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Original paper

Potential Misuse of Foreign Direct Investment Activities as a Medium of Money Laundering Crimes in Indonesia

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Abstract

With the efforts to encourage major investment from abroad to increase national economic growth, it is necessary to look at the potential or vulnerability of the misuse of Foreign Direct Investment (FDI) activities in Indonesia as a medium for Crime of Money Laundering (CML). This study aims to determine the potential misuse of FDI activities in Indonesia as a medium for CML, analyze the potential misuse of FDI activities in Indonesia as a medium for CML, investigate the policy directions needed to prevent CML in Indonesia. This study was normative legal research. The results showed that the vulnerability to misuse FDI activities in Indonesia as a medium for CML is due to the absence of technical regulations that require and further regulate the verification of the authenticity of shareholder data and proof of paid-up capital submitted by FDI during company establishment. In addition, there is no collaboration between PJK, INTRAC, and BKPM in detecting CML in FDI activities. In order to prevent the occurrence of CML in Indonesia by utilizing the medium of FDI activities, it is necessary to strengthen the capacity of the anti-money laundering regime for officials or staff in the authorized agencies, as well as the preparation of regulations in the investment sector in line with the provisions in recommendation 24 of the Financial Action Task Force regarding the state's obligation to apply the principles of transparency and beneficial ownership of legal entities, as well as synergy and collaboration between various stakeholders.

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Introduction

Current technological developments have eliminated non-physical boundaries between countries. The development of technology in the current era of globalization impact to the flow of information that is so fast and easy to access by people in various parts of the world. With the increasingly close borders between one country and another, the opportunities for investment are very wide open. In the context of the progressively converging national

boundaries, a wide-open investment opportunity exists. Consequently, each nation is able to compete with one another to attract potential investors, particularly foreign investors (Foreign Direct Investment),[1] to invest in their respective countries for the purpose of economic development.[2]

In the 2023 Investment National Coordination Meeting (Rakornas), the President of Indonesia, Joko Widodo emphasized that investment is something that all countries need as the key to economic growth. With investment, it will affect economic growth, increase employment, and provide high added value through downstream industries. In 2024, the government has targeted economic growth in 2024 at 5.1 percent to 5.7 percent so that investment realization of IDR1,650 trillion is needed.[3]

Some researches in several countries reveal that in addition to having a positive impact, investment can also have a negative impact in the form of illegal asset flight using a direct investment scheme whose capital comes from abroad through the FDI scheme.[4] FDI as a direct investment is the choice of criminals in hiding and disguising crimes because it can facilitate the illegal movement of money in larger amounts compared to indirect investment activities.[5] Offenders located abroad can use the FDI scheme by setting up shell companies that can legitimize the inflow of large amounts of illicit money by reporting it as company income due to the company's financial records that can be easily falsified.[6]

Research by M. Fabricio Perez, Josef C. Brada, and Zdenek Drabek (2011) revealed that in countries experiencing advanced transition economies in Europe, namely the Czech Republic, Estonia, Hungary, Poland and Slovenia, in 2000-2001 it was estimated that there were illegal assets invested in countries that were the centre of money laundering through the FDI mechanism (Perez et al., 2011).[7] Utilising data from the Czech National Bank in 2000, it was determined that the primary investment destinations for Czech capital were Liechtenstein, accounting for 17.8% of total FDI, and the British Virgin Islands, constituting 6.15% of total FDI. Notably, Liechtenstein was categorised as a Non-Cooperative Country or Territory (NCCT) by the Financial Action Task Force (FATF) until 2001. The NCCTs list is a blacklist issued by the FATF that contains countries that the FATF considers uncooperative in preventing and combating Anti Money Laundering (AML) and Counter Financing Terrorism (CFT). It is interesting to note that in 2000, there was a very significant investment flow from the Czech Republic to Liechtenstein, but this investment flow disappeared completely after Liechtenstein

[1] Sentosa Sembiring, Investment Law, Discussion Complemented by Law Number 25 of 2007 concerning Investment (Indonesian: *Hukum Investasi, Pembahasan Dilengkapi dengan Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal)* (Jakarta: Nuansa Aulia, 2018), pp. 1-2.

[2] Yanto Bashri, Where to Go for Indonesia's Economic Development, Prism of Thought by Prof. Dr. Dorodjatun Kuntjoro-Jakti (Indonesian: *Mau kemana Pembangunan Ekonomi Indonesia, Prisma Pemikiran Prof. Dr. Dorodjatun Kuntjoro-Jakti)* (Jakarta: Predna Media, 2003), pp. 12-13.

[3] Sambutan Presiden Joko Widodo yang dimuat dalam Sekretariat Kabinet RI, "Inauguration of the Opening of the 2023 National Investment Coordination Meeting, at the Rafflesia Grand Ballroom of Balai Kartini, DKI Jakarta Province, December 7, 2023 (Indonesian: Peresmian Pembukaan Rapat Koordinasi Nasional Investasi 2023, di Rafflesia Grand Ballroom Balai Kartini, Provinsi DKI Jakarta, 7 Desember 2023)" https://setkab.go.id/peresmian-pembukaan-rapat-koordinasi-nasional-investasi-2023, Accessed on 5 February 2024.

[4] Bui Huu Toan, "Effects of Foreign Direct Investment on Trade-Based Money Laundering: The Case of Vietnam", *Cogent Social Sciences Journal,* Vol. 8, Issue 1, November 2022, pp. 3-4.

[5] A.K. Biswas, J. Von Hagen, and S. Sarkar, "FDI Mismatch, trade mis-reporting, and hidden capital movements: The USA-China case", *Journal of International Money and Finance,* Volume 120, February 2022.

[6] Peter Reuter and Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Washington: Peterson Institute, 2005), dalam Bui Huu Toan, "Effects of Foreign Direct Investment on Trade-Based Money Laundering: The Case of Vietnam", *op.cit,* pp. 5

[7] M. Fabricio Perez, Josef C. Brada, Zdenek Drabek, "Illicit Money Flows as Motives for FDI: Evidence from a Sample of Transition Economies,"*Journal of Comparative Economies*, March 2011, pp. 2.

reformulated its banking policy to comply with FATF standards.[8] Research by Ndikumana and Sarr (2019) using data from a set of African countries from 1970 to 2015, provides empirical evidence that FDI inflows have a positive relationship with asset flight suspected of originating from the proceeds of crime, that a 1% increase in FDI inflows causes an increase in illegal asset flight of 0.21%-0.40%.[9]

The results of the above research show that, with efforts to encourage investment from abroad to increase economic growth, it is necessary to look at the potential or vulnerability of the FDI scheme in Indonesia as a CML medium. FDI itself is included in direct investment, which is investment in assets or production factors to conduct business ventures. Such as investment in plantations, factories, shops and other types of businesses. Indirect investment is investment in financial assets, not in assets or factors of production, examples of indirect investment are deposits, investment in securities, stocks and bonds, Commercial Paper (CP), mutual funds, and so on.[10] In relation to CML, it can be noted that there is a mode of use of offshore banks/businesses, including trust company service providers classified by the Asian Pacific Group on Money Laundering (APG).[11] The typology or mode of use of offshore banks/businesses is the use of cross-border banks or businesses to house the proceeds of crime. The use of this typology aims to obscure the identity of the person controlling the funds and move money away from the supervision of domestic authorities.[12] Similar to wire transfers and trade-based money laundering (TBML), this typology aims to make asset tracing more difficult by utilizing the jurisdiction of different countries in relation to CML regulations.[13] In relation to FDI, it is possible to use the mode of use of offshore businesses as a means for criminals to hide the proceeds of crime through the mechanism of FDI. It is possible for money launderers to establish shell companies in other countries by using the FDI mechanism to place funds in the company. With the support of the Government to increase investment including foreign investment in Indonesia, it is necessary to study whether there is a FDI scheme that can be used by criminals to place the proceeds of crime in Indonesia.

FDI according to Krugman is an international capital flow in which a company from a certain country can establish or expand its company in the investment destination country. FDI not only includes the transfer of ownership from domestic to foreign ownership, but also involves mechanisms that can provide opportunities for foreign investors to understand the management or planning to be carried out and the role of control of domestic companies, especially related to corporate governance mechanisms.[14] There are many benefits of FDI activities, such as helping to fund various sectors that are short of funds, opening new jobs to reduce unemployment rate, the transfer of technology that can be developed in Indonesia, and the most obvious benefit is the increase in state revenue through taxes.

In Indonesia, the regulation of FDI is regulated in the provisions of Law Number 25 Year 2007 on Investment (hereinafter referred to as "Investment Law"). Based on Article 1 number 3, FDI activities are investment activities in the Territory of the Republic of Indonesia by

[8] *Ibid.,* hlm. 16-17.

[9] Leonce Ndikumana and Mare Sarr, "Capital Flight, Foreign Direct Investment and Natural Resources in Africa," *Resources Policy Journal*, Volume 63 October 2019, dalam Bui Huu Toan, "Effects of Foreign Direct Investment on Trade-Based Money Laundering: The Case of Vietnam", *op.cit,* pp.

[10] Henry Faizal Noor, *Ekonomi Manajerial* (Jakarta: Raja Grafindo Persada, 2007), pp. 437.

[11] *Money Laundering Typologies* in APG, "Introduction to APG Typologies" https://apgml.org/methods-and-trends, Accessed on 5 February 2024.

[12]Asia/Pacific Group on Money Laundering, *APG Yearly Typologies Report 2021 "Methods and Trends of Money Laundering and Terrorism Financing"* (Sydney: APG Secretariat, 2021), pp. 30-31.

[13] *Ibid.*

[14] Menurut Krugman dalam Sarwedi, "Foreign Direct Investment in Indonesia and Factors Influencing It (Indonesian: Investasi Asing Langsung di Indonesia dan Faktor yang Mempengaruhinya)", *Jurnal Akuntansi & Keuangan Vol. 4, No. 1, May 2002.*

foreign investors either fully using foreign capital or in partnership with domestic investors. FDI activities have basically been accommodated in regulations since 1967, namely when Law Number 1 of 1967 concerning Foreign Investment was enacted which was then updated with Law Number 25 of 2007 concerning Investment. With the regulation of FDI activities, it is hoped that the acceleration of national economic development and political and economic sovereignty will be created due to the processing of economic potential using capital other than domestic.[15] In addition to Law Number 25 of 2007 concerning Investment, currently the regulation of FDI is also regulated through Law Number 11 of 2020 concerning Job Creation. Based on the provisions of Article 5 paragraph (2) and paragraph (3) of the Investment Law, FDI activities are required in the form of direct investment (FDI) in the form of a Limited Liability Company established under Indonesian law and domiciled in the territory of Indonesia. Investment activities are carried out either by means of investors taking shares at the time of establishment, purchase of shares, or other ways determined by the Law.[16]

During 2014 to 2022, the amount of FDI activities in Indonesia has always increased. In 2020, the amount decreased from IDR423.1 trillion (2019) to IDR412.8 trillion (2020). However, in 2021, the amount increased again to IDR454.0 trillion. The development of Investment in 2014-2022 can be seen in the following table:[17]

Table 1. Development of Foreign Investment in 2014 - 2022

Description	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020[18]**	**2021[19]**	**2022**
FDI Realization (IDR Trillion)	307,0	365,9	396,6	430,5	392,7	423,1	412,8	454,0	654,4
FDI Target (IDR Trillion)	297,3	343,7	384,4	429,0	467,4	483,7	348,1	469,8	1.200 (Total target of investment)

Source: Investment Realization of FDI & DI in the fourth quarter (October-December) 2021

As shown in Table 1, there has been an upward trend in FDI activity in Indonesia. This trend must be anticipated to prevent it from being exploited by criminals as a means of concealing the proceeds of their illegal activities.

The rise in foreign direct investment (FDI) activities in Indonesia is proportional to the rise in the establishment of companies operating virtually during the pandemic. Consequently, it is necessary to study the potential for money laundering in the FDI scheme in Indonesia, especially in the case of foreign investors placing their assets in the form of virtual companies (companies whose activities are carried out virtually and not physical activities that can be

[15] Considering letter c, Law Number 25 of 2007 concerning Investment. (Indonesian: Menimbang huruf c, Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal).

[16] Article 5 paragraph (2) and paragraph (3) of Law Number 25 of 2007 concerning Investment (Indonesian: Pasal 5 ayat (2) dan ayat (3) Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal).

[17] Attachment to the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 2 of 2020 concerning the Strategic Plan of the Investment Coordinating Board for 2020-2024. (Indonesian: Lampiran Peraturan Badan Koordinasi Penanaman Modal Republik Indonesia Nomor 2 Tahun 2020 tentang Rencana Strategis Badan Koordinasi Penanaman Modal Tahun 2020-2024.)

[18] Badan Koordinasi Penanaman Modal (BKPM), Realization of DI-FDI Investment in the Fourth Quarter and January-December 2020 (Indonesian: *Realisasi Penanaman Modal PMDN-PMA Triwulan IV dan Januari-Desember Tahun 2020)* (Jakarta: BKPM, 2021), pp. 3.

[19] Badan Koordinasi Penanaman Modal (BKPM), Realization of DI-FDI Investment in the Fourth Quarter and October-December 2021 (Indonesian: *Realisasi Investasi PMA & PMDN Triwulan IV (Oktober-Desember) 2021)* (Jakarta: BKPM, 2022), pp. 5.

easily observed). The Association of Joint Office Service Entrepreneurs (PERJAKBI) has observed that the number of virtual offices in Indonesia has reached 170,000 units in 2020.[20] The increase in the number of virtual offices is in line with the growth of start-up companies.[21] This growth is consistent with the rise in the number of start-up companies. This observation aligns with the observations of Sandiaga Uno, the Minister of Tourism and Creative Economy from 2020 to 2024, who has highlighted the emergence of virtual offices as a trend during the pandemic.[22] The establishment of a virtual office enables business entities to operate without the necessity of physical premises, as stipulated in the deed of establishment.[23] This can potentially create a loophole for ML practices in PMA activities, which are utilised by criminals to launder proceeds of crime through virtual office companies.

It is important to identify the potential for money laundering in the PMA scheme, which can arise if foreign investors place their capital through nominees or other parties by establishing companies in the form of PMA or Domestic Investment (PMDN). Presidential Regulation No. 13/2018 on the Implementation of the Principle of Recognising Beneficial Owners in the context of Prevention and Eradication of ML and TPPT regulates the obligation of corporations to convey the beneficial owners of their companies.[24] The regulation also establishes the role of the Ministry of Law and Human Rights in verifying the authenticity of documents submitted by corporations when determining beneficial owners. However, the absence of technical regulations governing the Ministry of Law and Human Rights' verification of beneficial owner information submitted by corporations indicates a potential for the utilisation of nominee arrangements or nominee shareholders[25] in direct investment activities, including FDI activities.

Currently, there is ease in establishing and managing company licenses in Indonesia. The approach to managing business licenses regulated by Law Number 11 of 2020 concerning Job Creation uses the application of Risk-based Business Licensing.[26] The determination of the risk level and business scale rating is based on an assessment of the level of hazard and the potential

[20] Statement by Hadi Nainggolan (Secretary General of PERJAKBI) in Hariyanto, "Virtual Office is a New Trend for Beginner Businessmen" (Indonesian: Penyataan Hadi Nainggolan (Sekjen PERJAKBI) dalam Hariyanto, "*Virtual Office* jadi Tren Baru untuk Pebisnis Pemula") https://www.industry.co.id/read/75974/virtual-office-jadi-tren-baru-untuk-pebisnis-pemula, Accessed on 29 November 2024.

[21] *Ibid.*

[22] Sandiaga Uno's Statement in Carlos Roy Fajarta, "Virtual Office Becomes a Trend in the Pandemic Period" (Indonesian: Penyataan Sandiaga Uno dalam Carlos Roy Fajarta, "*Virtual Office* Jadi Tren di Masa Pandemi") https://www.beritasatu.com/ekonomi/690821/virtual-office-jadi-tren-di-masa-pandemi, Accessed on 29 November 2024.

[23] Surat Edaran Nomor 06/SE/2016 tentang Penerbitan Surat Keterangan Domisili dan Izin-Izin Lanjutannya bagi Pengguna *Virtual Office.*

[24] Article 3 paragraph (1) of Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners in the Context of the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes, which states that: "Every Corporation is obliged to designate a Beneficial Owner of the Corporation." (Indonesian: Pasal 3 ayat (1) Peraturan Presiden Nomor 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat dalam rangka Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang dan Tindak Pidana Pendanaan Terorisme, yang menyatakan bahwa: "Setiap Korporasi wajib menetapkan Pemilik Manfaat dari Korporasi.")

[25]see Iman Sjahputra Tunggal dan Amin Widjaja Tunggal, Building *Good Corporate Governance (GCG)* (Indonesian: *Membangun Good Corporate Governance (GCG))* (Jakarta: Harvarindo, 2002), pp. 12., stated that "Nominee shareholder or nominee shareholder is a shareholder who is nominated or borrowed a name. In other words, the nominee shareholder is a formal shareholder, and the actual shareholder is a material shareholder. (Indonesian: *Nominee shareholder* atau pemegang saham *nominee* merupakan pemegang saham yang dicalonkan atau pinjam nama. Dengan kata lain pemegang saham *nominee* merupakan pemegang saham formal dan pemegang saham sebenarnya merupakan pemegang saham material.)"

[26] Article 7 paragraph (1) of Law Number 11 of 2020 concerning Job Creation. (Indonesian: Pasal 7 ayat (1) Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja.)

for hazard occurrence, and based on this, the risk level and business scale rating of business activities are determined to be low, medium and high risk business activities.[27]

Low-risk business activities for granting business licenses are by providing a business identification number (Indonesian: *Nomor Induk Berusaha, NIB*). There is convenience in registering NIB, namely online through the Online Single Submission (OSS) system. Therefore, it is necessary to ensure that the data submitted in the business license application is correct. Do not let this convenience be utilized by criminals who are abroad to place the results of their crimes in Indonesia.

Research on the Crime of Money Laundering and Investment has been conducted by Hendra Kariaga (2018),[28] the aim is to see the effect of optimizing the eradication of CML with the growth of the national investment climate. The results of the research show that there is a correlation between the losses incurred from CML and bribery crimes in the private sector with investment growth. The more losses incurred from CML and bribery crimes will slow down growth, as well as worsen the image and national investment climate at a macro level. The recommendation of the study is that there is a need for revision and synchronization of legal arrangements in Indonesia, especially CML, Corruption Eradication Commission and Prosecutor's Office actions, in order to maintain the investment climate in Indonesia in general. The study did not examine the impact of the ease of regulation in investing, especially Foreign Direct Investment activities with the potential for misuse of investment activities as a CML medium.

This research examines whether with the ease of regulation in investing there is the potential for misuse of investment activities, especially Foreign Direct Investment activities in Indonesia as a medium for CML. This study aims to determine the potential for misuse of Foreign Direct Investment activities in Indonesia as a medium for CML and identify policy directions needed to prevent CML in Indonesia with the medium of Foreign Direct Investment activities.

Methods

This type of legal research was normative legal research conducted with the aim of finding the truth of coherence, namely whether legal rules were in accordance with legal norms and whether norms in the form of orders or prohibitions were in accordance with legal norms and whether norms in the form of orders or prohibitions were in accordance with legal principles, and whether a person's actions were in accordance with existing legal norms or legal principles.[29]

This research used a statutory approach and conceptual approach. This research aims to conduct a review of the laws and regulations as well as a conceptual review of the issues discussed.[30]

This research was prescriptive[31] which means prioritizing the identification of potential misuse of Foreign Direct Investment in Indonesia as a medium for CML. The next step is to analyze the policy direction needed to prevent CML in Indonesia through Foreign Direct Investment.

[27] Article 7 paragraph (7) of Law Number 11 of 2020 concerning Job Creation. (Indonesian: Pasal 7 ayat (7) Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja).

[28] Hendra Kariaga, "Relation of Investment Climate and Money Laundering Eradication in Indonesia," *European Journal Business and Management*, Volume 10, Nomor 21, 2018, pp. 124.

[29] Peter Mahmud Marzuki, Introduction to Legal Research (Indonesian: *Pengantar Penelitian Hukum)* (Jakarta: Prenadamedia Group, 2014), pp. 47.

[30] *Ibid*., pp. 93.

[31] Soerjono Soekanto dan Sri Mamudji, Normative Law Research: A Brief Goal (Indonesian: *Penelitian Hukum Normatif: Suatu Tujuan Singkat)* (Jakarta: Raja Grafindo Persada, 2001), pp. 5-6.

The Potential Misuse of Foreign Direct Investment Activities as a Medium for Money Laundering Crimes in Indonesia

Crime of Money laundering (CML) is essentially a criminal offense with the aim of hiding or disguising the proceeds of crime. One of the modes or typologies of CML based on the Asia Pacific Group on Money Laundering (APG) is the use of Shell Companies/Corporations. The use of shell companies is a mode of CML that is carried out by criminals by establishing a company formally based on applicable legal regulations. In practice, the company is not used to conduct business activities.[32] The establishment of the company is only intended to conduct fictitious transactions or store assets of the founder or others.[33] In addition, this mode also has the aim of obscuring the identity of the people who control the funds.[34]

In relation to investment activities, it is necessary to study the potential use of companies in Indonesia as a medium for money laundering from criminals located abroad. It is possible for criminals from abroad to use companies in Indonesia, both in the form of FDI and PMDN, to place the proceeds of their crimes, which ultimately make the company in Indonesia a shell company. If this happens, in addition to the use of the shell company / corporations mode, the international transfer mode is also used. The international transfer mode or the use of foreign bank accounts is basically a mode or technique of money laundering carried out by making electronic transfers of funds between financial institutions in other jurisdictions to avoid detection and seizure of assets.[35] It is important to be aware of the possibility of criminals from abroad to place their funds in Indonesia by making electronic transfers.[36]

Research by M. Fabricio Perez, Josef C. Brada and Zdenek Drabek (2011), that in five advanced transition economies namely the Czech Republic, Estonia, Hungary, Poland and Slovenia, there is a massive outflow of funds for the purpose of Foreign Direct Investment activities mainly in the service sector reaching 56% in 2001. At the end of 2000, in the Czech Republic, only 13% of the total outflow of funds for Foreign Direct Investment activities was related to the manufacturing sector, while 77% of the outflow of funds for Foreign Direct Investment activities was related to trade, financial services and other services.[37] An important motivation for the implementation of Foreign Direct Investment activities for the Investor country is to expand sales abroad and to drain non-labor costs, including distribution and

[32] Tim Riset dan Pengembangan PPATK, *Money Laundering Typology Based on Court Decisions on Money Laundering Cases in 2020 (Indonesian: Tipologi Pencucian Uang Berdasarkan Putusan Pengadilan atas Perkara Tindak Pidana Pencucian Uang Tahun 2020)* (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan, 2021), pp. 101.

[33] Aal Lumanul Hukum dan Abraham Yazdi Martin, "Money Laundering Crimes and Their Modes in the Perspective of Business Law (Indonesian: Tindak Pidana Pencucian Uang dan Modusnya dalam Perspektif Hukum Bisnis)," *Jurnal Hukum De'rechtsstaat*, Volume 1, Nomor 1, March 2015, pp. 42.

[34] Hanafi Amrani, *Money Laundering Criminal Law: The Development of the Anti-Money Laundering Regime and Its Implications for the Basic Principles of State Sovereignty, Criminal Jurisdiction, and Law Enforcement (Indonesian: Hukum Pidana Pencucian Uang: Perkembangan Rezim Anti Pencucian Uang dan Implikasinya terhadap Prinsip Dasar Kedaulatan Negara, Yuridiksi Pidana, dan Penegakan Hukum)*(Yogyakarta: UII Press, 2015), pp. 14.

[35]Bank Indonesia, *A Study of the Typology of Money Laundering, Terrorism Financing and Financing of the Proliferation of Weapons of Mass Destruction (Indonesian: Kajian Tipologi Tindak Pidana Pencucian Uang, Tindak Pidana Pendanaan Terorisme dan Pendanaan Proliferasi Senjata Pemusnah Massal)* (Jakarta: Bank Indonesia, 2021), pp. 53.

[36] I Ketut Sukawati Lanang Putra Perbawa, "Money Laundering in the Indonesian Banking System (Indonesian: Tindak Pidana Pencucian Uang dalam Sistem Perbankan Indonesia)," *Jurnal Advokasi Unissula*, Volume 5, No. 1 Maret 2015, pp. 47-48.

[37] K. Kolotay, "Outward FDI from Central and East European Economics Countries", *Economic of Planning*, Volume 37, 2004, pp. 141-172.

marketing costs in foreign countries. Although there is a possibility that Foreign Direct Investment activities are carried out to facilitate capital flight and money laundering.[38]

Schneider and Windischabauer say the main source of money laundered by countries in transition comes from the illicit drug trade, where they report that the illicit drug trade is equivalent to nine percent of the world's recorded trade. In addition, they report that in Austria and Germany, about 40% of money laundered is linked to drug trafficking, with the rest coming from illegal arms shipments (20%), economic crimes (15%), theft (10%), prostitution and gambling (10%) and violent crimes such as armed robbery and kidnapping (5%).[39]

The results of the study show that there is a tendency for countries that are experiencing economic transactions to commit acts of money laundering through Foreign Direct Investment activities to countries that have weaknesses in regulations that regulate the anti-money laundering regime in investment activities. Therefore, it is necessary to study in depth the current regulations in Indonesia for regulations that regulate investment or investment activities. Is there still a legal loophole in the legal regulations in Indonesia that can be used by criminals who are abroad to place their assets in the proceeds of their crimes in Indonesia.

In relation to the potential for CML in Foreign Direct Investment activities in Indonesia, several provisions that currently exist have basically been made in order to prevent the potential placement of assets proceeds of crime by foreign parties. The first is that there is a provision that requires FDI activities in the form of a Limited Liability Company (Indonesian: *Perseroan Terbatas, PT*). The rules that have been prepared are in the form of:

1. Provisions that require Foreign Investment in the form of a Limited Liability Company (PT)

   Article 5 paragraph (2) of the Investment Law states that FDI activities are mandatory in the form of a limited liability company based on Indonesian law and domiciled in Indonesian territory. This is different from Domestic Investment (DI) activities in Article 5 paragraph (1) of the Investment Law, which can be in the form of a legal entity, unincorporated person, or individual business in accordance with the provisions of laws and regulations.
2. Foreign Investment that can only carry out activities in Large Enterprises with an investment value of more than IDR10 Million

   Based on the provisions of Article 7 paragraph (1) of Presidential Regulation Number 10 of 2021 concerning the Investment Business Sector (hereinafter referred to as the "Presidential Regulation on the Investment Business Sector"), it can be seen that there is a minimum capital limit for a FDI activity, namely the minimum capital is IDR10 Million.

3. There is a prohibition on the practice of "name-borrowing shares" in Investment activities

   Referring to the provisions of Article 33 of the Investment Law, it can be seen that both FDI and DI activities in the form of Limited Liability Companies prohibit the practice of owning shares in the name of others. Considering that the form of FDI business entity must be in the form of a Limited Liability Company, the provisions of Article 33 of the Investment Law have indirectly prohibited the practice of owning shares in the name of others or the practice of "borrowing shares" in FDI activities.[40]

[38] M. Fabricio Perez, Josef C. Brada, Zdenek Drabek, "Illicit Money Flows as Motives for FDI: Evidence from a Sample of Transition Economies,"*op.cit.*, hlm. 15-16. Lihat juga A. Jaklic and M. Svetlicic, *Enhanced Transition Through Outward Internationalization,* (Burlington: Ashgate Publishing, 2003).

[39] Friedrich Schneider and Ursula Windischbauer, "Money Laundering Some Facts,"*European Journal of Law and Economics,* 2008, pp. 387-404.

[40] Kevin Pahlevi, Paramita Prananingtyas, Sartika Nanda Lestari, " Juridical Analysis of the Use of Nominee Arrangement Shares Reviewed from Laws and Regulations in Indonesia (Indonesian: Analisis Yuridis Terhadap Penggunaan Saham Pinjam Nama (*Nominee Arrangement*) ditinjau dari Peraturan Perundang-Undangan di Indonesia)," *Diponegoro Law Journal,* Volume 6, No. 1, 2017, pp. 12.

In addition to being prohibited in the Investment Law, related to practice, name-lending shares are also prohibited in the Limited Liability Company Law. Based on the provisions of Article 48 paragraph (1) of the Limited Liability Company Law, it has expressly stated that "The Company's shares are issued in the name of the owner."[41] With this provision, it can be seen that both the Limited Liability Company Law and the Investment Law have prohibited the practice of name-borrowing shares.

In addition, Presidential Regulation Number 10 of 2021 has also regulated the existence of restrictions on foreign investment activities, even for certain business fields it is required to be 100% owned by domestic investors, indicating that the existing regulations are very clear limiting share ownership for foreign shareholders for certain fields or completely closed to foreigners.[42]

Provisions in the field of investment that have limited the establishment of Foreign Investment Companies or FDI, but FDI remains a vulnerable mechanism to be abused as a CML medium because:[43]

1. Can accommodate the transfer of funds from crime in a significant amount.
2. The transfer of funds is legal/official because Foreign Direct Investment business activities obtain permission from the local government.
3. The transfer of funds does not only occur in the initial process of establishment through capital participation, but also from Foreign Direct Investment business transactions.

Foreign Direct Investment as a medium to transfer the proceeds of crime, the crime funds that are transferred will be as if they were legal funds because the transfer has obtained permission from the authorized agencies. The perpetrator then uses the use of nominee mode when moving the assets of the crime. The mode of use of nominee is carried out by criminals by using other parties as a medium for money laundering. Some examples of modes or typologies of use of nominee carried out by Criminals such as using other parties' accounts, using fake identities or purchasing assets on behalf of other parties.[44] In addition, another example of the use of nominee mode is to use another person as the legal owner in a corporation, but the perpetrator of the crime as the controller of the corporation is outside the corporate organizational structure, which is then wrapped in a nominee agreement.

The use of other people as corporate controllers can then be divided into two, namely nominee shareholders and nominee directors. Nominee shareholders themselves can be interpreted as members of the company who hold shares in their name for the benefit of others.[45]

[41] Article 48 paragraph (1) of Law Number 40 of 2007 concerning Limited Liability Companies. (Indonesian: Pasal 48 ayat (1) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas).

[42] Kevin Pahlevi, Paramita Prananingtyas, Sartika Nanda Lestari, "(Indonesian: Juridical Analysis of the Use of Name borrowing Shares., *op.cit*., pp. 10.

[43] Iman Prihandono, "Some Notes for the Results of the Legal Study on the Abuse of FDI as a Means of Anti-Corruption (Indonesian: Beberapa Catatan untuk Hasil Kajian Hukum tentang Penyalahgunaan FDI sebagai Sarana TPPU)", presented at the Legal Review FGD 13 October 2022.

[44] Tim Riset dan Pengembangan PPATK, *Tipologi Pencucian Uang Berdasarkan Putusan Pengadilan atas Perkara Tindak Pidana Pencucian Uang Tahun 2020 (Indonesian: Tipologi Pencucian Uang Berdasarkan Putusan Pengadilan atas Perkara Tindak Pidana Pencucian Uang Tahun 2020)* (Jakarta: Pusat Pelaporan dan Analisis Transaksi Keuangan, 2021), pp. 14-15.

[45] Gunawan Widjaja, " Nominee Shareholders in the Perspective of the New Law and the New Investment Law and Its Problems in Practice (Indonesian: *Nominee Shareholders* dalam Perspektif UUPT Baru dan UU Penanaman Modal Baru Serta Permasalahannya Dalam Praktik)" *Jurnal Hukum dan Pasar Modal*, Volume 3, Edisi 4 Agustus-Desember 2008, pp. 43, in Lucky Suryo Wicaksono, "Legal Certainty of Nominee Agreement for Limited Liability Company Share Ownership" Ius Quia Iustum Law Journal (Indonesian: Kepastian Hukum Nominee Agreement Kepemilikan Saham Perseroan Terbatas" *Jurnal Hukum Ius Quia Iustum)*, Volume 23, January 2016, pp. 47-48.

Nominee shareholders or the practice of borrowing shares under this name are then prohibited both in the Investment Law and in the Limited Liability Company Law. Nominee directors can be interpreted as people appointed by the company to serve passively in the company. The definition of nominee indicates that the role of the Director is a non-executive role in the company, where the role of the Director is only intended to meet the legal requirements of the company's establishment.[46]

Several CML cases in Indonesia that use the use of nominee mode, in this case nominee shareholders and nominee directors, such as the case with the defendant Nazaruddin and the case with the defendant Robert Tantular.[47] Although in Indonesia itself the practice of borrowing shares is prohibited, there are no clear legal sanctions in terms of violations of the prohibition on the practice of borrowing shares. Therefore, it is necessary to analyze in more depth, especially in terms of the effectiveness of the current prohibition on the practice of lending shares. It is necessary to then study whether the prohibition of the practice of lending shares in both the Investment Law and the Limited Liability Company Law still allows the potential for nominee shareholders in the activities of Foreign Capital Investors. In addition, it is also necessary to study the potential for the entry of proceeds of crime originating from abroad in the Foreign Direct Investment activity.

Analysis of Potential Nominee Shareholders in Foreign Direct Investment Activities in Indonesia

In the event that it is proven that there is a practice of nominee shareholders or nominee agreements, in accordance with the provisions of Article 33 paragraph (2) of the Investment Law, the agreement and/or statement is declared null and void. This is because in accordance with the provisions of Article 1320 of the Civil Code, there are several conditions for the validity of the agreement.

The first and second conditions, namely "agreement and proficiency", are subjective conditions of the agreement, because they concern the parties to the agreement. The third and fourth conditions, namely "a certain subject matter and a cause that is not forbidden" are referred to as the objective conditions of the agreement because they concern the object of the agreement. In the event that the first and second conditions are not met, the consequences of the agreement can be canceled. An annulable agreement means that either party can apply to the Court to cancel the agreed Agreement. If the parties do not object, the agreement is still considered valid. If the third and fourth conditions are not met, the agreement is null and void. The nullity of the law here means that the agreement was originally considered non-existent.[48]

In the event that there is a nominee shareholders agreement, the agreement can then be declared "null and void" because it violates one of the conditions of the validity of the agreement, which is an unprohibited cause.[49] The existence of a nominee shareholders agreement itself is prohibited in both the provisions of Article 33 paragraph (1) of the Investment Law and Article 48 paragraph (1) of the Limited Liability Company Law. Therefore, in order to prevent the potential for nominee shareholders in investment activities,

[46] Yang Chik Adam, "Corporate Governance: Nominee Director The Gatekeeper" *Social and Management Research Journal*, Volume 12, No 2, 2015, pp. 93.

[47] Syahrijal Syakur, *The Urgency of Regulating Nominee Agreements in Indonesia to Prevent Money Laundering Crimes (Indonesian: Urgensi Pengaturan Nominee Agreement di Indonesia untuk Mencegah Tindak Pidana Pencucian Uang)* (Jakarta: PPATK, 2020), pp. 37-52.

[48] J. Satrio, *The Law of Covenant, the Covenant Born of Covenant (Indonesian: Hukum Perikatan, Perikatan yang Lahir dari Perjanjian)* (Bandung: Citra Aditya Bakti, 1995), pp. 167.

[49] Lucky Suryo Wicaksono, "Legal Certainty of Nominee Agreement for Limited Liability Company Share Ownership" Ius Quia Iustum Law Journal (Indonesian: Kepastian Hukum *Nominee Agreement* Kepemilikan Saham Perseroan Terbatas" *Jurnal Hukum Ius Quia Iustum)*, Volume 23, January 2016, pp. 45.

especially in FDI activities, it is necessary for the identification and verification process of shareholders of a Limited Liability Company carried out by an agency that has the authority in the process of establishing or licensing a Limited Liability Company.

Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes (hereinafter referred to as the "Presidential Regulation on Beneficial Owners") which provides obligations for Corporations, including FDI, to determine or identify beneficial owners, is expected to prevent corporations from being used as a medium either directly or indirectly by criminals to place the proceeds of CML, terrorism financing or other criminal acts.[50] The Corporation's obligation has been regulated to convey the beneficial owner, but there is still a possibility for the Corporation not to convey the actual Beneficial Owner.

Presidential Regulation Number 13 of 2018 can be optimally implemented, so it is possible to have two alternative solutions, namely:

1. The first alternative solution is the regulation of a nominee agreement in the provisions regarding Investment. The arrangement of the nominee agreement can be in the form of:
   a) Prohibition of the practice of nominee agreements for DI and FDI with certain conditions; and
   b) Permission to have a special nominee agreement for FDI whose shares can be controlled 100% by foreign investors on the condition that the nominee agreement must be stated in the form of a written agreement.

   With the exception of the prohibition of nominee agreements, it is hoped that Corporations, especially FDI, will be able to convey information about the actual Beneficial Owner as required in the Presidential Regulation on Beneficial Owners. Where the nominee agreement must then be outlined in the form of a written agreement so that it can then be monitored and supervised by the Ministries/Institutions that have the authority in the establishment of FDI and FDI licensing; or
2. The second alternative solution, in the event that the nominee agreement remains to be banned, it is necessary to optimize the authority of the Ministry of Law and Human Rights in identifying or determining other beneficial owners of FDI to be able to prevent the potential for nominee shareholders in FDI. Article 13 paragraph (1) of the Presidential Regulation on Beneficial Owners states that in addition to the Beneficial Owners that have been determined by the Corporation as referred to in Article 3,[51] Authorized Agencies in appointing other Beneficial Owners. The determination of Other Beneficial Owners by Authorized Agencies is carried out on the basis of the Authorized Agency's assessment which is sourced from the results of the Authorized Agency's audit of the Corporation, information on government agencies or private institutions or certain professions that manage or contain Beneficial Owner information, and/or other information that is

[50] Navey Varida Ariani, "*Beneficial Owner*: Regarding Beneficial Owners in Corporate Crimes (Indonesian: Mengenai Pemilik Manfaat dalam Tindak Pidana Korporasi)" *Jurnal Penelitian Hukum De Jure Balitbangkumham*, Volume 22, No 2, 2022, pp. 71.

[51] Article 13 paragraph (1) of Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of Prevention and Eradication of Money Laundering and Terrorism Financing Crimes (Indonesian: Pasal 13 ayat (1) Peraturan Presiden Nomor 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme).

accounted for for its truthfulness.[52] In case of need, the Authorized Agency can also carry out verification.[53]

The nature of nominee shareholders remains prohibited and there are no exceptions in accordance with the provisions of Article 33 paragraph (1) of the Investment Law, so there is a need to optimize the duties and functions of the Ministry of Law and Human Rights in verifying the authenticity of documents submitted by the Corporation not only when the Corporation determines the Beneficial Owner but also when the Company is Incorporation. Even though the mechanism for submitting the Deed of Establishment document containing the shareholder profile, details of the number of shares, the nominal value of the shares and the submission of proof of capital deposit documents in the process of establishing a PT in the Regulation of the Minister of Law and Human Rights Number 21 of 2021 concerning Terms and Procedures for Registration of Establishment, Amendment, and Dissolution of Legal Entities of Limited Liability Companies is still required for further verification by the Ministry of Law and Human Rights on the authenticity of the document to determine the potential for the existence or absence of nominee shareholders in the establishment of PT. The Ministry of Law and Human Rights may collaborate with the Indonesian Financial Transaction Reports and Analysis Center (INTRAC) to verify the suitability of shareholder profiles (along with transaction profiles) and proof of capital deposits submitted by Limited Liability Companies.

Article 90 paragraph (1) of the CML Law (Indonesian: TPPU) states that in carrying out the prevention and eradication of CML, INTRAC can cooperate in exchanging information, both requesting, providing and receiving information both nationally and internationally, including to institutions related to the prevention and eradication of CML or other criminal acts related to CML. Then referring to the provisions of Article 26 paragraph (1) of INTRAC Regulation Number 15 of 2021 concerning Procedures for Requesting Information to INTRAC that requests for information by other institutions can be made for the purpose of investigative audits or the prevention of actions that can endanger national security.

To prevent the potential for nominee shareholders in the establishment of Limited Liability Companies, including FDI, it is necessary to prepare technical regulations that regulate how the Ministry of Law and Human Rights carries out the verification process for the suitability of shareholder profiles at the time of company establishment. The Technical Regulation can technically regulate how the Ministry of Law and Human Rights carries out verification of the corporation concerned to determine whether there are Other Shareholders of a PT at the time of establishment. To determine the authenticity of the shareholder profile, the Ministry of Law and Human Rights can collaborate with INTRAC to verify the Shareholders' Account, PT FDI Account, and the Authenticity of the Proof of Capital Deposit Slip submitted by the Corporation at the time of Company Incorporation. The basis for information exchange is to still refer to the provisions as stipulated in Article 90 paragraph (1) of the CML Law and the INTRAC Regulation on Information Request Procedures.

The verification aims to find out whether there are nominee shareholders in the establishment of a PT, especially PT FDI. In the event that there are nominee shareholders, the

[52] Article 13 paragraph (3) of Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes (Indonesian: Pasal 13 ayat (3) Peraturan Presiden Nomor 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme).
[53] Article 17 paragraph (2) of Presidential Regulation Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of Corporations in the Context of the Prevention and Eradication of Money Laundering and Terrorism Financing Crimes (Indonesian: Pasal 17 ayat (2) Peraturan Presiden Nomor 13 Tahun 2018 tentang Penerapan Prinsip Mengenali Pemilik Manfaat Dari Korporasi Dalam Rangka Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang Dan Tindak Pidana Pendanaan Terorisme).

consequence is that the Ministry of Law and Human Rights will cancel the Nominee Agreement on the basis of not having a halal and valid cause.[54] This technical regulation can minimize the potential nominee shareholders in the establishment of FDIs.

Then the question is whether the verification process of proof of shareholder deposits and shareholder accounts in the process of establishing PT. The FDI violates the principle of Fair Equitable Treatment in international law. Fair Equitable Treatment (FET) is one of the main principles in international investment law, where the host state is obliged to ensure fair and equal treatment of investments made by foreign investors. In the event of unfair treatment, the investor can file a lawsuit with the assumption and justification that there has been unfair law enforcement for the investor so that it is detrimental to the investor.[55] Apabila kebijakan mengenai verifikasi pemegang saham dan bukti setor modal tersebut diberlakukan secara adil bagi semua investor asing dari negara manapun maka hal ini tidak dapat dikatakan sebagai pelanggaran terhadap prinsip FET.

The obligations of States to apply the principles of transparency and beneficial ownership of legal entities based on the 24 FATF recommendations include:[56]

1. States should assess the risk of misuse of legal entities for money laundering or terrorist financing, and take steps to prevent their misuse.
2. States must ensure that there is adequate, accurate and up-to-date information on beneficial ownership and control of legal entities that can be obtained or accessed quickly and efficiently by the competent authorities, either through a list of beneficial ownership or alternative mechanisms.
3. States must not allow legal entities to issue shares in a new designation or warrant of shares in designation, and take steps to prevent the misuse of shares in a designation or a warrant for designation.
4. Countries must take effective measures to ensure that Nominee Shareholders and Nominee Directors are not misused for money laundering or terrorist financing.
5. Countries should consider facilitating access to information on ownership, benefits and control by financial institutions Designated Non-Financial Businesses and Professions (DNFBPs) that implement the requirements set out in Recommendations 10 and 22.

Shareholder verification policy and proof of capital deposit to PT. The PMA has been in line with FATF Recommendation 24. This is because with this verification, it has provided guidelines for the state to ensure the accuracy of information about shareholders (including beneficial owners) submitted by legal entities and to be able to identify the existence of CML through investment media through a nominee shareholder scheme.

In addition to examining the potential of nominee shareholders at the time of establishment of a PT, especially PT. FDI, then it is also necessary to study the potential of nominee shareholders in terms of FDI licensing. Regarding FDI Licensing, that currently FDI Licensing is carried out through the Online Single Submission (OSS) System. That the OSS system is an integrated electronic system managed and organized by the OSS Institution for the implementation of Risk-Based Business Licensing.57 The flow of the licensing process through OSS is shown in Figure 1:

[54] David Kairupan, *Legal Aspects of Foreign Modal Planting in Indonesia (Indonesian: Aspek Hukum Penanaman Modaal Asing di Indonesia*)(Jakarta: Kencana, 2013), pp. 94.

[55] Hesti Widyaningrum, "The Existence of Corruption Eradication in Indonesia's International Investment Treaties (Indonesian: Eksistensi Pemberantasan Korupsi dalam Perjanjian Investasi Internasional Indonesia)" *Jurnal Integritas*, Volume 4, No 2, December 2018, pp. 66.

[56] *FATF Recommendation* 24.

[57] Article 1 number 12 of the Investment Coordinating Board Regulation Number 3 of 2021 concerning the Electronically Integrated Risk-Based Business Licensing System. (Indonesian: Pasal 1 angka 12 Peraturan

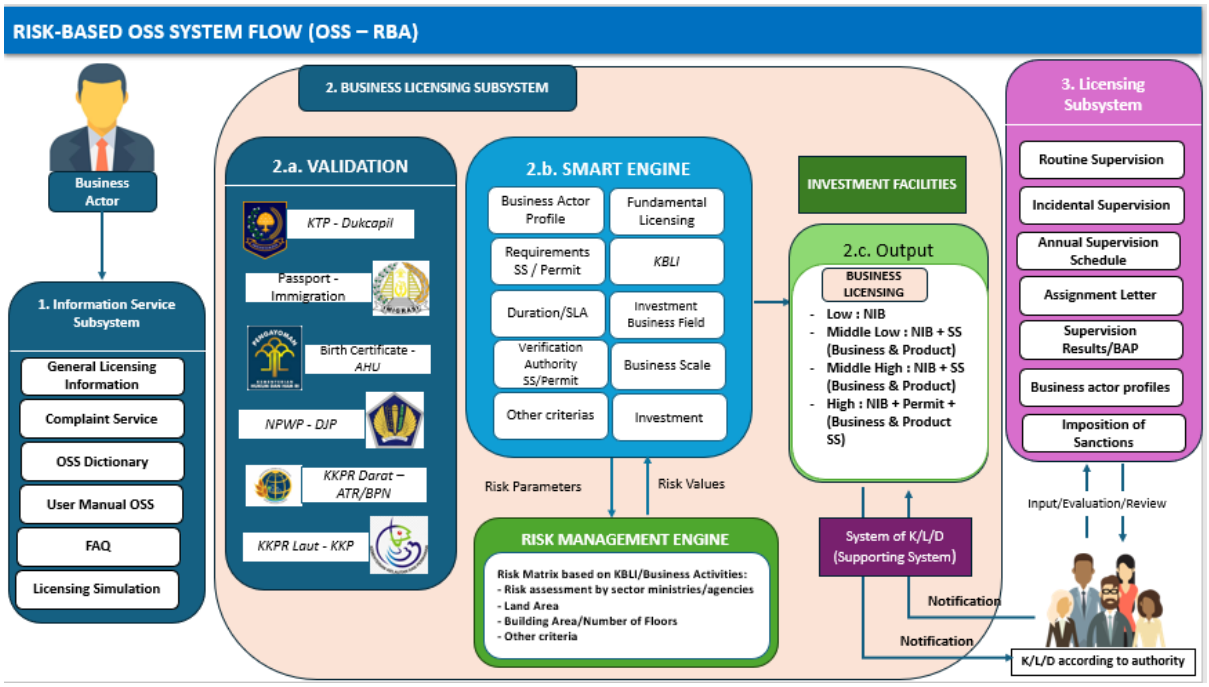

Figure 1. Licensing Process Flow through OSS [58]

The licensing process according to Figure 1 starts from data input to the output of licensing and supervision is carried out through the OSS system. The OSS system will validate after the Business Actor inputs the data, the OSS system validates the data entered by the business actor based on the data of the connected Ministries/Institutions such as KTP, Passport, Deed, NPWP, and other business actor data. One of the data validated for Business Actors in the form of PT is the shareholder profile of the Business Actor which will be validated based on the data of the Deed of Incorporation at the Directorate General of General Legal Administration of the Ministry of Law and Human Rights. Based on the author's interview with Representatives of Officials/Staff at the Directorate General of General Legal Administration (Indonesian: *Ditjen AHU*) of the Ministry of Law and Human Rights, that the data of the Directorate General of AHU that is integrated in the OSS system is the data of the Deed of Incorporation which also contains the data of the company's shareholders, and not the actual Beneficial Owner data of the Corporation, so that the data that can be validated is the data of the Shareholders based on the Deed of Establishment and not the Beneficial Owner.[59]

The absence of a shareholder data validation process based on Beneficial Owner data in the FDI licensing process through OSS, it can be a factor of vulnerability or potential nominee shareholders in investment activities (including Foreign Direct Investment activities). Therefore, it is possible to have a synergy between the Ministry of Investment/BKPM and the Ministry of Law and Human Rights (as the Beneficial Owner of the Data) in validating the Beneficial Owner Data of a Corporation.

Badan Koordinasi Penanaman Modal Nomor 3 Tahun 2021 tentang Sistem Perizinan Berusaha Berbasis Risiko Terintegrasi Secara Elektronik).

[58] Presentation of the Investment Coordinating Board/Ministry of Investment on "Risk-Based Business Licensing Mechanism" (Indonesian: Paparan Badan Koordinasi Penanaman Modal/Kementerian Investasi mengenai “Mekanisme Perizinan Berusaha Berbasis Risiko”).

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Analysis of the Potential Entry of Proceed of Crime from Abroad through Foreign Direct Investment Activities

Supervision related to the flow of funds from abroad to Indonesia has been regulated in the provisions of Article 23 paragraph (1) letter c of Law Number 8 of 2010 concerning the Prevention and Enforcement of Money Laundering Crimes. Financial Service Providers (Indonesian: PJK) in Article 17 paragraph (1) letter a of Law Number 8 of 2010 are obliged to submit reports on Financial Transactions of fund transfers from and abroad to INTRAC in addition to submitting LTKM and LTKT.[60]

Article 8 of PPATK Regulation Number 1 of 2021 concerning Procedures for Submitting Reports on Suspicious Financial Transactions, Cash Financial Transactions, and Financial Transactions of Fund Transfers From and Abroad through the GOAML Application for Financial Service Providers, that Financial Transactions of Fund Transfers From and Out of Abroad include Orders for Transfer of Funds from abroad; and Overseas Fund Transfer Order.[61] PJK that is required to submit reports on Financial Transactions of Fund Transfers from and to Abroad to INTRAC is a PJK that provides Financial Transaction Services for Fund Transfers to and from Abroad including remitency services which include banks and business entities incorporated in Indonesia other than banks that are the Originating Sender Operator for financial transactions of fund transfers abroad; and Banks and business entities incorporated in Indonesia that are not banks that are the Organizers of the Final Beneficiary for financial transactions of fund transfers from abroad. Seeing that there are regulations that regulate the supervision of financial transaction flows from and abroad in the context of preventing and eradicating CML, it is necessary to see whether these provisions can then be used as a tool in preventing the entry of proceeds of crime in foreign investment activities.

An example of an illustration of a case where the proceeding of crime can be possible to enter when establishing a Foreign Investment PT is as follows:
Mr. X is a Foreign Investor who owns a narcotics business in his home country. Mr. X came to Indonesia to launder money from his narcotics business by building a courier business. Based on Presidential Regulation Number 49 of 2021, the courier business is an open business field with a maximum foreign capital requirement of 49%. Therefore, Mr. X entered into a nominee agreement with Ms. Y who is an Indonesian citizen so that he could invest 70% in his courier business. Ms. Y, who previously also had experience in the business world, also invested her capital in the courier business by 5%. Because the foreign capital that can be invested is a maximum of 49%, Mr. X on behalf of part of his capital is 22% in the name of Ms. Y, so that at the time of registering the PT, Mr. X's written capital is 48% and Ms. Y is 27%. In the nominee agreement that has been agreed, Ms. Y will get a fee as a nominee of 2% of the profit obtained by Mr. X from the total original profit which Mr. X should get 70%. So, Ms. Y will get a profit share of 7% of the total profit of the courier business, while Mr. X will get 68% of the total profit of the courier business. The results obtained from 68% of the total profit of the courier business were also used by Mr. X to expand his narcotics business in his home country. An example of an illustration can be seen in Figure 2.

[60] Article 23 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. (Indonesian: Pasal 23 ayat (1) Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang).

[61] Article 8 of PPATK Regulation Number 1 of 2021 concerning Procedures for Submitting Reports on Suspicious Financial Transactions, Cash Financial Transactions, and Financial Transactions for Fund Transfers from and Abroad through the GOAML Application for Financial Service Providers. (Indonesian: Pasal 8 Peraturan PPATK Nomor 1 Tahun 2021 tentang Tata Cara Penyampaian Laporan Transaksi Keuangan Mencurigakan, Transaksi Keuangan Tunai, dan Transaksi Keuangan Transfer Dana dari dan ke Luar Negeri melalui Aplikasi GOAML Bagi Penyedia Jasa Keuangan).

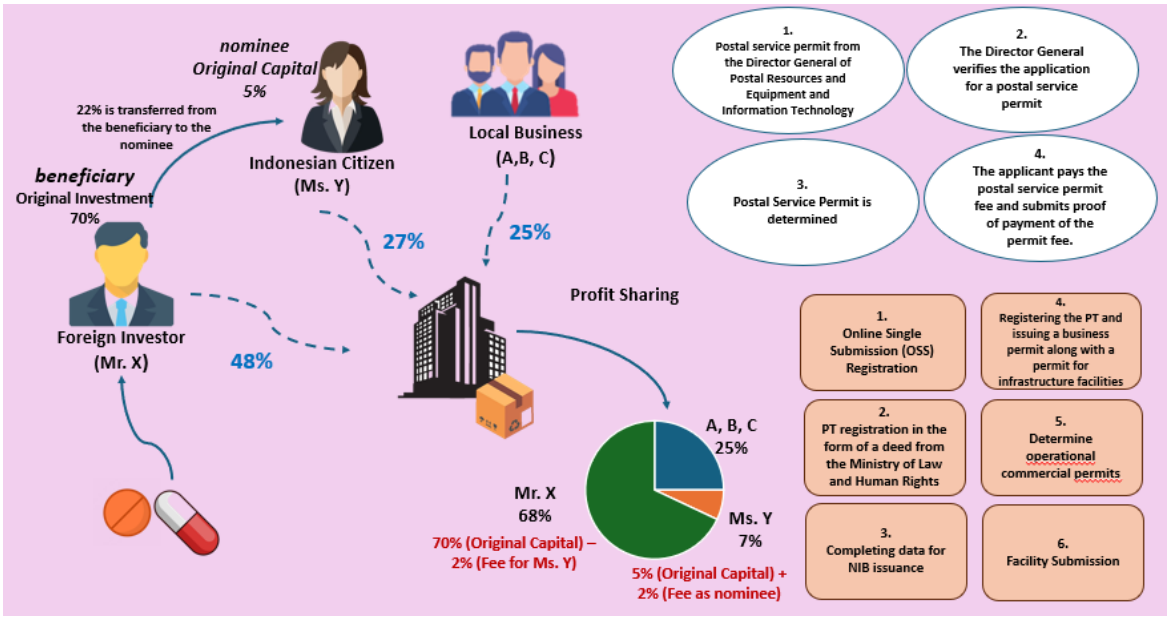

Figure 2. Illustration of a Case where the Proceeding of Crime can be Included in the Criteria for PT Penanaman Modal Foreign's Petition

Figure 2 shows that the potential for misuse of FDI as a TPPU medium can occur with a nominee scheme. Where Money Laundering Perpetrators place assets resulting from crime by using the names of other parties as shareholders (nominee shareholders). This practice, in addition to being aimed at concealing or disguising assets resulting from crime, can also be aimed at circumventing the restrictions in the provisions of the Negative Investment List. The Negative Investment List itself is a list of business sectors compiled by the Government that provides information for investors regarding closed and open business fields with requirements in the field of investment. Regarding the regulations related to the Negative Investment List contained in Presidential Regulation (Perpres) No. 44 of 2016 concerning the List of Closed Business Fields and Open Business Fields with Requirements in the Investment Sector.

To prevent the entry of proceeds of crime in Indonesia through the nominee shareholders scheme, verification of proof of capital deposit submitted by Limited Liability Companies (including FDI) is required. That there is a need for verification of proof of capital deposit submitted by Limited Liability Companies (including FDI) in order to verify the authenticity of documents submitted by the Corporation and to track the legality of the flow of funds used as company capital. Where to verify the proof of capital deposit document, it is possible to have synergy between the Ministry of Law and Human Rights and the PJK Reporting Party or with INTRAC.

In addition to looking at the potential for the inclusion of proceeds of crime in the establishment of a PT, it is also necessary to look at the potential for the inclusion of proceeds of crime in the activities of the FDI PT. The Ministry of Investment/BKPM is responsible for the supervision of PT. FDI. The Ministry of Investment/BKPM carries out Routine Supervision and Incidental Supervision activities. Routine supervision is carried out through Business Actor Reports and Field Inspections.[62] Incidental supervision is carried out due to certain circumstances such as public complaints, complaints and/or needs of business actors,

[62] Article 29 paragraph (1) of Investment Coordinating Board Regulation Number 5 of 2021 concerning Guidelines and Procedures for Supervision of Risk-Based Business Licensing. (Indonesian: Pasal 29 ayat (1) Peraturan Badan Koordinasi Penanaman Modal Nomor 5 Tahun 2021 tentang Pedoman dan Tata Cara Pengawasan Perizinan Berusaha Berbasis Risiko).

indications that business actors are carrying out activities not in accordance with laws and regulations, and very urgent needs.[63]

Periodic supervision in the form of submission of investment activity reports (Indonesian: LKPM) and inspections have been carried out by the Ministry of Investment/BKPM on PT FDI to check the suitability of the data and information submitted, it is necessary to study whether existing regulations can prevent the entry of proceeds of crime in investment activities. The submission of LKPM and verification by the Ministry of Investment/BKPM on the LKPM submitted by PT. FDI, it is necessary to know more about how BKPM methods or mechanisms in verifying the data submitted by PT. FDI.

The results of an interview with the Directorate of Non-Industrial Business Licensing Services of the Ministry of Investment/BKPM, that when Business Actors attach LKPM, further checks will be carried out by the BKPM Implementation Control Unit, namely checking the authenticity of documents, investment realization to the business fields run are appropriate or not in the system. That the supervision also involves Ministries/Institutions and Investment Offices in the Regions. If it is proven that there are Business Actors who upload false data or inappropriate data, it is possible to impose sanctions on Business Actors in accordance with BKPM Regulation Number 5 of 2021.[64]

The results of interviews and regulations related to licensing supervision, it can be seen that although existing regulations have comprehensively regulated the supervision of investment activities (both FDI and DI) starting from the obligation to submit LKPM by Business Actors, LKPM Verification by authorized agencies, and Field Inspections to check data suitability, so far no tools or systems have been built to verify the suitability of data between LKPM submitted by Business Actors and transactions carried out by Business Actors. In order to detect the existence of CML in Foreign Direct Investment activities, Financial Service Providers (PJK) need to be granted access rights to LKPM submitted by Business Actors to BKPM which can be a reference for PJK in compiling Suspicious Financial Transaction Reports (Indonesian: LTKM) that will be submitted by PJK to INTRAC. Referring to the provisions of Article 1 number 5 of the CML Law, that one form of Suspicious Financial Transaction (Indonesian: TKM) is a Financial Transaction that deviates from the profile, characteristics, or habits of the Transaction pattern of the Service User concerned.[65] As material for PJK to determine whether transactions related to Foreign Direct Investment activities deviate from the profile, characteristics or patterns of companies that carry out Foreign Direct Investment activities, in addition to data on fund transfer transactions from and abroad, PJK also needs data on the development or realization of investment activities of business actors, including the obstacles faced by investors contained in the Company's LKPM that are submitted periodically to BKPM and the Regional Government.[66] With the LKPM data that can be

[63] Article 30 paragraph (1) of Investment Coordinating Board Regulation Number 5 of 2021 concerning Guidelines and Procedures for Supervision of Risk-Based Business Licensing. (Indonesian: Pasal 30 ayat (1) Peraturan Badan Koordinasi Penanaman Modal Nomor 5 Tahun 2021 tentang Pedoman dan Tata Cara Pengawasan Perizinan Berusaha Berbasis Risiko).

[64] Interview with a Representative of the Directorate of Non-Industrial Business Licensing Services of the Ministry of Investment/BKPM, August 15, 2022. (Indonesian: Wawancara dengan Perwakilan Direktorat Pelayanan Perizinan Berusaha Non Industri Kementerian Investasi/BKPM, tanggal 15 Agustus 2022).

[65] Article 1 number 5 of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (Indonesian: Pasal 1 angka 5 Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang).

[66] Boy Andreas Damanik, "Juridical Review of the Obligation to Report Investment Activities (LKPM) Online based on the Regulation of the Investment Coordinating Board of the Republic of Indonesia Number 17 of 2015 (Indonesian: Tinjauan Yuridis Kewajiban Laporan Kegiatan Penanaman Modal (LKPM) secara Online berdasarkan Perka Badan Koordinasi Penanaman Modal Republik Indonesia Nomor 17 Tahun 2015)" *Jurnal Law of Deli Sumatera*, Volume 2, No 1, Desember 2022, hlm. 7.

accessed by PJK, it can help PJK in identifying whether the transaction is LTKM and then submitted to INTRAC.

In addition to CHD, INTRAC as a focal point for the prevention and eradication of CML, can also cooperate in exchanging information in the form of requests for LKPM data to BKPM for the purpose of preparing the results of analysis and examination referring to the provisions of Article 90 paragraph (1) letter d of the CML Law. The results of the analysis and examination are the final product of INTRAC, namely the results of the analysis of LTKM and other reports obtained by INTRAC from the Reporter[67] which was then forwarded by INTRAC to investigators for investigation.

Based on the provisions of Article 90 paragraph (1) letter d of the CML Law, in carrying out the prevention and eradication of CML, INTRAC can cooperate in the form of requests, provisions, and receipts of information with other institutions related to the prevention and eradication of CML or other criminal acts related to CML.[68] As for what is meant by other institutions based on Article 26 paragraph (1) of INTRAC Regulation Number 15 of 2021 concerning Procedures for Requesting Information to INTRAC, institutions that are financed or whose finances are sourced from state finances.[69] Based on the provisions of Article 26 paragraph (1) of the INTRAC Regulation on Information Request Procedures, BKPM is included in the definition of other institutions.

Based on the results of the discussion as mentioned above, in order to detect the potential for proceeding of crime originating from abroad through Foreign Direct Investment activities, there are 2 (two) ways that can be done. The first is to provide access rights for PJK to be able to access the Investment Activity Report (Indonesian: LKPM) which can be used as material for PJK to determine whether transactions made by business actors through the Foreign Direct Investment mechanism are Suspicious Financial Transactions (Indonesian: TKM). The second is through information exchange cooperation between INTRAC and BKPM, where INTRAC needs LKPM data for the purpose of compiling analysis and examination results if there are transactions that indicate criminal acts.

Analysis of Potential Crime of Money Laundering (CML) in Foreign Direct Investment Activities Using Virtual Office Companies

The potential of CML in Foreign Direct Investment activities that use virtual office companies, that what is meant by Virtual Office or Virtual Office itself is a form of 'office' rental service provider on the Internet.[70] The virtual office itself is generally used by business actors who want to establish a company and experience obstacles in finding an office location in accordance with regional regulations related to zoning.

Virtual offices in Jakarta are legal since they are regulated in Circular Letter Number 06/SE/2016 concerning the Issuance of Domicile Certificates and Extended Permits for Virtual

[67] Rr. Nurul Rahmah Cahyo Putri, "The Effectiveness of PPATK and AUSTRAC Cooperation in Eradicating the Crime of Terrorism Financing in Indonesia in 2014-2017 (Indonesian: Efektivitas Kerjasama PPATK dan AUSTRAC dalam Memberantas Tindak Pidana Pendanaan Terorisme di Indonesia Tahun 2014-2017)"*Journal of International Relations Universitas Diponegoro*, Volume 5, No 4, 2019, pp. 640.

[68] Article 90 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes (Indonesian: Pasal 90 ayat (1) Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang).

[69] Article 26 paragraph (1) of PPATK Regulation Number 15 of 2021 concerning Procedures for Requesting Information to the Financial Transaction Reporting and Analysis Center (Indonesian: Pasal 26 ayat (1) Peraturan PPATK Nomor 15 Tahun 2021 tentang Tata Cara Permintaan Informasi ke Pusat Pelaporan dan Analisis Transaksi Keuangan).

[70] Maulana Fachriko, Siti Mahmudah, Sartika Nanda Lestari, "Legal Protection for Consumers in the Provision of Virtual Office Services (Indonesian: Perlindungan Hukum bagi Konsumen dalam Penyediaan Jasa *Virtual Office)*" *Diponegoro Law Journal*, Volume 6 Nomor 2, 2017, pp. 2.

Office Users. Circular Letter Number 06/SE/2016, states that the Certificate of Domicile of a company/business entity/individual company/cooperative with a virtual office (virtual office) and its advanced business license can be given to business actors who use virtual offices, either those are: a) Business entities that already have offices or locations of business activities in accordance with zoning and can be proven by valid documents; or b) Business entities or individual companies that operate in residential houses or permanent locations that meet the criteria of not changing the function of residential houses, not using road shoulders, not causing water/air/noise pollution, not using equipment or machinery, not disturbing environmental order.[71]

The business entity/individual company is required to attach official documents on behalf of the two responsible persons. The attached documents include KTP (one of the directors/business owners), Family Card, Individual NPWP, Account Data and Letter of Recommendation from the Bank, and Stamped Statement Letter.[72]

In addition, the certificate of domicile and subsequent permits must also include the address of the virtual office and the address of the real business activity/activity (either office or residence). The validity period of the domicile certificate and the virtual office business license is 1 (one) year and can be extended according to applicable regulations.

With the existence of Circular Letter Number 06/SE/2016 concerning the Issuance of Certificate of Domicile and Subsequent Permits for Virtual Office Users, it has become a legal umbrella for Business Actors who want to carry out their business activities in the form of virtual offices in DKI Jakarta Province. Although Virtual Office itself has become a solution for Business Actors who want to establish a company but are constrained by the provisions of business locations regarding zoning, it is also necessary to study the vulnerability aspects of virtual offices to be used as a medium for money laundering by criminals.

The vulnerability aspect of virtual offices as a medium for money laundering is due to the fact that Business Actors can establish business entities without having to carry out their business activities/activities at the location or business address attached to the Deed of Establishment. That this makes it possible for criminals to hide the proceeds of crime by using the media of the virtual office company by disguising the underlying transaction as if the transaction is a business activity but in fact to place the proceeds of the crime. In addition, with the existence of a virtual office company, it is possible to carry out business activities that are not in accordance with their business licenses. For example, a company engaged in finance/fintech but it turns out that it also carries out prohibited business activities such as gambling.

Optimization of supervision of companies that use virtual office services by the Ministry of Investment/BKPM and Regional Governments that provide permits for Virtual Office Users, in this case the Jakarta Provincial One-Stop Integrated Service Agency. It can be carried out in the form of Supervision of Business Actor Reports (LKPM or other business activity reports) and Field Inspections.

In the context of Supervision of Virtual Office Companies, the Ministry of Investment/BKPM needs to have a database of Business Actors who use virtual office services. Data can be obtained when Business Actors register in OSS. The database can be used as a reference when the Authorized Agency conducts field inspections. Physical field inspection for companies that use virtual office services is mandatory to determine the suitability of the Investment Activity Report (Indonesian: LKPM) with physical activities carried out by the

[71] Circular Letter Number 06/SE/2016 concerning the Issuance of Domicile Certificate and Subsequent Permits for Virtual Office Users (Indonesian: Surat Edaran Nomor 06/SE/2016 tentang Penerbitan Surat Keterangan Domisili dan Izin-Izin Lanjutannya bagi Pengguna *Virtual Office).*

[72] *Ibid.*

Company. Physical field inspections to prevent the potential of CML in investment activities, especially FDI that use virtual office services.

Policy Directions Needed to Prevent Crimes of Money Laundering in Indonesia with Foreign Direct Investment Media

The theory of the legal system, according to Lawrence M. Friedman, states that the effectiveness and success of law enforcement depends on three elements of the legal system, namely the structure of law, substance law, and legal culture. Legal Structure, related to the number and size of the courts, their jurisdiction (including the type of cases they are authorized to examine), and the procedure for appealing from court to court. Structure also means how the legislative body is arranged. So the legal structure consists of existing legal institutions and is intended to carry out the existing legal apparatus.[73] The substance of Law is the rules, norms, and patterns of real human behavior that are in that system.[74] Friedman argues that legal culture or legal culture concerns legal culture which is the attitude of human beings (including the legal culture of law enforcement officials) towards the law and the legal system.[75]

To minimize the potential for the misuse of Foreign Direct Investment activities as a medium for Money Laundering, it is necessary to strengthen three elements in the legal system which include the structure of law, substance of law, and legal culture. The efforts that can be made are as follows:

a. Strengthening the Legal Structure

Regarding the strengthening of the legal structure, it is related to how to strengthen the structure or capacity of institutions that have the authority to license and supervise FDI activities from the side of the Anti-Money Laundering regime. The way to strengthen capacity is to carry out training for officials/staff in agencies that have the authority to establish and license PT FDI, in this case the Ministry of Law and Human Rights and the Ministry of Investment/BKPM on knowledge and insights related to the Anti-Money Laundering regime. With this training, it is hoped that the Authorized Agencies, in this case the Ministry of Law and Human Rights and the Ministry of Investment/BKPM, can have insight into the potential and vulnerability factors for the misuse of FDI as a CML medium.

Another effort to strengthen the legal structure is to optimize the role of the Ministry of Law and Human Rights in identifying and verifying (supervising) Beneficial Owners as stated in the provisions of Presidential Decree Number 13 of 2018 and Regulation of the Minister of Law and Human Rights Number 21 of 2019. That the existence of provisions regarding the identification and verification of the Beneficial Owner can be used as a tool also to identify the possibility of nominee shareholders.

In addition to training and optimizing authority, in order to increase capacity, it is also necessary to have the number of supervisors in an appropriate ratio compared to the subjects to be supervised. Therefore, it is necessary to increase the number of supervisors or verifiers if it is felt that it is still insufficient or not in accordance with the number of subjects to be supervised by paying attention to sufficient rotation to carry out periodic supervision.[76]

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[73] Lawrence M. Friedman, *American Law: An Introduction, Translation of American Law An Introduction 2nd Edition, Translation: Vishnu Basuki (Indonesian: Hukum Amerika: Sebuah Pengantar,* Terjemahan dari *American Law An Introduction* 2nd Edition, Alih Bahasa: Wisnu Basuki) (Jakarta: Tatanusa, 2001), pp. 6

[74] *Ibid*., pp 7-8.

[75] *Ibid.*, pp. 8.

[76] Iman Prihandono, "Some Notes for the Results of PPATK's Legal Study on the Abuse of FDI as a Means of TPPU (Indonesian: Beberapa Catatan untuk Hasil Kajian Hukum PPATK tentang Penyalahgunaan FDI sebagai Sarana TPPU)", delivered at the Legal Review FGD on October 13, 2022.

b. Strengthening of Legal Substance

Strengthening the Legal Substance can be done by drafting regulations that support efforts to prevent the misuse of FDI activities in Indonesia as a medium for CML. First, technical regulations can be prepared that regulate and require the process of verifying the authenticity of shareholder data and proof of capital deposit submitted by Limited Liability Companies (including CML) at the time of establishment by the Ministry of Law and Human Rights. To prevent the existence of nominee shareholders and the entry of proceeds of crime as capital in the establishment of a PT, a verification mechanism can be built where the Ministry of Law and Human Rights can collaborate with INTRAC to trace the transaction records of Shareholders and the suitability of proof of capital deposits submitted by the PT (including FDI). With the preparation of the mechanism as stated above, it is hoped that it will be able to track the flow of assets used as company capital. That the mechanism needs to be outlined in written technical regulations to be used as a guideline for authorized agencies in carrying out the verification process.

The second is the preparation of a Memorandum of Understanding between INTRAC and BKPM regarding cooperation in exchanging information for the purpose of prevention and eradication of CML. In order to detect CML that uses the Foreign Direct Investment activity scheme, INTRAC requires the data of the Investment Activity Report (Indonesian: LKPM) submitted by the Business Actor to BKPM to be able to identify whether the transactions carried out by the Business Actor in the Foreign Direct Investment activity are in accordance with the activities of the business actor as reported in the LKPM. This can then be used as material for INTRAC in the preparation of analysis and audit results. In order for the cooperation in information exchange to be carried out, it is necessary to prepare a Memorandum of Understanding between INTRAC and BKPM in accordance with the provisions of Article 26 paragraph (3) of the INTRAC Regulation concerning Procedures for Requesting Information to INTRAC.[77]

c. Strengthening Legal Culture

In addition to the need to strengthen the legal structure and legal substance, it is also necessary to strengthen the legal culture. The strengthening of legal culture is carried out by building synergy between Ministries/Institutions that have the authority to supervise FDI activities and transaction activities carried out by FDI. First, synergy can be carried out between INTRAC and the Ministry of Law and Human Rights in verifying the authenticity of shareholder data, as well as proof of PT FDI's capital deposit. That a joint verification system can be built between the Ministry of Law and Human Rights and INTRAC in verifying the documents submitted by the Corporation at the time of establishment, especially PT FDI which consists of Shareholder Identity, Shareholder Account (to verify financial transaction records), and Proof of Capital Deposit.

Second, synergy is needed between INTRAC, Financial Service Providers and the Ministry of Investment/BKPM to detect the potential entry of proceeds of crime through Foreign Direct Investment activities. In the context of the preparation of the Suspicious Financial Transaction Report by PJK, there is a synergy or cooperation in information exchange between PJK and the Ministry of Investment/BKPM. It is possible to have cooperation in exchanging information between PJK and BKPM, by providing access rights for PJK to be able to access Investment

[77] Based on Article 26 paragraph (3) of the PPATK Regulation concerning Procedures for Requesting Information to PPATK, that the Request for Information by other institutions as referred to in paragraph (1) is carried out after a memorandum of understanding or formal cooperation with PPATK (Indonesian: Berdasarkan Pasal 26 ayat (3) Peraturan PPATK tentang Tata Cara Permintaan Informasi ke PPATK, bahwa Permintaan Informasi oleh lembaga lain sebagaimana dimaksud pada ayat (1) dilakukan setelah adanya nota kesepahaman atau kerja sama formal dengan PPATK).

Activity Reports that can assist PJK in the preparation of LTKM. That the LKPM data can help PJK to find out the realization of investment activities from business actors and assist PJK in measuring the suitability of business actors' profiles by comparing the data with transaction data from business actors. In addition, it is possible to have cooperation in exchanging information between INTRAC and BKPM based on Article 90 paragraph (1) of the CML Law.[78] In order to detect financial flows that indicate criminal acts, INTRAC also requires LKPM data from BKPM as material in the preparation of analysis or audit results. The LKPM can be used as supporting data for INTRAC to determine whether transactions carried out by business actors are reasonable transactions or related to criminal acts.

Conclusion

Several things are vulnerable factors for the misuse of Foreign Direct Investment activities as a means of CML. The first factor is that there is still potential for nominee shareholders in the process of establishing and licensing Foreign Direct Investment companies, because there are no technical regulations that regulate how the Ministry of Law and Human Rights verifies the suitability of shareholder profiles at the time of company establishment. To determine the authenticity of the shareholder profile in order to prevent the possibility of nominee shareholders in the establishment of a Foreign Direct Investment company, the Ministry of Law and Human Rights can cooperate in exchanging information with INTRAC to verify the Shareholders' Account, and the authenticity of the Proof of Capital Deposit slip submitted by the Corporation at the time of Company Incorporation.

The second vulnerability factor is the lack of synergy between PJK, INTRAC, and BKPM in detecting the existence of proceeds of crime in Foreign Direct Investment activities. In detecting the possibility of transactions to transfer assets from crime in Foreign Direct Investment activities, it is necessary to cooperate between PJK and BKPM in the form of granting access rights for PJK to the data of the Investment Activity Report (LKPM). The existence of LKPM data can help PJK in preparing Suspicious Financial Transaction Reports (LTKM) which are not only based on transaction data but also based on LKPM data to determine the suitability of the profile of service users with the transactions made. In addition, there is also a need for cooperation between INTRAC and BKPM, through requests for information by INTRAC to BKPM regarding LKPM data which can assist INTRAC in the preparation of analysis and audit results to determine the suitability between transactions carried out and the realization of investment activities by business actors.

The third vulnerability factor is the regulation of virtual offices in several regions in Indonesia. The vulnerability aspect of virtual offices is abused as a CML medium because business actors can establish business entities without having to carry out business activities at the location contained in the deed of establishment. This can be used by criminals who are abroad to place their funds in Indonesia through Foreign Direct Investment activities that use the virtual office company to disguise the underlying transaction as if it were for business activities but in fact it is used to place the proceeds of criminal acts. Therefore, in the context of virtual office supervision, BKPM needs to have a database of business actors who use virtual office services. The data can be used as a reference for Authorized Agencies when conducting inspections in the field.

[78] Based on Article 90 paragraph (1) letter d of the Anti-Trafficking Law, in preventing and eradicating anti-trafficking, PPATK can cooperate in exchanging information in the form of requests, provisions, and receipts of information with other institutions related to the prevention and eradication of anti-trafficking or other criminal acts related to anti-trafficking (Indonesian: Berdasarkan Pasal 90 ayat (1) huruf d UU TPPU, bahwa dalam melakukan pencegahan dan pemberantasan TPPU, PPATK dapat melakukan kerja sama pertukaran informasi berupa permintaan, pemberian, dan penerimaan informasi dengan lembaga lain yang terkait dengan pencegahan dan pemberantasan TPPU atau tindak pidana lain terkait dengan TPPU).

Prevention of anti-money laundering in Indonesia by utilizing the media of Foreign Direct Investment activities requires strengthening the legal structure, legal substance and legal culture through strengthening the capacity of the anti-money laundering regime for officials/staff in authorized agencies, the preparation of regulations in the field of investment that are in line with the provisions of FATF recommendation 24, namely regarding the state's obligation to apply the principle of transparency and ownership of legal entity benefits, as well as synergy and collaboration between various stakeholders in detecting CML using Foreign Direct Investment means.

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Circular Letter Number 06/SE/2016 concerning the Issuance of Domicile Certificates and Subsequent Permits for Virtual Office Users. (Indonesian: Surat Edaran Nomor 06/SE/2016 tentang Penerbitan Surat Keterangan Domisili dan Izin-Izin Lanjutannya bagi Pengguna *Virtual Office.)*