

# Efficiency Improvement of Legal Proceedings Under Anti-Money Laundering Laws by Employing Digital Forensic Evidence

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## Abstract

This research aims to study obstacles, problems, and approaches to increase the efficiency of proceedings by using digital evidence according to the Anti-money Laundering Law. It uses qualitative measure. Key informants in the research consist of (1) specialist of Civil Servant Group, Anti-Money Laundering Office (Computer Academician), (2) specialist of Civil Servant Group, Anti-Money Laundering Office (Litigation Division Officers), and (3) prosecutor officers of the Attorney General. And this research uses snowball sampling to collect data via semi-structured interviews; data are analyzed by content analysis method. The research indicated that the problems of property legal proceedings under anti-money laundering laws using digital forensic evidence consist of an operation, and an expansion of the investigation of property proceedings under anti-money laundering laws. There were suggestions as follows: The Anti-Money Laundering Office should formulate policies, strategies, and operational plans to support the proceedings. And it should establish standards for digital evidence accreditation in line with central standards in order to incorporate digital evidence into the case files, thus significantly increasing the efficiency of litigation.

**Keywords:** Anti-Money Laundering, Property Legal Proceedings, Digital Forensic Evidence

## Introduction

According to the Electronic Transactions Act B.E. 2544 and its amendments, digital evidence is accepted as evidence in both civil and criminal proceedings. It is considered crucial evidence to be used in court proceedings. However, there is still a lack of clarity regarding the criteria for determining the accuracy of electronic evidence. This lack of clarity adversely affects the efficiency of prosecutions under the anti-money laundering law.

Nowadays, society has entered the digital era, where information and evidence are a crucial role

in the litigation process and court proceedings. Instances of financial fraud utilizing technology and digital devices as tools can significantly impact legal cases. However, with the advent of modern digital technology, there is a risk that criminals or perpetrators will exploit technology to commit financial crimes. If digital data lacks a robust protection system, it can be utilized by individuals to cause harm.

Digital evidence is a distinct form of evidence that relies on computer equipment and programs, often involving human interactions, to convey meaning. However, when digital information is

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presented as evidence, it may not be in its original condition, making it susceptible to easy modification or tampering. Hence, the handling of digital evidence necessitates a standardized process for collection, search, analysis, and reporting. Similar to other types of evidence, digital evidence has been widely accepted in both civil and criminal proceedings and is deemed crucial in court proceedings. Utilizing digital evidence to support prosecutions under anti-money laundering laws can significantly enhance the efficiency of the prosecution process. The purpose of this research is to study obstacles, problems, and approaches to increase the efficiency of proceedings by using digital evidence according to the Anti-money Laundering Law.

### Materials and Methods

**Key Informants.** To identify key informants in qualitative research, the researcher has categorized the sample into three groups: (1) specialist of Civil Servant Group, Anti-Money Laundering Office (Computer Academician), (2) specialist of Civil Servant Group, Anti-Money Laundering Office (Litigation Division Officers), and (3) prosecutor officers of the Attorney General. The total number of key informants in these groups is 15. The researcher employs a purposive sampling method, specifically selecting individuals with knowledge, experience, and expertise in the prosecution of anti-money laundering laws in civil cases. Additionally, snowball sampling is used to identify and recruit additional participants through referrals from the initial sample.

**Research Tools.** The researcher uses a semi-structured interview to collect data. It is developed based on literature reviews of concepts, theories, definitions of terminology, and relevant research papers. The validity is determined by administering the questionnaire to 5 experts to assess content validity. Subsequently, the index of item objective congruence (IOC) is calculated using predetermined criteria. A question is considered valid if it has an IOC value ranging from 0.50 to 1.00, indicating its suitability for the study.<sup>1</sup>In terms of reliability, the researcher examines confidence through triangulation, which involves a thorough examination of data from multiple sources in different dimensions. This includes analyzing data from all three groups of

key informants and studying data from judgments of the Civil Court. If the information obtained from these different sources aligns in the same direction, it indicates the accuracy of the information.<sup>2</sup> Furthermore, the researcher analyzes civil court judgments in cases where the court considers digital evidence. This analysis is conducted through content analysis to synthesize conclusions and bring together the information obtained from the key informants and the court judgments. This process allows for the comprehensive summarization of the issues at hand.

**Data Collection.** This research was approved by the Ethics Committee for Human Research of Silpakorn University. Every key informant signed an informed consent form. They were provided with detailed information about the study's objectives and procedures, and they were assured that their personal data would be kept confidential. They were also informed of their right to withdraw from the research at any time. The researcher adhered to the principle of confidentiality during the collection of information, ensuring that names or other identifying information of individuals were not disclosed.

**Data Analysis.** The information obtained from the study, including documents, textbooks, and various research papers on the context of evidence usage, was subjected to content analysis and synthesis in order to draw conclusions. The interviews with key informants, the researcher analyzed the data using content analysis as per the principles of data analysis.

### Results and Discussion

#### 1. Obstacles encountered in using digital evidence to support prosecution in accordance with the anti-money laundering law.

1.1 Officers who were responsible for collecting evidence from the Anti-Money Laundering Office (AMLO) played a crucial role in bringing information to aid investigations. They gathered evidence to process the assets involved in presenting the case to the prosecutor and during the court proceedings. From the study, it was discovered that there were implementation issues, including insufficient knowledge and officer members. The certification and training of officers to ensure their competence in supporting evidence examination

were not standardized. Ethical issues regarding officers had not been clearly defined. Additionally, there were resource constraints in acquiring modern equipment necessary for performing their duties. Structural problems were also identified, as appropriate personnel allocation was lacking. The current personnel were insufficient and may not have the necessary expertise in forensic evidence with new technology. Furthermore, it was recommended that the AMLO should provide additional training and knowledge for litigation division officers regarding the collection and handling of evidence. This would enable litigation division officers to adhere to the prescribed standards when collecting evidence and facilitate the subsequent data analysis by computer academician. As there were only a limited number of computer academicians in the Computer Forensic Division, it was crucial for litigation division officers to possess sufficient knowledge and skills in collecting high-quality evidence. By doing so, the prosecution could effectively utilize digital evidence, resulting in improved efficiency during court proceedings and an increased ability to litigate assets. In terms of policy and development, it was suggested that the AMLO should initiate an assessment of digital forensics standards. This could be achieved by comparing them with the standards certified by domestic agencies such as forensic science institutes, the Department of Special Investigation, or the Technology Crime Suppression Division, among others.

This corresponding with the perspective presented by WarintraSeevichai (2020: 78-101), who underscored the significance of having clear standards of practice to effectively manage digital evidence within the criminal justice system. It was crucial to adhere to international standards throughout the entire process, encompassing the investigation, collection of digital evidence, and presentation of digital evidence in court.<sup>3</sup>

1.2 The AMLO should have regularly provided training on crime scene investigation and forensic evidence collection. This training aimed to enhance their ability to perform their duties efficiently. The forensic evidence played a crucial role in the prosecution process, as it served as significant evidence that could prove the offense and had a significant impact on the outcome of the trial.

Including the issue of delivering documents related to the case obtained from the collection of officials, it was important to document them in a way that could not be edited. This measure aimed to increase the credibility of the evidence.

Corresponding with RatchadapornNoikaew and WoratouchWitchuvanit, who proposed that, to increase the efficiency of the handling of evidence in the investigation process, it was necessary to conduct trainings on crime scene inspection and forensic evidence collection. These trainings aimed to enhance the knowledge and skills of investigators in performing their duties, enabling them to efficiently inspect crime scenes.<sup>4</sup>

## **2. Problem and guidelines for expanding and enhancing efficiency in collecting and utilizing digital evidence to support prosecution in accordance with anti-money laundering law.**

2.1 It was found that there were difficulties in proving the connection of the seized assets to the offense due to insufficient evidence. As a result, the court revoked the seizure of assets. Additionally, challenges were encountered in verifying the assets, particularly when the objects did not possess clear indications. Consequently, officers had to primarily rely on inspecting individuals and their associated assets.

There were also issues related to the short time frame for officers to work within. This limited timeframe made it difficult to complete the evidence collection process. Additionally, the existing procedures at the AMLO did not incorporate digital forensics into asset management, which limited the effectiveness of comprehensive asset monitoring. It was essential that investigations and evidence gathering include digital evidence, which can be sent to the Computer Forensics Unit for data analysis. This would enable a more comprehensive examination of the results and litigate assets.

Corresponding with SakchaiLertpanichpun and NirumonRattanarat, who stated measures were suggested to enhance the fairness and stability of the legal system in litigation. It was recommended that amendments be made to the law to specify the scope of the term "assets related to the commission of an offense" and defined a specific timeframe within

which interested parties can request the return of the property. Furthermore, improvements to the law were suggested to raise the standard of proof and enhance the prosecution's ability to prove guilt more efficiently.<sup>5</sup>

2.2 The problems encountered in collecting and analyzing evidence in money laundering investigations were attributed to the lack of a legal framework in Thailand for the collection and analysis of evidence in such cases. Consequently, operations had to rely on methods based on guidelines from foreign countries for comparison purposes.

This finding was consistent with the research conducted by Prakid Boonmee, which revealed that fact-finding prior to the examination of evidence was a process employed by the United States and Germany to mitigate prosecution delays and expedite court proceedings. This approach proved to be particularly effective in addressing potential disputes and ensuring fairness throughout the proceedings. Conducting fact-finding before the examination of evidence helped minimize the scope of problems and conflicts that may have arisen during the case. Furthermore, it contributed to reducing the backlog of cases in court, enabling the court proceedings to move forward swiftly. This approach also fostered confidence among all parties involved in the justice process and enhanced the likelihood of reaching a prompt resolution to disputes.<sup>8</sup>

2.3 Weighing the evidence before presenting it to the court was identified in the research as an important step. It was crucial as it helped assess the significance of the evidence and determine whether it carried enough weight for the court to consider. This process directly impacted the proceedings of the trial.

This was in line with Jedsada Kamrin and Sungwien Theppha, who explained that criminal law concepts and principles related to e-evidence in criminal cases focused on addressing problems associated with the authenticity and weight of e-evidence. Since data or records in computer format were easily alterable, the parties involved in the case might have tried to dispute the credibility of electronic witnesses as part of their arguments. This posed challenges in certifying witnesses and collecting electronic evidence.<sup>6</sup>

### **3. Guidelines for enhancing the efficiency of prosecution under the Anti-Money Laundering Act B.E. 2542 through the utilization of digital evidence.**

3.1 There were challenges in proving the connection of the seized property, collecting and analyzing evidence during the investigation stage, and weighing digital evidence. To address these challenges, relevant agencies should have established standards for certifying digital evidence in accordance with foreign law. This would have included setting criteria for analyzing the reliability of electronic data, authentication through witness testimony and cross-examination of the parties, and authentication through court review by allowing the court to summon additional evidence for examination. Moreover, there should have been a legal certification process in place to ensure accuracy and reliability.

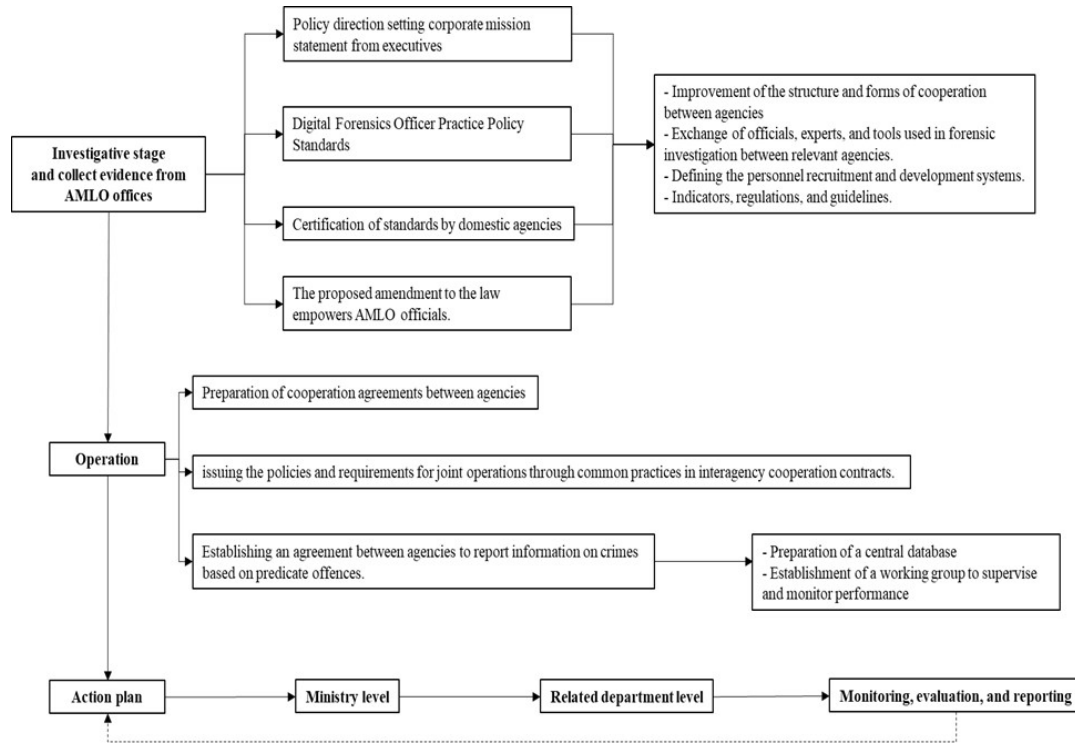
3.2 There was a need to improve the structure of relevant agencies to ensure sufficient personnel with the capability to perform both forensics and investigations, collect evidence, and report findings. This was necessary because officers needed to have a comprehensive understanding of evidence analysis to enhance their performance and expedite their duties. Additionally, it was crucial to ensure the reliability of digital evidence weighing. The source of evidence plays a pivotal role in the trial, especially when it originates from the collection of government agencies. Including, there was a need for the development of personnel in related agencies, where officers should have been trained to acquire the necessary skills to effectively perform their duties and stay up-to-date with new technologies. Additionally, it was recommended to establish indicators related to the case, which would have motivated the officers and resulted in more comprehensive sequestration of assets linked to crimes.

Both recommendations were consistent with Chudrapong Chuedee, who explained that in order to prevent electronic evidence from becoming unreliable, there should have been a model law for the establishment of electronic evidence certification bodies. The organizational structure should have included a supervisory board called the Digital Evidence Certification Board, as well as a working group responsible for examining different types of evidence. It was also suggested that a royal

decree should have been issued to establish an digital evidence certification body. Furthermore, appropriate policies and management should have been implemented to ensure the credibility of witnesses in cases involving electronic evidence.<sup>7</sup>

### Recommendations

The researcher has suggestions for enhancing the efficiency of prosecution in accordance with the anti-money laundering law, utilizing the digital evidence as shown in Figure 1.



**Fig.1: Guidelines for enhancing the efficiency of prosecution under the Anti-Money Laundering Act through the effective utilization of digital evidence.**

**Policy recommendations.** policy recommendations will prioritize the development of cooperation plans and action plans that all agencies must implement collaboratively. These plans should align with the management’s policy and provide a clear operating guideline. It is essential to include a plan of action steps that can serve as a comprehensive guideline for effective operations.

The next point is to expedite the development of operational policy standards for agencies that provide digital forensic services. While the AMLO has established operating standards within its agencies, there is currently no external agency responsible for certification. Therefore, it is recommended to establish a domestic agency that can certify these standards to ensure the reliability of evidence used in case files.

Additionally, the organization’s mission should be clearly defined in the management’s policy, which should determine the structure and form

of cooperation between departments. This can be achieved by establishing a network for the exchange of officials, experts, and forensic tools. Furthermore, proposals should be made to secure budget allocation for the purchase of equipment to enhance performance even further. This includes determining recruitment and personnel development systems to acquire capable personnel and ensure an adequate workforce to fulfill their duties. It is also essential to establish regulations and guidelines that serve as indicators for personnel, serving as both motivators and effective measurement tools.

Additionally, there are proposed amendments to the law that authorize the AMLO officials responsible for collecting digital evidence to have additional powers, including: (1) Issuing letters to request computer traffic data from service providers regarding communications conducted through computer systems or from other relevant individuals. (2) Ordering the person who owns or controls the

computer data, which serves as evidence, to hand over the computer data or equipment to the officer. (3) Inspecting, accessing, or making a copy of the computer system, computer information storage device, or communication equipment. (4) Decrypting computer data or instructing any involved person to decrypt or cooperate with authorities in such decryption.

**Practical recommendations.** Cooperation plans and action plans should be developed through interagency cooperation agreements, which should include a clear practice guideline and establish policies and requirements for joint operations. The determination of common practice guidelines should be included in the cooperation contract between agencies. In addition, policies should be established for relevant agencies to create agreements that require continuous reporting of crime information. This can be done by establishing a central database and setting up a working group to oversee and monitor performance.

**Recommendations for further research.** There should be comprehensive research on the standardization of the official operational level plan for forensic and digital evidence collection, in accordance with international standards that can be adopted by every organization. Furthermore, guidelines should be developed for establishing a network of agencies involved in the prevention and suppression of money laundering through the use of digital evidence. This will ensure the involvement of all relevant stakeholder groups and foster the creation of a cooperative network in both policy and practice.

### Conclusion

The results of the research found reveal significant problems in dealing with assets under the money laundering law using digital evidence, including: the problems of property legal proceedings under anti-money laundering laws using digital forensic evidence consist of an operation, and an expansion of the investigation of property proceedings under anti-money laundering laws. Suggestions have been made for the AMLO to formulate policies and strategies, establish action steps to ensure the effective utilization of digital evidence in court proceedings, enhance the knowledge of operational personnel, align the manpower structure with the workload, and establish certification standards for digital evidence in accordance with central standards. To enhance the efficiency of using digital evidence in trials, it is

crucial to consider its significance in investigations, evidence collection, and proving guilt. Prosecutors should explore the utilization of digital evidence in court filings, while judges in the Civil Court should carefully listen to such evidence. These measures aim to increase the overall effectiveness of prosecutions under the anti-money laundering law and align with the law's intention to disrupt the cycle of criminal activities.

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