial transactions to PPATK for the benefit of, or on behalf of, service users, concerning five listed matters. On the other hand, Advocates are not required to fulfil that obligation when representing a service user under two specific conditions, as follows:

- It is necessary to determine the legal status of the Service user; and
- In the context of case management, arbitration, or alternative dispute resolution. (vide Article 8, subparagraph 2 of Government Regulation Number 43 of 2015, inter alia Article 8, subparagraph 3 of Government Regulation Number 61 of 2021).

Through Risks Risks-Based Approach (so-called RBA), each legal professional must mitigate their risks.[23] Advocates need to know before they become involved in the client's activities that the clients are risky. Thus, the Advocate needs to avoid direct involvement by serving as a gatekeeper for negative perspectives and by engaging in activities that "seem" to be legal services extensions, such as serving as a trust company holder. Advocatescan abide by the law and fully comply with it.

From the business perspective, Advocate is not a representative of the client's business. If the Advocate receives a fee, a gift, and other things from the client, it does not mean that the Advocate is the client's representative in business. If the client offers the Advocate an expensive house or any other form of payment, the Advocate should suspect the client's intention.

The reporting obligation will mitigate the risk by preventing Advocates from engaging in money laundering if their clients are charged with such cases. The reporting obligation will be the legalprotection for Advocates.

The consequences of money laundering offences can significantly harm business reputations, weaken the legitimate private sector, and disrupt liquidity in business operations. Through Advocate involvement, both the

[23] Ibid.

nature and severity of crime can be elevated, intensifying social inequality, leading to substantial social costs, and contributing to instability within the financial system. In addition, those offences can result in diminished government control over economic policy and reduced potential state revenue from taxation.[24] A thorough evaluation of each transaction conducted by clients classified as reporting parties under legal duties is required. The reporting party must fulfil the compliance requirement autonomously. Advocates must maintain the profession's integrity by providing transparency in all procedures and conducting due diligence (also for high-risk customers). Advocates must conduct a comprehensive investigation into the source of the information. Advocates need to enhance their analysis and their use of information sources to establish reasonable grounds for suspicion, enabling professionals to conduct money laundering investigations in their noble professions (both as offenders and/or potential offenders). Further, Jenna C. Newmark is ever reminded that the reason for disclosing confidential information is actually to cultivate trust between lawyers and clients, promoting full disclosure of all information pertinent to the representation process.[25]

Thus, under Article 30 of the Indonesian AML Law, professions that fail to report to the PPATK will face administrative sanctions, including: a warning, a written warning, public disclosure of measures or penalties, and administrative penalties. However, the construction of an advocate as a reporting party is not just subject to administrative sanction, but also to criminal sanction when they are involved as an offender or potential offender under Article 4 and/or Article 5 of the Anti-Money Laundering Law, with the *mens rea*[26] being *willen en wetten*.[27]

The Prisoner's Dilemma Perspectives application

As understood, the prisoner's dilemma is a game theory. John Nash Jr introduced game theory. Game theory is implemented not only in economics but also in other social sciences. His game theory is called the

[24] Fauziah Lubis, *Advokat vs Pencucian Uang* (Deepublish 2020).
[25] Jenna C. Newmark, 'The Lawyer's "Prisoner's Dilemma": Duty and Self-Defence in Postconviction Ineffectiveness Claims' (2010) 79 Fordham Law Review 699.
[26] *Mens rea* is a Latin word that refers to the guilty mind of the offender of a crime. It refers to the criminal intent or mental state required for a crime.
[27] *Willen en Wetten* is a Dutch phrase referring to elements of intention in criminal law, in the form of intent and knowledge.

Nash Equilibrium. Nash Equilibrium is a strategy of the players in a game. Oneplayer will use an optimal strategy when considering the other players' decisions. Game theory is not about a mathematical theorem. It includes a moral judgment when making a decision. Nash's significant contribution to non-cooperative game theory lies in his provision of a conceptual framework for the discipline, which he may have regarded as an effortless initial step, yet seemed an insurmountable challenge to his predecessors. Cooperative game theory exhibits greater flexibility compared to non-cooperative game theory. It pertains to scenarios in which players negotiate their actions before the game begins.[28] Another explanation comes from Randal C. Picker, who said that Game theory is a set of tools and a language for describing and predicting strategic behaviour.[29]

The equilibrium will be reached when both players do not change their strategythrough a cooperative mechanism. The Prisoner's Dilemma will be operated. As is well known, the prisoner's dilemma is a game-theoretic situation. The situation in the prisoner's dilemma involved two criminal offenders who were arrested, and the prosecutors are trying to get their confessions since there is no evidence to convict either prisoner. The prisoner's dilemma is a fundamental concept in game theory that illustrates a situation in which two or more parties must decide whether to cooperate or defect. Related to this problem is that the Advocate's role as the reporting party in the AML regime presents a dilemma, as the reporting party may risk legal action from the client for breaching client confidentiality if they disclose the client's actions.

In Game theory, anticipating the actions of other parties is crucial, as the decisions of one party influence the outcomes for others. At times, one party is aware of all potential outcomes. However, there are instances in which a party must infer what the other party knows that remains unknown to them. Game theory actually examines decision-making among multiple parties to optimise outcomes. In some scenarios, competitors may need to collaborate to survive, while in others, cooperation is nearly impossible due to the winner-takes-all nature of the competition. Game theory elucidates the implications of interactions that may initially appear perplexing. Henry L. Njoo then explained that the prisoner's dilemma is the most renowned illustration of the dilemma faced by fishermen who risk depleting their fish stocks through overfishing. They will experience suffering collectively.

[28] John F. Nash Jr, *Essays on Game Theory* (Edward Elgar Publishing, Inc., 1996).
[29] Randal C. Picker, 'An Introduction to Game Theory and the Law' (1994) 22.

Individually, fishermen are unable to effect change, and they derive profit from maximising their catch. [30]

As an addition to the relationship between Advocates and the client, and legal processes and the court, it can be shown from the opinion of Orley Ashenfelter et al, what fundamentals cause the prisoner's dilemma? Incentives exist in dispute settlement. Strong case presentations can sway arbitrators and courts to favour clients. Clients and advocates will have tremendous incentives to obtain pricey legal representation. Advocates can advise clients in arbitration or court. An Advocate's experience can help choose a dispute resolution third-party decision maker.[31]

A game-theoretic perspective can be implemented for Advocates as a reporting party in the context of money laundering. This service encountered a dilemma. They are required to report suspicious transactions by clients, reflecting a cooperative effort with the state to combat money laundering. However, this obligation may compromise client trust and breach professional confidentiality, presenting a conflict of interest. Conversely, attorneys are obliged to safeguard their clients' rights, creating a potential 'zero-sum game' in which the gain of one party is the loss of another.

The situation of the anti-money laundering regime can be analysed through the prisoner's dilemma, in the context of moral justification, to determine whether the Advocate should make a report. The condition that happened is actually based on the conflict situation explained above. Advocates have responsibility under two main laws. One is the Law Number 18 of 2003 concerning Advocates, and the other is the Law Number 8 of 2010 concerning the prevention and eradication of money laundering, as mandated further by the Government Regulation Number 43 of 2015. The obligation is both mandated by the law. The other condition comes from the Interest that should be protected. The law always gives equal protection, but with consideration of the ultimate value. P.J. Kelly wrote the opinion of Bentham related to the Principle of Utility as follows:

By the principle of utility is meant that principle which approves or

[30] Henry L. Njoo, 'Game Theory: Prisoner's Dilemma' 8 2008 237.
[31] Orley Ashenfelter, Gordon B Dahl, and David E. Bloom, 'Lawyers as Agents of the Devil in a Prisoner's Dilemma Game' (2013) Vol. 10 Journal of Empirical Legal Studies 399.

disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question: or, what is the same thing, in other words, to promote or to oppose that happiness. [32]

Based on the principle of utility given by Bentham, it can be understood that in order to give utility to an action, it needs to consider what is best for the greatest number of people. P.J. Kelly then explains that the utility principle shall serve as a criterion of moral judgment in both approvaland disapproval situations.[33] In this regard, Advocates must consider their reporting obligations to implement the principle of utility. The ultimate value is social welfare. Thus, it must be considered that preparing a specific report, as mandated by the Law on anti-money laundering, will be beneficial to social justice and help avoid the risk of being an offender in money laundering.

If the client reports that the Advocate has abused the position and breached trust, the law will protect the Advocate due to their goodwill in considering the happiness and social welfare.

The fundamental concepts of game theory for Advocates in the prevention of money laundering can be understood through the particular participant: in this context, Advocates that serve as reporting entities. The Client himself was identified as a potential offender in a money laundering case. The state, as represented by PPATK, the public prosecutors, and judges, among others, also takes on this role. These parties must achieve goals, whereas Advocates must balance fulfilling legal obligations, such as reporting suspicious transactions, with protecting clients' rights. Stand as the opposite: clients need to evade identification and the consequences associated with money laundering. The interplay between the advocate's obligations under the anti-money laundering regime and the principles of client confidentiality and trust presents a complex challenge, as both are legally mandated responsibilities. However, the anti-money laundering regime mandates specific requirements, confined to five matters outlined in Government Regulation Number 43 of 2015, as amended by Government Regulation Number 61 of 2021.

The situation in the game imposes a responsibility on Advocates to report suspicious transactions as reporting parties. However, they are not required

[32] P.J. Kelly, *Utilitarianism and Distributive Justice: Jeremy Bentham and the Civil Law* (Clarendon Press 2013).
[33] Ibid.

to disclose their clients' criminal activities if doing so would breach the confidentiality of the professional relationship.

Thus, it must be considered the moral judgment that, in conducting the obligation to report specific transactions of their clients, they must do so. The prisoner's dilemma will help both Advocate and client to understand the situations due to the AML requirement, and it becomes a worse outcome if both Advocate and client remain silent and avoid the obligations themselves. Advocates cannot proceed with an accusation of breaking the confidentiality obligation (vide Article 28 of the Indonesian AML Law[34]), both in criminal proceedings and civil proceedings, as mentioned in Article 29[35] of the Indonesian AML Law, unless there is abuse of power.

RECOMMENDATION AND CONCLUSION

As recognised by international standards, Advocates play a significant role in the anti-money laundering regime. One of the conflict situations is being one of the reporting parties required by the law and regulation. In practice, Advocates often feel uncomfortable because there is a risk that the client may sue them after they report. The Advocates' code of ethics prohibited Advocates from revealing any secret or information that the client had disclosed to the advocate. The position of Advocates – clients – obligations by Law is like the moment the game begins. However, the moral judgment must be the primary consideration, whether the Advocate approves or disapproves of serving as the reporting party. It is important to keep in consideration that Advocates are not obliged to do what the client asks related to those activities required in Article 8 of the Government Regulation Number 43 of 2015, as amended by Government Regulation Number 61 of 2021. Therefore, a robust mechanism must be established to ensure specific protection for the Advocate in fulfilling reporting obligations. Both the Indonesian AML Law and the Law of Advocates are not in conflict and must be implemented in a harmonious manner.

[34] Article 28 of the Indonesian AML Law states that: the reporting party's reporting obligations are exempt from the confidentiality provisions applicable to the reporting party concerned.

[35] Unless there is an element of abuse of authority, the reporting party, officials, and their employee cannot be prosecuted, either civilly or criminally, for the implementation of reporting obligations under this Law.