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Criminal Liability of Non-Profit Organisations (Foundation) in Money Laundering Crimes in Indonesia

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ABSTRACT

Money laundering crimes have a massive impact on the economy and are transboundary as well. PPATK identifies Non-profit organizations (NPOs/Foundations) as being in the highrisk category of ML/TF, often used to accommodate the proceeds of crime and as a means of money laundering. This is due to the absence of an obligation for foundations to ensure the origin of funds received. This research aims to address how is the criminal liability of NPOs/Foundations as ML offenders. This research uses normative research method by utilizing library research. The results show that the NPOs/Foundations are a form of incorporated corporation that qualifies as a subject of money laundering crimes as stipulated in the Criminal Law Code 2023 and the Anti-Money Laundering Law. Therefore, NPOs/Foundations can be held criminally liable. The regulation of criminal liability of NPOs/Foundations in ML refers to the provisions of Articles 6 and 7 of the AML Law and Article 4 Paragraph (2) of Supreme Court Regulation No. 13/2016 which regulates corporate criminal liability. The AML Law follows the concept of vicarious liability, allowing foundations to be charged for money laundering crimes based on the actions of their representatives. The paper emphasizes the importance of law enforcement officials understanding these provisions to accurately assess the guilt of foundations, considering the form of guilt (intentional or negligence) and its implications for sentencing.

Keywords: criminal liability; foundation; money laundering.

INTRODUCTION

Money laundering is an extraordinary crime that is organized or structured and transboundary. The Financial Action Task Force (hereinafter referred to as FATF) as an international organization focused on global efforts to combat money laundering, financing of terrorism, and financing the proliferation of weapons of mass destruction defines money laundering: "Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without

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jeopardising their source".¹ The effects of money laundering crimes can threaten the stability and integrity of a nation's economic and financial systems. Consequently, it is necessary to ensure that there are sufficient policies in relation to the eradication of this particular type of crime.²

In response to these negative impacts, Indonesia began to criminalize money laundering through the enactment of Law Number 15 of 2002 on the Prevention and Eradication of Money Laundering (hereinafter referred to as the AML Law). Then amended by Law Number 25 of 2003 and then revised again through Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. Additionally, Indonesia, through its best efforts, successfully joined the 40th FATF as a full member in order to strengthen international cooperation in eradicating money laundering.³

Money laundering crimes have become increasingly complex, often involving institutions outside the traditional financial system, such as non-profit organizations (NPOs) or foundations. According to risk assessments by the Financial Transaction Report and Analysis Center (hereinafter referred to as PPATK), NPOs/foundations pose a high risk for money laundering and terrorism financing (ML/TF). This risk mainly arises because foundations may be used to conceal unlawfully obtained wealth by founders or others, partly due to insufficient regulations requiring foundations to verify the source of their funds or donations.⁴

The fact that the legal entity of the NPOs/foundations can be misused as a means of criminal offense has actually been a concern for a long time.⁵ Moreover, this is stated in the general explanation of the Law Number 16 of 2001 concerning Foundations. Many people tend to establish Foundations with the aim of sheltering behind the legal entity status of the Foundation, not only to develop social, religious, and humanitarian activities, but also to enrich themselves the founders, administrators, and supervisors. This concern leads to problems related to Foundation activities that are not in accordance with the aims and objectives written in the articles of association.⁶

¹ FATF, (2024), "What is Money Laundering", <https://www.fatf-gafi.org/en/pages/frequently-asked-questions.html#tabs-36503a8663-item-6ff811783c-tab>, accessed on February, 25, 2025.

² Ahmad Sofian dan Jesica Nadine, *Tindak Pidana Pencucian Uang Komparasi Indonesia dan Malaysia*, (Jakarta: Kencana, 2022), pp. 1.

³ PPATK, (2023), "Keanggotaan Penuh FATF : Bekal Penting Menuju Indonesia Emas 2045", https://www.ppatk.go.id/siaran_pers/read/1296/keanggotaan-penuh-fatf-bekal-penting-menuju-indonesia-emas-2045-.html accessed on February, 25, 2025.

⁴ Sirait, N. N., Hafidzah, L., & Rangkuti, Y. (2023). Organisasi Non-Profit Sebagai Media Tindak Pidana Pencucian Uang. *AML/CFT Journal: The Journal of Anti Money Laundering and Countering the Financing Terrorism*, 1(02), 132-145.

⁵ Sugianto, S. (2017). Praktek Curang dalam Yayasan Dihubungkan dengan Kajian Hukum tentang Pertanggungjawaban Badan Hukum. *Az-Zarqa': Jurnal Hukum Bisnis Islam*, 9(2), 279-288.

⁶ Penjelasan Undang-Undang Nomor 16 Tahun 2001 tentang Yayasan.

Tuti Wahyuningsih, Deputy for Strategy and Cooperation at PPATK, said that non-profit organizations or social organizations/groups that receive grants should always be vigilant and check the source of their funds. If received funds come from or are suspected to be related to money laundering, the group may be trapped as a passive perpetrator of money laundering.⁷ Highlighting the involvement of nonprofit organizations in potentially vulnerable positions to money laundering risks, the FATF specifically addresses this in the Recommendation 8 (measures to prevent nonprofit organisations/NPOs from being misused).⁸

The existence of foundations as a means of money laundering inherently can also lead to the potential of foundations as ML offenders who can be charged with criminal liability.⁹ However, the author did not find a single court judgment in a ML case that considered the foundation (as a corporation) as the perpetrator of a criminal offense that can be imposed with criminal liability. Whereas Article 45 of the Law Number 1 of 2023 on the Criminal Law Code (hereinafter referred to as Criminal Law Code 2023) and Article 1 point 9 of the AML Law have regulated that corporations can be the subject of criminal acts that can be criminally liable.

There are at least 2 world-renowned ML cases and 3 ML cases in Indonesia that involved foundations, namely the Panamas Papers¹⁰, the Pandora Papers¹¹, Yayasan Keadilan Untuk Semua case¹², Al-Zaytun case as part of the Yayasan Pesantren Indonesia¹³ and the case of ex- Minister of Communications and Information Jhonny G. Plate involving the Yayasan Pendidikan Katolik Arnoldus Kupang, NTT.¹⁴

Accordingly, the main strategy in handling ML/TF cases is to use the follow the money approach, which is related to tracing the flow of funds in order to identify and

⁷ CNBC Indonesia, "Terima Dana Sosial Miliaran, Awas jadi Sarang Pencucian Uang!", <https://www.cnbcindonesia.com/news/20230317162422-4-422672/terima-dana-sosial-miliaran-awas-jadi-sarang-pencucian-uang>, accessed on February, 25, 2025.

⁸ FATF, (2015), *Best Practice: Combating The Abuse of Non Profit Organisations (Recommendation 8)*, <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/BPP-combating-abuse-non-profit-organisations.pdf> accessed on February, 25, 2025.

⁹ Zulfi Diane Zaini dan Putri Septia. (2022). Pertanggungjawaban Pengurus dalam Pengelolaan Badan Hukum Yayasan di Indonesia. *Justice Voice Jurnal*, 1(1), 35-44.

¹⁰ Wicaksono, S., Audi, N. A., Rachmaddi, A., & Imaduddin, R. (2021). Tax Evasion and Fraud Scandal in Panama Paper Case. *International Journal of Economics, Business and Accounting Research (IJEBAR)*, 5(1), 590-595.

¹¹ Sean McGoey dan Will Fitzgibbon, (2021). "Pandora Papers reporting from the Middle East and North Africa", <https://www.icij.org/investigations/pandora-papers/pandora-papers-reporting-from-the-middle-east-and-north-africa/> accessed on February, 25, 2025.

¹² Fong, E. M., Ratam, A., & Velentina, R. A. Kesesuaian Ketentuan Pemilik Manfaat Dengan Undang-Undang Yayasan. *Indonesian Notary*, 5(1), 1.

¹³ *Ibid.*

¹⁴ Putusan Pengadilan Tinggi DKI Jakarta Nomor 1/PID.SUS-TPK/2024/PT DKI, accessed on 01 June 2024.

find out what assets, locations and perpetrators of criminal acts are.¹⁵ Under this approach, it is crucial to review the flow of funds from criminal offenses that may have been received by the foundation, causing the NPOs/foundations to be involved in ML as an active or passive perpetrator based on the formulation of Articles 3, 4 and 5 of the AML Law. Since this will be related to the criminal liability of the NPOs/foundations.

Criminal liability centers on holding a perpetrator responsible for unlawful acts committed with fault and without justification. The Anti-Money Laundering (AML) Law adopts a *pro parte dolus pro parte culpa* standard, requiring proof of either intent or negligence to establish guilt and impose criminal liability. However, when applied to corporations like foundations, this can challenge the traditional principle of "no punishment without fault," since corporate liability may deviate from this rule. Given that the AML Law demands proof of either intentional or negligent fault, it is essential to examine how this standard applies to foundations as criminal subjects.¹⁶ This research focuses on the provisions of the AML Law concerning corporate criminal liability, specifically exploring how NPOs/foundations can be held liable for money laundering offenses in Indonesia.

RESEARCH METHOD

Normative research was conducted to explore this issue, which provided on secondary data obtained through library research. Primary and secondary legal materials are referred to as secondary data. Primary legal materials used in this research include: 1) Law No. 1 of 2023 on the Criminal Law Code; 2) Law No. 8 of 2010 on Prevention and Combating of Money Laundering Crimes; 3) Law No. 16 of 2001 on Foundation, as amended by Law No. 28 of 2004 on Amendments to Law 16 of 2001 on Foundation; 4) Presidential Regulation No. 13 of 2018 on Application of the Principle of Recognizing Beneficial Owners of Corporate interest in the Context of Prevention and Suppression on Money Laundering Crimes; 5) Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Criminal Cases by Corporations. Secondary legal materials used are scientific articles related to the issues discussed.

The discussion will begin with an examination of the legal framework for NPOs/Foundation as a legal subject in criminal law in Indonesia and preventing and combating money laundering in Indonesia, including the subject of a criminal act and the criminal liability. The analysis will also draw on case studies to highlight the

¹⁵ Yusuf, M., Yunus, E. M., and Muslim, F., (2011). Ikhtisar Ketentuan Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang, *The Indonesia Netherlands National Legal Reform Program (NLRP)*,1(1), 97.

¹⁶ Aditya Wiguna Sanjaya, (2023). *Tindak Pidana Pencucian Uang, Telaah Kritis Terhadap Pencucian Uang Pasif di Indonesia*. (Yogyakarta: UII Press), p. 7.

possibilities of NPOs/Foundation involved in money laundering crimes and addressing its criminal liability.

DISCUSSION

Non-Profit Organisations (Foundation) as a Legal Subject in Criminal Law in Indonesia

Persons are not the only parties to rights and obligations. Similar to a person, a legal entity as a legal subject can have rights and obligations to perform legal acts.¹⁷ Article 1 point 1 of Law Number 16 of 2001 concerning Foundations (hereinafter referred to as the Foundation Law) which states that: "Foundation is a legal entity consisting of assets separated and intended to achieve a particular purpose in the social, religious and humanitarian fields, which does not have members".¹⁸ A foundation is a legal entity with its own assets, separate from those of its management, and these assets are used to fulfill the foundation's purpose. This aligns with Brinz's theory that a legal entity's assets are tied to a specific purpose. To gain legal entity status, a foundation must be authorized by the Minister of Law and Human Rights through an application submitted by a notary with the foundation's deed of establishment. Once ratified by the Minister, the foundation is officially recognized as a legal entity.¹⁹ In Indonesia, many people establish foundations not only for legitimate social, religious, educational, or humanitarian purposes but also to misuse their legal entity status for personal enrichment, particularly by those in management roles. This misuse can lead to foundations being involved in criminal activities, such as money laundering. In response, lawmakers have recognized foundations as legal subjects, enabling them to be held accountable for such crimes.

The existence of the Foundation as a legal subject in criminal law in Indonesia can be found in the legal framework, namely Law Number 1 of 2023 concerning the Criminal Code. The formulation of Article 45 paragraph (2) of the Criminal Law Code 2023 states that the corporation as referred to in paragraph (1) includes legal entities in the form of limited liability companies, foundations, corporations, state-owned enterprises, regionally-owned enterprises, or those equated with them, as well as associations both incorporated and unincorporated, business entities in the form of firms, limited partnerships, or those equated with them in accordance with the provisions of laws and regulations. This means that the foundation is one of the forms of incorporated corporation that can be the subject of a criminal offense.²⁰

¹⁷ Toruan, H. D. L. (2014). Pertanggungjawaban Pidana Korupsi Korporasi. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 3(3), 397-416.

¹⁸ Law Number 16 of 2001 concerning Foundations

¹⁹ Gatot Supramono, (2008). *Hukum Yayasan di Indonesia*. (Jakarta: Rineka Cipta), pp. 16-18.

²⁰ Law No. 1 of 2023 on the Criminal Law Code.

Non-Profit Organisations (Foundation) as a Subject of Money Laundering Crimes

In specifically, the subject of the crime of money laundering is regulated in the formulation of Articles 3, 4, and 5 paragraph (1) of the AML Law, it appears that the addresat is formulated with the phrase “anyone”. In connection with this, Article 1 paragraph 9 of the AML Law states that what is meant by anyone is an individual or corporation. This means that the money laundering offenses in Articles 3, 4, and 5 paragraph (1) of the AML Law can be committed by a natural person (natuurlijk persoon) or a corporation (rechts persoon).²¹

Regarding what is meant by a corporation, it can be referred back to Article 1 point 10 of the AML Law which states that a corporation is an organized collection of people and/or assets, whether it is a legal entity or not. Moreover, the broadening of the meaning of corporation can also be found in the Elucidation of Article 6 paragraph (1) of the AML Law, which defines corporation to also include organized groups, namely structured groups consisting of 3 (three) or more persons, whose existence is for a certain time, and act with the aim of committing one or more criminal acts regulated in this Law with the aim of obtaining financial or non-financial benefits either directly or indirectly.²²

Furthermore, the existence of foundations as legal entities that qualified as corporations under the AML Law can be found in Article 2 paragraph (2) of Presidential Regulation No. 13 of 2018 on the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Preventing and Eradicating the Criminal Acts of Money Laundering and the Criminal Acts of Financing Terrorism, which states that corporations include limited liability companies, foundations, associations, cooperatives, limited liability partnerships, firm partnerships, and other forms of corporations. It can be concluded that the foundation falls under the rules of the anti-money laundering regime which places it as a subject of money laundering crimes.

Regarding the foundation as a subject of money laundering crime is also reaffirmed through Article 6 paragraph (1) of the Anti-Money Laundering Law which regulates corporate criminal liability. In the case of money laundering offenses as referred to in Article 3, Article 4 and Article 5 committed by a corporation, the punishment shall be imposed on the corporation and/or the controlling personnel of the corporation. This means that if the criminal act of money laundering as referred to in Article 3, Article 4 and Article 5 of the AML Law is committed by a corporation, then there are three possible subjects who will be sentenced, namely: **First**, Corporations and Controlling Personnel of Corporations. **Second**, the Corporation. **Third**, Corporate

²¹ Law No. 8 of 2010 on Prevention and Combating of Money Laundering Crimes.

²² Elucidation Article 6 paragraph (1) Law No. 8 of 2010 on Prevention and Combating of Money Laundering Crimes.

Controlling Personnel. The provisions in Article 7 paragraph (1) of the AML Law apply to corporations, while the provisions in Article 5 paragraph (1) of the AML Law apply to the controlling personnel of corporations, which are essentially legal subjects of natural persons (*natuurlijk person*). This means that the legal entity of the foundation is a subject of money laundering crime that can be charged with criminal liability.

Criminal Liability of Non-Profit Organisations (Foundation) in Money Laundering Crimes in Indonesia

In terms of criminal offenses committed by corporations, there are 3 (three) parts that need to be understood, namely (a) corporation as a legal subject; (b) corporation as an offender; and (c) corporate criminal liability. In principle, criminal liability is an inseparable part in the discussion of the criminal law system. The criminal offense only concerns the issue of the act, while the issue of whether the person who committed it is then criminally liable is another issue in the Indonesian criminal law system.²³

According to Roeslan Saleh, criminal acts and criminal liability are distinct concepts. A criminal act refers to a prohibited action based on legal norms, while criminal liability involves a person's subjective responsibility to obey the law. He emphasizes that committing a criminal act does not automatically mean the person is guilty. For someone to be held criminally liable and punished, specific legal conditions must be met. Consequently, besides having committed a criminal offense, criminal liability can only be prosecuted if the criminal offense is committed with fault. This means that criminal liability is determined based on the fault of the perpetrator (liability based in fault).²⁴

Through the application of the identification theory to corporations, the law must first determine who is a legal subject that can be criminally liable in an act that is prohibited by law and has a proper basis for punishment. In order for a corporation to be held criminally liable on the basis of fault, it must be proven that there is an element of fault by identifying a mistake committed by the corporation by linking the wrongful act with the individuals representing the corporation.²⁵

In *lex generalis*, Indonesia has regulated corporate criminal liability in Law Number 1 of 2023 on the Criminal Law Code (hereinafter referred to as the Criminal Law Code 2023). The Criminal Law Code 2023 has recognized corporate liability which

²³ Chairul Huda, (2011). *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana dan Pertanggungjawaban Pidana*. (Jakarta: Prenada Media Group), pp. 6.

²⁴ Ahmad Sofian dan Jesica Nadine, (2022). *Tindak Pidana Pencucian Uang Komparasi Indonesia dan Malaysia*. (Jakarta: Kencana), pp. 160-161.

²⁵ Fadhila, Kharisma Wulan. (2024). Reformasi Hukum Pidana dan Pertanggungjawaban Korporasi dalam UU Kuhp 2023. *Action Research Literate* 8(3), 649-657.

is regulated in Article 45 to Article 48.²⁶ Article 46 of the Criminal Law Code 2023 provides a definition of a criminal act by a corporation as a criminal act committed by a manager who has a functional position in the organizational structure of the corporation or a person who by virtue of an employment relationship or by virtue of another relationship acts for and on behalf of the corporation or acts in the interest of the corporation, within the scope of the business or activities of the corporation either individually or jointly.

Criminal acts by corporations can be committed by the commanders, controllers, or beneficial owners of the corporation who are outside the organizational structure, but can control the corporation as stated in Article 47 of the Criminal Law Code 2023. To be able to impose criminal liability on corporations, Article 48 of the Criminal Law Code 2023 provides several elements that must be considered, including:²⁷ a) included in the scope of business or activities as specified in the articles of association or other provisions applicable to the Corporation; b) unlawfully benefiting the corporation; c) accepted as Corporation policy; d) the Corporation does not take the necessary steps to prevent, prevent greater impact and ensure compliance with applicable legal provisions to avoid criminal acts; and/or e) the Corporation allows criminal acts to occur. For the actions of the corporation as referred to above, the responsibility for the criminal offense by the corporation is imposed on the Corporation, the management who has a functional position, the order giver, the control holder, and/or the beneficial owner of the Corporation as stated in Article 49 of the Criminal Law Code 2023.²⁸

The AML Law has actually formulated when a corporation commits a criminal offense and who can be held accountable.²⁹ In the context of corporate criminal liability in the AML Law, if the crime is committed by a corporation, the punishment is imposed on the corporation and/or the controlling personnel of the corporation as stipulated in Article 6 Paragraph (1) of the AML Law which reads: "In the event that the criminal offense of Money Laundering as referred to in Article 3, Article 4 and Article 5 is committed by a Corporation, the punishment shall be imposed on the Corporation and/or the Controlling Personnel of the Corporation."

Therefore, the use of the word "and/or" in the formulation of Article 6 Paragraph (1) of the AML Law, it can be concluded that the punishment can be imposed against: a) corporation and corporate controlling personnel; b) corporation only; or c) corporate

²⁶ Article 45 - 48 Law No. 1 of 2023 on the Criminal Law Code

²⁷ Article 48 Law No. 1 of 2023 on the Criminal Law Code

²⁸ Article 49 Law No. 1 of 2023 on the Criminal Law Code

²⁹ Baiquni, M. I., Adiyatma, S. E., Saputri, A. D., Julianto, R., Arifin, R., & Fibrianti, N. (2023). Criminalization Arrangements for Corporations (Comparative Study of Indonesia and Australia). *Unnes Law Journal*, 9(2), 489-508.

controlling personnel only. Furthermore, Article 6 Paragraph (2) of the AML Law stipulates that the punishment shall be imposed on the corporation if the ML: a) Is conducted or ordered by the controlling personnel of the corporation; b) Is conducted in order to fulfill the purpose and objectives of the corporation; c) Is conducted in accordance with the duties and functions of the perpetrator or order giver; d) Is conducted with the intention of providing benefits to the corporation.³⁰

Then, the AML Law also regulates the form of punishment that can be applied to corporations that are distinguished from individuals. Furthermore, the AML Law also regulates the rules for criminal fines for corporations if they cannot be paid. Article 7 Paragraph (1) of the AML Law regulates criminal fines imposed by corporations that commit money laundering crimes. In the event of a money laundering crime committed by a corporation, Article 6 Paragraph (1) stipulates that the principal punishment imposed on the corporation is a maximum of IDR 100,000,000,000.00 (one hundred billion rupiah). In terms of corporation that commits laundering crime as referred to in Article 3, Article 4, and Article 5, additional punishment shall be imposed, then the corporation shall be subject to additional punishment in accordance with the provisions in Article 7 Paragraph (2) of the AML Law. The types of additional punishment in Article 7 paragraph (2) will be described as follows: 1) announcement of the judge's decision; 2) suspension of part or all of the corporation's business activities; 3) revocation of business license; 4) dissolution and/or prohibition of the corporation; 5) seizure of corporate assets for the state; 6) takeover of the corporation by the state.³¹

However, the AML Law is not sufficient because it does not regulate when corporations can be held accountable. The results of the author's research show that to be able to impose corporate criminal liability in the crime of money laundering in addition to referring to the AML Law, it is still necessary to refer to Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (hereinafter referred to as Supreme Court Regulation Number 13/2016). Article 4 Paragraph (2) Supreme Court Regulation Number 13/2016 In imposing punishment on the Corporation, the Judge may assess the Corporation's guilt as referred to in Paragraph (1), among others:³² a) the Corporation may benefit from the criminal act or the criminal act is committed for the benefit of the Corporation; b) the Corporation allows the criminal act to occur; or c) the Corporation does not take the necessary steps

³⁰ Article 6 paragraph (2) Law No. 8 of 2010 on Prevention and Combating of Money Laundering Crimes.

³¹ Article 7 paragraph (2) Law No. 8 of 2010 on Prevention and Combating of Money Laundering Crimes.

³² Article 4 paragraph (2) Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Criminal Cases by Corporations.

to prevent, prevent greater impact and ensure compliance with applicable legal provisions to avoid criminal acts.

The author also compares the rules of corporate criminal liability stipulated in the Criminal Law Code 2023 which is a unification of corporate criminal liability rules stipulated in laws outside the Criminal Law Code 2023. Based on the comparison of Article 48 of the Criminal Law Code 2023, Article 6 Paragraph (2) of the AML Law and Article 4 Paragraph (2) of Supreme Court Regulation No. 13/2016, the author can conclude that to impose criminal liability on corporations, the elements must be fulfilled:

- a) carried out or ordered by the Controlling Personnel of the Corporation;
- b) carried out in the context of fulfilling the purposes and objectives of the Corporation, which is included in the scope of business or activities as specified in the articles of association or other provisions applicable to the Corporation;
- c) carried out in accordance with the duties and functions of the perpetrator or order giver;
- d) the corporation can benefit from the criminal act or the criminal act is carried out for the benefit of the Corporation;
- e) the corporation allows the criminal act to occur; and/or
- f) the corporation does not take the necessary steps to prevent, prevent greater impact and ensure compliance with applicable legal provisions to avoid criminal acts;

Generally, it is the perpetrator who is held accountable in criminal law, but this is not always the case. This issue also depends on the method or system of formulation of responsibility adopted by the legislator. In relation to corporate liability, the formulation adopted by the legislator in the AML Law can be found in Article 6 Paragraphs (1) and (2). Based on the formulation of the article above, it can be seen that the person who can commit a criminal offense and be charged with corporate criminal liability is the corporation and/or the controlling personnel of the corporation. Furthermore, the possible models in the corporate criminal liability system in the Anti-Money Laundering Law can also be described, namely:

1. The controlling personnel of the corporation as the perpetrator of a criminal offense, so therefore the controlling personnel must bear criminal responsibility;
2. The corporation as the perpetrator of a criminal offense, but the controlling personnel of the corporation must bear criminal responsibility;
3. The corporation as the perpetrator of a criminal offense and the corporation itself must bear criminal responsibility;
4. The corporation as the perpetrator of a criminal offense, then the corporation and the controlling personnel of the corporation must also bear criminal responsibility.

5. The controlling personnel of the corporation as the perpetrator of the criminal offense, then the corporation and the controlling personnel of the corporation must also bear criminal responsibility.

According to the identification theory, if an individual is authorized to act on behalf of the corporation, then the element of fault (*mens rea*) that exists in the individual is considered as an element of fault of the corporation so that the corporation must be responsible for what the individual does in the corporation as long as he does it within the scope of his work and authority.³³ Finally, it can be concluded that the system of criminal liability of corporations in the Indonesian criminal law system as regulated in the AML Law has tacitly adopted the doctrine of identification and the doctrine of vicarious liability as can be found in the formulation of Article 6 Paragraphs (1) and (2) of the AML Law.³⁴

The example of the foundation's involvement in the crime of money laundering as an active perpetrator of money laundering can be seen from Judgment Number: 152/Pid.B/2011/PN.KPG involving the Yayasan Putra Timor. In this judgment, the defendant was Victorino a Dos Santos who was the founder of the foundation. The case began when the Yayasan Putra Timor received aid money from several people in the form of foreign currency, namely Singapore dollars. Then, Victorino A Dos Santos as the founder and administrator of the foundation exchanged the aid money for rupiah currency at Bank Mandiri Kupang. After checking by Bank Mandiri Center in Jakarta, it was found that some of the Singapore dollar bills were counterfeit. It was unnatural that some of the proceeds of the exchange were sent back to the account of the donor, even though the Defendant believed that the money was donated by the donor. So it can be concluded that the Singapore dollars were not aid money for the Yayasan Putra Timor but were given to the Defendant to be exchanged for rupiah currency in Kupang but through the foundation as a means.³⁵ In Judgment Number: 152/Pid.B/2011/PN.KPG, the Judges argued that the Defendant knew that the Singapore dollars obtained by the Defendant from donors were counterfeit or falsified currency. Therefore, the actions of the Defendant fulfill the elements of the crime of money laundering as formulated in Article 3 of the AML Law.

Although Judgment Number: 152/Pid.B/2011/PN.KPG, is a decision in which the defendant is an individual, if analyzed in the decision it is possible that the Yayasan Putra Timor can also be held criminally liable as an active perpetrator of money

³³ Edi Yunara, (2014), *Pertanggungjawaban Pidana Perseroan Terbatas (PT) di Indonesia*, Disertasi, Fakultas Hukum Universitas Sumatera Utara.

³⁴ Widyaningrum, T., Khoirunnisa, K., & Jubaidi, D. (2024). Corporate Criminal Liability: An Analysis of Corporate Crime Perpetrators Under Positive Law in Indonesia. *JCH (Jurnal Cendekia Hukum)*, 9(2), 146-157.

³⁵ Court Judgment Number 152/Pid.B/2011/PN.KPG.

laundering. This is due to the utilization of the foundation owned by the Defendant in the implementation of the predicate crime and then attributing the actions of the Defendant as the actions of the foundation. Due to the Defendant is the founder of the Yayasan Putra Timor, where the defendant can control all activities of the foundation including the Yayasan Putra Timor Account transactions. In the Foundation Law the founder can also be a member of the Trustees as stipulated in Article 28 Paragraph (3) of the Foundation Law.

If it is associated with the formulation of Article 3 of the AML Law, then the Yayasan Putra Timor has placed, transferred, changed the form, exchanged with currency for assets that it knows or reasonably suspects are the proceeds of a criminal offense. This has an impact on the potential for the Yayasan Putra Timor to be held criminally liable as an active perpetrator of money laundering (principle violater).

Based on the analysis of the involvement of Yayasan Putra Timor in the crime of money laundering based on court judgment, the author can simply conclude in the table below.

Table 1. Case Analysis of Foundation Involvement in Money Laundering Crime

Analysis Indicators	Judgment Number 152/Pid.B/ 2011/PN.KPG
Predicate Crime	Counterfeiting money
Criminal offender of predicate crime	Victorino A Dos Santos as Founder of Yayasan Putra Timor
Criminal offender of money laundering/ ML offender	Yayasan Putra Timor
Types of ML offender	Principle violators (perpetrators involved in predicate crimes and ML)
Unlawful act committed by ML offender	Whereas the Defendant Victorino a Dos Santos (Controlling personnel of the Yayasan Putra Timor) transferred the proceeds of the exchange of counterfeit dollar bills to Mandiri account No. 145-00-0483513-4 on behalf of Yayasan Putra Timor in the amount of Rp. 146,293,788.00 (one hundred forty-six million two hundred ninety-three thousand seven hundred eighty-eight rupiah).

The criminal action of money laundering

Based on the facts set out above, the ML offender could be charged with criminal liability for the following acts (pursuant to articles):

Article 3

“Anyone, who places, transfers, forwards, spends, pays, grants, deposits, takes to the abroad, changes the form, changes to the currency or securities or other deeds towards the Assets of which are recognized or of which are reasonably alleged as the result of criminal action, as set forth in Article 2 paragraph (1) with the purpose to hide or to disguise the origin of Assets, shall be subject to be sentenced due to the criminal action of Money Laundering with the imprisonment for no longer than 20 (twenty) years and fine for no more than Rp. 10.000.000.000,00 (ten billion rupiah)”.

Article 4

“Anyone, who hides, or disguises the origin, source, location, purposes, transfer of right or the truly ownership of the Assets that are known by him or of which are reasonably alleged as the result of criminal action, as set forth in Article 2 paragraph (1), shall be subject to be sentenced due to the criminal action of Money Laundering with the imprisonment for no more longer than 20 (twenty) years and fine for no more than Rp. 5.000.000.000,00 (five billion rupiah).

Objective elements	places, transfers, forwards towards the Assets of which are alleged as the result of counterfeiting money with the purpose to hide or to disguise the origin of Assets.
Subjective elements	Anyone, namely an individual or corporation (Foundation), which is known by them or of which are reasonably alleged as the result of the criminal action.
Criminal intent/mens rea	Intentionality / <i>dolus</i>

Source: Processed by the Authors based on the analysis of court judgment and case studies

Therefore, to be able to impose criminal liability on the **Yayasan Putra Timor** in the crime of money laundering must consider 3 (three) things, namely:

Firstly, the determination of the position of corporate controlling personnel at the Yayasan Putra Timor. The determination of corporate controlling personnel is crucial in identifying whose actions can be attributed to a corporation, forming the basis for corporate criminal liability. This is guided by the identification doctrine, which originates from civil law and is adopted in criminal law to hold corporations accountable. According to this doctrine, a corporation can only act through individuals, and when a controlling individual commits a crime, their actions are legally considered the actions of the corporation itself. The doctrine also incorporates the vicarious liability principle, meaning that the criminal acts of corporate controlling personnel can be

imputed to the corporation, allowing it to be held criminally responsible even though it acts only through individuals.³⁶

In the case of Yayasan Putra Timor, Victorino A. Dos Santos, as the founder, acted as the directing mind or controlling mind of the foundation, exercising authority over all its activities, including account transactions. Although not explicitly identified as part of the foundation's formal management structure, his control qualifies him as Corporate Controlling Personnel under Article 1 point 14 of the AML Law, someone with the power to determine or implement corporate policy without needing authorization. Additionally, Victorino meets the criteria of a beneficial owner as defined in Article 5(1)(c) of Presidential Regulation No. 13/2018, since he exerted influence and control over the foundation independently. In conclusion, Victorino's role as both Corporate Controlling Personnel and beneficial owner means his actions can be legally attributed to Yayasan Putra Timor, establishing the foundation's criminal liability for the money laundering offense.³⁷

Secondly, the actions of Victorino A. Dos Santos placing and transferring assets derived from counterfeiting into an account under the Yayasan Putra Timor fulfill the objective elements of Articles 3 and 4 of the Anti-Money Laundering (AML) Law, as they were intended to conceal the illicit origin of the assets. The subjective elements, specifically *mens rea*, are also met, as Victorino, acting as the founder and controlling mind of the foundation, was fully aware that the assets originated from criminal activity, specifically counterfeiting as defined in Article 2 of the AML Law. Moreover, he personally participated in the predicate offense, making him both the originator of the crime and the party responsible for laundering its proceeds through the foundation.

Lastly, to be able to impose criminal liability against Yayasan Putra Timor in the crime of money laundering, the fulfillment of the elements as described below must be considered:

1. **carried out or ordered by the Controlling Personnel of the Corporation**; based on Judgment Number 152/Pid.B/2011/PN.KPG, it can be seen that the act of hiding or disguising the origin of the proceeds of the crime of counterfeiting money into the Yayasan Putra Timor Account was carried out by the defendant Victorino A. Dos Santos as the founder of the Yayasan Putra Timor who is the controlling personnel of the corporation.

³⁶ Edi Yunara, (2014), *Pertanggungjawaban Pidana Perseroan Terbatas (PT) di Indonesia*, Disertasi, Fakultas Hukum Universitas Sumatera Utara.

³⁷ Hekmatiar, M. D., & Ridwan, F. H. (2024). Penerapan Pemilik Manfaat Dari Suatu Badan Hukum Yayasan di Indonesia. *Unes Journal of Swara Justisia*, 8(3), 496-511.

2. **carried out in the context of the fulfillment of the purposes and objectives of the Corporation**, which is included in the scope of business or activities as specified in the articles of association or other provisions applicable to the Corporation; based on Judgment Number No. 152/Pid.B/2011/PN.KPG, it can be seen that the defendant Victorino A. Dos Santos submitted a proposal to a foundation owned by H. Nur Asmawi in Jakarta for the establishment of a high school managed by the Yayasan Putra Timor. This act was committed by the defendant Victorino A. Dos Santos in the context of the aims and objectives of the foundation which is within the scope of its activities in the field of education. The donation received by the defendant Victorino A. Dos Santos was in the form of Singapore dollars, where the proceeds of the exchange of the counterfeit dollars amounting to Rp 146,293,788 were deposited in the account of the Yayasan Putra Timor established by the defendant.
3. **carried out in accordance with the duties and functions of the perpetrator or order giver**; based on Judgment Number 152/Pid.B/2011/PN.KPG, it can be seen that the defendant Victorino A. Dos Santos committed his actions in accordance with his duties and functions as the founder of the Foundation who has the authority to control the foundation without having to obtain authorization from any party.
4. **the corporation may benefit from the criminal offense or the criminal offense is committed for the benefit of the corporation**; based on Judgment Number 152/Pid.B/2011/PN.KPG, it can be seen that the foundation received profits or benefits with additional assets in the form of money amounting to Rp 146,293,788, deposited in the Yayasan Putra Timor account.
5. **the corporation allowed the criminal offense to occur**; based on Judgment Number 152/Pid.B/2011/PN.KPG, it can be seen that the act of money laundering by concealing the origin of assets originating from counterfeiting money was intentionally committed by the defendant Victorino A. Dos Santos as the controlling personnel of the corporation. Thus, the actions of the defendant Victorino A. Dos Santos are corporate actions, so it can be said that the corporation in this case the Yayasan Putra Timor has allowed the crime of money laundering to occur.
6. **the corporation did not take the necessary steps to prevent, prevent a greater impact and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts**; the governing bodies of a foundation must consistently adhere to the applicable legal provisions in managing the foundation, in order to avoid potential issues, including civil disputes and violations of

criminal law.³⁸ Based on Judgment Number 152/Pid.B/2011/PN.KPG, it can be seen that the Yayasan Putra Timor through the actions of the defendant Victorino A. Dos Santos did not take the necessary steps to prevent, prevent a greater impact and ensure compliance with applicable legal provisions to avoid the occurrence of money laundering crimes that used the Yayasan Putra Timor account as a means of money laundering.

As a result, the authors conclude that the Yayasan Putra Timor can be held or charged with criminal responsibility for its actions in the criminal act of money laundering as an active perpetrator (*principle violatter*).

CONCLUSION

In conclusion, Non-Profit Organizations (NPOs), including foundations, are recognized as incorporated legal entities that qualify as subjects of money laundering offenses under the 2023 Criminal Code and the Anti-Money Laundering (AML) Law. Consequently, foundations can be held criminally liable. The legal basis for such liability is found in Article 6 Paragraphs (1) and (2), and Article 7 Paragraphs (1) and (2) of the AML Law, with further guidance on assessing corporate guilt provided in Article 4 Paragraph (2) of Supreme Court Regulation No. 13 of 2016. The AML Law adopts the principle of *vicarious liability*, allowing for the imposition of criminal responsibility on legal entities based on the actions of their organs or representatives. In practice, this enables foundations such as Yayasan Putra Timor to be held liable as active perpetrators (*principle violatter*).

To effectively impose criminal liability on foundations, law enforcement must thoroughly understand the legal criteria outlined in the relevant legislation and jurisprudence. This includes evaluating the form of culpability whether the offense was committed with intent (*dolus*) or due to negligence (*culpa*)—as specified under the "pro parte dolus pro parte culpa" principle in the AML Law. The classification of intent versus negligence directly influences the severity and nature of the sanctions imposed. Ultimately, the enforcement of criminal liability against foundations serves as a critical mechanism to deter the misuse of legal entities for illicit purposes, particularly money laundering, and reinforces the accountability of NPOs under Indonesian law.

³⁸ Zulfiani, A., Probohudono, A. N., & Wibowo, N. A. (2024). The Precautionary Principle of Running Foundation Activities in the Perspective of the Foundation Law and the National Criminal Code. *Jurnal Ius Constituendum*, 9(2), 287-305.

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