

Evolution of Corporate Criminal Liability Models and Theories under Indonesian New Criminal Code

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Abstract

Corporate crime, also known as white-collar crime, has persisted in Indonesia for decades, evolving alongside the country's economic and industrial growth. Various models and theories have emerged to address these issues, reflecting a growing recognition of the need for robust legal frameworks to combat corporate misconduct. Normative legal research methods have been employed in this study, focusing specifically on the criminal law aspects related to the development of corporate criminal liability theories and concepts under Law Number 1 of 2023. Law Number 1 of 2023 introduces the corporation as a maker and also a responsible corporation model of corporate criminal liability, recognizing corporations as legal entities capable of being held accountable for their actions. This statutory framework represents a significant advancement, reinforcing Supreme Court Regulation Number 13 of 2016. The research explores various perspectives on corporate responsibility models and theories, offering ideal solutions for their application and development within Indonesia's legal framework. This evolution signifies Indonesia's commitment to enhancing corporate accountability and ethical standards,



aligning its legal principles with international norms while addressing domestic challenges. By integrating these models and theories into its legal system, Indonesia aims to foster a corporate culture that prioritizes compliance and ethical conduct, thereby mitigating the impact of corporate crime on society and promoting sustainable economic development.

Keywords

Criminal Liability; Models and Theories Corporation; Law Number 1 of 2023.

Introduction

Contemporary societal development, particularly in economic terms, is intricately linked with processes of modernization and industrialization. These endeavors are aimed at advancing national development and enhancing the welfare of the populace.¹ Companies play a crucial role as key drivers of economic growth within a country by both stimulating and fulfilling consumer needs.² According to Black's Law Dictionary, a corporation is an entity recognized by the laws of a state or nation. It is composed of individuals who act as agents or representatives within specific roles, but fundamentally comprises a collective of individuals collaborating towards common objectives.³ In the context of the era of globalization, the interests of the state and its population cannot be separated from the large share of the existence of corporations. Corporations become an inseparable part of social life and are related to efforts to meet human needs. The state also accepts the existence of

¹ T Andana Harris Pratama, Muhammad Ali, and Universitas Airlangga, "Corporations as Legal Subjects in Environmental Crimes" 5, no. 1 (2023): 612, <https://doi.org/10.37680/almanhaj.v5i1.2672>.

² Lidya Pratiwi Gunawan et al., "Corporate Criminal Liability in Environmental Destruction" 5, no. 3 (2023): 777.

³ Abdurrakhman Alhakim and Eko Soponyono, "Corporate Criminal Responsibility Policy for the Eradication of Corruption," *Indonesian Journal of Legal Development* 1, no. 3 (2019): 325, <https://doi.org/10.14710/jphi.v1i3.322-336>.

corporations because a country's economy can grow and develop thanks to the important role of a corporation.⁴ However, the increasingly massive corporate growth in a country also does not always produce positive potential. Violations of criminal law are often led by corporate behavior which then has an impact on the stability and security of society and the state.⁵

It is not uncommon for the state itself to play corporate crime. In research made by Vivi Arfiani Siregar⁶ that *Badan Usaha Milik Desa* (BUMDes) also has the potential to commit corporate crimes. Criminal liability for corporate crimes can be imposed on BUMDes after the enactment of Law Number 11 of 2020 concerning Job Creation. The law explains that BUMDes is a Legal Entity, so the study states that the criminal responsibility that can be imposed for BUMDes is on the administrator or maker based on Article 59 of the criminal Code. Criminal responsibility in this case is only charged to the person who committed or was involved in the criminal act. Criminal liability can only occur after a person has previously committed a criminal act, where criminal liability is carried out on the basis of the unwritten legal principle of "*no crime without fault*". The research did not examine in depth related to the theory or model used in the application of corporate criminal responsibility of BUMDes.

Then Albert Sanchez⁷ Sebayang's research in relation to corporate criminal liability for thuggery. In his research case, the panel of judges sentenced the defendants involved in a unit of PT. Cape Raya Lulen. The

⁴ Ikka Puspitasari and Erdiana Devintawati, "The Urgency of Regulating Corporate Crime in Corporate Crime Accountability According to the RKUHP," *Kanun Journal of Legal Sciences* 20, no. 2 (2018): 238, <https://doi.org/10.24815/kanun.v20i2.10661>.

⁵ Puspitasari and Devintawati, 239.

⁶ Vivi Siregar Arfiani, "Polemic of Criminal Responsibility by Regional Heads as Corporations Against Criminal Acts of Regional-Owned Enterprises," *JCI Journal of Scientific Horizon* 2, no. 6 (2023): 2639, <http://bajangjournal.com/index.php/JCI>.

⁷ Albert Sanchez Sebayang, Zulkarnein Koto, and Marsudin Nainggolan, "Corporate Criminal Liability in Law Enforcement Against Premanism," *HERMENEUTIKA : Jurnal Ilmu Hukum* 6, no. 2 (2022): 281–82, <https://doi.org/10.33603/hermeneutika.v6i2.7462>.

panel of judges applied the first model of the corporate responsibility theory proposed by Mardjono Reksodiputro, namely Company Management as the maker and administrator of the Java, while remaining in line with the applicable legal theories and rules contained in Article 48, Article 49, Article 50, Article 56, Article 486, Article 487 and Article 595 of the latest Draft Criminal Code. Thus, as one of the law enforcement officers, the panel of judges has carried out their duties in accordance with applicable regulations. The research has not been able to show an ideal theory or model of corporate liability and is only fixated with formal law where judges have ruled based on existing laws. Even though this method is not necessarily able to reach fairly the perpetrators of corporate crime.

Investigating, cracking down, and eradicating corporations involved in crimes or criminal acts has been a difficult task for law enforcement officials. Corporate crime often involves elements such as fraud, falsification of information, concealment of facts, manipulation, breach of trust, attempts to deceive, or violation of regulations aimed at evading legal liability. The impact of corporate crime not only harms individuals personally, but also causes significant harm to society at large.⁸

There is a problem in the implementation of the corporate criminal responsibility model in Indonesia. According to Savigny's view, humans and corporations cannot be uniformly classified as legal subjects, because corporations do not contain personalities like individuals. It is important to note that personality is related to inner attitudes (*mens rea*) as a basis for blaming the perpetrator. Intentionality (*dolus*) or negligence (*culpa*) is a mental attitude that is an indicator of the element of guilt. This error became the basis for establishing criminal liability. In other words, when there is no fault attributable to the corporation, then its criminal liability can be eliminated. As a result, corporations cannot even be said to have committed criminal acts.⁹

⁸ Silvia Dewi, "Formulation of Corporate Criminal Responsibility in Various Laws," *Legal Arena* 13, no. 01 (2020): 136, <https://doi.org/10.21776/ub.arenahukum.2020.01301.8>.

⁹ Hariman Satria, "Indonesia Criminal Law Review," *Indonesia Criminal Law Review* 1, no. 1 (2021): 1, <https://scholarhub.ui.ac.id/iclrAvailableat:https://scholarhub.ui.ac.id/iclr/vol1/iss1/5>.

Given the significant role of the corporation in the life of society, it is fitting that the corporation be granted the status of a legal subject with rights and obligations. The concept of corporate liability is a legal principle that indicates that a company is considered capable of being responsible for criminal acts committed by employees or agents of the company within the scope of their work and in the interests of the company. The government has a great opportunity to provide protection to the public by formulating laws that accommodate corporations as legal subjects. The formulation of concrete regulations related to corporate criminal liability is also able to ensure legal certainty when corporate activities take away the rights of the community and the state.¹⁰

Scientific studies related to the concept of corporate responsibility not only cause polemics in the national scope but become a global concern. This is an urgency for the position and regulation of corporations as subjects of criminal law. In placing corporations as subjects of criminal law, a state usually looks through the lens of the country's history and experience related to the handling of corporations. These historical differences and experiences make the position and regulation of corporations as legal subjects different from one country to another. The global perspective on corporations as subjects of criminal law (as well as human beings) is driven by significant economic and industrial progress. The simplification model provided by identification theory can be the answer to the difficulty in determining whether a corporation can provide criminal liability or not, because identification theory can delegate wrongdoing committed by members of the board of directors or officers of the corporation to the corporation itself.¹¹

To prevent the spread of corporate crime, emergency law No. 17 of 1951 was enacted as a first step in recognizing corporations as subjects of criminal acts in criminal law in Indonesia. After that, Indonesia passed

¹⁰ Bahari Sanjaya, Muladi Muladi, and Ratna Kumala Sari, "Inconsistencies in Corporate Criminal Liability in Laws and Regulations Outside the Criminal Code," *Pandecta* 15, no. 2 (2020): 221.

¹¹ Rahma Hidayat, *Buku Ajar Pengantar Fiqih Muamalah* (Medan, 2018).

many criminal laws that regulate corporate crime cases.¹² However, with the times, corporate crime is increasing in Indonesia. This situation raises the need for procedures for handling corporate crime so that these cases can be resolved and the law can be enforced. However, law enforcement officials often do not understand the procedures for handling corporate criminal cases, resulting in errors in determining the form of corporate criminal liability and hampering the process of case resolution and law enforcement.

Therefore, the existence of regulations governing procedures for solving corporate criminal cases aims to assist law enforcement officials in solving cases and providing appropriate verdicts. One of the arrangements related to this is contained in Supreme Court Regulation (PERMA) Number 13 of 2016. The existence of PERMA has not been able to complete the completion related to corporate enforcement regulations in Indonesia. For example, in a case investigated by Budi Suhariyanto, the¹³ Corruption Eradication Law (UU Tipikor) has made corporations subject to corruption violations and regulates the criminal liability system. Based on Article 20 paragraph (1) of the Law on Crime, he identified four models of corporate criminal responsibility that can be applied and developed in the prosecution and conviction process.

First, if an executive commits a criminal act, then the corporation will be subject to prosecution and penalties. Second, when management engages in corruption, both the corporation and its management can be prosecuted and punished. Third, if the corporation as a whole engages in corruption, then the corporation itself can be prosecuted and punished. Fourth, if a corporation is involved in a criminal act of corruption, both the corporation and its management can be prosecuted and punished.

However, it should be noted that the Law on Corruption does not provide clear enough criteria. In practice, judges have the authority to exercise judicial discretion and interpret how corporate criminal liability is

¹² Rayhan Wardhana and Hascarya Dwiyantama, "A Comparative Study of the Law on the Realization of Corporate Criminal Liability between the UK and Indonesia" 4, no. 1 (2023): 4.

¹³ Budi Suhariyanto, "Indonesia Law Review Contradiction Over the Application of Corporate" 13, no. 1 (2023): 66–67.

applied in corruption cases. This has an impact on differences in interpretation between judges in applying the law.

The implication is that there are variations in legal interpretation between district courts and high courts. In fact, differences in interpretation also occurred between the first supreme court and the supreme court. Even within the Supreme Court itself, there are differences in interpretation and interpretation of law among its judges. To overcome the problem of multi-interpretation and conflict among judges, a solution is needed that will create uniformity in the application of the law in order to achieve justice based on legal certainty. The research further strengthens the fact that further efforts are still needed to improve and perfect regulations related to corporations so that the handling of corporate crime can be carried out more effectively.¹⁴

The development of models and theories regarding corporate criminal liability was stimulated by the formation of rules that wanted to accommodate corporations into criminal law. Philosophically, a rule model based on the immoral human model should not be expected to motivate anything other than immoral behavior. To harness the moral courage of a corporation and to incentivize truly ethical corporate behavior, a values-based model of corporate criminal responsibility that acknowledges corporate wrongdoing, such as corporate negligence, must take precedence. Guilt-based standards of corporate criminal liability, such as corporate negligence, can be said to incentivize truly ethical corporate behavior and ethical corporate culture because they are built on the idea that a corporation is an entity capable of ethical behavior and moral considerations.¹⁵ Juridically, there is no clear provision regarding corporate legal responsibility in the Criminal Code. However, some specific laws outside the Criminal Code have regulated corporations as perpetrators of criminal acts. Some examples of such laws are the Law on Mining, Minerals and Coal, the Law on the Environment, the Law on the Eradication of Corruption, the Law on the Prevention and Eradication of

¹⁴ Wardhana and Dwiyantama, "A Comparative Study of the Law on the Realization of Corporate Criminal Liability between the UK and Indonesia," 4.

¹⁵ Heli Korkka-knuts, "Behaviourally Informed Approach to Corporate Criminal Law: Ethicality as Efficiency" 10, no. 1 (2022): 28.

Money Laundering, and so on.¹⁶ This diversity of provisions indicates weaknesses in legal politics, for example in the definition, scope of criminal acts, and types of criminal concepts applied to corporations. Even these laws can cause other problems because of differences in the formulation of corporate legal responsibility between one law and another.

The vagueness of provisions on corporate legal responsibility in various laws is one of the main obstacles in law enforcement to eradicate corporate crime. Despite the recognition of corporations as subjects of criminal offenses, some laws do not mention the system of corporate legal responsibility in their articles, nor even recognize corporations as subject to delicacies. For example, there is Law Number 10 of 1998 concerning Banking, where there is no article that provides sanctions to corporations, but legal responsibility is directed to members of the Board of Commissioners, Board of Directors, or bank employees. This condition shows the need for improvements in corporate legal responsibility provisions to avoid legal chaos and strengthen efforts to eradicate corporate crime.¹⁷ In this paper, we will discuss the understanding and development of models and theories related to corporate criminal liability in Law Number 1 of 2023 concerning the Criminal Code which will soon be implemented in 2026.

Method

The author conducts this research using a normative juridical approach, where the author will utilize data from research sources in the form of laws and regulations, court decisions, legal theories, and several scientific articles. Through a normative juridical approach, researchers will explore comprehensively related to aspects of criminal law in existing corporate models and theories, with models and theories developing in Law Number 1 of 2023. Then the researcher will analyze in perspective

¹⁶ Ana Fauzia and Fathul Hamdani, "Analysis of the Implementation of the Non-Conviction-Based Concept in the Practice of Asset Recovery Money Laundering Criminal Act in Indonesia from the Perspective of Presumption of Innocence," *Jurisprudence* 11, no. 1 (2021): 58.

¹⁷ Dewi, "Formulation of Corporate Criminal Accountability in Various Laws," 153.

related to the criminal responsibility model that is more ideal to be applied in the criminal law system in Indonesia.

Result and Discussion

A. Corporate Liability Theory and Model

The theory of corporate liability has evolved in response to the dynamics of corporate activities within a legal framework designed to exercise social control in political systems. In such systems, the law regulates human interactions through specialized mechanisms aimed at preventing unnecessary conflicts.¹⁸ The state legal system greatly influences the legal doctrine formed in a country, the disparity related to the theory of corporate liability is one of the phenomena created due to differences in approaches and differences in legal systems between common law and civil law. Countries that adopt common law tend to experience more significant developments in the application of the corporate responsibility model. This is due to the flexibility of the legal system that allows adaptation to the development of corporate activities in society.¹⁹ Meanwhile, countries that adopt civil law legal systems have different approaches to regulating corporate liability.²⁰

Here are various models and theories developed to address issues related to corporate criminal liability:²¹

¹⁸ Ayumi Kartika Sari, "The Influence of Legal Politics in Law Enforcement in Indonesia Dalihan Na Tolu," *Dalihan Na Tolu Indonesian Journal of Law, Politics and Communication* 1, no. 02 (2023): 54, <https://jurnal.seaninstitute.or.id/index.php/Jhui/issue/view/23>.

¹⁹ Gemala Dewi, "The Application of Islamic Business Contract in The National Law Regulations (The Comparison Between Countries with Civil Law Systems And Common Law Systems)," *Journal of Islamic Law Studies* 4, no. 1 (2021): 89.

²⁰ Kukuh Dwi Kurniawan and Dwi Ratna Indri Hapsari, "Corporate Criminal Liability According to Vicarious Liability Theory," *Journal of Law Ius Quia Iustum* 29, no. 2 (2022): 337, <https://doi.org/10.20885/iustum.vol29.iss2.art5>.

²¹ Aulia Ali Reza, "Corporate Accountability in the Draft Criminal Code," *Institute for Criminal Justice Reform*, 2015, 12, <http://mappifhui.org/wp-content/uploads/2016/12/Pertanggungjawaban-Korporasi-dalam-Rancangan-KUHP.pdf>.

1. Vicarious Liability Theory

Vicarious liability law has evolved rapidly over the past 30 years.²² The development of vicarious liability can be traced to slavery, when slaves are considered to belong to the master, and the master is the only individual with legal status, so all legal obligations under the judicial system are imposed on them.²³ Based on the explanation from Barda Nawawi Arief, Vicarious Liability can be interpreted as a person's legal responsibility for wrong actions committed by others. In general, this term is often referred to as "substitute responsibility". This kind of responsibility occurs when the actions of others are carried out in the context of their job or position. In this context, only cases are correlated between the owner of the corporation and his subordinate employees. Therefore, liability in the theory of Vicarious Liability can still be imposed on a person even though the individual committed a criminal act indirectly and did not commit a mistake in the *mainstream sense*.

The theory of vicarious liability, originating from civil law and subsequently adopted in criminal law, holds significant prominence. In civil law, it serves as a conceptual tool closely associated with the *respondeat superior* theory concerning wrongful acts. According to *respondeat superior*, actions undertaken by individuals through intermediaries carry the same legal implications as if performed directly by the individual. This doctrine draws its rationale from the master-servant relationship, underpinning the concept known as vicarious liability or *respondeat superior*. Sutan Remy Sjahdeni concurs with this perspective, noting that vicarious liability is predominantly employed in civil law under the *respondeat superior* doctrine regarding unlawful acts. The application of vicarious liability in criminal law requires meeting specific criteria: firstly, the commission of criminal acts by agents; secondly, the execution of these acts within the scope

²² Christine Beuermann, "Discerning the Form at the Second Stage of Vicarious Liability," *The Cambridge Law Journal* 81, no. November (2022): 495, <https://doi.org/10.1017/S0008197322000526>.

²³ M P Ram Mohan and Sai Muralidhar K, "In Pursuit of Balance : Vicarious Liability Doctrine in the United Kingdom and India In Pursuit of Balance : Vicarious Liability Doctrine in the United Kingdom and India" (India, 2022), 3.

of their employment; and finally, the pursuit of benefits for the corporation through these actions. This framework underscores the principle of attributing legal responsibility to corporations for the actions of their agents, aligning with broader efforts to enhance corporate accountability within legal systems.²⁴

At first, this theory received many comments from academics because it was considered to overstep the fundamental principles of criminal law. One of the main criticisms is that it ignores the element of guilt, where actions committed by others, can be the cause of a person having criminal liability for the act. Boisvert also stated that the principle of this theory clearly violates the doctrine of *mens rea* because this theory holds that a person who has done nothing wrong can automatically attribute a mistake to another individual so that he is responsible.

Several other academics have also criticized the theory of vicarious liability related to corporate criminal liability. Eric Colvin argues that this doctrine is unfair because it only gives rise to criminal liability for corporations through the criminal liability of others. In fact, criminal acts require an element of personal guilt. If the individual who committed the criminal act has no fault, then the corporation should not be convicted either, regardless of the degree of guilt that exists with the corporation. Conversely, this doctrine is also considered too broad because if the individual who committed the crime has a mistake, then the corporation will also be criminalized, even though there is no element of guilt on the corporation. This is objectively unjustified.²⁵

Vicarious liability is a legal theory that establishes that a person or company can be held accountable for criminal acts committed by others with whom they are in an employment or authority relationship. This theory is an exception to the principle of *mens rea* or error in criminal law. This theory applies not only to workers who

²⁴ Herlina Manullang and Riki Yanto Pasaribu, *Pertanggungjawaban Pidana Korupsi Korporasi*, LPPM UHN Press (Medan: LPPHM UHN Press, 2020), 55, <https://doi.org/10.33331/rechtsvinding.v3i3.33>.

²⁵ Reza, "Corporate Accountability in the Draft Criminal Code," 21.

are within the organizational structure of the corporation, but also to individuals who act as agents or representatives of the corporation outside the organizational structure, provided that their actions correspond to the scope of work or attribution provided by the corporation. This theory aims to prevent the occurrence of criminal acts by requiring employers to supervise and control the behavior of their workers. According to Low, an employer is held liable for the actions of its workers if those actions are carried out within the scope of employment. Therefore, corporations as employers must be careful in recruiting, training, and instructing their workers so as not to commit violations or criminal acts. The doctrine of vicarious liability has been regulated in several laws in Indonesia, such as Law Number 20 of 2001 concerning Corruption and Law Number 26 of 2000 concerning Human Rights Justice. However, the application of this doctrine must be done carefully and in accordance with the provisions of the applicable law, because it can have severe legal consequences for the responsible party.²⁶

2. Strict Liability Theory

Strict liability is a concept in criminal law in which a person can be held criminally liable without requiring an element of culpability (*mens rea*) in one or more of the elements of the act (*actus reus*). In strict liability, it is sufficient to suspect or know that the accused committed certain acts, criminal liability can be imposed on him. In this case, the existence of *mens rea* is not a problem because the main element in strict liability is *actus reus* (deed), not *mens rea* (error). Thus, in cases where strict liability is applied, the main focus in proof is to show the existence of *actus reus* (deed), not to show the existence of error of thought or evil intent (*mens rea*). In this context, criminal liability can be imposed without having to prove the existence of an element of guilt of mind or malicious intent on the offender. The application of the concept of strict liability may vary depending on the jurisdiction and applicable legal regulations. Although strict liability ignores the element of mistaken thought, the concept is often applied in situations where the public interest or protection of society is

²⁶ Reza, 22.

considered more important than paying attention to the state of mind of the individual performing the deed.²⁷

One of the theories used to assess corporate criminal liability is the theory of strict liability. This theory is based on the assumption that the corporation as a subject of law must be criminally liable if it violates or does not fulfill the obligations stipulated by law, without the need to prove the existence of an element of guilt or negligence on the part of the corporation. In other words, the corporation can be punished based on the consequences of its actions and not based on its intentions or motives. This theory prioritizes the public interest and the protection of society from the negative effects of corporate actions. Therefore, in strict liability, corporations can be criminally prosecuted as separate legal entities from the individuals involved in them, even if there is no evidence of individual guilt directly. This approach emphasizes corporate responsibility for the consequences, even without proving individual guilt.²⁸

3. Identification Theory

One form of corporate criminal liability is "direct liability," meaning that individuals who are in senior positions within the corporation, or who are delegated authority from them, are considered representatives of the corporation itself specifically and intentionally. Therefore, their thoughts and deeds are regarded as the thoughts and deeds of the corporation itself directly. Within this framework, corporations can commit broader criminal offences than if they were based solely on the "vicarious" doctrine. This theory states that the mistakes or actions of "senior officers" are the same as the mistakes or actions of corporations. This conception is also known as the "*alter ego*" doctrine or "*organ theory*".²⁹

In this situation, people who have important positions and obligations within the company can be considered part of the company. What they do and decide counts as what the company does

²⁷ Manullang and Yanto Pasaribu, *Criminal Liability for Corporate Corruption*, 59.

²⁸ Rodliyah, Any Suryani, and Lalu Husni, "The Concept of Corporate Crime in the Indonesian Criminal Law System," *Journal of Law Compilation* 5, no. 1 (2020): 200–201.

²⁹ Rodliyah, Suryani, and Husni, 202.

and decides as a whole. Therefore, they can be held legally liable for their unlawful actions or harm to others. That way, they can be held criminally liable for acts committed in their capacity as senior officers of the corporation, without having to prove vicarious liability or substitute liability. This doctrine of identification theory broadens the scope of corporate criminal liability by focusing on the roles and decisions of individuals who have power and influence in the corporation. This allows criminal law to reach individuals who are directly responsible for actions and decisions that may harm corporations or society in general. The use of this identification theory tends to be more applicable to corporate administrators with high positions such as directors or top-level managers. This is because the authority to act on behalf of the corporation is generally limited to that level of position. One effect is that corporations can only be criminally charged based on acts committed by directors or top-level managers without considering the actions of corporate agents, both inside and outside the corporation. Because of this, this doctrine is often considered a legal barrier to possible corporate criminal liability.

One of the challenges in applying the doctrine of identification is its suitability to contemporary corporate forms. The characteristics of corporate organizations in the postmodern era indicate a separation between position and responsibility, which precludes the existence of a single individual who has broad authority. As a result, corporate organizations are becoming increasingly complex, and it is difficult to find actions that can be considered corporate actions carried out by an individual top-level manager, given the large number of other administrators who participate in decision-making.³⁰

4. Corporate Accountability Model Mardjono Reksodiputro

In Indonesian criminal law, there are three types of models that regulate how corporations can be criminally liable. This was conveyed by Mardjono Reksodiputro in his work, where he explained the models as follows:³¹

³⁰ Reza, "Corporate Accountability in the Draft Criminal Code," 16–17.

³¹ Reza, 25.

"First, the corporate manager as the manufacturer and manager of the corporation in charge of the Second, the Corporation as the manufacturer and the manager is responsible Third, the Corporation as the maker and also the corporation in charge"

One way to understand corporations as subjects of criminal law is to look at the stages of their development outlined by Mardjono Reksodiputro. This stage also reflects different models of corporate criminal liability.³²

5. Corporate Culture Model

In Australia, the Corporate Culture Model is in place, but the United Kingdom and the United States refuse to base corporate criminal responsibility on this theory. Corporate criminal responsibility reform in Australia involves implementing the Corporate Culture Model, which facilitates legal changes in the way it assigns criminal liability to corporations through court decisions. The 1992 report of the Criminal Law Drafting Committee, relating to the development of the Model Criminal Code, stated that the existing doctrine was no longer suitable as a method of transferring criminal responsibility to corporations, as it focused only on corporate structures and lower-level officials. The committee was formed with the aim of creating a corporate criminal responsibility scheme that adapts individual criminal responsibility to suit modern corporations. They adopt the concept of corporate culture as the main way to achieve these goals.³³

One of the opinions on corporate criminal liability is that put forward by Sutan Remy Sjahdeni. According to him, a corporation can be criminally prosecuted if there is rational evidence that the perpetrator of the criminal act has a reasonable belief that there are authorized members of the corporation who approved or authorized the act. In this view, corporations are held collectively responsible for criminal acts that occur, not just the person who committed those acts. That is, according to the concept of Corporate Culture, there does not have to be a person who is directly responsible for criminal acts to be able to ensnare the corporation.

³² Reza, 25.

³³ Manullang and Yanto Pasaribu, *Corporate Corruption Criminal Liability*, 75.

This approach emphasizes that it is the corporation as a unified entity that must bear responsibility for the existence of a criminal act, not just the person who committed the act.³⁴

B. Models and theories of corporate criminal liability in the colonial Criminal Code

The development of corporations has changed the paradigm in criminal liability. Crimes that occur within corporations are often categorized as white-collar crimes, where the perpetrator uses his knowledge and position to commit the act, often by hiding behind the identity of the corporation. Unlawful acts committed by corporations can have economic motives and far-reaching impacts on society, as in the case of environmental pollution crimes.³⁵

In the states of the United States, companies can be prosecuted legally for all forms of crimes committed by employees in the performance of their duties, not only mistakes committed by top-level leaders. Even if top-level leadership has banned employees from committing violations or crimes, the company can still be held accountable. In addition, the fact that the company has implemented a prevention program to uncover or report crimes, and cooperates fully with federal authorities, does not automatically (*de facto*) be grounds for exemption from corporate legal liability.³⁶

Currently, the colonial Criminal Code that is still in force in Indonesia does not have specific provisions governing corporations. Criminal law only recognizes individuals as subjects of crime (*natuurlijk persoon*) based on the principles of "*university delinquere non potest*" and "*societas delinquere non potest*", which means that corporations are unlikely to commit crimes and therefore cannot be punished. According to Utrecht in his book, the Criminal Code applied in Indonesia today originated from

³⁴ Manullang and Yanto Pasaribu, 76.

³⁵ Dwi Kurniawan and Indri Hapsari, "Corporate Criminal Liability According to Vicarious Liability Theory," 330.

³⁶ Iwan Kurniawan, "Criteria for determining the forms of criminal acts and criminal liability of corporations that commit criminal acts of corruption," *Unnes Law Review* 5, no. 3 (2023): 1293.

the Dutch Wetboek van Strafrecht (W.v.S) in 1881. However, the W.v.S version of 1881 did not provide recognition of corporations as legal subjects. This recognition was only incorporated into the Dutch W.v.S after amendments to Article 51 of the W.v.S in 1976, which adopted the provisions of the Wet Economische Delicten of 1950.³⁷

One of the matters related to corporations in criminal law is Article 59 in Book 1 of the Criminal Code which regulates General Provisions. This article provides an explanation of how corporations can be convicted of committing certain criminal acts. In addition, in some parts of the Criminal Code, there are also provisions that regulate offenses that can be committed by corporations, such as in terms of crimes against state security, crimes against decency, and crimes against the environment. Thus, the Criminal Code provides legal recognition and protection to corporations as subjects of criminal law:

"In cases where because the offense is determined to be criminal against the patron, members of the governing body, or commissioners, the administrator, member of the governing body, or commissioner, who does not apparently not interfere in the violation, shall not be punished"

One of the reasons put forward to argue that the Criminal Code does not grant the status of subject matter of criminal law to corporations is the interpretation of the provision that asserts that corporate administrators involved in criminal acts must be criminally responsible. Thus, the corporation is not directly held liable for the act, unless there is an administrator who does not participate in the crime. Therefore, corporate criminal liability is still considered to apply only to individuals who commit criminal acts, and not to corporations as legal entities.³⁸

Article 169, Article 398, and Article 399 of the Criminal Code, do contain some provisions relating to corporations in the context of criminal liability. Article 169 of the Criminal Code prescribes penalties for those who belong to associations that aim to commit crimes or offenses, and provides for toughening penalties against the founders or administrators

³⁷ Manullang and Yanto Pasaribu, *Corporate Corruption Criminal Liability*, 87.

³⁸ Manullang and Yanto Pasaribu, 87–88.

of the association. This suggests that individuals involved in such criminal acts, including corporate administrators, can be held criminally liable.

Meanwhile, Article 398 and Article 399 of the Criminal Code regulate crimes committed by administrators or commissioners related to the bankruptcy of a corporation. However, this provision does not explicitly mention the imposition of criminal liability on corporations as legal entities.

Thus, it can be seen that the Indonesian Criminal Code has several provisions that offend corporations in the context of criminal liability. Although there is a conviction of individuals involved in criminal acts, there is no imposition of direct criminal liability on the corporation as a legal entity.³⁹

According to the corporate liability model that places the corporation as the maker and caretaker responsible, the corporation is an entity that must be held accountable for the criminal acts it committed. The management of the corporation is a party who must bear the legal consequences of the actions of the corporation, which carries out the authorized complementary instruments and in accordance with the articles of association of the corporation. Thus, corporate crime can be equated with individual criminal acts in the corporation. The characteristic of the act is impersonal, so the person who leads the corporation can be criminally charged, regardless of his knowledge of the deed. In the context of the corporate accountability model proposed by Mardjono R., the Criminal Code can be classified as a model of *"managers act and managers are responsible"*. In this model, criminal responsibility for corporate criminal acts is applied to the management of the corporation as individuals who play a role on behalf and interests of the corporation.⁴⁰

C. Models and theories of corporate criminal liability in the New Criminal Code

The primary distinction highlighted in this study between the old Indonesian Criminal Code and the new Law No. 1 of 2023 (hereinafter

³⁹ Manullang and Yanto Pasaribu, 88.

⁴⁰ Manullang and Yanto Pasaribu, 88.

abbreviated as "KUHP") revolves around the recognition of corporate liability as a subject of criminal acts. While this concept may seem novel within the formal legal framework, it echoes precedents from customary law in Indonesia. Historically, customary villages have imposed penalties in the form of fines, payable in money, livestock, or other valuables, demonstrating an early form of holding collective entities accountable for wrongful acts. In essence, the evolution seen in the new KUHP represents a formalization and adaptation of these traditional practices into a modern legal context. It signifies a deliberate effort to codify and regulate corporate behavior under criminal law, aligning with contemporary standards of accountability and justice. Thus, while the concept of corporate liability in criminal law may not be entirely new in Indonesia's legal traditions, its formal integration into the revised KUHP marks a significant step towards reinforcing legal clarity and consistency in addressing corporate misconduct.⁴¹ The term corporation is explained in article 146 of the Criminal Code:

"A corporation is an organized collection of persons and/or wealth, whether it is a legal entity in the form of a limited liability company, foundation, association, cooperative, state-owned enterprise, regional-owned enterprise, village-owned enterprise, or likened thereto, or an unincorporated association or a business entity in the form of a firm, a private partnership, or equated with it."

In the context of civil law, the concept of corporation is widely taken as a foundation for understanding corporations in criminal law. However, the definition of corporation in criminal law has a broader meaning than the definition of corporation in civil law, which is limited to legal entities.

With the adoption of the view that corporations are subject to criminal acts, there are no longer any restrictions that restrict corporations to human beings by nature. Article 45 paragraph (1) expressly states that "The Corporation is the subject of a Criminal Act." This means that corporations, whether as legal entities or non-legal entities, are considered to have the ability to commit criminal acts and can be accounted for in criminal law.

⁴¹ Dwi Kurniawan and Indri Hapsari, "Corporate Criminal Liability According to Vicarious Liability Theory," 336.

The definition of Criminal Acts by Corporations is clearly explained in Article 46 of the Criminal Code:

"Criminal Acts by Corporations are Criminal Acts committed by managers who have a functional position in the organizational structure of the Corporation or persons based on employment relationships or based on other relationships who act for and on behalf of the Corporation or act in the interests of the Corporation, within the scope of business or activities of the Corporation, either individually or jointly."

One form of corporate crime is committed by people who have authority or influence over the corporation, both inside and outside the corporate organizational structure. This is regulated in Article 47 of the Criminal Code which states that in addition to what is referred to in Article 46, corporate crime can also be committed by people who give orders, control, or benefit from the corporation. To determine whether a corporation or corporation has committed acts prohibited by law, it is necessary to know in advance what theory is used as a theoretical basis, whether the theory of functional actors or the theory of identification. Furthermore, the act committed by the corporation must be an unlawful act and there is no reason that removes the unlawful nature of the act. In addition, there must also be factors that show that the corporation has the ability to be criminally responsible for the acts committed.⁴²

One way to commit criminal acts in a corporation is through the management of the corporation who represents and is responsible for the corporation. It is based on identification theory or functional actor theory.⁴³ Thus, to determine the fault of the corporation, it must be seen whether the board has errors or not. If "yes" then the corporation is also considered guilty. Conversely, if "no" then the corporation is also innocent. According to Mardjono Reksodiputro, the mistakes of the corporate management become the fault of the corporation itself.

⁴² Manullang and Yanto Pasaribu, *Corporate Corruption Criminal Liability*, 31.

⁴³ Reine Sinaga and Marthin Simangungsong Budiman N.P.D. Sinaga, "Criminal Liability of Limited Liability Company Directors for Tax Crimes Committed Continuously (Study of Decision No. 1501/PID. SUS/2019/PN. JKT-BRT)," *Patik: Journal of Law* 07, no. 3 (2017): 222, <https://ejournal.uhn.ac.id/index.php/patik/article/download/304/417>.

Corporate errors, although diverted from the faults of individual administrators, have different characteristics from those of human legal subjects. The determination of corporate guilt is based on the lack of fulfillment of the community functions for which the corporation is responsible. In this context, an evaluation is carried out on how the corporation carries out its community functions. One indicator of corporate wrongdoing is the inability of the corporation to fulfill societal functions that should include, but are not limited to, efforts to prevent criminal acts.

In criminal law, the corporation as a legal subject has the right to submit justifying reasons in accordance with the provisions of Article 50 of the Criminal Code. Justification reasons can be raised by administrators who have a functional position, order-givers, control holders, or beneficial owners of the corporation. In addition, the corporation itself can also submit justifying reasons, provided that those reasons are directly related to the criminal act alleged against the corporation. Thus, the corporation has the right to defend itself and put forward relevant justification in the context of the criminal act for which it is accused. Then the punishment of corporations must consider several things as stipulated in article 56 of the Criminal Code.

The principle of no-fault crime remains a central principle in criminal law. However, there are some situations where exceptions are applied in the form of the principle of strict liability and the principle of vicarious liability. In absolute liability, a person can be convicted only on the basis of fulfilling the elements of the criminal act committed, without the need to prove subjective guilt. On the other hand, in substitute liability, a person is criminally liable for the actions of his subordinates carried out in the context of his work or orders.⁴⁴

Thus, the principle of absolute liability allows conviction based on objective facts without having to prove subjective guilt, whereas the principle of substitute liability extends a person's criminal responsibility

⁴⁴ "Criminal Code" (2023), <https://webcache.googleusercontent.com/search?q=cache:BDsuQOHoCi4J:https://media.neliti.com/media/publications/9138-ID-perlindungan-hukum-terhadap-anak-dari-konten-berbahaya-dalam-media-cetak-dan-ele.pdf+&cd=3&hl=id&ct=clnk&gl=id>.

for the actions of his subordinates committed in the context of work or orders. While exceptions to the no-fault criminal principle, both principles apply in certain situations that require a broader approach to imposing criminal liability.

The possibility stipulated in Book I of the Criminal Code is that the corporation and its administrators who play a functional role in the corporation can be held criminally responsible together, or only their administrators can be punished according to criminal law. Thus, corporate criminal liability, which previously only applied to certain crimes outside this Law, now applies generally to other crimes, both those stipulated in the Act and outside the Act.

One form of criminal sanction that can be imposed on a corporation is based on the fault of the management who is functionally responsible for the corporation. This is in accordance with Articles 118 to 122 of the Criminal Code. Thus, administrators and corporations can be convicted together or only the management can be charged with criminal law depending on the case. Administrators who have a functional position are those who:

1. have the authority to represent the corporation;
2. take decisions on behalf of the corporation; and
3. has the authority to apply supervision to corporations.

Based on the explanation above, it can be concluded that the corporate criminal liability model used in Law Number 1 of 2023 concerning the Criminal Code is the third model, namely "Corporations as makers and also responsible corporations". In this model, the corporation is recognized as a legal subject who can be held accountable for its actions. Thus, Indonesian law has regulated the liability of corporate crimes. This model reinforces Supreme Court Regulation Number 13 of 2016. Corporate criminals can no longer use the old view that their abuses are "part of the work environment" that is appropriate and legally valid.

The criticism from Andri Gunawan Wibisana is related to the model of corporate criminal liability in Article 46 of the 2023 Criminal Code while Article 48 states the condition of corporate liability, namely that criminal acts are committed within the scope of corporate work, benefit the corporation, and have been accepted as corporate policy.

Andri Gunawan Wibisana argues that the definition of corporate liability in the Criminal Code does not take into account one important model, namely corporate fault. This model assumes that the corporation can be responsible for its own mistakes or those it does on its own. Therefore, he proposed that the Criminal Code be revised to accommodate this model. According to him, Article 46 of the Criminal Code which mentions "carried out by management" and "persons based on employment relations" shows the existence of two theories of corporate liability, namely the theory of identification and vicarious liability. Identification theory assumes that a corporation is a human body that has the directing mind, that is, the steward. So, a corporation can be convicted if the criminal act is committed by the management, as the "owner" of the mind of the corporation. Substitute liability says that the corporation is liable for criminal acts committed by people who work under it.

Identification theory and substitute liability are two models of liability that are derivative because they derive from individual criminal acts, namely administrators in identification theory and employees in substitute liability. These models received a lot of criticism. One of the criticisms is that it focuses only on individual actions, without regard to the actions of the corporation itself. This causes corporations to be punishable for the actions of individuals within them, even though corporations already have an effective crime prevention system in place. This critic judges that these models are overinclusive. In addition, with overly widespread liability, corporations have no incentive to create a good compliance system because it will not exempt them from liability.

These models do not consider modern corporate realities where decisions to take actions, including acts that are against the law, are more influenced by policies or culture within the corporation than by the fault of any particular individual. The larger the company, the harder it is to find fault with a particular individual. This led to other criticisms. Lastly, because of the difficulty of identifying individual actors within a corporation, large corporations are easier to shirk accountability, even though they have posed harm through their activities and do not have good compliance systems in place. These critics conclude that these models result in a system of accountability that is not only unfair, but also too narrow (underinclusive). These models can create situations where

corporations are punished when they have attempted to comply, but they are free from punishment when they should have been punished. Therefore, this accountability does not achieve the goals of punishment, including the goals of retribution, prevention, and rehabilitation.⁴⁵

One alternative that overcomes the shortcomings of derivative liability is liability based on corporate fault. A good example of the application of a liability model based on corporate misconduct can be found in Australia's Criminal Code Act.

Some of the theories used to explain this accountability model include:

1. Corporate Policy (the corporation is responsible for criminal acts because it has rules, both written and unwritten, that require, encourage, tolerate, or allow violations of the law) to occur).
2. Corporate Culture (corporations are responsible for criminal acts because there is a culture within the corporation that directs, encourages, or tolerates violations of the law, or the corporation fails to create a culture that encourages compliance with the law).
3. Corporate Ethos (corporations are liable for criminal acts when an unlawful policy is implemented by an individual, or when the corporation or its officers give approval, order, or support to the violation occurred).
4. Preventive Fault (a corporation is liable for a criminal offence when it is judged to have failed to adopt or implement adequate internal systems to prevent the occurrence of a criminal offence, or fails to take appropriate steps to prevent or detect a criminal offence).
5. Reactive Fault (corporate fault arises when the corporation is deemed to have failed to take corrective action or an adequate response in response to a criminal act committed by corporate personnel).

Perspective is key to understanding the complexities that are often faced from multiple points of view. According to the author's perspective, a corporate misconduct liability model can address some of the weaknesses that exist in derivative liability. Corporate misconduct liability is a more

⁴⁵ UI Public Relations, "Criticism of the Formulation of Corporate Accountability in the RKUHP by Prof. Andri Gunawan Wibisana," 2022, <https://law.ui.ac.id/kritik-atas-rumusan-pertanggungjawaban-korporasi-dalam-rkuhp-oleh-prof-andri-gunawan-wibisana/>.

accurate approach to describing corporate reality. This model avoids the problem of applying too broad or too narrow an accountability to the corporation. In this model, corporate guilt can be identified directly, so it has a stronger normative basis and is more suited to the purpose of punishment than derivative liability. Thus, liability based on corporate misconduct is able to provide a more accurate and adequate picture of corporate liability.

Conclusion

This study concluded that the evolution of corporate liability models has been driven by the need to establish frameworks that integrate corporations into criminal law. These regulations have provided fertile ground for scholarly exploration, stimulating scientific inquiry into ideal models of corporate accountability. Within this context, Mardjono R. proposes a model akin to the "*administrators do and administrators are responsible*" framework found in the Colonial Criminal Code. Here, criminal responsibility for corporate acts is attributed to managerial personnel who act on behalf of the corporation's interests. In contrast, Law Number 1 of 2023 introduces a modern paradigm—"Corporations as makers and also responsible corporations"—wherein corporations themselves are recognized as legal entities subject to criminal liability. This statutory framework, bolstered by Supreme Court Regulation Number 13 of 2016, marks a departure from past notions that corporate misconduct was inherent in the work environment and legally acceptable. The application of this liability model demands consideration of more intricate theories, akin to those observed in Australia's Criminal Code Act, reflecting the complexities of attributing responsibility in corporate wrongdoing.

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