The Links Between Corruption and Money Laundering: Indonesia's Perspective

Submitted by: Indonesia
THE LINKS BETWEEN CORRUPTION AND MONEY LAUNDERING: INDONESIA’s EXPERIENCE

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"Corruption hurts the poor disproportionately-by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid" (Koffi Annan, UN Secretary-General)
Introduction

- Indonesia, like many other countries, has been suffering a lot from corruption for many years.
- The connection between corruption and the laundering of its proceeds is not new and has been highlighted on several occasions in the past. The link between money laundering and corruption is not only related to the laundering of corruption proceeds, but goes much further.
- Due to the close link between corruption and money laundering, various international fora have noted that a comprehensive anti-corruption strategy must also include actions to prevent and control the laundering of corruption proceeds.

Studies and International Standard

- There are currently five other studies being written on the relationship between money laundering and corruption. The most relevant work on this topic is being conducted under the auspices of the World Bank.
- The first examines how AML/CFT intelligence can be used for anti-corruption purposes, and will be based on a survey of 15 anti-corruption agencies in several different regions.
- The second, conducted jointly with the Egmont Group, is investigating how to improve the governance of FIUs.
- In its umbrella anti-corruption strategy report released in March 2007, the World Bank draws three key insights on the money laundering-corruption nexus.
First that effective customer due diligence under AML/CFT requirements plays an important role in promoting general financial transparency and hindering corruption.

Second that closer co-operation between FIUs, anti-corruption agencies, law enforcement, and the private sector is essential in maximising the impact the AML regime can have on combating corruption.

Lastly that in many countries law enforcement agencies specify corruption as the main underlying offence generating illegal funds to be laundered, and thus AML/CFT policy is to a large extent primarily an anti-corruption too.

United Nations Convention Against Corruption (UNCAC)

- Article 23: Laundering of Proceeds of Crime
- Article 58: Establishment of Financial Intelligence Unit (FIU)
FATF and APG Initiatives

- A Draft Scoping paper was prepared in September 2004 which analysed material provided by jurisdictions. Paper scopes: typologies of corruption-related money laundering; current measures to combat corruption-related money laundering; and challenges and opportunities for combating corruption-related money laundering.

- At the Joint Plenary Session of FATF and APG in Singapore in June 2005, agreed to further explore co-operative work on the relationships between anti-money laundering/combating the financing of terrorism (AML/CFT) and anti-corruption efforts and particularly ways in which corruption can undermine AML/CFT implementation.

FATF AND APG ...

- The Joint Plenary called for further work to explore possible joint efforts that could be undertaken. A paper outlining the joint project was prepared by the FATF and APG Secretariats and endorsed by the FATF during their October 2005 Plenary and by the APG members out of session.
Links Between Corruption and Money Laundering

- Corruption generates enormous profits to be laundered;
- Corruption facilitates many money laundering and terrorist financing methods and supports predicate criminal activities; and
- Systemic corruption undermines the effectiveness of legislative, regulatory and enforcement Anti-money laundering / combating the financing of terrorism (AML/CFT) measures.

Indonesia Efforts to Combat Corruption and Money Laundering

- Indonesia has criminalized corruption under Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001.
- Indonesia has criminalized money laundering crime under Law No.15 of 2002 concerning the Crime of Money Laundering, as amended by Law No.25 of 2003.
- Indonesia has established the Corruption Eradication Commission under Law No. 30 of 2002
- Indonesia has ratified United Nations Convention Against Corruption (UNCAC) by the enactment of Law No. 7 of 2006 concerning the Ratification of UNCAC.
Corruption and Money Laundering in Indonesia

- Corruption is one of the predicate crimes
- Reporting on corruption submitted by the Financial Services Providers are the dominant reports received by INTRAC

The Corruption Eradication Commission and INTRAC

- Law No. 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as amended by Law No. 20 of 2001 mandated the formation of an independent Corruption Eradication Commission (Komisi Pemberantasan Korupsi or “KPK”) to fight against corruption in Indonesia. Under Law No.30 year 2002 the Commission was established.
- Under Law No.15 year 2002 concerning the Crime of Money Laundering as amended by Law No.25 year 2003, the Indonesian Financial Transaction Reports and Analysis Center (Pusat Pelaporan dan Analisis Transaksi Keuangan/ “PPATK”) was established.
KPK’s Duties

a. coordinating with authorized institutions to eradicate corruption;
b. supervizing authorized institutions in their activities of eradicating corruption;
c. conducting investigations, indictments, and prosecutions against criminal acts of corruption;
d. preventing criminal acts of corruption; and
e. monitoring the governing of the State.

KPK’s Authorities

a. to coordinate investigations, indictments, and prosecutions against criminal acts of corruption;
b. to implement a reporting system for the purposes of eradicating corruption;
c. to request information on acts with the purpose of eradicating corruption from relevant institutions;
d. to arrange opinion hearings and meetings with institutions authorized to eradicate corruption; and
e. to request for reports from relevant institutions pertaining to the prevention of criminal acts of corruption.
INTRAC’s Duties

a. to collect, maintain, analyse and evaluate information obtained by the PPATK in accordance with this Law;
b. to report to the Police and the Public Prosecutor's Office the results of analyses of financial transactions which indicate money laundering;
c. to prepare guidelines for procedures for reporting of suspicious financial transactions;
d. to provide advice and assistance to relevant authorities concerning information obtained by the PPATK in accordance with the provisions of this Law;
e. to issue guidelines and publications to Providers of Financial Services concerning their obligations as set forth this Law or in other prevailing laws and regulations, and assist in detecting suspicious customer behavior;
f. to provide recommendations to the Government concerning measures for the prevention and eradication of money laundering;

INTRAC’s Authorities

a. to request and receive reports from Providers of Financial Services;
b. to request information concerning the progress of investigations or prosecutions of money laundering that has been reported to investigators or public prosecutors;
c. to audit Providers of Services for compliance with the provisions of this Law and guidelines for reporting financial transactions;
The interaction between two respective agencies

The KPK and INTRAC have signed the Memorandum of Understanding (MoU) in 29 April 2004. The coverage of MoU includes, among other things, sharing information, Liaison Officer assignment, and joint training.

Implementation/Practices

- The MoU between INTRAC and KPK allows both agencies to access the information owned by agencies.
- To smoothen and to speed up the information gathering, KPK appointed relevant staff to INTRAC as liaison officer (LO).
- In case INTRAC does not maintain the information requested by KPK, but such information is about financial institutions’ customers and their financial information, -INTRAC is allowed to inquire particular Financial Services Providers (FSPs) to provide the requested information.
Implementation...

- KPK could utilize the additional information provided by INTRAC, especially financial intelligence, for their investigation.
- INTRAC can also share financial intelligence spontaneously to KPK whenever the information is supposedly related to corruption.

Exchange of Information between PPATK and KPK

- Since the MoU has been signed in April 2004, PPATK received more than 150 inquiries from KPK with regards to corruption cases investigated by KPK. Most of those have been replied by PPATK by providing the requested information.
- 80% of the twenty essential investigating cases by KPK rely on the financial information provided by PPATK. Some of those cases have been charged by the court.
- PPATK provided more than 20 spontaneous financial intelligence to KPK and some of those have been examined.
Lessons Learnt

- For country that corruption is a serious (extra-ordinary) problem, anti corruption law as well as anti money laundering law must be available. The nation shall criminalize both corruption and money laundering offence. In addition, in AML Law, corruption shall be one of predicate crimes, which its proceeds of crime to be laundered.
- To eradicate the crime of corruption and money laundering, country shall have anti corruption agency and financial intelligence unit.
- Anti corruption agency and Financial Intelligence Unit shall have very close cooperation. If possible, the MoU should be established. The MoU allows both respective agencies to exchange the information.

Lessons Learnt....

- Direct access (on-line) database between two respective agencies, if possible, could be established. Instead of direct access, the access could be exercised on request basis. To smoothen and to speed up the information gathering based on request, the presence of liaison officer (LO) is necessary.
- To provide more valuable additional information, in case FIU does not have the requested information, the FIU shall be allowed to request the information to Financial Service Providers.
Lessons learnt.

- The effective initial way to eradicate corruption and money laundering as well as to reduce a deep impact on the effective implementation of the AML/CFT, preventive measures such as enhanced due diligence in case of PEPs shall be developed in financial institutions and other reporting parties.
- In this regards, the authorities should provide clear guidance regarding the identification and treatment of PEPs that can be implemented by financial institutions and other reporting parties.

Typologies of Corruption and Money Laundering

CASE 1
- Collusion, which is indicated from involvement of businessman and more than one government officials
- Use of numerous banks’ accounts
- Multiple transaction that is conducted in consecutive days

CASE 2
- Fund transfer from private company to relevant public officer without clear explanation
- Direct assignment (without bidding process) to particular private company in conducting a huge government project
Typologies …

- Third parties are used, including employees, subordinates, or affiliated companies to receive corrupt payments

CASE 3
- Involvement of PEPs (in this regards a provincial governor)
- Absence of a proper bidding process
- Marking-up price of the project
- Third parties are used, including family member to receive corrupt payments

Typologies…

CASE 4
- Frequently fund transfer from private company to public officer with the absence of reasonably background.
- Collusion between private company and public officer
- Structuring or ‘smurfing’ proceeds of corruption into bank accounts is occurring through the use of multiple deposit transactions.
- Third parties are used, including family members, employees, subordinates, or affiliated companies to receive corrupt payments in a variety of forms and to subsequently deposit proceeds of corruption into financial institutions. Such third parties may be employees or other accomplices. Typologies include proceeds of corruption being falsely loaned back to the bribe recipient.
Typologies...

CASE 5
- The use of fictitious transaction
- The use of shell company
- Negotiable instrument such as traveler checks are purchased with proceeds of corruption

CASE 6
- Gatekeepers, including accountants and lawyers, are utilized to conceal the origin of corrupt payments, including the disguising of such payments as consultancy fees.
- Proceeds of corruption being spent on luxury vehicles, jewellery and other luxury items.

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