MONEY LAUNDERING INVESTIGATION
BY DGCE (DIRECTORATE GENERAL OF CUSTOMS AND EXCISE) OF THE REPUBLIC OF INDONESIA

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Nowadays, Indonesia is one step away from becoming a FATF member after The 21st Asia / Pacific Group (APG) on Money Laundering session held in Kathmandu-Nepal, finally ratified the Indonesian Mutual Evaluation Report (MER).
DGCE Civil Servant Investigators has the authority to investigate offences in act of:

- Customs ➢ As predicate crimes
- Excise ➢ As predicate crimes
- Narcotics
- Psychotropics
- **Money Laundering**
- Illegal Trade
- Industrial related

Although the predicate crimes are not necessarily to be proven, but the investigators shall believe that it was happened. (Irman, 2017)
Article 2 par (1) of Anti-Money Laundering Act: there are 26 crimes in Indonesian existed laws as *predicate crimes*. 2 of them are...

**in CUSTOMS act (9 offences)**

Unmanifest import smuggling, Unpermitted of Import Unloading smuggling, Unlawful Import concealment, Unpermitted clearance, Export smuggling, Customs fraud, Illegally collect/buy goods related with import/export offences, Illegal customs access, Seal destruction

**in EXCISE act (9 offences)**

Unpermitted business activities (production, storage, import), Unpermitted clearance of excisable goods, Excise fraud, Selling excisable goods without excise band or with fake excise band, Fake excise band, Illegal buying of excisable goods without excise band or with fake excise band, Illegal excise access, unlawful transaction of excise band, seal destruction
<table>
<thead>
<tr>
<th>Type of Cases</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>PDP</td>
<td>P21</td>
<td>SP3</td>
<td>PDP</td>
<td>P21</td>
</tr>
<tr>
<td>Customs</td>
<td>80</td>
<td>78</td>
<td>2</td>
<td>71</td>
<td>68</td>
</tr>
<tr>
<td>Excise</td>
<td>29</td>
<td>29</td>
<td>0</td>
<td>39</td>
<td>39</td>
</tr>
<tr>
<td>Money Laundering</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>109</td>
<td>107</td>
<td>2</td>
<td>110</td>
<td>107</td>
</tr>
</tbody>
</table>

PDP: Notification of The Start of Investigation  
P21: Notification from the Prosecutor on the Completion of Lawsuit File  
SP3: Notification of the Termination of Investigation  

Source: Investigation Sub-directorate of DGCE Database
Some Factors according to Soerjono Soekamto’s thesis:

1. Legislation
2. Law Enforcement Officer
3. Facility
4. Community (external factor)
5. Culture

We observed only 4 out of those five factors according to Soekanto, due to the time and space constraints.
Questions:

1. Are the COMPETENT INVESTIGATORS available nationwide?
2. Are the EXISTED ACTS provide adequate legal basis for Investigators?
3. Are there adequate EQUIPMENT, BUDGET, and INFORMATION?
4. Is EXTERNAL ENVIRONMENT support investigators?

→ to conduct the Optimal Investigation of Money Laundering
Bungin, 2013 stated that purposive sampling used in researches which prioritized in research objectives than population characteristic in sampling decision. Nevertheless, to apply this technique, the researchers should be an expert in social situation characteristic. Based on the close observation at social situation, key social situation units could be decided as research sample.
Previous researches

1. Instary O. Karaseran, Thesis, University of Sam Ratulangi
   a. MLIP are not an easy job;
   b. There are weaknesses related with the vindication of the predicate crime

   a. Modus operandi: Placement, layering, integration
   b. Social order, including fit with the aspiration of the public

3. Prof. Romli Atmasasmita SH LL.M, Article (to be continued)
Previous researches

3. Prof. Romli Atmasasmita SH LL.M, Article,
   a. MATERIAL criminal law analysis
      ➢ INTRAC as a core institution in fighting money laundering should have
         owned pro-Justitia authority, but in reality they only possess an
         administrative role.
      ➢ “known or allegedly” → the recipients whether having or not having a
         goodwill, can be sued before the law;
   
   b. FORMAL criminal law analysis
      ➢ the implementation of principle “lex specialis derogate legi generali”. 
         The existence of special legal statue is a logic consequence from the
         existence of special criminal law;
      ➢ When strong suspicion arises that money laundering crime did occur,
         predicate crime is not needed to be proven
DGCE Investigators on customs and excise offences investigation are entitled to (point a to point p):

a. receive report on the occurrence of offences;
b. summon persons to hearings as suspect or witness;
c. examine, search, and collect information;
d. make the arrest and detention of persons;
e. request information/evidence from persons;
f. Photographed/record by mean of audiovisual media that could become evidence;
g. examine notes/ledgers obliged;
h. take fingerprints;
i. frisk residents, clothes, or bodies;
j. frisk places/vehicles and examine goods inside it;
k. seize goods allegedly;
l. seal and secure any evidence;
m. invite expert needed in relation with investigation;
n. stop person whom allegedly conduct customs and/or excise offences and check their identification;
o. stop investigation; and
p. carry out other actions needed to expedite investigation on customs and/or excise offences.

These are similar with the authorities in money laundering investigation... with additional...
Other authorities mandated by the Anti-Money Laundering Act:

1. Order the Reporter to post-phone transaction on asset known or suspected as crime result;

2. Order the Reporter to block asset known or suspected as crime result from persons reported by INTRAC to investigator and/or Suspect;

3. Request the Reporter to provide written information on asset from persons reported by INTRAC to investigator and/or Suspect.

Investigator is also entitled to carry out foreclosure on asset suspected as a result of predicate crime.
INVESTIGATION DATA IN 2017

Social Situation:

**Import Offences**: 99

**Export Offences**: 12

**CUSTOMS Offences**: 111

**Excise of Tobacco Products Offences**: 55

**Excise of Alcoholic Beverages Offences**: 16

**Total Excise Offences**: 71

**Customs Offences**: 111

**Excise Offences**: 71

**Money Laundering**: 2

**Total Offences**: 184

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Before reorganization of regional office that took place in the beginning of 2018
After reorganization of regional office that took place in the beginning of 2018

Social Situation:

**Distribution of Investigators**

<table>
<thead>
<tr>
<th>Unit</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Enforcement Unit</td>
<td>819</td>
</tr>
<tr>
<td>Enforcement Unit – Non-Investigation Unit</td>
<td>212</td>
</tr>
<tr>
<td>Investigation Unit</td>
<td>199</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1230</strong></td>
</tr>
</tbody>
</table>

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**Notes:**

- Non-Enforcement Unit: 819
- Enforcement Unit – Non-Investigation Unit: 212
- Investigation Unit: 199
- Total: 1230
Respondents

Total 143 respondents are DGCE Civil servant investigators
91 respondents from the investigation unit who have the experience in conducting investigation.

Respond rate is 11.6% of the Social Situation (143/1230) from all DGCE Civil servant investigators

Respond rate is 45.73% of the Social Situation (91/199) from DGCE Civil servant investigators that currently employed at the investigation unit.
Part #1: **Respondent Profile**: name, identification number, office station name, working unit, gender, date of birth, rank and position, education background, and investigation experience.

Part #2: **Human Resource aspect**, consist of 13 questions to acquire data on respondent perception based on his/her competencies in investigation field of work.

Part #3: **Regulation aspect**, consist of 6 questions to better understand the respondent perception on the general dimensions, material-formal aspect of the Anti-Money Laundering Act.

Part #4: **Infrastructure and facility aspect**, consist of 6 questions to acquire data on respondent perception related with the adequacy of quantity and technical specification of the equipment.

Part #5: **External aspect**, consist of 4 questions to know the perception related with the Attorney and INTRAC.

Part #6: **Anti-Money Laundering investigation management performance aspect**, consist of 4 questions to better understand the respondent perception related with this aspect.

We conduct data processing toward 91 questionnaires filled by the respondents who have experience in conducting investigation. The researchers used LISREL (linear structural relations) to process the data. And the structural equation model result on the research hypothesis is shown in image 2.
**LISREL result**

**SDM**: human resource aspect (observed variable)

**UU**: regulation aspect (observed variable)

**KORD**: external aspect (observed variable)

**SPRAS**: infrastructure and facility aspect (observed variable)

**KIN**: anti-money laundering investigation management performance aspect (latent variable)

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Chi-Square=0.00, df=0, P-value=1.00000, RMSEA=0.000
Respondents agree that this act is:

- not retroactively valid, *lex stricta* (interpreted as it written), not *lex certa* (multi-interpretation)

  - 38.46% respondents are not sure that this act can be implemented without obstacles although the others (40.66%) agree.

- contains **clear description** on activities categorized as active and passive money laundering crimes

  - 39.56% respondents are not sure that this act contains clear provisions related with *in absentia* case although the others (48.35%) agree.

- contains **clear provisions** related with vindication of the predicate crimes, transaction’s postponement, blockings, reverse vindication, and sequestration of assets that hasn’t been seized

  - 38.46% respondents are not sure that this act contains clear provisions related with *in absentia* case although the others (48.35%) agree.

The perception from respondents on this act is generally well:

- 41.76% agree
- 56.04% active activity
- 53.85% passive activity
- >50%
Perception about **Attorney**:

- The attorney carries out the pre-prosecution authority by providing indications on money laundering crime potency in the investigation of the predicate crimes
  - Not sure 48.35%

- They openly welcomes the initiation for consultation from DGCE investigator on the implementation of anti-money laundering delict
  - Not sure 41.76%  agree 40.66%

- They provides inputs related with the potency of the implementation of anti-money laundering delict in the predicate crimes case show
  - Not sure 56.04%
Perception about **INTRAC**:  

- INTRAC has conducted socialization on anti-money laundering investigation provisions for DGCE civil servant investigators  
  - Not sure: 35.16%  
  - Agree: 36.26%  

- INTRAC provides technical assistance to ease the money laundering investigations by DGCE civil servant investigator  
  - Not sure: 42.86%  

- INTRAC provides valid and complete information and/or analysis result to DGCE investigator.  
  - Not sure: 45.05%
Generally, the performance of investigation units in DGCE all over Indonesia is well.

Investigation units in DGCE all over Indonesia have the ability to evolve the investigation of the predicate crime into the money laundering crime and complete it well and settle.

This aspect can be reviewed from two dimensions, which are the national performance and local customs & excise service office performance.

**NATION WIDE**

- **Believe**
  - 58.24%
    - Generally, the performance of investigation units in DGCE all over Indonesia is well.

- **46.15%**
  - Investigation units in DGCE all over Indonesia have the ability to evolve the investigation of the predicate crime into the money laundering crime and complete it well and settle.

**RESPONDENT’S OFFICE**

- **Agree**
  - 45.05%
    - The performance of their office related with the settlement of criminal case is well;

- **41.76%**
  - Their investigation unit can evolve the investigation of the predicate crime into the money laundering crime and believe that they can complete it well and settle.
The results from the questionnaires then later be confirmed through focus group discussion (FGD) with experts of anti-money laundering investigation in DGCE.

The experts are officials who have succeed in conducting anti money laundering investigations, but their identity are un-disclosed.
The criminals usually cowed when the investigator begin to use the Anti-Money Laundering Act. Nevertheless, the experts give few notes:

- the principle of non retroactive seemed to be not valid, since the anti-money laundering delict designate the predicate crimes;
- the conceal delict is multi-interpreted;
- the reverse vindication is not common in positive law, but the anti-money laundering act allow this principle to be implemented.
- the anti-money laundering act, as well as customs act and also excise act, adopted the provision of corporate crime, which is the crime conducted by corporations. The penalty for corporate criminals is a fine, so the implication will be asset recovery.

All experts agree that the regulation is an effective tool for DGCE in conducting the investigation so that it has positive contribution.
Experts suggest that there are two other external institutions that influence the expedite of investigation of money laundering crimes, which are banks and court of justice.

INTRAC is the institution that is able to provide indication on the occurrence of money laundering crimes but still investigators need transaction record from banks as a proof for the vindication process before the court of justice.

The attorney is vital because the attorney will become the prosecutor when the case is brought before the court of justice. The attorney is also the institution that provide guidance for customs along the investigation process.

The court of justice is the estuary of the whole law enforcement process. Integrity in the law enforcement process is the key factor to ensure that the law is held in high esteem, above all individual or sectoral interests.

All experts agree that there is a procedure in place for coordination in the implementation of money laundering investigation with the attorney and INTRAC, and that the two institutions are essential in the investigation process.
Expert suggest that to achieve better investigation key performance indicator, they must be divided into three teams, which are analyst team, investigation team, and asset tracing team.

From expert experience, it needs more than a year to settle a money laundering case.

Investigators of the predicate crime should deepening the investigation process into money laundering investigation as soon as they identifies the adequate indications on the crimes.

We can get 2 things in parallel, which are seize the criminals, and sequestrate assets that coming from the criminal activities, to be returned to the owners (recovery state assets).
CONCLUSIONS

that the existing regulation provide adequate legal basis for DGCE Civil Servant Investigators to conduct money laundering investigation

that the INTRAC has fully supported DGCE on the investigation, while several investigators don't realize it
RECOMMENDATIONS

1. It is needed to improve the training curriculum related to Money Laundering Investigation regulations so that generate a harmonized understanding.

2. Both of DGCE and CEETC need to convince investigators about the positive support from INTRAC so that they are more confident to deepening the predicate crime cases to find strong indicators to sue Money Laundering offences.

3. DGCE should immediately empower officers who have just completed their training as Customs Civil Servant Investigator to handle investigative cases to gain real experiences on the job (continual post-trained learning by doing).