

## **Corporate Criminal Liability for the Crime of Money Laundering with a Follow-The-Money Approach**



**Langgeng Sukma Herwanda**

Universitas Pembangunan Negeri Veteran Jakarta, Jl. Rs. Fatmawati, Pondok Labu, Jakarta. 12450

**ABSTRACT:** Based on Law Number 40 of 2007 concerning Limited Liability Companies Jo. Law Number 8 of 2010 Concerning the Prevention and Eradication of Money Laundering Jo. Regulation of the Indonesian Republic of Indonesia Court of Justice Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations provides space for criminalizing corporations as subjects that are held liable for criminal acts of money laundering. However, law enforcement officers rarely place corporations as subjects for criminal responsibility in money laundering cases, even though corporations play an essential role in the occurrence of money laundering crimes. This was proven by handling the money laundering case taken by the Corruption Eradication Commission, which for the first time, made PT Putra Ramadhan a corporation that was asked to be held responsible for criminal acts of money laundering.

**KEYWORDS:** Money Laundering, Crime, Company Law

### **A. INTRODUCTION**

As a developing country, Indonesia emphasizes economic development in the private sector, which corporations dominate. The rapidly advancing technological developments also influence Money Laundering. Since corporations carry out Money Laundering, corporations can quickly generate large amounts of wealth.

The criminal act of money laundering or Money laundering (TPPU) was introduced by the United Nations (UN) after the passage of the Vienna Convention on the Illicit Trade in Narcotics and Psychotropics in 1988. America already has the first law regarding eradicating TPPU, regulated in the Money Laundering Control Act 1986. The world community has realized CPU as a crime that occurs systematically and widely, resulting in an increasing number of money laundering criminals, causing concern from the public because the actions of this crime can pose serious problems and threats to the stability and security of society and hinder sustainable development.<sup>1</sup>

Money Laundering is an attempt to hide or disguise the origin of money/funds or assets resulting from criminal acts through various financial transactions so that the money or property appears as if it is seen from legitimate activities and does not conflict with laws and regulations.

As a crime that seems legitimate and does not conflict with laws and regulations, it has many application modes as a complex crime. The development of money laundering crimes has occurred very quickly in Indonesia since the passage of Law Number 15 of 2002 concerning Money Laundering Crimes as amended by Law of the Republic of Indonesia Number 25 of 2003 concerning money laundering. Finally, in Indonesia, legal arrangements related to TPPU have been regulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

Money Laundering can not only be done by individuals but can be done by the Company's Legal Entity (Corporation) as referred to in Article 1 number (9) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes states, "Everyone is an individual or corporation."

In principle, talking about criminal acts and criminal liability is an inseparable part of the discussion of the criminal law system.<sup>2</sup> Suppose it is connected with the existence of a corporation that is accepted as a subject of criminal law and can be burdened with criminal liability. In that case, the question arises when a corporation is declared a non-criminal perpetrator of money laundering and what criteria state the corporation committed an illegal act of money laundering.

<sup>1</sup> Yulia Elsa, "Penerapan Pembuktian terbalik dalam Tindak Pidana Pencucian Uang Berdasarkan Undang-Undang Nomor 8 tahun 2010", Jurnal Ilmiah 2017, hlm vi - viii

<sup>2</sup> Mahmud Mulyadi dan Feri Antoni Surbakti, "Politik Hukum Pidana Terhadap Kejahatan Korporasi", (Jakarta: Softmedia, 2010), hlm 6

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A corporation is a legal entity whose existence and legal status are equated to that of a legal subject (human being), regardless of the form of organization. Corporations can own wealth and debts, have obligations and rights, act legally, bring claims, and be sued in court. Thus, it can be said that corporations are like legal subjects (humans) who have physical organs for carrying out their activities. It also confirms that corporations can be held accountable if they have committed criminal acts.

Proving the ability of a corporation to be legally liable is not easy. Because corporations, as subjects of criminal law, do not have the soul and reason like humans by nature. However, this problem can be overcome if we accept the concept of a functional actor (functional *daderschap*). That is, a person cannot escape responsibility because the person concerned has delegated responsibility to another person and even if the person concerned does not know what his subordinate has done.<sup>3</sup>

The functional *daderschap* also applies to the Controller of the Corporation, who gives authority to the corporation's directors so that the corporation's punishment can be criminally prosecuted. In addition, to find out thoroughly regarding the extent of TPPU and why corporations can be held accountable for TPPU, we need a follow-the-money approach to trace TPPU crimes committed by corporations, in which case corporations carry out TPPU based on the will of the management and controlled by the controller and management of the corporation.

This paper will discuss the normative provisions on how to apply corporate criminal liability in money laundering and how effective it is in law enforcement of money laundering crimes (money laundering) carried out by limited liability companies in the future.

The main issues raised in this study are as follows:

1. How is corporate liability application in money laundering crimes (Money laundering)?
2. How is the effectiveness of the application of criminal liability with the principle of a follow-the-money approach in the criminal act of money laundering committed by corporations?

The method used in this study is normative legal research carried out to obtain the necessary data in connection with the problem. Data was used with secondary data and with tertiary legal materials. In addition, primary data is also used as a support for secondary data legal materials. Data analysis is carried out by the method of qualitative juridical analysis.

## B. RESULTS OF RESEARCH AND DISCUSSION

### A. Limited Liability Company's Position as a Legal Subject

In 1995, the Republic of Indonesia had law number 1 of 1995 concerning limited liability companies. In addition, the legal rules governing the Company can also be found in Articles 36 to 56 of the Trade Law Code (KUHD), or in Dutch, it is called the Book of *Wetboek van Koophandel*. Over time and with the development of the times, the legal provisions governing the Company, as stipulated in the law above, are seen as no longer able to meet legal actions and the needs of people who want fast services, the presence of legal certainty and demands for the development of the business world by the principles of good corporate governance. For various reasons, advances in science, technology, and the information field developed rapidly on August 16, 2007. The legal rules governing Limited Liability Companies are regulated in Law Number 40 of 2007 concerning Limited Liability Companies, which replaces and revokes the previous regulations governing Limited Liability Companies.

This Limited Liability Company, which previously had the term *Naamloze Vennootschap*, in its position as a legal entity based on Law Number 40 of 2007 concerning Limited Liability Companies, which a Limited Liability Company means, from now on referred to as a Company, is a legal entity that is a capital partnership, established under an agreement, conducts business activities with an authorized capital which is entirely divided into shares and meets the requirements outlined in this Act as well as its implementing regulations.<sup>4</sup> Limited liability companies in their position as legal entities are also emphasized in the provisions of Article 1 number (1) of the Government Regulation of the Republic of Indonesia Number 8 of 2021 About the Authorized Capital of the Company and registration of the Establishment, Amendment, and Dissolution of a Company That Meets the Criteria for Micro and Small Enterprises which states that: "A Limited Liability Company, from now on referred to as a Company is a legal entity that is a capital partnership, founded based on an agreement, conducting business activities with an authorized capital that is entirely divided into shares or individual legal entities that meet the criteria for micro and small businesses as stipulated in the laws and regulations regarding micro and small enterprises."

In addition to being regulated in the 2 (two) legal regulations above, experts also provide their opinions that emphasize the legal position of limited liability companies as legal entities, including:

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<sup>3</sup> Mahmud Mulyadi, "Kebijakan Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, Bahan Kuliah Tindak Pidana Pencucian Uang", disampaikan di Fakultas Hukum, Magister Ilmu Hukum, Universitas Sumatera Utara, Medan, tanggal 28 Maret 2013.

<sup>4</sup> Republik Indonesia, Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas, Pasal 1 angka (1)

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1) According to Soedjono Dirjosisworo stated that a Limited Liability Company is a legal entity established under an agreement, carries out business activities with an authorized capital that is entirely divided into shares, and meets the requirements stipulated in Law No. 40 of 2007 as amended by and its implementing regulations;<sup>5</sup>

to H.M.N. Purwosutjipto states that a limited liability company is a partnership in the form of a legal entity. This legal entity is not called a "partnership" but a "company" because the capital of that legal entity consists of zero- zero or the shares it owns;<sup>6</sup>

Zaini stated that a Limited Liability Company is a form of an incorporated business, tially known as Naamloze Vennootschap (NV). The term "Limited" in a Limited Liability Company rests on the liability of a shareholder, which is limited to the nominal of all shares he owns;<sup>7</sup>

2) According to Abdulkadir Muhammad, the term "company" refers to how to determine capital, namely by dividing it into shares, and the word "limited" refers to the limit of shareholders' responsibilities, which is limited to the nominal number of shares owned. A Limited Liability Company is a legal entity partnership company;<sup>8</sup> and

3) According to R. Ali Rido also argued that a Limited Liability Company is a form of company that organizes a company, established by joint legal action by several persons, with a specific capital divided into shares, whose members can own one or more claims and are liable limited to the number of shares they own.<sup>9</sup>

According to Black's Law Dictionary, the definition of a corporation as a legal entity is stated, which is as follows:<sup>10</sup>

*"Corporation, an artificial person or legal entity created by or under the authority of the laws of a state. An association of persons created by statute as a legal entity. The law treats the corporation itself as a person who can sue and be sued. An entity (usually a business) having author under the law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely, a group or succession of persons established by legal rules into a legal or juristic person that has a legal personality distinct from the natural persons who wake it up, exists indefinitely apart from them, and has the legal powers that it constitution gives it".*

Based on 2 (two) laws and regulations and strengthened by expert opinions and explanations in Black's Law Dictionary as outlined above, it can be concluded that what is meant by a Limited Union is a form of business incorporated and jointly established by several persons, with a specific capital divided into shares, the members of which can own one or more claims and are liable limited to the number of shares that his possession.

From the descriptions of the definition of a Limited Liability Company above, it can be concluded that a Limited Company is a form of business that is incorporated and jointly established by several persons, with a specific capital that is divided into shares, the members of which can own one or more claims and are liable limited to the number of shares it owns.

A Limited Liability Company consists of two syllables: Liability Company and Limited. Each syllable has a different meaning. Namely, the word Company refers to the capital in a Limited Liability Company consisting of zero-zero or shares. Meanwhile, the Limited syllable is encapsulated as a shareholder's responsibility whose breadth is only limited to the par value of the claims he owns.<sup>11</sup>

Limited Liability Company is the most popular legal entity for business in Indonesia, even in the world. This is because Limited Liability Companies are one of the pillars of economic development at the national and international levels.

As a legal entity, a Limited Liability Company established under an agreement, conducting business activities with an authorized capital that is entirely divided into shares has consequences, namely, an independent institution supporting rights and obligations that can carry out legal actions both inside and outside the court and has assets separate from its administrators and founders.

A limited Liability Company's position as a legal entity means that a limited liability company has rights and obligations that must be accounted for. If a limited liability company carries out a criminal act, in this case, an illegal show of money laundering, then as a legal subject recognized by law as a legal entity that holds rights and obligations, the limited liability company can also be held legally liable.

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<sup>5</sup> Soedjono Dirjosisworo, "Hukum Perusahaan Mengenai Bentuk-bentuk Perusahaan (badan usaha) di Indonesia", (Bandung: Mandar Maju, 1997), hlm. 48.

<sup>6</sup> H.M.N. Purwosutjipto, "Pengertian Pokok Hukum Dagang Indonesia". (Jakarta: Djambatan, 1979), hlm. 85.

<sup>7</sup> Zaeni Asyhadie, "Hukum Bisnis Prinsip dan Pelaksanaannya di Indonesia", (Jakarta: PT. Raja Grafindo Persada, 2005), hlm. 41.

<sup>8</sup> Abdulkadir Muhammad, "Hukum Perusahaan Indonesia". (Bandung: PT. Citra Aditya Bakti, 2002), hlm. 68.

<sup>9</sup> R. Ali Rido, "Hukum Dagang tentang Aspek-aspek Hukum dalam Asuransi Udara, Asuransi Jiwa dan Perkembangan Perseroan Terbatas", (Bandung: Remadja Karya CV, 1986), hlm. 335.

<sup>10</sup> *Ibid*, Hlm 86

<sup>11</sup> H.M.N. Purwosutjipto, "Pengertian Pokok Hukum Dagang Indonesia, dikutip dari Ridwan Khairandy, Perseroan Terbatas Doktrin, Peraturan Peraturan PerundangUndangan, dan Yurisprudensi", (Yogyakarta: Edisi Revisi, Ctk. Kedua, Total Media, 2009), hlm. 1.

## B. Corporate Criminal Liability

The Dutch Criminal Code (KUHPB) initially did not regulate the criminal liability of Limited Liability Companies/Corporations. It was only in 1951 through The Economic Offenses Act, which was later developed in 1976 through the Law (Wet) dated June 23, 1976, Stb. 377, which was ratified on September 1, 1976, gave rise to a new formulation of Article 51 of the KUHPB, which reads:<sup>12</sup>

1) **Humans and legal entities can commit criminal acts.**

2) **If a legal entity carries out a criminal act, a criminal charge may be made, and if deemed necessary, a criminal offense and the actions contained in the law may be imposed against:**

- a) Legal entity; or
- b) Against those who ordered to do the act, as well as those who act as leaders to carry out the prohibited act; or
- c) To those mentioned in point (1) and point (2) above together.

3) **For the rest of the paragraph, it is equated with legal entities: companies without legal entity rights, associations, and foundations.**

The main objectives of regulating corporate criminal liability are:<sup>13</sup>

- 1) The existence of an act or omission of a person related to his work or for other reasons working in the legal entity;
- 2) The existence of an action that has conformity/relationship with the ordinary business of a legal entity;
- 3) The existence of actions that provide business benefits for legal entities;
- 4) Whether the legal entity can decide whether the act must occur or not;
- 5) Is it as seen in the actual series of events that the legal entity accepts the act or the same act?

According to Mahrus Ali, the elements of corporate crime are as follows:<sup>14</sup>

- 1) The existence of a crime;
- 2) What is done by a respectable and honorable person;
- 3) Coming from high social status;
- 4) Have an employment relationship; and
- 5) Violating public trust

Meanwhile, referring to the provisions of Article 1 number (8) of the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (PERMA RI 13/2016) states that "Criminal acts by corporations are criminal acts that can be held criminally accountable. to corporations by the laws governing corporations". Meanwhile, PERMA RI 13/2016 also regulates the conditions that must be met to ask for criminal liability of the company/corporate as stated in the provisions of Article 3 and Article 4, paragraph (1) and paragraph (2) of PERMA RI 13/2016, as follows:<sup>15</sup>

### Article 3 PERMA RI 13/2016:

*"Criminal acts by corporations are committed by people based on work relations, or based on other relationships, either individually or jointly acting for and on behalf of the corporation inside and outside the corporate environment."*

### Article 4 paragraph (1) PERMA RI 13/2016:

*"Corporations can be held criminally responsible by the provisions of the Corporate crime in the law governing Corporations."*

### Article 4 paragraph (2) PERMA RI 13/2016:

*"In imposing a sentence against a corporation, the judge may assess the corporation's faults as referred to in paragraph (1), among others:*

- a. *The corporation may obtain profits or benefits from the crime, or the crime is committed for the use of the corporation;*
- b. *Corporations allow criminal acts to occur; or*
- c. *The corporation does not take the necessary steps to prevent greater significance and ensure compliance with applicable legal provisions to avoid criminal acts.*

Based on the description above, it can be said that a Limited Liability Company can only be held accountable for the actions of an individual acting on behalf of the Company and that person has a high position or plays a crucial function in the decision-making structure or is someone who controls the Company. This model is known as under-detering and less retributive. To determine that a corporation or corporation that is proven to have committed an act that is prohibited has a fault, it must first be ascertained that

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<sup>12</sup> Prof DR. Muladi, S.H., "Pertanggungjawaban Pidana Korporasi (corporate criminal responsibility)", (Bandung: PT Alumni, cetakan ke-1, tahun 2013), hlm. 42 s.d. 43.

<sup>13</sup> *Ibid*, Hlm 5

<sup>14</sup> Mahrus Ali, "Kejahatan Korporasi Kajian Relevansi Sanksi Tindakan Bagi Penanggulangan Kejahatan Korporasi", (Yogyakarta: Arti Bumintaran, 2008), Hlm. 19

<sup>15</sup> *Ibid*, Pasal 3 dan Pasal 4 ayat (1) dan ayat (2)

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the corporate crime used as a theoretical basis to determine whether or not a corporation or corporation is a functional actor theory or identification theory. It is important to note that based on the traditional view of the Criminal Code, which is still dominant today, it is still influenced by the principle of "societas delinquent non-protect" as a result, a corporation cannot possibly have any faults with itself because it does not have a heart or it can be understood that the corporation does not have men's rea or the intention to commit a crime.

It should also be noted that the crimes committed by the Company are crimes committed without violence (non-violent crimes) accompanied by fraud, misdirection, concealment of reality, manipulation, breach of trust, subterfuge, and circumvention of regulations.

### 4) Corporate Criminal Liability Committing the Crime of Money Laundering (Money Laundering)

In Indonesia, money laundering is not new because this crime is increasingly occurring, involving individuals and legal entities. Today, many money laundering crimes are carried out by companies/corporations. Therefore, there is a need for serious handling by law enforcement officers against the perpetrators of money laundering.

Corporate criminal liability is regulated in the provisions of Article 6, paragraph (1) and paragraph (2) of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering (UU TPPU), which states:

#### Article 6 paragraph (1) of the Money Laundering Law:

*"If the criminal act of Money Laundering as referred to in Article 3, Article 4, and Article 5 is committed by a Corporation, the penalty shall be imposed on the Corporation and the Controlling Personnel of the Corporation".<sup>16</sup>*

#### Article 6 paragraph (2) of the Money Laundering Law:

*"Criminalization is imposed on the Corporation if the crime of Money Laundering: a) is committed or ordered by the Corporate Controlling Personnel; b) carried out in the context of fulfilling the purposes and objectives of the Corporation; c) carried out by the duties and functions of the perpetrator or the giver of orders; and d) carried out to provide benefits to the Corporation."<sup>17</sup>*

Suppose we refer to the explanation of Article 6, paragraph (1). In that case, we can find out in-depth about the punishment and responsibility of corporations that commit money laundering, which includes an organized group, namely a structured group consisting of 3 (three) people. Or more, exist for a specific time, and act to commit one or more criminal acts regulated in this Law to obtain financial or non-financial benefits, either directly or indirectly.

The Company/Corporation, as a legal subject, has rights and obligations so that if a company/corporation has committed a crime of money laundering, the company/corporation can be held criminally liable as stipulated in the Anti-Money Laundering Law.

However, the question arises of how a limited liability company that commits or is involved in money laundering can quickly identify that the limited liability company has committed or is engaged in money laundering.

In Anglo-Saxon or common law countries such as England, the United States, and Canada, the development of corporate/corporate criminal liability has existed since the industrial revolution. Courts in England started it in 1842, and a corporation has been fined for failing to fulfill a legal obligation. The debate that arises stems from the position of the company/corporation as a legal fiction and the ultra vires doctrine (corporate actions carried out beyond the powers or outside of its purpose or authority based on its articles of association) must be stated explicitly in the writings of association of the corporation. Furthermore, it is also related to the lack of mental attitude or elements of men's rea (actor non facit reum nisi men sit rea) needed in criminal liability and the ability of corporations to attend personally in court proceedings. Finally, there is a debate about the difficulties in criminalizing corporations, considering that the witnesses presented have been designed to convict people or humans.<sup>18</sup>

From the beginning, the English and French Courts followed the Doctrine of Respondeat Superior or Vicarious Liability which was very restrictive and stipulated that the actions of a subordinate would be linked to the corporation. This doctrine is only used in a limited number of countries where crimes occur.<sup>19</sup>

The development that occurred was the emergence of a substitute doctrine or theory called Identification Theory, which stated, *"The will power of the corporation's managers represented the will power of the corporations. The Manager and Directors represent the corporation's brains, intelligence, and will. A Sufficiently high-ranking corporate member acts not as an agent of the corporations, but as the corporations themselves, representing the nervous system that controls what the corporations do".<sup>20</sup>*

Thus, corporations can only be held accountable for the actions of individuals acting on behalf of the corporation; that person has a high position/position or plays an essential function or plays a controlling role in the corporate decision-making structure. This

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<sup>16</sup> Republik Indonesia, Undang-undang Republik Indonesia Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, Pasal 6 ayat (1).

<sup>17</sup> *Ibid*, Pasal 6 ayat 2

<sup>18</sup> Prof DR. Muladi, S.H., "Pertanggungjawaban Pidana Korporasi (corporate criminal responsibility)", (Bandung: PT Alumni, cetakan ke-1, tahun 2013).hlm 16

<sup>19</sup> *Ibid*, hlm 16

<sup>20</sup> *Ibid*, hlm 17



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model is considered an under-detering, less retributive model in connection with developing an increasingly broad organizational structure.

Identification theory has been used for more than a century in English courts. Based on this theory, all actions or criminal acts committed by people identified with the organization or those who are called who constitute its directing mind, namely individuals such as officials or employees who have levels as managers in their duties not under orders or under the direction of the authority of other superiors in the organization, or those who have controlled both from within the company and outside the company who can make company decisions, can be identified as acts or criminal acts committed by the company/corporation. Thus, the company/corporate liability is not based on vicarious liability.

Then it can also identify the responsibility for corporate criminal acts by using the theory of The Corporate Culture Model; according to this doctrine, corporations can be accounted for in terms of procedures, working systems, or culture (the processes, operating systems, or culture model). Therefore, this cultural theory is often called a theory, system model, or organizational model (organizational or systems model).<sup>21</sup>

Judging from its application, The Corporate Culture Model theory can be applied if:<sup>22</sup>

- 1) An attitude, policy, rule, course of conduct, or practice within the corporate body generally or in the part where the offenses occurred.
- 2) Evidence may be led that company's unwritten rules tacitly authorized non-compliance or failed to create a culture of compliance.

Based on the descriptions above, the application of identity theory and the theory of the corporate culture model is the right step to be taken by law enforcement officers because it provides the possibility of facilitating law enforcement efforts against corporations and asking for criminal liability against the corporation. Identification theory includes identifying an act committed by an individual recognized as a corporate action. For the individual to be identified as a corporation, the individual must act as a directing mind. Determining the directing mind can be done by looking at the facts in the case, such as the individual's position or the extent of the authority possessed, so that it can be considered that his actions are indeed the actions of the company: manager or director level. Therefore, in its application, this doctrine does not accommodate the actions of low-ranking employees.

### 5) Corporate Criminal Liability System

When a corporation is declared criminally responsible for a criminal act committed, it is generally known as three corporate criminal liability systems, namely:<sup>23</sup>

- 1) It is the management of the corporation as the maker and the management who are responsible (the development of corporate responsibility is in the first stage);
- 2) It is the corporation as the maker and administrator who is responsible (development of corporate responsibility in the second stage);
- 3) The corporation as the maker and the corporation must also be responsible (the development of corporate responsibility in the third stage).

However, corporate criminal liability is insufficient for the 3 (three) stated above; in this case, one more idea must be added: "The management and the corporation are both perpetrators of criminal acts, and both must bear criminal responsibility. " There are several reasons used by Sutan Remy Sjahdeini related to this concept, as follows:<sup>24</sup>

- 1) If only the management is burdened with criminal responsibility, it will be unfair to the people who have suffered losses because the leadership in carrying out their actions is for and on behalf of the corporation and is intended to provide benefits or avoid reducing financial losses for the corporation.
- 2) If only corporations are charged with criminal responsibility while the management does not have to shoulder the burden, then this system will allow the administration to be "stone-throwing and hide their hands" or shift responsibility. In other words, the management will always be able to hide behind the back of the corporation to release himself from duty on the pretext that his actions are not personal and not for personal interests but are still acts done for and on behalf of the corporation and for the benefit of the corporation.
- 3) Imposing criminal liability on corporations is only possible vicariously or indirectly (doctrine of vicarious liability); another party bears responsibility for unlawful acts committed by a person. The corporation's responsibility is transferred to the corporation in terms of criminal liability. The imposition of criminal penalties on corporations is only possible vicariously because corporations cannot possibly carry out a legal act by themselves. This means that all legal actions that are right or

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<sup>21</sup> Barda Nawawi Arif, "Kapita Selekta Hukum Pidana", (Bandung, Citra Aditya Bakti, tahun 2003), Hlm 251.

<sup>22</sup> *Ibid*, Hlm 252.

<sup>23</sup> Mardjono Reksodiputro, *Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana korporasi*, makalah disampaikan pada *Seminar nasional Kejahatan Korporasi*, FH UNDIP, Semarang, 23-24 November 1989, hal.9.

<sup>24</sup> Sutan Remi Sjahdeini, "Pertanggungjawaban Pidana Korporasi", (Jakarta: Grafiti Pers, 2006), hlm 162-163.

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wrong, both in the civil field and those regulated by criminal provisions, are carried out by humans who carry out corporate management.

If the legal action is a criminal act, the *actus reus* of the criminal act is carried out by the human perpetrator of the crime (the management of the company). Based on understanding such a reality, it is not appropriate for the criminal responsibility system to adopt that only corporations must bear criminal responsibility while the human perpetrators are released. To impose criminal liability on the corporation, it must first be proven that the corporation's management has committed the crime and that the inner attitude of the direction in committing the crime is actual guilt. Therefore, the management concerned must be responsible for the crime. After it can be proven that the administration has committed a criminal act and must be criminally accountable, the criminal responsibility can be charged vicariously to the corporation. Without proving that the management has committed a crime and that the administration has a guilty conscience in committing the crime, it is impossible to vicariously impose criminal liability on the corporation led by the administration.

**Susan Remy Sjahdeni** added that if the system applied was not the fourth system, namely imposing criminal responsibility either on corporations that committed crimes or imposing criminal burden vicariously on corporations. Another possibility is the human perpetrator (corporate management), who must bear criminal responsibility while the corporation is free. This system was adopted by the current Criminal Code, which it wants to abandon. However, it is impossible to enforce the opposite, namely to impose criminal responsibility only on corporations while the human perpetrators are free. This is contrary to the nature of the imposition of illegal duty vicariously. This condition contradicts the principle that corporations cannot act alone but must go through their management.<sup>25</sup>

In Indonesia, law enforcers of the Corruption Eradication Commission have applied identification theory in holding PT Putra Ramadhan criminally responsible for money laundering because KPK law enforcers identified the directing mind of PT Putra Ramadhan's actions by looking at the facts in cases such as the position of the individual or the authority possessed so that it can be considered that his actions are indeed the actions of the company. With such great power, generally, there are administrators with high positions, such as high-level managers, directors, or controllers, who drive the PT Putra Ramadhan.

### 6) Effectiveness of the Law in the Framework of Demanding Criminal Accountability of Legal Entities in the Crime of Money Laundering (Money Laundering) With a Follow The Money Approach.

Effectiveness means the effectiveness of the effect of success or efficacy or efficacy. Suppose we review the effectiveness of the law. In that case, it cannot be separated from analyzing the characteristics of the two variables, namely the features or dimensions of the target object used.<sup>26</sup>

The theory of legal effectiveness, according to Soerjono Soekanto, is that the point of a law is determined by 5 (five) factors, namely:<sup>27</sup>

- 1) The legal factor itself (law);
- 2) Law enforcement factors, namely the parties that form and apply the law;
- 3) Factors of facilities or facilities that support law enforcement;
- 4) Community factors, namely the environment in which the law applies or is applied;
- 5) Cultural factors result from work, creativity, and taste based on human initiative in social life.

When talking about the effectiveness of the law, we must first be able to measure the extent to which the rule of law is understood or not understood and obeyed or not obeyed. If the rule of law is understood and followed by most of the targets being the target of its obedience, it will be said that the law in question is effective.

Legal awareness and legal compliance are two things that will determine the effectiveness of implementing laws and regulations or the rule of law in society. Legal awareness, legal compliance, and the effectiveness of legislation are three interrelated elements. People often confuse legal awareness and legal obedience, even though the two are closely related but not the same. These two elements determine the effectiveness or not of the implementation of legislation in society.

To hold legal entities accountable for money laundering in the future, we have adequate legal instruments for that, including:

- 1) Law of the Republic of Indonesia Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering; and
- 2) Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

With the 2 (two) legal instruments mentioned above, of course, they must be applied with appropriate and accurate steps; for example, if a company is asked to be responsible for money laundering, law enforcement officers can begin to identify facts. what

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<sup>25</sup> *Ibid*, hlm. 162-163

<sup>26</sup> Barda Nawawi Arief, "Kapita Selekta Hukum Pidana", (Bandung : Citra Aditya , 2013) Hlm. 67

<sup>27</sup> Soerjono Soekanto, "Faktor-Faktor yang Mempengaruhi Penegakan Hukum", (Jakarta: PT. Raja Grafindo Persada, 2008) Hlm. 8

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happened actually used the identification theory approach, and then adjusted the conditions determined by law to choose the company as a criminal subject for whom it wanted to be held accountable. Finally, law enforcement officers can determine criminal sanctions imposed on companies that commit money laundering crimes.

Law Number 15 of 2002 as amended by Law Number 25 of 2003 concerning Amendments to Law Number 15 of 2002 concerning the Crime of Money Laundering and further refined in Law Number 8 of 2010 concerning Prevention of the Crime of Money Laundering, using the follow the money approach in criminalizing money laundering, namely the act of hiding and disguising assets resulting from criminal acts, so that they appear to be legitimate assets.

In every criminal act, there are at least three components, namely the perpetrator of the crime committed and the result of the crime. The proceeds of a crime can be in the form of money or other assets. The follow-the-money approach prioritizes finding money or assets resulting from criminal acts compared to looking for criminals. After the results are obtained, look for the culprit and the crime committed. A financial analysis of consequences is used to search for the effects of criminal acts. Here accounting science and other related sciences are used. The accounting science used is forensic accounting (forensic accounting).<sup>28</sup> To see the advantages of the follow-the-money approach, the author uses the example of illegal logging, which is difficult to eradicate because it involves unscrupulous officials and financial financiers.

Of the hundreds of illegal logging that have been brought to court, most of those convicted are field actors such as loggers, drivers, captains, crew members, and security forces. The law has ensnared almost none of the officials and kong who masterminded illegal logging. Pori has uncovered not all cases of unlawful loggers; the perpetrators can be arrested or detained for later trial in Indonesia. In addition to the problem of proving the crime which is still challenging to uncover, some of the perpetrators of these illegal loggers have fled abroad, both Indonesian and foreign nationals. Boundaries between neighboring countries are pretty close, separated by sea/water and land, allowing fast mobility for illegal logging actors to escape.<sup>29</sup>

This happens because, in the investigation and investigation, only the follow-the-suspect approach is used, not supported by the follow-the-money process. The follow suspect method will never find unscrupulous officials and kong roaming the field or forest. With a different policy, namely, following the money, it will be possible to reveal which officials received the proceeds of illegal logging by looking at their financial situation and financial transactions. With this approach, it is also possible to show the kong behind the illegal logging.

The follow-the-money approach has several advantages in tracing the perpetrators and the results of criminal acts. Its reach is further so that it is perceived as fairer, as seen in the case of illegal logging. This approach prioritizes pursuing the proceeds of crime, not the perpetrators, so it can be carried out quietly. It's easier, and there is less risk because you don't have to deal directly with perpetrators who often have the potential to fight back. This approach pursues the proceeds of crime, which will later be brought to justice and confiscated for the State because the perpetrator is not entitled to enjoy the property obtained illegally. With the confiscation of the proceeds of this crime, the motivation of a person to commit a crime to seek property is reduced or lost.<sup>30</sup>

The principle of the follow-the-money approach is almost similar to identification theory because both identify crimes based on the facts. Based on the descriptions above, the effectiveness of the law in the context of holding criminal liability for legal entities in the crime of money laundering (money laundering) in the future will be helped to achieve by existing legal provisions because with the implementation of the application of identification theory; it will help It is easy for law enforcement officers to find the flow of money laundering funds because the idea of identification theory can be defined the same as the principle of following the money.

The most important thing the author can state is the problem of implementing or applying the relevant rules. As previously stated, special criminal laws such as Law Number 31 of 1999, as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, or Law Number 8 of 2010 concerning the Prevention of Corporate Money Laundering have been expressly regulated as a legal subject. This means that corporations should be held criminally responsible when a crime occurs. However, in reality, criminal law only concentrates on punishing individuals or corporations related to the crime in question who are rarely criminally responsible. This proves that even though corporations are already regulated as criminal law subjects (although only in special criminal law) if these provisions are seldom implemented, these provisions will become "suspended provisions." So, in this case, the author emphasizes that the regulation of corporations as a subject of criminal law is essential and as crucial as the implementation of the provisions governing corporations that can be held criminally accountable.

The Government of Indonesia has drawn up the concept of Corporate Criminal Responsibility Formulation in the Draft Criminal Code (RKUHP), meaning that creating effectiveness and corporate criminal responsibility is considered an important matter; the Chief Drafter of the RKUHP, Muladi, stated that Articles 47 to 53 of the RKUHP regulate " corporate criminal liability."

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<sup>28</sup> Amiruddin dan H Zainal Asikin, 2003, *Pengantar Metode Penelitian Hukum*, Raja Grafindo Persada, Jakarta, hlm.118

<sup>29</sup> Yunus Husein, "Negeri Sang Pencuci Uang", (Jakarta: Pustaka Juanda Tiga Lima, tahun 2008), hlm 66.

<sup>30</sup> Ni Komang Sutrisni, "Pendekatan follow the money dalam penelusuran tindak pidana pencucian uang serta tindak pidana lain", (Jurnal Hukum) hlm 3.



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This means that criminal liability against corporations generally applies to all criminal acts, including those outside the Criminal Code.<sup>31</sup>

According to Muladi, Article 18 of the Council of Europe Criminal Law Convention on Corruption (1999) can be used as a guide, namely:<sup>32</sup>

*“... that legal persons can be held liable for the criminal offenses... Committed for their benefit by any natural person acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:*

- a) A power of representation of the legal person;*
- b) An authority to make decisions on behalf of the legal person;*
- c) An authority to exercise control within the legal person;*
- d) As well as for involvement of such a natural person as accessory or instigator in the offenses mentioned above.”*

The formulation of the articles relating to corporate criminal liability in the 2010 RKUHP are as follows:

- 1) Article 47: *“A corporation is the subject of a criminal act.”*
- 2) Article 48: *“A corporation commits a criminal act if it is committed by persons acting for and on behalf of the corporation or for the benefit of the corporation, based on an employment relationship or other relationships, within the scope of the corporation's business. Either individually or together”.*
- 3) Article 49: *“if a corporation commits a criminal act, criminal liability is imposed on the corporation and its management.”*
- 4) Article 50: *“A corporation may be criminally liable for an act committed for and on behalf of the corporation if the act is included in the scope of its business as specified in the articles of association or other provisions applicable to the corporation concerned.”*
- 5) Article 51: *“Criminal liability of corporate management is limited as long as the management has a functional position in the corporate organizational structure.”*
- 6) Article 52:
  - (1) *In considering a criminal charge, whether other parts of the law have provided more useful protection than helping a sentence on a corporation must be considered.*
  - (2) *The considerations referred to in paragraph (1) must be stated in the judge's decision.*
- 7) Article 53: *“Forgive reasons or justifications that can be put forward by manufacturers acting for and on behalf of the corporation, can be submitted by the corporation as long as those reasons are directly related to the act that is being charged to the corporation.”* Article 44: *“corporations can be accounted for in committing criminal acts.”*

### A. PENUTUP

A limited Liability Company's position as a legal entity means that the limited liability company has rights and obligations that must be accounted for. Suppose a limited liability company commits a criminal act, in this case, money laundering, then as a legal subject whose existence is recognized by law as a legal entity that holds rights and obligations. In that case, the limited liability company can also be legally responsible.

The application of identification theory in Law of the Republic of Indonesia, Number 8 of 2010, concerning Prevention and Eradication of the Crime of Money Laundering and Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 regarding Procedures for Handling Criminal Cases by Corporations, will assist in achieving legal effectiveness to hold accountable Criminal Entity in the Crime of Money Laundering (Money Laundering). In addition, the application of identification theory will also help law enforcement officers easily find the flow of money laundering funds because the idea of identification theory can be defined as the principle of following the money.

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<sup>31</sup> <[http://www.djpp.depkmham.go.id/inc/buka.php?d=sos+1&f=Beberapa\\_Catatan\\_Tentang\\_RUU\\_KUHP](http://www.djpp.depkmham.go.id/inc/buka.php?d=sos+1&f=Beberapa_Catatan_Tentang_RUU_KUHP)>, diakses terakhir pada tanggal 16 November 2012 pada pukul 11.16

<sup>32</sup> <[http://www.djpp.depkmham.go.id/inc/buka.php?d=sos+1&f=Beberapa\\_Catatan\\_Tentang\\_RUU\\_KUHP](http://www.djpp.depkmham.go.id/inc/buka.php?d=sos+1&f=Beberapa_Catatan_Tentang_RUU_KUHP)>, diakses terakhir pada tanggal 16 November 2012 pada pukul 11.25

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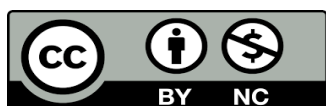
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