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National and International Cooperation in the Prevention and Eradication of Money Laundering

Yunus Hussein¹

The Prevention and eradication of money laundering, as part of the new paradigm in the effort to combat crimes, has its own mechanism in both national and international cooperation, particularly in relation to information exchange. The cooperation is pursuant to a Memorandum of Understanding, but can also be simply pursuant to the principle of reciprocity among parties. Once effective, this cooperation will strengthen the performance of Indonesian Financial Transaction Report and Analysis Center (INTRAC/PPATK) in performing its duties and exercising its authority as the Financial Intelligence Unit.

keywords: money laundering, cooperation, national, international, memorandum of understanding, reciprocity.

A. Introduction

Cooperation is an inevitable element to meet the needs and achieve goals within society as humans are social creatures. In theory, cooperation refers to activity or work done by several people or larger groups to achieve common goals by methods mutually agreed together. Cooperation is generally opposite to the paradigm of competition.

Some forms of cooperation are illegal or made in order to commit a crime. Organized crime is a term used to denote the crimes committed with a plan, led by a person or entity. The United Nations Convention Against Transnational Organized Crime (better known as UNTOC) which was established in 2002 “*Organized Criminal Group*” as “*a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences, in order to obtain, directly or indirectly, a financial or other material benefit*”.

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The development of science and technology, particularly the development of transportation and the communication of information have resulted in inter-regional relations within a country and between countries allowing the unlimited, easy and fast movement of people, goods, and money from one country to another. But this has also resulted in the development of increasingly sophisticated crime.

The existence of organized crime also requires the strengthening of efforts to control and fight it. Domestic control and multidimensional cooperation measures, as well as inter-governmental cooperation are necessary.

Prevention and eradication of money laundering, as a new paradigm³ or effort in combating crimes, has its own mechanism for national and international cooperation, particularly in relation to information exchange cooperation. In this matter, the Indonesian Financial Transaction Reports and Analysis Centre (INTRAC), as the focal point for the prevention and eradication of money laundering and terrorism funding, has been cooperating with many agencies within and outside the country. The end of October 2009, INTRAC has entered into 31 Cooperation arrangements within the country and 31 Cooperation arrangements overseas through the signing of Memorandums of Understanding.

His efforts of national and international cooperation implemented by INTRAC provide an interesting and special study in the field of law and international relations, because INTRAC itself is a financial intelligent unit newly established in Indonesia.

B. Prevention and Eradication of Money Laundering

1. INTRAC as a Financial Intelligent Unit

INTRAC is an independent institution established pursuant to Law No. 15

² UNTOC was ratified by Indonesia with Law No. 5 2009 about the Ratification of United Nation Convention Againsts Transnational Organized Crime. State Gazette of Republic of Indonesia Year 2009 Number, Additional State Gazette Number 4960;

³ Known as the paradigm of “follow the money”, which is pursuing a strategy of take, the proceeds of crime so that offenders can not develop and expand their crimes. See Yunus Husein, 2008, *Negeri Sang Pencucian Uang*, Pustaka Juanda Tiga Lima, Jakarta, p. 62.

of 2002⁴ as amended by Law No. 25 of 2003⁵ (hereinafter referred to as “Money Laundering Law”). The head of INTRAC is appointed by the President and responsible to the President. Although it is possible for the Money Laundering Law, INTRAC has no branches or representatives in the region. INTRAC is headquartered in Jakarta and does not have branches abroad.

As the Financial Intelligent Unit (FIU)⁶, the task of INTRAC is simply to receive information or reports, conduct analysis and provide the results to law enforcement agencies. As the FIU, INTRAC has a strategic role in coordinating efforts to prevent and combat money laundering. It provides the financial information needed to expand the scope or range of law enforcement against the perpetrators. Through financial information, the main perpetrators can be identified and pursued by police through conventional approaches.

INTRAC can be viewed, in fact, as FIU Plus. As pursuant to Articles 26 and 27 of the Money Laundering Law, INTRAC has additional duties, in the passing of legislation (guidelines) for CHD, compliance audit with CHD and providing recommendations to the government.

At this time, the existence of the FIU provides to domestic law enforcement, and also provides convenience and speed in the coordination and cooperation to fight transnational crime. In the first instance, the existence of an FIU in a country of is started from international consensus on institution supervising the financial transactions of various facilities in the financial industry and the need for easier and faster cooperation and coordination between countries in handling money laundering. The need for easy and fast cooperation is necessary, as the use of financial transaction facilities from the various financial service providers also.

⁴ State Gazette of Republic of Indonesia, 2002, Number 30, Additional State Gazette No 4191.

⁵ State Gazette of Republic of Indonesia, 2003, Number 108, Additional State Gazette No 4324.

⁶ According to the Egmont Group (1996), a Financial Intelligent Unit is a central, national agency responsible for receiving (and, as permitted requesting), analyzing, and disseminating to the competent authorities, disclosures of financial information (i) concerning suspected proceeds of crime, or (ii) required by national legislation or regulation, in order to counter money laundering. See Egmont Group, “Information Paper on Financial Intelligent Units and The Egmont Group” accessible on http://www.oecd.org/fatf/pdf/EGinfoweb_en.pdf

2. Anti-Money Laundering Regime

The Money Laundering Law did not only establish INTRAC as an institution, but also provides scope, authority and mechanism in respect financial service providers, financial industry regulators, law enforcement agencies, and other relevant parties.

The effort to eradicate money laundering is the ability of the obligation for financial service providers to detect and file Unusual Transaction Reports (UTR)⁷ and Financial Cash Transaction Report (FCTR)⁸. In this respect, CHD works as the front liner. A report is then given to INTRAC for analysis and value-add⁹ and then transmitted in the form of an Analysis Results Report (ARR) to law enforcement officers such as police, prosecutors and the Corruption Eradication Commission (CEC) for investigation, investigation and prosecution at trial.

In addition to the mechanism of statements of financial service providers (known as bottom-up mechanism), there is also the known mechanism the initiative of law enforcement agencies (known as top-down mechanism) such as police, prosecutors, or the Commission. Those agencies may request financial information INTRAC to complete evidence dossiers for these cases. INTRAC will affect also financial scanning of the financial service providers or exchanging of information with various countries through FIU and then submit the results to the law enforcement agencies.

C. Form And Content Of Cooperation

a. Legal Standing

Article 25 (3) of the Money Laundering Law states that in the prevention and eradication of money laundering, INTRAC can engage in cooperation with both national and international parties. In addition, Article 26 (d) also creates opportunities for cooperation between countries in the form of providing ad-

⁷ An Unusual Transaction (Article 1 Number 6 of Money Laundering Law) such as:1. deviates from the profile, characteristics or customer transaction patterns;2. aims to avoid reporting the transaction; 3. done / allegedly done by using the property derived from criminal acts.

⁸ Cash financial transaction to be reported on those cash of Rp.500,000,000.00 (five hundred million rupiah) or more (or an equivalent amount in (foreign currency)), conducted either in one transaction or in several transactions within 1 (one) business day. These transactions include a transaction receipt, withdrawal, deposit, whether that is in cash or other payment instruments, such as traveler checks and checks.

vice and assistance to relevant authorities concerning the information obtained by INTRAC. Furthermore, in Article 26 (f), INTRAC is tasked with giving recommendations to the Government regarding measures for the prevention and eradication of money laundering.

The implementation of such cooperation is continued in Presidential Decree No. 82 of 2003 on the Implementation Procedures of the Financial Transaction Reports and Analysis Centre and through the signing of the Memoranda of Understanding between INTRAC and other relevant agencies or with foreign partners.

Article 9 of Presidential Decree No. 82 of 2003 elaborates on the provisions of Article 25 (3) of the Money Laundering Law, by mentioning that the INTRAC can engage in cooperation with both national and international relevant parties in bilateral and multilateral forums. Such cooperation may involve a written agreements, information exchange, technical assistance, and / or education and training. The Money Laundering Law and Presidential Decree No. 82 of 2003 mention that INTRAC not only has the broad authority to cooperate in order to prevent and combat money laundering, it also specifies cooperation with law enforcement agencies and prosecutors (Article 26 (g)).

The cooperation in the national sphere conducted by INTRAC with the relevant authorities could not be separated from efforts of INTRAC to make the prevention and eradication of money laundering and other original crime or predicate offence more effective. In accordance with article 2 of Money Laundering Law, predicate offence of the Money Laundering consists of 24 original crimes and other criminal acts punishable by imprisonment of 4 years or more.

An illustration of INTRAC cooperation with the Corruption Eradication Commission (CEC), is that carried out. Article 31 of Money Laundering Law, INTRAC is obligated to submit the results of analysis of financial transactions to an investigator. If the results and analysis of the investigation indicate corrup-

⁹ Other sources of value added information include: (i) Reports of cash amount brought into or taken out of Indonesia from the Director General of Customs and Excise; (ii) access to the information requested from financial service providers or through compliance audits of financial service providers; (iii) information from law enforcement agencies and other strategic institutions in the country; (iv) information from foreign FIU's; and (v) information from the media and the public.

¹⁰ State Gazette of Republic of Indonesia, 2002 Number 137, Additional State Gazette Number 4250.

tion, INTRAC hand over to specialist corruption investigator. In accordance with Law No. 30 of 2002 the matter Corruption Eradication Commission¹⁰, the CEC has the power coordinate, supervise, enforce, prevent and monitor efforts to eradicate corruption.

b. Form of Cooperation

There are several types of instruments adopted to facilitate international cooperation in eradicating crime. These include Memoranda of Understanding on Information Exchange, Mutual Legal Assistance, Extradition Treaties, and Transfers of Sentenced Persons.

There are differences between the forms of cooperation under Memoranda of Understanding on Information Exchange, the object of cooperation or exchange is the information in the investigations or criminal investigations. With regard to Mutual Legal Assistance the scope of cooperation covers the investigation stage, examination trial court decision. An extradition treaty, on the other hand, focuses more on efforts to arrest a suspect or defendant who is in the jurisdiction of another country. To Transfers of Sentenced Persons cover the transfer of people who are already serving prison sentence in a foreign country to their home country to continue to serve the rest of the sentence.

Cooperation between INTRAC and foreign FIU is based on good relations, reciprocity, Memorandum of Understanding (MOU) and exchange of Letters. Meanwhile, the cooperation with domestic institutions is facilitates through the use of the MOU's. Reciprocity is a principle in international affairs which forms the ideal basis for cooperation and wishes as a mutual exchange of benefits or treatment between countries, states, companies, or individuals; the granting of a privilege on condition that a comparable privilege is returned¹¹.

According to Scholl¹², reciprocity is a sense of gratitude the foundation of normative commitment. Existence is usually recognized as a result of reciprocal

¹¹ William Statsky, 1986, *Legal Thesaurus/Dictionary*, Web Publishing Company, United States.

¹² See Richard W. Scholl, "Organizational Commitment", the article can be accessed on <http://www.uri.edu/research/lrc/scholl/webnotes/Commitment.htm>

interactions between people. People should help those who helped them and should not harm those who helped them.

Cooperation based on reciprocity does not require any underlying document. Cooperation based on reciprocity is usually carried out by each Financial Intelligent Unit (FIU) in particular that are members of the Egmont Group, the umbrella organization of FIU¹³

According to Law No. 37 of 1999 on Foreign Relations¹⁴, an international agreement can take in various forms international agreement, including the Convention, MOU, exchange of letters and others. Law No. 37 / 1999 provide an International Agreement is an agreement in various forms and titles, governed by international law and made in writing by the Government of Indonesia and one or more countries, international organizations or other subjects of international law which also creates rights and obligations under public law to the Government Republic of Indonesia (Article 1 (3)).

Almost all of the cooperation involving by INTRAC has occurred through MOU. Cooperation through an exchange of letters with Hong Kong has been facilitated. The signing an MOU needs authorization¹⁵ from the Ministry of Foreign Affairs. The MOU making mechanism does not fully follow the mechanism in Law No. 24 of 2000 on the International Treaty. It is because the MOU between FIU has its own standard that has been used by many countries.

c. Content of Cooperation

In accordance with the provisions of Article 25 (3) of the Money Laundering Law and its elucidation, the cooperation between INTRAC and relevant agencies may consist of exchanging information, staff and joint training. Coop-

¹³ The Egmont Group organization was formed in 1995, Brussel, Belgium. Its name defined Egmont De Arenberg, Ministry of Foreign Affairs of Belgium. At June 2009, the Egmont Group which its secretariat is based in Toronto, Canada, has 113 countries members

¹⁴ State Gazette of the Republic of Indonesia, 2002 Number 137, Additional State Gazette Number 3882

¹⁵ Full Powers means a letter issued by the President or the Minister who authorizes person or persons representing the Government of the Republic of Indonesia for the purpose of signing or accepting treaty documents, expressing the States' consent to be bound by the treaties, and/or accomplishing any other matter required in concluding the treaty (Article 1 letter c of Law Number 24 Year 2000 on Treaty).

eration can also occur in order to give advice and assistance to authorized institutions on information obtained by INTRAC (Article 26 (d) of the Money Laundering Law) as well as to provide recommendations to the government regarding efforts to prevent and eradicate money laundering (Article 26 (f) Money Laundering Law).

The scope of cooperation is adjusted to the limit of authority possessed by each institution. In this matter, the scopes of cooperation are distinguished according to limit the authority of the cooperative institutions by INTRAC in accordance with regulations.

Cooperation between INTRAC and the relevant institutions covers:

1. Cooperation with law enforcement agencies: the Police Department and the public prosecutor's office;
2. Cooperation with those bodies supervising the financial service industry, such as Bank Indonesia and the Capital Market Supervisory Agency and Financial Institutions (Bapepam-LK);
3. Cooperation with agencies who have the authority to investigate money laundering such as the Directorate General of Customs, the Directorate General of Taxes, Ministry of Forestry, and the Corruption Eradication Commission; and
4. Other institutions, such as research institutions, non-governmental organizations (NGOs) and universities.

INTRAC cooperation with the law enforcement agencies is carried out in order to perform the duties and authorities set forth by the Money Laundering Law in accordance with prevailing laws and regulations. In this regard, the cooperation is related to the investigation, and prosecution of money laundering cases. According to Article 26 (g) of Money Laundering Law, Police and Public Prosecutors are entitled to receive INTRAC analysis report.

Article 10 of Presidential Decree Number 8 of 2003 states that the scope of cooperation between the Police Department and INTRAC includes:

- a. analysis of financial transactions reports received by INTRAC;
- b. providing and requesting information in order to investigate money laundering;
- c. education and training; and
- d. other matters determined jointly by INTRAC and the Police Department.

Article 11 of Presidential Decree Number 82 of 2003 specifies the scope of cooperation between the Public Prosecutors and INTRAC shall include:

- a. requesting information in order to analyze the financial transactions reports received by INTRAC;
- b. providing and requesting information in order to prosecute;
- c. providing and requesting information about the execution of court decisions on money laundering cases;
- d. education and training; and
- e. other matters determined jointly by INTRAC and the Public Prosecutor's office.

Besides the aforementioned cooperation, the MOU between INTRAC and the Police Department and the Public Prosecutor also includes the assignment of public prosecutors and police officials to INTRAC if INTRAC so request. To increase the effectiveness of cooperation, each agency shall appoint liaison officers.

Meanwhile, cooperation with Bank Indonesia and Bapepam-LK is as financial services providers are parties must submit UTR and FCTR to INTRAC, proper coordination with both supervisory agencies of financial service providers is needed in order to improve the effectiveness of the implementation of Money Laundering Law. The scope of cooperation includes, the formulation of regulations, monitoring, information exchange and staff assignments in accordance with the duties and authority of each agency.

Cooperation with agencies that have investigation power has already been discussed Corruption Eradication Commission. Cooperation in this regard only includes information exchange related to the implementation of the duties and the authority of each agency.

Cooperation with other institutions, such as research institutions, non-governmental organizations (LSM) and universities, focuses on range of scientific research which relates to the prevention and eradication of money laundering as well as the socialization of anti-money laundering regime. INTRAC also provides substantial opportunities to those institutions to provide to INTRAC. In this respect, the exchange of information is arbitrary, INTRAC only receive information is one way and not-reciprocal.

Cooperation between INTRAC and other related institutions can also be seen as a means to prevent money laundering. In this respect, cooperation can

strengthen systems which are capable to prevent money laundering. For example is fixing government systems which result in corruption, including, efforts to fix the government's budgeting system. And there is helping to make the interns supervision more effective, such as by helping the work of the Inspector General in government departments. Prevention also includes efforts to aid the government's internal auditor (such as Board of Supervisors Finance and Development and external auditor such as Badan Pemeriksa Keuangan) in carrying out their duties.

INTRAC also cooperates with the Bank of Indonesia and Capital Market Supervisory Agency and Financial Institution (Bapepam-LK). This cooperation relate not only to the exchange of information, but also to the exchange of staff, the audit of obedience scale towards Penyedia Jasa Keuangan (PJK) and PJK management especially *Know Your Customer* principles.

FIU agreements with other countries usually use the standard agreement made by Egmont Group¹⁶, an *umbrella organisation* for FIUs.¹⁷ According to *the Statement of Purpose* of the Egmont Group¹⁸, FIUs which participate in Egmont Group are dedicated to support mutual cooperation for the purpose of fighting money laundering and terrorism funding.

In explaining the plan of creating an efficient and effective cooperation, the Egmont Group objectives are:

- a. focusing on communication among members, exchanging information and training;
- b. providing a forum for FIU's worldwide to increase support for each government in an attempt to fight money laundering, terrorism funding and other white collar crimes;
- c. widening and systemizing international cooperation in the form of exchanging intelligent financial information;
- d. increasing the effectiveness of FIU's by offering training and personnel exchanges in order to increase their skills;
- e. widening the exchange of financial intelligent information, increasing the skills

¹⁶ Profile and information about Egmont Group can be seen in www.egmontgroup.org

¹⁷ The Generic name of INTRAC is Financial Intelligent Unit or FIU. The main duty of is to receive information, doing analysis and distribute it to the law officer. INTRAC is a plus FIU because INTRAC has additional job such as creating the regulation in a guidance form for the Banking Industry, doing audit, helping or giving recommendation to the Government.

and capabilities of the FIU's personel, and helping to develop better and safer communication among FIU's through the application of technology, for example, through the development and using of the *Egmont Secure Web* (ESW) application; and

- f. promoting the establishment of FIU's in jurisdictions which do not have programs or are in an early development phase of anti-money laundering programs and the prevention of national terrorism funding.

The cooperation program of exchanging information between FIU's was agreed in the document of *Principles of Information Exchange Between Financial Intelligence Units*¹⁹. Those principles state that international cooperation between FIU's must be based on mutual trust. In this matter FIU's in each country must be able to exchange information freely based on the principle of reciprocity and also based on the mutual agreement among FIU's consistent with the procedure or rules when asking or sharing information. Besides demand based exchange of information such exchange can occur spontaneously. In general the exchange of information between FIUs can be described as follows:

- a. FIU asks for information must give a reason and a purpose for such information. In this regard, exchanging information between FIU's can only be done for the purposes of implementing the law.
- b. An FIU that asks for information can not give the information obtained to a third party, and can not use the information for administrative purposes, investigation, suing, and in court without first having obtained a consent from the FIU who provide the information;
- c. Besides the foregoing, all the information given by between FIU's one to another has to be supervised and secured directly in using them until the authority is convinced that the information was used properly.
- d. Period of time of the Cooperation

The period of time for cooperation between FIU's will be specified in the MoU typically the terms is "evergreen" and its term shall be evaluated if needed.

¹⁸ See IMF&World Bank Group, 2004, Financial Intelligent Unit An Overview, IMF&World Bank Group, Washington DC, p. 96;

¹⁹ Ibid, p. 110.

²⁰ INTRAC statistics update accessible in <http://www.ppatk.go.id>

D. The Implementation of the Cooperation

In order to facilitate cooperation, as at September 2009 INTRAC has cooperation arrangements in the form of MOUs with 31 domestic institutions and with 31 FIU's from other countries. INTRAC cooperates under MOU with the following domestic institutions:

1. Bank of Indonesia (BI)
2. Capital Market Supervisory Agency-Financial Institutions (Bapepam – LK)
3. Directorate General of Taxes
4. Directorate General of Customs and Excise
5. Police Department of Republic of Indonesia
6. Prosecutorial of Republic of Indonesia
7. Corruption Eradication Commission (KPK)
8. Forestry Department
9. Center for International Forestry Research (CIFOR)
10. Badan Pemeriksa Keuangan (BPK)
11. Inspectorate General of the Department of Finance
12. Judicial Commission
13. Directorate General of General Legal Administration of the Department of Law and Human Rights (Ditjen AHU Depkumham)
14. Directorate General of Immigration Department of Justice and Human Rights (Ditjen Imigrasi Depkumham)
15. Audit Agency and Development (BPKP)
16. National Narcotics Agency (BNN)
17. Regional Government of Nangro Aceh Darussalam (NAD)
18. University of Surabaya (Ubaya)
19. Perbanas Economic College (STIE Perbanas)
20. University of Gadjah Mada (UGM)
21. Supervisory Election Board (Bawaslu)
22. Commodity Futures Trading Supervisory Agency (Bappebti)
23. Soedirman University (Unsoed)
24. National Land Agency (BPN)
25. Andalas University (Unand)
26. Directorate General of Post and Telecommunications (Ditjen Postel)
27. Hasanuddin University (Unhas)
28. Bandung Technology Institute (ITB)
29. Diponegoro University (Undip)

30. Deposit Institutions Insurance Corporation (LPS)
31. University of Muhammadiyah Surakarta (UMS)

E. INTRAC cooperations under MOU's with the following FIU:

1. FIU Thailand 2. FIU Malaysia 3. FIU South Korea 4. FIU Australia 5. FIU Philippines 6. FIU Rumania 7. FIU Italia 8. FIU Belgium 9. FIU Spain 10. FIU Poland 11. FIU Peru 12. FIU China 13. FIU Mexico 14. FIU Canada 15. FIU Myanmar 16. FIU South Africa 17. FIU Cayman Island 18. FIU Japan 19. FIU Bermuda 20. FIU Mauritius 21. FIU New Zealand 22. FIU Turkey 23. FIU Finland 24. FIU Georgia 25. FIU Croatia 26. FIU Moldova 27. FIU USA 28. FIU Brunei Darussalam 29. FIU Bangladesh 30. FIU Senegal 31. FIU Srilanka

Based on the exchange of information and as a continuation of the reports sent by the banking industry, at October 2009²⁰, INTRAC has brought a total of 1052 cases to law enforcement agencies, 971 cases to the Police Department, and 81 cases to the public prosecutor's office. Many of the cases involved corruption (as many as 420 cases) and bribery (as many as 336 cases).

Beside the providing analysis reports, INTRAC also receives information from the national law authority and exchanges information with FIU's from other countries. As at Oktober 2009 INTRAC had received 884 requests to the reports. The biggest request came from the Police Department with 511 requests, then KPK with 240 requests, Public prosecutor's office with 66 requests and the other 67 requests. The exchange of information with foreign party occurred 321 times.

In strengthening the exchange of information, many activities such as training and socialization, coordination of cases, and joint investigation of cases were have been carried out. Beside that towards cases which have significant impact to the State financial, a task force or coordination team would be made to investigate the case.

Aside from the exchange of information, cooperation in the form of staff exchanges occurred by INTRAC receiving staff from the Police Department, the public prosecutor's office, the Human Rights and Law Department, the Department of Communication and Information, Finance Ministry, the Capital Market Supervisory Agency-Financial Institutions (Bapepam-LK), the State Audit Board (BPK), the Ministry of Administrative Reform (Minister), Bandung

Institute of Technology. The existence of these secondees not only helps INTRAC in performing its role but also strengthens the coordination amongst with INTRAC partners.

Cooperation with the financial services industry regulators has been done progressively through the exchange of information, PJK audit, and the provision of information in order to monitor law breakers. The establishment of rules which bind the financial service industry in order to support the prevention and eradication of money laundering crimes has also been facilitated through cooperation. Such rules are:

- a. Bank Indonesia Regulation No: 11/28/PBI/2009 dated July 1, 2009 on the Implementation of the Anti-Money Laundering Program and the Prevention of Terrorism Funding of Commercial Banks.
- b. Ministry of Finance Regulation No. 74/PMK.012/2006 dated August 31, 2006 on Implementation Guidelines for Non Bank Financial Institutions know your customer principles and;
- c. Decision of Head of Capital Market Supervisory Agency and Financial Institution No. KEP-313/BL/2007 dated August 28, 2007 on Know Your Customer Principles for Financial Service Providers in the field of Investment (known as Regulation VD10).

Aside from the implementation of cooperation based on an MOU, the coordination amongst related institutions is carried out through the Coordination Committee for the Prevention and Eradication of Money Laundering (Komite TPPU). This committee led by the Coordinating Minister for Political, Legal and Security Affairs, Deputy Chairman of the Coordinating Minister for Economic Affairs and the Secretary of the Head of INTRAC, Committee members also comprise of the Minister for Foreign Affairs, Minister of Law and Human Rights, the Minister of Finance, Head of Indonesian National Police, Public Prosecutor General of the Republic of Indonesia, Head of State Intelligence Agency and the Governor of Bank Indonesia.

Komite TPPU has a duty to coordinate and evaluate the efforts of preventing and eradicating money laundering and terrorism fundin and to report a development and give recommendations to the President about additional plans to prevent and eradicate money laundering and terrorism funding. Komite TPPU was formed by the President under Presidential Decree No.1/ 2004. The implementation of coordination and cooperation through this committee has gave a lot of positive impact in strengthening and implementing the National Strategy

of Preventing and Eradicating Money Laundering also in facing the review of international institution toward the Anti-Money Laundering regime in Indonesia.

E. Closing

Anti-Money Laundering regime was established with and relies on components. Cooperation and the effective implementation of the regime needs to be supported with concrete acts from all interested parties. In this regard, each Indonesia's exponent is part of a bigger machine and if one part of the machine can not do its functions and duties effectively, then it could exposes loophole for money laundering criminals to commit, to develop and to widen their crimes.

The cooperation facilitated by INTRAC is not only generated from the explicit or implicit framework regulations, but is bolstered by MOU's to ensure get the same perspective and level of involvement among related parties.

In the future, it is expected that this kind of cooperation will intensify, especially in relation to processing the analysis results given by INTRAC to law enforcement authorities. However it must be remembered what are the minimum requirements to reach the success of cooperation among law authorities. In carrying out effective cooperation; *firstly*, we need trust, this means no suspicious between those cooperating parties; *secondly*, communication between the parties has to be reciprocal. This way the transfer of information will be complete; *thirdly*, support each other. That is, helping to achieve the purpose of the cooperation. Meanwhile, on other aspect that is also important is the spirit and commitment for the same mission. The need for cooperation among institutions, is a logical consequence to achieve a consistent approach to implementing law and order.

When compared to a soccer team, INTRAC is the manager. But it needs coordination for all constituent institutions to give quality information (ball) to the strikers. (*)

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Production Sharing Contract: Is It Within Private or Public Domain?¹

Achmad Zen Umar Purba²

Investment is always requires government attention including on the oil sector. Production Sharing Contract (PSC) is an agreement constitutes the regime of utilizing the interest of state is constitutionally used to the greatest possible extent for the prosperity of the people. PSC is part of Foreign Direct Investment (FDI) since it involves the private equity of foreign investors. Thus, PSC in one hand is a private contract and it belongs to the private domain, in the other hand, state as the owner of natural resources is act as a party in this business transaction. This paper discusses Production Sharing Contract, whether it is in private or public domain.

Keywords: *Production Sharing Contract, Cost Recovery, Contract Law*

I. Introduction

It is interesting to note the statement made by the new appointed Minister of Energy and Mineral Resources, Dr. Darwin Zahedy Saleh, claiming that there should be no capping of operational cost recovery (hereinafter abbreviated “CR”). In his words, “such capping is causing concern, as it would hamper investment”³. The Minister’s statement needs to be observed carefully, as the direction of the discourse on CR in the natural oil and gas mining sector which continues to attract a lot of attention is apparently due to take a reversed course. As stated by the Minister, now the focus of attention is on the security of investment flow.⁴ Certain circles within the House of Representatives (“DPR”) have been voicing the opinion for a long time that CR should be capped. In the meantime, the Indonesia Petroleum Association (“IPA”) has been warning against including the CR in the State Revenues and Expenditures Budget.

¹ Expanded from the author’s seminar notes delivered at the seminar: The Energy Law Forum organized by Bimasena & Forum Hukum Energi, Jakarta, 26 May 2009.

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³ Antara, 2 December 2009.