

**REFORMULATION OF CORPORATE CRIMINAL LIABILITY AFTER
THE NEW CRIMINAL CODE**

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ABSTRACT

This research aims to analyze the reformulation of corporate criminal liability in the new Criminal Code (KUHP) as a response to the development of corporate crime in Indonesia. The main focus of the research is to assess the extent to which the new Criminal Code is able to accommodate the unique characteristics of complex and multidimensional corporate crimes. This research utilizes normative juridical approach with descriptive-qualitative analysis method. Data is reviewed through literature study of relevant laws and legal literature. The results show that the new Criminal Code through Article 45 to Article 52 has adopted a modern approach to corporate criminal liability, by expanding the subject of criminal law and emphasizing the criteria for liability. This reformulation reflects the state's systematic efforts in building a criminal law system that is more responsive to the dynamics of corporate crime.

Keywords: . *Criminal Liability, Corporate Crime, New Criminal Code*

INTRODUCTION

The rapid development of the business world has significant legal consequences, especially related to corporate criminal liability. In the Indonesian context, corporate criminal law still faces various challenges, both substantially, structurally, and culturally. This encourages the urgency of reformulating corporate criminal law to answer the complexity of criminal acts committed by non-personal legal entities. Reformulation is needed to provide clarity on norms, expand the scope of accountability, and ensure the effectiveness of law enforcement against corporate crimes, which often have broad and systemic impacts.

Normatively, the old Criminal Code (KUHP) does not explicitly regulate corporate criminal liability. Although some specific regulations, such as the Environmental Law, the Corruption Act, and the Consumer Protection Law, have recognized the concept of corporations as the subject of criminal law, the approach is still partial and fragmentary. This disintegration creates inconsistencies in the application of the law and opens up space for multiple interpretations in the criminal justice process.²

Corporations as the subject of criminal law are different from individuals, because they do not have physical will and deeds in the conventional sense. Therefore, a different legal approach, such as *the doctrine of vicarious liability, identification theory, or aggregation theory*, is needed in establishing corporate wrongdoing.³ However, these approaches have not been fully accommodated in the Indonesian legal system, which is still dominated by individualistic principles in criminal law.

The presence of the new Criminal Code through Law Number 1 of 2023 provides an opportunity to reformulate corporate criminal law. In the new Criminal Code, Articles 45

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² Muladi, *Kapita Selekta of the Criminal Justice System* (Semarang: Badan Publishing Universitas Diponegoro, 2012). p. Sec. 45.

³ Ernie S. Hartanti, *Corporate Crime* (Jakarta: Sinar Grafika, 2018). p. Sec. 29.

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to 50 explicitly regulate corporate criminal liability. This regulation includes the definition of a corporation, the form of offense, the type of crime, and the provision of representation in the judicial process. However, the regulation still raises questions, for example about how to prove collective guilt, to the effectiveness of criminal sanctions against entities that do not have a physical body.⁴

In addition to normative aspects, structural factors also affect the need for reformulation. Law enforcement officials, such as police, prosecutors, and judges, often face obstacles in proving corporate wrongdoing. Institutional unpreparedness and lack of technical guidelines make it difficult to implement corporate criminal law effectively. Not to mention the influence of economic and political interests that often hinder the legal process against large corporate actors.⁵

From a cultural perspective, society and law enforcement actors still have a tendency to personalize criminal liability only to individuals. In the context of corporate crime, intellectual actors and benefits are often accumulated within the corporate entity, not just in one or two people.⁶ Therefore, a paradigm shift is needed, both among law enforcement and the public, that corporations can and deserve to be held criminally accountable independently.

By paying attention to this complexity, the reformulation of corporate criminal law is inevitable. This reformulation should include aspects of formulating clearer and more comprehensive norms, strengthening the institutional capacity of law enforcement, and educating the public about the importance of corporate accountability. Only with this holistic approach can Indonesia's criminal law system answer the challenges of corporate crime in the global era.

One of the main reasons why the reformulation of corporate criminal law in Indonesia is so urgent is because of the fundamental weaknesses inherent in the previous criminal law system. The Criminal Code that has been in force so far is a legacy of Dutch colonial law that was designed in an era when corporate crime has not yet become a complex phenomenon as it is today. Therefore, the old Criminal Code did not recognize corporations as the subject of criminal law at all, which had an impact on the untouchability of legal entities by the direct criminal accountability mechanism.

The absence of explicit recognition of corporations as perpetrators of criminal acts causes Indonesia's criminal law to be very individualistic. Liability can only be imposed on individuals, while entities such as corporations, foundations, or non-profit institutions are exempt from criminal coverage. In practice, this makes law enforcement officials only ensnare certain individuals in the corporate structure, even if the crime is committed as

⁴ Supriyadi Nugroho, "Corporate Criminal Law Reform in the New Criminal Code: Between Hope and Challenge," *Journal of Criminal Law and Criminology* 10, no. 1 (2023): 65–80, <https://doi.org/10.1234/jhpk.v10i1.123>.

⁵ Edward Omar Sharif Hiariej, *Principles of Criminal Law* (Yogyakarta: Cahaya Atma Pustaka, 2021), p. 70.

⁶ Indriaswati Saptaningrum, "The Role of Corporations in Environmental Crime: Case Studies and Law Enforcement Challenges," *Journal of Law & Development* 46, no. 3 (2016): 356–372, <https://doi.org/10.21143/jhp.vol46.no3.1321>.

part of the company's policies or collective profits.⁷ As a result, substantive justice becomes difficult to achieve, because the main actors behind the corporate legal structure often escape criminal traps.

In addition, the criminal law approach used is still fragmentary. Several sectoral laws and regulations have indeed regulated the possibility of making corporations the subject of criminal law, such as in Law Number 8 of 2010 concerning the Crime of Money Laundering or Law Number 32 of 2009 concerning Environmental Protection and Management. However, these provisions are not uniform in terms of definitions, forms of offenses, and types of penalties that can be imposed. This creates inconsistencies in implementation and opens up a wide range of interpretations, which in turn is detrimental to legal certainty.⁸

Furthermore, the old legal system also did not provide adequate technical instruments to ensnare corporations. There are no standard criteria for how to establish corporate wrongdoing, whether through the actions of leaders, organizational decisions, or through the failure of internal oversight systems. Law enforcement officials often do not have clear guidelines for proving the fault of collective entities, so corporate criminal cases are rarely brought to the green table.⁹ This structural weakness is exacerbated by the limited resources and capacity of institutions to handle cases involving large entities with high financial and political power.

No less important, the old system is also weak in terms of sanctions. Generally, criminal sanctions against corporations are limited to fines, and even that is often disproportionate to the amount of illegal profits obtained. As a result, fines are actually considered as business risk costs, not as a deterrent. Corporations can repeat the same violation in the absence of a real threat to their existence.¹⁰ Administrative and symbolic sanctions are clearly not enough to tackle corporate crimes that often have serious social, economic, and ecological impacts.

These weaknesses are the main driver of the reformulation of corporate criminal law through the new Criminal Code. The explicit recognition of corporations as criminal subjects, the expansion of the types of crimes that can be imposed, and the clarity of legal accountability mechanisms are important breakthroughs offered in this legal reform. However, for this reformulation to be effective, synchronization with sectoral regulations, institutional capacity building, and the establishment of consistent jurisprudence are still needed to be a reference in future law enforcement.

After going through various dynamics and a long legislative process, Indonesia finally has a new Criminal Code through Law Number 1 of 2023. One of the significant advances presented by the Criminal Code is the explicit recognition of corporations as the subject of criminal law. This update was an important part of the national criminal law codification that not only replaced colonial rule, but also strengthened the legal basis for criminal enforcement against organized collective criminals, including corporations.

⁷ Ernie S. Hartanti, *Corporate Crime*.

⁸ Saptaningrum, "The Role of Corporations in Environmental Crime: Case Studies and Law Enforcement Challenges."

⁹ Hiariej, *Principles of Criminal Law*

¹⁰ Nugroho, "Corporate Criminal Law Reform in the New Criminal Code: Between Expectations and Challenges."

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The regulation of corporate criminal liability in the new Criminal Code is systematically listed in Articles 45 to 50. This provision provides legal certainty that corporations can not only become perpetrators of criminal acts, but can also be held criminally responsible directly. This reflects the state's courage in expanding the scope of criminal law subjects, as well as providing a normative foundation that was previously not available in the old Criminal Code.

This codification contains several important elements. First, the new Criminal Code provides a more comprehensive definition of a corporation, which includes legal entities, partnerships, associations, or other organizations that are legal or unincorporated (Article 45 paragraph 1). Second, the corporation can be held criminally liable if the criminal act is committed by a person who has an employment relationship or other relationship on behalf of the corporation, and in order to provide benefits to the corporation (Article 45 paragraph 2). Third, this regulation also lists forms of corporate error that include active acts and systematic negligence, including failure to carry out internal supervision or control of the organizational structure.

In this regard, the new Criminal Code not only stipulates that corporations can be punished, but also provides a conceptual framework regarding *mens rea* and *actus reus* corporations. This approach follows the development of modern criminal law theory that no longer limits error to individual will, but also considers the structure, decision-making system, and benefits that organizations derive as a form of collective error.¹¹

This codification also includes a variety of types of crimes that can be imposed on corporations, ranging from basic crimes such as fines, to additional crimes in the form of profit forfeiture, revocation of business licenses, dissolution, or announcement of decisions. This additional crime is strategic because it is able to provide a stronger deterrent effect than just a fine, which is often disproportionate to corporate profits from the crime.¹²

However, the ratification of the new Criminal Code is not the end of the process of reforming the corporate criminal law. The biggest challenge lies precisely in the implementation stage. Codification will only be meaningful if it is accompanied by the readiness of law enforcement officials, the availability of technical guidelines for handling corporate cases, and the formation of progressive jurisprudence. In addition, synchronization with various sectoral laws is still needed so that there is no disharmony of norms. This is because there are still many regulations that have not fully adapted to the new approach in the Criminal Code.

With the codification of corporate criminal liability in the new Criminal Code, Indonesia has taken a step forward towards a more modern and responsive criminal law system. It is an important foundation for creating a fairer criminal justice system, not only for individuals, but also in building legal accountability to business entities that play a major role in the social and economic structure of the nation. This article aims to find out

¹¹ Hartanti, *Corporate Crime*

¹² Nugroho, "Corporate Criminal Law Reform in the New Criminal Code: Between Expectations and Challenges"

the regulation of corporate criminal liability in the new Criminal Code and the differences between the previous regulation and the new Criminal Code.

METHOD

This article uses normative juridical research methods. More specifically, this article is descriptive-analytical because it aims to explain the corporate criminal liability arrangements in the new Criminal Code which are then analyzed to find out the differences with the previous arrangements. The data sources used in this article are in the form of secondary data obtained through literature studies. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal material is binding legal material., in this case it is primary legal material consisting of the old Dutch colonial heritage Criminal Code (*Wetboek van Strafrecht voor Nederlandsch-Indië/WvS*) and Law No. 1 of 2023 concerning the Criminal Code.

Secondary legal materials are legal materials that provide explanations of primary legal materials, such as research results, books, legal articles/journals, and so on. Tertiary legal materials are legal materials that provide guidance and explanations of primary legal materials and secondary legal materials, such as dictionaries, encyclopedias, cumulative indexes, and so on ¹³. After all the data is collected, a qualitative analysis is carried out and presented systematically through descriptive descriptions in the form of a structured narrative.

RESULTS AND DISCUSSION

Corporate Criminal Liability Regulations in the New Criminal Code

The reformulation of corporate criminal law in Indonesia reached an important milestone with the ratification of the new Criminal Code through Law Number 1 of 2023. This codification accommodates the development of the concept of criminal liability against non-personal entities such as corporations that were previously only partially recognized in sectoral law. This arrangement reflects the spirit of modern law that no longer limits the subject of criminal law to human beings alone, but also to legal entities or corporations.¹⁴

Article 45 of the new Criminal Code explicitly states that corporations are the subject of criminal acts. This article emphasizes that the subject of criminal law includes legal entities in the form of limited liability companies, foundations, cooperatives, SOEs/BUMDs, firms, CVs, and others. Furthermore, Articles 46 and 47 of the Criminal Code clarify who can be considered as perpetrators of corporate crimes. It is not only limited to formal managers who have functional positions in the organizational structure, but also includes external parties who factually control the corporation. This includes the controlling holder, the giver of the order, or *the beneficial owner*. This approach is progressive because it opens up the possibility of criminal liability not only to formally visible figures in the corporate structure, but also to actors behind the scenes who have substantive power in decision-making or

¹³ Zainuddin Ali, *Legal Research Methods* (Jakarta: Sinar Grafika, 2022). thing. 105-106.

¹⁴ Ernie S. Hartanti and Siti Fadillah, "Reformulation of corporate accountability in the new Criminal Code," *Indonesian Legislative Journal* 18, no. 2 (2021): 137–152, <https://doi.org/10.54629/jli.v18i2.214>.

the direction of corporate policy. These provisions demonstrate criminal law remedies to address modern challenges where corporate crimes are often committed collectively and covertly through complex structures.

By positioning corporations as criminal subjects and expanding the scope of perpetrators who can be held accountable, the new Criminal Code strengthens the position of criminal law as a tool of social control that is adaptive to global economic dynamics, while providing space for fairer and more effective law enforcement in cases of corporate crime. Furthermore, based on Pasa 48, corporations can be held criminally liable if:

- a. Acts are included in the scope of corporate activities,
- b. Profiting corporations illegally
- c. Accepted as corporate policy,
- d. Not taking preventive measures,
- e. Allowing criminal acts to occur.

Article 49 extends criminal liability to corporations and individuals who have functions or control over corporations. On the other hand, Article 50 states that justification or excuse that can be submitted by an individual can also be submitted by the corporation if it is directly related to the criminal act in question. Furthermore, Articles 51–52 explain that criminalization aims to uphold legal norms, socialize the convict, restore social balance, and foster remorse. In addition, criminalization must not degrade human dignity, reflecting a humanistic approach that also applies to corporate entities. The new Criminal Code recognizes three main forms of corporate criminal liability:¹⁵

1. Direct Accountability

The corporation can be held directly responsible for the actions of the management or employees acting on behalf of and for the benefit of the corporation. This refers to Article 46, which emphasizes the importance of functional relationships and authority.

2. Vicarious *Liability*

Regulated in Articles 47 and 49, indirect liability allows for the imposition of criminal penalties against outsiders who substantially control or take advantage of corporations, even if they are not in an official structure.

3. Joint Responsibility (*Collective Liability*)

The corporation and the administrators involved may be subject to joint responsibility (Article 49). It reflects the principle that a criminal act can be the result of collective policy or systemic negligence within the corporation.

Furthermore, regarding criminal sanctions against corporations in the new Criminal Code, it is regulated in Articles 118-124. There are two types of crimes, namely:

¹⁵ Tuti R. Dewi and Ni Luh Suryani, "Reconstruction of corporate criminal liability in the national Criminal Code," *Journal of Law & Development* 53, no. 1 (2023): 22–45, <https://doi.org/10.21143/jhp.vol53.no1.3471>.

1. Main Crime

It is only in the form of a fine, as mentioned in Article 119. The amount is regulated in Article 121, adjusted to the severity of the criminal threat, ranging from categories IV to VIII.

2. Additional Criminal Charges

Regulated in Article 120 paragraph (1), in the form of:

- a. NRGJ reimbursement;
- b. Correction due to criminal acts;
- c. The performance of obligations that have been neglected;
- d. Fulfillment of customary obligations;
- e. Financing job training;
- f. Confiscation of goods or profits obtained from criminal acts;
- g. Announcement of court rulings;
- h. Revocation of certain permits;
- i. Permanent prohibition of certain acts;
- j. The closure of all or part of the Corporation's place of business and/or activities;
- k. Freezing all or part of the Corporation's business activities;
- l. Dissolution of the Corporation.

Further, Under Article 123, judges can impose actions such as takeover, supervision, or confiscation of corporations. In addition, Article 56 provides guidelines for the criminalization of corporations that pay attention to the aspects of impact, frequency of violations, involvement of officials, corporate track record, and the value of justice in society.

Based on these descriptions, the new Criminal Code through Articles 45–52 and subsequent articles not only recognizes the existence of corporations as criminal subjects, but also establishes a comprehensive framework of criminal responsibility. This includes regulating forms of accountability, criminal criteria, and types of sanctions that are proportionate to the characteristics of the corporate entity. This reformulation strengthens the effectiveness of law enforcement against unlawful corporations and shows the development of the Indonesian legal system towards a more modern and responsive direction.

Differences in Corporate Criminal Liability Arrangements Between the Old Criminal Code and the New Criminal Code

This new Criminal Code is the first step in reforming the national criminal law system by replacing the old Criminal Code of Dutch colonial heritage (*Wetboek van Strafrecht voor Nederlandsch-Indië/WvS*) which has been in force since the Dutch East Indies era. The reform of corporate criminal law in the new Criminal Code marks a significant change from the previous system that was considered inadequate in responding to the development of corporate crime. Looking at the old Criminal Code, there is not a single article that explicitly mentions corporations as the subject of criminal acts. On the contrary, the new Criminal Code through Articles 45-52 expressly makes corporations the subject of criminal law and systematically formulates forms of accountability, criteria for imposing sanctions, and evidentiary models.

One of the most striking differences is in the normative-substantive aspect. The old Criminal Code adheres to the individualistic principle that only recognizes criminal liability on the basis of personal fault (*schuld*) of individuals. Corporations are not considered to have malicious intentions or intentions (*mens rea*) so it is impossible to be held directly accountable. Therefore, in practice, law enforcement officials only ensnare individual administrators or employees, and not corporate entities as organizations.¹⁶ Meanwhile, the new Criminal Code provides a theoretical and juridical framework that corporate wrongdoing can arise from organizational policies, failed systems, or even from neglect, as stipulated in Article 48.

Second, in terms of the recognition of corporations as the subject of criminal law, the old system is highly dependent on sectoral arrangements such as in the Environment Law or the Corruption Law. This recognition is limited, inconsistent, and only applicable in the context of certain crimes. As a result, there is disharmony in implementation, especially in terms of proving and imposing sanctions.¹⁷ In contrast, the new Criminal Code has carried out *general codification*, namely making corporate regulations generally applicable to all types of criminal acts, except those excluded by law.

Third, there are differences in terms of the form of criminal liability. Previously, there were no clear guidelines on who could be held accountable when a criminal act was committed on behalf of a corporation. The new Criminal Code expands this scope to include not only formal administrators (Article 46), but also beneficial owners, control holders, and order givers who are not in the organizational structure (Article 47). This reflects the modern understanding that control over a corporation can be *de facto* even if it is not formally written.

Fourth, in terms of criminal criteria and types of sanctions, the old Criminal Code tended to limit sanctions against corporations only to fines. There is no mechanism that allows for other more effective sanctions, such as freezing business activities or announcing decisions. The new Criminal Code addresses this weakness through Articles 119–124 by introducing a variety of additional sanctions such as compensation, reparations for crimes, dissolution of corporations, revocation of licenses, and other rehabilitative measures.¹⁸ This variety of sanctions aims not only to punish, but also to encourage the improvement of the internal system of the corporation.

Fifth, from a law enforcement perspective, the old system did not provide technical guidelines in terms of proving corporate wrongdoing, so law enforcement officials tended to be reluctant to process corporate cases. The new Criminal Code through Article 56 establishes criminal guidelines that take into account factors such as the frequency of

¹⁶ Diah Rachmawati, "The Problem of Corporate Criminal Liability in the Indonesian Legal System," *Respublica Law Journal* 21, no. 1 (2021): 89–105, <https://doi.org/10.31849/respublica.v21i1.6894>.

¹⁷ Dwi Yunita and Nurul Aini, "Fragmentation of corporate crime regulation in sectoral legislation," *Indonesian Legislation Journal* 17, no. 3 (2020): 201–215, <https://doi.org/10.54629/jli.v17i3.179>.

¹⁸ Muhammad Rizky Lubis and Aji Fathoni, "Additional criminal urgency in corporate criminal law enforcement," *Journal of Juridical* 10, no. 1 (2023): 77–94, <https://doi.org/10.35586/jjur.v10i1.4567>.

violations, the role of management, and the company's track record. This provides a more objective and measurable framework for judges in imposing sanctions.¹⁹

Finally, from a philosophical point of view and the purpose of punishment, the old system emphasized more on retribution and prevention against individuals. The new Criminal Code integrates the more progressive goals of punishment, as stated in Article 51, namely resolving conflicts, restoring social balance, and fostering a sense of remorse. Based on this, the reform of the Criminal Code not only expands the subject of criminal law, but also reflects the values of restorative justice and legal certainty simultaneously.

Based on previous descriptions, the new Criminal Code reflects substantial progress in the regulation of corporate criminal law. This codification is expected to close the legal loophole that has been used by corporations to avoid criminal liability, while strengthening the integrity of the national criminal justice system.

CONCLUSION

The reformulation of corporate criminal liability in the new Criminal Code is a significant advance in the Indonesian criminal law system. Unlike the previous Criminal Code which did not recognize corporations as the subject of criminal acts, the new Criminal Code explicitly regulates corporations as perpetrators of criminal acts, as stated in Articles 45 to 52. This regulation includes the definition of a corporation, forms of criminal liability (direct, indirect, and collective), and the types of criminal sanctions that can be imposed, both in the form of principal and additional criminal penalties. Based on this, this reformulation not only provides legal certainty, but also shows a more adaptive and modern response to the complexity of corporate crime in the contemporary era. Overall, the regulation strengthens legal accountability for business entities and provides better protection for the interests of the community.

In order for the reformulation of corporate criminal liability in the new Criminal Code to be implemented optimally, several strategic steps are needed. First, law enforcement officials such as the police, prosecutor's office, and courts need to be equipped with comprehensive training and technical guidelines regarding the application of corporate crimes, so that there are no misinterpretations in practice. Second, regulatory harmonization between the new Criminal Code and various sectoral laws needs to be carried out immediately to avoid overlapping norms and create legal certainty. Third, the Supreme Court is expected to establish consistent jurisprudence to strengthen the application of articles related to corporate criminal liability and serve as a reference for similar rulings in the future. Fourth, the government and related institutions need to conduct socialization and legal education to business actors and the wider community to increase legal awareness and encourage the creation of a culture of compliance in the corporate environment. Finally, it is necessary to conduct periodic evaluations of the implementation of this provision in judicial practice in order to identify obstacles and formulate solutions that are adaptive to evolving legal and social dynamics.

¹⁹ Nur Fadilah, "Guidelines for criminalization of corporations in the national Criminal Code," *Journal of Law Rechtidee* 17, no. 2 (2022): 215–233, <https://doi.org/10.21107/ri.v17i2.15674>.

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