



# Governance Brief

## Using the Anti Money Laundering Law Catching the Intellectual Actors behind Illegal Logging

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### 1. The Difficulties of Eradicating Illegal Logging

Despite a number of central government initiatives, including operations involving the police and the military, the problem of illegal logging keeps resurfacing. It is difficult to stamp out as it is supported by *cukong* who operate in style of organized crimes and involves forestry and law enforcement officers engaged in bribery and corruption.<sup>1</sup>

These intellectual actors are hard to reach with Forestry Law No. 41/1999 which law enforcers are using against illegal loggers. In implementing this law, law enforcers focus their investigations on detecting physical evidence of illegal timber, i.e. possession, handling, and transportation of logs and other forest products without the appropriate documentation. With the focus on physical evidence, the ones most commonly caught are field operatives such as truck drivers transporting timber without official documents. Law enforcers have difficulty proving any connection between the physical evidence transported by these drivers and the *cukong* and corruptors; the intellectual actors behind illegal logging (North Sumatra Chief of Police, 2004).

### 2. Money Laundering and Forestry Crime

In October 2003 the Indonesian government amended Law No.15/2002 regarding money laundering with Law No.25/2003 which included forestry and environmental crime as predicate offences to money laundering. With this amendment, the Indonesian government has developed a new approach to combating forestry and other serious crimes.

#### *Definition of Money Laundering*

Money laundering is a criminal offence and involves efforts to hide or conceal the proceeds of a crime. Criminals do this by placing the proceeds of their crimes (in cash or other forms) through financial systems or by converting them into other assets through the processes of *placement*, *layering* or *integration*.

‘Placement’ is an action whereby funds obtained from a crime are placed or deposited into a financial system, usually a bank. *Placement* involves the physical movement of money.

Examples of *placement* relating to forestry crime:

- Cash or check proceeds from illegal logging or corruption are deposited in a district bank account.
- Cash or check proceeds from illegal logging or corruption are used to purchase life insurance policies.

‘Layering’ is a modus where the owners of funds obtained from crimes conduct several transactions to disguise the ownership of the funds. Usually the beneficiary owners will instruct their banks or other financial service providers (FSP) to transfer funds to several accounts in other banks using their own names or nominees. ‘Layering’ can also involve

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Examples of *integration* relating to forestry crime:

- A legal timber industry uses assets from illegal logging (including illegal logs) to produce sawn timber, plywood, pulp or furniture.
- Cash from illegal logging or corruption is invested in land acquisition to support the production of legal wood products. The proceeds of illegal logging and corruption can also be invested in equipment and vehicles for producing legal wood products.
- Cash from illegal logging or corruption is invested in a legal transportation or oil palm business.

### *Punishment for Money Launderers*

Individuals or organisations (including forestry industries) guilty of money laundering can be sentenced to between 5 and 10 years imprisonment and made to pay fines from Rp.100 million to Rp.15 billion. Those supporting money laundering, such as bank employees, are subject to the same punishment as those caught money laundering. Every individual that tries or conspires to launder money can face the same penalties. Any Indonesian national that aids, abets or provides information to money launderers is also subject to the same punishment.

In instances involving a manager or agent, such as a forestry company director or a bank director, where crimes are committed in a company name, then the manager, the agent and the company are subject to penalties. The main penalty applicable to a company is the maximum fine plus an additional one third of that amount. A company's operational license can also be revoked or the company can even be dissolved or liquidated for its involvement in money laundering.<sup>2</sup>

transforming proceeds of the crimes to different forms without banking facilities. 'Layering' is a process of detaching the proceeds of a crime from the crime itself.

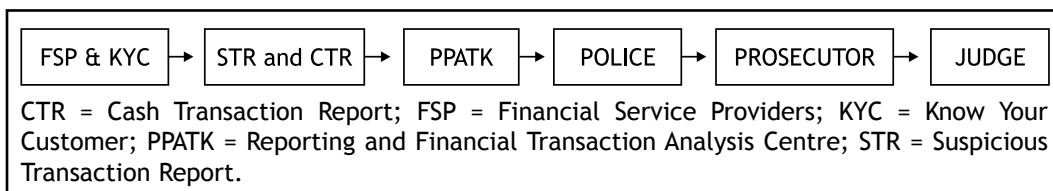
Examples of *layering* relating to forestry crime:

- Transferring illegal timber or bribery and corruption payments to several overseas bank accounts
- Cash from illegal logging or corruption is used to purchase financial instruments such as shares, bonds, foreign currency, and insurance for the purpose of selling them again later in efforts to obtain legal transaction basis.
- Cash from illegal logging or corruption is invested in activities to support company operations through payments to shell companies in the forms of loans or business contracts.
- Selling illegal timber using legal or legitimate SKSHH documents.

'Integration' is a money laundering method involving the amalgamation of the proceeds of crime with legitimate earnings from legal businesses. This usually involves proceeds of crimes that have already undergone *placement* or *layering*.

### 3. Anti Money Laundering Approach

The anti money laundering approach covers six stages as shown below.



### *FSP and KYC principles*

Banks and other FSP should make sure that no criminals or suspected criminals put money from illegal businesses into the banking system. FSPs are required to understand the profile of their customers, including their timber customers, and the patterns of their transactions including their customers involved in forestry businesses by implementing the Know Your Customer (KYC) principles.<sup>3</sup> This requirement is applicable to both existing as well as new customers. Banks are required to conduct 'customer due diligence' (CDD) to maintain a profile of their customers, at least with information covering their identity, their employment or business, their normal incomes, other accounts they have, normal financial transactions, and the purpose for opening an account with the bank.<sup>4</sup>

### *STR and CTR*

When this system works well banks and other FSPs can identify suspicious transactions (STR) involving their customers. A suspicious transaction takes place when a customer conducts or cancels a financial transaction using assets reasonably suspected to have arisen from criminal proceeds or if the financial transaction deviates from the customer's usual pattern of transactions.<sup>5</sup> The KYC principles require financial service providers having STR information to report to the Indonesia Financial Transaction Reports and Analysis Centre (PPATK). They are also required to report customers making cash transactions (CTR) of more than Rp.500 million in one day.

Sometimes banks and FSPs receive information from PPATK regarding their customers. The police that have already investigated many illegal logging cases and suspect a *cukong* of illegal logging can ask PPATK to provide financial intelligence analysis on the suspected *cukong*. The PPATK then creates an artificial STR by requesting banks or other FSPs to file STR reports on the suspected *cukong* of illegal logging. An artificial STR is an STR created by FSPs from information supplied by PPATK. A normal STR is one created by FSPs from information supplied by their internal KYC system.

### *PPATK*

An STR must be reported within three working days of the bank becoming aware of the suspicious transaction taking place. A CTR must be reported not more than 14 working days



after the transaction has taken place. After receiving a report, the PPATK investigates and analyzes financial intelligence to look for indications of money laundering. The outcome of this financial analysis is then submitted to money laundering investigators and the state prosecutors.<sup>6</sup> According to the applicable law, the Indonesian police are the only authority charged with investigating money laundering cases in Indonesia.

In the context of investigating and indicting intellectual actors behind illegal logging, the PPATK has a very important role in identifying the flow of money invested in logging, the process of transporting timber from the forest to industries or the market place, and payment processes from timber buyers to timber owners. This information will be very important for money laundering investigators and prosecutors to gain evidence of the flow of laundered money.

### *New Approach to Law Enforcement and Justice*

The anti money laundering law could be used to overcome weaknesses in enforcing the law on the intellectual actors behind illegal logging. The law provides the following breakthroughs:

- Ease of access to the financial data of suspected money launderers. Bank or customer confidentiality no longer applies if the customer is reported by FSPs following their obligation under the anti money laundering law or suspected involved in money laundering crimes. Law enforcers and judges can request



immediate access to financial data from financial service providers on reported, suspected or accused money launderers.<sup>7</sup>

- It is not necessary to wait for a court decision to open financial service provider data on a customer, or to freeze the account of a suspected or accused money launderer. Law enforcers are not required to prove any predicate offence as is the case with corruption or illegal logging.<sup>8</sup>
- Using more forms of evidence to prove a person's involvement in money laundering. The money laundering law also accepts verbal or written information stored electronically as evidence including maps, designs, photos, letters, and signs or symbols.<sup>9</sup>
- Accused money launderers are obliged to prove in court that the funds in their possession are not the proceeds of crime (reverse burden of approval).<sup>10</sup>
- It provides legal protection to those reporting parties of money laundering and witnesses in money laundering cases. Witness protection procedures can involve concealing the identity of a witness and keeping him or her from direct contact with accused money launderers.<sup>11</sup>

Although the anti money laundering approach begins with an STR report from a financial service provider and a financial analysis report from PPATK, Indonesian police money laundering investigators can initiate an investigation with reasonable suspicion that an individual or business has concealed or disguised the proceeds of a crime. Investigators could draw this conclusion from the results of investigations into predicate offences such as illegal logging and corruption. Coordination between illegal logging investigators and money laundering investigators is essential for the quick arrest of the intellectual actors behind illegal logging.

## 4. Conclusions and Policy Recommendations

This paper has explained the opportunities in using the anti money laundering law to catch intellectual actors behind illegal logging or timber theft. As we are well aware, illegal logging is an incredibly complex crime and hard to solve as it involves numerous stakeholders. Therefore, despite providing a weapon for overcoming the complex problem of illegal logging, the money laundering

law will be of little use in the hands of ineffective individuals or institutions. Below are a number of recommendations based on this consideration.

1. The Legislative Assembly can hopefully provide legal support to PPATK to secure sufficient resources for supervising financial organisations and grant the authority to impose sanctions on financial service providers failing to implement the money laundering law.
2. The Legislative Assembly should assess the effectiveness of the Indonesian police in handling money laundering cases and seek opportunities to improve the effectiveness of Indonesia's anti money laundering regime.
3. Banks and other FSPs should submit STRs to PPATK for customers that have already been reported by the Minister of Forestry, the Minister of the Environment, NGOs and the media for their involvement in forestry and environmental crime, especially those already under investigation by the police.
4. The police should use the anti money laundering law to arrest the *cukongs* in illegal logging cases they are investigating. The police and public prosecutor need to develop an integrated approach to charge money launderers both independently or cumulatively with illegal logging.
5. The anti money laundering system should be used to reduce predicate crime. The Legislative Assembly should provide legal support so that PPATK is allowed to make results of its analyses available to the authorities to combat predicate offences such as banking crime, corruption, and timber theft.

## Reference

North Sumatra Provincial Chief of Police, 2004, Law Enforcement and Implementing the Money Laundering Law to combat forestry crime. Paper presented at the seminar on implementation of the money laundering law, Medan, May 6.

Setiono, B. and Husein, Y. 2005. Fighting Forestry Crimes and Promoting Prudent Banking for Sustainable Forest Management: the Anti-Money Laundering Approach, CIFOR Occasional Paper No.44, Bogor, Indonesia

## Footnotes

<sup>1</sup> Several media and NGO reports broached this situation, among them *the Last Frontier* published by Telapak and EIA in February 2005

<sup>2</sup> Article 4 and 5, Law No.25/2003

<sup>3</sup> See details explanation on the implementation of the KYC principles in *Governance Brief* No.20, Do Banks Apply the KYC principles effectively? The case of forestry related customers.

<sup>4</sup> Bank Indonesia Regulation No. 3/23/PBI/2001 regarding amendment of PBI No. 3/10/PBI/2001 regarding know your customer principles.

<sup>5</sup> Article 1.7, Law No. 25/2003.

<sup>6</sup> Article 26g, Law No.25/2003

<sup>7</sup> Article 33.1, Law No.25/2003

<sup>8</sup> Explanation of Article 3, Paragraph 1, Law No. 25/2003.

<sup>9</sup> Article 38, Law No. 25/2003.

<sup>10</sup> Article 35, Law No. 25/2003.

<sup>11</sup> Articles 1 to 4, Regulation No. 57/2003 regarding special protection procedures for witnesses of money laundering crimes.



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