

LEGAL SUBJECTS AND CORPORATE CRIMINAL LIABILITY BASED ON LAW NO. 1 OF 2023 ON THE INDONESIAN CRIMINAL CODE

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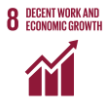
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SDG Elements:

Decent Work and Economic Growth, Responsible Consumption and Production, Peace, Justice, and Strong Institutions



ABSTRACT

This study aims to analyze the regulation of corporate criminal liability in the 2023 Indonesian Criminal Code (KUHP 2023), focusing on how corporations are held criminally liable within the context of the latest criminal law. The research method employed is normative legal research with a statutory approach. The primary data source is Law No. 1 of 2023 concerning the Indonesian Criminal Code (KUHP 2023), with data collection techniques including literature studies and content analysis. The analysis shows that KUHP 2023 regulates corporate criminal liability through articles that outline the types of crimes that can be committed by corporations and the sanctions that can be applied. However, several weaknesses were identified, such as the ambiguity regarding individual responsibility within corporations and the lack of an effective law enforcement mechanism. In the context of corporate criminal liability theory, this study highlights the importance of balancing corporate collective responsibility and individual responsibility to prevent criminal actions within corporations. This research aligns with Sustainable Development Goal (SDG) 16 by promoting justice and effective legal institutions and SDG 8 by fostering a responsible corporate environment conducive to inclusive economic growth. Furthermore, it relates to SDG 12, as strengthening corporate accountability contributes to sustainable production and consumption practices. In conclusion, the regulation of corporate criminal liability in KUHP 2023 requires refinement to enhance law enforcement effectiveness and legal clarity. This is essential for ensuring accountability and aligning corporate practices with sustainable development objectives.

Introduction

Corporate criminal liability has become an important issue in modern criminal law, particularly in Indonesia, where economic and business developments present new challenges to law enforcement. As legal entities, corporations can commit crimes that harm the public, especially the environment and the state, either directly or through internal policies that encourage criminal acts. In the latest Indonesian Criminal Code (KUHP), Law No. 1 of 2023, the regulation of corporate criminal liability has been updated to align with the dynamics of modern business.

As legal entities, corporations play a significant role in the economy but are also key actors in corporate crimes, which include environmental violations, corruption, and cybercrimes (Syahrin et al., 2023). For instance, PT Freeport Indonesia was accused of environmental pollution during its operations in Papua. This case demonstrates the potential for corporations to be involved in wide-reaching crimes, particularly environmental crimes. Such offenses harm a country's economy and threaten the safety of the environment and the public (Matondang & Putra, 2024).

Examples of corporate violations in economic and cybercrime sectors include the following:

- i. First, the Jiwasraya Insurance case is one of Indonesia's largest corporate crime cases in the economic sector. In 2020, Jiwasraya was accused of corruption and financial manipulation, resulting in over Rp 16 trillion in state losses. The state-owned insurance company mismanaged investment funds and misused customers' money, leading to its inability to meet policy obligations. Several company directors were sentenced to prison, but the case sparked debate over corporate and individual responsibility within the company (Christy & Rantetandung, 2021; Endro Suryono & Alfin Rahadat, 2020; Jayadiningrat et al., 2024; Setiajaya et al., 2022; Soraya & Prawesthi, 2023).
- ii. Second, the Bank Century case involved money laundering that caused significant state losses in 2008. Investigations revealed that the bank's management intentionally facilitated illegal fund transfers and manipulated financial reports to conceal these activities. This scandal became one of the largest in Indonesia's banking sector, raising questions about corporate criminal liability, particularly how large corporations with substantial resources often escape effective legal prosecution (Said, 2010).

Thus, the criminal law regulation of corporations under the 2023 KUHP becomes crucial. The articles governing corporate liability ensure that corporations cannot hide behind their legal entity status and must be held accountable for actions committed by their managers or employees (Matondang & Putra, 2024).

Despite the provisions of KUHP 2023 on corporate criminal liability, several challenges persist. First, it is often difficult to determine individual responsibility for crimes committed by corporations—whether it lies with top management, the board of directors, or other parties. Second, law enforcement efforts against corporations are frequently hindered by administrative and technical barriers, particularly in collecting evidence related to internal corporate operations (Soraya & Prawesthi, 2023). Third, gaps remain in the regulation of corporate criminal liability, especially concerning the types of sanctions that can be imposed and the procedures for their enforcement.

This study aims to analyze the regulation of corporate criminal liability in KUHP 2023, particularly in the context of offenses committed by corporations. Second, examine the weaknesses in this regulation, especially concerning individual responsibility within corporations and law enforcement mechanisms. Third, recommendations should be provided for improving legal regulations to make them more effective and just for communities harmed by corporate crimes.

Previous research, such as Maradona (2018) in *Corporate Criminal Liability in Indonesia: Regulation, Implementation, and Comparison with The Netherlands*, notes that Indonesia has recognized corporations as legal subjects in various specific laws since 1951. However, these regulations were not incorporated into the KUHP until the adoption of the KUHP 2023. By comparing Indonesia with the Netherlands—where corporate criminal liability has long been established within its criminal code—Maradona points out that Indonesia's KUHP still struggles to define the elements of *actus reus* (criminal act) and *mens rea* (criminal intent) for corporations (Maradona, 2018; Syahrin et al., 2024).

Widyaningrum et al., (2024), in their work *Corporate Criminal Liability: An Analysis of Corporate Crime Perpetrators under Positive Law in Indonesia*, analyze how Indonesian positive law addresses corporations as criminal actors. Their study emphasizes that regulations, including the KUHP 2023, continue to face challenges in clearly defining individual responsibility within corporate entities. Additionally, the authors discuss the application of vicarious liability, where accountability is extended to those issuing orders within the corporation.

Similarly, Dharmasisya Volume et al., (2022) underscore enforcement challenges under KUHP 2023 despite its provisions for corporate sanctions. Among the primary issues identified is the difficulty in gathering sufficient evidence to prosecute corporate leaders or management. The study also observes that while the KUHP 2023 introduces substantial fines for corporate offenders, additional sanctions—such as business license revocation—require further refinement to effectively deter repeated offenses, commonly referred to in criminal law as “*continuous actions*” (Dillon & Hendrik, 2022).

Literature Review

In the discussion of corporate criminal liability, several key theories and concepts form the legal foundation for determining how corporations, as legal entities, can be held accountable for the crimes they commit. Based on existing literature, several concepts and previous studies related to corporate criminal liability that are relevant to the analysis in the context of the 2023 Indonesian Criminal Code (KUHP 2023) are as follows:

Theory of Corporate Criminal Liability

Corporate criminal liability is based on the recognition that corporations, as legal entities operating collectively, can commit crimes through the actions of their managers or employees. According to the theory of vicarious liability (Brodowski et al., 2014; Díez, 2017; Easterbrook & Fischel, 1985; Pieth & Ivory, 2011, 2012; Polidori & Teobaldelli, 2019), a corporation can be held criminally liable for the actions of its agents or representatives if those actions are carried out within the scope of corporate activities. This theory is also applied in KUHP 2023, where corporations are considered legal subjects that can be subject to criminal sanctions (Maradona, 2018).

Widyaningrum et al., (2024) emphasize that the application of the theory of vicarious liability in the corporate context often faces challenges in determining who is individually responsible. Is it the top management or the board of directors who make decisions, or are just regular employees involved? In KUHP 2023, there is still some ambiguity regarding how this responsibility is applied, especially in the context of collective crimes.

Regulation of Corporate Criminal Liability in Indonesia

According to Maradona (2018), Indonesia has long recognized corporations as legal subjects through various specific laws, although comprehensive regulation was only introduced in KUHP 2023. Previously, corporate liability was governed by sectoral laws such as the Money Laundering Law and the Anti-Corruption Law. In KUHP 2023, there are clearer provisions regarding the crimes that can be committed by corporations and the criminal sanctions that can be imposed, ranging from fines to business license revocation (Hamka, 2021; Matondang & Putra, 2024).

In KUHP 2023, corporations referred to as legal entities are now recognized as subjects of criminal offenses. The specific provisions regarding corporate liability and criminal sanctions for legal entities (corporations) are as follows:

1. Article 45, paragraph (1) of KUHP 2023 states that “corporations are subjects of criminal offenses. These corporations include legal entities such as limited liability companies (PT), foundations, cooperatives, state-owned enterprises, and other forms of businesses”.
2. Article 46 outlines that “criminal acts committed by legal entities occur when managers holding functional positions within the corporate structure engage in illegal actions. Additionally, individuals acting on behalf of legal entities or for the corporation’s benefit may also be deemed perpetrators”.

3. Article 118 refers to “the criminal sanctions for corporations, which include:
 - a. Main sanctions, consisting of fines and supervision.
 - b. Additional sanctions, such as revocation of business licenses, dissolution of legal entities, or other actions applicable to legal entities.

These provisions demonstrate that corporations can be held criminally liable not only for actions committed by individuals within the organization but also for the corporation's failure to prevent legal violations (Ekaputra & Khair., 2010; Undang-Undang No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana, 2023).

Enforcement of Corporate Criminal Liability

Previous research highlights several obstacles and challenges in enforcing criminal law against corporations. One of the main challenges is the lack of effective mechanisms to gather the necessary evidence to involve corporations in criminal offenses (Widyaningrum et al., 2024). For example, the company was accused of environmental pollution in the PT Freeport Indonesia case. However, it was difficult to prove the direct involvement of “top management” despite the evident damage (Matondang & Putra, 2024).

Soraya and Prawesthi (2023), in their study on the construction of corporate fault, emphasize that in some cases, Indonesian law is still too lenient on large corporations involved in economic or environmental crimes. In contrast, in countries like the Netherlands, corporations face stricter sanctions, including collective punishment through the dissolution of entities.

International Comparison

Comparatively, Indonesia lags in corporate criminal liability mechanisms compared to countries like the Netherlands or the UK. In the Dutch legal system, corporate criminal liability has been regulated since 1976, where corporations can be held criminally liable for any crime committed by individuals representing them (Hartono, 2015; Maradona, 2018). In the UK, the Corporate Manslaughter and Corporate Homicide Act 2007 provides a good example of holding corporations accountable for deaths or accidents caused by corporate negligence.

From this literature review, it can be concluded that although Indonesia has regulated corporate criminal liability in KUHP 2023, many obstacles and challenges remain to be addressed, particularly in law enforcement and strengthening effective mechanisms. Previous research indicates the need for more progressive legal reforms to ensure that corporations can be held accountable for their criminal acts. According to Syahrin et al., (2024), the formulation of corporate criminal liability policies still needs improvement, particularly in the context of corruption and environmental crimes. Law enforcement is often hampered by the lack of clear mechanisms to prosecute individuals responsible within the corporation. One weakness is the absence of a uniform and consistent sentencing model, including ambiguity over when corporations can be held criminally liable and who can be held accountable within the corporation. As a result, there is uncertainty in effectively enforcing the law against corporations in Indonesia.

Methodology

The research method used in this study is a normative legal approach with descriptive and comparative methods. Primary data were obtained from analysing statutory regulations, particularly the 2023 Indonesian Criminal Code (KUHP 2023), which regulates corporate criminal liability (Caesar Ibrahim et al., 2023; Ekaputra & Khair., 2010). Data collection techniques were conducted through a literature review, and the data were analyzed using content analysis to understand the relevance of legal regulations to corporate cases (Ibrahim, 2011; Ibrahim, 2006). A comparative approach was also employed to compare the regulations in Indonesia with legal systems in other countries, such as the Netherlands, which had recognized corporate criminal liability in its legal system earlier (Hamka, 2021; Maradona, 2018; Matondang & Putra, 2024; Soraya & Prawesthi, 2023).

Results and Discussion

Regulation of Corporate Criminal Liability in the 2023 Indonesian Criminal Code (KUHP 2023)

The 2023 Indonesian Criminal Code (KUHP 2023) regulates corporate criminal liability through several provisions recognising corporations as legal entities capable of committing crimes. In this context, corporations can be subject to criminal sanctions if they are proven to have committed crimes, such as environmental offenses, economic crimes, or cybercrimes. The sanctions regulated under Article 118 of KUHP 2023 include fines, business license revocation, and other additional sanctions (Maradona, 2018; Soraya & Prawesthi, 2023).

KUHP 2023 also introduces a new approach to a corporate fault, where existing provisions state that offenses may be committed by individuals in positions of authority within the corporation, and such offenses can be regarded as a collective corporate fault. In practice, determining individual responsibility, particularly in large corporations, remains challenging because decision-making within these corporations is often structured and collective (Hamka, 2021).

For instance, in the environmental pollution case involving PT Freeport Indonesia, although the corporation was collectively deemed responsible, it was difficult to identify individual accountability within the top management who made operational decisions (Matondang & Putra, 2024; Soraya & Prawesthi, 2023). The provisions in KUHP 2023 still require further refinement to clarify how individual responsibility within corporations can be enforced.

Comparison with International Legal Systems

Compared to other countries' legal systems, such as the Netherlands, the regulation of corporate criminal liability in Indonesia is new and needs improvement. In the Dutch legal system, corporate criminal liability has been recognized in the Criminal Code since 1976, and law enforcement against corporations has proven effective in various cases (Maradona, 2018). In the Netherlands, the concept of vicarious liability is strictly applied, whereby individuals acting on behalf of the corporation can face criminal sanctions along with the corporation itself (Brodowski et al., 2014; Díez, 2017; Easterbrook & Fischel, 1985; Lubis et al., 2024; Murti Lubis et al., 2024; Pieth & Ivory, 2011; Polidori & Teobaldelli, 2019).

In contrast, the application of corporate criminal liability in Indonesia is often procedurally hampered by insufficient evidence (Article 183 of the Criminal Procedure Code) to implicate individuals within corporate management. In the case of PT Lapindo Brantas and the Sidoarjo mudflow disaster, which caused significant harm to the community, the corporation was found guilty, but the Indonesian Criminal Justice System failed to prosecute individuals within management for the operational decisions that caused the disaster (Lubis et al., 2024; Murti Lubis et al., 2024; Pribadi, 2018; Soraya & Prawesthi, 2023).

Weaknesses and Challenges in Law Enforcement

Although KUHP 2023 provides a clear legal basis for corporate criminal liability, several weaknesses still need to be addressed. One major issue is the lack of a strong mechanism to prove the direct involvement of individuals in corporate management (Maradona, 2018; Murti Lubis et al., 2024; Soraya & Prawesthi, 2023). In many cases, such as cybercrimes or environmental violations, it is difficult to link illegal actions to top management, often resulting in sanctions that do not serve as a sufficient deterrent (Syahrin et al., 2024; Syahrin et al., 2023).

Moreover, the sanctions regulated under KUHP 2023, such as fines, while substantial, are often deemed insufficient for large corporations with significant financial resources (Syahrin et al., 2024). Sanctions such as business license revocation are rarely applied due to political and economic pressures (Maroni, 2016; Matondang & Putra, 2024).

Implications for Cyber and Economic Crimes

The regulation of corporate criminal liability in KUHP 2023 has significant implications for handling cyber and economic crimes. In an increasingly digital world, corporations often play a central role in disseminating information and financial transactions, making criminal liability for actions such as money laundering and data manipulation essential (Matondang & Putra, 2024). The case of PT Indosat, accused

of involvement in cybercrime, demonstrates the critical role corporations play in digital crimes (Soraya & Prawesthi, 2023).

Corporate Criminal Liability in the 2023 Indonesian Criminal Code

The regulation of corporate criminal liability in KUHP 2023 marks a significant step forward in Indonesia's criminal justice system. KUHP 2023 explicitly recognizes corporations as legal subjects that can be held criminally liable. It provides for various types of sanctions that can be imposed on corporations proven to have committed crimes. However, despite this progress, several weaknesses remain, including the lack of effective law enforcement mechanisms and the ambiguity in individual responsibility within corporations, particularly for top management involved in crucial operational decisions. Cases such as PT Freeport Indonesia and PT Lapindo Brantas show that although corporations can be held accountable, law enforcement is often hindered by technical and administrative obstacles (Afdal, n.d.; Amin, 2018; Andreas & Laracaka, 2019; Hamka, 2021; Jayadiningrat et al., 2024; M. Yusufidli Adhyaksana, 2008; Manullang et al., n.d.; Maradona, 2018; Matondang & Putra, 2024; Mujiono & Tanuwijaya, 2019; Murti Lubis et al., 2024; R. Dwi Kennardi Dewanto P, 2018; Reza et al., n.d.; Satria, 2017; Sirait, 2024; Suryandari, 2022).

Another weakness is that although sanctions such as fines and business license revocations are regulated under KUHP 2023, their application often fails to provide sufficient deterrence for large corporations with strong resources (Christy & Rantetandung, 2021; Diansyah et al., 2011; Hamka, 2021; Matondang & Putra, 2024; Mudzakkir, 2011; Rangkuti, 2019; Syahrin et al., 2024). Therefore, further efforts are needed to strengthen law enforcement mechanisms, particularly in cyber and economic crime cases involving corporations.

This paper recommends the following:

- i. First, enhancing law enforcement against corporations through legal procedures, including improving the capacity and integrity of law enforcement officers (such as police, prosecutors, advocates, and judges) to gather relevant and effective evidence implicating corporate management. It is also crucial to strengthen collaboration among government agencies, law enforcement officers, and the private sector to address crimes committed by corporations effectively.
- ii. Second, the KUHP 2023 should be revised or supplemented with additional provisions that establish clearer mechanisms for prosecuting individuals within corporate management who are responsible for decisions leading to criminal offenses. Such measures would enhance the criminal liability system and provide a stronger deterrent effect.

Besides fines, KUHP 2023 should implement stricter and more progressive sanctions, such as asset freezing, corporate dissolution, or operation bans for corporations committing serious offenses, particularly in cases involving environmental crimes or human rights violations. The government needs to enhance the oversight system for corporations to prevent criminal acts from occurring. Training programs and outreach for corporations on legal compliance and business ethics are also crucial to preventing unlawful conduct.

Conclusion

The 2023 Indonesian Criminal Code (KUHP 2023) has established a significant foundation for regulating corporate criminal liability; however, weaknesses remain in law enforcement mechanisms and the clarity of individual responsibility within corporations. While corporations can be subject to criminal sanctions, technical limitations and insufficient evidence often hinder enforcement. Additionally, existing sanctions, such as fines, have not provided a sufficient deterrent effect for large corporations. To strengthen law enforcement against corporations, the capacity of law enforcement officers must be improved, especially in gathering evidence and involving corporate management in criminal activities. Furthermore, the individual responsibility of corporate management must be clarified to ensure accountability.

Implementing more progressive sanctions, such as asset freezing or corporate dissolution, is crucial for serious offenses. The government also needs to enhance oversight and conduct outreach to corporations regarding legal compliance to make preventive measures more effective. By taking these steps, the effectiveness of law enforcement and justice in corporate cases can be improved.

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