



THE OFFENSE RELATING TO EXCISE TAX EVASION AS  
PREDICATE OFFENSE IN ANTI-MONEY LAUNDERING LAW:  
A CASE STUDY OF OIL SMUGGLING

BY  
MR. PANITHAN KURSAKUL

AN INDEPENDENT STUDY PAPER SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF MASTER OF LAWS  
(BUSINESS LAW)

GRADUATE SCHOOL OF LAW  
ASSUMPTION UNIVERSITY

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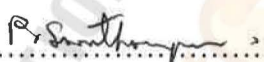
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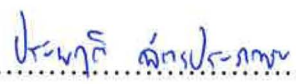
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### ABSTRACT

The main objective of this research is to study about current laws enforcing with Oil Smuggling and problems of current laws in comparison with international laws and to find the measures in prevention and suppression of Oil Smuggling offense. Due to the fact that the government loses huge amounts of revenue from this crime per year, the government loses revenue in oil tax collection more than other taxes, especially the excise tax. Oil tax can be used for developing country in many ways. Moreover, this problem is still ongoing proceed and difficult to stop because an illicit oil can make huge amounts of money for criminal network. Oil smuggling is an important problem that Thailand should concern seriously. A motive of this offense comes from a burden in oil taxation or oil fund which oil trader must take this burden. Moreover, Thailand has very long coast which an offender can use this opportunity to smuggle oil. Additionally, the difference of oil prices between Thailand and neighboring countries is one of the reasons.

It was found that one of the causes in this problem is the law that uses to enforce with this problem such as the Excise Tax Act B.E. 2527 is not efficient enough. There are no any provisions in this Act that can deal with property or money related to the commission of oil smuggling. Therefore, if people who commit the crime get caught by the excise's officer, they just pay for the fine and receive their oil back which can resell and get the money. Additionally, the Anti-Money Laundering Act that enforces against dirty money received from a commission of an offense has less predicate offenses, this Act does not cover some serious offenses. Hence, for the

money which came from such crimes, an offender can use this money to funding other crimes.

The suggestion in this research is the offense about an excise tax evasion in case of oil smuggling should be designated as one of the predicate offenses under the Anti-Money Laundering Act to bring measures under the Anti-Money Laundering Act to use against the oil smuggling offense. The main principle of this Act is to deal with properties relating to an offense by seizure or make it get vested in the state depending on the case. The most important reason is to block the money received from oil smuggling and will use for funding other crimes. There are measures to take person in aiding, abetting, attempting to commit, and conspiracy as guilty such as an offender. Countries such as the United States and Australia also have an offense about the excise tax evasion including in their Anti-Money Laundering law. Hence, Thailand should use these countries as a model in amendment of the Anti-Money Laundering Act.



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# Chapter 1

## Introduction

### 1.1 Background and General Statement of the Problem

Nowadays, Thailand is a developing country that has necessity to use a lot of energy, especially fuel oil which must be imported from abroad that can be used in a way of energy for industry production, agro-industry production, electricity production, transportation, —telecommunication, or importation and exportation. As the very high demand of fuel consumption in each year and the higher price of fuel these cause illegal business in importing fuel from abroad into Thailand and evading fuel tax payment in many ways to smuggle fuel for production cost saving and this illegal business can make unbelievable profit from tax evasion to people in this business. The mentioned illegal business is called “Oil Smuggling”.

Oil smuggling or illegal oil is the oil that is not brought into the legal process of taxation according to the laws such as Excise Tax, Municipal Tax and Value Added Tax (VAT). These taxes shall be sent to Oil Fund that costs more money per liter. A smuggler-tries to find all kinds of ways to evade these taxes to reduce their cost and this reason is the motivation of smuggler to import oil illegally. This can say that it is a “low capital high profit business”<sup>1</sup>

It is generally known that Oil is the most important thing to develop national economy and society. Additionally, it encourages employment and spreads income to people in the country. Moreover, the most significant thing is Oil produces massive revenue to government.

Previously, the Excise Department was able to levy taxes from oil and oil products more than ten to one hundred billion Baht per year and it was the top rank of all taxes collecting from goods and services<sup>2</sup> (in the latest year 2011-2012, Oil Tax

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<sup>1</sup> Energy Policy and Planning Office, “What is oil smuggling,” at [www.eppo.go.th/petrol/docs/script01.doc](http://www.eppo.go.th/petrol/docs/script01.doc), (last visited 10 November 2013).

<sup>2</sup> Energy Policy and Planning Office, “Harmful of oil smuggling,” at [www.eppo.go.th/petrol/docs/script02.doc](http://www.eppo.go.th/petrol/docs/script02.doc), (last visited 10 November 2013).

was lower than the past because the government decreases Diesel Tax due to flooding disaster in late 2011)<sup>3</sup> and the rate of oil taxes tends to be increasing every year because the amount of oil consumption has been increasing in consistent with the continuous expansion of economy. Each year the revenue from oil taxation, which is more than ten billion Baht, shall be allocated to annual financial statements of the government expenditure and use for developing country in many areas such as education, transportation, public welfare, defense of the country and national peace, and it is also used for making a better quality of life for people. Hence, if Thailand has no powerful law enforcement and punishment for Oil Smuggling Offense, the government will lose huge amounts of tax revenue and it is the obstacle to country's development.

Oil Smuggling problem began to widespread between Year 1986 – 1987 but it had not been generally well-known. At first, it happened by the assembly of fish market owners at Paknam, Samutprakarn after the government announced floating oil price policy in 1991. This policy caused the most terrible Oil Smuggling problem by spreading to all regions in Thailand which there are fisheries in the part of territory connecting to the sea and. This situation causes setting many specific organizations to control and vanquish oil smuggling problem by the government.<sup>4</sup> After setting specific organization, an oil smuggling process had been changed by having various complicated procedures such as fund raising, using the power of influential person or politician and having a complicated network that is hard to control. The important thing of this business is it has an immense interests involving with this problem.

At present, the transportation used in Oil Smuggling has two main ways which are transportation by land and by sea.

By Land: Smugglers modify a pickup truck to set up Oil storage tank which have three patterns: 1. Set up 2000-3000 liters of oil storage tank on pickup truck. 2. Modify oil storage tank below a car or in the gap of a car body that can carry oil for 1200-1500 liters depending on type of cars and the proficiency of garage that modifies a car. More than 1,500 cars that have been modified by this method are in the Southern part of Thailand such as Songkhla, Stool. 3. For the 3<sup>rd</sup> pattern, smugglers use the

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<sup>3</sup> Annual Report 2012 The Excise Department

<sup>4</sup> Energy Policy and Planning Office

original 20-40 liters Oil storage tank going to buy oil from Malaysia and transfer into the bigger tank by going in and out of Malaysia many times per day.

By Sea: There are oil tankers from Malaysia and Singapore in the way of joint owning business between businessman or politician in Thailand and businessman in Malaysia or Singapore. An oil tanker will stop on the high seas and then a fishing boat that is modified to become a transfer ship will bring an oil into coast of Thailand. There are about 200 modified boats in Pattanee, Songkhla, Nakhon Si Thammarat and Surat Thani which are the coastal provinces located in the Gulf of Thailand.

The area that the most Oil Smuggling transfer occurs is around the coast of Songkhla-to Nakhon Si Thammarat, but the place that the most Oil Smuggling transfer occurs is a private harbor where illegal oil are firstly transported to this place and then a truck that can carry oil for 15,000 liters per truck will transport these oils and sell to gas station all over Southern parts of Thailand.<sup>5</sup>

Moreover, there are other oil crimes in different actions which are as follows:

1. Make false documents about oil export for tax refund fraud.
2. Use hydrocarbon solution (Solvent) or petroleum product which gets tax refund or tax exemption to contaminate with fuel oil.

Recently, there was the case occurring in Prachuab Kirikan. The Customs Department arrested the modified fishing boat smuggling diesel fuel about 100,000 liters and seized property in dispute about ten million Baht. This is not the small business because it is a huge amount of money flowing in this business.<sup>6</sup>

The money arisen from this illegal oil business will shift to capital for supporting- Drug Trafficking in the Southern Thailand.

Nowadays, Oil Smuggling grows rapidly with the negligence or taking bribery of the officer and the law enforcement is not efficient enough to solve this problem.

At present, the governing laws of the Oil Smuggling offense such as Excise law have the insufficient measures to prevent and suppress Oil Smuggling to make smugglers afraid of the laws because the Excise law generally cannot control and stop

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<sup>5</sup> Savek Laohaekarin "disclosure of oil smuggling process" 4 (September 2011), at [http://swinddon.blogspot.com/2011/09/blog-post\\_04.html](http://swinddon.blogspot.com/2011/09/blog-post_04.html), (last visited 25 August 2013).

<sup>6</sup> Petrol news, at <http://www.patrolnews.net/crime/102996.html>, (last visited 25 August 2013).

Oil Smuggling. It is clearly seen that smugglers try in every way to evade tax payment for Excise Tax, Municipal Tax and Value Added Tax which shall send these incomes to Oil Fund to cut costs. Moreover, a profit arising from this illegal business is very high and it can say that high profit is the motivation of people who want to become rich overnight. Hence, there must set up legislative measures to solve this problem efficiently and make smugglers afraid of committing Oil Smuggling Offense. This research aims to study on legislative measures which should amend the current law for more efficiency of law enforcement and for higher revenue of the government from taxation to be used in developing country.

## **1.2 Objective of the Study**

1. To study about method, detail and the offense on excise tax evasion of Oil Smuggling and effects on economy.
2. To study about current laws enforcing with Oil Smuggling and problems of current laws in comparison with international laws.
3. To find the measures in prevention and suppression of Oil Smuggling offense.
4. To suggest the way for amending the Anti-Money Laundering Act by putting an offense about Oil Smuggling which relating to excise tax evasion into one of predicate offense.

## **1.3 Hypothesis of the Study**

The offense relating to Excise Tax evasion is a crime that has big impact to Thailand economy. Government loses revenue from this offense more than billion baht each year. At present, the offense relating to Excise Tax evasion does not specify as a predicate offense in Anti-Money Laundering Act yet.

Oil Smuggling problem is one of the offense relating to Excise Tax evasion. It rapidly increases by the reason of the deficiency in law measures to stop this problem. It is the beginning of other crimes that get funding from the profit of Oil Smuggling processes. The governing laws of Oil Smuggling offense such as Excise Tax are not

efficient enough which people relating to Oil Smuggling process are not afraid of laws. Hence, Thailand must amend the current laws by adding Oil Smuggling offense which related to the Excise Tax evasion into the predicate offenses under the Anti-Money Laundering Act in order to prevent and suppress the Oil Smuggling problem.

## **1.4 Scope of the Study**

This research will try to find the legislative measures to prevent and suppress the Oil Smuggling that presently affects Thailand economy by focusing on Anti-Money Laundering law comparing with foreign Anti-Money Laundering laws which if there are some problems, Thailand should amend this law.

## **1.5 Study Methodology**

The methodology of this research is based on documentary sources, such as books, domestic or international journals and articles relating to Oil Smuggling in Thailand, Thailand Excise Tariff Act B.E. 2527, Thailand Customs Act B.E. 2469. Domestic laws and International laws to compare each other for an adoption, and Internet to get some information that are useful to fulfill this research.

## **1.6 Expectation of the Study**

1. To understand method, detail and the offense on excise tax evasion of Oil Smuggling and effects on economy.
2. To understand how to use current domestic laws and solve the problem of current laws enforcing with Oil Smuggling problem in comparison with international laws.
3. To find the legislative measures to prevent and suppress Oil Smuggling
4. To find the way for amending Anti-Money Laundering Act by putting an offense about Oil Smuggling which relating to excise tax evasion into one of predicate offense.

## **Chapter 2**

# **Development, Concept of the Excise Taxes, Anti-Money Laundering Law, Oil Tax Evasion in Thailand**

### **2.1 General Concept of the Excise Taxes**

Excises or Excise Taxes are an inland tax on the sale, or production for sale, of specific goods or a tax on goods produced for sale, or sold, within a country or licenses for specific activities. Excise Taxes are distinguished from customs duties, which are taxes on importation. Excise Taxes are an inland tax, whereas customs duties are a border tax.<sup>7</sup>

Excise Taxes is considered as an indirect tax, which means that a producer or a seller who pays tax to the government, is expected to raise the price of products paid by a buyer. Excise Taxes are typically imposed in addition to another indirect tax such as Sales tax or Value Added Tax (VAT). Excise Taxes are distinguished from Sales Tax or VAT in three ways: first, Excise Taxes typically apply to a narrower range of products; second, Excise Taxes are typically heavier, accounting for a higher fraction of the retail price of the targeted products; and third, Excise Taxes are typical unit tax, costing a specific amount for a volume or unit of the item purchased, whereas Sales Tax or VAT is an Ad Valorem Tax and proportion to the price of the good. The examples of Excise Taxes are taxation on gasoline and other fuels, and taxation on tobacco and alcohol (sometimes referred to as Sin Tax).

There are four motivations underlying the use of most excise taxes.<sup>8</sup> The first is a revenue generation: excise taxes can produce significant government revenues, and may do so at lower political or economic cost than alternatives such as income taxation. The second motivation is an application of the benefit principle of taxation: excise taxes can be tailored to impose tax burdens on those who benefit from

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<sup>7</sup> “Excise” at <http://www.en.wikipedia.org/wiki/Excise>, (last visited 10 November 2013)

<sup>8</sup> James R. Hines Jr., “Excise Taxes,” (Michigan: University of Michigan and NBER, 2007), p.1.

government services financed by excise taxes. Gasoline taxes are often justified as user fees for government-provided roads, and taxation on sonar devices is justified by government expenditures to maintain lakes and fisheries. The third motivation is a control of externalities, which is the goal of amount of excise taxes on polluting substances, such as taxes on ozone-depleting chemicals. The fourth motivation is that excise taxes may discourage consumption of potentially harmful substances (such as alcohol and tobacco) that individuals might over consume in the absence of taxation.

Excise Taxes can also play a role in discouraging consumption of goods that may not have external effects, but are nonetheless harmful to the individuals who consume such goods. Examples of such goods include tobacco products, alcohol, and food with poor nutritional content. Irrational consumers may begin consuming these items without fully appreciating the regret they will experience in years later. There could be a role for optimal excise taxation to help consumers by making it more expensive, and therefore less likely, to start early on the path of overconsumption.

It is unlike most forms of taxation, excise taxes are not, in their modern form, clearly delimited from other taxes.<sup>9</sup> The traditional British concept of an excise, still accepted in many British Commonwealth countries, was clearly defined as an excise tax was a levy upon production rather than sale, imposed only upon domestic activity and only to commodities, not services, at specific rates, with quantitative control. The modern concept of an excise, however, is substantially broader, especially in non Commonwealth countries. The basic characteristic is application to specified commodities or groups of commodities. The tax may apply to either production or sale, to domestic outputs or to imports as well, with either specific or ad valorem rates, with either physical control (common on alcoholic beverages and tobacco) or accounts control. As with the traditional British concept, there is a definite intent to discriminate against the users of the specified goods. Excise may apply to services as well as commodities, although in many countries selective service taxes are regarded as distinct from excises.

For comparison between Excise Taxes and Sales Taxes, excise taxes are distinguished from sales taxes in being applied to specified goods, with a limited

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<sup>9</sup> John F. Due, Excise Taxes, Policy Research Working Paper (Washington: Policy Research Dissemination Center, 1994), p.1.

overall coverage, whereas typically, but not always, sales taxes apply to all goods except those specified as exempt. In most countries there is a sharp distinction, at law and in practice, between excises and sales taxes, but this distinction is not universal. Thus a very broad excise system, such as that of Japan and the Union government of India, resembles a sales tax, and a sales tax with numerous exemptions and a wide range of rates is similar to the usual excise system. In a few countries levies that are excises by usual definition are designated by law as sales taxes, the states of Nigeria being the prime example.

Most countries impose license taxes on motor vehicles and various forms of economic activity. These are typically annual, constituting a direct charge for a certain privilege, and thus are distinguished from excises. The same is true of stamp duties required on various documents in many countries, airport departure taxes, and other similar levies.

### **2.1.1 Origin of the Excise Taxes<sup>10</sup>**

Excise Taxes were among the relatively early forms of taxation, first developed on a significant scale in Holland, and then introduced in Great Britain and other countries in the 16th and 17th centuries. In developing countries, however, the introduction of excises, though partly influenced by the policies of the colonial powers, occurred primarily when domestic production began of commodities that had been major sources of customs revenue, particularly cigarettes and beer, and subsequently distilled spirits. Essentially the excises were introduced to protect major revenue sources as domestic production replaced importation.

### **2.1.2 History of Collecting the Excise Taxes**

Excise Taxes are one the significant revenues for the country. The collection has been started since the Absolute monarchy system in Sukhothai period<sup>11</sup> and kept developing by the time. For the very first of collecting Excise taxes, it began with some categories of goods such as liquor, opium and tobacco and then has been

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<sup>10</sup> Ibid.,p.2

<sup>11</sup> "History of Taxation in Thailand," at <http://www.rd.go.th/publish/3460.0.html>, (last visited 15 December 2013).

added category of goods until now. Some was repealed for the appropriateness and the change of country. The government had enacted the law to collect tax for each type of goods and to enforce by specific law. For Example, Tobacco Act B.E. 2509, Playing Cards Act B.E. 2486 and Liquor Act B.E.2493

In the past, excise taxes were not so important because the government expense was not too much. The government also received enough money from other sources such as tributes, war reparations, and other properties. Excise taxes were collected in forms of objects, slaves, pets, and ownerships of some businesses. The collection of excise taxes in the past was different from the present because it collected from people who own properties used for their household consumption but not from seller or producer.

However, at present excise taxes are collected from industrial plants that produce goods. Additionally, some goods are required to collect excise taxes because the government needs revenue in order to pay for public services and to develop country. When an industrial expansion increases, the industrial development causes producers to produce goods faster and in higher quantity. Hence, excise taxes are collected more conveniently. By these reasons, excise taxes are popular in many countries and some countries shift collecting taxes from consumers to industrial producers for more convenience and saving more expenses from processes of collection.

### **2.1.3 Types and Characteristics of the Excise Taxes**

Excise Taxes are a tax collected from products that produced in a country and imported products. It is a kind of Consumption Tax which is an indirect tax that payers (sellers) do not have to take direct tax burdens but tax burdens are pushed to consumers. Moreover, Excise Taxes are a tax collected particularly from some types of products and services apart from taxes collected from sale of general products or services. In Thailand, a tax which is collected from general product sales is a Value Added Tax (VAT). Furthermore, -excise taxes which are collected from some types of products and services are deemed as a Selective Sale Tax.<sup>12</sup> In collecting excise taxes,

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<sup>12</sup>Prapas Kong-ied, Excise Tax Law (Bangkok: Nititham, 2542), p. 2-3.

there are general principles of excise taxes collection on goods and services by dividing into four principles as follows:<sup>13</sup>

### **Sumptuary Excise Tax**

Sumptuary Excise Tax is taxation on goods that may cause bad effects on health and public morals. There are two reasons for sumptuary excise taxation as follows:

First, there is an overconsumption of products which lead to bad health of consumers.

Second, a consumption of particular products leads to high social cost. For example, an excessive cigarette smoking causes social several problems other than negative health effects. The state must provide more treatments and social services to the problems.

### **Luxury Excise Tax**

Tax collection from luxury goods is very important for a developing country, this is to constrain the consumption of luxury goods.

The first reason in collecting tax from luxury products is to create equality in society. People with high income usually consume the luxury products or high quality products. Therefore, such high income people should pay more tax than low income people which only consume products that are necessary for their living.

Second reason, luxury excise tax helps promoting economical behavior. People who purchase luxury products shall accept higher tax burdens resulting in less consumption and higher saving that can create prosperity in social.

Last reason is a luxury excise tax also limits a consumption of luxury products by reducing the amount of production. The capacity of production can then be used for the production of other necessary products and services instead. The luxury products have characteristics as follows:

1. Being the products that only high income people can consume. However, this limitation is not always correct. In certain cases, rich people may prefer to purchase general products while poor people purchase luxury products.

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<sup>13</sup> Ibid., p.5-8.

2. Being the products that have flexibility in demand because such products are not necessary for living. However, the flexibility or elasticity of demand is difficult to measure and can be changed over time.

3. Being the products that enhance the prestige of consumers. Consumers can use these products for general purposes, but at the same time, they have a pleasure to show off these special and expensive products to others. For example, we may use a small car to travel around and go nearby cities; but on the other hand, we may buy sport car or the unique car to show off.

4. Being the products that can lack of or can live without. By doing so, there will cause no harm to health and good morals of people. However, the definition in this aspect could mean that the products other than rice, food, clothes and medicine are the luxury products. Nevertheless, it is up to the administrative section and council to decide on which products are subject to taxation. The criteria shall be applied with any cost products.

### **Benefit-Based Excise Taxes**

Sometimes the state gives benefits to some groups of people more than others. Therefore, excise taxes should be collected from people who receive such special benefits. For example, the government believes that when they build roads, people who use car and roads should pay for oil tax. One of the logics falls to the fact that people who often use road are also consuming a huge quantity of oil. This made it easier for oil tax collection in proportion to oil consumption. Many countries spend the revenue from oil tax on road construction only, without spending on other businesses.

### **Miscellaneous Excise Taxes**

For some occasions, the government needs revenue or needs to limit the production of goods for a short period. For example, during the period of World War II, the U.S. government collected miscellaneous excise taxes in woman tights as to reduce the usage of nylon and then government take nylon for the production of parachutes. For another example, sometimes when the government may really need to spend money to relief poverty during a crisis or needs to use for political advantages, the government may impose an excise tax on some types of products to satisfy those needs.

#### 2.1.4 Excise Tax Law in Thailand

There are seven provisions that allow the relevant authority to collect excise taxes directly as follows:<sup>14</sup>

- Excise Tax Act B.E. 2527. It sets the criteria and method to manage excise taxes collection such as setting and identifying groups of people that have duty to pay tax, the responsibility to pay tax base, and discount rate and tax exemption.
- Excise Tariff Act B.E. 2527. It sets the characteristic of products and services as well as the rate of excise taxes.
- Liquor Act B.E. 2493. This law uses for collecting excise taxes on alcohols beverage products.
- Tobacco Act is the law which is used to enforce with taxation on tobacco products.
- Card Act is the law designed to manage and collect excise taxes on card products.
- Allocation of Excise Taxes is the law enforced to support the transportation of products which are produced in Thailand for selling in foreign countries. This is to increase opportunities in the competition of Thai's products in the world market. The government will pay for certain amount at the rates agreed by the product exporters.
- Allocation of Liquor Tax is the law that uses to increase tax imposed on liquor to generate government revenue.

Excise taxes are an indirect tax imposed by the Excise Tax Act and other specific Acts. It is collected on certain commodities regardless of whether the commodities are imported or produced in Thailand. It is imposed on the manufacturer or importer, tax liability is incurred when the goods leave the factory or bonded warehouse, or are imported.

#### **Goods subject to Excise Taxes under the Excise Tariff Act B.E.2527<sup>15</sup>**

Part 1 Oil and Oil products

Part 2 Beverage

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<sup>14</sup> Ibid., p.13.

<sup>15</sup> Excise Tariff Act of B.E. 2527.

Part 3 Electrical Appliances, For example, Air condition, composed of fan driven by motor and contained part for adjusting temperature whether there is moisture control or not.

Part 4 Glasses and Glassware, For example, Chandelier for ceiling or wall excluding lamp for the public along road sides, outdoor and lead crystal and other crystal.

Part 5 Motor Vehicle, For example, Seat cars or Passenger cars.

Part 6 Boats, For example, Yacht and water vehicles used for entertainment

Part 7 Fragrance Product and Cosmetic

Part 8 Other goods, For example, carpets and other textiles for floor, motorcycles, marble and granite, battery, Goods that have an impact on the atmosphere

#### **Services subject to Excise Taxes**

Part 9 Entertainment or Amusement Business, For example, Nightclub, discotheque and Turkish baht

Part 10 Gambling business, For example, Racecourses

Part 11 Businesses that have an effect on environment, such as Golf courses

Part 12 Business permitted from the state or concession from the government, such as Telecommunication

Part 13 Other services as determined by the Royal Decree

### **2.1.5 Offenses relating to Excise Tax Evasion under Section 161 of the Excise Act**

Section 161 of the Excise Tax Act B.E.2527 stated that Whoever;

(1) Possession of goods which knows that it does not pay tax or incomplete tax paid.

Except in the case of industrial operator have in the industry or in a bonded warehouse.

Shall be liable for a fine penalty two times up to ten times of the tax that would be levied. But not less than one hundred baht.

According to Section 161, if the possessor has to be liable for this action, the possessor must know that it is the goods that it does not pay tax or incomplete tax paid. The word “does not pay tax” means the possessor does not file tax return, and the word “incomplete tax paid” means the possessor has filed tax return but does not pay full tax amount. The main point of this element is knowing that such goods did not pay tax or incomplete tax paid. In consideration of such case, there must consider the facts and circumstances of each case.

In case of oil smuggling, smuggler who get arrested while committing an offense must be subject to this section and shall be liable for a fine penalty according to this section. After paying a fine, such smuggler will receive illegal oil back and can sell it again.

## **2.2 Excise Taxes Collection on Oil**

In the past, oil goods or oil products was governed by the Petroleum Product Act B.E.2507 to enforce with oil goods or oil products that made in the kingdom and later on this law had been repealed by the Excise Tax Act B.E.2527

On 10th September 2527, The government declared to use the Excise Tax Act B.E.2527 and repealed the old Petroleum Product Act B.E.2507 to use the Excise Tax Act B.E.2527 and the Excise Tariff Act B.E.2527 for collecting tax from oil and oil products instead of the old law. The reasons to collect the Excise Tax from oil are as follows:

1. Collecting tax for the expense that the government has to provide services or advantages to some groups of people more than other people. Hence, these groups of people must be imposed on excise tax burdens. The principle that were adopted by many countries to collect tax from oil is when the government builds roads, the people that gain profit from these buildings are only the people who have car or motorcycle and use such roads. If there are huge numbers of people who use car and motorcycle, oil consumption will increase. Hence, the government has to collect Excise Tax from oil. This is the easiest and fair way that many countries use this principle. The revenues from oil tax are only used to build roads not for other businesses.

2. Collecting tax to limit consumption, because usage of oil will cause pollution and destroy environment. The amount of pollution depends on number of using oil. People, who do not use car, will get aggrieved from pollution not only oil consumers. Therefore the government has to allocate some revenues to restore the environment and build hospital to treat patient. Moreover, oil is the goods that the government has to use budget more than other goods; for example, if one person uses personal car instead of using bus, there will be more consuming oil. Therefore, the government has to limit the consumption of these luxuries by collecting the Value Added Taxes and promote for saving energy.

For the policy of collecting tax on fuel oil by the purpose to limit consumption, this can give benefit to the government in way of country revenue and limit oil consumption.

The next sub-section is an essence of the Excise Tax Act B.E.2527 relating to oil and oil product.

### **2.2.1 Tax Payer Designation**

If considering Section 7 of the Excise Tax Act B.E.2527 which stipulated that the industrial operator, Entertainment or Amusement Business operator, the commodities importer or other persons specified under this Act as the person having responsibility to pay tax shall be responsible for paying tax according to the ad valorem or specifics of commodities, at the rate prescribed in the law relating to excise tariff as applied during the time of liability to pay tax.<sup>16</sup>

From above mentioned, it can separate a person who has a duty to pay an excise tax according to Section 7 of the Excise Tax Act into 4 types and Section 4 has given the definition as follows:

1. Industrial Operator means owner, manager or a person who is responsible for an operation of industrial plant.
2. Entertainment or Amusement Business Operator means owner, manager or a person who is responsible for an operation of that place.
3. Importer means a person who brings commodities into the Kingdom according to the Customs law.

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<sup>16</sup> Prapas Kong-ied, Excise Tax Law, (Bangkok: Nititham, 2542), p.82.

### 2.2.2 Tax Base of Oil and Oil products

Tax Base means thing that uses as the base in accompany with tax rate for calculation of tax amount. Tax Base for oil and oil products are included in tax base for goods and any goods which the ad valorem and specific excise tariffs prescribed. This shall be burdened to the excise tariff that produces the highest value.

According to the Excise Tax Act, Tax Base can be separated into 2 types as follows:

#### 1. Base on Value (AD VALOREM) according to Section 8

1) In the case of commodities produced in the country, the value shall be based on the ex-factory price including the excise tax that should be paid.

2) In the case of services, the value shall be based upon the income received or deemed to be received for an operation of services including the excise tax that should be paid.

3) In the case of imported commodities, the value shall be based upon the C.I.F. price plus import duty, special fees under the Investment Promotion Law, taxes and other fees specified in the Royal Decree excluding the Value Added Tax specified in Chapter 4 at Title 2 of the Revenue Code including the excise tax that should be paid.

Excise Tax calculation for imported commodities in Summary<sup>17</sup>

Excise Tax =

$\frac{(\text{C.I.F price} + \text{import duty} + \text{BOI fee} + \text{taxes and other fees in Royal Decree}) * \text{tax rate}}{1 - (1.1 * \text{tax rate})}$

#### 2. Base on Quantity (Specific) according to Section 9

The commodities which are based on quantity shall be based upon net weight or quantity except:

1) In the case of food, if it uses liquid for benefit to conserve food, it shall be based on the weight included liquid to calculate tax.

<sup>17</sup> Ibid., p.164.

2) In case of containers and seals for sale, if it shows the quantity of goods, the Director of the Excise Department considers on that quantity.

For the goods like oil and oil products, there must pay tax by using net weight basis and use liter as measurement. (Any fraction of liter is deemed as one liter)

$$\text{Excise Tax} = \text{quantity} * \text{tax rate}$$

### 2.2.3 Tax Rate on Oil and Oil products

Excise Tax Rate on oil and oil products has defined in the Excise Tariff Act as follows:<sup>18</sup>

Benzene = 7.000 Baht/Litre

Diesel with sulphuric content exceeding 0.005 percent by weight = 5.310 Baht/Litre

Diesel with sulphuric content not exceeding 0.005 percent by weight = 0.005 Baht/Litre

Gasohol E10 = 6.300 Baht/Litre

Gasohol E20 = 5.600 Baht/Litre

Gasohol E85 = 1.050 Baht/Litre

(Excise tax rate at July 2014)

## 2.3 History of Oil Smuggling

The beginning of oil smuggling in Thailand started with smuggle oil from abroad into Thailand without customs formality to evade tax payment. This situation happened for long time ago because tax burdens or oil funds take very high cost for people in doing this business. Hence, it is the motivation for smuggler to smuggle oil and in the past the amount of oil productivity is lower than demand of user. Then it needed to import some oils from Singapore. Thailand has very long coast that makes it easy to smuggle oil by Sea and Diesel was the most popular. In 1994, the number of oil user in Thailand had been increasing by 10 percent and at that time the world oil crisis impacted to oil price in Thailand and this is the cause of high number of oil

<sup>18</sup> Excise Tariff Act B.E.2527.

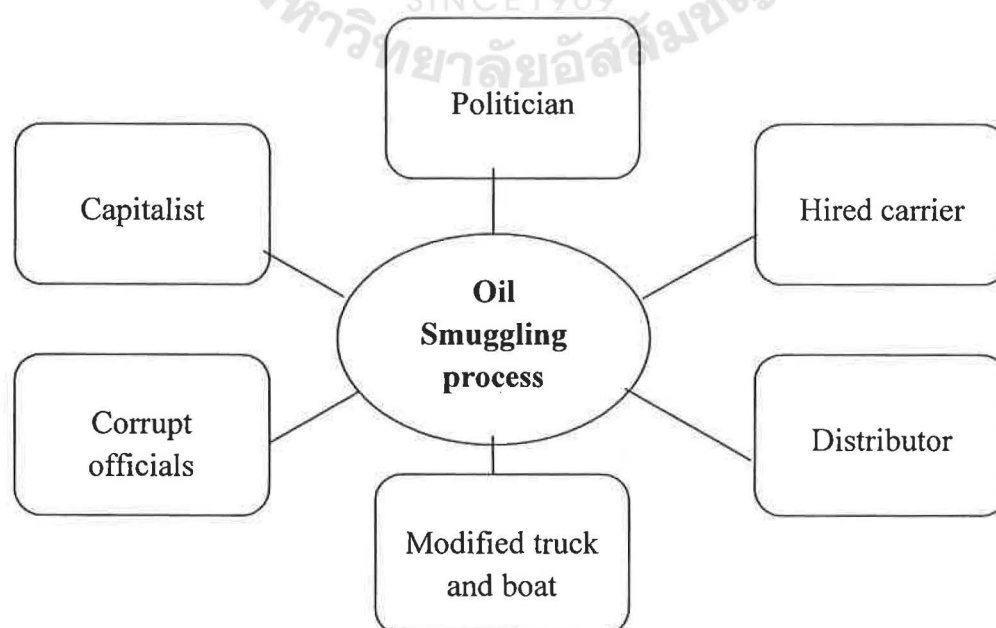
smuggling. The report found out that there are oil smugglings coming into Thailand both by Land and Sea and tax evasion. The government started to deal with this problem seriously and set the measures in prevention and suppression of illegal oil which have made oil smuggling more difficult. In few years later, there had more procedures and forms of illegal oil to avoid suppression.

### 2.3.1 Oil smuggling problem

Oil Smuggling is the offense that the offender committed for a purpose to evading taxes collection. Normally, when person bring oil come into Thailand, this oil must subject to custom duties, excise tax, municipal tax, etc. These taxes are the reason that cause of the high oil price. Hence, oil smuggling can generate huge amount of money to offender and it is the motivation of this crime. In addition the benefit from oil selling will use as fund to other crimes. Benzene and Diesel are almost found in this offense more than other kinds of oil.

The motivation of oil smuggling

1. Price difference between two countries and the benefit gained.
2. Penalties provision of domestic laws that not efficiently enough, the offender does not afraid.
3. The neglect of state sector.
4. Characteristic of landscape which suitable for smuggle oil.



### 2.3.2 Excise Tax Evasion on Oil

The motivation for the Oil smuggling is the difference of oil price between Thailand and the neighboring countries. Thai oil price is higher than Malaysia because of burden of taxes that are very high. Oil that import into Thailand must subject to taxes at least 2-3 kinds of taxes that will increase the price of oil.

Smuggling of oil is often conducted for one or both of two reasons: to avoid excise taxes and to evade rules prohibiting the sale of such oil. Therefore, smuggling can be defined as the evasion of excise taxes on goods by circumvention of border controls.

The definition of smuggling encompasses both illegal activities typically thought of as “smuggling” and tax avoidance activities which are legal and generally not considered “smuggling.” Oil smuggling is deemed as one of tax evasion businesses. Economists generally term illegal circumvention of taxes as tax “evasion”, while legal circumvention is called tax “avoidance.” Both illegal and legal circumvention can affect tax revenues and consumption of the state which incurred with these issues.

Oil smuggling or illegal oil is the oil that is not brought into the legal process of taxation according to the laws such as Excise Tax, Municipal Tax and Value Added Tax (VAT). These taxes shall be sent to Oil Fund that costs more money per liter. A smuggler-tries to find all kinds of ways to evade these taxes to reduce their cost and this reason is the motivation of smuggler-to import oil illegally.

There are different kinds of way that smuggler use to smuggle oil in the present, For examples;

1. Smuggle fuel from abroad without paying taxes

The reason is the neighbors of Thailand, especially Singapore and Malaysia, have lower oil's price in their country than Thailand. Hence, there have been attempts to smuggle oil from these countries into Thailand. The Oil smuggling network has expanded continuously, with both boats and vehicles smuggling fuel into Songkhla, Stool, Narathiwat and other provinces situated nearly to border. Characteristic of landscape of these provinces are suitable for smuggle an oil. There are two ways that oil smuggler uses to smuggle which are by Land and Sea.

## 2. Fraudging an export tax on fuel without real export

Fuel exported out of country has a privilege to get tax exemption or tax refund according to types of petroleum products under the Excise Tax Act B.E.2527. Additionally, the method that is frequently used by smuggler is “misdeclaration” by informing that oil were exported to other countries for getting tax exemption or tax refund, but in fact, such smuggler did not export anything or export for minimum amount or bring such informed fuel back to sell in Thailand.

## 3. Mixing fuel with hydrocarbon solvents

Solvent has a characteristic closely to fuel but its cost is cheaper from getting tax exemption. When mixing with fuel, it can damage an engine by making it deteriorate faster than usual and causes pollution. At present, this method starts to spread widely because the cost of solvent is much cheaper than fuel.

Gasoline and diesel are still the main items being smuggled out across the Malaysia-Thailand border, as their prices in Thailand are almost twice of that in Malaysia.

### 2.3.3 Effect of Oil Smuggling on Economy

Illegal oil business which can make huge money from fraud but causes high negative effect on oil consumption, public security and the country. The government had lost revenue from the Excise Tax, Municipal Tax and Import Duty more than billion per year, if the government can collect it, the government can use this revenue to develop the country for utilities of public in many ways, such as improving quality of life of people, taking care of safety in public life and property, providing a good welfare for people including developing education system. These can help Thailand to develop equally to other countries. It deems oil smuggling causing loss of good opportunity of Thai people and country.

Moreover, illegal oil business is damaging the usual oil trade system in the country because it makes oil trader who trades in good faith lose opportunities in their business and destroys an investment in petroleum business. Additionally, oil smuggling problem also has a direct effect on Thai people and Oil consumers because most of illegal oils have lower quality than general oil, it can cause damage to engine or machine that uses low quality oils and deteriorates machine faster than normal.

Oil smuggling is count as one of the illegal economy. The illegal economy has both positive and negative impacts. On the positive side, illegal businesses are relatively labour intensive and help to generate employment. For example, Oil smuggling has generated employment among former fishermen.<sup>19</sup>

On the negative side, an illegal economy has several distorting effects.

Illegal activities often generate huge profits which are then redeployed in the mainstream economy. Local businesses will get an impact by competitors who have access to large reserves of cheap funds.

Illegal funds are often laundered through legitimate markets such as real estate, stock, and entertainment businesses. Generally, there are channels through the more speculative parts of these markets, and tends to magnify the tendency towards boom and slump.

Despite creating on employment, the net effect of illegal economy is probably bad for income distribution. Gambling in particular transfers money from the poor to the rich - from a mass of often poor punters, to a handful of wealthy entrepreneurs. Drug trafficking also makes money for the rich from an expense of students, youth, workers and vulnerable groups such as prostitutes and slum dwellers.

The illegal economy complicates and undermines the management of economy. The profits are often spent on luxurious consumption or invested speculatively in stock and property markets. These flows may counteract the government policies to control consumption, promote saving, combat inflation, and regulate eccentric movements in speculative markets.

High profits in illegal economy promote a spendthrift consumerist culture and also create social values in favour of risk and speculation for superficial and unreal gains, including tend to erode the work ethic.

In summary, there are two sides of illegal economy such as oil smuggling. Illegal businesses generate employment and income like other businesses. On the other hand, illegal businesses tend to distort resource allocations, damage human resources, undermine government policies and contribute to economic

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<sup>19</sup> Pasuk Phongpaichit "Thailand's Illegal Economy and Public Policy" Seminar paper delivered at the Centre of Southeast Asian Studies, Kyoto University, November 1999.

instability. These negative effects entail economic costs which are difficult to quantify, but are undoubtedly large.

#### **2.3.4 Current Issue of Oil Smuggling**

The current situation of Oil smuggling in Thailand still has smuggler trying to smuggle oil into Thailand more than the past and continually increase everyday because money gaining from this illegal business is worth for taking risk. A smuggler develops methods and find new method to avoid a detection from the officer, moreover, the pattern of smuggling has changed and is difficult to detect. The following are the methods that are widespread use:

1. High Seas Smuggling: High seas smuggling occurs mostly in the High Seas where officials have no jurisdiction over such offense. Fuel products usually come from nearby countries, where petroleum prices are much lower than Thailand. Smaller ships get transferring fuel from a mother ship for delivery to customers. These make such fuel spread in the country.

2. By Land: Smugglers modify a pickup truck to set up Oil storage tank which have three patterns: 1. Set up 2000-3000 liters of oil storage tank on pickup truck. 2. Modify oil storage tank below a car or in the gap of a car body that can carry oil for 1200-1500 liters depending on type of cars and the proficiency of garage that modifies a car. More than 1,500 cars that have been modified by this method are in the Southern part of Thailand such as Songkhla, Stool. 3. For the 3<sup>rd</sup> pattern, smugglers use the original 20-40 liters Oil storage tank going to buy oil from Malaysia and transfer into the bigger tank by going in and out of Malaysia many times per day.

3. Declaration of Lower Value: Some importers declare value for their shipments thus paying lower VAT and excise taxes. This is done through fake or tampered invoices.

4. Declaration of Lower Volume: Some importers declare lower shipment volumes for petroleum products which result in nonpayment of taxes for undeclared volumes.

5. Misdeclaration of Imports: Some importers misdeclare their shipments to evade tax payment. For instance, diesel is misdeclared as low quality oil to avoid paying the specific tax.

### 2.3.5 Statistic on the suppression of offenders under the Excise Act (Oil and Oil products)

Oil smuggling movement seriously affects Thailand economy and society. The oil distribution is a kind of hiding from officials, the real information about oil smuggling has not been recorded officially. Hence, the value estimation of smuggled oil is based on the data of expert staff, especially from the Excise Department.

Fiscal year (B.E.)	Number of Oil cases	Oil fines (Baht)	Solvent (Liter)	Diesel (Liter)	Benzene (Liter)	Fuel oil (Liter)
2552	1,096	47,010,577.27	154,482.00	690,785.00	452,807.00	1,513,500.00
2553	2,722	157,383,519.29	383,662.00	3,704,255.00	1,283,380.00	718,385.00
2554	3,589	200,691,121.75	326,796.00	3,051,738.00	2,350,496.40	3,594,900.00
2555	3,062	139,649,257.46	188,000.00	796,011.00	2,400,401.00	1,616,700.00
2556	4,487	128,736,290.55	74,483.96	1,014,253.00	1,866,763.50	4,051,900.00
2557 (Oct.-Apr.)	1,892	37,065,948.03	19,054.00	277,962.00	585,415.00	426,800.00
Total	16,848	710,536,714.35	1,146,477.96	9,535,004.00	8,939,262.90	11,922,185.00

The table above shows that the numbers of illegal oil cases are increasing every year. The estimates of oil smuggling from year 2552 to 2557 are about 30 million liters. However, this statistic is only the small portion of the total nationwide oil smuggling. There are many illegal oils that are not detected by officials.

### 2.4 Anti-Money Laundering Act B.E. 2542 (1999)

The Anti-Money Laundering Act B.E. 2542 (1999) came into force on 19 August 1999 as a result of the Royal Thai Government's intent to accede to the United

Nations Convention Against Illicit Drug Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention 1988).<sup>20</sup>

The Vienna Convention had been drafted among more than 100 UN member countries with the view to strengthen law enforcement on drug trafficking by prosecuting financiers or cutting off their funds. The Convention was resolved on 19 December 1988, at which time 71 countries ratified it.

The Office of the Narcotics Control Board (ONCB), the Thai coordinating body on drug matters, realized the importance of being a party to the Convention. The Office thus set up an ad hoc committee comprising representatives from concerned government agencies which resolved on 16 May 1990 that Thailand should accede to the Convention subject to the completion of certain legislative measures compliant with obligations addressed in the Convention. Two years later, a working group, chaired by a representative from the Office of the Attorney-General, was set up with the mandate to consider whether Thailand had domestic legislative and administrative measures to comply with the Convention.

At that time, the working group was of the view that with the absence of domestic law concerning money-laundering control, Thailand may not be ready to be a party to the Convention. Consequently, the ONCB and relevant government agencies took initiatives to draft the Anti-Money Laundering Bill and forwarded it to the Cabinet and the Parliament for consideration. The Bill passed the Parliament on 19 March 1999, before being gazetted on 21 April 1999 and coming into force on 19 August 1999.

#### **2.4.1 Money Laundering**

Money laundering refers to a financial transaction that aims to conceal the identity, source, and destination of money that obtained from a commission of an offense. The offender has intended to turn dirty money into clean money.

The money laundering process can be separate into three stages. First, the illegal activity gathers the money from the commission of an offense. Second, the

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<sup>20</sup> Police Major General Peeraphan Prempooti, "Effective Countermeasures Against Money Laundering in Thailand," at [http://www.unafei.or.jp/english/pdf/RS\\_No67/No67\\_18VE\\_Prempooti.pdf](http://www.unafei.or.jp/english/pdf/RS_No67/No67_18VE_Prempooti.pdf), (last visited 11 November 2013).

launderer passes the money through a complex scheme of transactions to obscure who initially received the money from the criminal enterprise. Third, time to returns the money to the launderer in an obscure and indirect way.<sup>21</sup>

In Thailand, there are also problems with money laundering and the offender has many methods to avoid detection from the officer.

Money is the prime reason for engaging in almost all types of criminal activity. Money-laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence.

Terrorists and terrorist organizations also rely on money to sustain themselves and to carry out terrorist acts. Money for terrorists is derived from a wide variety of sources. While terrorists are not greatly concerned with disguising the origin of money, they are concerned with concealing its destination and the purpose for which it has been collected. Terrorists and terrorist organizations therefore employ techniques similar to those used by money launderers to hide their money.

The ability to prevent and detect money-laundering is a highly effective means of identifying criminals and terrorists and the underlying activity from which money is derived. The application of intelligence and investigative techniques can be one way of detecting and disrupting the activities of terrorists and terrorist organizations.

Money Laundering is funding to corruption and organized crime. Organized criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling. Terrorist groups use money-laundering channels to get cash to buy arms. The social consequences of allowing these groups to launder money can be disastrous. Taking the proceeds of crimes from corrupt public officials, traffickers and organized crime groups is one of the best ways to stop criminals in their tracks.

In recent years, the international community has become more aware of the dangers that money-laundering poses in all these areas and many Governments and jurisdictions have committed themselves to taking action. The United Nations and other international organizations are committed to helping them in any way they can.

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<sup>21</sup> Cornell Law School, "money laundering: an overview," at [http://www.law.cornell.edu/wex/money\\_laundering](http://www.law.cornell.edu/wex/money_laundering), (last visited 10 November 2013).

Criminals are now taking advantage of the globalization of the world economy by transferring funds quickly across international borders. Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money-laundering more urgent than ever.

#### **2.4.2 Nature of the Anti-Money Laundering Act<sup>22</sup>**

Thailand Anti-Money Laundering law aims at the laundering of money or property derived from the commission of a "predicate offense" as defined in the Anti-Money Laundering Act (AMLA). The Predicate Offenses include, among others, crimes relating to narcotics, public corruption and terrorism. Thai government largely relies on the private sector to assist by enforcing the anti-money laundering law. Thai anti-money laundering laws impose due diligence and reporting requirements on government entities, financial institutions and various other parties.

For new customers, Regulated Parties are required to obtain and verify detailed information independent and reliable sources. Regulated Parties also have an ongoing responsibility to monitor the activities of their existing customers and report suspicious activities to the Anti-Money Laundering Office (AMLO).

Simplified customer due diligence measures may be performed if the risk of money laundering and terrorist financing is low and the customer is already subject to governmental supervision under Thai anti-money laundering laws. A Regulated Party must document such simplified customer due diligence measures and provide them to AMLO and other agencies when requested to do so.

#### **Reporting Requirements**

One of the Act's key provisions requires banks and other financial institutions to report all cash transactions exceeding two Million Baht. This also includes property transactions, which must be reported if in excess of 5 Million Baht.<sup>23</sup>

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<sup>22</sup> Price Sanond Prabhas & Wynne, "Overview of Thailand's Anti-Money Laundering Laws," at <http://www.pricesanond.com/knowledge/overview-of-thailands-anti-money-laundering-laws.php>, (last visited 11 November 2013).

<sup>23</sup> Siam Legal, "Anti-Money Laundering in Thailand" at <http://www.siam-legal.com/litigation/anti-money-laundering-law-in-thailand.php>, (last visited 11 November 2013).

In the case of such transactions, the financial institutions must require their customers to provide a detailed record. This requirement is generally left to the practical discretion of the financial institution which must balance customer confidentiality concerns and compliance with the Act.

The AMLO has also implemented a requirement for all persons entering or leaving Thailand to declare the amount of currency in their possession in order to investigate whether the amount exceeds certain statutory levels.

Failure to comply with these reporting requirements is punishable by a fine of up to 300,000 Baht. Moreover, filing a false report can result in a fine of up to 500,000 Baht and imprisonment of up to two years.

#### **2.4.3 Measures of the Anti-Money Laundering Act<sup>24</sup>**

After received transaction reports from financial institutions, land offices, investment consultants, other government agencies, the Anti-Money Laundering Office will examine the reports and will make an investigation.

If there are reasonable grounds to believe that the transaction may relate to any predicate offense or money laundering offense, the officer in charge will submit the matter to the Transaction Committee or the AMLO Secretary-General for consideration. If the Transaction Committee considers that the transaction may be engaged with predicate offenses or money laundering, it has the power to restrain all transactions of involved suspected persons. Furthermore, if there is a reasonable ground that the asset related to commission of an offense may be transferred, distributed, moved or be transformed, the Transaction Committee has the power to seize the asset for a period not more than 90 days. All transaction restraints and temporary asset seizures shall be reported to the AMLO Board.

If the asset seized by the order of the Transaction Committee or the Secretary-General is unsuitable to be kept in custody or burdensome to the Government rather than the utilization thereof for other purposes, the Secretary-General may do the following:

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<sup>24</sup> Police Major General Peeraphan Premphooi, "Effective Countermeasures Against Money Laundering in Thailand," at [http://www.unafei.or.jp/english/pdf/RS\\_No67/No67\\_18VE\\_Premphooi.pdf](http://www.unafei.or.jp/english/pdf/RS_No67/No67_18VE_Premphooi.pdf), (last visited 11 November 2013).

1. Order those who have a vested right in the asset to maintain and utilize the asset with bail or security;
2. Issue an order for a sale by auction and then keep cash in the bank account;
3. Issue an order to utilize such asset for official purposes

The above action is intended to prevent asset devaluation due to depreciation and inappropriate asset maintenance. If the court finally issues an order to return the asset to the owner or holder or the vested interest recipient of the asset in the belief that the person has owned the asset honestly and/or with compensation, this process would also reduce damage occurring to the person in good faith as well.

In case there is an evidence to believe that the asset is related to an offense, the Secretary-General will refer the case to the public prosecutor to consider for filing a petition to the court for order that asset to be vested in the state. If the public prosecutor considers that there is insufficient evidence to file a petition to the court, the case will be returned to the Secretary-General upon which he would reconsider and then submit the case to the public prosecutor again. In case the public prosecutor maintains his view that there is not enough evidence, he will inform the AMLO Board via the Secretary-General for a decision. The AMLO Board has to consider the matter within 30 days from the date of receipt. Otherwise, the case shall be in line with the public prosecutor's opinion.

During processing the case to the court, if there is probable cause to believe that there may be a transfer, distribution or movement of any asset related to an offense, the Secretary-General could pass the subject to the public prosecutor to file the petition to the court for the provisional asset forfeiture.

After receiving the petition to turn over the ownership of the asset to the Government from the public prosecutor, the court will order a notice be posted at the court and to publish in a local well-known newspaper for two consecutive days so that individuals who may claim ownership or have vested interest in the asset may file an objection to the petition to the court prior to the issuance of the court order. In case the court believes that the asset named in the petition is related to an offense and the petition of the claimant has no merit, the court will give the confiscation order to turn over the ownership of the asset to the Government. However, if the court believes that

the petition of the claimant has merit, the court may issue an order to protect the rights of the recipient claimant with or without conditions.

The petition for asset return shall be filed with the court within one year from the date of the final court confiscation order. If the claimant does not file the petition within one year, he must prove that he honestly was not aware of the notification or written notice of the Secretary-General. In case an owner or holder or a vested interest recipient of the asset can establish the validity of the claim to the satisfaction of the court, the court may order the return of the asset or may set any condition for claimant rights' protection.

#### **2.4.4 Predicate Offenses under Thailand Anti-Money Laundering Act**

A predicate offense is the underlying crime that generates the money to be laundered. Laundering the proceeds of those crimes, "the process by which one conceals the existing, illegal source, or illegal application of income, and disguises the income to make it appear legitimate", constitutes the distinct offense of money laundering. The predicate offense is therefore one of the material elements of money laundering offense. For example, authorities cannot punish an individual for laundering the proceeds of arms smuggling if arm smuggling is not defined as a predicate offense.<sup>25</sup>

In the beginning, predicate offenses concerned only for narcotics because the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances required state parties to enact domestic laws to combat against laundering the proceeds of drug trafficking. Later, the international community acknowledged that other crimes, e.g., organized crimes such as arm and human trafficking, also can harm national security. Therefore, it began to expand the definition of predicate offenses.

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<sup>25</sup> Nattawat Baibua, "The Predicate Offenses of Money Laundering: A Study of the Definition of "Predicate Offenses" under Thai Anti-Money Laundering Act and the United Nations Convention Against Transnational Organized Crime," at <http://www.thailawforum.com/articles/Predicate-offences-under-thai-money-laundering-act-5.html>, (last visited 11 November 2013).

To investigate money laundering effectively, each state needs the private sector's cooperation, in particular the cooperation of financial institutions. The state therefore requires financial institutions to report any suspicious financial transactions. This is because money launderers must use financial institutions to clean "dirty money". This requirement, however, burdens the financial or business sector because the financial institutions will have to expand their resources and manpower to meet the requirement. In defining predicate offenses, therefore, lawmakers should balance the burden to the private sector with the efficient suppression of money laundering. For example, if the law includes many immaterial predicate offenses, it can place a great burden on the private sector without necessity. On the other hand, if the state has a small number of predicate offenses, the suppression of money laundering will unlikely be efficient.

#### **List of Predicate Offenses**

For the first time that the Anti-Money Laundering Act came into force, it has only nine categories of predicate offenses which has Section 3 of the Anti-Money Laundering Act pertaining to the predicate offenses as follows:

(1) Offenses relating to narcotics under the law on narcotics control or the law on measure for the suppression of offenders in offenses relating to narcotics.

(2) Offenses relating to sexuality under the Penal Code only in respect of procuring, seducing or taking away for an indecent act a woman and child for sexual gratification of others, offenses of taking away a child and a minor, offenses under the law on measures for the prevention and suppression of women and children trading or offenses under the law on prevention and suppression of prostitution only in respect of procuring, seducing or taking away such persons for their prostitution, or offenses relating to being an owner, supervisor or manager of a prostitution business or establishment or being a controller of prostitutions in a prostitution establishment.

(3) Offenses relating to public fraud under the Penal Code or offenses under the law on loans of a public fraud nature.

(4) Offenses relating to misappropriation or fraud or exertion of an act of violence against property or dishonest conduct under the law on commercial banking, the law on the operation of finance, securities and Credit Foncier business or

the law on securities and stock exchange committed by a manager, director or any person responsible for or interested in the operation of such financial institutions.

(5) Offenses relating to malfeasance in office or malfeasance in judicial office under the Penal Code, offenses under the law on offenses of officials in State organizations or agencies or offenses of malfeasance in office or dishonesty in office under other laws.

(6) Offenses relating to extortion or blackmail committed by claiming an influence of secret society or criminal association under the Penal Code.

(7) Offenses relating to smuggling under the Customs law.

(8) Offenses relating to terrorism under the Penal Code.

(9) Offenses relating to gambling under the law on gambling, limited to offense relating being an organizer of gambling activity without permission and there are more than one hundred players or gamblers at one time, the total amount of money involved exceeds ten million Baht.

Afterwards, the Anti-Money Laundering Act has been amended many times and latest amendment is the Anti-Money Laundering Act (No.4), the following shall be added as (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) and (21) as the definition of “predicate offense” in Section 3 of the Anti-Money Laundering Act B.E. 2542<sup>26</sup>

(10) Offense relating to being a member of a racketeering group under the Penal Code or participating in an organized criminal group which constitutes an offense under relevant laws;

(11) Offense relating to receiving stolen property under the Penal Code only as it constitutes assisting in selling, buying, pawning or receiving in any way property obtained from the commission of an offense with a nature of business conduct;

(12) Offense relating to counterfeiting or alteration of currencies, seal, stamp and ticket under the Penal Code with a nature of business conduct;

(13) Offense relating to trading under the Penal Code only where it is associated with the counterfeiting or violating the intellectual property rights to goods

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<sup>26</sup> Anti-Money Laundering Act (No. 4) B.E. 2556 (2013)

or the commission of an offense under the laws on the protection of intellectual property rights with a nature of business conduct;

(14) Offense relating to forging a document of right, electronic cards or passports under the Penal Code with a nature of regular or business conduct;

(15) Offense relating to the unlawful use, holding, or possessing of natural resources or a process for illegal exploitation of natural resources with a nature of business conduct;

(16) Offense relating to murder or grievous bodily injury under the Penal Code which leads to the acquisition of assets;

(17) Offense relating to restraining or confining a person under the Penal Code only where it is to demand or obtain benefits or to negotiate for any benefits;

(18) Offense relating to theft, extortion, blackmailing, robbery, gang-robbery, fraud or misappropriation under the Penal Code with a nature of regular conduct;

(19) Offense relating to piracy under the anti-piracy law;

(20) Offense relating to unfair securities trading practice under the law on securities and stock exchange;

(21) Offense relating to arms or arms equipment which is or may be used in the combat or war under the law on arms control.

#### **2.4.5 Criteria of the Predicate offenses in the Anti-Money Laundering Act**

The reason in specifying of predicate offense is to make clear for bringing the forfeiture measure to enforce with the money and property relating to an offense and for the punishment to the person who committed an offense about money laundering, including the person attempting to commit, aiding and abetting in commission of the predicate offenses. The specifying predicate offense is the most important step in the Anti-Money Laundering law.

In theoretically, the decent criteria for specifying predicate offenses in the Anti-Money Laundering Act are:

**1. Being an offense that has complex procedure and difficult to suppress.**

At present, criminal has developed their process in commission of an offense. They try to conceal their guilt and get rid of the evidence and have complex procedure. The officer cannot track them or may be waste too much time to realize the commission of an offense. This can give the chance to the criminal to do such thing. The money that they have got from the crime can use to silence the witness or bribery the officer and hired some fake witness. So, it is difficult to track to the origin of the crime plus, the criminal has an expertise in the specific crime. Moreover, they use the high technology and have a good preparation in crime commission.

According to this reason, it is hard to solve by using other laws, it is proper to use the provision under the Anti-Money Laundering Act to stop this process because this law have special provision to suppression and prevention against money laundering whereby its special measures to acquire the information about an offense. And its main purpose is to seize the property which obtained from the commission of an offense.

**2. Being an offense which can make high returns.**

Most of crimes in the present day have an objective to receive high amount of money in return. The good examples are drug trafficking and oil smuggling. This money does not create a circulation in economic system in Thailand because the money earned from illegal business does not really use for investment. It is an obstacle to the law enforcement, some of the money has been used to generate power and influence of the criminal as well as and it is overshadow the officer. We can say that more power means huge money for criminal. These huge amounts of money affect the durability of the criminal network because all networks are stick together for great benefits. Most of the benefits came from the crime. Moreover, these money are used for funding other crimes such as arms trafficking and human or kids trafficking which can create cycle of a crime endlessly.

It is necessary to specify the crime which has an effect to Thai economy as one of predicate offenses under the Anti-Money Laundering Act because this law has a special provision in suppression and prevention against the property relating to an offense whereby its special measures which cannot find in other laws.

### **3. Being an offense which threatens public security in economic way.**

In present day, the crime does not affect only to the victim but also has an effect to public security or to economic system of the country. This kind of crime can call "Economic crime".

Economic crime can cause damage to Thailand economy and public security because the execution of the crime is involved with huge amount of money. If there is the high number of crimes, it can cause more damages to Thailand economy. Moreover, the economic crime can destroy the trust in business investment and make a negative image of Thailand economy. The foreign investor will not have a confidence to invest in Thailand and also have impact to all of our businesses systems.

Moreover, it is threatens public security in life and body of people in southern part of Thailand. Due to a report implying that there is the connection between oil smuggling operation and terrorist in that area. The benefit from selling oil will use as fund for terrorist.

It can be seen that economic crime has an impact to Thailand economy and assign economic direction due to the amount of money circulation in illegal businesses. Thailand should bring the property forfeiture measure of the Anti-Money Laundering Act to enforce with this crime. Hence, Thailand should specify an offense which threatens public security in economic way as one of the predicate offenses under the Anti-Money Laundering Act.

## **Chapter 3**

# **Foreign Laws regarding Predicate Offenses under the Anti-Money Laundering Law in Oil Smuggling Offense**

### **3.1 Anti-Money Laundering under the U.S. law**

The United States has taken the lead on creating anti money laundering legislation. The U.S. has enacted a number of money laundering laws beginning in 1970. These laws are collectively referred to as the Bank Secrecy Act. In the early days, the anti-money laundering laws were primarily focused on curbing organized crime and tax evasion. In present, U.S. has specified predicate offense more than 150 offenses and also has offense about excise tax evasion as one of predicate offense under their laws. The reason is to cover serious offense as much as possible. U.S. Anti-Money Laundering law can be role-model for Thailand.

#### **3.1.1 General Principle**

The goal of the anti-money laundering laws is to make it more difficult for criminals to use funds generated by illegal activities. The basic assumption is that most criminal transactions deal in cash. The laws seek to accomplish the following things. Financial institutions must identify and track the source of cash transactions above a certain threshold. They must know their customers and the types of transactions to expect. Financial institutions must report suspicious activity.

To study about the predicate offenses under the anti-money laundering laws in the United States, the United States is the very first country that started to enact the law related to money laundering in all over the world and the United States also has the important specific laws to enforce with money laundering as follows:

### **The U.S. Money Laundering Laws<sup>27</sup>**

#### **Bank Secrecy Act – 1970**

The original Bank Secrecy Act enacted in 1970 established filing and record keeping requirements for financial institutions. The act required any cash transaction over \$10,000 be reported. The identity of the person conducting the transaction must also be recorded. In addition, the financial institution must also keep records on the transaction.

Traditionally, they think of financial institutions as banks and credit unions. Anti money laundering laws have expanded this definition greatly over the years. The definition includes travel agents, auto dealers and casinos. These institutions all provide financial services that can be used in laundering money.

#### **Comprehensive Crime Control Act – 1984**

The Comprehensive Crime Control Act is a broader law established to fight drug trafficking. It established money laundering as a criminal activity covered under the RICO Statutes. Associating money laundering with RICO allows for seizure of the proceeds of criminal activities. The Act increased penalties for money laundering and allowed border agents to conduct searching relating to currency. Moreover, the Act authorized the payments of rewards for informants and also required documentation of international transportation of cash over \$10,000.

#### **Money Laundering Control Act (MLCA) – 1986**

The Money Laundering Control Act made it a federal crime to launder money. The law introduces the concept of the Specific Unlawful Activities (SUA) which can call it as a predicate offense. This Act set wide broad for predicate offenses and makes it illegal to spend money derived from SUAs. It also criminalizes the attempt to conceal the source of money through financial transactions. The definition of financial transactions is very broad in this law. The law also enabled law enforcement to seize cash derived from criminal activity. Finally, bank regulators were directed to ensure that banks monitored compliance with money laundering laws.

In this research will emphasize on Money Laundering Control Act (MLCA) – 1986

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<sup>27</sup> Dr. Josh Burdett, "US Money Laundering Laws," at <http://tmprisk.com/anti-money-laundering-laws-101/>, (last visited 15 November 2013).

Almost the same with other countries, Money laundering, generally, is the practice of using a business to conceal cash or other assets that are the products of criminal activity. For example, a business would be established so that it appears legitimate. However, the cash deposits from this business would not come from business sales, but rather money generated through distribution of controlled substances.

The term, "money laundering," is generally understood to mean washing dirty money to make it seem clean.

Money laundering has been characterized as the "lifeblood" of international narcotics trafficking and traditional organized crime.<sup>28</sup> The Money Laundering Control Act ("MLCA") of 1986 makes it a federal crime to launder proceeds from specified unlawful activity.<sup>28</sup> In enacting federal Congress was responding to the spiraling growth and pervasiveness of money laundering in the United States and the nexus between money laundering and organized crime. Congress's primary intent was to criminalize the "process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate." The MLCA also aimed to stem the flow of illicit profits back to the criminal enterprise, where profits provide the capital needed to expand criminal activity.

Additionally, the enormous profits generated by organized crime and the drug cartels have created, out of necessity, a new profession within criminal circles-the professional money launderer. Congress was concerned with the increasing number of professionals, such as lawyers, accountants and bankers, who were either willing to look the other way or to become active participants in the laundering of illicit monies.

### **3.1.2 Predicate Offenses**

For the predicate offenses under the United States law, it is specified in the Money Laundering Control Act (MLCA) 1986 at Title 18 of the United States Code in Sections 1956 and 1957

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<sup>28</sup> 18 U.S.C. §§ 1956-57 (1988)

It is a federal offense to engage in money laundering, and the penalties can include a substantial prison sentence. The laws that make money laundering a criminal offense are found at Title 18 of the United States Code in Sections 1956 and 1957. These statutes were passed as a part of the Anti-Drug Abuse Act of 1986.

Moreover, the predicate offenses which are known as the Specific Unlawful Activities (SUA) under the U.S. law have more than 150 offenses. The offense about excise tax evasion is also one of Specific Unlawful Activities (Predicate offense).

### **18 U.S.C. § 1956 - Laundering of monetary instruments**

(a) (1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity

(A) (i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

Shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

We can see that the 18 U.S.C. § 1956 is concerned with financial transactions involving the proceeds of illegal activity. It prohibits anyone from conducting or attempting to conduct a financial transaction that involves the proceeds of the Specified Unlawful Activity either:

1. with the intent to promote the carrying on of the Specified Unlawful Activity; or

2. with intent to engage in conduct constituting avoidance of taxes (eg, violation of 26 U.S.C. 7201 or 26 U.S.C. 7206)

### 26 U.S.C. § 7201 - Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

The penalty for federal money laundering can be up to either a fine up to \$500,000, or double the amount of money that was laundered, whichever is greater. The court is also authorized to sentence the defendant to a term of 20 years in federal prison.

During the course of a prosecution for money laundering, the court may issue an injunction to freeze the assets of the defendant.<sup>29</sup> The restraining order may also appoint a receiver to disburse the funds in the accounts.

The most prominent is 18 U.S.C. § 1956. Section 1956 outlaws four kinds of money laundering which are promotional, concealment, structuring, and tax evasion laundering of the proceeds generated by designated federal, state, and foreign underlying crimes (predicate offenses).

Section 1956(a)(1) specified financial transactions involving the proceeds of other certain crimes (predicate offenses referred to as "specified unlawful activities") committed or attempted (1) with the intent to promote further predicate offenses; (2) with the intent to evade taxation; (3) knowing the transaction is designed to launder the proceeds; or (4) knowing the transaction is designed to avoid anti-laundering reporting requirements.

Moreover, they have 18 U.S.C. § 1957 which outlaws the engagement or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity.

18 U.S.C. 1957 outlaws depositing or spending more than \$10,000 of the proceeds from a Section 1956 predicate offense. Violations of Section 1956 are

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<sup>29</sup> 18 U.S.C. 1956(3) - Court authority over assets.

A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

punishable by imprisonment for not more than 20 years; Section 1957 carries a maximum penalty of imprisonment for 10 years. Property involved in either case is subject to confiscation. Misconduct which implicates Sections 1956 and 1957 may implicate other federal criminal statutes as well.

Unless there are some elements of promotion, concealment, or evasion, Section 1956 does not make simply spending or depositing tainted money a crime but Section 1957 does. It outlaws otherwise innocent transactions contaminated by the origin of the property involved in the transaction. Using most of the same definitions as Section 1956, the elements of 1957 cover anyone who:

1. A. in the United States,  
     B. in the special maritime or territorial jurisdiction of the United States, or  
     C. outside the United States if the defendant is an American,
2. Knowingly
3. A. engages or  
     B. attempts to engage in
4. A monetary transaction
5. In or affecting U.S. interstate or foreign commerce
6. In criminally derived property that:
  - (1) is of a greater value than \$10,000 and
  - (2) is derived from specified unlawful activity.

Section 1957 also proscribes attempts to violate its provisions. A violation of Section 1957 and conspiracy to violate Section 1957 are each punishable by imprisonment for not more than 10 years and/or by a fine of not more than the greater of \$250,000 (\$500,000 for an organization) or twice the amount involved in the transaction. Violators of Section 1957 are subject to a civil penalty of no more than the greater of \$10,000 or the value of the property involved in the offense. Any property involved in a violation of Section 1957 or traceable to property involved in a violation of Section 1957 is subject to confiscation under either civil or criminal procedures, and the applicable law is essentially the same as in the case of Section 1956.

In conclusion, predicate offenses are the key to bring the measure under Anti-money laundering law to enforce against such offense. U.S. has many

predicate offenses in their law in order to cover various offenses for the efficiency of Anti-Money laundering law. The offense relating to excise tax evasion is one of their predicate offenses.

### 3.1.3 Illegal action against Excise Tax in Oil Smuggling

The wrongful commitment related to the excise tax under the Money Laundering Control Act of 1986 is in Title 18 of the United States Code in Sections 1956(a)(1)(A)(ii) which stated that "Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity: (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986"

The violation of Section 7201 or 7206 is about tax evasion including Excise tax evasion. Hence in the United States, if any person committed an offense about oil smuggling, this can refer to a violation of Section 7201 regarding an excise tax evasion. Moreover, it is one of the predicate offenses under the Anti-Money Laundering law of the United States which can be enforced by this law.

The property derived from the offense must be subject to 18 U.S.C. § 981<sup>30</sup> "Civil forfeiture." Because this offense violates Section 1956 and 1957.

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<sup>30</sup>18 U.S.C. § 981. Civil forfeiture.

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of section 215, 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 485, 486, 487, 488, 501, 502, 510, 542, 545, 656, 657, 842, 844, 1005, 1006, 1007, 1014, 1028, 1029, 1030, 1032, or 1344 of this title or any offense constituting "specified unlawful activity" (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

### 3.2 Anti-Money Laundering under the Australian law

Australia is one of the progressive financial countries in the world and has favorable geography and financial structure to the offender who bring money from the illegal business to transmute for hidden their guilt and to make more profit. For this reason, Australian government then starts to enact the law relating to money laundering and to stop it. In present day, Australia does not specified predicate offense clearly but they give an example of serious offense according to their Anti-money laundering law, offense of excise tax evasion is also one of them.

#### 3.2.1 General principle

Australia's legal regime to combat money laundering and terrorist financing is generally comprehensive. Australia has comprehensive money laundering offense and framework to provide international cooperation. In Australia, there are many laws relating to the prevention and suppression of money laundering which are as follows:

First is the Financial Transaction Reports Act 1988 (FTRA), this law makes a mandatory to report certain types of financial transactions which involve cash and/or certain monetary instruments. Accordingly, money launderers need either to circumvent the legitimate financial system entirely, or violate (evade, manipulate or ignore) the regulatory requirements of the FTRA to conceal their activities such as relevant to investigation of an evasion, or attempted evasion, of a taxation law<sup>31</sup>. And this report must give to the AUSTRAC (AUSTRAC means the Australian Transaction Reports and Analysis Centre, established under the FTR Act)

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<sup>31</sup> Taxation law is under control of The Australian Taxation Office (ATO), ATO is the Australian Government's main revenue collection agency. The ATO manages and shapes the revenue systems that sustain social and economic policy, and fund services for Australians. Their main role is to administer legislation for taxes, superannuation and excise (but not customs duty) and they also address broader issues such as aggressive tax planning, persistent tax debtors, globalization and the cash economy.

Second law is the Proceeds of Crime Act 2002 (the Act). This Act was passed on 11 October 2002 and came into operation on 1 January 2003.<sup>32</sup> The Act provides a scheme to trace, restrain and confiscate the proceeds of crime against Commonwealth Law. In some circumstances it can also be used to confiscate the proceeds of crime against foreign law or the proceeds of crime against State law (if those proceeds have been used in a way that violates Commonwealth law). The Act also provides a scheme that allows confiscated funds to be given back to the Australian community in an effort to prevent and reduce the harmful effects of crime in Australia.

However, this act has given the examples of serious offenses such as unlawful conduct relating to a narcotic substance, offense of smuggling or supporting the offense of smuggling which deem as money laundering conduct and tax evasion.

Third law is the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act)

The Australian Government introduced the Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Act 2006 in response to global pressures to strengthen Australia's ability to detect and prevent money laundering and terrorism financing.

In 2005, the Australian Government agreed to recommendations of the Financial Action Task Force (FATF) and to implement the recommendations in the form of the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act).

Policy programs on anti-money laundering and combating the financing of terrorism

(AML/CFT) have largely called for preventive measures like keeping record of financial transactions and reporting suspicious ones. It's also imposes obligations on any person or entity that provides one or more of the 'designated services' set out in section 6 of the Act. These include financial, bullion and gambling services. The public is also affected, as any person who moves physical cash of

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<sup>32</sup> "Proceeds of Crime," at <http://www.afp.gov.au/policing/proceeds-of-crime.aspx>, (last visited 20 November 2013).

AUD10,000 or more (or the foreign equivalent) or bearer negotiable instruments (of any amount) has certain reporting obligations.

In carrying out its AML/CTF regulatory functions, AUSTRAC collects reports from regulated entities in the financial, bullion and gambling sectors which provide designated services under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Moreover, this act also set suspicious matter reporting obligation for any person such as for the service that may be relevant to investigation of, or prosecution of a person for, an evasion, or an attempted evasion, of a taxation law; or may be relevant to investigation of, or prosecution of a person for, an evasion, or an attempted evasion, of a law of a State or Territory that deals with taxation.<sup>33</sup>

### **3.2.2 Predicate Offenses**

For Australian Anti-Money Laundering laws that studied from above mentioned Acts, almost of their laws emphasize on prevention and suppression against money laundering to support authority's operation. Australian laws specify the offenses which deem as serious offenses and give examples of these offenses such as Drug Trafficking, Tax Evasion People Smuggling, Corporate Crime, Corruption, Sexual Servitude, Fraud and Organized Theft. We can be said that predicate offenses under Australian laws are the offense that has characterized of serious offenses, they did not defined specific predicate offenses under their laws directly but Australia set wide offenses that can enforce with their anti-money money laundering law. However, the offense must be serious offenses according to anti-money laundering law.

### **3.2.3 Illegal action against Excise tax in Oil smuggling**

Australian law set illegal acts about tax evasion or tax fraud which deem as the one of serious offenses under their anti-money laundering laws and tax evasion or tax fraud are including of excise tax evasion in this meaning of their provision. This can be seen in Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) on suspicious matter reporting obligation for an evasion or attempt to

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<sup>33</sup> Division 2 "Suspicious matters" of Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

evasion of taxation law, and the taxation law is in responsibility of the Australian Taxation Office (ATO). The ATO is the Australian Government's main revenue collection agency. Their main role is to administer legislation for taxes, superannuation and excise<sup>34</sup> (but not customs duty) and they also address broader issues such as aggressive tax planning, persistent tax debtors, globalization and the cash economy.

The Commissioner of Taxation and any taxation officer from ATO is entitled to access to AUSTRAC information for any purpose relating to the facilitation of the administration or enforcement of taxation law.

Moreover, in case of Oil Smuggling which deem as an offense on excise tax evasion is subject to the Proceeds of Crime Act 2002. Measures under the Proceeds of Crime Act include:

1. Forfeiture orders such as property/instrument is forfeited to the Commonwealth
2. Pecuniary penalty orders, offender pays amount equal to the benefit they are calculated to have gained from crime
3. Literary proceeds order, offender pays amount calculated as the benefits received through commercial exploitation of their notoriety from offending.

Therefore, any conduct related to oil smuggling offense deem as one of excise tax evasion under Australian anti-money laundering law. Hence, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) and the Proceeds of Crime Act 2002 are applicable with the offense.

### **3.3 Anti-Money Laundering by the Financial Action Task Force (FATF)**

The Financial Action Task Force (FATF) is an inter-governmental body established in July 1989 by a Group of Seven (G-7) Summit in Paris, initially to examine and develop measures to combat money laundering. In October 2001, the

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<sup>34</sup> The Australian Taxation Office, at <http://australia.gov.au/directories/australia/ato>, (last visited 12 December 2013).

FATF expanded its mandate to incorporate efforts to combat terrorist financing, in addition to money laundering.<sup>35</sup>

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. Starting with its own members, the FATF monitors countries' progress in implementing the FATF Recommendations; reviews money laundering and terrorist financing techniques and counter-measures; and, promotes the adoption and implementation of the FATF Recommendations globally.

The inclusion of tax offenses in the FATF list of crimes that should be predicates to money laundering was already considered in the standard. And "smuggling" was included because it was recognized that smuggling of goods and the consequential evasion of customs and excise taxes was a serious offense that generated significant criminal proceeds.

The FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal, administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats. The FATF Recommendations, therefore, set an international standard, which countries should implement through measures adapted to their particular circumstances.<sup>36</sup>

The FATF also produces Guidance, Best Practice Papers, and other advice to assist countries with the implementation of the FATF standards. These other documents are not mandatory for assessing compliance with the Standards, but countries may find it valuable to have regard to them when considering how best to implement the FATF Standards.

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<sup>35</sup> The Financial Action Task Force, at <http://www.fatf-gafi.org/>, (last visited 21 November 2013).

<sup>36</sup> The FATF Recommendations, at [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf), (last visited 20 November 2013).

Countries should criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offenses, with a view to including the widest range of predicate offenses.

Designated categories of offenses under FATF guidance including of :<sup>37</sup>

1. Smuggling; (including in relation to customs and excise duties and taxes);
2. Tax crimes (related to direct taxes and indirect taxes);

We can see that FATF is also concern with crime about smuggling with relating to excise tax and tax crimes. When deciding on the range of offenses to be covered as predicate offenses under each of the categories listed above, each country may decide, in accordance with its domestic law, including the way it will define those offenses and the nature of any particular elements of those conducts that make them serious offenses. Thailand should adapt this guidance to Anti-money laundering act.

The FATF currently contains 34 member jurisdictions and 2 regional organizations, representing most major financial centers in all parts of the globe.

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<sup>37</sup> International Monetary Fund “Revisions to the Financial Action Task Force (FATF) Standard” at [www.imf.org/external/np/pp/eng/2012/071712a.pdf](http://www.imf.org/external/np/pp/eng/2012/071712a.pdf), (last visited 20 November 2013).

## Chapter 4

### Analysis on the problems of Oil Smuggling and Deficiency of Legislative Measures

#### 4.1 Reasons and Necessities of adding the Offense relating to Excise Tax Evasion into one of the Predicate Offenses under the Anti-Money Laundering Act.

Nowadays, problems of excise tax evasion are the big problem in Thailand. Government loses revenue from this offense more than billion baht each year. Excise Tax that collected from goods and commodities are the important part to develop the country which can be seen from this table:

Excise revenue table (Fiscal Year: 2013)<sup>38</sup>

Type of Revenue	Taxes Collected	Estimate
Oil and Oil products	63,532.07	80,730.00
Motor Vehicles	153,874.01	122,000.00
Beer	69,118.85	66,000.00
Liquor	52,640.29	60,000.00
Tobacco	67,892.54	60,000.00
Beverages	17,838.34	16,000.00
Electrical appliances	1,003.26	840.00
Golf Courses	565.78	510.00
Entertainment or Amusement Business	249.74	273.00
Perfumery and Cosmetic	236.44	205.00
Gambling Businesses	58.28	52.00

<sup>38</sup> Annual Report 2013 The Excise Department

Glass and Glassware	31.75	23.00	Unit : Million Baht
Other Goods	5266.74	4925.00	
Vessel	-	-	
Total	432,308.09	411558.00	

Excise revenue table shows the total amount of excise revenue which can be seen that it is the huge amount of revenue. If government loses this revenue to the smuggler, it must be the obstacle to develop the country.

In comparison between foreign Anti-Money Laundering laws and Thailand Anti-Money Laundering law, it can be seen that the determination of predicate offenses is the key to bring measures under the Anti-Money Laundering law to enforce with such offenses. Due to the fact that any offense whether it is serious or not, if that offense is not determined as a predicate offense under the Anti- Money Laundering Act there cannot bring the civil forfeiture measure under the Anti-Money Laundering Act to enforce with the property derived from the commission of an offense.

Offense relating to excise tax evasion is in scope of the criteria for specifying as a predicate offense under the Anti-Money Laundering Act which are:

1. Being an offense which threatens public security in economic way.
2. Being an offense which can make high returns.
3. Being an offense that has complex procedure and difficult to suppress.
4. Being an offense that has an aspect of organized crime.

Therefore, the offense on the excise tax evasion which came from smuggling should be defined as one of the predicate offenses to be enforced by Thailand Anti-Money Laundering Act for the following reasons:

#### **4.1.1 Adopting measures under the Anti-money Laundering Act to enforce with properties received from an offense relating to the Excise Tax Evasion**

In general, goods which are imported into Thailand must be passed the Customs formality. It has a burden on excise tax and other taxes that will make importer lose too much money and means that profit will be reduced. Thus some groups of people try to evade these burdens by smuggling oil.

Generally, a smuggler who gets arrested with charging of smuggling will be subject to Customs Act due to the penalties that much heavier which Customs Department can file the case to court according to Section 27 and Section 27bis<sup>39</sup> of the Customs Act B.E.2496 in the Offenses relating to smuggling under the Customs law. The penalties are a fine of four times the amount of price of the goods including duty or to imprisonment for a term of not exceeding ten years, or to both. For the property in dispute such as oil will get confiscate and sell by auction later on

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<sup>39</sup> Section 27. Any person imports or brings into the Kingdom any tax unpaid, restricted, or prohibited goods, or any goods which has not duly passed through the customs, or exports or takes such goods out of the Kingdom or assists in any way in importing or exporting or removing or assisting to removal without permission from any ship, quay, godown, warehouse, place of security, or store room, or provide the place to keep, or conceals such goods, or permits or arranges other persons to do so or is involved in any manner in carrying, removing, or dealing with such goods in any manner to avoid or attempt to avoid the payment of customs tax or of any duties of avoid or attempt to avoid any provisions of law and restrictions relating to the importation, exportation, landing, warehousing, and delivery of goods with the intention to defraud the government tax of His Majesty the King with must be paid for such goods or avoids the prohibition or restriction of such goods, shall for each offense be liable to a fine of not exceeding five thousand Baht or of three times the price of the goods including duty, or to imprisonment for a term of not exceeding ten years, or to both. For each offense there shall be a fine of four times the amount of price of the goods including duty or to imprisonment for a term of not exceeding ten years, or to both.

Section 27 bis. Any person whoever assists in concealing, disposing or making away with, purchases, takes in pledge or otherwise receives any goods, knowing that such goods are tax unpaid or restricted or prohibited goods; or that they were imported into the Kingdom without duly cleared through the Customs; or that they were imported into the Kingdom by evading duties, restrictions or prohibitions so related to such goods shall be liable to imprisonment for a term not exceeding five years or a fine equal to quadruple the duty-paid value of the goods or both the imprisonment and fine.

according to customs regulations. These penalties are heavy and proper to control oil smuggling.

However, the law presently has a gap. There are many cases which are not subject to Custom Act. For example, in case of oil smuggling when smugglers get caught by Army Region 4, inspector of Excise Department, other officer stipulated in the Criminal Procedure Code of Thailand<sup>40</sup> except customs officer, they will send the offender through process of Excise, not the Customs.(Major reason is: there are no specific rules to distinguish the duty between Excise Department and Customs Department, Hence, the officer who arrest usually send the offender through process of Excise for the big amount of reward which calculate with the proportion of fine.) But the penalty of Excise Tax Act only has a fine penalty at a maximum rate of ten times for the amount of oil price, it does not have an imprisonment penalty for the guilty like this according to Section 161(1) of the Excise Tax Act B.E.2527 and then releases oil back to smugglers for sell again.<sup>41</sup> From this reason, it gives opportunity to smugglers to make money; for example, if they smuggle oil ten times but get caught for one time, they certainly agree to get fine penalty. They can also have profit from other attempts, it is worth for them to get fine penalty and then sell again because the Excise Tax Act does not have a confiscation provision on the money or the properties even if such properties are related to selling of illegal oil. The Excise Tax Act can do nothing to these properties. Moreover, smugglers do not get an imprisonment penalty, there is no risk for their freedom. All of these benefits are the main reason of this crime.

There are many crimes that involved Excise Tax Evasion such as Oil smuggling, Cigarette smuggling. Only fine penalties cannot stop the motivation of a criminal.

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<sup>40</sup> Section2 (16) "Administrative or Police Official" denotes an official who is invested by law with the power and duty to maintain public order, and includes a prison official, an official of the Excise Department, Customs Department or Harbour Department, an immigration official and other official, when arresting offenders and suppressing offenses by virtue of his office.

<sup>41</sup> Interview Mr. Narong Jittsophon, head of legal affairs at Nakorn Sri Thammarat Area Excise Office, Interview 25 November 2013.

Therefore, there should bring the Anti-Money Laundering Act B.E. 2542 to enforce with this crime because this law has the special provisions to deal with the properties or benefits derived from an offense.<sup>42</sup> The officials can eavesdrop the phone, get access to the account, communicated data or computer data, for the acquisition. It also provides measures for the confiscation as a cutting financial support for another crime on a reasonable ground to believe that any property connected with the commission of an offense which will push the burden of proof to the defendant. If that property connected to one of predicate offenses according to the Anti-Money Laundering Act the court can confiscate that property and the property owner are responsible for all proving the origin of such property. If he fails to prove, such property shall vested in the State and the offender shall have nothing to fund other crimes.

#### **4.1.2 Increasing the Cover ability and Completion of “Predicate Offenses”**

In present day, an illegal business which is deemed a crime has a complex method and aim to avoid enforcement by the law. For example, arms smuggling and oil smuggling, the money that they have got from these businesses will bring into the process of launder. This process will make that dirty money become legal in the same way with drug trafficking. This crime has a big impact to public security. The predicate offense is a criminal offense that can cause an offender obtained properties or money from the commission of an offense. Therefore, the determination of predicate offense in the Anti- Money Laundering law is to make clear in the enforcement of this law. In other countries the determination of predicate offense depends on the violence of such crime, allocated by the seriousness of an impact to the public security and economy. If Thailand has more predicate offenses in the Anti- Money Laundering Act, it can prevent the crimes that have serious effect to Thailand economy.

Since oil smuggling operation can make high benefit for smuggler, the money that gets from this crime can be up to billion baht per year due to the record of excise department through various methods of smuggling. Some parts of this money

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<sup>42</sup> Surapol Trivate, Explanation on Money Laundering Law (Bangkok: Winyuchon, 2542), p. 29.

are used to funding other crimes such as drug trafficking, arms smuggling and have an evidence that it is convincing to terrorism in southern part of Thailand. Although the officer has an intense suppression against oil smuggling but it seems to be increasing every day. If the dirty money can come into Thailand economic system, it may cause the inflation.

The Anti- Money Laundering law is one of the measures that can prevent from the arising of an offense that specifies as the predicate offenses which means if an offense about oil smuggling relating to excise tax evasion is specified as one of the predicate offenses, the offender who committed crime about oil smuggling will get enforced by this law. Hence, it can prevent an offense about oil smuggling. Moreover, it is necessary to make this bill covering offenses as wide and complete as possible.<sup>43</sup> At present, the Anti-Money Laundering Act does not have an offense about an excise tax related to oil smuggling in Section 3 “Predicate offense” yet. It is very important to add this offense into one of the predicate offenses due to the fact that the Anti-Money Laundering Act can be able to deal with offenders and property at the same time.

#### **4.1.3 Equivalence with the International Standard**

The Anti-Money Laundering Act has to be amended many times because of the predicate offenses under this Act does not cover the offenses enough. The Latest amendment in this year of the Anti-Money Laundering Act (No.4) had been added new predicate offenses, hence it has the predicate offenses in the Anti-Money Laundering Act for total of 21 offenses. As we know that the predicate offense is one of the material elements of money laundering offense. For example, authorities cannot punish an individual for money laundering in case of oil smuggling which relating to excise tax evasion if it not defined as a predicate offense.

Although, the offense relating to smuggling under the customs law has been designated as one of the predicate offenses under the Anti-Money Laundering Act which means the crime such as oil smuggling, smuggler who gets arrested by the Customs Department and goes through process under the Customs Act, if his offense deems as committed an offense of money laundering according to Section 5 of the

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<sup>43</sup> Aunnop Likitjitta, Background of the anti-money laundering bill drafting. (Bangkok, 2542)

Anti-Money Laundering Act B.E.2542<sup>44</sup> he will get punished by the Anti-Money Laundering Act as well which means the money and property relating to smuggling under the Customs law must get confiscated, seized or vested in the State depending on the case. But, the Customs Act B.E.2469 uses to enforce with the goods that does not go through the Customs Clearance, while oil smuggling have more various tactical patterns and methods to avoid.

An offense relating to excise tax in case of oil smuggling has not been specified in the Anti-Money Laundering Act yet. By this reason if oil smuggler gets caught by the Army Region 4, there will send the offender through process of excise and punish with a fine penalty and then release to resell and make money from it.

For foreign laws such as the United States, it is specified an offense relating to tax evasion including both excise tax and customs duty as one of the predicate offenses in the Anti-Money Laundering laws which can be seen in Title 18 U.S.C. Section 1956 of the Money Laundering Control Act 1986 (MLCA). 18 U.S.C. Section 1956 concerns with financial transactions involving proceeds of illegal activity. It prohibits any person from conducting or attempting to conduct a financial transaction that involves the proceeds of specified unlawful activity; with intent to engage in conduct constituting avoidance or evasion of taxes (eg, violation of 26 U.S.C. 7201 or 26 U.S.C. 7206). The predicate offenses under the United States Anti-Money Laundering laws have been specified very broad and cover more than 150 offenses and much more than predicate offenses in the Anti-Money Laundering Act of Thailand.

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<sup>44</sup> Section 5. Any person who:

(1) transfers, accepts a transfer of or converts the property connected with the commission of an offense for the purpose of covering or concealing the origin of that property or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offense; or

(2) acts in any manner whatsoever for the purpose of concealing or disguising the true nature, acquisition, source, location, distribution or transfer of the property connected with the commission of an offense or the acquisition of rights therein, shall be said to commit an offense of money laundering.

In Australia, the Australian Anti-Money Laundering laws does not specify clearly about predicate offenses but has various money laundering laws such as Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) for the suspicious matter reporting obligation for committing or attempting in tax evasion. Taxation law is the one provision to prevent and suppress smuggling in Australia. Australia is slightly different from the United States in part of the predicate offenses which Australia does not specify directly but the U.S. specified the predicate offenses directly and clearly. However, these two countries have many provisions to prevent and suppress oil smuggling and can be the model for Thailand to amend the law in the part of predicate offenses.

The predicate offenses in the Anti-Money Laundering Act of Thailand does not conform to the purpose of the law which aims to stop crimes that have a big impact to economy because of other offenses that can be done without punishment of this law can generate money to support another crime. If using the Anti-Money Laundering Act to enforce with oil smuggling relating to excise tax, this law can block the person who wants to use money getting from oil smuggling to fund other crimes whereby adding the smuggling offense relating to excise tax in Section 3 of Thailand Anti-Money Laundering Act to suppress oil smuggling and conform to the purpose of this law.

Moreover, currently there is an intergovernmental organization called the Financial Action Task Force (FATF) which globally monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures. If Thailand amends the Anti-Money Laundering law conforming to the Recommendations of the FATF, Thailand will get support from the FATF in fighting against money laundering (Thailand presently is in the Dark Grey list that still has not yet specified the law in conforming with the Recommendations of the FATF).

#### 4.1.4 Pros and Cons of using the Anti-Money Laundering Act

##### Pros:

1. Provisions under the Anti-Money Laundering Act are very strict and severe. It impacts on stability in political and administrative power and decreases the number of crimes.
2. It is beneficial to economy, when the suppression of crime is effective, it can promote an investment for an investor because it can make a confidence. This can make stability in financial system of the country.
3. The seizure measure against properties related to an offense can block the way in finding the dirty money of criminal. It can decrease the number of illegal businesses.
4. Measures under the Anti-Money Laundering law can combat to a corruption and misbehavior of the government officer efficiently.
5. In using forfeiture measure under the Civil Code to enforce with the properties related to an offense, it causes an easily proceeding in offense about money laundering. The primary burden of proof on the origin of such property belong to an owner and interested person.
6. It can reduce the influence of politician due to the fact that there are some politicians involving in the smuggling process. Hence, if politician cannot easily commit this crime because of the very strong penalties, a politician will lose the money power from this source.

##### Cons:

1. Causes more obligations on the operation process in money laundering law.
2. A person or group of person who loses benefit in goods smuggling from business the enforcement of the Anti-Money Laundering law will resist and does not comply with the law. Moreover, there will find other ways to avoid or use other gaps of the law to commit an offense and there are more channels to commit more offenses for getting huge benefits that used to receive.
3. If the state sector which have a responsibility in goods smuggling lacks a preparedness and good cooperation between sectors, this can cause the failure of money laundering law enforcement and cannot decrease the problem of this crime.

In consideration of bringing measures under the Anti-Money Laundering law to enforce with smuggling relating to excise tax evasion, the measures also have good point and bad point. For the bad effect, Thailand can prevent by enacting the law or having rules for practices, and must do concisely. Hence, if the Anti-Money Laundering law covers smuggling offense which relating to excise tax evasion, it will expand a framework of this law to be covering more offenses.

## **4.2 Analysis on the Problems to defining only Oil Smuggling Offense into one of Predicate Offense in Anti-Money Laundering Act**

At present, Excise Department has collected an Excise Tax from goods which can separate into thirteen parts. Oil and Oil products are one of it. Oil is the goods that can generate huge amount of revenue to government, on the other hand its can make huge amount of money to the smuggler too. Oil smuggling crime has effect to Thailand economy more than other excisable goods, it can be seen in annual report 2013 of Excise Department that the taxes collected from oil and oil products are lower than the estimation around 1.7 billion baht.

In case of oil smuggling, the offender receive huge amount of money from evading of Excise Tax. This crime has been increasing every year, especially in provinces that have border close to neighboring countries which have cheaper oil price than Thailand.

Although, there is the Customs Act which can prevent some offenses about oil smuggling by having criminal penalties or can seize such smuggled oil, but it does not have a power to deal with the money or properties derived from an offense and these properties can transfer or transform with many methods. Thus it cannot use the criminal confiscation measure because it is not the property used or possessed for use in the commission of an offense.

According to a report by Internal Security Operations Command(ISOC)<sup>45</sup> implying oil smuggling crime is linked with the terrorist in Southern part of Thailand.

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<sup>45</sup> Report of Internal Security Operations Command(ISOC) at [www.isocthai.go.th/yut-ta-saat\\_isoc\\_year55-59/yut-ta-saat\\_isoc\\_year55-59.pdf](http://www.isocthai.go.th/yut-ta-saat_isoc_year55-59/yut-ta-saat_isoc_year55-59.pdf), (last visited 01 September 2014).

This crime can fund the operation of the terrorist by giving the money from the benefit of oil selling. It is also connected with influential person in that area. If we don't putting this offense into one of predicate offense, we can do nothing to the money that they received from oil smuggling. So, we must defining oil smuggling before other goods.

In practical way, Excise Department should have an agreement with AMLO or a notification about an offense that must send to AMLO. The reason is to protect an offender who committed a minor offense from heavy punishment by Anti-Money Laundering law. Excise Department should stipulate offenses which have an aspect to undermine economic and threaten public security as offenses that must send to AMLO. For example, offenses which have value of oil prices more than 1 million baht, this can compare to Notification of the Customs Department.<sup>46</sup>

The characteristics of the oil smuggling process are conform to the criteria for the specifying of predicate offenses under the Anti-Money Laundering Act which contains the offenses that are complicated procedures and difficult to suppress, moreover, such offenses can make high returns and threaten public security in economic way as follows:

#### **4.2.1 Analysis on Criteria for adding the Oil Smuggling Offense relating to Excise Tax Act into one of the Predicate Offenses under the Anti-Money Laundering Act**

For putting an offense relating to the Excise Tax Act on oil smuggling into one of the predicate offenses under the Anti-Money Laundering Act, besides the aspect of oil smuggling that is an economic crime, it is in scope of the criteria for specifying as a predicate offense under the Anti-Money Laundering Act which are as follows:

##### **1. Oil smuggling is an offense that has complicated procedures and is difficult to suppress.**

In present day, the person who committed crime has main purpose and objective to get high benefits. These benefits are the motivation for criminal

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<sup>46</sup> Notification of the Customs Department No. 78/2546 (1)

organizations to continue doing their illegal businesses and expand for larger network. The money from illegal businesses does not cause the country's economic advantage; in opposition, it is the obstacle to law enforcement. The crime about smuggling is an offense that is intent on getting huge amount of money by evading from excise tax and other taxes burden. Oil smuggling is the crime that can make high profits and it cannot be done by one or two people but it contains group of people that join together as a network. This can call the "process of oil smuggling" which works separately from each other by starting with the contact part who makes decision that it is the required specific oil.(some are the businessman and politician) and the next is a transport part which have by land and by sea. After that there are persons to bring oil came into Thailand to sell to people, then the received money will be distributed to other illegal businesses, some will be used as funding in other crimes such as terrorist and illegal arms. Moreover, this crime is difficult to find evidence to track the origin of process and hard to solve by using other laws. It is proper to use the provision under the Anti-Money Laundering Act to stop this process because this law has a special provision in suppression and prevention against oil smuggling whereby its special measures to acquiring information. Hence, we can say that oil smuggling is very complicated and difficult to suppress that conforms to the aspect of the predicate offenses under the Anti-Money Laundering Act.

## **2. Oil smuggling offense can make high return**

Thailand is one of developing countries. Fuel business is the business that has huge amount of money in circulation. The government can collect oil taxes in many ways such as excise tax or customs duty in the total of billions Baht per year. When oil becomes a necessity, it is needed by consumers all over the country and the prices are very expensive. Additionally, oil dealer must be subject to many steps of tax burdens, these make some dealers find the way to avoid and evade tax burdens causing high profits for their business. The way of commission has various methods such as smuggling oil, Fraudging export oil tax and contaminating oil. Then oil dealer brings these oils to make additional profits. If the number of oil crimes has been increasing like this, it will have an effect to person doing oil business with good faith and make them being exploited in oil commercial by getting more competitions in oil market. Moreover, it also has an effect to a confidence of investors by making

them afraid to invest in the petroleum business. The most important thing is the government would lose revenue from collecting oil taxes which is the primary income of our country. Hence, oil smuggling and other oil crimes must get interception as soon as possible.

It is necessary to specify the crime which has an effect to Thai economy as one of the predicate offenses under the Anti-Money Laundering Act. This law has special provisions in suppression and prevention against oil smuggling by using special measures while other laws have no such strong measures.

Oil Smuggling Crime is deemed as an economic crime which the direct victim is a country, even though oil smuggling does not use force or any weapon in the process, but this crime has a purpose in the result of huge benefit in return. Oil smuggling also causes more damages to Thai economy than general crimes and destroys Thailand's image.

### **3. Oil smuggling is an offense which threatens to public security in economic way**

Fuel oil consumption and economic growth are related because the amount of consumption conforms to economic growth, due to the fact that oil is the main mechanism which drives economy toward. Thailand is using fuel and energy for industrial part in high level which make more variation of oil consumption. Therefore, if the growth rate of economy goes well but the amount of oil consumption based on the oil trader report does not increase or is lower than expectation, it can reflect that there are illicit oils coming into system of oil consumption in the country without any report to the government.

It can be seen that oil or fuel has an impact on Thailand economy and influence to economic direction due to the state generates revenue from collecting excise tax, customs duty, and oil and fuel products. These revenues relates to economic growth. In each year, the government can collect taxes for more than ten billion Baht. If the situation of oil smuggling still continues like this, the government will lose revenue from oil taxes and these amounts of money will spread to some groups of person.

Due to current high oil prices in the world market and the different prices between Thailand and nearby countries that cause oil smuggling becoming

worst, Thailand absolutely loses money that can use in developing country. Additionally, if there brings more illicit oils into the oil market of Thailand, it will decrease the total sales of legal oil and local traders will lose their market. Most of all, oil taxes that are collected by the government also decrease and investors who want to invest in oil market will not have a confidence to do business in Thailand. All of these reasons will certainly give a bad effect to Thai economy.

There are many oil smuggling cases that has been occurred every year.<sup>47</sup>

Fiscal year (B.E.)	Number of Oil cases	Oil fines (Baht)
2552	1,096	47,010,577.27
2553	2,722	157,383,519.29
2554	3,589	200,691,121.75
2555	3,062	139,649,257.46
2556	4,487	128,736,290.55

The table above shows the number of oil cases in each year which was arrested by the officer. If these oil cases are not detected by the officer, government will lose the huge amount of revenue. In addition, there are still has many cases that was not detected and cause damage to our country more than billion baht per year.

#### **4.2.2 Seizure and Other Measures on Properties received from Committing Oil Smuggling Offense**

The properties or benefits derived from committing an offense are the encouragement to do such crime. If any person commits the crime once and gets properties without getting arrested, there will continue to commit it again and this expands illegal oil businesses and causes more various crime conducts. Hence, only the measures under the Excise Tax Act are not enough to prevent criminal businesses because such businesses rely on illegal source of funds. The Anti-Money Laundering Act has the effective measures to enforce with offender's properties.

<sup>47</sup> Statistic on the suppression of oil smuggling.

The measures on property under the Anti-Money Laundering Act are the seizure or attachment of the property measure appeared in the Civil Code. It is the process separated from the confiscation stated in the Criminal Code. These measures use to enforce with the property's owner who committed a predicate offense. In case of the predicate offenses, if a person committed crime which deemed as a money laundering action and founded that he converts the property connected with the offense for the purpose of covering or concealing the origin of that property in related to predicate offense, the seizure measure shall be applied. The main principle of this measure is to push a burden of proof on the origin of such property to the defendant or to the owner, and this measure is different from measures in the Criminal Code. In the Criminal Code, the seizure measure will be applied only for the case that the court has a judgment that a defendant is guilty for his action without any doubt. In practice, nevertheless during the proceedings, the defendant would transfer all properties to other persons and it is difficult to track. These measures are as follows;

### **1. Seizure or Attachment of the property**

When the Transaction Committee has received report, the Committee will conduct an examination of the report and information on transaction-making, if there is a reasonable ground to believe that any property connected with the commission of an offense may be transferred, distributed, moved, concealed or hidden, the Transaction Committee shall have the power to order a provisional seizure or attachment of such property for the period of not more than ninety days. In case of compelling necessity or urgency, the Secretary-General shall order a seizure or an attachment of the property for the time being according to Section 48 paragraph 1 and 2.

After getting seizure or attachment of the property by the Transaction Committee or the Secretary-General depending on circumstances, the person who made the transaction in respect of which the property has been seized or attached or any interested person in the property may produce evidence that the money or property in such transaction is not the property connected with the commission of the offense in order that the seizure or attachment order may be revoked according to Section 48 paragraph 4.

Even if, the offender has sold all illicit oils but the money or properties received from selling oil can get seized afterwards. This measure has a big

impact on the oil smuggling operation because the Anti-Money Laundering Act can enforce with the things that an offender acquired after committing the crime.

For example, Mr. A is the person who committed oil smuggling action, if Mr. A is arrested and charged for the offense under the Excise Act, Mr. A can pay for a fine and receive his oil back. Then he can sell this oil and get the money, the officer can do nothing to this money. On the other hand, if Mr. A charged for committing the predicate offenses under the Anti-Money Laundering Act, other than a fine penalty under the Excise Act, Mr. A also can get seized the money received from selling oil. Thus, the measure under the Anti-Money Laundering Act is a key measure to prevent and suppress oil smuggling efficiently.

## **2. Make the property vested in the State**

After the examination of the report and information on transaction-making and founded that there is a convincing evidence that any property is the property connected with the commission of an offense, the Secretary-General shall refer the case to the public prosecutor for consideration and filing a petition to the Court for an order that such property shall be vested in the State according to section 49 of the Anti-Money Laundering Act.

When the court has received the petition filed by the public prosecutor under paragraph 5 of Section 49, if there is a reasonable ground to take such action as to protect the rights of the injured person in the predicate offenses, the Secretary-General shall refer the case to the competent official under the law which prescribes such offense in order to proceed in accordance with that law for preliminary protection of the injured person's rights according to Section 49 paragraph 6.

Before the Court giving an order that property shall be vested of the State, the person claiming ownership of the property by filing an application and satisfying that such applicant is the real owner and the property is not the property connected with the commission of an offense or the applicant is a transferee in good faith and for value or has secured its acquisition in good faith and appropriately in the course of good morals or public charity according to Section 50 paragraph 1 of the Anti-Money Laundering Act. If the public prosecutor brings witness or documentary evidence to examine and proves to the Court that such property connects with the commission of an offense, in this case the claimant must prove to the Court that he is

the real owner and such property does not connect to the offense and acquired in good faith.

After examining evidences of two parties, the Court will weight evidences if the Court believes that such property connects to an offense, and the petition of claimant sounds unreasonable, the Court shall give an order that property shall be vested of the State. On the other hand, if the Court does not believe that such property does not connect to an offense and the claimant acquired in good faith, the Court shall dismiss the petition of the public prosecutor and return such property back to the claimant.

If Thailand put an offense relating to the Excise Tax Act in case of oil smuggling into one of the predicate offenses, for a person who commits oil smuggling offense, the money and properties received from the commission of an offense of oil smuggling will get seize.

From the characteristics of oil smuggling which is a large illegal oil business network by containing many people in the operation. It may be difficult to arrest every person in the network with the charge of coprincipal, the first person who get arrested while committing flagrant offense in oil smuggling should be charged as a main culprit, but other people who get arrested thereafter are in different status, some are an aiding or abetting person, some are a person attempting to commit. The Anti-Money Laundering Act has specified all conducts as an offense under this law for the efficiency of punishment which is heavier than the Criminal Code and the Excise Tax Act.

Any person who can get seizure of property are as follows:

1. Person who committed an offense which is specified as the predicate offense

Any person who committed a predicate offense and then acquired money or property from that offense must be subject to the Anti-Money Laundering provision. In case of oil smuggling, after smuggler selling all oils, the received money is deemed as a part of an offense. Hence, the officer can seize this money. Moreover, if smuggler spends the money to buy the property, such property is

related to commission of an offense which also can get seized. The commission of this offense is said to commit an offense of money laundering.<sup>48</sup>

2. Person who aiding and abetting other persons in committing the predicate offense.

It means the person was aiding and abetting the commission of the offense or assisting the offender before or at the time of the commission of the offense for the purpose of assisting other persons to evade criminal liability or to be liable to lesser penalty in respect of a predicate offense, such person may not commit the predicate offenses by himself but he accepted the money acquired from the predicate offenses. For example, Mr. A sold an illicit oil and then gave money to Mr. B, Mr. B accepted that money for the purpose of assisting Mr. A to evade criminal liability in respect of the predicate offenses. Hence, Mr. B is also deemed as committed money laundering offense and can get seize such money. Moreover, if Mr. B spends this money to buy the property, such property also can get seized.

In consideration of measures against properties related to money laundering, we can see that it can block money circulation in criminal process. It also pushes a burden of proof in the origin of such property to the defendant or to the owner if he fails to prove, such property shall be vested of the State. Moreover, if an offender transfers, accepts a transfer of, or converts the property connected with the commission of an offense for the purpose of covering or concealing the origin of that property or, whether before or after the commission thereof, for the purpose of assisting other persons to evade criminal liability, such offender can also get punishment by the Anti-Money Laundering Act. Hence, if Thailand uses only provision under the Excise Tax Act, it cannot stop and prevent the crime efficiently because oil smuggling business is the crime that has a huge money circulation which is very attractive to people. For stopping this crime, there must deal with properties related to an offense to obstruct criminal processes.

By an aspect of oil smuggling, it is appropriate to bring measures under the Anti-Money Laundering Act to be enforced with and to suppress this crime efficiently.

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<sup>48</sup> Section 5 of Anti-Money Laundering Act.

### 4.2.3 Impact of using the Anti-Money Laundering Law

According to the strong provision of the Anti-Money Laundering law, if Thailand uses this law to enforce with oil smuggling, it will cause good and bad impact on any related person in oil business as follows:

#### 1. Impact on Smuggler

A smuggler will have a high risk to get arrested and get seized the properties even though that smuggled oil is not confiscated. A smuggler will get seized the properties which are bought by using dirty money obtained from selling illicit oil. An officer has more optional laws to enforce with a smuggler other than the excise law.

#### 2. Impact on Economy

If the state has more measures in combating with oil smuggling and the offender by using the Anti-Money Laundering law, this will give a confidence to the official and people which would see the state can efficiently suppress an offense of oil smuggling. When this offense decreases, the huge amount of money which was once belonged to an offender will come into tax system of the country. It makes state have more revenue which come from oil taxes and use this revenue in develop country afterwards.

#### 3. Impact on Oil Consumers

For oil consumers, if Thailand uses the Anti-Money Laundering law to enforce with oil smuggling case, people who use an illegal oil to pay cheap price will have to pay at higher price because a legal oil has a tax burden. Hence, the number of oil consumption may decrease if an illicit oil has been vanquished or less than before. However, if comparing to the good impact, it is worth to get rid of illicit oil.

In conclusion, the reason to improve the Anti-Money Laundering Act is this Act does not stipulate some serious offenses as a predicate offense under its provision. The offender can bring the money and property acquired from the commission of an offense to fund other crimes. Therefore, it has to specify more predicate offenses and stipulate framework of predicate offenses more clearly.

At present, it can be seen that the predicate offenses under Thailand Anti-Money Laundering Act B.E.2542 have a few predicate offenses in comparing to

foreign laws. Thailand needs to expand the scope of offenses which the Anti-Money Laundering law can be applied to.

Until the present time, Thailand Anti-Money Laundering Act has been amended for many times, the reason of each amendment is to add more predicate offenses to cover more offenses. Due to a variety of crimes in present time, it has been developed the process of the operation and to conform to international standard.

If looking at the offenses on smuggling related to Customs Act which specified in Section 3(7) of the Anti-Money Laundering Act B.E.2542, the crime about oil smuggling also violates the Customs Act and is deemed as one of the predicate offenses under the Anti-Money Laundering Act. The customs officer can seize oil and truck which is used in committing this crime according to Section 24 and Section 25<sup>49</sup> of the Customs Act. The money received from selling oil also can get seizure by the Anti-Money Laundering law because it comes from the predicate offenses which mean that a person has committed money laundering offense. Moreover, for a capitalist who supports this crime, if the officer has an evidence which can prove the connection between a capitalist and smuggler, a capitalist must get seizure of money and property according to the Anti-Money Laundering law. This is a good provision under the Anti-Money Laundering Act.

Therefore, besides the fine penalty on illegal oil, the addition of Smuggling offense related to the excise tax into one of the predicate offenses under the Anti-Money Laundering Act, smuggler, capitalist and person who were aiding and abetting in oil smuggling also get seizure of money and property if found that they related to this crime.

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<sup>49</sup> Section 24 Any article liable to forfeiture under this Act may be seized at any time and any place by the customs official, administrative or police official.

Section 25 All goods or articles seized under this Act shall be delivered into the custody of the competent customs official. If there is no such official within a reasonable distance, they shall be delivered into the custody of the nearest Amphoe, who shall hold them on behalf of the customs. All good seized or forfeited under this Act or other laws relating to the customs shall be disposed of as instructed by the Director-General.

Hence, Thailand should add (22) of the definition of “predicate offense” into Section 3 of the Anti-Money Laundering Act B.E. 2542 as follows:

“(22) Offense relating to excise tax evasion on oil and oil products”



## **Chapter 5**

### **Conclusion and Recommendations**

#### **5.1 Conclusion**

An offense about Oil Smuggling is an important problem that Thailand should concern seriously. A motive of this offense comes from a burden in oil taxation or oil fund which oil trader must take this burden. Moreover, Thailand has a very long coast which can use this opportunity to smuggle oil. Additionally, the difference of oil prices between Thailand and neighboring countries is one of the reasons and diesel is the most popular oil to be smuggled.

Nowadays, oil smuggling is the big problem in Thailand because this illicit oil is not paid tax legally as it should be. The most important tax is an excise tax which can generate great revenue to the country more than billion Baht per year. The government earns money from oil tax more than any tax, and oil tax can be used for developing the country in many ways. Moreover, this problem is still ongoing proceed and difficult to stop because an illicit oil can make huge amount of money for the criminal network.

One of the causes in this problem is the law that uses to enforce with this problem such as the Excise Tax Act B.E.2527 is not efficient enough. This can be seen in its provision that has no any provision mentioned about what the officer has to do with the properties or money related to the commission of oil smuggling. Therefore, if people who commit the crime get caught by the excise's officer, they just pay for the fine and receive their oil back which can resell and get the money according to Section 161 of the Excise Act. The Excise Department can do nothing on this money. This is a good reason for smuggler to take a risk for getting huge amount of dirty money.

Moreover, the money that obtained from oil smuggling is used to further funding other crimes, such as drug trafficking, arms smuggling, and human trafficking. This is the reason why the cycle of crime is growing quickly and endlessly. Thailand needs to stop oil smuggling as fast as possible. One of the solution is to amend the law for having more power to efficiently control oil smuggling network.

Thailand should use the law that has special provision such as the forfeiture measure against properties or the money related to the commission of an offense to block the money used for funding other crimes whereby seizure of the property and money that received from an offense. In case of oil smuggling, if a smuggler has sold all oils, the money received from selling oil can get seizure if found that the money relates to oil smuggling. The name of that law is the Anti-Money Laundering Act. The provision of the Anti-Money Laundering Act is used for stopping network of criminal whereby seizure of the money and property acquired from the predicate offenses. Hence, if Thailand adds an oil smuggling offense which relates to the excise tax evasion into one of the predicate offenses under the Anti-Money Laundering Act, Thailand can use the forfeiture measure of this law to prevent and suppress oil smuggling offense efficiently.

The prominent provisions under the Anti-Money Laundering Act which can use to prevent and suppress an oil smuggling offense are as follows:

1. Provisions as money laundering action.

- 1) The person who committed an offense about money laundering must get punishment by the provision as money laundering according to Section 5 of the Anti-Money Laundering Act B.E.2542

- 2) Provision for the person who committed money laundering outside the country under Section 6 of the Anti-Money Laundering Act B.E.2542

- 3) Punishment for aiding, abetting or attempting to commit and conspiracy on money laundering according to Section 7, 8 and 9 of the Anti-Money Laundering Act B.E.2542

2. Provision against the properties connected with the commission of oil smuggling

- 1) Seizure or attachment of the property; if there is a reasonable ground to believe that any property connected with the commission of oil smuggling may be transferred, distributed, moved, concealed or hidden; the Transaction Committee shall have the power to order a provisional seizure or attachment of such property for a while. This is stated according to Section 48 of the Anti-Money Laundering Act B.E.2542

- 2) Make the property vested of the State; if found that there is a convincing evidence that any property is the property connected with the commission

of oil smuggling, the Secretary-General shall refer the case to the public prosecutor for consideration and filing a petition to the Court for an order that such property be vested of the State according to Section 49 of the Anti-Money Laundering Act B.E.2542

Adding smuggling related to the excise tax into one of the predicate offenses under the Anti-Money Laundering Act, may increase more efficiency to prevent and suppress oil smuggling offense because only the punishment is not enough. The aspect of the oil smuggling process is running by a big network. If the officer can arrest smugglers with oil, this criminal network will change from a person who performs as a smuggler to other persons. It has a huge amount of money circulation in this network. The Anti-Money Laundering Act is the law that tends to punish people who use illegal money acquired from the commission of crime by punishing individual and seizing property related to the offense separately from criminal procedure for the predicate offenses. Hence, if the evidence in the predicate offenses cannot prove the guilt of the offender and cannot confiscate the property according to the seizure measure of the Criminal Code, it does not have any effect to the money laundering proceeding; because in the proceeding of the money laundering offense, it uses the forfeiture measure of the Civil Code. The offender has to prove the origin of the property, if he fails to prove, the Court shall give an order to make such property be vested of the state. By using the provision under the Anti-Money Laundering Act, it can make the effective prevention and suppression against oil smuggling.

## 5.2 Recommendations

From the current situation that each year Thailand suffers from oil smuggling problem which causes the government loses a great revenue up to billions Baht per year according to the Excise Department Annual Report. Hence, Thailand has to generate possible ways to prevent and suppress oil smuggling that causes economic problem and will be an obstacle in developing the country. At least, these recommendations would decrease the number of this crime as follows:

1. Oil smuggling offense relating to the excise tax evasion should be designated as one of the predicate offenses under the Anti-Money Laundering Act. This offense has the characteristics conforming to the criteria of the predicate offenses under the Anti-Money Laundering Act. If Thailand brings measures under the Anti-Money Laundering Act to use against the oil smuggling offense, it would be good to stop the crime. Moreover, the Anti-Money Laundering provisions are to take person who aiding, abetting, attempting to commit, and conspiracy as guilty such as an offender. Furthermore, it has special provision to access the information such as wiretapping. It also has measures against the properties relating to an offense by seizure or make it vested of the state depending on the case. The most important reason is to block the money received from oil smuggling and will use for funding other crimes. The foreign laws such as the United States law and the Australian law also have a smuggling provision which relates to the excise tax evasion, including in the Anti-Money Laundering law. If Thailand adds this oil smuggling offense into the Anti-Money Laundering law, it should have more efficiency to deal with oil smuggling.

For the measures under the Anti-Money Laundering Act, it can make the difference in combating to oil smuggling both in practical way and in prevention and suppression against oil smuggling.

However, after amending new predicate offense, for the law enforcement, the person who is authorized by the law must fairly use it, not to defame other people. The measure under the Anti-Money Laundering Act is very strong and can be excessive if it is used to enforce with an innocent people. Hence, this law should be used with fairness.

2. A price mechanism of oil should be adjusted; the major causes of oil smuggling in Thailand are the price difference between Thailand and neighboring countries such as Singapore and Malaysia determined by high taxes (excise duties). Moreover, Diesel in Malaysia or Singapore can be twice cheaper than Thailand. By this reason, it makes group of capitalist start to buy oil from Malaysia or Singapore which also evades tax from that country and smuggles through boat and truck coming into Thailand and spreads all over to gas stations in Thailand.

In Thailand, oil price is high because of tax burdens. These taxes are the excise tax, municipal tax, Value Added Tax and money that shall be sent to the oil

fund. Thai people must pay for oil tax up to 18-19 Baht per liter. Some reasons are because the government must collect these taxes from promoting to use LPG gas in low cost, as the LPG gas price is cheap, the government must collect other taxes much higher instead.

This can say that primary reasons for smuggling are high price of goods that are determined by high excise duties. If Thailand can change unnecessary regulations for the reduction of excise duties at the same level with neighboring countries and restructuring price of LPG gas, the government could collect tax lower for other oil products and it is the most effective tool in combating smuggling because price of oils in Thailand per liter would cheaper than today. Additionally, people who try to smuggle the oil will change their mind if smuggling can make low profit for them by reason of Thailand's oil price is not different too much from oil price in Malaysia and Singapore.

3. Every officer should perform their duty by strictness. This refers to not receive the bribe from an offender. Many crimes can still ongoing operated by this reason. If an officer who has a duty to collect tax or examination of the importation of oil gets the bribe, an officer will let a smuggler bring illegal oil across border and sell in Thailand. The problem of oil smuggling will never end.

4. Increase and adjust a reward structure for tax officers and other officers who have a responsibility in oil smuggling capture. Rewards increase motivation for raids and seizures, which are necessary steps for improving enforcement and increasing tax collection. A performance based on reward system also reduces a chance that tax officers will fall for venal offers of oil smuggler and this conforms to the previous recommendation. In many other countries such reward systems have successfully helped in control an illicit oil trade.

This idea is not new in Thailand. There have been the existing Customs Reward mandated by law for a long time. The government gives rewards to high performance officials and the one who performs the hard works. If Thailand can increase this reward, it will motivate an officer to have a good performance and to not become the instrument of oil smuggling network. Moreover, if an officer performs a hard work, he can decrease the number of smuggling and lastly, oil smuggling will get prevention and suppression efficiently. The existing rewards regulations can be easily

amended to include incentives for tax officers and other officers who help stopping leakage of the government revenue through their duty in stopping illicit oil.

5. Officer should monitor on suspicious transaction in collaboration with the bank that such transaction has occurred; this can be done by bank that should make a notice or report to anti-money laundering officer about transaction which involves with huge amount of money. This measure can track to the origin of oil smuggling and can prevent from funding other crimes. Moreover, it can decrease the motivation of oil smuggling because the money received from oil smuggling gets seized before spreading the money. However, there should have a good control over money laundering because a criminal may have a relation with some directors of the bank which they can use this relation to avoid the detection by officer.

6. Oil smuggling is the crime conducted by an intention to evade the excise tax and other taxes as previous mentioned. If Thailand has measures against tax evasion, it would be very useful in tracking of oil smuggling process and knowing the origin of this crime to prevent of future smuggling.

In Europe, there is the European Union containing many countries which have measures against tax avoidance and tax evasion by having the development in administrative assistances. The administrative cooperation or assistance between countries is necessary because each country has a limit power, not crossing the line to other countries which mean their power to investigate stops at their borders. If Thailand and ASEAN members adopt this measure like the European Union, there must be suggested this idea in the Summit. Thailand and other countries which have the same problem in oil smuggling such as Malaysia and Singapore should have the administrative cooperation or assistance between countries like European Union members. This is because it is important to exchange information about the conduct of tax evasion in each country for helping in prevention and suppression of oil smuggling and tax evasion.

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