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The Criminal Action of Money Launching and Funding of Members in the Baitul Maal Wa Tanwil Cooperative by the Management and Members of Cooperative in Indonesia

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Abstract
The Ministry of Small and Medium Enterprises Cooperatives (KUKM), together with the State Intelligence Agency and the National Police Criminal Investigation Agency, continue to work together to eradicate fraud cases under the guise of cooperatives. In recent times, these crimes have emerged frequently. Their modus operandi is to offer investments or loans via a short message service (SMS) in Indonesia. They act on behalf of the Savings and Loans Cooperative (KSP) or by forming a Sharia BMT Cooperative. These two institutions are often used for money laundering activities for their customers, either indirectly or directly known by the management of the cooperative. Therefore, with various efforts to ensure that the KSP and the Sharia Cooperative are legal and legal and can carry out financial transactions, savings and loans or receiving time deposits to customers and members. In fact, there are Savings and Loans Cooperatives and BMTs who are brave and brave enough to issue time deposit bilyer as is generally practiced by national banks internationally. Therefore, to protect society from White Collar Crime (white collar crime), which is included in the scope of economic crime. Many victims of clients in this country are unable to withdraw their savings from the KSP or BMT Cooperative, and in the end, only with a ransom for the management to go to jail, the assets are auctioned off by the court, and the stopping money does not match the funds deposited by the customer. The huge losses of billions as a result of the economic crime of the KSP and the BMT Cooperative in Indonesia are very rife, so people must be careful to save their money in the KSP and Koperasi BMT Syariah and must be careful to see the health of the KSP and BMT. Because, customers have been negligent in assessing the health of the KSP and BMT when they have problems with the law, it will definitely result in money disappearing, unclearly and cannot be held accountable by the KSP and BMT administrators. Therefore, to maintain the security of customers' money, KSP and BMT members, to prevent illegal acts, the supervision of the Deputy for Supervision of the Ministry of KUKM continues to be encouraged. Under these conditions, it is clear that effective preventive measures are needed so that cases of such fraud do not spread in society. Of course not an easy thing. The reason is, there are around 79,543 KSP units or 52.62% of the total number of cooperatives in Indonesia. Cooperatives engaged in the savings and loan sector are very prone to being misused by irresponsible parties so that the Financial Services Authority participates in monitoring the victims of cheat Investment. The Ministry of KUKM will continue to improve the performance of the Investment Alert Task Force which is spread throughout Indonesia. Currently, there are 13 Ministries / Agencies that are included in the ranks of the task force including Bareskrim, National Police Headquarters. To prevent money laundering, the Ministry of KUKM has also collaborated with the Financial Transaction and Analysis Reporting Center. National Counterterrorism Agency so that cooperatives are not used as a forum for financing terrorism in Indonesia. The community is asked not to be easily tempted by the lure of large funds promised by certain parties on behalf of the KSP or the Sharia BMT Cooperative. The community must first find out the truth as well as the track record of related cooperatives as a precaution. People don't be easily tempted. The people behind this scam are targeting the consumptive society in an easy and fast way but without control. BIN's Director of Cyber Analysis and Forensics has the task of detecting the initial potential for cybercrime that have a national impact. The public is also expected to be able to read such symptoms as the most basic anticipation.
Keywords: KSP, Criminal Action-KUKM-PPATK, BNPT, Cyber BIN, Money Loundry, Mambers Savings, Police Headquarters
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1. Introduction

Ministry-Small and Medium Enterprises Cooperatives (KUKM), together with the State Intelligence Agency and the National Police Criminal Investigation Unit continue to work together to combat fraud cases under the guise of cooperatives. In recent times, these crimes have emerged frequently. Their modus operandi is to offer investments or loans via a short message service (SMS) in Indonesia. They act on behalf of the Savings and Loans Cooperative (KSP) or by forming a Sharia BMT Cooperative. These two institutions are often used for

money laundering activities for their customers, either indirectly or directly known by the management of the cooperative. Therefore, with various efforts to ensure that the KSP and the Sharia Cooperative are legal and legal and can carry out financial transactions, savings and loans or receiving time deposits to customers and members. In fact, there are KSPs and BMTs who are brave and brave enough to issue time deposit bilyer, as is generally done by banking practices by national and international banks. Therefore, to protect society from White Collar Crime (white collar crime), which is included in the scope of economic crime. Many victims of clients in this country are unable to withdraw their savings from the KSP or BMT Cooperative, and in the end, only with a ransom for the management to go to jail, the assets are auctioned off by the court, and the stopping money does not match the funds deposited by the customer. The huge losses of billions as a result of the economic crime of the KSP and the BMT Cooperative in Indonesia are very rife, so people must be careful to save their money in the KSP and Koperasi BMT Syariah and must be careful to see the health of the KSP and BMT. Because, customers have been negligently negligent in assessing the health of KSP and BMT when they have problems with the law, they inevitably result in money disappearing unclearly and cannot be held accountable by the KSP and BMT administrators. Therefore, to maintain the security of customers' money, KSP and BMT members, to prevent illegal acts, the supervision of the Deputy for Supervision of the Ministry of KUKM continues to be encouraged. Under these conditions, it is clear that effective preventive measures are needed so that cases of such fraud do not spread in society. Of course not an easy thing. The reason is, there are around 79,543 KSP units or 52.62% of the total number of cooperatives in Indonesia. "Like it or not, cooperatives engaged in the savings and loan sector are very prone to being misused by irresponsible parties. Therefore, the Financial Services Authority (OJK) requests that the victims of large investments, due to low financial literacy, therefore, continued. him, the Ministry of KUKM will continue to improve the performance of the Investment Alert Task Force that is spread throughout Indonesia. Currently, there are 13 Ministries / Institutions that are included in the ranks of the task force, including Police Headquarters. To prevent money laundering, the Ministry of KUKM has also collaborated with the Reporting Center. Financial Transaction and Analysis (PPATK) Cooperatives are obliged to report when they receive large amounts of funds or are suspected of being suspicious transactions. We are also working with BNPT (the National Counterterrorism Agency) so that cooperatives are not used as a forum for financing terrorism in Indonesia. he also asked people not to be easily tempted by the lure of the lure of large funds promised by certain parties on behalf of the KSP or the Sharia BMT Cooperative.

The community, he continued, must first find out the truth as well as the track record of related cooperatives as a precaution. People don't be easily tempted. The people behind this scam are targeting the consumptive society in an easy and fast way but without control. On the same occasion, BIN's Director of Cyber Forensics and Analysis, Linardi Utama, revealed that his party has the task of detecting the initial potential of cybercrime that has a national impact. "The number of cooperatives in Indonesia is very large with a very large number of members. Cooperatives and SMEs are encouraged to realize how important it is to secure data so that cybercriminals are not misused. When the cooperative business is transformed into a digital system, he stressed that all parties must be aware of the dangers and threats that follow The community is also expected to be able to read such symptoms as the most basic anticipation. Therefore, the community must be careful about the KSP operations and ensure that the KSP or BMT is safe to keep your money. Center for Financial Transaction Reporting and Analysis held a coordination meeting with the Ministry of Cooperatives and Small and Medium Enterprises. In the meeting, the Head of PPATK Dian Ediana Rae said that cooperatives are an important part of the regime for the prevention and eradication of money laundering (TPPU) and terrorist financing crimes (TPPT). As stipulated in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering, among others regulates cooperatives, especially those that carry out Savings and Loans activities as Reporting Parties. For this reason, the role of the Ministry of Cooperatives and SMEs as the Supervisory and Regulatory Agency of Cooperatives, particularly Savings and Loans Cooperatives, is very strategic. Dian explained, supervision of cooperatives, especially the savings and loan cooperatives (KSP) is not an easy thing. Based on Sectoral Risk Assessment data compiled by PPATK and a number of related institutions, there are no less than 67,891 Sharia Savings and Loans Cooperatives / Savings and Loan Financing Cooperatives / Savings and Loans Units / Savings and Loans and Sharia Financing Units. According to Dian, of this number, only 501 KSPs were registered and had submitted 297 Suspicious Financial Transaction Reports (LTKM) and 2,451 Cash Financial Transaction Reports (LTKT), during the period 2010 to June 2020. The disturbing fact is that there are a number of cases. Cooperatives that are used as a means of laundering money and various other crimes. Various cases related to cooperatives costing trillions of rupiah in losses, such as the case that ensnared the Langit Biru Cooperative which cost customers up to Rp 6 trillion in customer funds, the Pandawa Cooperative with a loss of Rp 3 trillion, to the Cipaganti Karya Guna Persada Cooperative of Rp. Furthermore, it was also revealed that the cooperative is used as a vehicle for narcotics crimes, ”explained Dian. Meanwhile, the Minister of Cooperatives and Small and Medium Enterprises, Teten Masduki also mentioned that the problems that have been wrapping up cooperatives, especially Savings and Loans Cooperatives have become serious problems. Various examples of KSP have been found that have committed crimes that harm many people. The result is the damage to the

integrity of the cooperative which should function as a pillar for the national economy. We have made efforts to moratorium on the opening of new KSP and expansion of existing KSP branches. We are also developing a supervisory system, so that the cooperative supervision model can be similar to that applied in banking, as explained by Teten.

2. Research Methodology

A. Cooperative as a form of business entity

Mohammad Hatta argued that cooperatives are essentially a joint effort to improve the fate of economic livelihoods based on helping to help. He said that the cooperative movement symbolized hope for the weak economically based on self-help and help among its members which gave birth to among them a sense of self-confidence and brotherhood.77 The main objective of cooperatives is to improve the standard of living and welfare of its members. Cooperatives are not solely for profit businesses like private businesses such as firms or companies, although they try to improve the standard of living and prosperity of their members.

1. Cooperatives as legal entities

The definition of cooperatives in Article 1 number 1 of the Cooperative Law states that: "Cooperatives are business entities whose members are individual persons or cooperative legal entities by basing their activities on the principles of cooperatives as well as a people's economic movement based on the principle of kinship" With its status as a legal entity, then a cooperative business entity becomes a legal subject that has rights and obligations. Thus, third parties can clearly and firmly know who can be held responsible for the running of the cooperative's legal entity business.79 In addition, the legal status between the cooperative as an organization and the legal status of its founders is clearly separated.80 This is useful for distinguish founders and members from cooperative organizations in day-to-day operations. This strict separation of legal entity status includes explicit separation of assets.81 Several theories of legal entities include:

a. Von Savigny's Fictional Theory is also called the artificial entity theory. This theory teaches that companies are only human creation and imagination, and are considered to exist by humans. So it doesn't happen naturally. A legal entity is only a creature created by law (creature of law).

b. Wealth Theory Aim from Brinz, according to this theory only humans can become legal subjects. However, it is also indisputable that there are rights to a certain wealth, whereas no human being is a supporter of these rights. What we call the rights of a legal entity are actually rights that no one owns and in its place are assets that are linked to a purpose or property belonging to a purpose.

c. Otto Von Glerke's Organ Theory. The legal entity is a real reality just as the personality traits of the human nature exist in legal association. It is a LeiblichgeistigeLebense inheit die Wollen und das Gewolite in Tat Umsetzen kam. Here it is not only a real person, but the legal entity also has its own will or will which is formed through its equipment (management, members). What they decide is the will or will of the legal entity as something that is not different from humans.

d. Planiol's Propriete Collective Theory. According to this theory the rights and obligations of the members are shared. Apart from private property rights, these rights and assets are collective assets. Members can not only own each for the indivisible portion but also joint owners for the whole, so that they individually are not all co-owners. The people who gather together form a unit and form a person, which is called a legal entity. Thus, a legal entity is a juridical construction only. The characteristics of a legal entity are: (a) owning assets separate from the assets of the people who carry out the activities of these legal entities; (b) has rights and obligations separate from the rights and obligations of persons carrying out the activities of the legal entity; (c) have a specific purpose; (d) sustainable (having continuity in the sense that its existence is related to certain people, because the rights and obligations remain even though the people who carry it out change) .83 In such legal position, if it turns out that the cooperative is in default, for example in fulfilling the legal status. obligations to pay debts to third parties, then with such a legal entity status it becomes clear that it can be determined who will be legally responsible for the default.

2. Capital in cooperatives

Although Indonesian cooperatives are not a form of capital collection, as a business entity, in running their business, cooperatives also need capital. But the influence of capital and its use in cooperatives must not obscure and undermine the meaning of cooperatives, which emphasize the interests of humanity more than material interests. Article 41 of the Cooperative Law states that cooperative capital consists of own capital and guarantor's capital. Own capital can come from (a) principal savings, (b) mandatory savings, (c) reserve funds, (d) grants. For business development, cooperatives can use loan capital by taking into account the feasibility of going on business. Loan capital can come from: (a) Members, (b) other cooperatives and / or their members, (c) Banks and other financial institutions, (d) Issuance of bonds and other debt securities, and (e) other legal sources.87 Apart from capital and loan capital, cooperatives can also raise capital originating from participation capital, both from the government and from the community, in order to strengthen cooperative business activities,

especially those in the form of investment.88 The Cooperative Law has provided flexibility to develop capital for cooperatives, but in its implementation it is necessary to be aware of it so that management and its supervision remains in the hands of the cooperative members in accordance with cooperative democracy.

a. Participation Capital

Article 1 number 1 Government Regulation Number 33 Year 1998 concerning Participation Capital in Cooperatives, hereinafter referred to as Participating Capital PP in Cooperatives, states that: "Participation Capital is an amount of money or capital goods that can be valued by the money invested by investors to increase and strengthen the capital structure of the cooperative. in enhancing its business activities "Accumulation of cooperative capital originating from participation capital, whether originating from public funds, is carried out in

in order to expand the capacity to carry out business operations; especially businesses that need funds for businesses that require a long-term process. The position of this participation capital equals equity; so it contains a business risk.

b. Investment Rules for Participating Capital in Cooperatives

Based on Article 42 paragraph (1) of the Cooperative Law, investment by cooperatives in the form of investment can be obtained from the government, business world and society. This capital can be used to develop and expand cooperative business activities. On this basis, investment investment needs to be specifically regulated, among others, regarding the function of capital, its management and supervision which is stipulated in the Decree of the Minister of Cooperatives, Small and Medium Enterprises of the Republic of Indonesia Number: 145 / KEP / M / VII / 1998 concerning the Implementation Guidelines for Investment in Cooperatives. hereinafter referred to as the Kepmenkop Guidelines for Investment Participation in Cooperatives, which explains that the scope of investment in cooperatives is in the form of:

1. Own capital is obtained from principal savings, mandatory savings, reserve funds and grants
2. Loan capital, obtained from members of cooperatives, other cooperatives, banks or financial institutions, issuance of bonds or other debt documents and other legal sources.
3. Participation capital is obtained from the government, members of the public, business entities and other entities both from within and from abroad "

In Article 16 of Government Regulation No.9 of 1995 concerning the implementation of Savings and Loans Activities by Cooperatives, it states that: "Savings and Loans Cooperatives are obliged to provide their own capital and can be added with investment capital." Government No. 9 of 1995 concerning the Implementation of Savings and Loan Business Activities by Cooperatives, regarding the aspects of capital that must be considered by savings and loan cooperatives, in order to maintain business health and safeguard the interests of all related parties. In the aspect of capital, between own capital and loan capital and participation capital must be balanced, while the solvency aspect in the form of loan capital accumulation and investment capital is based on the ability to repay and the ratio between loan capital and investment capital to wealth must be balanced and the profitability aspect is needed to measure the ratio between the remaining Operating results (SHU) or profit with assets must be reasonable. Cooperatives that will plan to receive investment capital, carry out activities by preparing a business activity plan in advance by determining the amount of capital required for said business activity and offering a plan to raise such participation capital to prospective investors, either directly or through mass media announcements. Cooperative managers and investors who have agreed to carry out business activities with investment capital, both sign a Cooperative Participation Capital Agreement (SPMPKOP) so that it has legal force that binds investors and cooperatives. The SPMPKOP must explain the type of business, capacity, value of capital included and the place of business being financed by the investment capital and matters relating to implementation

other.

3. Organizational Structure of Cooperatives in Indonesia

Article 21 of the Cooperative Law states that a cooperative organization consists of: (a) Member Meetings, (b) Managers and (c) Supervisors. Article 23 of the Cooperative Law states that the meeting of members is the highest authority holder in the cooperative; The meeting of members stipulates the Articles of Association, general policies in the fields of organization, management and cooperative business; Election, appointment, dismissal of Managers and Supervisors; Work plans, cooperative income and expenditure budget plans, as well as ratification of financial reports; Ratification of the management's accountability in carrying out their duties; Distribution of the remaining income; Merger, consolidation, division and dissolution of cooperatives. Article 29 of the Cooperative Law states that the Management is the power of attorney for the Members' Meeting. Article 30 of the Cooperative Law states that administrators have the duty to manage cooperatives and their businesses; submitting a draft plan for the cooperative income and expenditure budget, holding Member Meetings, submitting financial reports and accountability for the implementation of tasks; maintain financial bookkeeping and inventory in an orderly manner; and maintains a book register of members and administrators, and has the authority to represent cooperatives inside and outside the court; take actions and efforts for the interests and

benefits of the cooperative in accordance with their responsibilities and decisions of the Members' Meeting. Article 39 of the Cooperative Law states that Supervisors have the duty and authority to supervise all implementation of cooperative policies and management. Regarding the responsibility of the cooperative apparatus that carries out actions on behalf of the cooperative principal, the actions of the cooperative apparatus as a means of cooperative equipment are considered the cooperative's own actions, and therefore the cooperative is responsible for third parties, and is responsible for criminal acts or illegal acts committed by the official on behalf cooperative. Cooperatives are responsible for the actions of representatives (equipment) within the scope of real or secret authority, 94 in the case of ultravires illegal acts, some modern experts claim that the principal of a legal entity is directly responsible together with the representative, where the representative is firmly has been empowered to do this, even though these are the co-op ultravires.

3. Findings and Discussion

Corporate Criminal Liability in the Criminal Law System Indonesia

1. Criminal Law in the Indonesian Legal System

Utrecht argues that criminal law is a special sanction, criminal law as a public law, because it is entirely in the hands of the state or government to carry out criminal law, Simons also believes that because criminal law regulates the relationship between individuals and individuals and their communities. According to Simons, Een strafbare Feit is an action or act that is punishable by law, which is against the law which is committed by mistake by someone who can be responsible. These are divided into two groups of elements, namely objective elements in the form of prohibited or required actions, due to certain circumstances or problems, and subjective elements in the form of errors and the ability to take responsibility for the perpetrator. The measure used to determine that a person can be criminally accountable for their actions is seen from the person's ability to take responsibility. Only people who are able to take responsibility can be held accountable (punished). If the perpetrator of a criminal act is unable to take responsibility, then there will be no criminal responsibility, which is known in criminal law as the mens rea doctrine. This doctrine originates from a principle in British criminal law, which completely reads actus non facit reum, nisi mens sit rea. This means that an action cannot make a person guilty unless it is done with evil intentions. In various modern legal arrangements, there are two types of legal subjects, human or person (natuurlijke person) and legal entity (rechtspersoon). The French Criminal Code which later gave birth to the Dutch Criminal Code and subsequently based on the concordance principle (the principle that equates existing law in the Netherlands with existing law in Indonesia) also applies in Indonesia, has been made based on the stance that only humans can commit criminal acts (subject to criminal acts). This can be seen from the phrase hij die which is used in the formulation of various strafbaar feit (crime or offense) in Wetboek van Strafrecht. The phrase was translated into Indonesian with the phrase whoever means "whoever". Because in Indonesian the word "who" refers to "human being", the phrase "whoever" or "whoever" means "every human being". With regard to the imposition of criminal responsibility against legal entities, in this case corporations, there are two main teachings which become the basis for justifying criminal liability to corporations, namely (1) doctrine of stric liability which states that criminal responsibility can be borne by the perpetrators of the criminal acts concerned without it is necessary to prove that there is an error (intentionally or negligently). Because according to the teaching of Stric Liability, criminal responsibility for the perpetrator is not questioned, and (2) the doctrine of vicarious liability which states the imposition of criminal responsibility from the crime committed, for example by A to B. has committed a crime then the company can be held responsible for the crime. Furthermore, regarding corporate criminal liability, there is a model of corporate criminal responsibility as follows:

a. The corporate administrator, as maker and manager, is responsible.
b. The corporation as the responsible maker and administrator.
c. The corporation as a maker and also as a responsible person.

The Criminal Code as a source of material criminal law adheres to the first system, which is seen in Article 59 of the Criminal Code and Article 399, which reads as follows: Article 59 of the Criminal Code: or the commissioner of commissioner, the management, member of the board of directors or commissioner, who apparently did not interfere in the violation, shall not be sentenced ". Article 399 of the Criminal Code: “A manager or commissioner, an Indonesian airline or corporate association declared bankrupt or whose business activities are ordered by a court to be resolved, shall be punished with a maximum imprisonment of seven years if he, for fraudulently reducing his rights. a debtor from a company, airline or association. Considering that the Draft Criminal Code has not been enacted and that the current Criminal Code maintains that only humans can be charged with criminal responsibility, so to impose criminal responsibility on corporations one must look at various laws outside of the Criminal Code, which the law stipulates. apart from people (humans), also corporations as perpetrators of criminal acts in this law, for example, can be seen in Law No. 23 of 1997 concerning Environmental Management, which Article 45 of the Law reads as follows: "If a criminal act as referred to in this Chapter is committed by or on behalf of a legal entity, company, association, foundation or

other organization, the threat of criminal fine. heavier by a third. And Article 46 paragraph (1) of the Law stipulates: "If the criminal act referred to in this Chapter is committed by or on behalf of a legal entity, company, association, foundation or other organization, criminal prosecution is carried out and criminal sanctions and disciplinary actions as intended. Article 47 is imposed either on the legal entity, company, association, foundation or other organization as well as on those who gave the order to commit the criminal act or who acted as a leader in said act or both.

2. Corporate Responsibility as Criminal Actors

The consequence of adigum actus non facit reum, mens sit rea or no crime without fault is that only "something" that has a heart can be liable for criminal responsibility, namely humans, while corporations do not have a heart, so the corporation cannot be liable for criminal responsibility. Various special criminal laws in Indonesia, even since 1951 have made corporations the subject of non-human crimes with the issuance of Emergency Law No. 17 of 1951 concerning the Hoarding of Goods, after that it was followed by various special criminal acts laws that were born later. In other words, the corporation can also bear criminal liability. The definition / definition is closely related to the field of civil law because the definition of a corporation is a term that is closely related to the term legal entity (rechtpersoon). Legal entities are supporters of rights and obligations based on non-human law, which can sue or can be prosecuted by another legal subject in court. According to Subekti and Tjitrosudibio, a corporation is a company that is a legal entity. Based on the previous description, the definition of a corporation in civil law is limited as a legal entity. When examined further, the definition of a corporation in criminal law turns out to be broader. In Indonesia, the development of corporations as subjects of criminal acts occurs outside the Criminal Code (KUHP), in special legislation. The Criminal Code itself still adheres to the subject of a criminal act in the form of "person" (see Article 59 of the Criminal Code). The subject of corporate crime can be found in Law Number 35 of 2009 concerning Narcotics, Article 1 number 13, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001, Article 1 number 1 concerning the Eradication of Corruption Crime, Law Number 8/2010 concerning the Prevention and Eradication of the Crime of Money Laundering, which in essence says: Corporation is an organized group of people and / or assets, both legal and non-legal entities. " Similar provisions can also be found in Emergency Law Number 7 of 1955 concerning Economic Crimes, Article 15 paragraph (1), which states that: "If an economic crime is committed in the name of a legal entity, a company, an association of persons. or foundations .. and so on. " Logical consequences regarding the position of the corporation as a legal entity, have an effect on criminal acts that can be committed by the corporation, there are several exceptions. In this regard, Barda Nawawi Arief stated, although in principle corporations can be held accountable to the same as individuals, but there are several exceptions, namely:

a. In cases which by nature cannot be carried out by the corporation, for example bigamy, rape, perjury.
b. In cases where the only punishment that can be imposed may not be imposed on the corporation, for example imprisonment or death penalty. Another logical consequence is if a corporation is defined broadly, namely having the position of a legal entity and non-legal entity, as adopted in the Netherlands and in Indonesia (in special legislation outside the Criminal Code). So theoretically all criminal acts can be committed, even though the law enforcement process is based on court practice.

In the absence of any action taken by the police, the victim or the community then takes legal action against the action taken by the corporation by filing a lawsuit for cals action or legal standing, however the legal remedy is limited to a civil suit. In fact, if a criminal charge is committed, it will have advantages over the settlement in a civil process, namely: First, criminal liability has stronger protective procedures. Second, criminal law is enforced by law enforcement officials who have more power and resources than the plaintiff (civil). Third, criminal punishment provides stigma and reproach to the perpetrator. Fourth, criminal law has a role to convey a message to the public about the wrongdoing of the perpetrator. The stages of the development of a corporation as a subject of a criminal act are broadly divided into three stages, among others: The first stage, marked by efforts to limit the nature of the offenses committed by the corporation to individuals (natuurlijke persoon). If a criminal act has occurred in a corporate environment, then this crime is deemed to have been committed by the management of the corporation. This stage assigns "the task of taking care" (zorgplicht) to the committee. This stage is actually the basis for Article 51 W.v.Sr Ned (Article 59 of the Criminal Code), which is strongly influenced by the nonpotest societas delinquere principle, namely that legal entities cannot commit criminal acts. In the second stage, a corporation is recognized as being able to commit a criminal act but what can be criminally responsible is the management who actually leads the corporation, and this is clearly stated in the laws and regulations that govern this matter. The third stage, this is the beginning of the direct responsibility of the corporation which began at the time after World War II. This stage opens the possibility to sue the corporation and hold it accountable according to criminal law.

3. Corporate Criminal Liability

The stages of corporate development as the subject of criminal acts also affect the position of the corporation as the maker and the nature of corporate criminal responsibility in the laws and regulations. According to Sutan Remy Sjahdeini, there are four systems of imposing criminal liability on corporations, which can be enforced,

including:

a) The management of the corporation as the perpetrator of a criminal act and the management is responsible
b) The corporation as the perpetrator of a criminal act and the management is responsible.
c) Corporations as perpetrators of criminal acts and also as responsible.
d) The management and the corporation are both the perpetrators of criminal acts, and both are also responsible.

In relation to corporations, corporations can be held liable for criminal acts that do not require a mens rea for accountability for these crimes based on the doctrine of strict liability. It turns out that there are not many criminal acts that can be accounted for by the perpetrators without an element of mens rea, while there are a lot of criminal acts committed by corporate managers they lead which have seriously harmed the community. There are 7 (seven) concepts which are the development of the discourse of doctrines regarding Corporate criminal responsibility. The seven concepts include:

a. Identification Doctrine

According to this doctrine, if a person who is senior enough in the structure of the Corporation, or can represent the Corporation, commits a crime in his field of office, then that person's actions and intentions can be linked to the corporation. The corporation can be identified by this act and held directly accountable. such a theory is of interest to those who argue that Corporations cannot do or do something except through the humans who represent them. Furthermore, in a number of cases in Corporations with large and complex organizational structures, it is nearly impossible for outsiders to break through the walls of the corporation to ascertain the true individuals who have committed crimes. The amount of money, time and expertise involved in such investigations may not be worth the wrongdoing, and in some instances, it may be fruitless if a corporation decides to spread smog around its internal areas of operation. More importantly, even when investigations are carried out properly, it is often revealed that the fault lies not with any particular individual but rather with the Corporation itself. The case using this doctrine is the Privy Council Decision on Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2AC 500. In this case, an investment manager invests in another corporation without making the necessary notification as he knows that he has an obligation. to do it.

b. Aggregation Doctrine

In order to know a number of problems that arise in the identification doctrine, a basic alternative for the formation of criminal responsibility is the aggregation doctrine known in America as The Collective Knowledge Doctrine. According to this approach, criminal acts cannot only be known or committed by one person. Therefore, it is necessary to collect all the actions and intentions of various relevant people in the corporation, to ascertain whether overall their actions will constitute a crime or are equivalent to if the actions and intentions were carried out by one person. For example, if A, B, C and D did or did not do it, it would cumulatively cause harm and if their mental or negligent elements combined would result in the intention of a crime, the company could be held accountable. This doctrine takes advantage of the recognition that in most cases it is impossible to separate a person who has committed a crime with intent. This doctrine can prevent the corporation from burying its responsibilities deep within the corporate structure.

c. Reactive Corporate Fault

Adifferent approach regarding corporate criminal responsibility has been proposed by Fisse and Braithwaite, namely by arguing that an act which is a criminal act is committed by or on behalf of a corporation, the court must be given the authority to order the corporation to carry out its own investigation to ascertain the person responsible. and take appropriate disciplinary action against the person's error and take corrective steps to ensure that such error will not be repeated. If the corporation takes appropriate steps, then no criminal responsibility can be imposed on the corporation. Criminal liability can only be applied to a corporation if the corporation fails to fulfill court orders seriously. Thus, the corporation's fault is not a mistake when a crime occurs but a mistake because the corporation fails to take appropriate action for the mistakes committed by its employees.

d. Vicarious Liability

In the United States, a very common story of holding corporations criminally responsible is through the doctrine of respondeat superior or vicarious liability. According to this doctrine, if an agent or corporation worker, acting within the scope of his work and with the intention of benefiting the cooperative, commits a crime, criminal responsibility can be borne by the company. It does not matter whether the company actually makes a profit or not or whether the activity has been prohibited by the company or not. This doctrine has worked well in British law, in relation to crimes of strict liability related to issues such as pollution, food and drugs, health and job safety. This has also been applied to hybrid crimes where the main crime is strict liability but allows a due diligence defense. By crossing all the problems that have to do with other doctrines, such as finding significant people in the corporation who have committed crimes. With this doctrine, as long as a person acts in his / her field of work and has committed a crime, the company can be held responsible for the crime. This will prevent

the company from protecting itself from criminal responsibility by delegating illegal activities only to its workers. The main objective of this approach is to turn all intentional crimes (mens rea) committed by corporations into hybrid crimes, namely strict liability crimes coupled with a due diligence defense. Once again as a consequence, corporate crime will be considered to have a different significance compared to other crimes, as a normal condition of a crime does not need to be proven, this kind of crime will be considered a lesser crime and therefore will greatly damage the reproach function of the crime. criminal law.

e. Capital Failure Management

The legal commission in England has proposed a crime of manslaughter committed by a corporation when there is a mismanagement by the corporation that causes someone to die and the failure is behavior that rationally is far from what a corporation is expected to commit. This crime is defined with reference to management failure (as opposed to corporate failure), because the British Law Commission implicitly sees the people in the corporation as committing the crime and is pre-conditional on the crime they are proposing, namely "murder by carelessness / negligence" is not correct applied to corporations. Based on this, crimes are designed without referring to the classic concept of mens rea in order to ascertain the different nature of corporate wrongdoing. From that point of view it seems that this concept is nothing more than an extension of doctrine identification. Instead of seeing the failure of individuals or groups of individuals who occupy high positions, what is seen is the failure of management.

f. Corporate Mens Rea Doctrine

It has often been argued that companies themselves cannot commit crimes, they cannot think or have will. Only people inside the company can commit a crime. However, one can accept that the whole idea of corporate personality is fictional but well-crafted and very useful there seems to be no reason why law should not develop a fit for fictional corporate mens rea. The basic idea of this doctrine exists because all other doctrines have ignored the complex reality of corporate organization and the dynamics of organizational processes, structures, goals, cultures and hierarchies that can combine and contribute to an ethos that permits or encourages the committing of a crime. Understanding the notion of a major corporate abandonment does not require a mental element. It is important to emphasize that both, namely recklessness or intent, can be found in policy policies, operational procedures and weak corporate countermeasures. If the corporate culture permits or encourages wrongdoing, it may be easy to conclude that the corporation itself must have suspected the possibility of error or that there has been a serious and real risk of the result of errors or of very certain consequences for its foreseeable purpose.

g. Specific Corporate Offenses

The British Law Commission has proposed that a new crime, namely corporate killing, has been introduced into English law. This crime will be a separate species from menslaughter which can only be committed by the corporation. In this case, problems related to the affirmation of corporate wrongdoing, such as proof of intent or carelessness, can be overcome by making a special definition that can only be applied to the corporation.136 In terms of cooperative criminal liability for criminal acts committed by cooperative officials, it must be determined according to the law of granting power of attorney, especially according to the principles developed in modern corporate law. Usually the person who commits the crime is responsible, especially if the act is committed by a representative on behalf of the cooperative principal. The next problem is whether the cooperative principal is also responsible or not, to solve this problem it is very important to determine whether the principal responsibility of a legal entity because the criminal act committed by his representative is direct responsibility (due to his own actions) or not. In Germany, to avoid undesirable consequences, courts as well as modern corporate law have developed a regulation, according to which in certain circumstances the actions and objectives of certain representatives are considered to be the actions and objectives of the principal of a legal entity and therefore the principal of the legal entity can be held directly responsible. for a criminal act committed by the representative on his behalf. According to the regulation, legal entities are directly responsible for criminal acts committed by their representatives, provided that:

a. If the act can be considered as an act of a legal entity because of the position of the representative who committed the act (responsible representative, important official in the cooperative: member of the management, or board of directors or managers).
b. If the representative acts within the limits of the real authority;
c. If the criminal act is an act that can be subject to a fine.

Sutan Ramy Sjahdeini is of the opinion, if this type of corporation is a cooperative, then to find out who is meant by the management of a cooperative, it must refer to the Cooperative Law, that the cooperative organizational apparatus consists of a meeting of members, managers and supervisors. By the Cooperative Law, what is meant by the management of cooperatives is what is meant in Article 29 to Article 37 of the Cooperative Law. According to Article 30 paragraph (1), the organizational apparatus called the committee has the task of managing cooperatives and their businesses. The management of the cooperative is the manager as meant in the Corruption Crime Law. Thus, the main directing mind of the cooperative is the management. Because

supervisors according to Article 39 of the law can have a very large role and authority in determining the direction of cooperative business activities, according to Sutan Ramy Sjahdeini, supervisors are also the directing mind of cooperatives. Members' Meeting which according to Article 22 paragraph (1) is the highest authority holder in the cooperative is also the directing mind of the cooperative, because Article 23, among other things, stipulates general policies in the cooperative business sector. In imposing criminal responsibility on corporations, Law no. 8 of 2010 concerning the Prevention and Eradication of Money Laundering, adheres to the doctrine of identification in imposing corporate responsibility. The Criminal Act of Money Laundering stipulates that the directing mind of the corporation is "corporate management as long as the management has a functional position in the corporate organizational structure".

Regulations Concerning Criminal Liability Against Cooperatives Related to Misuse of Equity Funds from the Community. In connection with criminal arrangements carried out by cooperative organs within the body of this cooperative, the Cooperative Law does not contain criminal provisions, and what applies is the Criminal Code (KUHP) or laws outside the KUHP.141 In fact, the 2004 Criminal Code Bill contains requirements condition so that a criminal act can be held accountable with or without imposing criminal responsibility on the human being the perpetrator. As stated in Article 45 of the Draft Criminal Code, as follows: "a criminal act is committed by a corporation if it is committed by persons acting for and on behalf of the corporation or for the benefit of the corporation, based on work relations or based on other relationships, within the scope of the corporation's business, either alone or together. " Since the Draft Criminal Code has not been implemented at this time, to impose criminal sanctions on cooperatives that misuse funds from investment capital collected from the public, so that the cooperative and / or its organs can be punished with the following articles:

1. Articles in the Criminal Code (KUHP):
   a. Article 372 of the Criminal Code "Anyone who knowingly and unlawfully possesses goods which are wholly or partly owned by another person, but who are in his possession not because of a crime is subject to embezzlement, with a maximum imprisonment of four years or a maximum fine of nine hundred rupiahs."
   b. Article 374 of the Criminal Code "Embezzlement committed by a person whose possession of property is due to a work relationship or because of a search or because of being paid for it, is punishable by a maximum imprisonment of five years."
   c. Article 378 of the Criminal Code "Anyone with the intention of illegally benefiting himself or another person, using a false name, by deception, or a series of lies, moves others to hand over something to him, or to give a debt or write off a debt, will be threatened with fraud by imprisonment. at most four years. "

1. Regulations outside the Criminal Code:
   a. Article 46 of Law No. 10 of 1998 concerning Banking: paragraph (1), "Anyone who collects funds from the public in the form of deposits without a business license from the Management of Bank Indonesia as referred to in Article 16, shall be punished with imprisonment of at least 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 10,000,000,000, - (ten billion rupiah) and a maximum of Rp. 20,000,000,000, - (twenty billion rupiah). Paragraph (2) In the event that the activity referred to in paragraph (1) is carried out by a legal entity in the form of a limited liability company, association, foundation or cooperative, then prosecution of the said agencies shall be carried out against those who gave the order to carry out the act. or who acts as a leader in the act or both.
   b. Article 3 of Law No. 8 of 2010 Prevention and Eradication of Money Laundering:"Anyone who places, transfers, transfers, spends, pays, grants, entrusts, takes abroad, changes forms, exchanges currency or securities or other actions on assets that he knows or should reasonably suspect are the result of a criminal act as referred to. in Article 2 paragraph (1) with the aim of concealing or disguising the origin of Assets, the punishment shall be for the crime of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of Rp. 10,000,000,000, - (ten billion rupiah). The provisions above can only be imposed on people or cooperative officials who are suspected of misusing the investment capital funds collected from the community, while criminal responsibility for the cooperative itself may be subject to several articles of the Money Laundering Criminal Act which adheres to the principle of identification (doctrineof identification), which can be seen in several articles therein, among others.
   c. Article 6 of Law Number 8 of 2010 The Crime of Money Laundering:(1) In the event that the crime 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 Corporation Controlling Personnel.

2. Criminal is imposed against the Corporation if the crime of money laundering:

a. Conducted or ordered by Corporate Control Personnel

b. Conducted in order to fulfill the purposes and objectives of the Corporation

c. Performed in accordance with the duties and functions of the perpetrator or giving the order; and

d. Conducted with the intention of providing benefits to the Corporation
b) Article 7 of Law Number 8 Year 2010 on the Crime of Money Laundering:
(1) The principal punishment imposed on the Corporation is a fine of up to Rp. 100,000,000,000, - (one hundred billion rupiah).
(2) In addition to the fine as referred to in paragraph (1), additional penalties may also be imposed in the form of:
a. Announcement of the judge's decision
b. Freezing of part or all of the business activities of the Corporation
c. Revocation of business license
d. Dissolution and / or violation of the Corporation
e. Confiscation of corporate assets for the state; and / or
f. Takeover of the Corporation by the state.

1. **Indonesian Criminal Law Policy**

1. Definition of Criminal Law Policy

Criminal law policy is part of criminal politics (criminal policy). Criminal politics is a rational attempt by society to tackle crime. Crime prevention policies or efforts are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare. Therefore, it can be said that the ultimate goal or main goal of criminal politics is protection of society to achieve social welfare . Thus, criminal politics is essentially an integral part of social politics (ie policies or efforts to achieve social welfare) .147 Crime policy can cover a fairly broad scope. According to G.P. Hoefnagels crime prevention efforts can be achieved by:

a. Application of Criminal Law (criminal law application);
b. Prevention without punishment
c. Influencing people's views on crime and punishment through mass media (influencing views of society on crime and punishment / mass media).

Based on this, efforts to combat crime need to be pursued with policies, in the sense of:

a. There is integration (integrality) between criminal politics and social politics.
b. There is integration (integrality) between crime prevention efforts with "penal" and "non penal"

2. **Penal Efforts in Criminal Law Policy Two central problems in criminal policy using penal means are problems of determination:**

What actions should be a criminal act, What sanctions should be used or imposed on the offender. According to Von Feurbach, quoted by Moeljatno, so that in determining the actions that are prohibited in the regulations, it is not only about the types of acts that must be written clearly, but also about the types of crimes that are threatened. In this way, the person who is going to commit the prohibited act will know in advance what punishment will be imposed on him if the act is committed. Thus, in his mind or in his psyche, there is pressure not to make mistakes. Marc Ancel stated that "Penal Policy" or Criminal Law Policy by means of penal is a science as well as an art which ultimately has a practical objective to enable positive legal regulations to be better formulated and to provide guidance not only to legislators, but also to lawmakers. courts that apply the law and also to administrators or executors of court decisions. Seen from the point of view of criminal politics, the politics of criminal law is synonymous with the definition of "crime prevention policy with criminal law". Therefore, it is often said that politics or criminal law policies are also part of law enforcement policies. In essence, the problem of criminal law policy is not merely technical legal work which can be carried out in a normative and systematic-dogmatic manner.154 Crime prevention efforts through the making of criminal (law) laws are essentially an integral part of social protection efforts. welfare).

4. Conclusion

Non-Penal Efforts in Criminal Law Policy, In this conclusion, the authors assess that the effort to take a normative juridical approach, criminal law policy also requires a factual juridical approach which can be in the form of a sociological, historical, and comparative approach, as well as a comprehensive understanding of various social disciplines and national development in general. Efforts such as prevention without punishment and influencing people's views on crime and punishment through the mass media (influencing views of society on crime and punishment / mass media) are a group of "non penal" efforts. Considering that efforts to tackle crime through the "non-penal" route are more of a preventive measure for the occurrence of crime, the main objective is to deal with these conducive factors, among others, focusing on problems or social conditions that directly or indirectly can cause or grow. suburkan criminal acts within the scope of cooperatives in Indonesia. Policy policies regarding the prevention of money loundry crimes, embezzlement of capital participation funds from the community in savings and loan cooperatives by cooperative administrators as well as by cooperative members and the criminal justice must consider structural causes, including the causes of socio-economic injustice, where crimes are often only a symptom / symptom. Several social problems and conditions that can be a conducive factor causing the crime of embezzling funds from customers of savings and credit cooperatives are clearly problems that cannot be solved solely by "penalties". This is where the limitation of the "penal" pathway

and, therefore, must be supported by the "non penal" pathway. Viewed from the point of view of criminal politics in a macro and global perspective, non-penal efforts occupy a key and strategic position in the overall political criminal effort in enforcing criminal law of embezzlement of cooperative customer funds. Thus it can be distinguished that efforts to combat crime through the "Penal" route focus more on the "repressive" nature (suppression / eradication / suppression) after the crime occurs. Meanwhile, the Non Penal route focuses more on the "preventive" nature (prevention / deterrence / control) before a crime occurs. Criminal law reform must be carried out with a policy approach, because in essence it is part of a policy step. Each policy also contains value considerations. Therefore, it is suggested that the reform of criminal law should also be oriented towards a values approach. Seen from the point of view of the value approach that criminal law is essentially an effort to review and reassess the socio-political, socio-philosophical, and socio-cultural values that underlie and provide content to the aspired normative and substantive content of criminal law. Therefore, it is only natural that criminal law policies or politics are also an integral part of social policy or politics (social policy). So in the sense of social policy, it is also included in the social welfare policy and social defense policy.

Refferences

Andjar Pachta, Op.Cit, p. 125.
Abdulkadir Muhammad, Cooperative Law, Alumni, Bandung, 1982, p. 117.
Abdul Kadir Muhammad, Op. Cit. p, 114.
Andjar Pachta, Op. Cit, p. 7
Andjar Pachta, Op. Cit, p. 93.
Barda Nawawi Arief, Interest of Criminal Law Policy (Development
Badar Nawawi Arief, Op.Cit, p. 23-24.
Barda Nawawi Arief, Op.Cit, p. 30-31.
Barda Nawawi Arief, Comparative Criminal Law, Rajawali Pers, Jakarta, 1990, p. 37.
B. Mardjono Reksodiputro, Review of the Development of Special Offenses
In a Modernized Society, Binacipta, Bandung, 1982, p. 51.
C.M.V. Clarkson. Op.Cit, p. 5-14.
C.M.V. Clarkson, Corporate Culpability, First Published in the Web Journal of Current Legal Issues in Association with Blackstone Press Ltd. in Papers Advocacy Position Draft Criminal Code Series # 6, Corporate Criminal Responsibility in Draft Criminal Code, Elsam, Jakarta, 2005, p. 6.
D. Schaffmeister, D., N. Keitzer, Criminal Law, Translator Editor J.E. Sahetapy, Liberty, Yogyakarta, 1995, p. 276.
Dede Zaki Mubarok, Menkop: There are no criminal sanctions in the Draft Law on Cooperatives
Muhammad Firdaus, Perkoprasian: History, Theory and Practice, Ghalia Indonesia, Jakarta, 2002, p. 70.
Muladi, and Dwidja Prayitno, Op.Cit, p. 255.
S.R. Sianturi, Criminal Principles in Indonesia and Their Application, Alumni Ahaem-Patahaem, Jakarta, 1996, p. 244.
Sutan Remy Sjahdeini, Corporate Criminal Accountability, Grafitti Pers, Jakarta, 2007, p. 27-28.
Sutan Remy Sjahdeini, Op Cit, p. 59-60.
Sutan Remy Sjahdeini, Corporate Criminal Accountability, Grafitti Pers, Jakarta, 2007, p. 39.
Mochtar Kusumaatmadja and B. Arief Sidharta, Introduction to Legal Studies, a
First Introduction to the Scope of Applicability of Law Science, Alumni, Bandung, 2000, p. 82- 83.
Subekti and R. Tjitrosudibio, Legal Dictionary, Pradnya Paramita, Jakarta, 1999, p. 34
Corporations In the Criminal Code Bill, Elsam, Jakarta, 2005, p. 6.
Sudarto, Law and Criminal Law, Alumni, Bandung, 2007, p. 38.
Drafting the New Criminal Code Concept), Kencana Prenada Media Group, Jakarta, 2011,p.4
Sudarto, Kapita Selekta on Criminal Law, Alumni, Bandung, 1981, p. 118.
Decree of the Minister of Cooperatives, Small and Medium Enterprises of the Republic of Indonesia Number: 145 / KEP / M / VII / 1998 concerning the Implementation Guidelines for Investment Cooperatives
https://www.jawapos.com/nasional/09/06/2020/ppatk-sejotal-koperasi-jadi-sarana-pencucian-uang-dan-kejahat-lain/
Sagimum MD, Op. Cit, p. 7-8.http: //www.rmol.co/read/2012/02/20/55442/Menkop: -No-Criminal-Sanctions-in-RUUKUoperative-,