Asia-Pacific
Economic Cooperation

2018/ACT-NET/WKSP/013

Freezing and Confiscating Assets - Indonesian Perspective

Submitted by: Indonesia

APEC 2018
PAPUA NEW
GUINEA

Training Workshop on Asset Recovery
Bangkok, Thailand
20-22 March 2018

FREEZING & CONFISCATING ASSETS FROM INDONESIAN PERSPECTIVE

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BANGKOK, 21-22 MARCH 2018

LEGAL BASIS

- CRIMINAL PROCEDURAL LAW
- LAW ON PREDICATE OFFENCE, SUCH AS ANTI CORRUPTION LAW
- LAW ON MONEY LAUNDERING

REASON TO FREEZE AND CONFISCATE ASSET

ARTICLE 39 OF CRIMINAL PROCEDURAL LAW

- PROCEEDS OF CRIME
- GOOD USED TO COMMIT A CRIME
- GOOD USED TO COMMIT OBSTRUCTIOON OF JUSICE
- SPECIAL MADE GOOD UTILIZEDTO COMMIT A CRIME
- OTHER GOODS WHICH HAS RELATIONSHIP WITH THE CRIME

FREEZING & SEIZURE BASED ON AML LAW

ARTICLE 70 AML LAW (SUSPEND TRANSACTION)

An investigator, public prosecutor, or judge shall be authorized to order the Reporting Party to suspend Transactions on the Assets which are known or are reasonably suspected to be the proceeds of a criminal act.

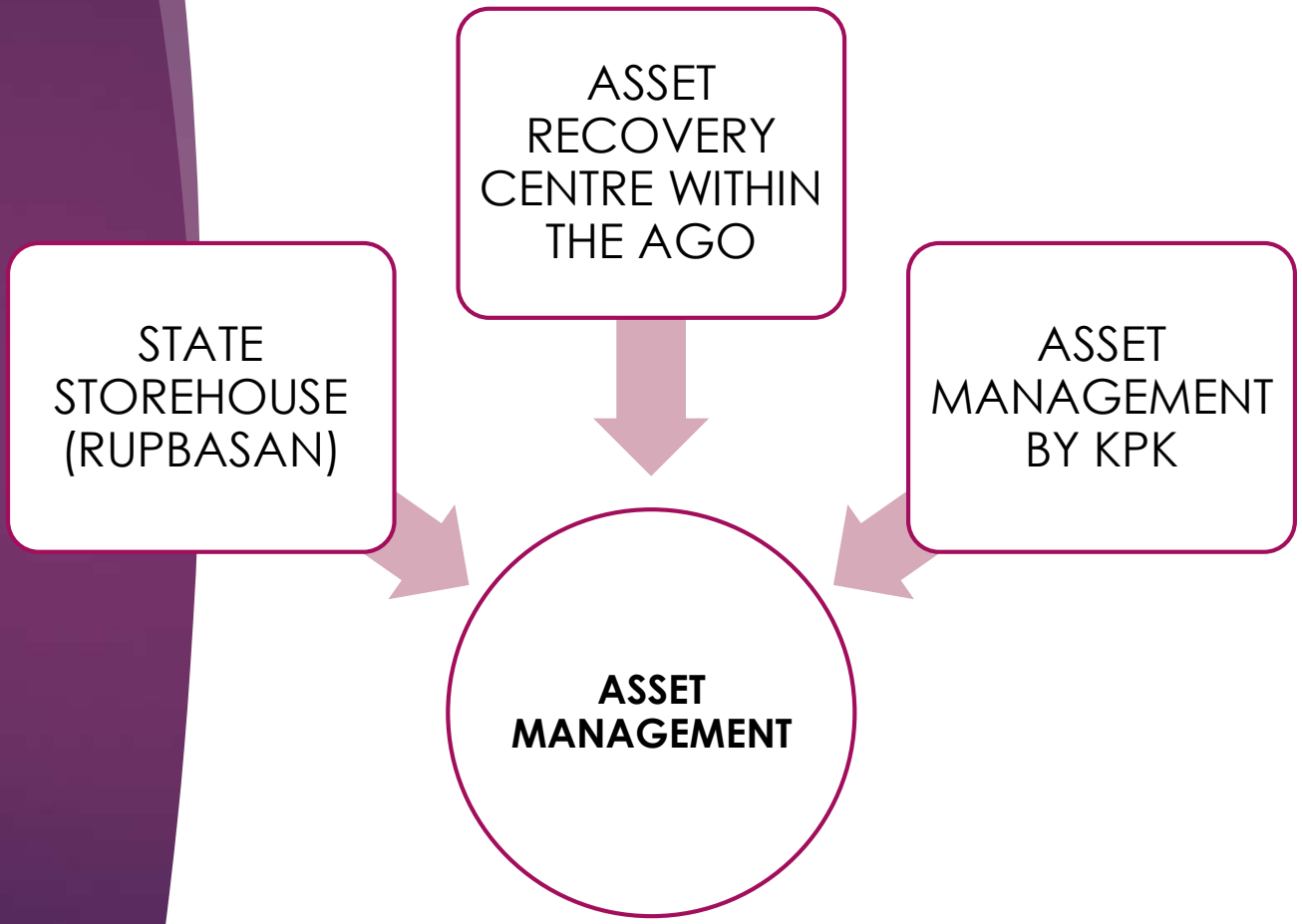
ARTICLE 71 AML LAW (FREEZING ASSET)

An investigator, public prosecutor, or judge shall be authorized to order the Reporting Party to freeze the Assets known or reasonably suspected to be the proceeds of a criminal act of (a) any person reported by PPATK to the investigator; (b) a suspect; or (c) a defendant.

ARTICLE 81 AML LAW (SEIZING ASSET)

In the event that sufficient evidence is obtained that there are still Assets which have not been seized, the judge shall instruct the public prosecutor to seize such Assets.

ASSET MANAGEMENT

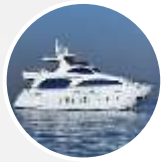


HOW TO MAINTAIN AND ENSURE THE VALUE OF FROZEN AND SEIZED ASSETS

FORECLOSURE OF ASSETS UNDER ARTICLE 45 OF OUR CRIMINAL PROCEDURAL LAW WITH REASONS

FAST DETERIORATED ASSET SUCH FISH

DANGEROUS ASSET



HIGH COST OF MAINTENANCE (ASSETS)

THE VALUE OF ASSET POTENTIALLY DECREASED (SUPREME COURT REGULATION NO. 13 OF 2016)

FORECLOSURE

IN THE STAGE OF INVESTIGATION (PRE INDICTMENT), WITHOUT COURT APPROVAL

IN THE STAGE 0F INDICTMENT WITH COURT APPROVAL

CORPORATE CRIMINAL LIABILITY

LEGAL BASIS

- ANTI CORRUPTION LAW
- ATTORNEY GENERAL REGULATION NO. 28 0F 2014
- SUPREME COURT NO. 13 OF 2016

CORPORATION AS A SUSPECT/DEFENDANT

APPLY VICARIOUS LIABILITY

ADOPT STRICT LIABILITY

CORPORATION CAN AVOID STRICT LIABILITY BY IMPLEMENTING : EFFECTIVE GOOD CORPORATE GOVERNANCE, RISK MANAGEMENT AND COMPLIANCE PROGRAM.

FREEZING CORPORATION

“ PRESIDENTIAL REGULATION NO. 13 0F 2018 ON TRANSPARENCY OF BENEFICIAL 0WNER OF CORPORATION, REC 24 OF FATF RECOMMENDATION) ”

“ **ARTICLE 67 AML LAW**

In the event where suspected perpetrators of criminal offense are not found within 30 (thirty) days, investigators may apply to the district court to decide the Assets as state assets or returned to the rightful.

The procedure of article 67 AML Law regulates under Supreme Court Regulation Number 1 of 2013. ”

(NON CONVICTION BASED ASSET FORFEITURE)

ARTICLE 77 AML LAW

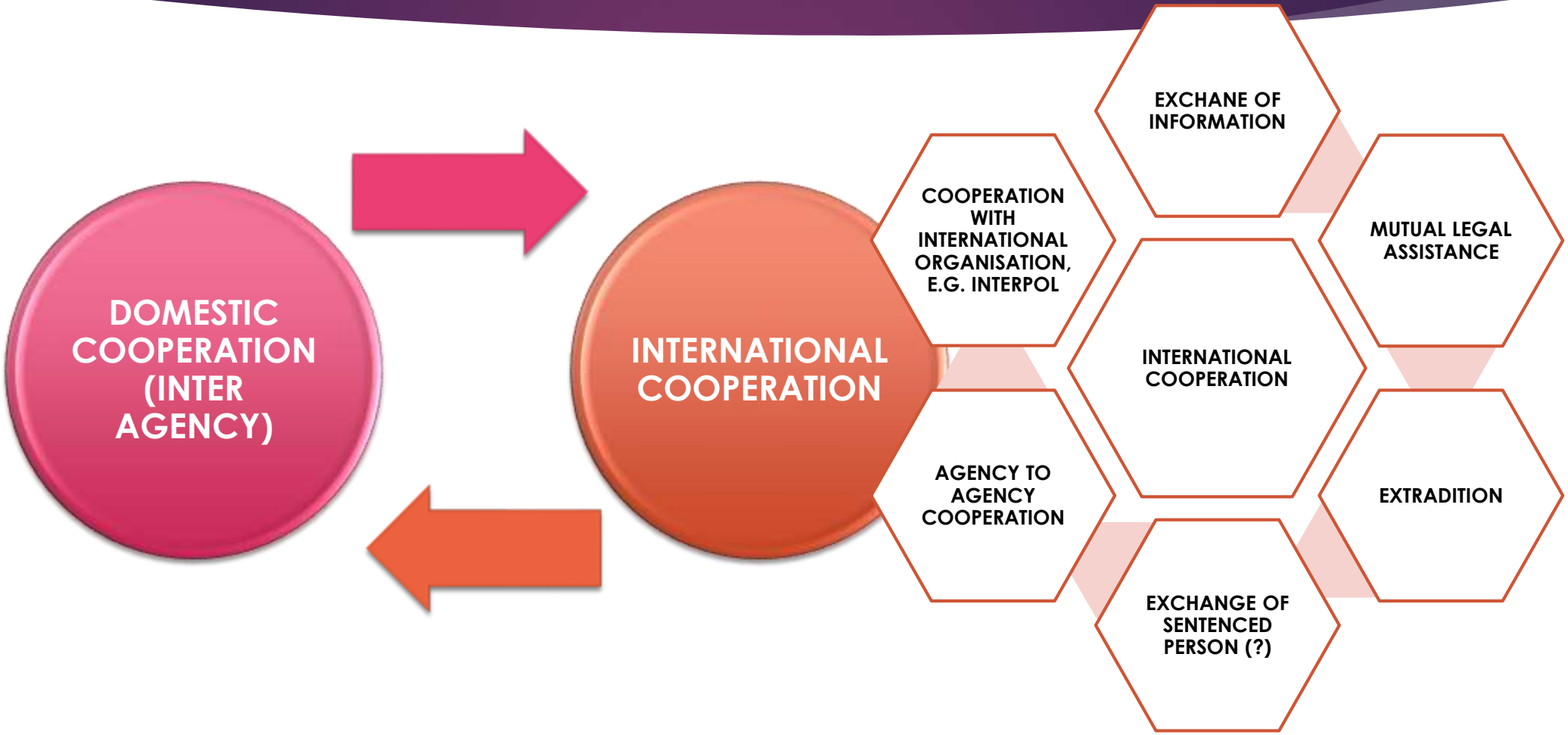
- For the purpose of examination before the court of law, the defendant must prove that his/her Assets are not the proceeds from a criminal act.

ARTICLE 78 AML LAW

- In the examination before the court of law, the judge concerned shall order the defendant to prove that the Assets related to the case do not originate from or that they are not related to the criminal acts.

REVERSE BURDEN OF PROOF

DOMESTIC & INTERNATIONAL COOPERATION



PRACTICAL GUIDELINES ON INTERNATIONAL ASSET REOVERY (Lausanne Seminar BY ICAR)

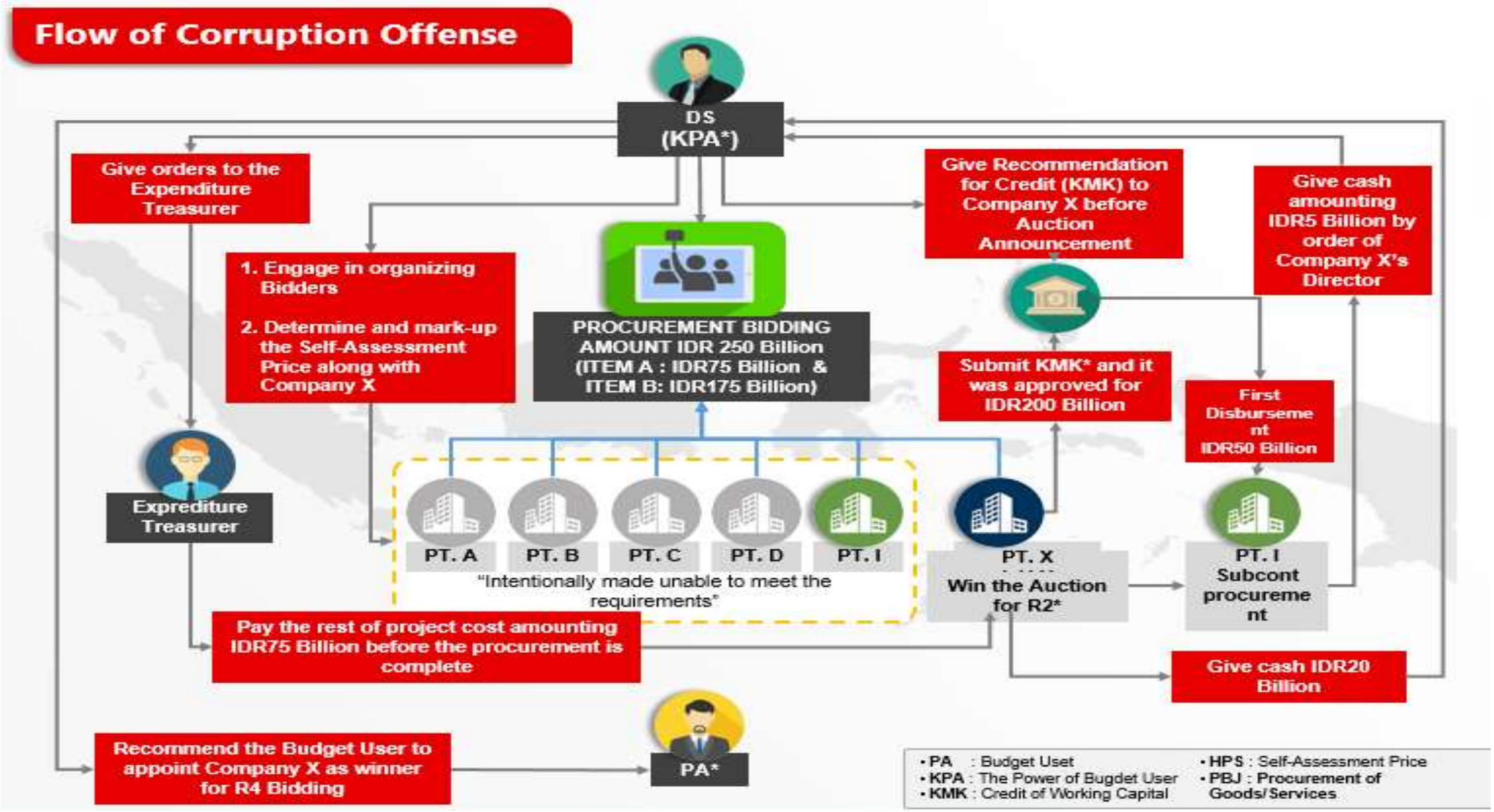
- Preliminary review and use of all possible resources
- Provisional measure: request for freeze
- Investigative strategies
- Timing of request
- Legal requirement
- Use direct contact and expert
- Coordination
- Parallel investigation in requested countries
- Share the draft request
- Prioritizing international case

INDONESIA'S SUCCESS STORIES

THROUGH FOLLOW THE MONEY APPROACH

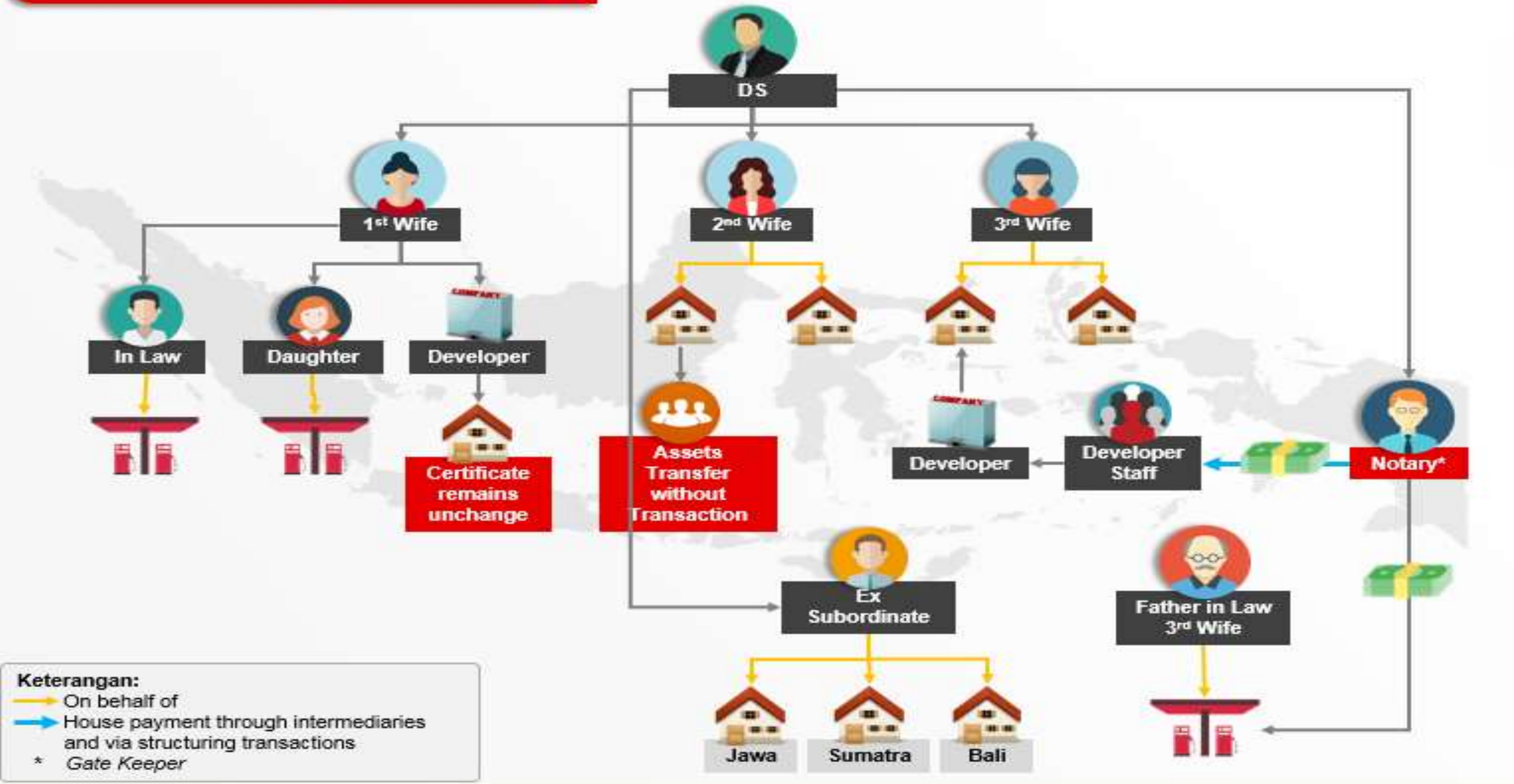
- GENERAL DJOKO SUSILO (SIMULATOR'S CASE)
- SENIOR POLICE OFFICER
- CAUSE STATE LOSS ≥ IDR144BILLION

DJOKO SUSILO (DS) CASE



Modus for Money Laundering

DJOKO SUSILO (DS) CASE



SUCCESS STORY IN NUMBERS

In 2014, Indonesia established the Asset Recovery Centre within the AGO.

Since its establishment, the Asset Recovery Centre has managed the realization of 128,056,973,935.09 IDR (~9.5 million USD) to the state budget. The detail as follows:

- 2014, IDR2.519.955.391.304,-
- 2015, IDR69.670.375.085,09
- 2016, IDR25.782.114.850,-
- up to May 2017, IDR32.388.154.000

SUCCESS STORY IN NUMBERS

(NON CONVICTION BASED ASSET FORFEITURE ARTICLE 67 AML LAW)

SALAHUDIN CASE (RELATED TO NARCOTICS)

THE AMOUNT OF CONFISCATE ASSET IS IDR1BILLION

NINDY HELSA AND SITTI N CASE (RELATED TO FRAUD)

THE AMOUNT OF CONFISCATE ASSET IS MORE THAN IDR4,8BILLION

FOSHAN ZEBROS CASE (RELATED TO CYBERCRIME)

THE AMOUNT OF CONFISCATE ASSET IS USD226.451,50

THANK YOU

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