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Criminal Law Policy on Criminal Liability of Political Parties in Criminal Acts of Money Laundering

Maria Silvya E. Wangga, Dian Adriawan Dg. Tawang, Ahmad Sabirin, Faculty of Law, Universitas Trisakti, Jakarta, Indonesia, Email: maria.s@trisakti.ac.id

In its development, the criminal law outside the Criminal Code, including the Law on the Prevention and Eradication of Criminal Acts of Money Laundering, has positioned individuals and legal entities or corporations as perpetrators of criminal acts. The policies for holding political parties criminally liable are still limited to political party members or administrators, not yet reaching political parties. This research questions how criminal law policy along with its limitations holds political parties criminally liable for criminal acts of money laundering. This research concludes that the conduct and fault of the administrators constitute the conduct and fault of the political party as a corporation which can be held criminally liable for criminal acts of money laundering by way of Article 5 of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering. The limitation or weakness of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering is that it is extremely difficult or rare to apply Articles 3 and 4 in the form of placement and layering against political parties. It is expected that in the future, criminal law policy for holding political parties criminally liable will be maximized to be applied on political parties considering the fact that political parties are highly vulnerable to the integration stage for money laundering.

Keywords: *criminal law policy, criminal liability, criminal act of money laundering and political party*

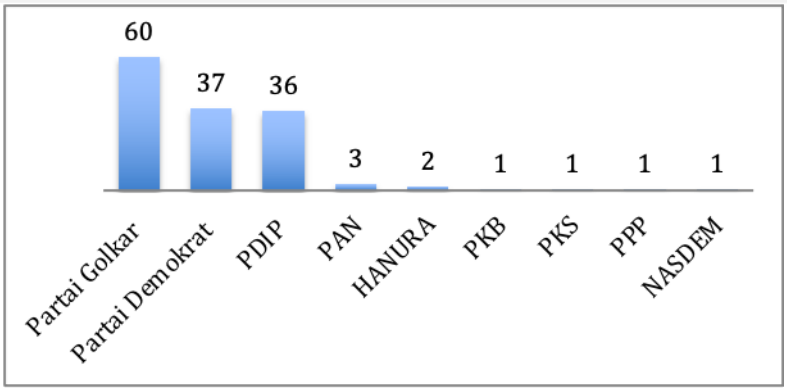
Introduction

In its development, criminal law, particularly the laws outside the Criminal Code, have positioned individual humans and legal entities or corporations as perpetrators of criminal acts. Such laws are Law Number 31 Year 1999 in conjunction with Law Number 20 Year 2001 concerning the Prevention and Eradication of Criminal Acts of Corruption and Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. The Law on the Prevention and Eradication of Criminal Acts of Corruption as well as the Law on the Prevention and Eradication of Criminal Acts of Money Laundering formulate corporation as a group of people and/or assets. Therefore, corporation is defined as a group of people only and/or a group of assets only or a group of both.

With due observance of the aforementioned criteria, a political party constitutes a group of people and/or a group of assets. Political parties have thus been positioned as legal subjects which can be subject to liability for criminal acts of corruption as well as criminal acts of money laundering. This is so formulated in Article 20 of the Law on the Eradication of Criminal Acts of Corruption and Article 6 paragraph (2) of Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. This scientific article will study the criminal law policy on criminal liability of political parties for criminal acts of money laundering.

Criminal acts of money laundering have become an organized terror to the financial, banking sectors and law enforcement since they give space to instability of the financial system in terms of legal risk, reputation and liquidity as well as for certain political purposes, drugs trading and illegal logging activities (www.KHN: 2010; Wangga; 2012). Development of civilization supported with technological advancement has turned the criminal act of money laundering into one of white collar crime and transnational crime(www.KHN: 2010). This form of crime is committed through the *wire system* by professional criminal syndicates which may lead to deviations of the State finances and economy and it may even destroy the goals of national development which have been affirmed in the preamble to the 1945 Constitution(www.KHN: 2010).

ICW presented the results of research on the most corrupt political parties (kumparan.com;2020; Wangga:2021), based on the number of members of the People's Legislative Assembly (DPRI) and the Regional People's Legislative Assembly (DPRD) who became convicts during the period of 2014-2019, as described in the following table.



The source is processed by the writers from kumparan.com.

The table above shows the Functional Group (Golkar) party at the top position with 60 persons. The Democratic Party was at the second position with 37 persons. The Indonesian Democratic Party of Struggle (PDIP) was at the third position with 36 persons. The National Mandate Party (PAN) was at the fourth position with 3 persons. The People's Conscience Party (Hanura) was at the fifth position with 2 persons. Meanwhile, at the sixth position were 4 political parties each with 1 person, namely National Awakening Party (PKB), the Prosperous Justice Party (PKS), the United Development Party (PPP) and the National Democratic (NASDEM) Party.

Donald Fariz conveys that one of the factors behind the occurrence of corrupt acts by the party members or administrators was that they have been ordered by the political parties to find contributions or additional funds for the parties (Wangga; 2021). Fariz further suggests that political parties position their members or administrators to guard the programs in partnership with the government or the private sector so that the funds can be used to finance party activities (Wangga; 2021). Meanwhile, the community has been aware that the sources of funding for political parties have been regulated in Article 34 paragraph (1) of the Law of the Republic of Indonesia Number 2 Year 2011 concerning Political Parties which assets that the sources of finances of political parties are a). members' contributions, b). legitimate contributions under the law, c). financial aid from the State Budget (APBN) and the Regional Budget (APBD) (Wangga; Kardono & Wirawan; 2019).

The policies for imposing criminal liability on political parties are still limited to political party members or administrators, not yet reaching political parties. The application of criminal law in connection with the criminal liability of political parties is aimed not merely at protecting the victims, but it is also intended for reaching balance of interests such as the balance of the state, the balance of the community and the balance of the perpetrators. The criminal law policy through Law Number 10 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering should have been applied to political parties as corporations. Based on the background above, the researchers are interested in conducting a research on the Criminal Law Policy of Imposing Criminal Liability on Political

Parties in Criminal Acts of Money Laundering. To provide the direction in this research, some issues are formulated as follows; (1) How does criminal law policy hold political parties criminally liable for criminal acts of money laundering? (2) What are the weaknesses of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering in imposing criminal liability on political parties in criminal acts of money laundering?

Criminal Law Policy of Imposing Criminal Liability on Political Parties in Criminal Acts of Money Laundering.

Barda Nawawi Arief (2002) states that *penal policy, or criminal law policy or strafrechtspolitiek* constitutes a part of *criminal policy*, namely the policy for mitigating crime. Barda Nawawi (2002; Nawawi Arief 2005; Serikat Putra Jaya; 2008), further asserts that criminal law policy is also part of the law reform. The essence of criminal law reform is the rational policy to eradicate/mitigate crimes for protecting the community in order to overcome social problems and humanity issues for the purpose of achieving the national goals (social defence or social welfare) (Nawawi Arief 2002).

The criminal law policy to impose criminal liability on political parties in criminal acts of money laundering in Indonesia has existed since the application of Law No. 15 Year 2002 concerning Criminal Acts of Money Laundering. The Law was revised with Law Number 25 Year 2003. In the course of time, the government was aware that the law needed readjustments to the development of law enforcement needs, international practices and standards, so that it was revised again with Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering.

The criminal law policy to mitigate criminal acts of money laundering has been run by an agency called *Pusat Pelaporan Analisis Transaksi Keuangan* (PPATK) or the Indonesian Financial Transactions and Analysis Center, subsequently referred to as INTRAC. This agency has developed an application called *Politically Exposed Persons* (PEP). PEP is defined as a person possessing or once possessing public authority, such as a state administrator. The persons included in PEP are state administrators and/or persons recorded or once recorded as members of political parties having influence on the policies and operations of political parties (PPATK; 2022), whether of Indonesian or foreign nationality. The provisions on PEP are regulated in the Regulation of INTRAC Head Number per-02/1.02/PPATK/02/15 concerning the Categories of Service Users with the Potential to Commit Criminal Acts of Money Laundering. Article 5 of this Regulation of INTRAC Head states that the persons potentially exposed to the high risk of committing criminal acts of money laundering are, among others, administrators or members of political parties. The great number of political party members holding positions in the government surely leads to the alertness regarding their behavior which may lead to Criminal Acts of Money Laundering as they are also included in the PEP list. (Fitriyana; 2019).

The *Politically Exposed Persons* (PEP) application launched by INTRACT since 2015 only monitors and studies financial service users from among the administrators, members of political parties and their families with the banking sector and the financial service authority, performing regular monitoring when high risks are involved. Results of monitoring and racking by PEP cannot serve as instrument of evidence (PPATK; 2022). The 2020 Annual Report of PPATK (2020) reported 523 analysis results, 457 information items and 25 results of examination of criminal acts of money laundering and other financial crimes, as presented in the following table:

NO	**NUMBER OF ANALYSIS RESULTS**	**523**
1	Corruption	206
2	Taxation	126
3	Financing of terrorism	39
4	Drugs	30
5	Fraud	29
6	Fraud and/or embezzlement	28
7	Embezzlement	19
8	Banking	8
9	Excise	6
10	Forgery	6
11	Customs	3
12	Fraud and/or forgery	3
13	Criminal Acts of Money Laundering (TPPU)	3
14	Customs and/or excise	2
15	Theft	2
16	Human trafficking and/or human trading	2
17	Trading and/or fraud	2
18	Gambling	2
19	Fund transfer	1
20	ITE	1
21	Transfer of assets of Foundations	1
22	Smuggling of animals	1
23	Trading and/or smuggling of animals	1
24	Trading and/or banking	1
25	Provocation and spreading of hoaxes	1
	Amount of Information (INF)	457

Based on the table above, all the Reports on Analysis Results or *Laporan Hasil Analisis* (LHA) and information have been submitted to the law enforcement agencies such as the Police of the Republic of Indonesia (198 LHAs and 56 Information items), the Directorate General of Taxation (125 LHAs and 64 Information items), the Corruption Eradication Commission (99 LHAs and 34 Information items), the State Attorney (81 LHAs & 9 Information items), the Directorate General of Customs and Excise (11 LHAs), and the National Narcotics Board (9 LHAs). Furthermore, 25 Reports on Examination Results or *Laporan Hasil Pemeriksaan* (LHP) of PPATK have been submitted to the Corruption Eradication Commission (8 LHPs), the State Attorney of the Republic of Indonesia (4), the Police of the Republic of Indonesia (4), the National Narcotics Board (2), the Directorate General of Customs and Excise (2), the Directorate General of Taxation (1), and PPATK (2020) data base (1). Such LHPs are, among other things, related to criminal acts of corruption, criminal acts of taxation, drugs-related criminal acts, customs-related criminal acts and criminal acts of fraud. Scrutinizing the reports of PPATK RI above, the criminal liability for criminal acts of money laundering is still limited to the individuals of political party members and administrators, not yet reaching the political parties.

In her study, Nani Mulyati (2018) states that political parties can still be imposed with criminal liability although they have important roles under the constitution. If political parties are to be granted with immunity, they will only be subject to imposition of a sanction since they cannot be subject to forced dissolution. In their research, Andreas Nathaniel Marbun and Revi Laracaka (2019) propose some considerations for political parties to be subject to criminal liability using the corporate liability theory, namely as follows: a) many criminal acts committed by political party administrators for the interest of the political party in gaining extra money meet the criteria for *vicarious liability;* b) many criminal acts committed by political party core administrators meet the criteria of identification theory; c) many such criminal acts have been committed under a silent order from the political party system with no strict supervision of the sources of fund received from party administrators committing such criminal acts. Political parties even give rewards to those giving quite a lot of contributions to the parties while knowing that such funds are proceeds of criminal acts of corruption by the administrators, thus fulfilling the theory of organizational liability.

The norms for imposing criminal liability on a political party in criminal acts of money laundering are formulated in Article 6 of Law No.8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. The norm formulation states that corporations, including political parties, can be held liable for a criminal act of money laundering if: a). it has been committed or ordered by the corporation's controlling personnel; b). it has been committed to fulfill the purpose and objectives of the corporation; c). it has been committed in accordance with the duties and functions of the perpetrator or the one giving the order; and d). it has been committed to benefit the corporation.

The authentic understanding of such norm formulation is that a political party which has met the criteria as a corporation can be held criminally liable for a criminal act of money

laundering if it has been committed or ordered by the corporation's controlling personnel or if it has been committed in accordance with the duties and functions of the perpetrator or the ones giving the order. This refers to those having authority under the Articles of Association/Bylaws of the political party. A political party can also be held criminally liable if a criminal act of money laundering has been committed in the interest (purpose and objectives) of the political parties and the criminal act even provides some benefit or advantages to the political party. The Indonesian Financial Transactions and Analysis Center (INTRAC)

It is hoped that the criminal law policy formulated in the law on the prevention and eradication of criminal acts of money laundering is able to be implemented at its application stage. Barda Nawawi Arief (2002) states that the efforts of mitigating crimes using the penal facility can be put in in several stages, namely as follows:

a) Formulation stage or law enforcement stage *in abstracto*, namely the stage of stipulation and formulation of criminal law by the lawmakers;

b) Application stage, namely the stage of application of criminal law by the law enforcement apparatuses such as the police up to the court;

c) Execution stage, namely the stage of implementation of criminalization by the execution implementation apparatuses

Examining the three stages above, the formulation stage is the most strategic one of the efforts of prevention and mitigation of crimes by penal means. The discussion on the formulation of law policy on criminal liability of political parties in criminal acts of money laundering will be started first with the description of:

1. Formulation of the subjects of criminal acts of money laundering

By observing the formulation of criminal act of money laundering in Law Number 8 Year 2010, it is found that the formulation always starts with the phrase "any person (*setiap orang*)". This formulation seems to show that the legal subject is limited to the legal subject of a person. If related to the provision of Article 1 sub-article (9), referred to as "person" is a natural person or a corporation. The Law on the Prevention and Eradication of Criminal Acts of Money Laundering has included corporations as legal entities which can be imposed with criminal liability. Corporation is formulated in Article 1 sub-article (10) which refers to:

> “a well-organized group of people and/or assets, whether incorporated or unincorporated”.

Based on the Law, corporation is viewed not only as a group of people but also as a group of assets, whether incorporated or unincorporated. Political party is formulated as a corporation for being a group of people (citizens) which is, in Article 1 paragraph (1) of the Political Party Law, defined as:

> "an organization of national and local nature voluntarily formed by a group of Indonesian citizens based on shared will and goals to struggle for and defend the political interests of the members, the community, the nation and the state as well as to maintain the integrity of the Unitary State of the Republic of Indonesia based on *Pancasila* and the 1945 Constitution of the State of the Republic of Indonesia".

The definition states that a political party is a corporation for being a group of people or citizens having certain goals (the direction to follow as set out in the party's deed of establishment) as well as assets and distinct rights and obligations. The view of INTRAC concerning corporation is as follows (PPATK; 2022):

The viewpoint of the Law on Criminal Acts of Money Laundering (UU TPPU) on corporation is so broad, from Article 1 paragraph (10) of Law No. 8 Year 2010, being a well-organized group of people and/or assets, whether incorporated or unincorporated. (the definition is so broad). For political parties, it is impossible for them not to be organized. The requirement is being a group of people, although without assets, but being well-organized, then it is corporation. Or it may be a group of assets without people but it is organized, then it is called a corporation. Insofar as the people have their respective responsibility and are organized, they are still categorized as a corporation. For complex money laundering, no legal entity or no specific corporation is formed. The definition is relatively broad. No structure of chairperson or administrator is required as long as there is a group of organized people, then it is a corporation. INTRAC's definition is very broad. Thus, a corporation does not have to be a business entity.

No people but with assets and organized. Thus, a political party is surely a group of people and is surely organized with their respective roles. Hence, corporations include not only business entities but also unincorporated entities. Incorporated entities include CV, Foundations, and Firms. An entity is called a corporation when it is group of people only or a group of assets only but is organized, whether incorporated or unincorporated. Corporations include 6 types, namely limited liability companies, cooperatives, limited partnerships (CV), foundations, firms and associations. (Business entity but not legal entity). In addition to the 6 types, insofar as the formulation of Article 1 paragraph 10 in the Omnibus Law on Job Creation (UU Cipta Kerja) is fulfilled, corporations also include Village-Owned Enterprises (BUMDES) and others.

2. Formulation regarding when a political party commits a criminal act of money laundering

The norm formulation of Article 6 of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering states that a criminal act of money laundering is committed by a corporation if

a) It is committed or ordered by the corporation's controlling personnel;
b) It is committed for the purpose of fulfilling the purposes and objectives of the corporation;
c) It is committed in accordance with the duties and functions of the perpetrator or the one giving the order; and
d) It is committed for the purpose of benefiting the corporation.

The drafters of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering as well as its Elucidation do not provide the definitions of points a, b, c and d. According to INTRAC, the lawmakers only stipulate article 6 as the requirements which can be imposed on corporations upon fulfillment of (PPATK; 2022):

a) It is committed or ordered by the corporation's controlling personnel;
   According to INTRAC, the purpose must be clear, it can be that those in control of the corporations make use or misuse the corporations. The Articles of Associations/Bylaws of a corporation have no purpose of committing any criminal acts of money laundering or that they are not known at all while any criminal act of money laundering is committed under the order of the corporation's controlling personnel such as the finance director, rather than any individual working in the corporation.
b) It is committed for the purpose of fulfilling the purposes and objectives of the corporation;
   It is an illegal objective or purpose of a corporation to conceal or disguise the origins of its assets. If for a legal purpose, it will have an impact on everybody. It can be seen that the corporation intends to conceal and disguise its assets. There is often, however, misunderstanding regarding the purely business purpose and objective of a corporation (being perceived similar), while the corporation as the perpetrator conceals or disguises its assets
c) it is committed in accordance with the duties and functions of the perpetrator or the one giving the order or the similar understanding of the corporation's controlling personnel; they are often the people listed in the Articles of Association/Bylaws or deed of establishment, such as the directors or commissioners, while some corporations may also have people not listed in the Articles of Association/Bylaws but they can

control the corporation so that they are called the perpetrators or those giving the order or the *beneficial owner*.

d) It is committed for the purpose of benefiting the corporation.

The benefits from money laundering can be seen when a political party gains the benefits from the proceeds of criminal acts of corruption of the elected official who at the beginning gained support from a political party as the sponsor. Insofar as there is a flow of funds or any event of fund flow of any benefit for the purpose of giving a certain amount of money to a political party not as a recompense (not *placement* or *layering*) but already at the utilization stage (*integration*). For *placement* and l*ayering*, the funds are used at the financial service sector or business corporation, while direct funds to a political party refers to utilization *(integration*). Therefore, as a corporation, a political party can be imposed with criminal liability upon the fulfillment of any of the requirements under a, b, c, and d.

3. Formulation of criminal acts of money laundering committed by political parties

A political party being a corporation subject of criminal law can be imposed with criminal liability based on the norm formulation of Article 1 sub-articles (9) and (10) of Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. According to INTRAC, the forms of criminal acts of money laundering in the Law on the Prevention and Eradication of Criminal Acts of Money Laundering are provided for in the following Articles 3, 4 and Article 5:

a) Any person, who places, transfers, assigns, spends, pays, grants, deposits, bring overseas, changes any form, exchanges with other currencies or other commercial papers or commits any other acts on the assets he knows or he should have known to be the proceeds of any criminal act as referred to in Article 2 paragraph (1) for the purpose of concealing or disguising the origins of such assets, shall be charged for a criminal act of money laundering (Article 3)

b) Any person, who conceals or disguises the origin, source, location, purpose, transfer of right or true ownership of the assets he knows or he should have known as the proceeds of any criminal acts as referred to in Article 2 paragraph (1), shall be charged for a criminal act of money laundering (Article 4)

c) Any person, who receives or controls the placement, transfer, payment, grant, contribution, deposit, exchange or who uses the assets he knows or he should have known to be the proceeds of any criminal acts as referred to in Article 2 paragraph (1), shall be charged for a criminal act of money laundering as referred to in Article 2 paragraph (1). (Article 5)

According to INTRACT (2022):

It is more accurate for the investigator to impose liability on political parties as corporations under Article 5 of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering rather than under Article 3 and Article 4 since it is far more complicated and rarely done. Thus, if a political party is the source of funds but violates the Political Party Law. Some contexts which need to be observed regarding political parties and active criminal acts of money laundering asserts which articles of the General Elections Law or Political Party Law are being violated. For active criminal acts of money laundering, which provisions of the General Elections Law are being violated? Which Political Party Law? (The General Elections Law and the Political Party Law are not listed in Article 2 sub-articles a through y). However, political parties are subject to Article 2 sub-article Z with threatened criminal sanction of 4 years). In the General Elections Law, all are violations, making it difficult to impose Articles on criminal acts of money laundering because the required (mandatory) element of 2 articles, whether Article 2, Article 3 and Article 4 as well as Article 5 are not fulfilled. Criminalization in the General Elections Law and Political Party Law with sanctions for more than 4 years is categorized as placement of a political party for actively taking action (illegally issuing funds to its candidates, in excess of its budget by using other hands or other corporations).., this needs to be followed up because the element of **concealing or disguising has not been evident**….but if it can be ascertained that a person uses a corporation or if he conceals or disguises the proceeds of any criminal act...it would be difficult to find the result….Thus, placement, for example, (Article 4) occurs when the source of funds is acted upon by another activity of money laundering under Article 3, which is very rare for active perpetrators of criminal acts of money laundering. Political parties are more in the integration rather than placement or layering position (more at the stages), and criminalization under Articles 3, 4, and 5... involves lengthy legal events if Article 3 of the Law on the Criminal Acts of Money Laundering is imposed since lengthy events are required. Therefore, it is easier and more feasible if political parties are imposed with Article 5 of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering.

4. Formulation of the parties imposed with criminal liability

The policy in the formulation of Article 6 paragraph (1) confirms that in the event of any criminal act of money laundering as referred to in Articles 3, 4 and 5 is committed by a corporation, criminal sanction shall be imposed on the corporation or its controlling personnel. Elucidation of Article 6 paragraph (1) states that corporation also includes any organized group consisting of 3 (three) persons or more, existing for a definite time, and acting for the purpose of committing one or more criminal acts regulated in the Law on the Prevention and Eradication of Criminal Acts of Money Laundering for the purpose of gaining financial benefits whether directly or indirectly.

5. Formulation of the types of criminal sanctions threatened against political parties

Sudarto explains that criminal sanction refers to the pain deliberately imposed upon a person committing any act meeting certain conditions (Muladi & Nawawi Arief; 1998). Roeslan Saleh explains that criminal sanction refers to the reaction to any offense in the form of misery deliberately imposed on the offender (Muladi & Nawawi Arief; 1998). The formulation regarding the criminal sanctions against corporations is further regulated in Article 7 paragraphs (1) and (2) of Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. Criminal sanctions against corporation consist of the type of main sanctions and the type of additional sanctions. The formulation in Article 7 paragraph (1) reads as follows:

> The main criminal sanction imposed on a corporation shall only be a maximum fine of Rp100,000,000,000.- (one hundred billion rupiah)

The formulation in Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering asserts that in the event that the accused's payment of criminal sanction of fine as referred to in Articles 3, 4 and 5 is insufficient, then the criminal sanction of fine shall be replaced with maximum imprisonment of 1 year and 4 (four) months. Article 9 paragraph (1) provides that if a corporation is not able to pay the criminal sanction of fine as referred to in Article 7 paragraph (1), the criminal sanction of fine shall be replaced with confiscation of assets of the corporation or assets of its controlling personnel with the same value as the criminal sanction of fine imposed. Furthermore, Article 9 paragraph (2) states that in the event that the confiscated assets of the corporation as referred to in paragraph (1) are not sufficient, criminal sanction of confinement in substitution for fine shall be imposed on the corporation's controlling personnel by taking account of the fine which has been paid. The sanction with its limitation in the formulation cannot be served by political parties as corporations. The formulated sanction of confinement can only be served by humans as legal subjects.

Political parties can also be subject to additional sanctions under Article 7 paragraph (2) which comprise:

a. Announcement of the judge's decision
b. Suspension of any part or all business activities of the corporation;
c. Revocation of business permit;
d. Dissolution and/or ban on the corporation;
e. Confiscation of corporate assets for the state; and/or
f. Acquisition of the corporation by the state.

Types of criminal sanctions of structural/institutional/administrative nature are additional sanctions only. The formulation of these additional criminal sanctions has its limitations as it is highly dependent on the judge examining, hearing and deciding upon the criminal case. The forms of penal sanction to be imposed on political parties shall be adjusted to the characteristics of political parties.

Weaknesses of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering in Imposing Criminal Liability on Political Parties in Criminal Acts of Money Laundering

Criminal Act of Money Laundering is already believed to be a crime by the international circle and the world states have a commitment in taking action upon the perpetrators of such criminal acts of money laundering. Criminal act of money laundering (TPPU) has not had a universally standard definition in many countries. The definition of criminal act of money laundering (TPPU) is explained in the provision of Article 1 Law No. 8 Year 2010 which states that money laundering refers to an act which fulfills the elements of criminal act under such provision. As set out in the Document of INTRAC Report year 2021, the risk of campaign funds for the general elections of regional heads becomes the means for money laundering with 79 reported suspicious financial transactions related to the general elections of regional heads in the total amount of Rp 41 billion. This definition of being suspicious is related to political parties, political party administrators and the winning teams in the general elections of regional heads that are highly vulnerable to money laundering (PPATK; 2022).

INTRAC adds that although the Law on the Prevention and Eradication of Criminal Acts of Money Laundering has formulated the policy on criminal acts of money laundering as provided for in Articles 3, 4, 5, and 6, it is very rare or difficult to apply it to political parties through Article 3 and Article 4 of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering rather than through Article 5 (PPATK; 2022). The Law on the Prevention and Eradication of Criminal Acts of Money Laundering has several limitations or weaknesses in imposing criminal liability on political parties in criminal acts of money laundering, namely:

1. Formulation of When a Political Party commits a criminal act of corruption

To tell when a political party commits a criminal act of money laundering, the norm has been formulated in Article 6 of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering. The formulation is not accompanied with any elucidation when stating that a political party as a corporation commits a criminal act of money laundering if;

a) It is committed or ordered by the corporation's controlling personnel;
b) It is committed for the purpose of fulfilling the purposes and objectives of the corporation;
c) It is committed in accordance with the duties and functions of the perpetrator or the one giving the order; and
d) It is committed for the purpose of benefiting the corporation.

The Law on the Prevention and Eradication of Criminal Acts of Money Laundering does not provide any explanation concerning the act being committed or ordered by the corporation's

controlling personnel. The criminal act is committed for the purpose of achieving the purpose and objective of the corporation or is committed for the purpose of gaining benefits for the corporation. This means that the criminal act committed by the controlling personnel serves to pursue the purpose and objective of the political party or to gain benefits for the political party. Meanwhile, the criminal act being committed in accordance with the duties and functions of the perpetrator or the person giving the order refers the perpetrator's receiving the role and duty under the Articles of Association or Bylaws of the political party.

2. Formulation regarding the Parties Held Criminally Liable in Political Parties

The Law has limitations or weaknesses in formulating which parties can be imposed with liability in criminal acts of money laundering, namely as follows:

a) When the controlling personnel is the perpetrator, then the liability shall be imposed on the controlling personnel of the corporation or political party.
b) Political party as a corporation gaining benefits from the actions of its controlling personnel for pursuing the purpose and objective of the political party as a corporation shall lead to the liability being imposed to the political party as a corporation.
c) With the political party as the perpetrator being a corporation, the political party shall be held liable

3. **Formulation of the Types of Criminal Sanctions threatened against political parties.**

The other limitation found in the Law on the Prevention and Eradication of Criminal Acts of Money Laundering concerns with the type of main criminal sanction in the form of fine. The formulation in Article 7 paragraph (1) of the Law on Criminal Acts of Money Laundering reads as follows:

> The main criminal sanction imposed on a corporation shall only be a maximum fine of Rp100,000,000,000.- (one hundred billion rupiah)

In Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering asserts that in the event that the accused's payment of criminal sanction of fine as referred to in Articles 3, 4 and 5 is insufficient, then the criminal sanction of fine shall be replaced with maximum imprisonment of 1 year and 4 (four) months. Article 9 paragraph (1) provides that if a corporation is not able to pay the criminal sanction of fine as referred to in Article 7 paragraph (1), the criminal sanction of fine shall be replaced with confiscation of assets of the corporation or assets of its controlling personnel with the same value as the criminal sanction of fine imposed. Furthermore, Article 9 paragraph (2) states that in the event that the confiscated assets of the corporation as referred to in paragraph (1) are not sufficient, criminal sanction of confinement in substitution for fine shall be imposed on the

corporation's controlling personnel by taking account of the fine which has been paid. The sanction with its limitation in the formulation cannot be served by political parties as corporations. The formulated sanction of confinement can only be served by humans as legal subjects.

Political parties as corporations are subject to additional sanctions provided for in Article 7 paragraph (2) of the Law on Criminal Acts of Money Laundering, comprising:

a. Announcement of the judge's decision
b. Suspension of any part or all business activities of the corporation;
c. Revocation of business permit;
d. Dissolution and/or ban on the corporation;
e. Confiscation of corporate assets for the state; and/or
f. Acquisition of the corporation by the state.

The limitation of the imposition of additional criminal sanctions is highly dependent on the judges examining, hearing and deciding upon the case of criminal act of money laundering. The formulation of criminal law policy provided for in the Law on the Prevention and Eradication of Criminal Acts of Money Laundering only recognizes the model of criminal liability in the form of main criminal sanction and additional criminal sanction. Additional criminal sanctions are in the form of freezing of any part or the entire business operation of a corporation; revocation of business permit; or dissolution and/or ban of a corporation which can be applied to political parties as corporations.

According to Muladi, if a corporation (political party) as the subject of a criminal act having a position equal to a human being, then the types of such additional criminal punishments may become main criminal punishments (Muladi & Dwidja; 1991). Therefore, it is greatly needed that the types of criminal punishments imposed on political parties shall not be financial sanctions only but also those of structural or institutional sanctions. Criminalization against political parties may serve to improve the roles and functions of political parties as a pillar of democracy in the future.

Sudarto (Nawawi Arief; 2002) assets that if the criminal law is to be involved in the efforts of overcoming the negative sides of social development (mitigation of crimes/criminal acts of money laundering by political parties), then it should be viewed in connection with the overall criminal politics of social defence planning which shall become an integral part of the planned national goals, formulated in the Preamble to the 1945 Constitution, namely to protect the whole Indonesian nation and the entire native land of Indonesia and to advance the public welfare, to educate the life of the nation, and to participate in the execution of world order by virtue of freedom, perpetual peace and social justice.

Conclusion

The criminal law policy to impose criminal liability on political parties in criminal acts of money laundering in Indonesia has existed since the application of Law No. 15 Year 2002 concerning Criminal Acts of Money Laundering. The Law was revised with Law Number 25 Year 2003. The government was aware that the law needed readjustments to the development of law enforcement needs, international practices and standards, so that it was revised again with Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering. The criminal law policy in the the Law on the Prevention and Eradication of Criminal Acts of Money Laundering has recognized corporations, including political parties, as subjects of criminal acts. With the existence of the regulation, there will be no more debate on whether political parties are corporations or not. The act (*actus reus)* and fault (*mens rea)* of the administrators listed in the structure of the Articles of Association and Bylaws of a political party.

The formulation for imposing criminal liability on political parties has existed in the Law on the Prevention and Eradication of Criminal Acts of Money Laundering. Based on the INTRAC Report year 2021, political parties, political party administrators and the winning teams in general elections of regional heads are highly vulnerable to money laundering so that they may be imposed with liability under Article 5 of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering. The limitation or weakness of the Law on the Prevention and Eradication of Criminal Acts of Money Laundering in Imposing Criminal Liability on Political Parties in Criminal Acts of Money Laundering is that a political parties rarely commit criminal acts of money laundering under Article 3 and Article 4 in the form of *placement* and *layering*.

References

Fitriyani, Lolita, 2019.*Pertanggungjawaban Pidana Partai Politik Dalam Tindak Pidana Pencucian Uang,* Jurist DictionVolume 2 Nomor 4, http://dx.doi.org/10.20473/jd.v2i4.14495, (1321-132)

Marbun Andreas, Nathaniel dan Laracaka, Revi, 2019.*Analisa Ekonomi Terhadap Hukum dalam Pendanaan Partai Politik melalui Pertanggungjawaban Korporasi Dalam Tindak Pidana Korupsi,* Integritas, Jurnal Integritas Anti Korupsi, Vol.5.No.1, https://doi.org/10.32697/integritas.v5i1.384, (143-150)

Mulyati, Nani. 2018.*Korporasi Sebagai Badan Hukum dan Pertanggungjawaban Pidana Dalam Hukum Pidana Indonesia,* summary of doctoral thesis, Doctorate of Law Program, Law Faculty of University of Indonesia, Depok

Muladi dan Priyatno, Dwidja, 1991.*Pertanggungjawaban Korporasi Dalam Hukum Pidana,* Bandung; Sekolah Tinggi Hukum Bandung

Muladi dan Barda Nawawi Arief, 1998. *Teori-Teori dan kebijakan Pidana,* Edisi Revisi, Penerbit Alumni, Bandung

Nawawi Arief, Barda , 2002. *Bunga Rampai Kebijakan Hukum Pidana,* cet-ketiga, edisi revisi Citra Aditya Bakti, Bandung

_____, 2002. Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Penanggulangan Kejahatan* Citra Aditya Bakti, Bandung.

_____, 2005. *Pembaharuan Hukum Pidana Dalam Perspektif Kajian Perbandingan,* Citra aditya Bakti, Bandung

_____, 2008. *Kebijakan Hukum Pidana Perkembangan Penyusunan Konsep KUHP Baru,* kencana prenada media group, Jakarta

Nyoman Serikat Putra Jaya, 2008. *Beberapa Pemikiran ke Arah Pengembangan Hukum Pidana,* Citra Aditya Bakti, Bandung

Wangga, Maria Silvya E. 2021 *Mekanisme Pembalikan Beban Pembuktian Tindak Pidana pencucian Uang,* Adil Jurnal Hukum Vol. 3 No.2, 2012, (334)

_____,2018. *Pertanggungjawaban Pidana Partai Politik Sebagai Badan Hukum Dalam Tindak Pidana Korupsi,* Jurnal Integritas KPK Volume 04 Nomor 2, Desember, https://doi.org/10.32697/integritas.v4i2.179, (271)

_____. 2019. R. Bondan Agung Kardono & Aditya Wirawan, *Penegakan Hukum Korupsi Politik,* Kanun Jurnal Ilmu Hukum, Vol.21 No. 1, April (45)

_____. 2021.*Pertanggungjawaban Pidana Partai Politik Dalam tindak Pidana Korupsi,* Doctoral Thesis of Legal Science, Faculty of Law, Diponegoro University, Semarang

Wangga, Maria Silvya E, Nawawi Arief, Barda & Pujiyono, 2019. *Revocation of Political Rights of the Perpetrators of Criminal Acts of Corruption,* Journal of Indonesian Legal Studies, Vol.4 Issue 2 November, https://doi.org/10.15294/jils.v4i2.29689, (282)

_____, 2020. *When Criminal Liability Leads to Political Parties in Criminal Acts of Corruption in Indonesia*, International Journal of Innovation, Creativity and Change, Volume 14, Issue 1, https://www.ijicc.net/images/Vol_14/Iss_1/14146_Wangga_2020_E_R.pdf, (474-476)

Law Number 8 Year 2010 concerning the Prevention and Eradication of Criminal Acts of Money Laundering in State Gazette (Official Gazette of the Republic of Indonesia Year 2010 Number 122, Supplement to State Gazette of the Republic of Indonesia Number 5164)

Law Number 31 Year 1999 in conjunction with Law Number 20 concerning the Eradication of Criminal Acts of Corruption (Official Gazette of the Republic of Indonesia Year 1999 Number 140, Supplement to State Gazette of the Republic of Indonesia Number 3874)

Law Number 2 Year 2011 concerning Amendment to Law Number 2 Year 2008 concerning Political Parties (Official Gazette of the Republic of Indonesia Year 2011 Number 8, Supplement to State Gazette of the Republic of Indonesia Number 5189)

Regulation of the Supreme Court of the Republic of Indonesia Number 2016 concerning the Procedures for Handling the Cases of Criminal Acts by Corporations (Official Gazette of the Republic of Indonesia Year 2016 Number 2056)

Decision Number 1261K/Pid.Sus/2015 (Verdict on the Case of Criminal Act of Corruption with the Defendant Anas Urbaningrum, General Chairman and Faction Chairman of the Democratic Party in DPR RI)

Laporan Tahuan (*Annual Report*) PPATK RI 2020, https://www.ppatk.go.id//backend/assets/images/publikasi/1621565512_.pdf, p. 8, accessed on January 17 (17.25)

_____, 2010. *Negara Kalah Perang Melawan Penjahat Cuci Uang*, *News letter* KHN, vol. 10 No.5 (Jakarta: Komisi Hukum Nasional Republik Indonesia, 2010). (5)

kumparan.com, ICW: *Golkar Partai Terkorupsi di DPR/DPRD periode 2014-2019,* accessed on July 3, 2020)

Interview with Directorate of Law of INTRACT (Ms. Ibu Ferti Srikandi Sumanthi), via ZOOM on Monday, March 14, 2022 at 01.30 P.M.