

# The Effectiveness Enhancement in Enforcing Financial Crime: A Case Study of Witness and Evidence Measure

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## Abstract

A study of the Effectiveness of Enforcing Financial Criminal Laws: a case study of witness and evidence measures aims to analyze the meaning, Patterns and natures of the economic crime, (its criminals, and its factors), to study problems and limitations in evidence search and collection regarding financial Crimes; to study measures taken against assets and the financial crime under the anti-money laundering law of Thailand, and to study and analyze approaches to enhance effectiveness in the enforcement of evidence measures against the financial crimes in Thailand. Findings show that Thailand faces problems and limitations with search and collections of financial crimes evidences, particularly in the cases of cheating, security offence, stock market, public fraud under the criminal code or under ordinance and ill-mobilized network because they are sophisticate and complicate economic crimes. Technologies were used for offending and concealing evidences while performing organized and transnational crimes which makes it difficult for investigations and interrogations of evidence collections and the prosecutions of criminals. Also, taking action against assets from money laundering at the moment are likely ineffective.

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**Keywords:** Effectiveness Enhancement, Enforcing Financial Crime, Witness and Evidence Measure

## Background and Significance of the Problem

Riddles of economic crime are crucial to Thailand particularly the financial crimes which are the offenses of finance seriously affecting social, economy and security of a country. It has been witnessed that financial crimes never failed to lead most economic crises. Besides their catastrophizing economies and people directly involved, they also holistically impact and accelerate the state to pivotally set the policy of prevention and suppression.

Natures of the financial crime have been faded into more sophisticated styles and hard to impose lawsuit. By the current global evolution with communication technology to speedily hook information network with borderlessness, expanded business affairs and maximized gains; criminal rings have been formed into the “organized crime”. Organizations formed networks with ultimate influential individuals in crimes as big boss and mandated illegal businesses. Business gains or profits were consecutively laundered and legalized to feed the organization and to reach out its networks. Some parts of its money were spent in graft with some state authorities and backing both local and national politicians by financing to facilitate dark business affairs and counter lawsuits. It turned impossibility to trace the big boss who was the backdrop and enabled the organized crime to expand its network influences creating countless calamities to countries in all regions (Komkris Dullayaphitak, 2012) and reset to be the transnational organized crime networking from two countries unto international level, which escalates deadly criminal problems (the United Nations Convention against Transnational Organized Crime, 2000).

The financial crimes were the offenses of finance and the financial institutions such as offenses of the financial institutions, of the stock exchanges, of public fraud, of direct sales, of illegal business affairs, of bankruptcy by fraud, of customs laws, of taxation, of counterfeit goods, of computer, and of credit card. Economic criminals were experts in jockeying advanced technology to commit crimes and became hard for investigation, interrogation and arrestment. They boundlessly covered their offenses and eliminated evidences which would later bring difficulties to them. Such types of crimes eased coverage, elimination, and cleverly covered evidences. With monetary power gained from crimes, it brought dark influence to gag witnesses, bribed police and state agents, included with hiring scapegoats. It was likely impossible to bring them to punishment because of their acts were masked, hidden and difficult to notice or found. Sometimes victims felt unvictimized, without horrifying public, threat or terror, without vengeance made to the onlookers, and not

only made victims felt non-victimization but just felt common business disadvantages. However, when realizing the victimization, it is too detrimental for the state to ameliorate and to solve them. Natures of the economic crime endangered public peace and welfare due to the damages of large amount of money with great number of victims.

Searches and collections of criminal financial evidences were very critical and indispensable to prove guilt or innocence of the alleged (Thawee Sordsong, 2010) but the identical financial crime was significantly on indicia or circumstantial evidences rather than witnesses demanded by the court in order to weigh punishment. Admissibility of the indicia for punishment, they had to be concrete, evidently identifiable on real offense and closest to the offense. Such quality of collecting evidences requires special methods and measures on their searches, necessity of deliberation and prioritizing e-evidences and assistance from the public prosecutors who had experience on lawsuits and knew well the procedures of the court which evidences eligibly served to prove guilt, which ones did not and which ones might be doubtful-led and favorable to the defendant. In addition, most cases of the financial crime, the state was unable to charge criminal lawsuit with the mastermind-man of the organization because of the evidence incompleteness and eligibility to enter the justice administration. The major root was most evidences to prove guilt of the defendants were under their possession, well concealed and well secured, particularly offenses of the unfair securities trading, where most evidences were with the defendants. Moreover, such deeds were done by the erudite and specialists and they were brighter than common criminals. This included accomplice and well concealment of the offense. So, it was tough to identify guilt of the defendants without doubts for the sentence.

To leverage the efficiency of law enforcement against the financial crimes needed to find modern approaches and advanced investigation methods and enabled to efficiently collect evidences. this study was focused on the model of the financial crime affecting the national economic system, concentrating the intricate laws, cases, problems and limitations to find and to collect evidence in each case, i.e. the financial institution fraud under the Financial Institution Business Act B.E. 2551 (2008), the security offence under the Securities and Exchange Act B.E. 2535 (1992), the public fraud under the Criminal Code, and the Emergency Decree on Loans Amounting to Public Cheating and Fraud B.E.2527 (1984), and the Direct Sales and Direct Marketing Act B.E. 2545 (2002). Also, the study was concentrated on applying evidence measures which should be enforced on financial crimes in Thailand

through their investigations and analyses in abroad, and measures of taking action on assets under the anti-money laundering law. Findings would have been guidelines to enhance efficiency of law enforcement and the achievement of evidence measures, in taking action with assets by imposing the anti-money laundering in Thailand where it would lead to the very solution of the financial crimes.

### **Research Objectives**

1. To study the meaning, patterns and natures of the economic crimes, the natures of economic criminals, and factors creating economic crimes,
2. To study problems and limitations in searching and collecting evidences in the cases of financial crimes, types of offense on financial institution fraud, security fraud, public cheating and fraud, public cheating an fraud on loan and offense of direct sales,
3. To study measures of taking action against assets and the financial crime under the anti-money laundering law of Thailand, and
4. To study and analyze approaches to enhance effectiveness in the enforcement of evidence measures against the financial crimes in Thailand.

### **Scope of the Study**

This investigation was scoped under laws and types of offence intricate to the three following bills, i.e.

1. The financial institution fraud under the Financial Institution Business Act B.E. 2551 (2008),
2. The security offence under the Securities and Exchange Act B.E. 2535 (1992), and
3. The public fraud under the Criminal Code and the Emergency Decree on Loans Amounting to Public Cheating and Fraud B.E.2527 (1984), and the Direct Sales and Direct Marketing Act B.E. 2545 (2002)

These led to analyzing and synthesizing problems and limitations of the law enforcement, particularly, the evidence measures and measures of taking action against assets under the anti-money laundering law.

## Research Questions

1. Currently facing problems and limitations, how could Thailand search and collect the following evidences?

1) The financial institution fraud under the Financial Institution Business Act B.E. 2551 (2008),

2) The security offense under the Securities and Exchange Act B.E.2535 (1992), and

3) The public fraud under the Criminal Code and the Emergency Decree on Loans Amounting to Public Cheating and Fraud B.E.2527 (1984), and the Direct Sales and Direct Marketing Act B.E. 2545 (2002)

2. Were the evidence measure proceedings sufficiently efficient against the financial crimes? How?

3. How could evidence measures in the financial crime be improved for their efficiency and achievement?

4. Were measures of taking action sufficiently efficient against assets in the financial crimes through the anti-money laundering? And how could it be improved?

## Research Methodology

This was a qualitative research exploring Thai and foreign documents in areas of law provisions, law texts, books, journals, articles and other documents including information technology to search what involved the financial crimes on frauds in the financial institutions, frauds on securities, public cheating and fraud, and offences of direct sales through in-depth interview from 10 key-informants who were experts with experiences in imposing lawsuit of financial crimes. This led to analyzing and synthesizing problems and limitations regarding evidences of the financial cases and the actions taken against assets under the anti- money laundering law. In addition, this study had analyzed and adapted the evidence measures with the cases of foreign financial crimes to meet the situations in Thailand.

## Results

Focuses were on natures and patterns of financial crime, related laws, case study, problems and limitation to seek and collect evidences in each case or financial crime against the Financial Institution Business Act B.E. 2551 (2008). They were the cases of BBC (Bangkok bank of Commerce), First Bangkok City Bank (Pcl) against the Securities and Exchange Act B.E. 2535 (1992), the case of Song Watcharasriroj, Picnic Corporation (Pcl), and Roynet (Pcl) and offense of public cheating and fraud against the Emergency Decree on Loans Amounting to Public Cheating and Fraud B.E.2527 (1984), the Direct Sales and Direct Marketing Act B.E. 2545 (2002). This includes the case of call centre gangs, Blisher Intergroup co. Ltd., Green Planet 108 Corporation Ltd. This was to analyze approaches to enhance effectiveness in law enforcement and achievements of evidence measures and the enhancement of law enforcement against property under the anti-money laundering law.

Findings showed that Thailand faced problems and limitations with search and collections of financial crimes evidence, particularly in the cases of cheating, security offence, stock market, public fraud under the criminal code or under ordinance and illegal mobilized network because they were sophisticated and complicated economic crimes. Technologies were used for offending and concealing evidences while committing organized and transnational crimes which in turned made them difficult for investigations and interrogations regarding evidence collections and the prosecutions of criminals. Also, taking action against assets from money laundering at the moment were likely ineffective.

## Discussions

1. The meaning, patterns and natures of the economic crimes, the natures of economic criminals, and factors creating economic crimes

With the data collection from documental explorations and in-depth interviews, they resulted as below:

Economic crime though differently called such as white collar crime, business crime, commercial crime, corporate crime, organized crime and occupation crime. All are analogous, which are crimes intended for economic gains or interests by violating laws related to economy and commerce affected the national economic system and the national security. "Economic crime" was coherent with objectives of committing this type of crime and covered the entire economic offenses.

Patterns and natures of economic crimes were not only violating laws, obligation, government regulation or civil violations but also endangered societies. Culprits had motive and expect unlimited monetary gains. Some culprits had high social status, fame, and been trusted by societies. Economic crimes destroyed the monetary security of individuals, public and private enterprises. They were popular crimes which could threaten societies and linked to the money laundering that let to backing other lawbreaking affairs. Their distinct natures are as below:

1) It was lawbreaking or hiding lawbreaking within the licensed legal affairs. The patterns were distributed in different patterns either closed businesses and disclosed businesses but illegal which the Act promulgated wrongness.

2) There were techniques of concealment and attempts to destroy evidence disabled to trace back to wrongdoers. Herewith, economic crimes were complicated and gradual within sometime until damages were sensed. It made evidence searches difficult and outdated. It offered opportunities for these types of crime to well hide, destroy and conceal evidences. With the money power gained from economic crimes and rise of dark influence to dumb witnesses, bribing authorities and the state agencies including hiring scapegoats, which was difficult to reach the root.

3) Due to being hidden and covert behavior, it was difficult to observe or find. Sometimes, victims did not sense they were victimized until mishaps appeared. In corporate without directly haunting image amid people, no threat and fear or terror against the victims; they made victims unrealized their victimization but just thought that it was the disadvantage for common business only. Attitudes and

values of the victims had very mild retaliation compared to common crimes and it did not create vengeance to the onlookers or spectators.

4) Criminals were experts with modern technology either management or set-ups. Devices were improvised such as computers, trade documents and with well-plan, crimes were systematically committed. There were studies about data, plans and readily manage other things which were difficult to investigate, interrogate, arrest and judge.

5) Crimes were committed by individuals or groups with status and dignity in societies especially the influential persons or political power man and laws at hand wherewith common people dared not commit. A fact undisputed was inside the political ring itself there are number of economic criminals. They were equipped with two statuses, i.e. popular voted entrusted by people and tuxedo criminals (white collar criminal).

6) Economic crime could not commit alone but by many and in group included people with and without knowledge until linked into the local movement and the national movement while there was tendency to assemble into an organized crime and expanded into the transnational crime.

7) It endangered peace and order of public. Its damages were cost more than common crime. Number of victims was in large number. Besides harming societies and public, the state was also victimized because economic crime devastated economy and investment, blocked social growth and security. Some kinds devastated morals, traditions and cultures of societies.

Natures of economic criminals are found that most of them have better backgrounds than common criminals. They enjoyed stable economy, social and political status, backed by influential person aiming to commit crimes for one's benefits and returned in property and income. Economic criminals were highly capable to commit crime, expert, experienced, using high techniques, planning in steps, and ability to well cover data or evidence related. It was hard to investigate and arrest. Crimes were unlikely commit alone because economic crimes happened with juristic persons with complicated regulations and in multiple steps. It was certainly hard to achieve alone. Usually, there were backers or accomplice in team. The more it was large amount of gains; number of team members were increasing. If it were a crime in an organization, some personnel in the organization might consent or cooperate. It was hard to probe the mastermind-man because criminals cooperated with multi level of networks.



Factors leading to economic crime are found that economic crimes likely had motive of returns with large amount of property. There were many factors to ease committing crimes and they were (1) opportunity to commit crime such as most organizations or most offices breed crimes. The higher responsible position the person has; the higher opportunity to commit economic crimes to exchange job advancement, affluence and fame, which executives would not be reluctant to violate laws since there were shortage of the government regulators to monitor them. (2) Decision to commit crime was to seek gains which were the major objective to run business and for the survival of the workplace which demanded companies to use variety of techniques senselessly to righteousness such as avoidance to follow laws, tax avoidance and directly violating laws and so on. (3) Expertise to commit crime was because economic criminals were likely the persons with specialization to successfully take action. A person to cheat bank must know well about banking system. If needed to cheat on goods distribution, it was necessary to understand banking system, and transport system which was complicated and sought first weakness to destroy the strength of the banking system and the transport system. Then cheating and fraud was successful. It was not for the common outsiders to understand and take action. When the doer was qualified, it was easy to destroy evidence which would later harm oneself. And (4) the economic system and structure under free trade system assembled more violent economic crimes because it was the opened system where private and government could fully run the business in every sector which was mainly emphasizing production. So, products from the opened economic system would be more affluent and it motivated to commit crime higher than the monopoly system.

Director - General of the Department of Special Investigation (DSI) was interviewed on August 15, 2012 and convinced, "...Financial crimes are likely committed by experts and found channels to commit them and offended by covering their crimes which was hard to have apparent evidences of such crimes..." Deputy Commander of Economic Crime Division was interviewed on March 7, 2013 and said, "...The problems of financial institution crimes in Thailand are usually found with their executives and they affect overall national economy at large. The damages are broader than other crimes because they create mega-domino effects and most criminals are erudite with high social status where crimes are more complicated with larger amount of money in damages...."

Patterns and natures of economic crime are coherent with the Differential Association Theory (Edwin H. Sutherland, 1947) advocating that economic criminals were not inherited but from social learning and committed through drive of property interests and income to meet one's wants. Economic criminals were likely the offenders who had high job position regardless in the government sector, politics, and business sector. They exploited their positions to seek illegal monetary gains and characterized their offence with techniques and expertise. It concluded complicated offenses which needed occupational relationship. It was cohesive with the theory that offenses are from association and learning concepts, tactics and channel to offend. Economic crimes are usually found in organized crime grouped into firmly established organization. They aimed at common interests and were occupational crime while attempting to expand their business in the territory as well as involving transnational businesses. There was effective administration within their organization and organized divisions with strong responsibility. Generally, the organization recruited government agents and politicians to be its members or leverage for gains and they were nurtured to ease their works. Economic crimes as organized crimes or transnational crimes were the most evident model in the Differential Association Theory.

Issue on causes of economic crime is coherent with the Techniques of Neutralization (Gresham M. Sykes and Davis Matza, 1957) because the economic criminals on finance were executives of the financial institutions to cheat in their institutions. The executive in the securities companies cheated or speculated and neutralized and rationalized what had been violated laws so that they or others felt that they did not violate any laws such excuses were harming none, doing no wrongs, or lawbreaking but not criminals. Sometime, they neutralized to be accepted such as by necessity for the survival of the affairs. Some neutralized by referring to societies that to secure the financial condition of the company or of the business. Some neutralized on necessity of the business and if other encountered such situation, they would do or neutralized that this was to help workers not to be jobless, and so on. Exploiting techniques of neutralization was not meant that offenders rejected their deeds were not illegal but rationalizing to make themselves not to feel violating any laws or to feel that one is not evil. Mostly offenders would not take action until they could find reasons for their neutralization.

In addition, it is coherent with the Rational Choice Theory (Ronald V. Clarke and Derek B. Cornish, 1985) because economic criminals were experts with modern technologies to offend. They had ability of coverage, elimination, hiding evidences well. They were professional criminals. Meaning, criminals living by committing crimes had techniques and expertise how to do them. They did not need criminal records, recognition and decision-making based on the Choice Theory but they were proud to lead their lives their own ways, e.g. swindlers, counterfeiters, hired gunman, procurer and procuress. In addition, professional criminals learned and experienced to choose crime scenes, targets, and learning criminal techniques to save them from arrestment which exactly met the structure of the Choice Theory (Sudsanguan Suthisorn, 2004).

Issue of factors leading to economic crime is coherent with Differential Reinforcement in Social Learning Theory (Ronald L.Aker, 1998) because when social saw that economic crime was an offense and the state met difficulties to find evidences and punished offenders especially the financial crimes, e.g. the case of Bangkok Bank of Commerce Limited (Public) (BBC), the case of First Bangkok City Bank, cases of speculations, cases of chain shares. They made criminals see that consequences of crime create large amount of gain and returns for them and for their companies. Also, current laws could not effectively punish any criminals. All these gains and returns were the catalysts and supports to commit crime which the executives of banks and securities companies imitated the behavior. It aligned with the concept of Theory of Imitation coming from learning the criminal behaviors with the closed persons (here, it might be referred to companies running the similar type of business) through communication and learning.

2. To study problems and limitations in searching and collecting evidences in the cases of financial crimes, type of offense on financial institution fraud, security fraud, public cheating and fraud, public cheating and fraud on loan and offence of direct sales

The studies and analysis of documents and information of in-depth interviews conducted with 10 experts in trying financial crimes and experts of anti-money laundering laws revealed that:

1) Cheating and fraud in the financial institutions were met with the problems of discretion on the acts of the executive whether they deserved the charge of cheating and fraud or not since there was the problem of interpreting “fraud” which each office holds different opinion. It led to practical problems, cooperation and coordination among personnel and offices involved both in the country and in abroad. It delayed lawsuits and evidence collection with completion and concise. Moreover, the enforcement of anti-money laundering law was unlikely effective.

2) Securities offenses met problems of proving their guilt of unfair trading under the Securities and Exchange Act B.E. 2535 (1992), which was strict in proving the evidences. The plaintiff was responsible to prove beyond responsible doubt that the defendant was guilty; then the court would sanction the defendant. At the same time, such offense had complicated and sophisticated techniques and most wrongdoers were experts with experiences of securities trading as well as being the mastermind-man and possessed almost all evidences. To prove guilty in such a case required proving mainly on intention but most evidences were circumstantial and could not find witnesses and it affected the admissibility and production of evidences during the trial because presenting the circumstantial evidences to testify wrongdoing was likely unacceptable and less weight of admissibility to punish the defendant.

3) The case of public cheating and fraud revealed that most victims feared disable to regain their principal and kickbacks from joint-investment in chain shares business. They declined to cooperate on data to the police. Besides, they might be charged as offenders themselves. In the case of business to recruit members, they feared to notify the police because they would be subject to be the alleged of conspiracy while such the case involved countless documents particularly accounting documents which consumed time to prove guilty. It delayed lawsuit and was late to counter such a crime which remodeled all the time. Lawsuits in court with large amount of victims and documents involved; presenting all documents for

inquiries consumed time which delayed the lawsuit and left the cases remain in court and might allow evidence losses. Also, there might be interception with justice administration if culprits were the influential persons or personnel from organized crime. There might be intimidations or bargaining the victims to decline to appear as witnesses in court or reverse their statements. Moreover, communication technology today had been so advanced for its development which could speed destroying evidences.

4) Offenses of illegal network mobilization revealed that they were complicated crimes and involved heaps of document either the application for membership forms or applications for joint-venture or accounts or membership evidences or other documents related. The evidence collections consumed time to classify and to prove them. Moreover, destroying documents was rapid and problematic to handle their property because offenses of illegal network mobilization by direct sales and direct market laws were not the offense against anti-money laundering law in Thailand, which was impossible to enforce this law.

3. Measures of taking action against assets and the financial crime under the anti-money laundering law of Thailand

1) The Conspiracy Theory (Robin Ramsay, 2006) measures helped enforcement against the financial crimes and adhering to the principles of conspiracy. That was two individuals agreeing upon any actions deserved guilty in order to intercept committing offense as being agreed upon to actually happen. It was to consider their ill-intention of the conspirators only without considering their agreement would be the action close to the result of preparation stage or attempted to commit crime or any. Reason was the intent of the law on conspiracy was to intercept any crimes committed. It was “to prohibit individuals agree to offend” which was enough to charge conspiracy as crime. The main objective of the criminal law aimed to provide social members the protection of life and property particularly crimes committed by the organized crime and it was consistent with the United Nations Convention against Transnational Organized Crime, 2000, No. 5 Paragraph 1(A) (1) which at present Thailand has adopted the principles of conspiracy enacted in many laws, such as the Act on Measures for the Suppression of Offenders in an Offences Relating to Narcotics B.E. 2534 (1991), Article 8; the Act Concerning Offences Relating to Submission of Bids to Government Agencies, B.E.2542(1999), Article 4; The Anti-Money Laundering Act B.E. 2542 (1999) Article 9, and the Anti Human -Trafficking in Persons Act B.E. 2551 (2008), Article 9.

The researcher believed that the conspiracy theory measures was appropriate against the economic crimes which was complex, ingenious, concealed techniques and many individual parties involved which were troublesome to trace the mastermind-man. To apply the principles of the criminal law on the mastermind, the employed persons, and the backers in the case of economic crime was hard because of the evidence searches. In some cases, the law enacted the specific qualifications of the offenders which granted accomplice serving softer punishment or disproportionate to their crimes. For example, the negligence to duty by the criminal code, the accomplice as a common people and the state authority cannot be punished as the mastermind as the state authority but just as backers.

However, the conspiracy measures found in many Acts in Thailand as above are the enactment for specific issues which are insufficient to completely counter the financial crimes in every form of offenses. Due to the laws involve directly with financial crimes such as the Financial Institution Business Act BE 2551 (2008); the Securities and Exchange Act B.E. 2535 (1992); the Emergency Decree on Loans Amounting to Public Cheating and Fraud B.E.2527 (1984); and the Direct Sales and Direct Marketing Act B.E. 2545 (2002); there are no enactments connected with the conspiracy measures to be applied with the crimes in these Acts. It is commented that the way to enhance effectiveness of enforcement against the financial crimes in Thailand is to adopt the concept of the conspiracy measures to be enforced against these types of crime. They will be the tools for the enforcers enabling to intercept conspiracy and it is the preventive measure not to think to commit more crimes. It also helps alleviate problems in case the government sector disables to find evidences enough to punish offenders in guilty of major offenses. The court might consider punishment defendants on guilty of conspiracy as enacted in laws on an offense base because the major offense fail to provide sufficient evidences. By proceedings, the plaintiff must present evidences to prove guilty beyond doubt against the defendants else benefits of doubt are granted in favorable to defendants.

Moreover, the conspiracy measures were worth against crimes with complexity, indigenously, technical concealment and many individual parties involved. For example, crimes committed by the organized crimes were troublesome to trace to the mastermind-man. To adapt the mastermind, the employed persons, and the backers under the Criminal Code Articles 83, 84, and 86 was hard because of the evidence searches were unlikely. Or in the case of the law enacted the specific qualifications of the offenders which granted accomplice serving softer punishment or disproportionate to their crimes. For example, the negligence to duty by the criminal code, the accomplice as a common people and the state authority could not be punished as the mastermind-man as the state authority but just as backers. The conspiracy measure can then help prevent the financial crimes at this level.

2) With the advancement of sciences and technology, the financial crimes were more complex and hard to pursue arrestment in the justice administration, particularly to prove guilt in the proceedings. They must be based on evidences but the authority in justice administration could not find them because current crimes were organized crime with complex organization, concealing evidences and mechanism to intercept connection thoroughly. Traces to find evidences to prove their guilt was to find evidences from the guilty. The researcher finds that measures internationally accepted should be adopted and adjusted to find evidences from the defendants. That was the plea bargaining (Grossman, G. M.; Katz, M. L., 1983) where the government agents or the prosecutors negotiated and agreed with the defendants if the latter agreed to provide data to the justice administration which would enable to prosecute the conspirators and the defendant would meet a softer charge or less punishment.

The principles of plea bargaining was generally accepted but the countries would enact the due process to endorse it. In Thailand, no laws have been evidently enacted to endorse it for the financial crimes. If there was an evident one, it would include the endorsement of the evidence gained from the guilty pleas. In the financial crimes regardless being the cheating and fraud in the financial institutions, unfair stock trading, public cheating and fraud or loan being public cheating and fraud; they were all the special cases under the authority of DSI subject to the Special Case Investigation Act B.E. 2547 (2004). So, if there was enactment of plea bargaining under the DSI, which was empowering the DSI personnel to conduct plea bargaining with the arrested under law; it would enable to adopt the plea bargaining measures so as to effectively enforce against the financial crimes. It resulted fuller counter the financial crimes. Had amendment been evident, it allowed evidences

collected from plea bargaining between the DSI personnel and the arrested with legal endorsement and by the voluntary willingness of the arrested. They were then the legitimate evidences admissible to prove guilt or to punish defendant counted that the collected evidences were not illegitimate. Adopting the plea bargaining thus to be enforced against the financial crimes would be positive to the lawsuit in many ways. For examples, the plea bargaining could speedily finalize adjudication of the criminal cases. It reduced burdens of justice administration and beneficial to victims and witnesses who gained some benefits from the state. It enabled the state to find evidences from the alleged or the defendant for the benefit of the lawsuit and creates certainty to the proceedings, the justice administration and social.

3) With the measures to enhance effectiveness against handling property under the anti-money laundering law, it was necessary to amend the Predicate Offense under Article 3 of the Anti-Money Laundering Act B.E. 2542 (AMLA, 1999), i.e.

3.1) In the offense of cheating and fraud in the financial institutions, there should be amendment on the 4th Predicate Offense to cover any acts of individual which includes the acts of the directors, the managers and any responsible individuals or the stakeholders in running the financial institutions and other acts of other individuals involved conspire in misappropriation or fraud or violent act against property or cheating and fraud under the Criminal Code. This would enhance effectiveness to address the property of cheating and fraud in the financial institutions.

3.2) In the offense of illegal network mobilization under the direct sales and direct market; there should be amendment of 3<sup>rd</sup> Predicate Offense to cover the offense of illegal network mobilization under direct sales and direct market, too because such offense has circumstantial connection with the Emergency Decree on Loans of Money Amounting to Public Cheating and Fraud BE 2527 (1984), and deserves as the perfect element offense of public cheating and fraud under the Criminal Code, Article 341 supplement with Article 343.



On account of the current financial crimes were more transnational, there were plots of organized crimes committed in more than one state and there was illegal property transferred or moved to foreign countries which troubled lawsuit and property pursuance. Since there were limitations in law enforcement on territory, it was very necessary to have more international cooperation and assistance of criminal affairs through amendments. For examples, the International Cooperation on Criminal Matters Act B.E. 2535 (1992), there is at present the issue of property which might be confiscated or forfeited under the Thai laws and does not cover the confiscation or forfeit of their yields of the reproduced or deformed property. This included the amendments of the principles of admittance or enforcement or judgment in foreign countries regarding seizure, confiscation and forfeit of properties. This was to end major limitations disabling Thailand to cooperate with foreign countries. If not, Thailand could not request cooperation from foreign countries on the ground of reciprocity which was the international principles to engage in mutual assistance among countries on criminal matters.

4) The witness protection measures in the criminal case should be adopted under the Witness Protection in Criminal Case Act B.E. 2546 (2003) to enhance effectiveness in conducting evidence measures against the financial crimes especially the special measure in protecting witnesses. It counted to the measures of the absolute law on protecting witnesses and their intimate to be safeguarded from intimidation and threats upon being the witnesses in the criminal case where facts could be appeared. Individual witness was the most important evidence to weigh testimony in the criminal case and was important to prove guilty. Some types of evidence had limitations to prove and justification such as material evidences or documental evidences but witnesses particularly the eye-witnesses who saw the crime scene and facts were deemed closest to the offense. So, they were much weighed to provide facts to prove guilty of the case. However, if adopting witness protection measures to be applied with the financial crimes, it needed amendment in the Witness Protection in Criminal Case Act B.E. 2546 (2003), Article 8 by adding types of financial crime to be the case accessible to enter witness protection to meet the conditions of special measure.

5) In the financial crimes, the electronic-evidence (e-evidence) were important to prove guilty of the defendant particularly the offense of the financial institutions and the offense of securities which the law did not identify its offense base. It must thus adhere to evidence proof beyond doubt. Therefore, the court should adjust the admissibility of the e-evidences by weighing the admissibility as the origin to have weight enough and enable the admissibility to punish offenders. Though Thailand had enacted law to endorse prohibiting the court to reject admit e-data as evidence in the lawsuit in both civil cases and criminal cases or any other cases just being the e-data under the Electronics Transactions Act B.E. 2544 (2001), Article 11. But the proposal and the inquiries were yet to determine clearer methods and by practice, the court paid no attention and unlikely weighed such type of evidences.

6) A critical cause of the offense was the executives lack good governance. It was seen if the financial institutions acquired effective administration system and engagements with good monitoring measures through the function of their board which set direction and manage them. It would invigorate the national economic and financial systems with sustainable development. The financial institutions should engage by adhering to good governance and well monitoring themselves as in the announcement of Bank of Thailand (BOT) No. 13/2552 (2009) on Strict Good Governance in Financial Institution and emphasize encouraging investors or stakeholders knew how to protect their own rights by educating investors or stakeholders while supporting shareholders to see the importance of shareholders meeting. Applying rights of shareholder meeting would not only be the indispensable tool to directly protect their benefits, but also, in other way, monitoring the listed companies in the stock markets.

7) The concept of social control should be adopted and adapted to be applied in preventing financial crimes particularly with the case of public cheating and fraud, e.g. public cheating and fraud through illegal fundraising or chain shares, and public cheating and fraud through direct sales and so on. Due to offense of illegal fund, most victims would decline to notify police fearing to fall being the offenders because they persuaded others to joint investment or fearing their benefits would not be regained if the government sector took action. This delayed the government to take lawsuit. Applying social control given people to protect and control crimes was to minimize channels or chances of offend. It needed public relation and educating people on tactics and patterns of deception and encouraged people to monitor wrongdoing behaviors while notifying clues or causes to the state

authorities. It was seen if the measures could be driven along with tangible compensation for informants; it would further promote social measure to effectively prevent this type of crime.

### **Recommendations from the Study**

1. In the evidence measure, the conspiracy and confession negotiations for the benefit of evidence collections are necessary. The court should better amend the principles and concepts of the current regulations and laws to admit e-testimony. The Witness Protection in Criminal Case Act B.E. 2546 (2003), Article 8 could be adopted as special measure for witness protection.

2. In the asset measure under the money-laundering law, the Anti-Money Laundering Act B.E. 2542 (1999) Article 3 of the 3rd and the 4th predicate offences should be amended and international cooperation and assistance on criminal cases should be enhanced, and

3. In the social measure, “good governance” in the financial institutions should be promoted and well supervised while social control should be applied to prevent financial crimes. Approaches as mentioned above can appropriately be adjusted to meet the Thai Contexts. These measures would be more effective in the enhancement of enforcing financial crime deterrents.

### **Recommendations for Further Studies**

Further studies should be measures of property by anti-money laundering law, and social measures to be appropriately and relevantly adapted with domestic laws; they would have enhanced effectiveness in enforcing laws against the financial crimes in the country.

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