

Criminalization Arrangements for Corporations (Comparative Study of Indonesia and Australia)

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Cite this article as

Baiquni, Muhammad Iqbal, Septhian Eka Adiyatma, Atha Difa Saputri, Riki Julianto, Ridwan Arifin, and Nurul Fibrianti. "Criminalization Arrangements for Corporations (Comparative Study of Indonesia and Australia)". *Unnes Law Journal* 9, no. 2 (2023): 489-508. <https://doi.org/10.15294/ulj.v9i2.74129>

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ABSTRACT. This research examines the regulations governing corporate criminal liability in Indonesian legislation, with the long-term objective of harmonizing the regulations governing corporate criminal liability to ensure legal certainty, utility, and justice in law enforcement in Indonesia. To support the achievement of harmonization in the regulations governing corporate criminal liability in legislation, it is necessary to conduct an assessment of corporate criminal liability regulations in other countries, both those with legal systems similar to Indonesia and those with a common law system, such as Australia. The research method used to achieve the research objectives and targets is normative legal research with a legislative and comparative approach. The findings of this research indicate that corporate criminal liability in Indonesia and Australia follows different approaches. Indonesia has recognized corporations as subjects of criminal law since 1955, but the enforcement of the law against corporations still faces challenges in practice. On the other hand, Australia has adopted a broader approach, considering corporations as subjects of criminal law and emphasizing corporate culture, employee behavior patterns, crime prevention, and corporate responsibility for individual actions conducted in the company's interest. The comparison of Indonesia and Australia's legal systems in regulating and enforcing corporate criminal law reveals that they have distinct approaches, reflecting unique legal traditions, cultures, and institutions in each country. Indonesia's approach is rooted in the civil law tradition with an emphasis on legislation, while Australia adopts a common law approach that places importance on judicial precedents.

KEYWORDS. Corporate, Corporate Criminal Liability, Corporate Criminal Offenses

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Introduction

Corporate crime refers to illegal activities carried out by corporations, their executives, or employees for the purpose of advancing their interests or achieving financial gains.² These crimes can range from minor violations, such as embezzlement or insider trading, to more serious offenses like bribery, fraud, and environmental crimes. Corporate crime is a significant issue in many countries and has significant social and economic consequences. The enforcement of corporate crime is primarily the responsibility of law enforcement agencies, such as the Federal Bureau of Investigation (FBI) in the United States or the Serious Fraud Office (SFO) in

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Acknowledgment: This research was funded by Universitas Negeri Semarang by scheme *Hibah Riset Ormawa DIPA FH UNNES 2023*. We would like to thank to all research team, faculty member at Universitas Negeri Semarang, Research and Community Services UNNES, as well as Law Journals Development Center Faculty of Law UNNES, who constantly give us a lot of invaluable comments, suggestions, and inputs for our research.

² Abdurrahman Alhakim and Eko Soponyono, “Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi,” *Jurnal Pembangunan Hukum Indonesia* 1, no. 3 (2019): 322–36, <https://doi.org/10.14710/jphi.v1i3.322-336>.

the United Kingdom.³ These agencies have the power to investigate and prosecute corporate crimes and can impose significant fines and other penalties for legal violations.⁴ Civil sanctions, including fines, restitution, and profit disgorgement, are typically used to punish and deter corporate crime.

There are several challenges in addressing corporate crime, including the difficulty of detecting and investigating these crimes, the complexity of corporate structures and transactions, and the limited resources available to law enforcement agencies.⁵ Corporate crimes can be challenging to detect and investigate, especially when companies operate in multiple jurisdictions or employ sophisticated methods to conceal their activities.⁶ The complex and often opaque nature of corporate structures and transactions can make it difficult to effectively detect and prosecute corporate crimes. Additionally, the lack of resources available to law enforcement agencies can limit their ability to investigate and prosecute corporate crimes effectively. Finally, the lack of public awareness about the seriousness of corporate crime can lead to a lack of political will to address the issue and result in lighter penalties for offenders.

The issue of holding corporations accountable for serious human rights violations in Indonesia is a complex matter that requires careful consideration of the legal framework governing corporate criminal liability. Currently, the Indonesian Criminal Code (KUHP) does not have specific provisions governing corporate criminal liability for crimes such as genocide, crimes against humanity, and war crimes. Article 55 of the KUHP, which deals with

³ Mochamad Ramdhan Pratama and Mas Putra Zenno Januarsyah, “Penerapan Sistem Pertanggungjawaban Pidana Korporasi Sebagai Subjek Tindak Pidana Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi,” *Jurnal Wawasan Yuridika* 4, no. 2 (2020): 240, <https://doi.org/10.25072/jwy.v4i2.350>.

⁴ Eko Suprihanto, Yos Johan Utama, and Irma Cahyaningtyas, “Reformulasi Pemberantasan Korupsi Di Indonesia: Perspektif Kepolisian Menghadapi Korupsi Sebagai Ancaman Perang Proksi,” *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023): 204–19, <https://doi.org/10.14710/jphi.v5i1.204-219>.

⁵ Tri Baskoro Bintang, “PERTANGGUNGJAWABAN HUKUM PIDANA TERHADAP KEJAHATAN KORPORASI DITINJAU DARI UNDANGUNDANG PERSEROAN TERBATAS,” *NATIONAL JOURNAL of LAW* 6, no. 1 (2022), <https://doi.org/10.47313/njl.v6i1.1680>.

⁶ Muslim Muslim, “KEJAHATAN KORPORASI DAN PERTANGGUNGJAWABAN PIDANA LINGKUNGAN HIDUP,” *EKSEKUSI* 3, no. 2 (2021), <https://doi.org/10.24014/je.v3i2.13048>; Suryandari Wieke Dewi, “Kebijakan Pidana Korporasi Di Indonesia Dalam Penanggulangan Kejahatan Korporasi,” *JPeHI (Jurnal Penelitian Hukum Indonesia)* 3, no. 1 (2022).

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the criminal liability of legal entities,⁷ is not suitable for corporations because it was designed to be applied to other legal entities such as foundations and associations, rather than for-profit corporations seeking to gain profits. In contrast, in Australia, the recognition of corporations as subjects of violations in crimes against humanity, genocide, and war crimes is a significant development within the international criminal law framework.⁸ Prosecuting corporations for their roles in such crimes is crucial to promote accountability and prevent future violations. It also sends a strong message that corporations cannot act with impunity and must be held responsible for their actions.

Therefore, the author is interested in examining the "Regulation of Corporate Criminal Liability (A Comparative Study of Indonesia and Australia)" to provide a comparative analysis of corporate criminal liability regulations in Indonesia and Australia. Specifically, this essay will examine the legal framework in both countries, the types of corporate criminal activities that are common in each country, and the effectiveness of law enforcement mechanisms in addressing corporate criminality.

Several studies related to Corporate Criminal Liability Regulations have been conducted, including the research by Taufiq Wibowo in 2010, which compared the legal authority of the prosecution in criminal cases between Indonesia and Japan. This study discussed the similarities and differences in the prosecution and investigation systems in both countries, with a focus on the distinction between Indonesia's Mandatory Prosecutorial System and Japan's Discretionary Prosecutorial System.⁹

Another study conducted by Nur Hidayah Febriyani in 2021 compared corporate accountability in environmental crimes in various countries. This research highlighted the relatively loose concept of environmental criminal law in Indonesia, which relies fundamentally on law enforcement. In contrast, in Australia, there is an acknowledgment of mens rea in the concept of environmental criminal law, which can be overridden by legislation, either explicitly or with necessary implications. The strict and absolute liability principles are emphasized in cases of pollution and environmental damage

⁷ Atha Difa Saputri and John Lee, "Law Enforcement of Corruption Crimes in the State-Owned Enterprises Sector in Indonesia," *Law Research Review Quarterly* 9, no. 1 (2023): 1–25.

⁸ Hijrah Adhyanti Mirzana Khairil Andi Syahrir, M. Said Karim, "Pembaharuan Metode Pembuktian Subjek Hukum Korporasi Sebagai Pelaku Tindak Pidana Korupsi," *Fakultas Hukum Universitas Sam Ratulangi Indonesia* 1, no. 1 (2022): 32–47.

⁹ Alex Saputra Siregar, Iriansyah, and Indra Afrita, "Tanggung Jawab Hukum Pelaku Usaha Jasa Pengiriman Barang Terhadap Kerugian Konsumen," *Nusantara: Jurnal Ilmu Pengetahuan Sosial* 8, no. 7 (2021): 2398–2408.

that cause widespread harm, both in the environmental medium itself and to society.¹⁰

While these studies are broadly related to legal matters, none of them specifically examined the concept of corporate criminal liability regulations comparatively between Indonesia and Australia. Therefore, the research proposal presented here has a high level of novelty and can directly impact the academic community in Indonesia.

Based on the background provided above, the researcher is interested in examining and analyzing the "Regulation of Corporate Criminal Liability (A Comparative Study of Indonesia and Australia)." This research raises two research questions: 1) What is the concept of corporate criminal liability in criminal offenses in Indonesia? 2) What are the similarities and differences in the regulation of corporate criminal liability according to national criminal law in Indonesia and Australia?

Method

The approach used in this research is a qualitative approach.¹¹ This approach involves identifying issues through in-depth analysis of statutes and relevant legal regulations concerning the concept of corporate criminal liability. This research also employs a comparative study, primarily in analyzing selected legal materials through content analysis, involving grammatical, systematic, and theological interpretations of the law. The emphasis of this research is to provide an overview and description of the concept of corporate criminal liability through an inventory and in-depth analysis of the comparative legal regulations in place in Indonesia and Australia.

The research method used in this study is the normative juridical research method. It is a qualitative research type that employs a statute

¹⁰ Nur Hidayah Febriyani, "Perbandingan Pertanggungjawaban Korporasi Dalam Tindak Pidana Lingkungan Di Berbagai Negara," *Fakultas Hukum Univ. Sebelas Maret Surakarta* 4, no. 1 (2021): 1–23.

¹¹ Lexy J. Moleong, *Metodologi Penelitian Kualitatif, Cet. XI. Bandung: PT Remaja Rosdakarya*, 2018; Ahmad Rijali, "Analisis Data Kualitatif," *Alhadharah: Jurnal Ilmu Dakwah* 17, no. 33 (2019), <https://doi.org/10.18592/alhadharah.v17i33.2374>.

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approach and a comparative approach.¹² Normative juridical research gathers primary data through the analysis of relevant legal regulations, ranging from legislation to ministerial regulations, and also includes the use of supporting scholarly journals. In addition, secondary data is collected through interviews with relevant parties.¹³ This research focuses on the concept of criminal regulation for corporations through a comparative study between Indonesia and Australia. In the research process, the author will analyze the regulations applicable in both countries and make comparisons to understand the similarities and differences in the regulation of corporate criminal liability in Indonesia and Australia. This approach will provide in-depth insights into how both countries regulate corporate criminal liability and can help in understanding the challenges and differences in law enforcement related to corporate crimes in both nations¹⁴

Corporate Criminal Liability Systems in Indonesia and Australia

The issue of criminal responsibility for corporations engaged in corrupt activities has become a crucial aspect of criminal law. Some viewpoints argue that accountability should only apply to corporate executives, but this perspective is seen as unfair to the victims of criminal activities who suffer losses. Consequently, corporations often seek protection by shifting responsibility onto their executives. In Indonesian law, a corporation is defined as a collective entity, whether a legal entity or not. The Republic of Indonesia Law Number 31 of 1999, in conjunction with Law Number 20 of 2001 on the Eradication of Corruption, recognizes corporations as legal subjects.¹⁵ Both individuals and corporations can be held criminally accountable.

¹² Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020), <https://doi.org/10.14710/gk.2020.7504>.

¹³ Irwansyah Irwansyah, "Penelitian Hukum: Pilihan Metode & Praktik Penulisan Artikel," *Yogyakarta: Mirra Buana Media*, 2020; Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Preneda Media Group, 2013).

¹⁴ *Ibid.*, p.247

¹⁵ Pujiyono and Rahmi Dwi Sutanti, "Alternatif Model Pertanggungjawaban Pidana Korporasi Melalui Pendekatan Keadilan Restoratif," *Pembaharuan Hukum Pidana* 2, no. 2 (2019): 21–36.

The policy regarding corporate criminal liability is regulated by Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption (UUPTPK). Under the Indonesian Penal Code (KUHP), corporations are not recognized as criminal law subjects because the KUHP is a legacy of the Dutch colonial era. However, outside the KUHP, there have been legal developments recognizing corporations as one of the subjects of criminal offenses.

There are two perspectives on criminal acts and criminal responsibility: the monist and dualist views.¹⁶ The monist view asserts that the existence of criminal liability is an inherent aspect of the act itself, while the dualist view distinguishes criminal acts from criminal accountability. Several countries have legislated corporate criminal liability in their legal systems, such as Australia, the United Kingdom, and the United States. Forms of corporate criminal sanctions include fines, probation, community service, judicial supervision, restitution, and disciplinary actions.¹⁷

In the UUPTPK (Law on the Eradication of Corruption), corporations can be held accountable if they engage in corrupt activities through individuals acting within the corporate environment,¹⁸ either individually or collectively.¹⁹ However, the implementation of corporate criminal liability needs to be clearer and may give rise to various interpretations. Some theories that have been adopted include the doctrine of strict liability based on the law, vicarious liability doctrine that emphasizes the accountability of corporate executives as agents of corporate actions, the identification theory or direct criminal liability doctrine where a company can commit a criminal act through individuals closely related to the company, the aggregation theory that states that criminal liability can be imposed on a legal entity if committed by a number of related individuals, and the corporate culture

¹⁶ Ana Fauzia and Fathul Hamdani, "Pembaharuan Hukum Penanganan Tindak Pidana Korupsi Oleh Korporasi Melalui Pengaturan Illicit Enrichment Dalam Sistem Hukum Nasional," *Jurnal Hukum Lex Generalis* 3, no. 7 (2022): 497–519, <https://doi.org/10.56370/jhlg.v3i7.249>.

¹⁷ Andi Marlina, and Andi Mulyono, *Pertanggungjawaban Hukum Korporasi Dalam Tindak Pidana Korupsi*, (CV. EUREKA MEDIA AKSARA, 1967).

¹⁸ Yuyun Ghoftar, Abdul; Khalid, Khalisah; Harmono, "Kejahatab Ekosida Dan Korporasi," 2020.

¹⁹ Andi Firmansyah, Herman, and Hamka, "Primum Remedium Dalam Tindak Pidana Korporasi di Bidang Perikanan," *Jurnal Hukum Pidana Islam Al -Ahkam* 4, no. 2 (2022): 108–25.

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model that focuses on the policies of the legal entity that influence its operations.²⁰

Indonesia has recognized corporations as subjects of criminal law since 1955.²¹ Regulations and guidelines governing corporate criminal liability have also existed,²² such as Supreme Court Regulation No. 13 of 2016 on the handling of corporate criminal cases. The draft of the Indonesian Criminal Code (RKUHP) has also recognized corporations as subjects of criminal offenses. Despite the regulations acknowledging corporate criminal liability, in practice, law enforcement against corporations remains less effective because many law enforcement agencies are hesitant to take action against corporations as suspects or defendants.

Criminal Corporate Liability in Special Laws in Indonesia has been regulated in various legislations, such as the Law on Hoarding Goods, Law Number 15 of 2002 concerning Money Laundering Crimes, Law Number 23 of 1997 concerning Environmental Management, and others.²³ Over time, corporations have been recognized as separate criminal subjects from individuals in these various laws.²⁴ Corporations can be held criminally accountable for actions committed by their executives or employees within their scope of authority and in the interest of the corporation.

The Indonesian Criminal Code (RKUHP) has also adopted pecuniary penalties as a primary form of punishment for corporations, and if the fines are not paid, corporate assets can be seized to cover the determined fines. Substitute penalties can also be imposed if the corporation's wealth or income is insufficient to settle the fines, in the form of freezing some or all of the corporate business activities. The draft RKUHP maintains the principle of

²⁰ Rizqi Purnama Puteri, Muhammad Junaidi, and Zaenal Arifin, "Reorientasi Sanksi Pidana Dalam Pertanggungjawaban Korporasi Di Indonesia," *Jurnal Usm Law Review* 3, no. 1 (2020): 98, <https://doi.org/10.26623/julr.v3i1.2283>.

²¹ Dwi Alfianto, "Pertanggungjawaban Pidana Korporasi Pada Korupsi Pengadaan Barang / Jasa Pemerintah Berdasarkan Perma RI No. 13 Tahun 2016," *Hukum Pidana dan Pembangunan Hukum* 5, no. 1 (2022): 25–40.

²² Siti Thali'ah Athina, Eddy Purnama, and Efendi Efendi, "Dualisme Hukum Pendirian Perseroan Terbatas Pasca Berlakunya Undang-Undang Cipta Kerja," *JURNAL USM LAW REVIEW* 5, no. 2 (2022), <https://doi.org/10.26623/julr.v5i2.4989>.

²³ Muhammad Ridho Sinaga, "Konsep Deffered Prosecution Agreement (DPA) Dalam Upaya Pemberantasan Korupsi Oleh Korporasi Di Indonesia," *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 1 (2021): 80–97.

²⁴ Agung Susanto, "Perbandingan Sistem Pertanggungjawaban Pidana Korporasi Sebelum Adanya RUU KUHP Pada RUU KUHP Dan Sistem Dari Negara Belanda," no. 1 (n.d.): 125–46.

"Geen Straft Zonder Schuld" or "No Punishment without Fault"²⁵, but there are exceptions where the law can establish criminal liability without having to prove individual fault in detail. In the case of corporate criminal liability, a perpetrator can only be subject to criminal penalties if their actions were intentional or negligent, based on the legal basis stipulated in the relevant laws.

In a theoretical context, Christina de Maglie identifies three categories related to corporate criminal liability²⁶. First, it relates to the types of organizations that can be held criminally accountable. Second, it concerns the types of crimes that can be categorized as corporate criminal liability. Third, it addresses the criteria for considering a crime as a corporate crime that can be subject to criminal liability. In answering the first question, de Maglie identifies three possible models.

Firstly, there is an approach without specific limitations that use the terminology of organizations or corporations. In this case, legislation does not require specific criteria for organizations to be held criminally liable. This approach is practiced in Australia, where their Criminal Code explicitly states that criminal law provisions apply to corporations as they do to individuals. As de Maglie points out, the Australian Criminal Code requires that a criminal act can only be attributed to a corporation if it is within the scope of the perpetrator's authority and is intended to benefit the corporation. Therefore, there are two essential elements in corporate criminal liability: first, the criminal act is within the scope of the perpetrator's authority or job. Second, the criminal act benefits the corporation. Gobert also states that in the vicarious liability regime, corporate liability depends on when the crime occurred, where the perpetrator was still bound by the corporate employment relationship, and the action was taken for the benefit of the corporation.

In the context of the scope of authority, Webb concludes that in some cases, the scope of authority does not always require explicit permission or authorization from the company for its employees to commit a crime²⁷. Corporate criminal liability can apply if an employee commits such actions

²⁵ Alfath Gumilang Priangga Jati and Rehnalemken Ginting, "Sistem Pertanggungjawaban Dan Pemindaan Korporasi (PT. Indosat Mega Media) Pelaku Tindak Pidana Korupsi," *Alfath Gumilang Priangga Jati* 4, no. 3 (2015): 1–9.

²⁶ Timothy L. Coggan et al., "An Investigation into Per- and Polyfluoroalkyl Substances (PFAS) in Nineteen Australian Wastewater Treatment Plants (WWTPs)," *Heliyon* 5, no. 8 (2019): e02316, <https://doi.org/10.1016/j.heliyon.2019.e02316>.

²⁷ Shann Turnbull, "Corporate Governance: Its Scope, Concerns and Theories," *Corporate Governance: Values, Ethics and Leadership* 5, no. 4 (2019): 415–40.

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as part of their duties and responsibilities. Webb emphasizes that when employees engage in such actions as part of their job obligations or routine tasks, the corporation can be criminally accountable, even if the corporation asserts that the actions are contrary to company policies. De Maglie also explains the practice of attributing criminal responsibility to corporations in Australia. In that country, courts have expanded the meaning of the scope of authority or employment to include acts that are expressly, tacitly, or implicitly approved by the board of directors. Australian courts also consider actions that align with the common behavior patterns of employees. Therefore, if an employee commits a criminal act as part of their role within the company, and the company benefits from the act, the corporation cannot defend itself by claiming that written policies prohibited employees from committing the crime.

In practice, Australia is one of the countries that applies the concept of corporate culture to corporate criminal liability. In the Australian Capital Territory Criminal Code of 2002, corporate culture serves as a reference point for corporate criminal liability. Section 51 of the Australian Capital Territory Criminal Code explains that if a criminal offense requires intent, knowledge, or negligence as an element of fault, then these elements can be inferred from the corporate culture that should, either explicitly or implicitly, allow the commission of the crime. Australian courts also expand the meaning of the scope of authority to include actions consistent with the common behavior patterns of employees.

The third concept - failure to prevent - corporate liability arises when a corporation fails to establish or implement internal systems or policies to prevent criminal activities. A corporation can be held accountable for failing to take the necessary actions to prevent and detect existing violations. One way to take appropriate action is by creating and implementing internal policy programs to ensure corporate compliance with the law. In the fourth concept - relative inaction - a corporation is considered to have fulfilled the element of fault if it fails to take preventive or corrective action related to the crimes committed by its employees. This concept emphasizes the company's actions in taking preventive measures or corrective actions against employees who engage in misconduct, undertake structural reforms, and provide compensation for the losses arising from their actions. This concept encompasses two types of faults: the criminal act committed by the employee and the corporate failure to punish the employee. The proof of reactive fault is easier because it focuses on the corporation's attitude or response to the

committed crime. Furthermore, the reactive corporate model establishes corporate liability for the corporation's own fault in failing to provide a reactive response or action to the consequences of the committed crime and the perpetrator.

Differences in Law Enforcement and Corporate Criminal Regulation between Indonesia and Australia

The legal systems of Indonesia and Australia have distinct characteristics due to their historical backgrounds, cultures, and unique institutions. Indonesia's legal system is rooted in civil law, a legacy of its colonial history under Dutch influence. This civil law tradition emphasizes codified rules as the primary source of law and tends to rely more on legislation.²⁸ On the other hand, Australia's legal system is based on the common law tradition inherited from English law. This system places importance on judicial precedents, where decisions made by high courts serve as binding guidance for future cases.²⁹

The differences between the legal systems of the two countries are also reflected in their approaches to criminal regulation of corporations. In Indonesia, corporate criminal liability is largely governed by the Indonesian Criminal Code or Law Number 1 of 2023, and corporations can be held responsible for violations committed by their employees that benefit the corporation. Law enforcement involves institutions such as the police and the Corruption Eradication Commission (KPK). The Indonesian Criminal Code regulates criminal sanctions for corporations or legal entities as stipulated in Article 45 paragraph (1). Additionally, Article 45 paragraph (2) explains that corporations subject to criminal provisions in the Criminal Code include all types of corporations present in Indonesia. This includes legal entities in the form of limited liability companies (PT), foundations, cooperatives, state-owned enterprises (BUMN), regional-owned enterprises (BUMD), or their equivalents, as well as associations, whether legally recognized or not, legal

²⁸ Anita S. Krishnakumar, "The Common Law As Statutory Backdrop," *Harvard Law Review* 136, no. 2 (2022): 609–88.

²⁹ Martuwarra RiverOfLife et al., "Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being," *Transnational Environmental Law* 9, no. 3 (2020): 541–68, <https://doi.org/10.1017/S2047102520000163>.

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entities in the form of firms, limited partnerships, or their equivalents, as regulated by applicable laws and regulations.

Article 49 of the Indonesian Criminal Code states that criminal acts committed by a company or corporation can be attributed to the corporation itself, its functional officers, individuals who give orders, those who control the corporation, and/or the beneficial owners of the corporation. Therefore, if a corporation is proven to have committed a criminal act, the Board of Directors and/or Commissioners may be subject to criminal sanctions. The Indonesian Criminal Code prescribes imprisonment and/or fines as penalties for certain unlawful actions committed by corporate executives.

In contrast, the Australian legal system addresses corporate criminal liability through a combination of regulations, including the Corporations Act 2001, and regulatory bodies such as the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC).³⁰ Corporate criminal law in Australia is designed to hold corporations and their officers accountable for illegal activities conducted in the context of their business operations. The purpose of these laws is to ensure that corporations act lawfully and responsibly, avoiding activities that are detrimental to the public interest or in violation of the law. Several regulatory bodies in Australia oversee corporate misconduct and enforce corporate criminal law, including the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC), and other industry regulators.

Corporate misconduct in Australia encompasses various types of violations, spanning multiple categories such as financial crimes like insider trading, market manipulation, accounting fraud, and false financial reporting. Additionally, it includes violations of competition and consumer laws, such as anti-competitive behavior, price fixing, and deceptive advertising practices. Environmental violations, including pollution, improper disposal of hazardous materials, and breaches of environmental regulations, are also within the scope. Health and safety violations involve the failure to provide a safe workplace and compliance with safety regulations, while tax evasion encompasses fraudulent or evasive tax activities. The consequences for corporate violations in Australia can be significant, with potential sanctions including hefty fines, imprisonment, or a combination of both for responsible

³⁰ George Gilligan and Ian Ramsay, "Is There Underenforcement of Corporate Criminal Law? An Analysis of Prosecutions under the ASIC Act and Corporations Act: 2009 – 2018" 38, no. 6 (2021): 435–58.

individuals. Legal action against corporate wrongdoers can take the form of civil and criminal proceedings, with civil cases typically resulting in monetary penalties and criminal cases potentially leading to incarceration for involved individuals.

A notable aspect of corporate accountability in Australia is the personal liability of directors and officers within companies. These individuals can be held personally responsible if they are found to have participated in or known about illegal activities, often referred to as "director's liability." To promote transparency and prevent retaliation against whistleblowers, Australia has established robust whistleblower protection laws that provide protection for those reporting corporate misconduct and penalties for those who treat them as victims. Additionally, Australia's legal system includes mechanisms like Deferred Prosecution Agreements (DPAs), which allow prosecutors and companies to reach agreements to resolve corporate criminal charges without full criminal trials. This approach encourages cooperation and ensures that companies take corrective actions. To proactively prevent corporate misconduct, companies are encouraged to implement comprehensive compliance programs and ethical standards. The existence of effective compliance measures can serve as a mitigation factor in corporate crime cases.³¹

Simply put, the legal systems of Indonesia and Australia differ in their historical roots and the emphasis they place on legislation versus judicial precedent. This disparity shapes their respective approaches to corporate criminal regulation, influencing enforcement mechanisms, regulatory bodies, and specific sanctions imposed on companies found guilty of criminal violations. The cultural and political contexts of Indonesia and Australia also contribute to differences in their legal systems and corporate criminal regulation. Indonesia's legal framework is influenced by its diverse cultural landscape and historical experiences. The state's efforts to combat corruption have led to the establishment of institutions like the Corruption Eradication Commission (KPK) to address corporate violations. The law enforcement landscape can sometimes be influenced by broader political considerations.

In Australia, the legal system reflects its colonial history and democratic governance. The common law tradition inherited from England emphasizes

³¹ Stephen Corones and Juliet Davis, "Protecting Consumer Privacy and Data Security: Regulatory Challenges and Potential Future Directions," *Federal Law Review* 45, no. 1 (2017), <https://doi.org/10.1177/0067205x1704500104>.

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the role of judges in interpreting and applying the law, leading to a legal environment that highly values legal precedents. Regulatory bodies like ASIC and ACCC have the authority to enforce laws related to corporate behavior and competition.³²

The differences in legal systems and corporate regulation not only reflect the unique legal heritage of Indonesia and Australia but also mirror broader social, cultural, and political landscapes in each country. Understanding these differences is crucial for businesses, legal practitioners, and policymakers operating within or across these jurisdictions, as it allows them to navigate the legal intricacies and expectations related to corporate behavior, accountability, and compliance. As both countries continue to evolve and adapt their legal systems, these differences play a role in shaping the ways in which corporate activities are regulated, monitored, and adjudicated.

Furthermore, the role of international and regional legal frameworks also plays a role in shaping corporate criminal regulation in Indonesia and Australia. Indonesia's legal system is influenced not only by its colonial history but also by its engagement with international organizations and international agreements. This interaction can affect how corporate violations are defined, investigated, and prosecuted, aligning Indonesian law with global standards. Australia, as a member of the British Commonwealth, is linked through the common law tradition to legal developments in other countries with similar roots. Additionally, Australia's participation in international agreements and its commitment to trade and economic cooperation can lead to the adoption of legal measures that harmonize corporate practices and accountability among nations.

Both Indonesia and Australia strive to maintain a balance between the interests of justice, regulatory compliance, and economic growth within their legal frameworks. As they continue to navigate the complexities of corporate criminal regulation, both countries demonstrate how legal systems evolve to address the challenges of the modern business environment, uphold the rule of law, and ensure accountability for corporate wrongdoing. In the globalized business world, understanding the differences between Indonesia's and Australia's legal systems and their corporate criminal regulations is crucial for multinational companies, legal experts, and policymakers. Operating in

³² Carol Richards et al., "A Toothless Chihuahua? The Australian Competition and Consumer Commission, Neoliberalism and Supermarket Power in Australia," *Rural Society* 21, no. 3 (2012), <https://doi.org/10.5172/rsj.2012.21.3.250>.

these different legal landscapes requires a comprehensive understanding of local laws, regulations, and enforcement mechanisms to ensure compliance and minimize legal risks.

The legal systems of Indonesia and Australia, shaped by historical, cultural, and institutional factors, demonstrate diverse legal approaches among nations. While Indonesia's civil law tradition emphasizes codified rules and reflects its unique historical path, Australia's common law heritage emphasizes the importance of legal precedents and its alignment with English legal principles. As Indonesia and Australia continue to adapt to changes in the social, economic, and technological landscape, their legal systems and corporate criminal regulations will also evolve. Ongoing interactions between domestic legislation, international agreements, and regional influences will continue to shape how both countries address corporate violations, protect the interests of stakeholders, and uphold principles of justice and accountability.

Conclusion

In the context of corporate criminal liability, Indonesia and Australia have different approaches. Indonesia recognized corporations as subjects of criminal law since 1955, but law enforcement against corporations still faces challenges in practice. On the other hand, Australia has adopted a broader approach, considering corporations as subjects of criminal law and implementing corporate criminal liability with a focus on corporate culture, patterns of employee behavior, crime prevention, and corporate responsibility for actions taken for the benefit of the company. Australia's approach allows courts to more effectively enforce the law against corporations while taking into account the role of corporate culture and internal policies in preventing criminal acts. Therefore, the comparison between Indonesia and Australia regarding corporate criminal liability highlights significant differences in the legal approaches they apply.

The comparison of Indonesia and Australia's legal systems in the regulation and enforcement of corporate criminal law reveals that they have different approaches, reflected in their unique legal traditions, cultures, and institutions. Indonesia's approach is rooted in the civil law tradition with an emphasis on legislation, while Australia adopts the common law approach, which emphasizes the importance of judicial precedents. These differences affect how they regulate and enforce corporate criminal law, including the

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regulatory bodies involved, the sanctions imposed, and the roles of individual responsibilities within corporations. While these differences reflect the unique characteristics of each country, both strive to strike a balance between justice, regulatory compliance, and economic growth in their efforts to regulate corporate behavior. A deep understanding of these differences is crucial for multinational businesses, legal practitioners, and policymakers operating in both countries, as it enables them to navigate and comply with the applicable legal provisions and minimize legal risks in an increasingly complex and global business environment.

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All the great things are simple, and many can be expressed in a single word: freedom, justice, honor, duty, mercy, hope.

Winston Churchill