

# Legal Development and Asset Proceedings under the Anti-Money Laundering

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## Abstract

The objectives of this research study were 1) to study concepts and theories relating to measures of asset proceedings under law on anti-money laundering 2) to study the mechanism of law enforcement and measures of asset proceedings under law on anti-money laundering in Thailand and foreign countries 3) to study problems and obstacles of asset proceedings under law on anti-money laundering 4) to study the evaluation of laws and effectiveness under international standard on anti-money laundering and combating terrorism financing 5) to suggest guidelines on drafts of anti-money laundering act (No. ...) and 6) to propose guidelines on integration for enforcement of asset proceedings measures under anti-money laundering law. The study found 5 issues in asset proceedings measures under law on anti-money laundering that are 1) predicate offences are not consistent with international standard 2) receiving data for asset proceedings does not have clear legal power base 3) duration of temporary seizure or freezing of assets is not flexible in law enforcement 4) there is no criterion of scope of action about right protection of damaged persons caused by the predicate offence and stakeholders and 5) legal execution does not take action as Court's order in some cases. The recommendations of this research are amending 14 sections of Anti-Money Laundering Act and drafting Anti-Money Laundering Act (No. ...) to address in problem and weakness of asset proceedings measures. Moreover, the important policy recommendations are creating pro-active measures and building network among relevant agencies for steering anti-money laundering law enforcement.

**Keywords:** Asset Proceedings, Money Laundering, Anti-Money Laundering Act 1999

## Introduction

“Money laundering” is one of the economic crimes which means any action making money that has been acquired illegally or dishonestly appears to have been obtained legitimately or cannot prove that the money was acquired corruptly. Hence, the United Nations proclaimed the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, for solving the money laundering problem. Many countries have signed up for membership of this convention including Thailand. Then, Thailand proclaimed Anti-Money Laundering Act 1999 so any person cannot utilize money or asset obtained from the

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commission of a predicate offence to commit such action again and it can break cycle of crimes. Moreover, “asset proceedings measures relating to the commission of predicate offence” was enacted which is a civil measure used in asset proceedings relating to the commission of predicate offence in criminal cases. The said measure has no prescription even though such predicate offence was committed before the date of enactment of anti-money laundering law. It does not connect with criminal case which is a predicate offence and it is not civil claim in connection with an offence that can be enforced. Although the owner or stakeholder who was proceeded under the said measure will not be proceeded with criminal case, if there is reasonable cause to believe that the predicate offence was committed, the offenders were arrested or not, the Court shall order to devolve property on the State. The owner of assets connected with the commission of predicate offence shall prove that he or she is real owner and the assets are not connected with the commission of a predicate offence or he or she is transferee honestly and has compensation or receive honestly and as reasonable in good moral or public charity.

Although effective measures of asset proceedings were prescribed in law on anti-money laundering, the study found 5 issues in the said measures that are 1) predicate offences are not consistent with international standard 2) receiving data for asset proceedings does not have clear legal power base 3) duration of temporary seizure or freezing of assets is not flexible in law enforcement 4) there is no criterion of scope of action about right protection of damaged persons caused by the predicate offence and stakeholders and 5) legal execution does not take action as Court’s order in some cases. This research focused on guidelines of legal development and process of asset proceedings under law on anti-money laundering which relate to the said issues and also guided to increase efficiency and effectiveness of enforcement of asset proceedings measures under anti-money laundering law for the benefit of breaking the cycle of crime commission under predicate offence and decrease motivation of criminal in commission of predicate offence including saving lives and assets of people. The problems solving conformed with international standard in anti-money laundering under recommendations of the Financial Action Task Force on Money Laundering (FATF) which will make financial system more credible and will cause good result in trading system, investment and overall economics of the country.

### **Research Objectives**

The objectives of this research are 1) to study concepts theories and international standard relating to measures of asset proceedings under law on anti-money laundering and mechanism in law enforcement and asset proceedings measures 2) to analyze problems and obstacles of the proceedings under law on anti-money laundering in Thailand and foreign countries connecting with effectiveness and technical compliance of asset proceedings measures under international standard on anti-money laundering and combating the financing of terrorism (AML/CFT) 3) to suggest guidelines on law amendment and measures of asset proceedings under efficient and effective anti-money laundering law conforming with international standard and being accepted from all countries including guidelines on integration for enforcement of asset proceedings under anti-money laundering law for breaking the cycle of commission of underlying predicate offence and decreasing motivation of criminals.

### **Research Methodology**

This research on legal development and measures of asset proceedings under anti-money laundering law uses qualitative research methodology in information collecting and data analyzing consisting of documentary research by studying and collecting related information from relating researches, legislations, textbooks, journals, articles in relation to the concepts and theories of asset proceedings under law on anti-money laundering. Also, the authors

studied about main points of relevant Thai and foreign laws which are Malaysia, Indonesia, the Republic of Korea and Australia including international standard and convention on asset proceedings measures under law on anti-money laundering. The focus groups were conducted And the meetings were arranged to acquire the suggestion about legal development and asset proceedings under law on anti-money laundering, also, to hear and exchange the opinion about law amendment and guidelines on integration for enforcement of asset proceedings measures from specialists and experts working in law enforcement agencies, judicial agencies, private organizations and academicians or qualified person. The acquired information or data was analyzed and guidelines for law amendment was proposed.

## **Research Results**

The study found that there are 2 assessments of laws and effectiveness frameworks of asset proceedings measures under international standard on anti-money laundering and combating the financing of terrorism (AML/CFT) that are 1) technical compliance assessment relating to the relevant legal framework which Thailand complied 31 out of 40 recommendations and 2) effectiveness assessment in implementation which Thailand got substantial level of effectiveness in 4 out of 11 immediate outcomes (IO) that are IO 1 (risk understanding), IO 2 (international cooperation), IO 6 (financial intelligence analysis) and IO 8 (confiscation) (Asia/Pacific Group on Money Laundering, 2021). If Thailand does not comply with international standard, it may affect economics and financial sector, people and national security, international relationship as well as Thailand may be in the list of high risks countries. Moreover, the problem in asset proceedings under law on anti-money laundering can be concluded as follows;

### **Problem in Designation of Predicate Offence**

Firstly, predicate offence shall be designated to conform with the international standard of Financial Action Task Force (FATF) which money laundering offence shall cover all serious offences. The predicate offences shall be prescribed in the widest range or at least, it shall include each type of prescribed offence. Thailand should select type of designation of offence. The recommendations of FATF stated that 21 serious offences shall be prescribed under Thai law as predicate offences (Financial Action Task Force, 2022). However, the current law does not cover the predicate offences including the offence relating to smuggling of migrants as required by FATF recommendations. In Thailand, adding predicate offences in law on anti-money laundering is quite difficult and spends much time. If Thailand cannot comply with FATF recommendations, the technical compliance of Thailand will not conform with the international standard.

Secondly, the Office of the Council of State had a decision on case No. 632/2563 (Office of the Council of State, 2020) about proceeding with assets connected with predicate offence committed outside the Kingdom that a predicate offence shall include a penal offence committed outside the Kingdom which would have constituted a predicate offence had it been committed in the Kingdom. However, it does not include 7 predicate offences prescribed in other laws, which are, an offence relating to participation in transnational organized crime, an offence relating to the financing of terrorism, an offence of the financing of proliferation of weapons of mass destruction, an offence relating to election of members of the House of Representatives, an offence relating to acquisition of members of the House of Senate, an offence relating to election of members of councilor or local executive and an offence relating to forcing for labor or services that caused such person to be grievous bodily injured or death. This problem will affect mutual evaluation according to the FATF recommendations 36-40 relating to international cooperation.

Last, Constitutional Court made a decision No. 8/2564 dated 2 June 2020 (Senate, 2021) about prescription of a predicate offence that contradicts the Constitution that to prescribe a

predicate offence relating to tax under Section 37 Ter of the Revenue Code as additional legislation shall affect right restriction of person unreasonably under Section 37 Paragraph One and Two of the Constitution. It also disregarded right protection and liberties and it was right derogation in occupations and assets of people in accordance with Section 26 Paragraph One of the Constitution. Thus, the provision of Section 37 Ter of the Revenue Code is no longer applicable.

There are many methods to prescribe predicate offences in foreign countries. The first example is the Federation of Malaysia and the Republic of Korea clearly prescribed predicate offences in their laws. Malaysia stated clearly about any offence or law is a predicated offence under money laundering law. Hence, there are 421 predicate offences prescribed in 49 laws and their details appear in the table attached anti-money laundering and countering the financing of terrorism law. In Indonesia, predicate offences are widely prescribed which only stated any offence under any law is predicate offence without specifying the section number. Malaysia prescribed 26 predicate offences in Section 2 (1) of anti-money laundering law (Bank Negara Malaysia, 2001) and only the types of offences and law relating to money laundering were prescribed. In addition, other offences sentenced to a minimum 4 years imprisonment under provisions of law of the Republic of Indonesia whether it was committed in the Kingdom or outside the Kingdom shall be considered as a predicate offence under law on anti-money laundering (Driss, 2006). In the Commonwealth of Australia, assets connected with the commission of an offence and rate of penalty were used to prescribe predicate offence. There should be 2 issues of fact for requesting seizure and freezing order of the Court which are the owner of assets is convicted of an offence or charged for commission of an offence or will be charged for commission of a serious offence or committed criminal offence which has right to be judged by jury and there was reasonable cause to believe that the assets were connected with the commission of an offence or were used as a tool for the commission of serious offence which should be sentenced to imprisonment of 3 years or more (Maylam, 2002).

### **Problem in Receiving Information for Further Asset Proceeding**

First, there is no legal power basis in setting regulations relating to receiving information from people and no provision for protecting people who report information or clue honestly. Thus, such measures should be established to enhance trust of people for participating in anti-money laundering.

Second, there is no legal power basis in setting related regulations relating to receiving information from all relevant government agencies inclusively and clearly. This is for reducing the gap and enhancing trust of law enforcement.

Last, the definition of suspicious transaction did not cover “transaction which is complicated and different from the usual transaction and lack economic possibility”. Moreover, it is inconsistent with the fact at present (Anti-Money Laundering Office, 2019) and law on anti-money laundering shall be amended. The definition of “suspicious transaction” shall be rewrite as the original law so the Anti-Money Laundering Office will receive wider range of suspicious transaction. This is for the benefit of further effective and efficient proceeding with the assets of AMLO.

Measures of receiving information for further asset proceeding of the Federation of Malaysia identified that Bank Negara Malaysia shall have duty in receiving suspicious transaction report and cash transaction. It also stated that apart from financial service providers, individuals and juristic persons who are non-financial institutions and were abused for money laundering shall have duty in reporting the suspicious transaction to Bank Negara Malaysia which acts as financial intelligence unit of the Federation of Malaysia for using in financial investigation. In the Republic of Korea, Korea Financial Intelligence Unit (KoFIU) was established as core agency in AML/CFT law enforcement and analysis transaction report

under Financial Services Commission (FSC). Besides, reporting entities shall report transactions to other law enforcement agencies when there is a transaction relating to the commission of an offence or money laundering or terrorism financing which has the amount exceeding than prescribed in the laws (ICLG, 2021). The Republic of Indonesia has designated banks, financial companies, insurance companies and insurance brokers, financial institutions, pension funds, securities companies, investment managers, trustees, trusts, post offices, money exchange shops, card payment service providers, e-payment service providers, cooperatives, pawn shops, futures companies, remittance service providers, real estate companies and real estate brokers, vehicle dealers, gem, precious jewelry and metals traders, and antiques and art products traders as reporting entities which they are required to submit suspicious transaction report to Indonesian Financial Transaction Reports and Analysis Center (Pusat Pelaporan dan Analisis Transaksi Keuangan: PPATK) for further financial investigation. Information exchange between law enforcement agencies in the Commonwealth of Australia is flexible. Owners of Financial service providers and related persons prescribed by law shall report cash transaction, suspicious transaction, transaction with international fund transfers, transaction with the intention of or attempting to avoid investigations or the law relating to taxation, transaction relating to prosecution or contention or transaction avoiding law on money connected the commission of an offence or other rules and regulations to Australian Transaction Reports and Analysis Centre (AUSTRAC). AUSTRAC will submit the result of financial investigations to relevant tax and law enforcement agencies. AUSTRAC also allows other agencies that are Australian Taxation Office, Australian Customs Service, and Federal Police and the Australian Securities Commission to access all data. The scope of suspicious transaction report of Australia is similar to Thailand.

#### **Problem in Duration of Temporary Seizure and Freezing of Assets Connected with the Commission of an Offence**

Firstly, duration of temporary seizure and freezing of assets is inappropriate with type of case because the duration of not more than ninety days is for collecting evidence proving that the seized or frozen assets are connected with the commission of predicate offence under Section 49 Paragraph One before Secretary-General of Anti-Money Laundering Board submit the case to public prosecutors for requesting for property to devolve on the State. This duration is limited timeframe for collecting all evidence as in some cases there are many involved persons or related to international cases.

Last, the duration of temporary seizure and freezing of assets for not exceeding ninety days includes the balancing process of public prosecutors in case of case records submitted by AMLO is not complete or sufficient for requesting the Court to devolve all or some property on the State. When the Secretary-General of Anti-Money Laundering Board submits additional information or evidence, but the public prosecutors decided that it is still not complete or sufficient, the Secretary-General of the Anti-Money Laundering Board shall submit the case to Anti-Money Laundering Board (AMLB) to make a decision and AMLB shall make a decision within 30 days from the date of receiving the case from Secretary-General. If AMLB made decision, the public prosecutors and the Secretary-General of the Anti-Money Laundering Board shall act accordingly. If AMLB cannot make decision within 30 days, it shall be complied with the decision of public prosecutors.

In the Federation of Malaysia, law on anti-money laundering prescribed that the duration of temporary seizure and freezing of assets is 12 months from the date of issuing an order. While law on anti-money laundering of Indonesia prescribed that the duration of temporary seizure and freezing of assets is not exceeding 30 working days and the reporting entities have authority to temporarily seize or freeze assets connected with the commission of a predicate offence for not exceeding 20 days when suspicious transaction of customers is

found under President Regulation No. 50 (Procedures of Foreign Loans Procurement and Grants Receipt, 2011) and the reporting entities have authority to restrain transaction for 5 days when assets used in the commission of crimes are found. The republic of Korea prescribed temporary seizure or freezing of assets in the Criminal Procedure Code only (Cho, 2010) and there is no temporary seizure and freezing of assets in Civil measures. Public prosecutors or police officers have authority to request the Court warrant of seizure and freezing of assets, if needed, without the timeframe. The said assets will be seized or frozen until there is judgement. Also, there are value confiscation measures, if the confiscation cannot be carried out or the state of the assets cannot be confiscated, the officer has the power to confiscate money in the same value of the assets from the offenders. In Australia, there is a wide variety of legal authorization of officers to issue orders, suspend bank accounts and temporarily seize and freeze assets such as the authorization of issuing an order to suspend financial institutions from allowing money withdraw from accounts of such financial institutions or issuing temporary seizure and freezing order in case of persons who were judged or charged of serious offence or there is reasonable cause to believe that any person committed a serious offence or a serious offence was committed in the country and such persons got the benefit, directly or indirectly, of the commercial exploitation from misbehaving of such persons. The temporary seizure and freezing order shall come into force from the date of ordering and shall terminate when the charge which is the reason for issuing the order was revoked or the owner of assets was exonerated. This authorization form is similar to the form of the Republic of Korea. Thus, this is an efficient measure and can reduce redundant and complicated process as well as it can prevent future problem.

#### **Problem in Right Protection of Damaged Persons Caused By the Predicate Offence**

Firstly, the law did not prescribe criteria and methods of right protection of damaged persons. Section 49 Paragraph Six of Anti-Money Laundering Act of 1999 stated that the Secretary-General shall request the public prosecutor to file a petition to the court for an order to return or repay the value of assets connected with the commission of the offence to the damaged persons instead of forfeiting to the state. When there is such return or repayment order under this paragraph, the Office shall proceed in accordance with the order without delay. Nonetheless, this law did not determine that subordinate legislation can be enacted for prescribing criteria and method of right protection of damaged persons. Thus, it can cause the problem in law enforcement of the said section, and it cannot protect the right of damaged persons as quickly as the intention of law enactment.

Second, the right protection does not cover stakeholders of assets connected with the commission of an offence as damaged persons under Section 49 Paragraph Six shall be persons who were directly damaged in assets connected with the commission of predicate offence. A stakeholder who acts as sell contractor in frozen assets is a person who was directly affected from asset proceedings measure will not receive right protection under law on anti-money laundering.

Last, right protection shall be conducted in parallel with assets examination process because there is process of gathering evidence for proving damage of damaged person. In case there are many damaged persons, it will spend much time and use many officers for gathering evidence. The process of right protection and assets examination shall be made within the duration of temporary seizure and freezing of assets for not exceeding than ninety days. Thus, the duration of temporary seizure and freezing of assets is quite limited for gathering evidence to prove that seized or frozen assets are connected with the commission of predicate offence and there are damaged persons caused by predicate offence.

The measure of protection of damaged persons caused by predicate offence is a measure for making balance between right and liberty of assets of people and prevention and suppression of crime for building safety to our society. Each country prescribed different forms, means

and legislation but most countries used “good faith” to protect the right of people such as in Section 61 of law on anti-money laundering of Malaysia, the Civil and Commercial Code and the Criminal Procedure Code of Indonesia and Section 8 (3) of law on money from the commission of an offence of the Republic of Korea which is same as a measure used in Thailand. Although, good faith is the principle of law for creating justice and being natural foundation, this principle of law is abstract because it is the basis of civil law which is different from criminal law. It should be proven about the intent by analyzing and considering from circumstance which is quite difficult. Moreover, there is weakness in analyzing and considering evidence which are standard of discretion. It depends on different experiences of each officer, and it will not meet the same standard.

#### **Problem of Execution of Property According to Court’s Order**

First, the Court will have condition in ordering the property to devolve the property on the State in some cases if there are some parts of property which are not connected with the commission of an offence. The execution according to Court’s order cannot be conducted, for example, there is a building on the land which the Court does not order to devolve on the State. Hence, AMLO cannot auction the property as the Court’s order. If there is an auction as the Court’s order by separating the property and valuing of separated property, the said property will be damaged or devalued.

Last, there is a problem when the Supreme Court reversed order or judgement of the Civil Court or order or judgement of the Court of Appeal which have ordered to dismiss the request of public prosecutors for property to devolve on the State. This can cause problems in execution according to Court’s order because when the Civil Court or Court of Appeal ordered to dismiss the requesting and the public prosecutor did not request for temporary seizure or freezing of assets during the judgement, the owner of assets can dispose of, transfer, move or transform or cause disappearance so the property cannot be vested on the State as the order of the Supreme Court.

In the Federation of Malaysia, the Court has power in ordering confiscation and devolving the property on the State. In addition, the government will possess the said asset and the asset cannot be transferred or proceeded in other means which is same as in Thailand. In the Republic of Indonesia, there is no specific law about measure of confiscation and devolving the property connected with the commission of money laundering on the State but the Court shall order to seize and confiscate the said property if there is evidence that the property is connected with the commission of an offence under the Criminal Code and the Criminal Procedure Code. It is a general provision that applies to all types of crimes including money laundering offence.

In the Republic of Korea, execution of the property shall be only from the judgement under the Criminal Code and value confiscation measures, if the confiscation cannot be carried out or the state of the assets cannot be confiscated, value confiscation shall be conducted from the offenders and the asset will be vested on the Ministry of Finance. Moreover, the Ministry of Justice may give money as reward to the informant. In Thailand, value confiscation measure is not prescribed in law on anti-money laundering. It is one weakness of Thai law which may cause ineffective prevention. There are advances in technology and methods of money laundering, and various and complex forms of assets transfer. Without value-based confiscation measure, there will be legal loopholes which criminals can easily commit the commission of money laundering offence. There are 2 interesting legal orders in Australia that are pecuniary penalty order and literary proceeds order. The pecuniary penalty order is fine order for civil liability or debt as the judgment to the offender. It is considered as penalty measure. If the offender did not have enough assets as the Court’s confiscation order, he shall be paid by counting from the benefit that has derived from such an offence or, in some cases, the benefits that the person has derived from other unlawful activity. To consider about any

person legally obtaining benefit or any asset, it does not matter whether a person obtained right of such benefit or asset, if the person has the right to possess such benefit or assets. Literary proceeds order (Biddington, 2008) counts from any benefit obtained by a person which is defined as any benefit that derives from the commercial exploitation. This type of order is similar to pecuniary penalty order. The difference is no requirement that a person has been convicted of an offence which is the cause of ordering. Both pecuniary penalty order and literary proceeds order are not prescribed in law on anti-money laundering of Thailand. This measure is interesting because the criminals will lose their benefits more than gaining. Also, it is a legal measure which relates to the motivation to commit an offence based on law and economics concept by cutting motivation in assets and benefits. When law can be effectively enforced making criminals feel about more loss than gaining benefits from the commission of an offence, "There will be no crime in our society".

## Suggestions

The authors analyzed and synthesized problems and obstacles in asset proceedings under law on anti-money laundering received from the study according to qualitative research rules by gathering information or data of documentary research, focus group, and hearing for obtaining correct and complete information and making the suggestion relating to drafting Anti-Money Laundering Act (No. ...). The major principles in solving deficiencies of asset proceedings measure are as follows;

### **Recommendations For Amending Anti-Money Laundering Act and Drafting Anti-Money Laundering Act (No. ...)**

1) The definition of "predicate offence" shall be amended and predicate offence prescribed in other laws shall be defined as predicate offence under this Act (Section 3 shall be amended) for widening the scope of meaning of predicate offence to cover the offence relating to an act in which a person shall be liable in criminal offence that the Transaction Committee unanimously resolved to investigate transactions or assets connected with the commission of an offence. A person will be liable for criminal offence when he deliberately committed an act which shall be sentenced to 1 year or more imprisonment as prescribed in Ministerial Regulation. Besides, it is an act resulting in the acquisition of assets connected with the commission of an offence in the amount or value prescribed in the Ministerial Regulation. No action has been taken against that asset under that law or the action taken under that law has failed to achieve its purpose or the action under this Act is more beneficial to the Government service, action shall be taken against that asset in accordance with this Act. The measures under law on anti-money laundering can be used to proceed with assets connected with the commission of an offence without being restricted under the criminal offence only prescribed as the predicate offence under the former law. It also conforms with international standard of the Financial Action Task Force (FATF) which countries shall prescribe criminal offence with maximum penalty of more than one year's imprisonment as predicate offence and for widening the scope of meaning of predicate offence to cover the predicate offence prescribed in other laws.

2) Predicate offence shall include the offence prescribed in other laws which committed outside the Kingdom (Section 3 shall be amended) for widening the scope of meaning of predicate offence to cover the said offence.

3) The definition of "suspicious transaction" shall be amended (Section 3 shall be amended) by widening the scope of meaning to cover transactions with complexity that differ from the usual suspicious transaction and transactions that lack economic possibility.

4) The Anti-Money Laundering Office shall have duty in promoting people's cooperation in giving information and providing protection (Section 40 (3/5) shall be amended) for widening

the duty of the office to cover the promoting and shall provide a channel to give information, clues or evidence of the commission of an offence under this Act.

5) The government agencies designated by the Cabinet shall report information of predicate offences to AMLO (it shall be added as Section 40/1) for using as database for further proceeding under Anti-money Laundering Act 1999.

6) The Court shall have power to extend the duration of temporary seizure and freezing of asset if necessary (it shall be added as Section 48/1) because the duration of not more than ninety days is limited timeframe for collecting all evidences in accordance with laws. Also, there are many related persons or many evidence or complicated transactions or it is international cases which shall spend much time to cooperate for proving that the assets are connected with the commission of a predicate offence or the value of assets or money which shall be returned or repaid to the victims in case of right protection. Moreover, the acquired evidence or information may not be complete or sufficient for prosecution so it shall be waited for the decision of the Anti-Money Laundering Board, and it will exceed the time limit.

7) The period of time, criteria, methods, and condition of right protection shall be amended (it shall be added as Section 49 Paragraph Seven)

8) Right protection of stakeholders shall be prescribed in Section 50 Paragraph Two, Section 52 and Section 53 Paragraph One of Anti-Money Laundering Act 1999. The word “beneficiary” in the said Section shall be revised to be “stakeholder” because the stakeholder has wide meaning which does not define only a person who have ownership of assets. If the word “beneficiary” is revised, all stakeholders will receive right protection which is consistent to the amendment of Section 50 Paragraph Two of AMLA.

9) The execution process with the assets connected with the commission of an offence that was combined with other assets and they were disposed of, distributed, transferred or transformed shall be prescribed (it shall be added as Section 52/1 and Section 52/2) including receiving money based on the value of the assets connected with the commission of an offence instead of selling it at auction. Moreover, the Court shall order confiscation of other assets or making payment in the same value of the assets.

#### **Recommendations For Drafting Secondary Legislations**

When the Anti-Money Laundering Act 1999 is amended, the following 4 secondary legislations should be drafted.

1) Ministerial Regulations Prescribing the Commission of Criminal Offence which was sentenced to One Year and More Imprisonment as (B) of predicate offence under (22) by virtue of (22) (B) of the definition of “predicate offence” in Section 3 and Section 4 of the Anti-Money Laundering Act 1999.

2) Ministerial Regulations Prescribing Amount or Value of Assets connected with the Commission of an Offence as (C) of predicate offence under (22) by virtue of (22) (C) of the definition of “predicate offence” in Section 3 and Section 4 of the Anti-Money Laundering Act 1999.

3) Ministerial Regulations Prescribing Criteria, Condition, and Method of Consideration of the Transaction Committee in Determining Predicate Offence as (22) by virtue of (22) Paragraph Two of the definition of “predicate offence” in Section 3 and Section 4 of the Anti-Money Laundering Act 1999.

4) Ministerial Regulations Prescribing Duration, Criteria, Method and Condition of Gathering the Evidence and Prescribing Damages and Asset Keeping and Management for Returning or Repaying to the Damaged Persons by virtue of Section 49 Paragraph Seven and Section 4 of the Anti-Money Laundering Act 1999.

### **Policy Recommendations**

From the research, there should be policy recommendations in order to enhance a system for preventing and suppressing money laundering in Thailand with strong steering mechanism at policy level supported by the Government. In addition, working networks with close cooperation were created at the operational level. The people shall realize the problem relating to money laundering. Although Thai laws and regulations do not conform with international standard, they shall be improved and amended. Moreover, the officers and staffs of the Anti-Money Laundering Office shall enhance their bodies of knowledge in innovation and new technology for understanding and applying to develop their works. The details of recommendations are as follows;

- 1) Creating proactive measures with relevant agencies for steering enforcement of anti-money laundering law.
- 2) Integrating and building network with relevant agencies for prevention and suppression of money laundering.
- 3) Supporting and developing supervision system of relevant public and private agencies in anti-money laundering.
- 4) Promoting people's cooperation in anti-money laundering.
- 5) Expanding organizational structure and developing officers and staffs of Anti-Money Laundering Office to keep pace with all types of innovation and promptly response to prevention and suppression of money laundering situation.

### **Additional Recommendations**

After analyzing of problems and obstacles of legal measures in law on anti-money laundering, the author would like to recommend about appointing sub-committees for taking action under Section 25 in conjunction with Section 30 of the Anti-Money Laundering Act 1999 which consist of representatives from relevant public and private agencies for giving opinions or performing any particular act on behalf of the Anti-Money Laundering Board as follows;

- 1) Sub-Committee on Coordination the Undertaking under Laws on Anti-Money Laundering has powers and responsibilities in coordination of receiving and disseminating case information between the relevant agencies, proceeding with assets and criminal prosecution for money laundering.
- 2) Sub-Committee on Supervision and Examination has powers and responsibilities in supervision and examination of reporting entities about transaction report to AMLO.
- 3) Legal Advisory Sub-Committee has powers and responsibilities in improving and developing laws to conform with international standard and being as an advisor or giving opinions on laws.
- 4) Sub-Committee on the Steering of the Anti-Money Laundering and Combating the Financing of Terrorism Strategy has powers and responsibilities in improving the country's compliance with anti-money laundering and countering the financing of terrorism international standard.
- 5) Asset Management Sub-Committee has powers and responsibilities in asset management including execution and right protection in accordance with the Court's order.
- 6) Sub-Committee on People's Network for Promoting and Supporting Anti-Money Laundering has powers and responsibilities in building social cooperation for promoting and supporting anti-money laundering and creating activities to enhance the network in all sectors and exchange knowledge about prevention and suppression of money laundering.

### **Suggestions For Further Research**

The followings are 7 immediate outcomes which Thailand cannot comply with the international standard on anti-money laundering and combating the financing of terrorism

(AML/CFT) of Financial Action Task Force (FATF) and the author provides recommendations for further research.

1) IO 3, supervision and monitoring of financial institutions and designated non-financial business or profession, there is no appropriate determination of punishment which can restrain the commission of an offence and the lack of measures of administrative punishment is also another key issue.

2) IO 4, compliance with AML measures of reporting entities commensurate with their risks, there is no risk-based supervision covering accountants, lawyers, business in leasing, business in pawn shops, and there is no appropriate determination of punishment which can restrain the commission of an offence and the lack of measures of administrative punishment.

3) IO 5, enhancing the transparency of legal persons and trust companies and information on beneficial ownership, there is no law on supervision of foreign trust companies operated in Thailand and the penalties cannot restrain the commission of an offence.

4) IO 7, proceeding with criminal case relating to money laundering, there is no appropriate penalties under law on anti-money laundering as the penalties of criminal case relating to money laundering are less than the penalties of other criminal cases prescribed as predicate offences.

5) IO 9, investigation and financing of terrorism case proceedings, there is no sufficiently serious penalties under law on combating financing of terrorism and proliferation of weapons of mass destruction.

6) IO 10, measures on prevention of terrorism and abusing the NPO sector, the supervision of NPOs is not sufficient and appropriate with risks and there is no measure for unregistered NPOs.

7) IO 11, measures on prevention of proliferation of weapons of mass destruction financing, there is no appropriate determination of punishment and effective penalties to restrain the commission of an offence.

## Conclusion

Problems of money laundering crime are the key issues which affect security of the country and public peace. It is also the obstacle of economic development. Moving social dynamic is also the cause which makes criminals have complex methods to commit crimes and cause more difficult in prevention and suppression of money laundering. In addition, there are loopholes in Thai legislation which the criminals can use as means to commit the offence and many problems in cooperation from private and public sectors. All of these factors can cause negative effect to anti-money laundering. However, efficient law enforcement and adequate examination measures from all sectors can solve the problems and break cycle of crimes including make peace to the society from now on.

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