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Reformulation of Corporate Liability Implementation in Money Laundering Crimes

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Abstract

Money laundering crimes (ML) are currently committed not only by individuals but also by corporations. The provisions of Money Laundering Crimes (MLC Law) regulate corporations, specifically Limited Liability Companies (PTs). However, since the enactment of MLC Law, only five legally binding rulings have involved corporations as perpetrators of ML offenses. In these rulings, there are several errors in the application of law. These errors include the fulfillment of the benefit element only being met when there is an increase in wealth, overlooking other circumstances such as a decrease in liabilities that the company must pay or use for its operations. Furthermore, in another ruling, the panel rejected the additional criminal charge of dissolving the corporation, with the legal reasoning that MLC Law does not regulate corporate dissolution. There are several rulings in which limited liability companies (PTs) were named as suspects but were ultimately found not guilty because the element of intent to conceal or disguise the origin of assets derived from criminal offenses was not fulfilled. This paper then compares several ML cases that occurred in the UK involving PTs, reflecting on some of these cases. In this paper, the author propose several ideas for the application of MLC Law, particularly for PTs involved in ML offenses. The methodology employed is doctrinal research. The paper emphasizes the necessity of optimizing sanctions against corporations that violate the MLC Law, not only in their capacity as perpetrators of money laundering but also for failing to fulfill obligations stipulated under the law.

Keywords
Corporation, Criminal Fine, Money Laundering.

Introduction

A distinguishing characteristic of money laundering compared to other crimes lies in its nature, as it does not stand alone but exists as an inseparable unit with the predicate offense that generates the proceeds of crime.[1] The challenges in preventing and combating money laundering crimes have intensified over time, as perpetrators increasingly employ sophisticated and widespread methods. The advancement of technology has become a common phenomenon. In the digital era, technology has a significant contribution in nearly all dimensions of human life. The economic sector, which is crucial for the sustainability of a nation and the well-being of its people, is no exception.[2] On the other hand, change is also influenced by crime in the economic field.[3]

The use of various financial instruments, technological advancements, and the exploitation of legal entities originally intended for social activities have not escaped the attention of criminals seeking ways to conceal or disguise the origins of assets derived from criminal activities. Money laundering by misusing different types of financial systems, can have a negative effect on people's live, especially in the economic sector.[4] While sophisticated money laundering methods may

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1 Sahuri Lasmadi et al., "Asset Seizure of Money Laundering Crimes Arising from Corruption in the Perspective of Legal Certainty and Justice," *Pandecta Research Law Journal* 18, no. 2 (December 25, 2023): 352–74, https://doi.org/10.15294/pandecta.v18i2.48568.

2 Prita Fiorentina et al., "Legal Protection of Consumer Personal Data in Indonesia Fintech Peer-To-Peer Lending Pioneers," *Pandecta Research Law Journal* 17, no. 2 (December 30, 2022): 307–12, https://doi.org/10.15294/pandecta.v17i2.40235.

3 Fadel Ilato, Abdul Majid, and Setiawan Noerdajasakti, "Criminal Action Without Proven in Money Laundering in Indonesia," 2021, https://doi.org/10.33756/jlr.v3i0.7162.

4 Febby Mutiara Nelson et al., "Cracking the Code: Investigating the Hunt for Crypto Assets in Money Laundering Cases in Indonesia," *Journal of Indonesian Legal Studies* 9, no. 1 (May 8, 2024): 89–130, https://doi.org/10.15294/jils.vol9i1.4534.

be involved, ofenders and financial facilitators can also launder money in much more straightforward methods. [5]

The primary goal of money laundering perpetrators, whether on a small or large scale, is solely to make assets obtained from a crime or criminal act appear legitimate, allowing the perpetrators to comfortably enjoy the proceeds. [6] Advancements in banking services that offer convenience and speed for customers in conducting transactions are exploited by criminals to transfer the proceeds of their crimes from one account to another within a short period.[7] Moreover, the presence of digital banking features, which provide customers with convenient access to banking services, has also become a target for exploitation by criminals.

Technological advancements, marked by the rapid growth of cryptocurrency assets, have also become a means exploited by criminals to conduct money laundering. The use of cryptocurrencies poses a potential risk for money laundering due to their decentralized and anonymous nature, which can obscure the origins of illicit funds. Blockchain encrypts cryptocurrencies, making them a common tool for layering in recent money laundering crimes. Additionally, one of the most innovative techniques involves the use of high-value assets, such as luxury vehicles, bought or leased to launder significant quantities of illicit funds and transform them into clean cash.[8]

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[5] Jo Anne Kramer et al., "Money Laundering as a Service: Investigating Business-like Behavior in Money Laundering Networks in the Netherlands," *Trends in Organized Crime*, September 1, 2023, https://doi.org/10.1007/s12117-022-09475-w.

[6] Ibrahim Arifin, "Penggunaan Hasil Tindak Pidana Untuk Sumbangan Dana Pemilu," *AML/CFT Journal The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 2, no. 2 (June 1, 2024): 175–86, https://doi.org/10.59593/amlcft.2024.v2i2.169.

[7] Pronika Julianti Manihuruk, Triono Eddy, and Ahmad Fauzi, "Peran Perbankan Dalam Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Yang Dilakukan Oleh Nasabah," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 3, no. 2 (December 2, 2020): 325–32, https://doi.org/10.34007/jehss.v3i2.259.

[8] Geo Finna Aprilia and Meiryani, "Exploring Detection and Prevention of Money Laundering with Information Technology," *Journal of Money Laundering Control* (Emerald Publishing, October 25, 2023), https://doi.org/10.1108/JMLC-08-2023-0138.

In addition to exploiting technological advancements and the development of financial service instruments, another loophole that criminals have exploited for money laundering is the use of foundations or nonprofit organizations. The use of legal entities such as foundations in money laundering can involve the donation and transfer of funds derived from criminal activities, such as capital markets, illegal logging, fraud, bribery, corruption, crimes in banking, drug trafficking, and other offenses. All assets suspected of originating from crime and concealed or disguised constitute money laundering offenses.[9]

Along with the development of corporations as legal entities in civil law, criminal law has also accommodated legal entities or corporations as subjects of law through several approaches, including psychological, sociological, juridical, and functional approaches. [10] Corporations are indicated to be involved in a number of criminal practices such as smuggling, corruption, forestry crimes, and money laundering. [11] Regulatory reforms that encourage corporate growth enhance the desired economic transformation.[12] The availability of job opportunities and economic growth have direct outcomes on the development of a country's economy.

Problems arise when the advancement of time and technological sophistication lead to the emergence of crimes committed by corporations. The current legal framework regarding corporate criminal liability states that a corporation is responsible for its employees' criminal

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[9] Ningrum Natasya Sirait and Liza Hafidzah Yusuf Rangkuti, "Non-Profit Organisations (NPOs) As Media for Money Laundering Crimes," *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing of Terrorism* 1, no. 2 (June 14, 2023): 132–45, https://doi.org/10.59593/amlcft.2023.v1i2.54.

[10] Pridja Dwijatno and Kristian, *Sistem Pertanggungjawaban Pidana Korporasi: Ditinjau Dari Teori Dan Konsep, Pendapat Para Ahli, Pertimbangan Hakim Dan Yurisprudensi* (Jakarta: Kencana, 2020).

[11] Hafrida, Helmi, and Bunga Permatasari, "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020): 314–33, https://doi.org/10.22304/pjih.v7n3.a2.

[12] Lastuti Abubakar et al., "Restorative Justice in Corporate Dispute Resolution as Business Actor in Indonesia," *Journal of Indonesian Legal Studies* 9 (May 8, 2024): 187–216.

acts if they are committed during employment and with at least a partial intent to gain benefit or interest for the company.[13] The provisions in Article 6 of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (MLC Law) establish the position of corporations as legal subjects that can be held accountable as perpetrators of money laundering offenses.

Another issue that arises is the subo*pt*imal application of criminal liability for money laundering offenses against corporate perpetrators. In terms of case numbers, since the enactment of the MLC Law in October 2010, over a span of 14 years, the prosecution of corporations remains relatively low. Based on preliminary research conducted by the author, which gathered data from several court decisions on money laundering crimes, only five corporations have been tried and convicted as offenders in court rulings. On the other hand, these rulings still contain many issues that warrant correction, particularly regarding how the judges apply the provisions of the MLC Law. These issues include misinterpretation of the conce*pt* of benefit, the application of criminal fines, and the imposition of double penalties on perpetrators.

The application of criminal penalties against corporations involved in money laundering is not solely aimed at punishing the corporation as severely as possible, but must also consider that corporations are pillars of the economy upon which society depends. Therefore, the application of the MLC Law to corporations engaged in money laundering should take into account not only the aspect of legal certainty but also the aspects of utility and justice. According to Aditya Wahyu Saputro, the application of corporate criminal liability in Indonesia has not been o*pt*imal due to issues of attribution and the unclear regulation of corporate criminal responsibility. The attribution of fault in corporate crimes has not yet accommodated the theories that

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[13] Hasani Mohd Ali, Muhamad Helmi Md Said, and Siti Zakiah Binti Che Man, "Corporate Culture as a Means of Proving Mens Rea in Corporate Criminal Liability Under Malaysian Anti-Corruption Law," *Jurnal Undang-Undang dan Masyarakat* 33 (December 13, 2023): 119–32, https://doi.org/10.17576/juum-2023-33-10.

have developed. Additionally, Indonesia has not yet separated corporate liability from that of the corporate management.[14]

Errors in the application of the law and the handling of money laundering cases involving corporations have the potential to hinder the achievement of justice. This is evident in cases of money laundering where the predicate offenses involve fraud and embezzlement, such as in the case of *PT* Amanah Bersama Ummat,[15] The panel of judges at the Makassar District Court held the corporation accountable, ruling that *PT* Amanah Bersama Ummat was proven beyond a reasonable doubt to have committed fraud and/or embezzlement and money laundering. However, there was a legal error in handling the case, as, in addition to convicting *PT* Amanah Bersama Ummat as the perpetrator of money laundering, legal proceedings were also conducted against Hamzah Mamba, S.H., also known as Abu Hamzah, the president director of *PT* Amanah Bersama Ummat, using the same case materials, the same object, and for the same offenses and actions. Aside from this ruling, there have been other cases where corporations were acquitted, with the reasoning that the money received by the corporation was not derived from criminal activities and that there was no indication of intent to conceal or disguise the origins of the assets from criminal acts.[16]

Philosophically, this paper will elaborate on how corporations can be held liable based on the decisions or actions of someone authorized within the corporation. Additionally, it will be explained that corporations—in this case, banks—can face penalties such as fines. In several cases, banks have been indicated as being negligent in fulfilling their responsibilities as reporting parties within the AML regime.

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[14] Aditya Wahyu Saputro et al., "Pertanggungjawaban Pidana Korporasi oleh Pengurus dalam Kasus Karhutla Karena Unknown Cause: Perspektif Ekonomi dan Lingkungan," *Jurnal Hukum Lex Generalis*, vol. 2, 2021, https://doi.org/10.56370/jhlg.v2i12.146.

[15] Pengadilan Negeri Makassar, "'Indonesia v. PT Amanah Bersama Ummat, 284/Pid.Sus/2019/PN.MKS, Makassar District Court,'" https://sipp.pn-makassar.go.id/list_perkara/search, 2019.

[16] Pengadilan Negeri Makassar, "'Indonesia v. PT Amanah Bersama Ummat, 284/Pid.Sus/2019/PN.MKS, Makassar District Court,'" https://sipp.pn-makassar.go.id/list_perkara/search, 2019.

There are several articles related to the theme that the author examines in this paper. The article by Hilman, Dadang Epi Sukarsa, and Lies Sulistiani titled "Corporate Criminal Liability in Money Laundering." The article by Rodliyah, Any Suryani, and Lalu Husni titled "Corporate Criminal Responsibility in Indonesia Criminal Justice System." The article by Barra Bimantara Ginting titled "Corporate Responsibility in Money Laundering Crimes." The article by Peter Yeoh on "Bank's Vulnerabilities to Money Laundering Activities." The article by Marco Parasian Tambunan titled "Corporate Criminal Responsibility in Money Laundering Crimes."

This paper aims to analyze the provisions regarding corporate criminal liability for money laundering offenses based on current Indonesian law and to examine several rulings related to the position of corporations as perpetrators of money laundering. The author will elaborate on several legal applications in those rulings that have not been appropriately applied. The author then provides examples of how corporate liability for infringements of anti-money laundering regulations should ideally be applied, referencing several cases in the United Kingdom and the United States. In addition to the application of sanctions, the consideration for using rulings from the United Kingdom and the United States as examples is due to these countries' strong adherence to the standards set by the Financial Action Task Force (FATF).

Method

This article is written using doctrinal research and employs both conce*pt*ual and legislative approaches. The conce*pt*ual approach means that this research analyzes the criminal law conce*pt*s used in Indonesia. The study utilizes primary legal sources, including relevant legislation such as Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering (MLC Law), The Money Laundering Regulation 2007, and the Bank Secrecy Act. Additionally, this research also references primary legal materials in the form of international conventions, including the United Nations Convention Against Transnational Organized Crime, the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, and the Revised 40+9 Financial

Action Task Force (FATF) Recommendations. This research also utilizes primary legal materials in the form of court rulings, including:

1. Decision of the Corru*pt*ion Court at the Class I A Bengkulu District Court, Case No. 64/Pid.Sus/TPK/2016/PN.Bgl.
2. Decision of the Corru*pt*ion Court at the Class I A Bengkulu District Court, Case No. 3/Pid.Sus-TPK/2019/PN.Bgl.
3. Decision of the Corru*pt*ion Court at the Semarang District Court, Case No. 47/Pidsus-TPK/2019/PN.Smg.
4. Decision of the Makassar District Court, Case No. 284/Pid.Sus/2019/PN.MKS.
5. Decision of the South Jakarta District Court, Case No. 104/Pid.Sus/2024/PN.JKT.SEL.

Secondary legal materials that provide explanations regarding primary legal materials include books, research papers, scholarly works from the legal field, journals, laws such as the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana), magazines, and other publications from both print and electronic media related to the issue of corporate liability.

On the other hand, the legislative approach is carried out by reviewing regulations related to money laundering offenses within the scope of Indonesian law and identifying those that are most suitable and relevant for use in this research. Additionally, several rulings related to money laundering offenses in the United Kingdom are included as comparative materials to analyze the implementation of provisions under the MLC Law in Indonesia.

Result and Discussion

A. Regulation and Application of Corporate Liability for Money Laundering Offenses Under Indonesian Law

Theoretically, there are three prototypes of corporate crime. First, *crimes for corporation*, meaning crimes performed with the intent of benefiting the corporation. Second, *crimes against corporation*, referring to crimes that harm or are performed against the corporation. In this context, the offenders commit illegal acts that go against the interests of

the corporation or cause damage to it. Third, *criminal corporations*, meaning corporations that are originally formed with the sole purpose of committing crimes. The business activities of such corporations are merely a cover to conceal the crimes they commit.[17] The acce*pt*ance of corporations as a legal subject that can be held criminally liable has undergone significant debate. Initially, the conce*pt* of corporate criminal liability faced rejection, based on the principle *universitas delinquere non potest*, meaning that a corporation cannot be criminally prosecuted. Absolute liability and strict liability can serve as a basis for imposing corporate criminal liability.[18]

The legal subject of corporations is a development in Indonesian criminal law. The term "corporation" comes from the verb *corporare*, which is derived from the Latin word *corpus*, meaning body or to embody.[19] This definition shows that lawmakers have responded to the needs of investigators or acknowledged the fact that the various types of legal subjects imply such a need. Currently, in practice, corporations are the most active parties engaging in economic activities and transactions. As legal subjects, corporations are indeed present to drive economic activities, which do not always run smoothly. That's one common issue that arises.

Corporate criminal liability is a form of expansion. According to Sutan Remi Sjahdeini, there are at least four systems of corporate criminal responsibility:

1. A corporation that acts as the perpetrator of a criminal offense must bear criminal responsibility itself.
2. If the corporation is the perpetrator, then the controlling personnel of the corporation (corporate management) must bear criminal responsibility.

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[17] S.S Simpson, *Corporate Crime, Law and Social Control* (New York: Cambridge University Press, 2005).

[18] Hafrida, Helmi, and Bunga Permatasari, "The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning," *Padjadjaran Jurnal Ilmu Hukum* 7, no. 3 (2020): 314–33, https://doi.org/10.22304/pjih.v7n3.a2.

[19] Yudi Kristiana, *Pemberantasan Tindak Pidana Pencucian Uang: Perspektif Hukum Progresif,* (Yogyakarta: Thafa Media, 2014).

3. The corporation along with the controlling personnel of the corporation as perpetrators must bear criminal responsibility together.
4. If the corporate management acts as the perpetrator of the crime of money laundering, the criminal responsibility is solely placed on the corporate management.

Article 1 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering defines a corporation as a group of people and/or assets that are organized, whether it is a legal entity or not. This definition is wider than the conce*pt* of a legal entity in civil law. It can be said that every legal entity is a corporation, but not every corporation is a legal entity, as there are corporations that are not legal entities, such as partnerships or firms, which are organized groups of people and/or assets that are not legal entities.[20] Based on the author's observations, in practice, the majority of final and binding *(inkracht)* decisions on money laundering cases predominantly involve the application of criminal liability on corporations in the form of limited liability companies (*PT*).

A corporation, especially a limited liability company (*PT*), as a legal entity, plays a significant role in contributing to economic growth and national development. However, in reality, *PT*s sometimes engage in various criminal activities (corporate crime) that result in harm to the state and society.[21] There are several reasons why a corporation can be held accountable for criminal liability. First, without corporate criminal liability, a corporation could avoid legal consequences for its actions. On the other hand, only individuals carrying out the illegal acts are held accountable. Secondly, it is procedurally easier to prosecute the corporation rather than its employees. Third, in serious criminal offenses, a corporation is more capable of paying the fines imposed than its individual employees. Fourth, the threat of criminal penalties against a corporation can encourage shareholders to better oversee the activities

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[20] Rodliyah Rodliyah, Any Suryani, and Lalu Husni, "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia," *Journal Kompilasi Hukum* 5, no. 1 (February 9, 2021): 191–206, https://doi.org/10.29303/jkh.v5i1.43.

[21] Sutan Remy Sjahdeni, *Ajaran Pemidanaan: Tindak Pidana Korporasi Dan Seluk Beluknya* (Jakarta: Kencana Prenada Media , 2017).

of the company in which they have invested.In general, perpetrators of money laundering use various methods with the aim of hiding or obscuring the origin of illicit wealth to make it difficult to trace. Subsequently, the perpetrators can freely utilize this wealth for both legal and illegal activities. It is not surprising, then, that the term used to describe how money laundering cases are handled requires a special approach. The proceeds of crime are referred to as the "life blood of the crime," meaning that the proceeds are the "lifeblood" that sustains the crime itself, and also represent the weakest link in the criminal chain, making them easier to detect. To dismantle the "business of crime," what needs to be done is to stop the "lifeblood" that sustains it.

Technically, the author views that tracing this "lifeblood" requires specialized expertise and authority. To make it effective, a specialized institution is formed for this purpose, called the Financial Intelligence Unit (FIU), based on specific legal provisions. The implementation of the Anti-Money Laundering Law and the establishment of the Financial Transaction Reports and Analysis Center fall within the anti-money laundering regime, which has authority within the national jurisdiction and cooperates with other FIUs from other countries to improve the efficacy of fighting money laundering. This demonstrates Indonesia's seriousness in fighting money laundering.

The flow of funds becomes a crucial parameter in uncovering money laundering activities conducted by a limited liability company. According to the author, once the flow of funds into the company's account is identified, the involvement of PT will be evident. There are two forms of money laundering involving a limited liability company: the company itself as the subject of the crime, and the company acting as a vehicle or medium for money laundering. The presence of such fund flows serves as an initial trigger, signaling unusual activities where suspicious transfers of money occur from the PT's account to the accounts of its executives.

In Article 1, number 10 of the Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes (UU TPPU), it is stated that: "A corporation is a group of people and/or wealth that is organized, whether it is a legal entity or not." In relation to this definition of a corporation, the explanation in Article 6, paragraph (1) of the UU TPPU states: "A corporation also includes organized groups, which are

structured groups consisting of three (3) or more individuals, existing for a certain period, and acting with the purpose of committing one or more crimes regulated in this Law with the aim of obtaining financial or non-financial benefits, either directly or indirectly." This definition expands the conce*pt* of a corporation beyond just legal entities to include organized groups of people engaged in unlawful activities for financial or non-financial gain."[22] The definition of a corporation in this context is not only related to domestic needs but also aligns with international standards under the anti-money laundering regime. With this broad definition, anti-money laundering law enforcement agencies have the flexibility to target all parties involved in (suspected) money laundering activities. This expansive interpretation ensures that the law can cover a wide range of entities, from formal legal bodies to informal organized groups, enhancing the ability to address money laundering effectively across various sectors and jurisdictions.

The modus operandi of money laundering is generally carried out using both human and legal entities as the perpetrators. For example, illicit money or assets obtained from criminal activities are often introduced into the financial system, such as banking or capital market, to conceal their origins. This situation demonstrates that money laundering perpetrators exploit various instruments to carry out their illicit activities. Every crime requires proof of guilt, including money laundering offenses. Legal entities, such as corporations, can be used as vehicles to conceal the true identity of the perpetrators of money laundering. In this case, a limited liability company is a legal entity that can be used as a vehicle for money laundering. The structure of a legal entity provides a degree of separation between the individuals behind the crime and the illicit transactions, making it more difficult to trace the source of the funds. As a result, corporations must be closely monitored to ensure they are not misused for criminal purposes, and robust legal frameworks should be in place to hold them accountable in cases of money laundering.

The requirements to qualify an act as money laundering committed by a limited liability company (perseroan terbatas) are

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[22] M. Arief Amrullah, *Tindak Pidana Pencucian Uang* (Universitas Jember: Kementerian Riset, Teknologi, dan Pendidikan Tinggi, 2017).

stipulated in Article 6 paragraph (2) of the Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering, as follows:

a. Acted or Ordered by Controlling Personnel of the Corporation
b. Conducted in Pursuit of the Corporation's Objectives
c. Aligned with the Duties and Functions of the Actor or Commander
d. Conducted to Provide Benefits for the Corporation

These requirements must be proven to qualify a limited liability company as a perpetrator of money laundering. For *requirement (a),* the identification must focus on the individual acting as a *director, commissioner, or shareholder*. Once the status of the individual committing the legal act is successfully identified, the act must then be linked to the *purposes and objectives* of the company's establishment. If the company's deed of establishment specifies broad purposes and objectives, such as generating profit and ensuring the welfare of the legal entity, then the legal act alleged to be money laundering satisfies *element (b)* of Article 6 paragraph (2) of the Prevention and Eradication of Money Laundering Crimes. The next requirement is that the legal act must be conducted in accordance with the *duties and functions* of the individual within the company's structure. If the act is committed by a *director*, the reference would be the provisions of *Article 92 paragraphs (1) and (2) of the Limited Liability Company Law*.

Similarly, for commissioners, their duties and functions are regulated under Article 108 paragraph (1) of the Limited Liability Company Law, which include supervising the management policies, overseeing the general management of the company and its business, and providing advice to the board of directors. Supervision and advice must be carried out in the interest of the company and in accordance with the company's purposes and objectives, as stipulated in Article 108 paragraph (2) of the Limited Liability Company Law. As for shareholders, Article 75 paragraph (1) of the Limited Liability Company Law states that the General Meeting of Shareholders (GMS) holds authority not granted to the directors or the board of commissioners, within the limits determined by the law and/or the articles of association. This indicates that the GMS can perform actions not assigned by the directors pr commissioners regarding the company's management. In the

context of money laundering, shareholders may instruct the execution of transactions that cannot be rejected by the directors or commissioners. Such instructions or policy determinations by shareholders are often driven by the desire to gain profit or increase dividends.

From the outset, the purpose of establishing a limited liability company is to generate profit. Therefore, it is reasonable for a limited liability company to undertake a series of activities aimed at achieving its profit targets. However, even though the state provides and protects the business activities of limited liability companies in their pursuit of profit, these companies must continue to adhere to current legal regulations. In this regard, a limited liability company is prohibited from engaging in unlawful acts in its efforts to gain profit. Unlawfulness as an element of a criminal offense applies to all crimes. Within the framework of criminal offenses, the element of unlawfulness is recognized as an objective element, which refers to conduct that is opposite to the regulation .

In the current evolution of crime, limited liability companies are often used as instruments or means to commit criminal acts. Under certain conditions, aligned with developments in criminal law, corporations can be held as legal subjects subject to criminal liability. This includes cases of money laundering crimes, where the specific provisions of the Money Laundering Law regulate corporate criminal liability.[23] According to Elliot and Quinn, there are several reasons why corporations are considered capable of being subjects of criminal acts, including: 1) Without criminal liability, it is possible for corporations to evade criminal regulations; 2) In serious criminal offenses, corporations are more capable of paying fines compared to their employees. According to the author, this is one of the considerations for imposing fines as a form of criminal punishment on corporations; 3) The threat of criminal charges against corporations can encourage shareholders to oversee corporate activities. This oversight is intended to ensure that the corporation returns to the proper path by conducting business activities that comply with the law; 4) Corporations that have profited from illegal

[23] Listawati H Pusat Pelaporan dan Analisis Transaksi Keuangan Jalan Ir Juanda Nomor and Jakarta Pusat, "Pertanggungjawaban Pidana Korporasi Pada Perkara Tindak Pidana Pencucian Uang," December 22, 2021, https://doi.org/https://doi.org/10.24002/jep.v37i2.4412.

actions deserve to bear the corresponding sanctions.[24] According to the author, this is also one of the considerations that justify the requirement to establish a corporation as a legal subject, or in this case, when a crime is committed to benefit the corporation. Thus, if a crime is committed to benefit the controlling personnel, the corporation cannot be held accountable. 5) Publicity surrounding cases that result in penalties imposed on a company can serve as a deterrent, preventing the corporation from engaging in illegal activities.

Conceptually, the regulations under the Anti-Money Laundering Law have accommodated the status of corporations as legal subjects and the circumstances under which they can be held accountable for violations under the provisions of the Anti-Money Laundering Law. However, in practice, not many corporations have been sanctioned based on these provisions. Therefore, it is necessary to reconstruct the application of criminal liability to corporations to optimize law enforcement efforts against corporations involved in money laundering. Corporations play a crucial role in driving the economic growth of a country, and even globally, but on the other hand, they can also act as masterminds behind criminal activities.[25] This is due to the activities of criminals who exploit corporate entities to carry out money laundering, including leveraging the ease of licensing provided by the government, which serves as a favorable opportunity for offenders.

Based on the author's research, five limited liability companies (*PT*) have been found guilty of committing money laundering offenses, namely *PT* Bangun Beringin Utama, *PT* Lian Suasa, *PT* Putra Ramadhan (*PT* Tradha), *PT* Amanah Bersama Ummat, and *PT* Rudi Mapan Jaya.

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[24] Bambang Ali Kusumo, *Tanggung Jawab Korporasi Dalam Tindak Pidana Korupsi Di Indonesia* (Surakarta: Unisri Press, 2022).

[25] Muhammad Fatahillah Akbar, "Penerapan Pertanggungjawaban Pidana Korporasi Dalam Berbagai Putusan Pengadilan," *Jurnal Hukum & Pembangunan* 51, no. 3 (2021): 15, https://doi.org/10.21143/jhp.vol51.no3.3272.

The details of the rulings in each case are as follows:

TABLE 1. List of Sanctions Imposed on Corporations That Commit Money Laundering

Corporation	Fine	Additional Penalty	Judgment
PT. Bangun Beringin Utama	Rp.750.000.000	-	Decision No. 64/Pid.Sus/TPK/2016/PN.Bgl
PT. Lian Suasa		Prohibition from participating in auctions for six months	Decision No. 3/Pid.Sus-TPK/2019/PN.Bgl
PT. Putra Ramadhan	Rp500.000.000	-	Decision No. 47/Pid.Sus-TPK/2019/PN.Smg
PT. Amanah Bersama Ummat	Rp1.000.000.000	-	Decision No. 284/Pid.Sus/2019/PN.MKS
PT. Rudi Mapan Jaya	Rp14.000.000.000	-	Decision No. 104/Pid.Sus/2024/PN.JKT.SEL

From the five verdicts, four of them classify the corporations as both perpetrators of the predicate offense and offenders of money laundering. Meanwhile, the case involving *PT*. Rudi Mapan Jaya shows that it received the proceeds of a crime without being directly involved in committing the predicate offense. Instead, *PT*. Rudi Mapan Jaya acted as a medium or entity that received or harbored assets derived from tax-related crimes. These corporate cases are predominantly linked to corruption as the predicate offense.

The author has conducted an analysis of several court rulings where the subject of the case was a limited liability company (*PT*). Generally, although the *PT*s in these rulings were all declared legally and convincingly guilty of money laundering offenses, there were still several errors in the application of the law. For example, in the ruling of the Corru*pti*on Court at the Bengkulu Class I A District Court, Case Number: 64/Pid.Sus/TPK/2016/PN.Bgl, the court's reasoning interpreted that the benefit received by the corporation must be evidenced by the acquisition of certain assets. However, the author

disagrees with this interpretation. In the author's view, the state of the defendant, as a corporation or *PT*, enjoying the proceeds of a crime should not be limited to the condition of asset accumulation. Instead, the concept of "enjoyment" should also include situations where the proceeds of a crime are used to settle corporate liabilities or debts. This use of illicit proceeds should also be regarded as the corporation deriving benefits.

In handling money laundering cases involving corporations, limiting the element of "benefit" solely to asset accumulation would create significant obstacles. This is particularly problematic given that Article 6 paragraph (2) of the Anti-Money Laundering Law ado*pt*s a cumulative approach.

Criminals could channel illicit proceeds to be enjoyed by the corporation through indirect means, such as settling corporate debts or covering operational expenses, including employee salaries or other corporate liabilities. Such transactions might not be recorded as profit or revenue in the corporation's financial statements, but they still constitute the corporation deriving benefit from the proceeds of crime.

In addition to the interpretation of the term "benefit," another point the author notes regarding the ruling concerns the imposition of additional penalties, specifically the dissolution of the corporation. The prosecutor had requested the panel to impose an additional penalty in the form of the corporation's dissolution. However, the panel of judges ruled that the dissolution of the corporation was not stipulated as an additional penalty in this case. The dissolution of a corporation in the form of a limited liability company (*PT*) is regulated under Law Number 40 of 2007 on Limited Liability Companies. However, the author disagrees with the judges' reasoning in this ruling, as the Anti-Money Laundering Law expressly provides in Article 7 paragraph (2) letters c and d that in addition to the fine penalty stipulated in paragraph (1), a *PT* can also be subject to additional penalties such as Retraction of business licenses and disbandment of the corporation. Therefore, it is inaccurate for the panel of judges to state that the dissolution of the *PT* is not part of the additional penalties.

The author argues that even if there are differences between the provisions regarding the dissolution of a corporation (in this case, a limited liability company) as outlined in Law Number 40 of 2007 and

those in the Anti-Money Laundering Law, the principle of lex specialis should be applied. This principle states that when two laws cover the same subject matter but one is more specific than the other, the more specific law should take precedence. Therefore, in this case, the provisions in the Anti-Money Laundering Law regarding the dissolution of a corporation should apply, as they are more specialized in dealing with money laundering-related offenses.

The author argues that if the panel of judges considers the imposition of an additional penalty in the form of the dissolution of a *Perseroan Terbatas (PT)* to be too severe and disproportionate to the offense committed by the corporation, the Anti-Money Laundering Law provides alternative sanctions. These alternatives include the temporary revocation of business licenses or the imposition of a prohibition on the corporation from participating in government-run procurement activities. These alternatives can be applied as a more proportionate response to the corporation's offenses.

The author also highlights the Makassar District Court's Decision No. 284/Pid.Sus/2019/PN.MKS. This case was adjudicated on November 27, 2019, where the *PT* Amanah Bersama Ummat corporation, represented by its management, Hamzah Mamba was found guilty beyond a reasonable doubt of money laundering offenses committed jointly as a continuous act.

PT Amanah Bersama Ummat, as the legal entity subject, has been proven to have obtained benefits from the crime committed, in the form of several vehicles, including 2 unit of Toyota Avanza, as well as a sum of money consisting of IDR 822,903,185.60 (eight hundred twenty-two million nine hundred three thousand one hundred eighty-five rupiahs and sixty cents) and USD 24,421. These funds and vehicles have been seized as part of the legal proceedings.

Regarding the element "with the intention to conceal or disguise the origin of the assets," as outlined in Article 3 of the Anti-Money Laundering Law, the judge opined that the defendant's actions of spending the proceeds of crime on purchasing cars, houses, buildings, and other items, where the ownership of these assets was registered nominee, such as a spouse, or intentionally failing to process the transfer of ownership such as changing the title deeds, were aimed at ensuring that the true ownership of the assets purchased with illicit proceeds remained

hidden. This conduct aims to conceal the source of the asset acquisition. Thus, this element has been satisfied.

The verdict against the defendant, *PT* Amanah Bersama Ummat, was issued by the panel of judges, where the defendant, represented by its manager, was found guilty beyond a reasonable doubt of jointly committing money laundering.

The author agrees with the legal considerations regarding each element of Article 3 and Article 6 of the Anti-Money Laundering Law as the requirements for the criminalization of PT in its capacity as a corporation. However, the author has a different argument regarding the imposition of the money laundering offense on the CEO of PT Amanah Bersama Ummat, Hamzah Mamba, with the same subject matter and objects of the case as those charged against PT Amanah Bersama Ummat in its capacity as a corporation

Ideally, when judges declared that Hamzah Mamba, as the defendant in this case, were guilty of committing money laundering, the fulfillment of the elements of the act by Hamzah Mamba would automatically exclude the liability of *PT* Amanah Bersama Ummat. Likewise, if *PT* Amanah Bersama Ummat found guilty of money laundering, then there should not have been a separate conviction against Hamzah Mamba. The existence of two verdicts for the same subject matter, where the corporation is convicted and the individual is also sentenced, indicates an error in the application of criminal liability for money laundering conducted by *PT.*

In addition to the cases of corporate criminal liability discussed, there have been several instances in Indonesia where corporations accused of money laundering (TPPU) were acquitted by the court's verdict. These include *PT* Pool Advista Management, , *PT* Oso Management Investasi, *PT* Prospera Aset Management, *PT* Pinekel Persada Investasi, *PT* Millenium Danatama, *PT* Maybank Aset Management, *PT* Dana Wibawa Management Investasi *PT* GAP Capital, *PT* Jasa Capital Asset Management, *PT* MNC Asset Management, *PT* Corvina Capital, *PT* Sinar Mas Asset Management, and *PT* Iserfan Investama.

The designation of these 13 corporations as perpetrators of money laundering began with the suspicion that Benny Tjokro, a convict in a money laundering case with the predicate offense of corru*pt*ion,

transferred a significant amount of wealth derived from criminal activity to each of these corporations or investment managers. The assets were then managed, invested in various investment products, and generated additional profits. Each corporation received compensation for managing the money from the criminal activities.

In the court ruling concerning these 13 corporations, all were declared not guilty of money laundering, with the legal reasoning being that the management of assets derived from criminal activity, invested in various financial instruments, was considered a normal business process. Additionally, regarding the earnings or compensation received and subsequently used for the company's operational purposes, the court considered that these funds were legitimate fees for the asset management services provided by the defendants in their capacity as investment managers. Therefore, the use of these funds for company operations or employee salary payments was not seen as an attem*pt* to conceal or disguise the origins of the criminal proceeds. Based on this reasoning, the court concluded that the defendants, in this case, the corporations acting as investment managers, were not proven to have committed money laundering as alleged by the public prosecutor.

The author believes that the judge's reasoning in these cases was incorrect because it overlooked the fact that the corporations acting as investment managers have duty to enforce strict Know Your Customer (KYC) principles. They also have a responsibility to ensure that the funds they manage originate from legal activities. In practice, the investment funds, which used mutual funds as their underlying asset, were entirely managed under the instructions of Benny Tjokro (a convicted offender in the money laundering case, with the predicate offense being corru*pt*ion) or his subordinates. This disregard for the KYC obligations and the origin of the funds should have been carefully considered by the court in determining whether the companies were complicit in money laundering activities.

B. Reconstruction of the Criminal Liability Framework for Corporations Involved in Money Laundering

Basically, a criminal offense can be identified by the occurrence of harm, which then gives rise to criminal liability.[26] Similar to the concept of criminal offenses, corporate criminal liability arises from a criminal act committed by the corporation. Therefore, the responsibility for the offense is placed on the corporation itself. Money laundering crimes have very serious consequences, disrupting tand destblizing the integrity of the financial system and the economy in its entirety. Money laundering offenses often involve organized crime schemes and networks that extend across borders. This characteristic has become the focus of countries worldwide, leading them to take cooperative actions to address the threat of money laundering.[27] The challenge in efforts to prevent and combat money laundering crimes has escalated because the perpetrators are not only individuals but also corporations, including limited liability companies (*PT*). The position of *PT* as a subject of criminal law that can bear criminal responsibility has been a topic of long debate. The regulation of the Money Laundering Crime Law has accommodated the position of corporations as legal subjects. However, in practice, to date, there have been only six final and binding verdicts in Indonesia related to *PT* as perpetrators of money laundering crimes.

The goal to be achieved from a legal reconstruction process is to optimize the benefits of law, thereby realizing a more ideal application of law. Regarding the law as the object of reconstruction, according to Ahmad Ali, law exists in three places: law in application (law in action), law in legislation (law in the book), and law in conce*pt* (law in idea).

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[26] Hyman Gross, *A Theory of Criminal Justice* (New York: Oxford University Press, 1979).

[27] Dadang Epi Sukarsa and Lies Sulistiani, "Hilman et al / Development of Japanese Language Proficiency to Upgrade Manpower for Working Abroad EISSN" 20 (2022): 1303–5150, https://doi.org/10.14704/nq.2022.20.5.NQ22509.

Law enforcement must deliver justice for individuals, as this is the fundamental element required in the concrete realization of law.[28]

The Indonesian national economy suffers significant losses due to financial crimes committed by corporatio.[29] Since the enactment of Law No. 15 of 2002, only five corporations have been found guilty of committing money laundering offenses. Imposing a sentence on a corporation, in other words, is the process of law enforcement based on existing evidence that clearly indicates the corporation's wrongdoing. However, this wrongdoing often arises from the actions of the corporation's management, who have the authority to represent the corporation.

The provisions of the Money Laundering Crime Law require certain conditions for a corporation to be held accountable for money laundering crimes. Cumulatively, the act must be ordered by the controlling personnel of the corporation, provide benefits to the corporation, and the person giving the order must have the capacity and authority in line with the corporation's business scope or objectives. These strict requirements aim to anticipate the misuse of the corporation by its management, preventing them from using the corporation as a shield to avoid punishment and shift the burden of responsibility to the corporation.

Reflecting on the number of money laundering cases with corporate defendants that have resulted in final judgments *(inkracht),* it is important to analyze the factors contributing to the low number of such cases and explore ways to optimize this. When compared with European countries, particularly in handling corporate money laundering cases, there are notable differences in the characteristics of the cases between those countries and Indonesia. The United Kingdom, for instance, has long ado*pt*ed the conce*pt* of corporations as criminal law subjects that can be held accountable, including the criminalization of money laundering. Although UK law does not

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[28] Dian Latifiani et al., "Reconstruction of E-court legal culture in Civil Law Enforcement," *Journal of Indonesian Legal Studies* 7, no. 2 (December 1, 2022): 409–48, https://doi.org/10.15294/jils.v7i2.59993.

[29] Renny Ariyanny et al., "Disgorgement of Profits: An Alternative Solution to Stolen State Assets' Recovery from Corporate Financial Crimes," *Hasanuddin Law Review* 9, no. 2 (August 1, 2023): 139–54, https://doi.org/10.20956/halrev.v9i2.4622.

impose criminal sanctions on corporate executives in the same way as Indonesian law does, it has optimized the imposition of large financial penalties in practice.

The Proceeds of Crime Act (PoCA) 2002 and the Money Laundering Regulations (MLRs) 2003 serve as the legal foundations of the anti-money laundering regime in the United Kingdom (Preller, 2008). Under these provisions, money laundering is defined as the concealment of property derived from criminal activities (under Section 327), making arrangements to transfer money illegally (under Section 328), and the prohibition of acquiring, using, and possessing property obtained through criminal conduct (under Section 329).[30]

The scope of the offense also includes actions such as committing, planning, or provoking violations as defined in Sections 327, 328, and 329, which are part of the money laundering definition. Referring to Section 340(11), money laundering also encompasses acts of facilitating, advising, providing, and assisting in such violations. However, there are specific provisions and defenses concerning the primary offenses outlined in those sections. If convicted, the offender confronts an incarceration sentence of up to 14 years, along with a financial sanction based on PoCA. This is considered a serious crime under UK law. Penalties are also imposed on regulated sectors that fail to report suspicious activities or money laundering actions. Personnel from both regulated and non-regulated sectors may be subjected to supervision if they are found to be complicit in money laundering by failing to report suspicious financial exchanges and being aware of the money launderers, as per Section 330 of PoCA 2002. Violations of this provision may result in a 5-year prison sentence and a fine, according to Section 334.[31]

There have been several cases where the Financial Conduct Authority (FCA), as one of the authorities responsible for handling money laundering cases, imposed sanctions on corporations found guilty of violating anti-money laundering (AML) regulations in the

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[30] Christoph Wronka, "Anti-Money Laundering Regimes: A Comparison between Germany, Switzerland and the UK with a Focus on the Crypto Business," *Journal of Money Laundering Control* 25, no. 3 (June 8, 2022): 656–70, https://doi.org/10.1108/JMLC-06-2021-0060.

[31] Christoph Wronka

UK. In the first case, the FCA imposed a fine of £102,163,200 on Standard Chartered Bank for breaching AML regulations.[32]

Based on an investigation conducted by the FCA, indications were found of inadequate and prolonged implementation of Know Your Customer (KYC) procedures, as required by anti-money laundering regulations. Standard Chartered was found to have violated customer due diligence and ongoing monitoring obligations. The bank did not manage to implement and maintain guidelines and rules that aligned with risk mapping and failed to ensure that its branches in the European Economic Area (EEA) implemented KYC and anti-terrorism financing actions equivalent to those required in the UK.[33]

Referring to the Money Laundering Regulations 2007 (MLRs), Standard Chartered was required to manage to implement and maintain suitable policies and procedures, including Know Your Customer (KYC) measures, to mitigate the risk that the bank could be used for money laundering, avoiding financial sanctions, or financing terrorism. The MLRs also imposed an obligation on Standard Chartered to ensure that its branches and subsidiaries worldwide (outside the European Economic Area) applied due diligence and ongoing monitoring procedures equivalent to those required for Standard Chartered in the UK.

There are several parameters that the FCA used as a basis to conclude that Standard Chartered did not take adequate steps in implementing the MLRs regulations. One of these was the opening of an account with 3 million Dirhams in cash (approximately £500,000) without conducting thorough inquiries or identifying the origin of the funds. The second parameter was that Standard Chartered failed to review customer due diligence, despite repeated warning signs such as blocked transactions from other banks that indicated links to entities subject to sanctions.

The next case involves the FCA imposing a fine of £63,946,800 on HSBC Bank plc (HSBC) for failure in obedience with anti-money

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[32] The Financial Conduct Authority, "FCA Fines Standard Chartered Bank £102.2 Million for Poor AML Controls," https://www.fca.org.uk/news/press-releases/fca-fines-standard-chartered-bank-102-2-million-poor-aml-controls, April 19, 2019.

[33] The Financial Conduct Authority,

laundering guidelines. The MLRs in effect at the time required companies to set up and sustain appropriate and anticipatory rules and guidelines for the continuous supervising of business relationships to prevent money laundering and terrorist financing. Companies were also required to set up and sustain policies and procedures that were sensitive to risks for monitoring and managing compliance, as well as internal communication of those policies and procedures. The purpose of monitoring was to detect abnormal or inconsistent behavior with a customer's characteristics and behavioral patterns that are indicative of money laundering or terrorist financing. After analysis, such monitoring could raise suspicion of money laundering or terrorist financing. This monitoring also helps companies know their customers, assess risks, and ensure that the company is not being used for financial crime purposes. [34]

BHSBC had 13.6 million active customers. two of HSBC's key transaction monitoring systems monitored approximately 284.8 million transactions per month. With such a significant volume of customers and transactions, HSBC employed automated transaction monitoring systems to help institute and maintain appropriate and risk-sensitive policies and procedures as outlined in the MLRs. HSBC also had a policy in place By the end of the relevant period. The standards set by this policy reflected HSBC's understanding of the key components necessary for an appropriate automated transaction monitoring system for a company of HSBC's size, including key components that are the subject of this notice.[35]

As of March 31, 2010, and March 31, 2018, HSBC failed to obey with anti-money laundering rules because the standards for two of its key automated transaction monitoring systems were either inadequate or not sufficiently risk-sensitive, and HSBC failed to guarantee that the policies governing and overseeing those systems were adhered to correctly. Despite being aware of the importance of these issues since December 2007, three key components of HSBC's automated

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[34] Financial Conduct Authority, "FCA Fines HSBC Bank Plc £63.9 Million for Deficient Transaction Monitoring Controls," https://www.fca.org.uk/news/press-releases/fca-fines-hsbc-bank-plc-deficient-transaction-monitoring-controls, 2021.

[35] Financial Conduct Authority, "FCA Fines HSBC....

transaction monitoring systems were found to be lacking. In light of this failure, the authorities decided to enforce a financial penalty of £63,946,800 after a 30% discount (Stage 1) from the original fine of £91,352,600, in accordance with Regulation 42 of the MLRs. In addition to this case, the UK's FCA also imposed a penalty of £163 million on Deutsche Bank (DB) for failing to comply with anti-money laundering laws, following a mirror trading scheme worth US$10 billion carried out through its Moscow branch.[36]

Anti-money laundering regulations in the UK strictly stipulate that anyone involved in the sale of vehicles may face large fines and even legal action for failing to detect signs of potential money laundering. This includes banks, law office, as well as vehicle dealerships, which may be involved in the business of trading vehicles or acting as intermediaries in the buying or selling process. These regulations aim to prevent criminal activities such as money laundering and ensure that businesses and professionals in the industry adhere to stringent customer due diligence requirements.[37]

In addition to the two cases mentioned, there was another case where the UK authorities imposed a penalty on National Westminster Bank (NatWest) for alleged violations of anti-money laundering regulations. NatWest failed to identify large cash deposits that were suspected to be the proceeds of crime. Despite the substantial nature of the deposits, the bank did not conduct the necessary due diligence to verify the legitimacy of the funds, which led to the regulatory breach. This case highlights the importance of financial institutions complying with anti-money laundering regulations and carrying out thorough checks on abnormal financial transactions to prevent the laundering of criminal proceeds.[38] From these cases, it is evident that the subject of

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[36] Financial Conduct Authority, "FCA Fines HSBC Bank Plc £63.9 Million for Deficient Transaction Monitoring Controls,"

[37] Ambareen Beebeejaun, "Money Laundering and the Automobile Industry: A Comparative Study between the Laws of Mauritius and UK," *Journal of Money Laundering Control* 28, no. 1 (January 8, 2025): 160–70, https://doi.org/10.1108/JMLC-08-2024-0128.

[38] Financial Conduct Authority, "NatWest Fined £264.8 Million for Anti-Money Laundering Failures," https://www.fca.org.uk/news/press-releases/natwest-fined-264.8million-anti-money-laundering-failures, December 13, 2021.

law is the corporation, and the focus of the sanctions imposed is primarily financial penalties. These sanctions are applied for violations of the regulations outlined in the Money Laundering Regulations (MLRs) in the UK. This is similar to the provisions found in Articles 3, 4, 5, and 6 of Indonesia's Law on the Prevention and Eradication of Money Laundering. In addition to these provisions, the imposition of fines on a corporation in its capacity as a reporting party is also regulated under Article 25 of the Law on the Prevention and Eradication of Money Laundering.

The position of banks in the anti-money laundering regime is that of a "gatekeeper." In practice, banks are one of the channels used by criminals to launder money. According to Paku Utama, gatekeepers integrate illicit funds into the financial system or other integration schemes, enabling criminals to enjoy money that appears to be legitimate. Integration schemes can vary. Gatekeepers may integrate laundered money, after it has been transferred through various accounts in different jurisdictions, into the financial system of a foreign country using someone else's name, or the money can be integrated into legal business activities elsewhere. [39]

The imposition of sanctions on corporate perpetrators in several case decisions is due to violations of anti-money laundering regulations, where these corporations failed to implement customer due diligence effectively and failed to identify suspicious financial transactions. According to data from the Financial Transaction Reports and Analysis Center, during the period from 2003 to 2010, the Financial Transaction Reports and Analysis Center received 57,143 Suspicious Transaction Reports (STRs), during which the prevailing regulations were Law No. 15 of 2002 on Money Laundering and Law No. 25 of 2003 amending Law No. 15 of 2002.

After the implementation of the new Anti-Money Laundering Law, the number of STRs submitted to PPATK increased drastically, rising by more than 1,000%, reaching 603,910 STRs from 2011 to 2022. The obligation of banks and other reporting parties to submit STRs has contributed significantly to this increase. This suggests that

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[39] Paku Utama, ""Gatekeepers' Roles as a Fundamental Key in Money Laundering," *Indonesia Law Review* 6, no. 2 (2016): 180–206.

Indonesia is increasingly vulnerable to being chosen by criminals as a location for committing money laundering activities.[40]

The handling of cases under the provisions of the Indonesian Anti-Money Laundering Law so far has not been o*pt*imal. This can be seen from the limited number of cases where corporations have been criminally convicted for money laundering. Similarly, sanctions in the form of fines for reporting parties (corporations) that fail to comply with the Anti-Money Laundering Law regulations have not yet been applied in Indonesia. The absence of significant enforcement in these areas reflects a gap in the application of the law, particularly in holding corporations accountable through financial penalties for non-compliance with anti-money laundering regulations.

In its development, the UK government has taken further steps to combat economic crimes with the enactment of the Economic Crime and Corporate Transparency Act 2023. This law was introduced to Parliament as a bill in Se*pt*ember 2022 and follows the Economic Crime (Transparency and Enforcement) Act, which was passed on March 15, 2022, to reform the handling of economic crime and increase transparency regarding corporate entities. The Act introduces a wider range of criminal offenses, with the most significant aspect being the introduction of the failure to prevent fraud offense and comprehensive reforms to the directing mind provisions for corporate criminal liability. These reforms aim to improve corporate accountability and strengthen enforcement mechanisms, ensuring that businesses are held responsible for failing to prevent economic crimes, including fraud, and that senior management is held accountable for criminal acts committed within the organization. The law's focus on corporate transparency is also a significant step towards addressing the challenges posed by complex corporate structures and illicit financial flows.[41]

The introduction of the "failure to prevent fraud" provision in the Economic Crime and Corporate Transparency Act 2023 is a significant step in holding corporations accountable not only for

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[40] "Personal Interview Conducted by Author with Novie Eriska Aritonang, PPATK," October 1, 2024.

[41] Patrick Rappo, "Editorial: Tackling Economic Crime: Major Reform of Corporate Criminal Liability in the UK," *Journal of Money Laundering Control* (Emerald Publishing, January 2, 2024), https://doi.org/10.1108/JMLC-01-2024-178.

committing crimes but also for failing to prevent them. This provision expands the scope of corporate liability by making companies responsible for the actions of their employees or agents if they fail to implement effective measures to prevent fraudulent activities within their operations. The "failure to prevent fraud" provision serves as a trigger for corporations and their management to take a more proactive approach in implementing anti-fraud policies and ensuring that proper safeguards are in place to detect and prevent fraudulent behavior. By holding corporations accountable for their inability to prevent crime, this regulation encourages businesses to ado*pt* a culture of compliance, due diligence, and transparency, and to create systems that effectively mitigate the risk of financial crime within their organizations. This approach not only strengthens the deterrent against corporate crime but also shifts the burden of responsibility onto corporations to take reasonable steps to prevent fraud, thereby incentivizing them to improve their internal controls, governance practices, and ethical standards. [42]

Through procedures and early identification, financial service providers are expected to be able to prevent money laundering. This is anticipated to be realized through management and systems capable of early detection.[43]

In the 2021 National Risk Assessment of Money Laundering, the emerging threats include the practice of buying and using bank accounts under someone else's name by syndicates, the misuse of e-commerce in transactions that are successfully conducted criminally, and the practice of unlicensed peer-to-peer (P2P) financial technology. [44] Due to its nature involving internet networks, this

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[42] Financial Conduct Authority, "FCA Fines Metro Bank £16m for Financial Crime Failings," https://www.fca.org.uk/news/press-releases/fca-fines-metro-bank-16m-financial-crime-failings, November 12, 2024.

[43] Diadra Preludio Ramada, "Prevention of Money Laundering: Various Models, Problems and Challenges," *Journal of Law and Legal Reform* 3, no. 1 (January 31, 2022): 67–84, https://doi.org/10.15294/jllr.v3i1.54837.

[44] Pusat Pelaporan dan Analisis Transaksi Keuangan, *Indonesia Risk Assessment On Money Laundering 2021*, http://www.ppatk.go.id.

phenomenon seems to be commonly found in other countries as well.[45] According to Salazar, the old methods for detecting money laundering, due to the large volume of data and rapid changes in the types and methods of money laundering, have become ineffective in recent years. Therefore, high-dynamics methods should be used; as a result, artificial intelligence (AI) has been ado*pt*ed in the new methods.[46]

Money laundering causes the distributes of "dirty money" worldwide, leading to the infiltration of financial systems in many countries, instability in national currencies, complications in international economic exchanges, and worldwide. Therefore, money laundering poses a danger not only to one country but has become one of the most significant global threats.[47] In certain conditions, there is even a double danger from money laundering activities. On one hand, it serves as a means to "bring out of the shadows" the proceeds of certain criminal groups; on the other hand, it provides a source that enables further terrorist activities by investing the laundered money into them.

There is only one goal in running a business, which is to achieve profit. [48] Corporations have made significant contributions to the development of a country, especially in the economic sector. However, companies often have negative impacts from activities such as environmental pollution, tax manipulation, labor exploitation, fraud, and money laundering. Therefore, these impacts necessitate that the

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[45] Valeriia Dyntu and Oleh Dykyi, "Cryptocurrency In The System Of Money Laundering," *Baltic Journal of Economic Studies* 4, no. 5 (2019): 75-81, https://doi.org/10.30525/2256-0742/2018-4-5-75-81

[46] J-J Rocha-Salazar, Segovia-Vargas, M.-J. and Camacho-Miñano, M.-M. "Money laundering and terrorism financing detection using neural networks and an abnormality indicator", *Expert Systems with Applications* 169 (2021): doi 10.1016/j.eswa.2020.114470.

[47] Rusanov, G. and Pudovochkin, Y. "Money laundering in the modern crime system", Journal of Money Laundering Control, Vol. 24 No. 4, (2021) : https://remote-lib.ui.ac.id:2075/10.1108/JMLC-08-2020-0085

[48] Doni Budiono and Maria Clarisa Talia, "Limited Liability Company's Status After Insolvency: Dissolution or Rehabilitation?," *Pandecta Research Law Journal* 18, no. 2 (December 25, 2023): 280–99, https://doi.org/10.15294/pandecta.v18i2.48203.

law, as a regulator and protector of society, must pay attention to and regulate corporate activities.[49]

In the context of the application of corporate criminal liability related to violations of anti-money laundering regulations, and by reflecting on several previously discussed cases that occurred in the UK, it is necessary to further explore how the provisions of the Anti-Money Laundering Law can be optimized in efforts to enhance the implementation of liability against corporations involved in money laundering activities or failing to comply with the regulations as stipulated in the Anti-Money Laundering Law.

When, for example, a financial service provider in its capacity as a corporation fails to report suspicious financial transactions, several law enforcement actions can be taken. First, an administrative sanction in the form of an administrative fine can be imposed based on delays in submitting reports or the failure to report suspected suspicious financial transactions. Article 76 of the Financial Services Authority Regulation Number 8 of 2023 on the Implementation of Anti-Money Laundering, Countering the Financing of Terrorism, and Preventing the Proliferation of Weapons of Mass Destruction in the Financial Services Sector states that Financial Service Providers are obligated to submit Suspicious Financial Transaction Reports, cash transaction reports, and other reports to the Financial Transaction Reports and Analysis Center, including submitting corrected reports for all of these reports as regulated by the laws concerning the prevention and eradication of money laundering.

Banking is part of a corporation as regulated in the Anti-Money Laundering Law. On the other hand, the inherent characteristics of a bank as a corporation, supported by the desire to obtain profit, must comply with the obligations as set forth in the provisions. The obligation imposed on the banking sector to conduct due diligence and verification of service users, as well as the obligation to report certain transactions, is regulated in the Anti-Money Laundering Law. According to Markus Tiemann,Click or tap here to enter text. the

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[49] Dadang Epi Sukarsa and Lies Sulistiani, "Corporate Criminal Liability in Money Laundering" 20, no. 5 (May 2022): 1176–86, https://doi.org/10.14704/nq.2022.20.5.NQ22509.

involvement of banks in money laundering can have serious financial and non-financial consequences for the bank and its investors, including reputational damage, heavy fines from authorities, or even the revocation of banking licenses. As a result, a bank's involvement in money laundering can also negatively impact equity prices and, more broadly, financial stability.

In addition to the UK, sanctions against corporate entities for failing to prevent and anticipate money laundering have also been imposed by U.S. authorities on Binance. FINCEN found that Binance ignored its regulatory responsibilities in the quest for profits. Their deliberate failure allowed funds to flow to money laundering, cybercriminals, narcotics and child sex offenders via its platform. By reflecting on the handling of money laundering cases involving limited liability companies (LLCs) in the UK and the US, one key point that should be emphasized is the significant impact of an LLC's involvement in money laundering activities.

One of the underlying reasons for the design of Article 6 paragraph (2) of the Anti-Money Laundering Law, which is to be applied cumulatively, is to ensure that a limited liability company (*PT*) is not easily made the subject of a money laundering offense. In addition to preventing it from being used as a shield for the company's management, criminal sanctions against corporations or *PT*s would have a significant impact on economic activities. Given that a *PT* plays a crucial role in the economy, especially in job creation

The involvement of corporations or limited liability companies (*PT*) in money laundering activities needs to be viewed more broadly. It should not only focus on *PT* as the direct perpetrators of money laundering, but also recognize that *PT*s can "contribute" to the occurrence of money laundering as a consequence of their failure to comply with various anti-money laundering regulations outlined in the Anti-Money Laundering Law and other supporting regulations. This perspective emphasizes the importance of corporate responsibility in adhering to legal frameworks to prevent money laundering and highlights the potential indirect role *PT*s can play in facilitating such activities through non-compliance.

The significant impact of a corporation (*PT*) being involved in money laundering extends beyond merely being a perpetrator. A

similar, if not greater, impact can occur if a *PT* that has an obligation to prevent money laundering neglects its responsibilities. For example, in the case of online gambling, if a *PT* fails to implement appropriate anti-money laundering (AML) measures, it may unintentionally facilitate illegal financial flows. According to findings from the Financial Transaction Reports and Analysis Center, such negligence can contribute to the expansion of illicit activities and undermine the integrity of the financial system. This highlights the broader implications of corporate non-compliance, which can have detrimental effects not only on the company itself but also on the overall financial environment and public trust, that the total turnover of money in online gambling activities has reached Rp 600 trillion, and for the first three months of 2024, it has already reached Rp 100 trillion.

One of the key enablers of the large transactions in online gambling is access to banking services. Statistics from expert testimonies provided by Financial Transaction Reports and Analysis Centre reveal that in several cases of handling money laundering crimes, it was discovered that the bank accounts used for online gambling deposits were obtained by criminals through the illegal sale of accounts. In other words, customers voluntarily sold their accounts to others for a price spanning from Rp 100,000 to Rp 2,000,000. This situation is further facilitated by the ease of opening bank accounts without the need to physically visit the bank in question.

Another example is a money laundering case with illegal mining as the predicate crime. In several cases, it was revealed that the perpetrators of illegal mining were not subjected to the know-your-customer obligation when purchasing heavy equipment. In other words, the company or heavy equipment provider is strongly suspected of failing to fulfill its obligations as regulated in the Anti-Money Laundering Law.

Law enforcement against legal entities involved in money laundering or participating in such activities by failing to fulfill their obligations as outlined in the provisions of the Anti-Money Laundering Law should be expanded. This is because the consequences of a legal entity's failure to comply with its obligations under the Anti-Money Laundering Law can be significant. The sanctions can include criminal fines as well as administrative fines for violations of the law.

Further provisions regarding the imposition of sanctions for late reporting are regulated in the Presidential Regulation Number 109 of 2021 concerning the Types and Tariffs of Non-Tax State Revenue applicable to the Financial Transaction Reporting and Analysis Center. This regulation stipulates that a delay of 1 to 40 days will incur a sanction of IDR 25,000 per day for each report.

The second mechanism related to the imposition of sanctions on corporations that violate the provisions of the Money Laundering Law is the use of the instrument of Article 5 of the Money Laundering Law. Article 5 of the Money Laundering Law stipulates that anyone who receives or controls the placement, transfer, payment, donation, gift, deposit, exchange, or use of assets that they know or should have known are the proceeds of a crime as referred to in Article 2, paragraph (1), shall be sentenced to a prison term of up to 5 (five) years and a fine of up to IDR 1,000,000,000.00 (one billion rupiah). Furthermore, Article 5, paragraph (2) states that the provisions mentioned in paragraph (1) do not apply to the reporter who fulfills the reporting obligation as stipulated in this law.

The provisions of the Money Laundering Law have detailed the criminal sanctions for corporations involved in money laundering. However, the imposition of criminal sanctions on corporations is not the only approach that can be applied. Administrative sanctions in the form of fines can also be an o*pti*on. The imposition of fines is more focused on asset recovery and financial penalties, which are indeed appropriate to be imposed on corporations.

Money laundering by corporations can occur in the form of failure to fulfill their obligations as reporting parties. Therefore, to optimize the imposition of sanctions on corporations within the framework of the Money Laundering Law, the application of fines for the failure to fulfill corporate obligations, as specified in the Money Laundering Law and other related provisions, needs to be optimized.

Conclusion

In principle, the Money Laundering Law has regulated the position of corporations, particularly limited liability companies (PT), as legal subjects responsible for money laundering activities. However, in

practice, the final judgments regarding corporate responsibility, especially for PTs that violate the Money Laundering Law, have not been optimal. Since the enactment of the Money Laundering Law in 2002 until 2024, there have been only 5 final cases in which corporations were found guilty of money laundering. In contrast, there have been several cases where money laundering was not proven. On the other hand, the author has identified several indications of errors in the application of the Money Laundering Law in some of these cases. Referring to several money laundering rulings in the UK, sanctions against corporations are not only imposed on those who directly commit money laundering but also on those who fail to comply with anti-money laundering obligations. These examples from the UK can serve as a guide in handling corporate money laundering cases in Indonesia. Given that the Indonesian Money Laundering Law allows for the imposition of fines, both administratively and within the scope of criminal sanctions, applying these provisions can make it easier to handle money laundering cases involving PTs and enhance the deterrent effect.

The actions of money laundering by a corporation (PT) should not be limited to the act of money laundering itself. Instead, the scope should be expanded to include failures in implementing the KYC principle or other obligations as stipulated in the Money Laundering Law. This aligns with several cases in the UK and the US, where the failure to fulfill these obligations, either directly or indirectly, provides a pathway or means for money laundering to occur.

The failure or negligence of a corporation (PT) in fulfilling its obligations as outlined in the Money Laundering Law has the same impact as direct involvement in money laundering. The primary focus should be on optimizing asset recovery and creating a deterrent effect for the corporation. Therefore, the imposition of sanctions on corporations violating the provisions of the Money Laundering Law should not only focus on their role as perpetrators of money laundering but also on corporations that fail to fulfill their obligations as required by the law.

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