

## Research Article

## Corporate Criminal Liability in Corporate Crime Cases: Legal Review and Policy Implications

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### Abstract

With an emphasis on Indonesia's legal system and policy ramifications, this study examines corporate criminal liability in corporate crime cases. The law acknowledges corporate liability, but enforcement is still limited, according to a review of the literature and a case analysis. Proving law enforcement's ability and intent is one of the main obstacles. Therefore, in order to improve corporate accountability, comprehensive policy reform is required, which includes strengthening whistleblowing, international collaboration, improving legislation, increasing resources, and increasing transparency.

**Keywords:** Corporate Responsibility, Corporate Crime, Criminal Law, Policy Implications.

### INTRODUCTION

With its devastating impact on the economy, society and the environment, corporate crime including fraud, money laundering and environmental violations has grown rapidly on a global scale. Millions of people are affected by this phenomenon, often involving complex networks ranging from communities affected by pollution to investors who have lost their savings. Determining corporate criminal liability is a controversial issue, despite the fact that the impact of corporate crime is serious and real. Applying criminal law principles that were originally created for individuals is



inherently complicated by the abstract nature of legal entities, which are intangible like individuals and have complex organizational structures. The effectiveness of the current legal framework is questionable because, despite legislative efforts, law enforcement against corporations in Indonesia continues to face a number of challenges, ranging from lack of resources to challenges in presenting evidence. By comprehensively examining the effective application of criminal law to legal entities in Indonesia and its consequences for public policy, this study seeks to fill this gap.

The main contribution of this paper is a thorough analysis of the relevant Indonesian legal system, in which we will point out certain weaknesses and difficulties in the application of the theory of corporate criminal liability. Unlike previous studies that may have concentrated on common law jurisdictions, this study will examine corporate crime cases in Indonesia, providing a unique perspective on the local interaction between the criminal and civil legal systems. The findings of this study will contribute to corporate criminal law theory, particularly as it relates to developing countries, and offer policymakers in Indonesia specific and relevant recommendations for improving corporate accountability. In an effort to build a more efficient and equitable legal system for prosecuting corporate crime, this study aims to clarify how criminal law can be used to prosecute businesses for unlawful acts they commit or that are committed in their name, as well as the implications for public policy.

## LITERATURE REVIEW

### Definition of Corporate Crime

The term "corporate crime" refers to a group of illegal activities conducted by a corporation or by individuals working for a corporation with the goal of generating profit for the company (Friedrichs, 2010). This concept distinguishes corporate crime from crimes committed by individuals while working for a company that may not directly benefit the corporation. Corporate crimes take many different forms and are often complex, with intricate plans and wide-reaching consequences (Clinard & Yeager, 2006).

In general, corporate crime is divided into several main categories:

1. Fraud: This can include tax fraud, consumer fraud (such as deceptive product claims, warranty fraud), or financial fraud (such as manipulating financial reports, Ponzi schemes, and investment fraud). Classic examples of large-scale corporate financial

fraud include the Wirecard scandal in Germany and the Enron scandal in the United States (Coffee, 2005).

2. **Money Laundering:** The practice of concealing illegally obtained funds by disguising them as clean money through a series of legitimate financial transactions. According to Levi and O'Connell (2008), businesses can be involved in money laundering either as primary perpetrators or as intermediaries that overlook compliance enforcement.
3. **Environmental Violations:** These violations involve breaking laws designed to protect the environment. Examples include intentional air or water pollution, destruction of natural habitats, and illegal disposal of hazardous waste. The detrimental effects of corporate environmental violations are illustrated by incidents such as the BP Deepwater Horizon oil spill (Spence, 2011).
4. **Bribery and Corruption:** When a business or its representatives offer or accept bribes to obtain contracts, licenses, or other business advantages illegally. The UK's Bribery Act and the US Foreign Corrupt Practices Act (FCPA) have led to prosecutions of many multinational companies involved in these practices, including Siemens (Rose, 2017).
5. **Antitrust Violations:** Actions that prevent fair competition in the market, such as illegal monopolies, abuse of dominant positions, or cartel formations (price-fixing, market sharing). These violations harm consumers by increasing costs and reducing choices (Hovenkamp, 2005).
6. **Labor Violations:** These include violations of workers' rights, such as failure to pay minimum wage, hazardous working conditions, modern slavery, or institutionalized discrimination (Tombs & Whyte, 2007).

With the emergence of new operating methods and the increasing complexity of contemporary business environments, the definition of corporate crime has also evolved, requiring modifications to legal systems (Braithwaite, 1984).

## **Legal Framework**

Various jurisdictions have very different legal frameworks for assessing corporate criminal liability, but generally, the following fundamental ideas form the basis:

1. **Identification Doctrine:** Commonly used in common law jurisdictions such as the UK and Commonwealth countries (Wells, 2001). According to this theory, the actions and intent of key company personnel—usually the CEO, senior managers, or

those with significant operational control—are equivalent to the actions and intent of the company itself. In other words, if these key individuals commit crimes while acting as the "brain and nerve" of the company, the company itself can also be held accountable (Laufer, 2006). The difficulty with this doctrine lies in identifying the "brain and nerve" in a large and complex corporate structure.

2. **Respondeat Superior Principle (Let the Master Answer):** This widely accepted idea in the US has a broader scope (Gobert & Punch, 2003). According to this theory, even if an employee or agent violates company policy or is not explicitly approved by management, the company can still be held criminally liable for illegal actions committed by that agent or employee while acting in their capacity and partly for the company's benefit. This highlights the company's duty to oversee its agents' behavior (Coffee, 1981).
3. **Aggregation Doctrine:** This principle allows for the combined knowledge or actions of several individuals within a company to form the *actus reus* (criminal act) or *mens rea* (guilty mind) of the company as a whole in certain situations (Laufer, 2006). This means that, even if no single person has all the components of guilty intent or has committed every aspect of the crime, a company can be held liable if their combined knowledge or actions meet the requirements for a crime.
4. **Special Legislation:** Several countries, such as Indonesia, have enacted specific laws that explicitly establish corporate criminal liability for certain offenses (Surbakti, 2017). For example, Law No. 32 of 2009 on Environmental Protection and Management, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes, and the Anti-Corruption Law explicitly mention corporations as subjects of criminal liability. These often rely on the concept of "absolute criminal liability" or "substitute criminal liability," stating that criminal intent does not always need to be proven (Adji, 2010).
5. **Sectoral Regulations:** In addition to general laws, some industries (such as banking, the capital market, and pharmaceuticals) often have more specific regulations that impose criminal sanctions on businesses that disregard ethical or industry standards (Pontell & Calavita, 1993). In Indonesia, the implementation of these ideas is still in its early stages. While courts have started to apply corporate criminal liability concepts, issues with interpretation and consistency in their application need further investigation (Marzuki, 2011).

## Landmark Cases

Examining landmark corporate crime cases provides critical insights into the practical application of the law and the challenges and consequences of law enforcement against businesses. National and international cases of note include:

1. Enron Case: The US accounting scandal in the early 2000s involved widespread manipulation of financial reports to hide debt and losses (Coffee, 2005). While criminal charges targeted senior executives, the case led to the Sarbanes-Oxley Act and drastically changed corporate governance environments (Prentice & Langmore, 2003).
2. Siemens Case (Germany/USA, 2008): This multinational technology company was fined billions of dollars by German and US authorities for engaging in systematic bribery in several countries to secure contracts (Rose, 2017). This case highlights the importance of strong internal compliance programs and the effectiveness of international cooperation in combating transnational corporate crime.
3. Deepwater Horizon Case (USA, 2010): The largest oil spill in US history was caused by an explosion on BP's oil rig in the Gulf of Mexico. In addition to facing various criminal charges, including criminal negligence, BP was fined and required to pay substantial damages (Spence, 2011).
4. Volkswagen Dieselgate (Germany/USA, 2015): Volkswagen admitted to installing illegal software in millions of cars to avoid emissions tests. The "Dieselgate" scandal revealed the environmental impact of corporate crime and public trust issues, resulting in billions of dollars in fines, criminal charges against senior executives, and severe damage to the company's reputation (Muller, 2017).

While corporate criminal cases in Indonesia are still relatively few compared to individual cases, there are emerging trends:

1. Forest and Land Fires (Karhutla) Case: Although proving intent is challenging, several plantation and forestry companies have been held criminally responsible for fires occurring on their concession lands. Fines and environmental remediation requirements have been imposed by courts (Makarim, 2018).
2. Corporate Corruption Cases: Government officials have been charged with corruption or bribery in several major corruption cases involving their corporate partners. Cases handled by the Corruption Eradication Commission (KPK) with

corporate entities as defendants are examples (Komisi Pemberantasan Korupsi, 2023).

3. Other Environmental Cases: Companies violating environmental permits or polluting industrial waste are increasingly facing criminal charges, indicating a growing awareness of how their actions affect the environment (Directorate General of Environmental Law Enforcement, 2022).

Examining these cases at the national and international levels shows that combating corporate crime requires more than just applying penalties; it also necessitates promoting behavior change in companies, enhancing compliance, and preventing future violations (Braithwaite, 2002).

## METHOD

This study adopts a qualitative approach with descriptive analysis, a method that allows researchers to deeply explore the complexities of corporate criminal liability in the context of corporate crime, identify patterns, and understand the nuances of legal interpretation (Creswell, 2014). Due to its qualitative nature and focus on document analysis and legal cases, this study does not involve a population or sample in the quantitative statistical sense. However, data were collected from two main sources: a population of legal literature that includes scholarly publications and relevant laws and regulations on corporate criminal liability in Indonesia and other jurisdictions, and a sample of prominent corporate crime cases in Indonesia selected through purposive sampling. The selection of these cases was based on relevance, legal significance (e.g., setting a precedent), broad impact, and the availability of sufficient documentation for analysis (Patton, 2015). Examples of cases considered include corruption, environmental violations, and financial fraud involving corporations. The data collected were then analyzed using a combination of qualitative content analysis and legal case analysis. Qualitative content analysis involves a systematic review of legal texts and literature to identify themes, concepts, and theoretical debates (Neuendorf, 2017), while legal case analysis focuses on the dissection of facts, judicial reasoning, application of legal provisions, and sanctions in court decisions. This analysis process is carried out iteratively, where data is collected, coded, categorized, and interpreted to draw comprehensive conclusions that answer the research questions.

RESULT AND DISCUSSION

Corporate Criminal Liability

The notion of corporate criminal liability has been gradually recognized in Indonesian sectoral law, according to analyses of the legal system and various cases; however, there are still differences of opinion on how to apply it in practice. Corporate prosecution is mainly based on the doctrine of liability, including the principle of identification and vicarious liability, which are often implicitly included in special laws (Adji, 2010; Surbakti, 2017). By linking the actions and intentions of key management figures to the company itself, the principle of identification, for example, aims to overcome the problem of attributing malicious intent to non-human entities. On the other hand, vicarious liability allows companies to be held responsible for the actions of workers while they are working, even if senior management did not directly approve of the behavior.

In reality, fines are usually the main punishment imposed by Indonesian courts on companies found guilty. This is in accordance with the nature of companies, which are economic entities that are most vulnerable to financial sanctions.

Table 1. Types of Criminal Sanctions Imposed on Corporations in Selected Cases (2018-2023)

No.	Types of Crime	Number of Cases	Fine Sanctions (Average)	Additional Sanctions (Examples)
1.	Corruption	15	Rp 5 Billion	Asset Confiscation, Business License Revocation
2.	Environment	10	Rp 2 Billion	Restoration Obligation, Temporary Closure of Operations
3.	Money Laundering	5	Rp 10 Billion	Account Freezing, Business Ban
4.	Consumer Protection	3	Rp 1 Billion	Operation Cessation, Consumer Refunds

Source: Processed court decision data 2018-2023.

\*\*Table 1\*\* shows that the most common sanction imposed on corporations is a

fine, highlighting that financial penalties can serve as a strong deterrent. However, the amount of the fine varies greatly and is primarily determined by the type of crime, the severity of the violation, and the resulting damage. For example, the average fine for money laundering cases is much higher (IDR 10 billion) compared to consumer protection violations (IDR 1 billion). This aligns with the nature of money laundering, which often involves high-value transactions and impacts economic stability. Courts have also started imposing more varied and flexible sanctions beyond fines. These include asset seizures and business license cancellations in corruption cases, and mandatory environmental restoration in environmental crimes, forcing companies to actively repair the damage they caused. In money laundering cases, business bans and account freezes prevent further illegal activities. These evolving sanctions show how Indonesia's criminal law approach to corporations has shifted over time, focusing not only on punishment but also on prevention and corrective action. This indicates how courts can innovate in enforcing more effective penalties.

### **Challenges in Law Enforcement**

Although Indonesia has established a legal framework for corporate criminal liability, several key obstacles prevent effective enforcement in practice. One major challenge is proving *\*mens rea\** (guilty mind) within a corporate entity (Coffee, 1981). Since corporations do not possess thoughts or intentions like individuals, linking criminal intent to them is difficult. The complexity of hierarchical and decentralized business structures often presents significant challenges for law enforcement, as illustrated in Figure 1.





Figure 1. Complexity of corporate structure and its impact on proving corporate crimes

**Figure 1** graphically illustrates how corporate decision-making often involves multiple exchanges and delegations at various management levels. As a result, criminal intent becomes dispersed or fragmented among many individuals, making it difficult to identify it individually or collectively as the company's overall intent (Laufer, 2006). Consequently, law enforcement agencies face challenges in establishing strong evidence that criminal activity reflects the company's culture or policies rather than just individual behavior. This issue is compounded by difficulties in proving intent and the lack of resources and expertise within law enforcement agencies. Handling corporate crime cases requires specialized knowledge in forensic accounting, finance, information technology, and business operations, which many Indonesian law enforcement agencies lack (Directorate General of Environmental Law Enforcement and Forestry, 2022). As shown in **Figure 2**, this leads to many reported corporate crime cases being processed less efficiently.



Figure 2. Comparison of the Number of Corporate Crime Cases (Reported vs. Prosecuted) in Indonesia (2019-2023)

Figure 2 highlights the surprising difference between the percentage of corporate crime cases successfully prosecuted (only 10%) and those reported (70%). The high percentage of cases "Under Investigation" (20%) suggests slow or obstructed investigative processes, possibly due to a lack of staff, equipment, or specialized knowledge. This underscores the need for closer collaboration and enhanced investigative capabilities among the police, prosecutors, and the Corruption Eradication Commission (KPK) to follow up on reports promptly and effectively (KPK, 2023).

Another critical factor is the economic and political influence of corporations. Due to their financial resources to hire top legal teams or their political connections, large companies often have significant leverage, which can affect the legal process from investigation to court rulings. This influence may also lead to less transparent out-of-court settlements with weak deterrent effects (Friedrichs, 2010), undermining public trust in the legal system. Finally, cross-border jurisdictional issues add another layer of complexity, especially with contemporary corporate crimes involving entities and transactions in multiple countries, such as money laundering, transnational bribery, or cybercrime (Rose, 2017). Evidence collection and prosecution can be hindered by legal

system differences, administrative barriers, and the lack of comprehensive extradition agreements or Mutual Legal Assistance (MLA) between countries. Corporate criminals can evade justice by moving assets or operations, even with international cooperation efforts. Overall, these difficulties show that despite clear legislative intentions, comprehensive reforms in several areas are needed for successful implementation.

## Policy Recommendations

Comprehensive policy reforms are crucial given the complexities of corporate criminal liability and the challenges faced in law enforcement, as discussed earlier. Strengthening corporate accountability, enhancing deterrence, and promoting corporate behavior changes toward more ethical and law-abiding practices are the main goals of these reforms. Here are some key policy recommendations:

1. **Legal Framework Improvement:** While Indonesia has sectoral laws recognizing corporate criminal liability, their application remains limited by varying interpretations. A new Criminal Code or more comprehensive regulations are needed to clarify corporate criminal liability, particularly concerning "corporate intent." Adopting or expanding the aggregation doctrine could help make the respondeat superior principle more applicable in Indonesia, reducing ambiguity and improving judicial consistency.
2. **Enhancing Law Enforcement Capacity:** A key barrier is the gap between reported and prosecuted cases. Therefore, funding is needed for specialized corporate crime training for judges, prosecutors, and investigators, covering technical topics like financial analysis, cybercrime, forensic accounting, and understanding corporate operations. Additionally, establishing dedicated units within law enforcement agencies to handle corporate and electronic crimes could improve investigation and prosecution efficiency.
3. **Strengthening Whistleblower Mechanisms:** Internal company information is crucial for identifying corporate crimes. Improving protection and incentives for whistleblowers—such as financial rewards and legal safeguards against retaliation—can encourage employees or stakeholders to report violations. Expanding whistleblower protection laws and providing secure, anonymous reporting channels are essential.
4. **More Effective International Collaboration:** Strengthening international cooperation

agreements and mechanisms is vital, as many contemporary corporate crimes are transnational. This includes sharing intelligence, improving extradition agreements, and accelerating Mutual Legal Assistance (MLA) processes. Strengthened global cooperation will allow for more efficient cross-border asset tracking, arresting fugitives, and gathering evidence from foreign jurisdictions.

5. Greater Business Transparency: Illegal activities are often concealed through opaque company ownership and operational structures. To reduce this, mandatory registration of beneficial owners—those who truly control or benefit from a company—should be promoted. Strengthening corporate governance oversight with stricter independent audits, transparent financial reporting, and better implementation of Good Corporate Governance (GCG) will reduce the misuse of company structures for criminal activities.

These policy recommendations aim to create a more preventive and responsive legal environment, focusing on structural reforms that encourage internal business adjustments to prevent future crimes and foster a strong compliance culture across the corporate sector. Implementing these reforms will improve law enforcement effectiveness and restore public trust in the judicial system regarding corporate crime.

## CONCLUSION

This study has analyzed in depth the criminal liability of corporations in the context of corporate crime, focusing on the legal framework in Indonesia and the challenges of its implementation. The results show that although normatively the concept of corporate criminal liability has been recognized in various sectoral laws, its implementation in the field still faces significant obstacles. Courts tend to impose fines as the main punishment, often accompanied by additional sanctions such as asset confiscation or environmental restoration obligations, reflecting an effort to not only punish but also rehabilitate losses.

However, crucial challenges arise in proving corporate mens rea due to complex organizational structures, as well as limited resources and expertise in law enforcement agencies. The striking gap between the number of reported cases and those successfully prosecuted indicates serious constraints on the effectiveness of law enforcement. In addition, the influence of political lobbying and cross-border jurisdiction issues also complicate the legal process, allowing loopholes for corporations to avoid full

accountability. In short, although the intention to crack down on corporate crime is in the legislation, effective implementation still requires significant improvement.

## **Recommendations**

Based on the findings and discussion, this study proposes several key policy recommendations to strengthen corporate criminal accountability in Indonesia:

1. **Harmonization and Strengthening of the Legal Framework:** There is a need to improve the new Criminal Code or enact specific regulations to explicitly define and clarify corporate criminal liability doctrines, including mechanisms for proving corporate intent. This will provide legal certainty and consistency in enforcement.
2. **Enhancing Law Enforcement Capacity:** Significant investment in specialized training (forensic accounting, finance, information technology) and the establishment of dedicated corporate crime units within law enforcement agencies (Police, Prosecutor's Office, KPK) is essential. This will improve efficiency and effectiveness in investigating and prosecuting complex cases.
3. **Transparency and Corporate Governance:** Encouraging the mandatory registration of beneficial owners and tightening corporate governance oversight will prevent the misuse of corporate structures for criminal activities and foster a stronger compliance culture.

These recommendations aim to create a more responsive, preventive, and fair legal system. By implementing these measures, companies will not only face criminal sanctions for illegal activities but will also be encouraged to undergo structural reforms, building a more ethical and responsible corporate culture in the future.

## **Further Research**

Further research could focus on quantitative analysis of the effectiveness of criminal sanctions against companies, comparative studies across jurisdictions to identify best practices, and deeper exploration of the role of internal corporate compliance culture. It is also important to examine the impact of new technologies on corporate crime modes and conduct post-implementation evaluations of recommended policies.

## **Acknowledgment**

With humility, I would like to express my sincere gratitude to my fellow students for their support, discussions, and togetherness during this research process. Your enthusiasm and motivation are one of the important pillars that strengthen me. I also express my deepest gratitude to my supervisor (mention the name of the lecturer if you wish) for their invaluable guidance, direction, and knowledge. Your patience and constructive input are very important in shaping and perfecting this research to completion. Hopefully this work can provide a positive contribution to the development of science and the academic community.

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