


Reconstruction of Financial Crime Investigation Methods Law Enforcement in the Era of the Industrial Revolution 4.0



Sukardi Sukardi 

Universitas Nasional, Jakarta, Indonesia

 sukardi.fhunas@gmail.com

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Reconstruction of Financial Crime Investigation Methods in Law Enforcement in the Era of the Industrial Revolution 4.0

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ABSTRACT. The purpose of this study was to determine the construction of the concept and method of financial crime investigation in the Netherlands in the law enforcement system in Indonesia to deal with financial crime in the era of the industrial revolution 4.0. The method used is normative research because it only uses secondary data in the form of primary, secondary and tertiary legal materials with conclusions drawn using deductive reasoning methods. The urgency of this research is because the development of crime that is not symmetrical with its legal efforts in the era of the industrial revolution 4.0, has an impact on efforts to enforce the rule of law which will affect reciprocally with the democratic process in Indonesia. The novelty of the research is an investigative method that combines civil and criminal concepts and economic accounting concepts with criminal law concepts. The results of the study are the strategy for law enforcement of financial crimes and financial technology in the era of the industrial revolution 4.0, by building a legal system, namely on the substance of the law, regulatory changes are built that are oriented towards proving the profits from crime through the concept of follow the money. In the aspect of legal structure, build a synergistic and harmonious coordination system between law enforcers and between institutional and private departments with an online networking system. In the aspect of legal culture, building a database system through a data bank, building a business economic infrastructure with a digital transaction system.

KEYWORDS. Financial crime investigation, law supremacy, democracy concept

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Introduction

Technological developments, especially in the field of telecommunications and transportation, are considered locomotives and contribute to accelerating the process of globalization¹ in various aspects of life.² The telecommunication industry is currently growing very rapidly. Telecommunications which serve the community (public utility) has become a means of delivery vehicle for online services such as banking, aviation, electronic commerce and so on.³ The advancement of world communication

¹ The term globalization develops rapidly and simultaneously with various languages, "Globalization" in English, "Quan Qui Hua" in Chinese, "Globalizzazione" in Italian, "Jatyanthareekaranaya" in Sinhalese and so on. Globalization is a relative process of social relations that finds no boundaries of distance and removes real boundaries so that the scope of human life increases by playing a wider role in the world as a single unit. See Teuku May Rudy, *Hubungan Internasional Kontemporer dan Masalah-Masalah Global* (Jakarta: Refika Aditama, 2003), 4-5.

² Muhammad Aulia Adnan in Sutarman, *Cybercrime, Modus Operandi Dan Penanggulangannya* (Yogyakarta: LaksBang PRESSindo, 2007), 1-2.

³ Judhariksawan, *Pengantar Hukum Telekomunikasi*, 1st ed. (Jakarta: PT. Grafindo Persada, 2005), 132.

technology is currently the biggest revolution that changes the fate of millions of human beings and modern life.

The forerunner of the Industrial Revolution 4.0⁴ begins with the invention of the internet for the first time named "Arpanet"⁵ by Leonard Kleinrock (1969), the mobile phone (wireless), and the cellphone named "Radio Telephone System" by Martin Cooper (1973).⁶ The 4.0 industry applies the concept of machine automation without the need for human labor in its application. Its implementation in factories today is also known as the Smart Factory. Many innovations have been made in the 4.0 era, including the Internet of Things (IoT), Big Data, 3D printing, Artificial Intelligence (AI), driverless vehicles, genetic engineering, robots and smart machines. Internet of Things is one of the biggest things. Big data is all information stored in cloud computing. Big data analytics and cloud computing help early detection of defects and production failures, so that it will enable the prevention or improve productivity and quality of a product based on recorded data. This is possible because of the big data analysis with the 6c system, namely connection, cyber, content/context, community, and customization.⁷

Information Technology Association of Canada (ITAC) pada International Information Industry Congress (IIIC) 2000 Millennium

⁴ Binus University, "Getting to Know the Industrial Revolution 4.0," BINUS (2 May 2019), accessed September 17, 2019, <http://binus.ac.id/knowledge/2019/05/mengenal-lebih-jauh-revolusi-industri-4-0/>. The Industrial Revolution 4.0 was initiated for the first time by a group of representatives from various fields from Germany, in 2011 at the Hannover Trade Fair. In 2015, Angela Merkel introduced the idea of the Industrial Revolution 4.0 at the World Economic Forum (WEF). Germany has invested € 200 million in capital to support academics, government, and businesspeople to carry out cross-academic research on the Industrial Revolution 4.0. The United States also run the Smart Manufacturing Leadership Coalition (SMLC), a non-profit organization of manufacturers, suppliers, technology companies, government agencies, universities, and laboratories whose goal is to advance the thinking behind the Industrial Revolution 4.0.

⁵ "Mengenal Leonard Kleinrock Sang Penemu Internet," *sindonews* (13 February 2018), accessed September 17, 2019, <https://autotekno.sindonews.com/read/1281465/133/mengenal-leonard-kleinrock-sang-penemu-internet-1518425958>.

⁶ Wahyu Budi Santoso, "Charles Babbage Penemu Komputer Penentu Kemajuan Teknologi Digital," *sindonews* (7 September 2021), accessed November 11, 2021, <https://tekno.sindonews.com/read/533246/207/charles-babbage-penemu-komputer-penentu-kemajuan-teknologi-digital-1630926586>.

⁷ Binus University, "Getting to Know the Industrial Revolution 4.0."

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Congress in Quebec on September 19, 2000, stated that⁸: “Cybercrime is a real and growing threat to economic and social development around the world. Information technology touches every aspect of human life and so can electronically enable crime”. What is even more worrying, there is no sufficiently significant framework in the laws and regulations to ensnare cyber actors due to the difficulty of proof. There is no legal pillar that can handle this major crime (at least for now). Moreover, cyber law campaign towards the community is still very minimal. We can compare this with countries like Malaysia, Singapore or America which already have laws that set the provisions of the cyber world, or even like India that already have cyber police.⁹

Economy and finance are two important sectors in this globalization era. The rapid development of the economy and finance has led to many fundamental changes in the existing financial architecture, including the development of economic crime itself, which is also known as financial crime or economic crime. The term economic crime means a crime against the economy or a detrimental crime for the economy.¹⁰ Various crimes have emerged with new dimensions, especially in terms of economic or financial crime, using a technology system as a means (tool) (crime of financial technology) becomes a challenge in enforcing business law.¹¹

The digital technology development and the convergence process, as well as a disruptive innovation in the industrial revolution 4.0 era, greatly influenced the law enforcement system, especially legal principles that became unclear due to the convergence of technology among so fast-developing telecommunication technology, transportation, computerization and the internet, obscuring the boundaries of the concepts, the convergence of economic, political, and conventional crime modes, borderless trans-state and trans-legal systems resulting in unclear cyber jurisdiction, use of the approach system, extradition, locus delicti, judging competence, conflict of norms and even overlapping of authority are things that cannot be avoided. Therefore, it is interesting to study the opportunities and challenges of law enforcement in the industrial era 4.0, especially using the police perspective.

⁸ Teguh Arifiyadi, “Cybercrime Dan Upaya Antisipasinya Secara Yuridis,” accessed September 17, 2019, <http://www.depkominfo.go.id/portal/?act=detail& mod=artikel itjen&view= 1&id= BRT061002181001>.

⁹ *Ibid.*

¹⁰ Ramli Atmasasmita, *Pengantar Hukum Kejahatan Bisnis* (Jakarta: Prenada Media, 2003), xvi; Adrianus Meliala, *Praktek Bisnis Curang* (Jakarta: Sinar Harapan, 1993), 140.

¹¹ Sukardi, “Financial Crime on Investigation in Industrial Revolution 4.0 Era”, 696-697

The development of financial crime is identified by various indicators of the occurrence of fraud which are very complex. The combination of financial crime, cybercrime, corporate crime and transnational crime creates its own problems in law enforcement. The emergence of new modes of crime such as corruption, misappropriation of assets and manipulation of financial statements that are difficult to detect by ordinary financial audit processes. To overcome the development of crime in this economic field, and to overcome various frauds in various fields, forensic accounting and investigative audit methods were developed for the prevention and disclosure of fraud in financial crimes. The author uses the term financial crime to distinguish it from the term economic crime which has a wider scope, and financial crime is part of economic crime. The term financial was chosen as a term that is more relevant to the follow the money method, which refers to money more specifically from the wider economy.

Method

This research uses a normative type of research, namely by examining library materials or secondary data only in the form of positive legal norms, namely international laws and regulations. This journal begins by abstracting legal materials in accordance with legal analysis and interpretation, followed by a systematization and synchronization process, and ends by drawing conclusions using the deductive reasoning method, namely starting from a general proposition whose truth is known (believed) and ends at a conclusion (new knowledge) that is more specific.

Result and Discussion

The government's efforts to carry out asset recovery against various state losses caused by financial crimes still leave various constraints in its performance, including only small amount of replacement money can be saved, and approximately Rp. 10 trillion in replacement money has not been deposited to the state; the laws which support the return of assets has not been fully applied, for example the Law on Money Laundering; the provisions of Article 69 (concerning no need to prove predicate crime) have not been applied, the provisions regarding reverse proof of improper wealth (Articles 77-78 TPPU and 38 B *Tipikor*); the non-optimal asset tracing method; the non-optimal implementation of the *Mutual Legal Assistance* (MLA) (long

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processing time, slow response, low success, weak coordination, hampered by bank secrecy provisions and so on); weak law enforcement practices (typing errors, no nexus, non-performing procedures, etc.; non-optimal asset management (confiscated goods are not maintained, lost, replaced, state losses + Rp. 30-40 billion since the confiscated sugar is not immediately auctioned off, rattan worth 1.5 M is damaged in the State Confiscated Objects Storage House, and so on); and non-optimal asset sales (auction process does not refer to a reasonable price, slow process, alleged state losses due to low timber auction price +IDR500 billion/year, etc.), as well as various other constraints and weaknesses in the process of law enforcement and asset recovery.¹²

Economic theory underlies civil relations in business practice; however, fraud theory formulates at least 3 (three) types of fraud in civil relations, especially corporations, namely asset misappropriation, fraudulent statements, and corruption. These types of fraud have been formulated in the Criminal Code and various other *lex specialis* laws such as the Corruption Law and the Money Laundering Law. However, there is no investigation method consistent with the law substance. In the concept of scientific crime investigation, the combination of legal and economic theories within the financial crime investigation concept is built on the *onrechmatigedaad* (actions against the law), the theory of good faith, and the theory of criminal responsibility as the basis for determining material financial evidence. Next, the calculation of losses and/or profits from the proceeds of crime in *delic material* uses forensic accounting theory with an investigative audit aimed at proof the criminal act and the criminal profit, and to investigate the criminal property. Therefore, the synergy of legal and economic theory must be constructed in a financial crime on investigation method.¹³

So far, investigative audit methods and forensic accounting have only been applied in the law enforcement system against corruption to calculate state losses. Meanwhile, for other financial crimes cases such as embezzlement in companies, fraud in accounting and financial reports, falsification of corporate documents, fraudulent investments, money games and so on, the forensic audit system has not been implemented, at least there are no standard rules in criminal law enforcement regulations in Indonesia.

¹² *Ibid.*, 698. See also Sugeng Wahyudi, "Penal Policy on Assets Recovery on Corruption Cases in Indonesia". *JILS (Journal of Indonesian Legal Studies)* 4, No. 1 (2019): 45-72. <https://doi.org/10.15294/jils.v4i01.28224>.

¹³ Sukardi, "Financial Crime Dari Perspektif Hukum Pidana," *Media Holdings Investor Daily*, 2021, 4.

Even if there are audits, most of them use ordinary accounting audits and not forensic audits.

Financial crime is fraudulent business behavior or what is also known as fraud. The case of financial crime increases along with the development of information technology systems in the digital era, it might be due to the lack of understanding by many business actors about how close this business behavior is to fraud. Many companies are involved not because they do not have good standards, or not because they intentionally commit fraud, but rather because of their ignorance so that they are trapped in a condition they do not understand.¹⁴

1. Fraud and Financial Crime

Fraud is literally defined as deception. Fraud is often identified with dishonesty, infidelity, perfidy, unfairness. Fraud from the point of view of financial criminal investigation is a series or collection of criminal acts to get money or property belonging to the victim to become the property of the criminals. Meanwhile, according to the Association of Certified Fraud Examiners (ACFE) fraud is deliberately misusing a position in an organization to enrich oneself by utilizing the assets or resources of the organization.¹⁵

In everyday terms, fraud is often given different names, such as theft, seizure, extortion, exploitation, embezzlement, forgery, and others. According to Auditing Standard Statement (PSA) No. 70, fraud is translated as “*kecurangan*” (in Indonesian), while errors and irregularities are respectively translated as “*kekeliruan*” and “*ketidakberesan*” (in Indonesian).

Based on the previous PSA, namely PSA No. 32., fraud can be classified into three types according to the Association of Certified Fraud Examinations (ACFE), namely:¹⁶

¹⁴ *Ibid.*

¹⁵ Hendricus Verland, “Finance Criminal Investigation - Training Materials for the Collaboration between the Police Academy of Netherland and the Indonesian National Police (19 March – 5 April 2012),” 2012.

¹⁶ *Ibid.* See also Recky Vincent Oktaviano Wuysang, Grace Nangoi, and Winston Pontoh, “Analisis Penerapan Akuntansi Forensik dan Audit Investigatif Terhadap Pencegahan dan Pengungkapan Fraud dalam Pengelolaan Keuangan Daerah Pada Perwakilan BPKP Provinsi Sulawesi Utara,” *Jurnal Ilmu Ekonomi* 3, No. 2 (2012): 31–53. The topic concerning State Financial Losses especially in fraud and corruption cases raised the public attention as well as debate pro-contra concerning to this element. For further discussion please also see Fira Saputri Yanuar Andri, Amarru Muftie Holish, and Aditya Wicaksono. “Efforts to Recover State Financial Losses Through Criminal Cases Case

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- a. Financial statement on fraud committed by management, namely in the form of material misstatement of financial statements detrimental to investors and creditors of a financial or non-financial nature.
- b. Asset misappropriation can be classified as “cash fraud” and fraud on inventories and other assets, as well as fraudulent disbursement.
- c. Corruption. This occurs when it meets three criteria constituting a condition that a person can be charged under a corruption law, namely: violating the law, enriching himself or another person or corporation, and detrimental to state finances or the country’s economy.

In the context of the world of forensic accounting and investigative auditing, fraud is its main operational objective. Fraud or in Indonesian better known as fraud is the main object to be fought in forensic accounting and proven in investigative audits. Fraud is a general meaning that includes a variety of ways that involves human ingenuity, which someone uses to gain an advantage over others through wrong actions. Fraud is deliberate deception, generally in the form of lies, plagiarism and theft. Fraud is committed to obtain benefits in the form of money and wealth, or to avoid payment or loss of services, avoid taxes and secure personal or business interests.¹⁷

Donald R. Cressey (1953) revealed the concept of fraud known as the fraud triangle.¹⁸ The Fraud Triangle is a scheme that describes the motives or causes of an act of fraud. This fraud triangle is a model that connects the three major groups of causes of fraud:¹⁹

Study Against Corruption”. *Law Research Review Quarterly* 5, No. 1 (2019): 19-24. <https://doi.org/10.15294/snh.v5i01.29701>; Muhamad Adji Rahardian Utama, Muhammad Reza Maulana, Fadhilah Rizky Aftriani Putri, Fauziah Ramadhani, and Setyarini Nur Octaviana, “State Financial System in Indonesia: Some Recent Developments”. *The Indonesian Journal of International Clinical Legal Education* 2, No. 2 (2020): 147-66. <https://doi.org/10.15294/ijicle.v2i2.37676>.

¹⁷ Annisa Sayyid, “Pemeriksaan Fraud dalam Akuntansi Forensik dan Audit Investigatif,” *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 13, No. 2 (2014): 137–62, 141.

¹⁸ Wuysang, Nangoi, and Pontoh, “Analisis Penerapan Akuntansi Forensik Dan Audit Investigatif Terhadap Pencegahan dan Pengungkapan Fraud dalam Pengelolaan Keuangan Daerah Pada Perwakilan BPKP Provinsi Sulawesi Utara”, 32.

¹⁹ Karni Soejono, *Auditing: Audit Khusus dan Audit Forensik dalam Praktek* (Jakarta: Lembaga Penerbitan FE UI, 2000), 27. See also Wuysang, Nangoi, and Pontoh, “Analisis Penerapan Akuntansi Forensik dan Audit Investigatif Terhadap Pencegahan Dan Pengungkapan Fraud dalam Pengelolaan Keuangan Daerah Pada Perwakilan BPKP Provinsi Sulawesi Utara”, 32-33; Aninditya Eka Bintari, “Rights of Police Action by the Financial Audit Board of the Republic of Indonesia”. *JILS (Journal of Indonesian Legal Studies)* 2, No. 1 (2017): 3-14. <https://doi.org/10.15294/jils.v2i01.16632>. In the further context, corruption, fraud as well as money laundering in the current situation has changed into various new forms,

- a. Pressure, or the beginning of pressure, such as the need for money for urgent needs.
- b. Opportunity, or the availability of opportunities for perpetrators of fraud, such as the opportunity to commit acts of fraud without being noticed by others and lack of supervision by superiors.
- c. Rationalization, namely seeking justification before committing a crime.

Basically, fraud is the *modus operandi* of financial crime to be tackled with forensic accounting methods and investigative auditing. This method is also implemented in the financial criminal investigation. Investigative methods using forensic audits are only applied to cases of corruption and money laundering to enforce criminal law in Indonesia, even though fraudulent behaviour in the substance of criminal law has spread such as in cases of fraud (Article 378 of the Criminal Code), embezzlement (Article 372 KUHP), articles of forgery (Article 263 to Article 271 KUHP), theft (Article 362 to Article 367 KUHP) and so on. Even in a corporate case involving a private company, usually, only an ordinary audit (using general accounting methods) is carried out, not forensic accounting.

2. Forensic Accounting and Investigative Audit

The term “forensic accounting” was first coined by a fellow at an accounting firm in New York named Maurice E. Peloubet in 1946.²⁰ forensic accounting is formed of many collaborations between accounting and the legal system. Attorneys use forensic accounting to find evidence in white-collar cases that they cannot obtain. This evidence will help win many cases.²¹

The term forensic accounting in Indonesia has only seen success after the Price water House Coopers (PwC) managed to uncover the Bank Bali case.²² PwC with its special software was able to show complex cash flows shaped like a diagram of the light sticking out of the sun (sunburst). PwC then condensed it into a flow of funds from certain people. The method used in the audit is follow-the-money or following the flow of money corrupted

such as cryptocurrencies for moneylaundering. *Please see* Sепthian Eka Adiyatma, and Dhita Fitria Maharani, “Cryptocurrency’s Control in the Misuse of Money Laundering Acts As an Effort to Maintain the Resilience and Security of the State”. *Lex Scientia Law Review* 4, No. 1 (2020): 70-82. <https://doi.org/10.15294/lesrev.v4i1.38257>.

²⁰ Theodorus M. Tuanakotta, *Akuntansi Forensik Dan Audit Investigatif* (Jakarta: Salemba Empat, 2016), 15.

²¹ Sayyid, “Pemeriksaan Fraud Dalam Akuntansi Forensik Dan Audit Investigatif”, 148.

²² Theodorus M. Tuanakotta, *Menghitung Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi* (Jakarta: Salemba Empat, 2010), 4.

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from Bank Bali and in-depth-interview which then direct it to the officials and entrepreneurs involved in this case.²³

One model that becomes a reference in the application of forensic accounting in law enforcement in Indonesia is the Forensic Accounting Triangle model, a forensic accounting model described by Theodorus M. Tuanakotta in his book "Forensic Accounting and Investigative Audit".²⁴

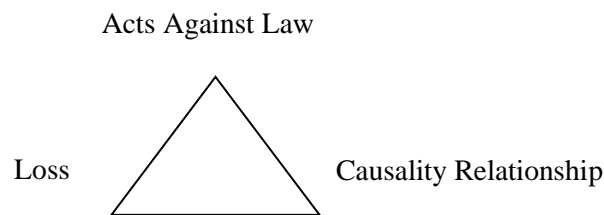


Figure 1. Forensic Accounting Model Theodorus M Tuanakotta
Source: Theodorus M. Tuanakotta, *Akuntansi Forensik Dan Audit Investigatif*, Theodorus M. Tuanakotta, *Akuntansi Forensik Dan Audit Investigatif* (Jakarta: Salemba Empat, 2016), 15

Tuanakotta based his views on the provisions of Article 1365 BW to describe the cycle of the forensic accounting triangle, namely that the first point is the most important legal concept in implementing the presence or absence of a loss, and if any, how the calculation concept is. Furthermore, the second point is an act against the law. Without an illegal act, no one can be sued for damages. Furthermore, the third point is a link between losses and actions against the law or a causal relationship between losses and acts against the law.²⁵

Different interpretations and points of view in interpreting the forensic accounting triangle model have an impact on the implementation of different audit methods and results. When the economic point of view becomes more dominant by placing the "loss" aspect as a standpoint in tracking losses, the accounting method used is accounting calculations according to accounting economics which highlights the formal aspects of the case, so that the results are by accounting mathematical calculations. However, if the legal point of view is more dominant by placing the aspect of "unlawful acts" as a standpoint in tracking losses, the accounting method used in forensic accounting which highlights the material aspects of the case, so that the result

²³ Sayyid, "Pemeriksaan Fraud dalam Akuntansi Forensik Dan Audit Investigatif", 148-149.

²⁴ Tuanakotta, *Akuntansi Forensik Dan Audit Investigatif*, 22.

²⁵ *Ibid.*, 22-23

is consistent with the calculation, not only the losses caused by the illegal acts but also the benefits, potential losses and potential benefits that may be obtained from the calculation.

An investigative Audit can be simply defined as an effort to prove an error in accordance with applicable legal provisions.²⁶ The term Investigative Audit confirms that what is carried out is a general audit, or financial audit which aims to provide an independent auditor's opinion regarding the fairness of the presentation of financial statements. Therefore, this audit is also called an opinion audit. An investigative Audit is directed to prove the presence or absence of fraud and other illegal acts.

As Jack Bologna and Paul Shaw quoted in Tunggal (2012), fraud or investigative auditing is a skill that goes beyond the realm of embezzlement and corporate management fraud, or commercial bribery. Indeed, forensic accounting skills go beyond the general area of collateral crime.²⁷

The Association of Certified Fraud Examiners (ACFE) mentions three axioms in conducting an investigative audit or fraud examination. These three terms by ACFE are called fraud axioms, which consist of:²⁸

- a. Fraud is hidden. The nature of fraud is always hidden. The method or mode of operation always contains deception to hide the ongoing fraud. Fraud perpetrators are very creative in looking for loopholes to hide their fraud. For example, a bank's board of directors facilitates its customers by opening a fictitious L/C or providing fraudulent loans which immediately become NPL (Non-Performing Loan).
- b. Reverse proof. This reverse proof targets fraud examination to be approached from two directions. To prove that fraud occurred, proof must be done by proving that fraud did not occur and vice versa. In proving that fraud did not occur, the evidence must include efforts to prove that fraud did occur.

²⁶ *Ibid.*, 153.

²⁷ Wuysang, Nangoi, and Pontoh, "Analisis Penerapan Akuntansi Forensik dan Audit Investigatif Terhadap Pencegahan dan Pengungkapan Fraud dalam Pengelolaan Keuangan Daerah Pada Perwakilan BPKP Provinsi Sulawesi Utara", 36.

²⁸ Amin Widjaja, *Forensic & Investigative Accounting: Pendekatan Kasus* (Jakarta: HARVARINDO, 2012), 55. See also Tuanakotta, *Akuntansi Forensik dan Audit Investigatif*, 322-324. Some of online loan cases and fraud are very complex, including how the protection to the victims of crime itself. For further discussion concerning to this issue, please also see and compare Jeremy Zefanya Yaka Arvante, "Dampak Permasalahan Pinjaman Online Dan Perlindungan Hukum Bagi Konsumen Pinjaman Online". *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, No. 1 (2022): 73-87. <https://doi.org/10.15294/ipmhi.v2i1.53736>.

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- c. Existence of fraud by the court. This axiom wants to say simply that only the court has the right to determine the legal status of fraud. To investigate the presence or absence of fraud, investigators make allegations about someone guilty or innocent. Only the court has the authority to determine whether the fraud occurred or not so that the person ultimately accepts the verdict.

3. Differences in the Indonesian-Dutch Investigation Method

Financial Investigation on Criminal or Financial Criminal Investigation (FCI) is an investigation method (investigation/examination) to find out the assets of a suspect obtained from the proceeds of crime so that they can be confiscated and returned to the state and/or victims. This method was developed by the Dutch Police academy (Politie academie) and is applied in the process of investigating all criminal acts. The basic concept of this method is intended to answer the development of crimes that follow technological developments. The technology development through the convergence of telecommunication networks with a computerized system has resulted in a digitalization system of the Internet network which can then be used by criminals as a means of committing crimes.²⁹ The financial Investigation on criminal in the Netherlands aims to:³⁰

- a. to prove criminal facts;
- b. to prove on criminal profits; and
- c. property investigation before confiscation.

With the ultimate goal to confiscate all proceeds of crime, profits of crime and assets of the accused which do not match his legal income. When compared with the objectives of the investigation in Indonesia, namely:

- a. determining whether a crime has occurred;
- b. Identifying the perpetrator;
- c. Catch the perpetrator, and
- d. proving evidence to support prosecution in court with the ultimate goal is to prove whether the defendant's actions are guilty or not.

²⁹ Sukardi, "Financial Criminal Investigation," *Harian Fajar* (3 October 2012), 2012.

³⁰ Trainer Team FCI, "Materi Pelatihan Financial Criminal Investigation Level 1 & II" (Markas Besar Kepolisian Negara Republik Indonesia: Lembaga Pendidikan POLRI, 2012), 1.

The ultimate goal of calculating the proceeds from the FCI crime is the confiscation and handover of the proceeds to the state treasury and/or returned to the victim. Thus, the processes of criminal and civil law enforcement are integrated in a method of Financial Investigation on Criminal. In contrast, the criminal law enforcement system in Indonesia only proves criminal acts committed by the perpetrator of the crime, so that the recovery of the victim's loss or state loss can be carried out through a civil process.

Several conceptual differences between Indonesian investigative methods according to Law no. 1 of 1981 concerning Criminal Procedure Law with the Dutch investigation method (Financial criminal Investigation), can be described in the table below:

Tabel 1. Differences in the methods of investigating financial crimes between Indonesia and the Netherlands

Differences	Indonesia Criminal Procedure Code	Netherlands FCI
Examination & Investigation	Separated	Integral
Coordination Of Investigators and Prosecutors	After Handover	Case Files Since the Beginning of The Investigation
Purpose	Uncovering The Perpetrator Proving Criminal Action Proving The Criminals	Proving Criminal Acts Proving Proceeds of Crime Tracking Assets of Criminals
Process	Separating Criminal Procedures with The Civil Ones	Combining Criminal Procedures with The Civil Ones
Coordination Network	Bureaucratic, Constrained by Administration	Very Synergistic, Can Be Done Via Cellphone

Source: Author's analysis results

The different methods in the criminal case investigation process are as follows:

- a. The concept of investigation in law enforcement in Indonesia is separated between the stages of investigation and investigation as formulated in Law no. 8 of 1981 concerning the Criminal Procedure Code. The investigation as referred to in the formulation of Article 1 point 2 of the

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Criminal Procedure Code, while the investigation as referred to in the formulation of Article 1 point 5 of the Criminal Procedure Code. In the practice of criminal law enforcement, at the investigation stage, the case begins with an investigation process to find out whether there is a criminal act, then after finding sufficient preliminary evidence, a case title is carried out to increase the status from the investigation stage to the investigation stage. In contrast to the law enforcement process in the Netherlands, the process of investigation and investigation is not separated but is integrated in one process called "investigation". The case investigation process is carried out by means of a simultaneous investigation and investigation method without separating the process. Thus, in addition to making bureaucracy easier, administrative investigations do not overlap, it also makes control and supervision easier, so this method tends to be more effective.

- b. Coordination process between investigators and public prosecutors. As a consequence of the separation of the investigation and investigation processes as described in point a above, the formal coordination process between investigators and prosecutors in criminal cases according to the Criminal Procedure Code starts from the issuance of the Notice of Start of Investigation (SPDP). The Prosecutor appointed as Research Prosecutor shall coordinate formally by providing instructions to investigators to complete the Case Files, as formulated in the provisions of Article 110 of the Criminal Procedure Code. Therefore, in the practice of enforcing criminal law in Indonesia, the coordination process is only carried out after the submission of the case files from the investigator to the research prosecutor, then back and forth the case file is carried out accompanied by the appointment of the research prosecutor. In contrast to the investigation process in the Netherlands, where the coordination process begins at the beginning of the case investigation, the prosecutor and investigator jointly carry out an investigation so that there is no back and forth between the investigator and the prosecutor. This method is applied in the investigation system at the Corruption Eradication Commission (KPK), between investigators and prosecutors jointly conducting investigations for the sake of construction of case files. investigations in the Netherlands, the investigation process is carried out jointly between the Investigator and the Prosecutor since the beginning of the investigation. For example, in *Wetboek van Strafvordering* or the Dutch Code of Criminal Procedure, in particular the provisions of Part

IVA, Special Investigative Powers, Chapter One, Systematic Surveillance, Section 126g that: “In the case of suspicion of a serious offense, the public prosecutor may, in the interest of the investigation, order an investigating officer to systematically follow a person or systematically observe his movements or behavior.” This provision illustrates that the investigation process is carried out integrally between the investigator and the prosecutor in one method of investigation.

- c. Purpose of Investigation. Based on the provisions of Article 1 point 2 of the Criminal Procedure Code, what is meant by an investigation is "a series of actions by an investigator in terms of and according to the method regulated in this law to seek and collect evidence which with that evidence makes clear about the criminal act that occurred and in order to find the suspect". So, the purpose of the investigation according to the Criminal Procedure Code is to reveal the perpetrators of the crime; prove the existence of a criminal act; and prove the guilt of the perpetrator of the crime (who is responsible). In contrast to the law enforcement process in the Netherlands, the objectives of a financial investigation are to prove the existence of a criminal act; prove the proceeds of crime; and carry out an investigation of the suspect's property for confiscation.
- d. In the law enforcement process in Indonesia, civil cases are separated from criminal cases. Criminal cases are oriented towards proving a crime with the main sanction being imprisonment or confinement, while civil cases are oriented towards proving material losses with the principal sanction of compensation or fines. In contrast to the law enforcement system with the financial investigative method in the Netherlands, where the orientation of the investigation is not separated between the criminal process and the civil process. This is because the purpose of the investigation as described in point c above, the orientation of the investigation is not only to prove the criminal act that occurred, but to investigate the profits from the crime and the suspect's property, then confiscate it to be returned to the victim and the state.
- e. The network system for coordinating criminal law enforcement in Indonesia, both internally and externally between government and private agencies, is still very bureaucratic and not yet integrated and online. For example, to request a checking account or to open a bank secret, one must go through an application process to the Minister of Finance and obtain a permit, as formulated in the provisions of Article 41 paragraph (1) of Law no. 10 of 1998 concerning Amendments to Act

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Number 7 of 1992 concerning Banking (State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790) that: "(1) For tax purposes, the Head of Bank Indonesia at the request of the Minister of Finance authorized to issue written orders to banks to provide information and show written evidence and letters regarding the financial condition of certain Depositing Customers to tax officials." This coordination mechanism is different from the coordination system at the investigation stage in the Netherlands, where investigators request account data from financial service providers, simply call and state the investigator's registration number, which will then be served online.

4. Friedman's Legal System Theory Approach

The main difference between the financial crime investigation method in the Netherlands and Indonesia, when examined from the point of view of the legal system theory according to Lawrence M. Friedman (1975)³¹, it can be explained that from the aspect of legal substance, the orientation of law enforcement in Indonesia still aims to prove the illegal act of the criminals (follow the action). The audit process is still oriented towards proving losses due to criminal acts, while in the Netherlands' law enforcement is oriented to the follow-the-money concept to prove the proceeds of crime. In the legal structure aspect, Indonesia still has a formal and bureaucratic coordination system among its law enforcers, and they have not used a forensic audit as the investigation method on all financial crimes, whereas in the Netherlands the coordination system is easier and uses technological facilities. Also, the forensic audit method is used in almost all cases. crime. Furthermore, in the aspect of legal culture, business infrastructure in Indonesia has not been sufficiently developed to adopt a digital system, for example, payment instruments have not used a card system, then there is no centralized and systemized data-based system to support law enforcement, while in the Netherlands business infrastructure has utilized technology with a data-based system to be easily accessed and shared among law enforcers who mutually support each other in the coordination system.

³¹ M. Khozim, *Lawrence M. Friedman, 1975, The Legal System: A Social Science Perspective (1975) - Indonesian Translation* (Bandung: Nusamedia, 2011), 18. According to Friedmann, a legal system in its actual operation is a complex organism in which structure, substance, and culture interact to explain the background and effects of each part, which requires the role of many elements of the system.

Tabel 2. The Legal System Theory Approach According to Friedman
 Source: Author's analysis results

Items		Indonesia Investigation Audit	Dutch FCI
Legal Substance	Investigation Objectives	Proving Criminal Activities and Losses Due To Crime	Proving Profit of Proceeds of Crime
	Sanction System	Fine And Replacement Money May Be Reimbursed by Confinement	Fine and Replacement Money Can Be Reimbursed by Tracing and Confiscating Assets
	Proof System	Reverse Proof	Proven By The Prosecutor
Legal Structure	Investigation Method	Forensic Audits Separated from Law Enforcement	Forensic Audits Integral with Law Enforcement
	Coordination System	Very Bureaucratic,	Can Be Done Directly Via Phone or Email
Legal Culture	Business Infrastructure	Most of The Business Transactions Are Still Conventional	Generally Using Card in Business Transactions
	Based Data System	Not Yet Organized in An Online Central Data System	Data System Has Support Enough the Law Enforcement and Legal Audit

Referring to the legal system theory according to Lawrence M. Friedman (1975) as explained above, the development of a legal system in the aspect of legal substance requires a change in legal regulation by changing the mindset and orientation of law enforcement from an orientation of proving illegal acts to proving the proceeds of crime; development in the aspect of the legal structure requires a change in the investigation methods, especially adopting the financial crime method on an investigation, such as in the Netherlands by combining the forensic accounting method with the investigative audit method within the follow-the-money concept. Meanwhile, in the aspect of legal culture, it is necessary to build a database system through big data, and online data networking systems, and to build a business economy infrastructure by utilizing digital technology.

5. Upholding the Rule of Law and Democracy in Indonesia

Democracy and *rechtsstaat* (rule of law) are two conceptions of the power mechanism in running the wheels of state governance. Democracy and *rechtsstaat* are interrelated and integral conceptions since on the one hand democracy provides a basis and mechanism for power based on the principle of human equality and equality. On the other hand, *rechtsstaat* provides a benchmark that it is the law that rule a country, not humans³². This means that a constitutional state requires constitutional supremacy which constitutes the consequence of a rule of law, as well as the implementation of constitutional democracy and the highest form of social agreement³³.

Supremacy means: "The position of having the superior or greatest power or authority", the supremacy of regular as opposed to arbitrary power (citizens must respect the rule of law) also termed supremacy of law³⁴. The term supremacy of law is derived from the English translation of the words supremacy and law, to become "supremacy of law" or commonly known as "law's supremacy". Hornby. A.S (1974: 869) argues that etymologically, the word "supremacy" comes from the word supremacy which is taken from the root of the adjective supreme, which means "highest in degree or highest rank" that means being at the highest level or the highest rank, while supremacy means "the highest of authority", so it also means the highest power³⁵.

The development of crime following the globalization of information technology in a country without an effective legal framework to ensnare perpetrators in the cyber world, especially in the business world, is worrying. For this reason, Indonesia must carry out reforms in the field of law enforcement to implement the rule of law that supports the democratic system. The legacy of Dutch colonial law was adopted based on the concordance principle in the 1945 independence era. Its criminal law remains valid to date and has not been adapted to the legal values that exist within Indonesian

³² Muntoha, "Demokrasi dan Negara Hukum," *Jurnal Hukum Ius Quia Iustum* 16, No. 3 (2009): 379–395.

³³ Meriam Marcelina Kaingge, "Supremasi Hukum Atas Asas Kedaulatan Rakyat Berdasarkan Undang-Undang Dasar Tahun 1945," *Lex et Societatis* 5, No. 3 (2017): 141–49.

³⁴ Bryan A. Garner, ed., *Black's Law Dictionary*, 7th ed. (St. Paul Minnesota: West Publishing, 1999), 132, 1454.

³⁵ Hornby. A. S. in Eti Mul Erowati, "Supremasi Hukum dalam Membangun Sistem Peradilan Berbasis Perlindungan Hukum dan Keadilan," in *Prosiding Seminar Nasional Hukum dan Ilmu Sosial Ke-2*, 2018.

society. Meanwhile, the Dutch legal system itself, especially in the concept and method of financial crime investigation, is currently very advanced and adapts to the development of information technology systems and economic crime. Indonesia, which inherited Dutch law in the era of independence, has not even adjusted its concepts and methods to this kind of development in the current Industrial Revolution era.

Therefore, the comparison of systems, concepts and methods of investigation of financial crimes as described in the previous sub-title, should have been constructed in the Indonesian criminal law system by harmonizing dynamic concepts and methods according to the current development of information technology and the 4.0 industrial revolution. The financial crime on investigation method applied in the Netherlands by using the forensic accounting method and investigative audit on all types of financial crime, even for all criminal acts, turned out to be very effective in the Netherlands. These concepts and methods are also very suitable to be applied in Indonesia, considering that the legal system in Indonesia, which adopts the Dutch legal system, has the same law enforcement system.

Indonesia as a democratic country, makes law as one of its other principles. Authentic and constitutional evidence that Indonesia is based on a state of law is explicitly stated in the 1945 Constitution Article 1 paragraph (3) that Indonesia is a state based on law (*rechtsstaat*) not based on power (*machstaat*).³⁶ As one of the elements of democracy, the law must also be the basis for a transparent, accountable and responsive government, the establishment of an honest and fair electoral system, the protection of human rights and the existence of a democratic and confident society. The law must also be able to ensure that state administrators in carrying out their duties transparently comply with the rule of law.³⁷ If it is related to the rule of law Indonesia, it can be stated that the elements of the rule of law are: the recognition of the guarantee of human rights and citizens; there is a division of power; the government in carrying out its duties and obligations must always be based on applicable laws, both written and unwritten; The existence of judicial power in exercising its power is independent, meaning that it is independent from the influence of government power and other powers.³⁸

³⁶ Desi Indriyani, "Penegakan Hukum Berkeadilan Sebagai Perwujudan Demokrasi Indonesia," *'ADALAH: Buletin Hukum Dan Keadilan* 2, No. 6 (2018): 55–56.

³⁷ Supriyanta, "Demokratisasi Dalam Penegakan Hukum," *Wacana Hukum* 7, No. 1 (2008): 90–99.

³⁸ *Ibid.*, 91.

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According to A. Muhammad Asrun in his writings, he stated that, in the two concepts, namely the rule of law and democracy, the protection of the rights of citizens was introduced, because the protection of human rights is one of the elements in the ideals of the rule of law and the protection of the rights of citizens is a manifestation of the sovereignty of the people which is an element of the sovereignty of the people. important in the concept of democracy.³⁹ The concept of a state of law Enforcement of Justice and Justice as the Embodiment of Indonesian Democracy is intended as an effort to limit the power of state authorities so as not to abuse their power to oppress their people. With the implementation of a fair law, it is hoped that all people in the country are subject to the law, so that everyone has the same position in the eyes of the law that is impartial only to some groups and limits the government's authority based on the principle of distribution of power, so that the government does not act arbitrarily and protects rights. - the rights of the people according to their capabilities and roles in a democratic manner.⁴⁰

The process of democratic law enforcement has become a natural requirement in a legal state like Indonesia. Law enforcement must be accountable both in terms of law, social politics, morals and so on. Improving law enforcement must start from reforming the legal system which includes the legal structure, legal substance and legal culture. The estuary of all of this is the realization of a judiciary that is fast, simple, cheap, clean, authoritative, and predictable.⁴¹ According to Satjipto Rahardjo,⁴² offering progressive law to overcome the crisis in today's global era. The dedication of legal actors gets the main place to make recovery. Legal actors must have empathy and concern for the suffering experienced by the people and this nation. The interests of the people (welfare and happiness) must be the point of orientation and the ultimate goal of administering the law. The change

³⁹ Andi Muhammad Asrun, "Hak Asasi Manusia dalam Kerangka Cita Negara Hukum," *Jurnal Cita Hukum* 4, no. 1 (2016): 133–154.

⁴⁰ Nur Rohim Yunus, *Teori Dasar Penelitian Hukum Tata Negara* (Jakarta: Poskolegnas, 2017), 138.

⁴¹ Supriyanta, "Demokratisasi dalam Penegakan Hukum", 92.

⁴² Progressive law, has a logic similar to Legal Realism, sees and evaluates law from the social goals it wants to achieve and the consequences arising from the operation of the law, which therefore from an ethical point of view, can be called teleological ethics. This teleological way of thinking, is not ignoring the law. The rule is important, but it is not the last measure that takes precedence over purpose and effect. Therefore, the main question in teleological ethics is whether an action has a good purpose, and whether an action with a good purpose also has a good result. See Yanto Sufriadi, "Penerapan Hukum Progresif dalam Penegakan Hukum Di Tengah Krisis Demokrasi," *Jurnal Hukum Ius Quia Iustum* 17, No. 2 (2010): 233–248.

process is no longer centered on regulations, but on the creativity of legal actors in actualizing the law in the right space and time. Legal actors can make creative changes to existing regulations without having to wait for regulatory changes (changing the law). Bad regulations do not have to be an obstacle for legal actors to bring justice to the people and justice seekers, because they can make new interpretations of a regulation.⁴³

The application of new methods in law enforcement, especially the Financail Criminal Investigation method from the Netherlands in the investigation method of law enforcement in Indonesia is a form of progressive law application, especially in the law enforcement system in Indonesia. The development of Indonesia's democratic life is intended to build a national legal system that is open to the global order, accommodating customary law, prevailing religious law and normalizing the constitutional law in force by upholding the rule of law. In short, Indonesia wants to implement a democratic political life with a clean, moral and responsible government for the long term. Also, an order of economic life capable of driving the people's economy and the availability of job opportunities and wide business opportunities. Furthermore, to create full of tolerance and mutual understanding in religious life.⁴⁴ Therefore, the application of the Dutch financial crime investigation method in Indonesia can support the rule of law which in turn will create a democratic system supported by an effective law enforcement system.

Conclusion

The strategy of criminal law enforcement to overcome the impact of technological developments in the industrial revolution 4.0 era, especially in the context of dealing with crimes and its new dimensions in the field of financial crime and financial technology, a fully developed law enforcement system is needed in terms of legal substance, legal structure and legal culture by reconstructing the concept of legal and economic methods that combines Dutch and Indonesian financial crime investigation method. Legal substance development is carried out through regulatory changes oriented towards proving the proceeds of crime, not only proving losses arising from criminal acts; the use of the follow-the-money concept in a consistent and structured

⁴³ *Ibid.*, 242.

⁴⁴ Arba'atun, "Isu-Isu Kritis Menuju Masyarakat Madani Indonesia," *Jurnal Manajemen Pendidikan dan Keislaman* 6, No. 2 (2017): 128–142.

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manner in the investigation method. We can develop legal structure by reconstructing investigative methods that include investigative auditing and forensic accounting and by building an integrated online coordination system both internally and externally among synergistic and harmonious elements of law enforcement; while the development of legal culture is carried out by advancing a database system through a data bank accessible via an online data networking system to law enforcement elements, and by building a business economic infrastructure to a digital transaction system. The application of this new financial crime investigation method can support the rule of law which in turn will create a democratic system supported by an effective law enforcement system.

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About the Author(s)

Dr. Sukardi, S.H., M.Hum., CFrA is a Criminal Law Lecturer with the rank of Lecturer at the Faculty of Law, National University of Jakarta Indonesia. In addition to teaching duties, currently he also serves as an Investigator at the Police Criminal Investigation Agency; Forensic Auditor at Indonesian Professional Certification Institute by obtaining Certified Forensic Auditor (CFrA); as a teacher and internal trainer of the Indonesian National Police, received a certificate as a trainer for Financial Criminal Investigation performed by trainer of the Indonesian National Police and monitored by Politeiaacademie (police academy of the Netherlands) (CFCI) April 2012, September 2012 and April 2013 respectively; He has been an International Journal Reviewer at the International Journal of Criminology and Sociology, Lifescience Global Canada in 2021. He has also served as an Advisor to the Australian Study Center of the National University since 2021. Sukardi obtained his Bachelor of Laws degree (Bachelor of Law/SH) in November 2002 from the Manokwari College of Law (Papua). In October 2004, he received his Master of Humanities (M.Hum) in Business Law from Atma Jaya University, Jogjakarta. Finally, Sukardi obtained his Doctor of Law (Dr) degree at the Faculty of Law, Hasanuddin University Makassar, Indonesia in September 2014.