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Reconstruction of Corporate Criminal Liability Based on Structural Errors in the New Criminal Code

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Abstract. *This study aims to analyze the regulation of corporate criminal liability in the National Criminal Code, the urgency of regulating corporate criminal liability in the National Criminal Code by comparing the application of corporate criminal liability in other countries, and analyzing the ideal concept of reconstructing corporate criminal liability based on structural errors in national criminal law to realize legal benefits. The type of research used in this study is normative juridical research. The research approaches used are the Statutory Regulation Approach, Conceptual Approach, Case Approach, Historical Approach, and Comparative Approach. The types and sources of legal materials used in this study are primary legal materials, secondary legal materials, and tertiary legal materials. The collection of legal materials was carried out using the legal materials inventory technique. The results of the study show: (1) The regulation of corporate criminal liability in the National Criminal Code shows a fairly progressive development compared to the previous Criminal Code regime. The National Criminal Code has recognized corporations as subjects of criminal law that can be held accountable, and regulates the mechanism for imposing responsibility on both corporations and their managers; (2) The urgency of implementing corporate criminal law in the National Criminal Code cannot be separated from the increasing complexity and wider impact of corporate crime on society, the state, and the economy. When compared with countries such as the United States and the United Kingdom, Indonesia is still relatively behind in developing a model of accountability based on compliance (compliance-based liability) and corporate legal culture (corporate culture); (3) The ideal concept of regulating corporate criminal liability in national criminal law to realize legal benefits basically demands a fundamental paradigm reconstruction from the individual liability approach to structural liability, considering that corporate crime is no longer individual, but systemic and rooted in policies, governance, and corporate organizational culture.*

Keywords: *Corporations; Criminal; Errors; Liability; Structural.*

1. Introduction

Corporations, as dominant economic actors in modern society, possess economic, technological, and organizational capacities far exceeding those of individuals, allowing their misuse to have systemic impacts on the economy, the environment, and public trust

in the rule of law. (Arrahman et al., 2025: 195-203) The fundamental limitation of the colonial Criminal Code lies in its construction of criminal law subjects, which exclusively recognizes natural persons as perpetrators of crimes. This paradigm arose from colonial social and economic conditions that did not recognize corporations as dominant actors in economic and social life. As a result, criminal law is more oriented towards individual deviant behavior than crimes committed through complex organizational structures. The construction of criminal responsibility based on individual fault (schuld) requires proof of personal will and awareness as the basis for punishment. This approach, while consistent with the principle of nulla poena sine culpa, poses serious problems when faced with crimes committed by collective entities. Corporations do not act through a single will, but rather through complex organizational mechanisms, division of functions, and layered decision-making. (Weno et al., 2025: 1-17) The development of Indonesian criminal law theory then demonstrated efforts to overcome these limitations. The New Criminal Code reaffirmed the principle of "no punishment without fault" as formulated in the adage nulla poena sine culpa or actus non facit reum nisi mens sit rea, by emphasizing that a person can only be punished if there is an element of intent (dolus) or negligence (culpa). (Faisal & Rustamaji, 2021: 291-308)

The recognition of corporations as subjects of criminal acts in the National Criminal Code not only raises technical issues of proof but also presents fundamental conceptual-philosophical problems. On the one hand, criminal law still adheres to the classic principle of geen straf zonder schuld, which requires fault as the basis for punishment. (Pratiwi & Yustrisia, 2026: 3563-3578) However, on the other hand, the construction of corporate criminal liability is no longer entirely based on personal fault, but has begun to shift to an assessment of risk, system failure, and the resulting impact. This condition raises the fundamental question of whether corporate criminal liability in the National Criminal Code is still consistent with the principle of fault, or has actually shifted towards a risk-based liability paradigm. This shift indicates a conceptual transformation in modern criminal law, from one that was originally oriented towards culpability-based liability to a more structural and functional accountability model.

Corporate crime cases in Indonesia demonstrate that corporate crime generally does not arise from isolated individual actions, but rather is a consequence of failed organizational systems, corporate culture, and weak internal oversight mechanisms. In various cases of corporate corruption, money laundering, forest and land fires, and environmental crimes, the pattern that emerges is not simply the violation of the law by a single individual, but rather the structural negligence that allows criminal acts to occur systematically and repeatedly.

One prominent example is seen in the case of corruption in the tin trade system in the PT Timah Tbk Mining Business Permit area in 2015-2022, which caused enormous state losses and environmental damage. (Hanyfah et al., 2024: 351-358) A similar phenomenon is also seen in cases of forest and land fires involving a number of plantation and forestry corporations in Indonesia. In several cases, corporations gain economic benefits from illegal land clearing or from allowing practices that have the potential to cause fires, while criminal responsibility in practice often stops with the perpetrators in the field. (MHC

Pratama, 2025: 11-20) The character of structural errors is also evident in various corruption cases in state-owned enterprises, including corruption cases of financial management and investment within PT Asabri and PT Jiwasraya. (Satriyawan, 2025: 23-41) In this case, the state's losses did not arise from one individual action alone, but were related to decision-making patterns, weak internal supervision, abuse of authority, and an organizational culture that failed to prevent repeated deviations.

Although the National Criminal Code, through Article 45, expressly stipulates that corporations are subjects of criminal acts, this formulation remains declarative and has not been fully followed by a clear operational construction of criminal responsibility. Article 45 only answers the question of who can be a subject of criminal law, but does not simultaneously address how and to what extent corporations can be held criminally responsible independently as collective entities. The expansion of the definition of a corporation to include both legal entities and non-legal entities actually widens the spectrum of legal subjects without being balanced by adequate differentiation of norms. As a result, this norm opens up room for uncertainty in determining which corporate characteristics actually possess the structure, will, and decision-making mechanisms worthy of criminal responsibility, thus potentially giving rise to inconsistent application of the law.

The ambiguity of norms is increasingly apparent in Articles 46 and 47, which define criminal acts by corporations as actions by managers, employees, parties acting on behalf of the corporation, and beneficial owners outside the organizational structure. This formulation is indeed progressive because it does not limit perpetrators to formal structures alone, but normatively raises serious problems in drawing the line between individual and corporate responsibility. The National Criminal Code does not provide clear parameters regarding when an individual's actions cease to be personal responsibility and begin to be attributed to the will or actions of the corporation. The phrases "acting in the interests of the Corporation" and "within the scope of the Corporation's business or activities" are not accompanied by measurable legal indicators, potentially leading to subjective interpretations by law enforcement officials in linking the actions to the corporation as a legal entity.

This normative problem reaches a crucial point in Article 48, which outlines the requirements for corporate criminal liability. This provision combines various doctrinally distinct concepts, such as "unlawfully benefiting the Corporation," "accepted as Corporate policy," "failing to take preventive measures," and "allowing the occurrence of a crime." However, the National Criminal Code does not clarify the operational meaning of these phrases. It is unclear whether "accepted as Corporate policy" must be proven through a formal decision, repeated practice, or simply passive inaction. Similarly, the phrase "failing to take necessary steps" is very open, with no normative criteria regarding the standards of compliance, reasonableness, or appropriateness that a corporation must meet. This ambiguity has the potential to make corporate criminal liability dependent on subjective judgments rather than definitive legal standards.

Based on the overall construction of Articles 45 through 50 of the National Criminal Code, it can be emphasized that the primary legal issue in corporate criminal liability lies not in

the absence of regulations, but rather in the vagueness of norms in defining the relationship between actions, wrongdoing, and corporations as subjects of criminal law. This vagueness has direct implications for legal certainty, the effectiveness of law enforcement, and the achievement of legal benefits.

This article aims to analyze the regulation of corporate criminal liability in the national Criminal Code, analyze the urgency of regulating corporate criminal liability in the national Criminal Code by comparing the implementation of corporate criminal liability in other countries, and analyze the ideal concept of reconstructing corporate criminal liability based on structural errors in national criminal law to realize legal benefits.

2. Research Methods

The type of research used in this study is normative legal research. According to Johnny Ibrahim, "normative legal research is a scientific research procedure to find the truth based on the logic of legal science from its normative side." (Ibrahim, 2006: 57) The research approaches used are the statutory regulatory approach, the conceptual approach, the case approach, the historical approach, and the comparative approach. The types and sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The collection of legal materials is carried out using the legal materials inventory technique.

3. Results and Discussion

3.1. Regulation of Corporate Criminal Liability in the National Criminal Code

a. Normative Regulations on Corporate Criminal Liability in the National Criminal Code

The development of modern criminal law in the Indonesian legal system indicates a fundamental shift in determining the subject of criminal law, which is no longer limited to humans as natural persons, but also includes corporations as legal persons. (Hermawan & Waluyo, 2025: 244-254) This recognition gained normative legitimacy in Law Number 1 of 2023 concerning the Criminal Code, specifically through regulations that place corporations as subjects of criminal acts. This regulation marks a paradigm shift from the old Criminal Code which did not explicitly accommodate corporations.

The paradigm shift in corporate criminal liability in the National Criminal Code is not only affirmative through the explicit recognition of corporations as legal subjects, but also reflects a fundamental shift when compared to the construction of the old Criminal Code which tended to be implicit and fragmentary. The old Criminal Code basically did not recognize corporations as subjects of criminal acts explicitly, so that criminal liability was more focused on individuals as natural persons. (Januardy & Sangalang, 2026: 3938-3955) In contrast, the National Criminal Code through Article 45 paragraph (1) states "Corporations are subjects of Criminal Acts" this expressly confirms corporations as subjects of criminal acts, which conceptually ends the classic debate regarding the capacity of non-physical entities to be held accountable. This change is not merely an expansion of legal subjects, but an epistemological transformation in understanding crime as a phenomenon that is no longer individualistic, but also institutional and structural.

This shows a shift from a personal liability approach to corporate fault liability, which allows the attribution of fault not only based on individual actions, but also based on the failure of the supervisory system, internal policies, and organizational culture.

Further comparison shows that the old Criminal Code does not have a clear normative construction regarding the requirements for corporate liability, while the National Criminal Code explicitly requires a functional relationship, corporate interests, and failure to carry out prevention (due diligence) as the basis for liability. (Saputera et al., 2025: 388-394) The regulation of corporate criminal liability in Articles 45 to 50 of the National Criminal Code is a progressive step in the reform of Indonesian criminal law because for the first time corporations are explicitly recognized as subjects of criminal acts in the codification of national criminal law. (Biyoto et al., 2026: 1-26)

The philosophical basis for recognizing corporations as subjects of criminal law is rooted in the principles of justice, expediency, and legal certainty. The principle of justice requires that corporations that profit from a crime are not exempt from accountability. The principle of expediency is reflected in efforts to prevent corporate crimes that have a broad impact on society and the environment. (Harefa & Nashir, 2025: 36-60) The position of corporations as legal subjects in the National Criminal Code is emphasized through a normative definition that includes organized groups of people and/or assets, both legal entities and non-legal entities. This formulation demonstrates a broad approach aimed at closing legal loopholes that can be exploited by perpetrators of crime. Corporations are no longer understood narrowly as formal legal entities, but rather encompass various forms of organizations with specific structures and activities. The conceptual boundaries regarding corporations in the National Criminal Code contain important elements such as the existence of an organization, a common goal, and a structured decision-making mechanism. These elements serve as parameters in determining whether an entity can be qualified as a corporation from a criminal law perspective. (Karuni & Novelin, 2025: 655-671)

Corporations under the National Criminal Code can be positioned as either direct or indirect perpetrators in a criminal act. As direct perpetrators, corporations act through their organs or managers who have representative authority. (Sjawie, 2017: 11) As indirect perpetrators, corporations can be held accountable for the actions of other parties within their sphere of control. This approach provides flexibility in constructing criminal liability that is appropriate to the complexity of the corporation's organizational structure.

The corporate criminal liability model in the National Criminal Code reflects legislators' efforts to accommodate the complexity of corporate structures and activities within the context of modern criminal law. Within this framework, the National Criminal Code implicitly adopts various liability models developed within criminal law doctrine to ensure effective law enforcement against corporate crimes. The direct liability model positions the corporation as the primary perpetrator of the crime without the need for explicit individual intermediaries. (Pravifjayanto, 2025: 89-102) The vicarious liability model provides the basis for holding the corporation responsible for the actions of individuals with whom it has an employment or other relationship. The identification theory model

emphasizes attributing the will of the management to the will of the corporation. This theory assumes that individuals occupying strategic positions within the corporate structure represent the "soul" of the corporation. (Tanjung, 2015: 1-14) The aggregation theory model provides a broader approach by combining the various actions, knowledge, and negligence of individuals within the corporation to form a single entity of guilt.

b. Application of Provisions on Corporate Criminal Liability in the Indonesian Criminal Law System

The application of corporate criminal liability provisions in the Indonesian criminal law system is essentially a test of the effectiveness of the normative construction established in the National Criminal Code. Codified norms have no practical meaning if they cannot be consistently operationalized in the reality of law enforcement. The fundamental problem that arises lies not solely in the adequacy of the normative formulation, but rather in the gap between normative design (law on the books) and implementation practice (law in action). (Ari Wibowo, 2025: 1-20) Normatively, the National Criminal Code, through Articles 45, 46, and 48, has provided a fairly progressive basis by recognizing corporations as legal subjects and opening up space for attribution of fault based on functional relationships and failures of due diligence. However, at the implementation level, these norms have not been fully operationalized consistently due to the continued dominance of the classical paradigm oriented towards individual liability. This condition indicates an epistemological gap between positive legal construction and law enforcement practices that are still rooted in traditional approaches.

From the perspective of the legal system theory proposed by Lawrence M. Friedman, the effectiveness of law is determined by three main elements: legal structure, legal substance, and legal culture. (Affan & Sunarto, 2026: 838-852) Synchronizing norms between the National Criminal Code and sectoral laws in practice still faces significant challenges. Differences in the approach to accountability, standards of proof, and types of sanctions indicate a disharmony that has not been fully resolved. This condition not only creates legal uncertainty but also has the potential to be exploited by perpetrators of corporate crimes to avoid accountability. Therefore, an interpretive approach is needed that can bridge these differences rationally and systematically. The application of the principle of lex specialis derogat legi generali in practice does not always provide a simple solution to norm conflicts. This principle does give priority to specific provisions, but it does not immediately resolve problems when there is overlap or a lack of regulation. (Hardiyanti et al., 2024: 23) In this context, a more comprehensive approach is needed, taking into account the objectives of the law, the principles of justice, and the interests of protecting society. An overly formalistic approach to these principles has the potential to obscure the substance of justice.

Law enforcement practices against corporations demonstrate fundamental differences compared to handling individual perpetrators. Corporations, as abstract entities, cannot be treated with conventional approaches focused on physical perpetrators. Handling corporate cases requires an analysis of organizational structures, policy patterns, and decision-making mechanisms. This approach demands a paradigm shift in criminal law enforcement.

c. Problems in the Regulation of Corporate Criminal Liability in the National Criminal Code

The conceptual problem of recognizing corporations as subjects of criminal law is rooted in the fundamental tension between the classical construction of criminal law and the demands of modern criminal developments. The principle of societas delinquere non potest, which asserts that legal entities cannot commit crimes, is built on the philosophical assumption that only humans possess the will, consciousness, and physical ability to act. (Hermawan & Waluyo, 2025: 244-254) This construction faces serious challenges when empirical reality shows that economic crimes, corruption, and environmental crimes are often committed through organized and systematic corporate mechanisms.

Conceptual ambiguity is further exacerbated when linked to the concept of fault (mens rea), an essential element in criminal law. Fault in the classical sense is always associated with the perpetrator's mental attitude, reflecting malicious intent or negligence, while corporations, as fictitious entities, lack direct mental awareness. This situation necessitates reconstructing the concept of fault to encompass collective entities acting through their governing bodies. Approaches such as identification theory attempt to bridge this gap by identifying the will of the management as the will of the corporation. However, this approach still leaves open the problem of errors not originating from specific individuals, but from systemic organizational policies or culture. (Agustinus & Arifin, 2025: 1405-1433) The fragmented concept of fault within individuals is not always able to explain collective corporate crimes, thus necessitating a more comprehensive approach. This situation indicates that the construction of fault in the Criminal Code is not yet fully able to accommodate the characteristics of corporate crimes that develop in practice.

The theoretical debate between the legal fiction approach and real entity theory also deepens the complexity of regulating corporate criminal liability. Legal fiction theory views corporations as legal creations that have no real existence, so that criminal liability can only be attached through intermediary constructions to individuals acting on their behalf. (Karuni & Novelin, 2025: 655-671) In contrast, real entity theory views corporations as social entities with a collective will that is manifested through their organizational structure and internal policies.

On the other hand, the disharmony between the National Criminal Code and sectoral laws and regulations demonstrates fragmented regulations that directly impact law enforcement practices. Sectoral laws, such as those on corruption, environmental crimes, and money laundering, develop a more progressive approach to accountability, including the broader application of strict liability and vicarious liability. The implications of these various problems indicate that existing corporate criminal liability regulations are incapable of addressing structural and systemic crimes. An approach still oriented toward individual culpability is insufficient to explain the complex and organized phenomenon of corporate crime. The need to develop a concept of structural culpability as a basis for reconstructing corporate criminal liability is becoming increasingly urgent. This concept positions systemic failures, organizational culture, and internal policies as sources of criminally accountable errors. Normative reform is needed to strike a balance between

legal certainty, justice, and expediency, so that criminal law is not merely repressive but also preventive and corrective. The direction of corporate criminal law reform must be able to respond to the dynamics of modern crime with a more comprehensive and adaptive approach to the structural realities of corporations.

3.2. The Urgency of Regulation of Corporate Criminal Liability in the National Criminal Code in Comparison with the Implementation of Corporate Criminal Liability in Other Countries

a. Application of Corporate Criminal Law from a Comparative Law Perspective (America, England, and France)

The legal basis for imposing criminal liability on corporations in the American and British legal systems is supported by various legal instruments, both in the form of statutes and jurisprudential precedents. In the United States, various federal statutes explicitly regulate corporate criminal liability in the environmental, financial, and antitrust sectors. This approach broadens the scope of liability by emphasizing the actions of corporate agents carried out within the scope of their employment. The United Kingdom developed a legal basis through a combination of common law and statutory law, including the enactment of the Corporate Manslaughter and Corporate Homicide Act 2007. (Agus Wibowo, 2025: 36) The English legal system developed the identification doctrine as the basis for attribution of corporate fault, which links the actions and intentions of specific individuals to the corporate entity. (DJ Pratama, 2025: 158-171)

Table Comparison of Corporate Criminal Liability Systems

Aspect	United States of America	English	Implications for Indonesia
Main doctrine	Respondeat Superior	Identification Doctrine (developing into corporate culture)	Indonesia tends to be combinative (Articles 45–48 of the New Criminal Code)
Extent of responsibility	Very broad (up to low level employees)	Limited to directing mind	Indonesia is moderate, based on labor relations & corporate interests
Proof of mens rea	It doesn't have to be on the board of directors	Must be on senior officials	Indonesia is starting to shift towards structural errors
Approach	Pragmatic & utilitarian	Normative & cautious	Indonesia is in a transition phase
Strict liability	Widely applied	Limited	Indonesia has not yet made it explicit in the general Criminal Code
Non-litigation mechanisms	DPA, NPA is very dominant	Limited DPA	Indonesia has not explicitly regulated this in the Criminal Code.
Focus of sanctions	Big fines + compliance	Sanctions + system failure	Indonesia is starting to move towards restorative justice (Article 120 of the Criminal Code)

This comparison shows that the American system emphasizes effective law enforcement through broadening the attribution of fault, while the British maintain the precautionary principle by maintaining the link between fault and the corporate leadership structure. In

Indonesia, the National Criminal Code instead displays a hybrid approach that attempts to integrate the two models by recognizing employment relationships, corporate interests, and due diligence failures. A comparative analysis of the American and British legal systems reveals significant differences in their approaches to corporate criminal liability. The American system tends to adopt a pragmatic approach by expanding the scope of liability through the doctrine of respondeat superior. The British system is more cautious, maintaining the identification doctrine, despite its reforms. The British system, on the other hand, is more oriented towards the principles of caution and legal certainty.

Complementing the comparative analysis of the American and British legal systems, a study of the French legal system is important because France is a primary representative of the Continental European civil law tradition, which has doctrinal ties to the Indonesian legal system. France faces a similar challenge to Indonesia: how to establish effective corporate criminal liability within a legal tradition that initially recognized only humans as subjects of criminal law. The developments made by France in addressing this challenge can serve as a reflective mirror for reforming corporate criminal law in Indonesia. (Delmas-Marty & Spencer, 2002: 3-7)

A comparative analysis of the French, American, and British models reveals fundamental similarities in the recognition of corporations as independent subjects of criminal law, but with varying approaches to attribution. The American model adopts the broadest attribution through the doctrine of respondeat superior, which covers all employees. The British model, through the doctrine of identification, limits attribution to top management. The French model occupies a middle ground, requiring the involvement of authorized organs or representatives but with a corporate interest orientation. Another similarity lies in the tendency of all three systems to develop a compliance- and deterrence-based approach, rather than simply punishment, as reflected in the deferred prosecution agreement mechanism in the United States and the United Kingdom, and the CJIP in France. The most fundamental difference lies in the character of the legal systems: the United States and Britain are rooted in the more pragmatic and precedent-based common law tradition, while France, like Indonesia, is rooted in the civil law tradition, which emphasizes codification and normative certainty. France's success in establishing a comprehensive corporate criminal liability system within the civil law tradition demonstrates that Indonesia, with its similar background, has the capacity to develop a more operational and effective model to address modern corporate crimes, provided it is supported by normative clarity, comprehensive sanction instruments, and adequate law enforcement capacity. (Nieto Martin, 2014: 23-45)

The comparative relevance of the French model for the development of Indonesian corporate criminal law lies in at least three aspects. First, the "for the benefit of the corporation" requirement in the French model can serve as inspiration for the formulation of clearer criteria regarding when individual actions can be charged to corporations in the National Criminal Code, filling the gap left by the still ambiguous phraseology in Articles 46 to 48 of the Criminal Code. Second, the CJIP mechanism provides an alternative model for resolving corporate cases that is more oriented towards recovery and compliance, which can be adapted to reduce the burden of litigation and encourage corporations to

proactively build a culture of legal compliance. Third, the reporting and transparency obligations strengthened by Loi Sapin II—which obliges large corporations to implement comprehensive anti-bribery programs—can serve as a reference for the development of corporate compliance obligations in Indonesian positive law as part of organization-based prevention. By considering these three lessons, a comparative study of the French system complements the comparative perspectives of the American and British systems, and together provide a more solid foundation for the reconstruction of corporate criminal liability based on structural faults in the National Criminal Code. (Engelhart, 2018: 117-145)

b. Implementation of Corporate Criminal Law in the National Criminal Code and its Problems in Practice

The recognition of corporations as subjects of criminal law in the National Criminal Code reflects the development of a criminal law paradigm that is increasingly adaptive to the complexities of modern life. Corporations are no longer viewed as fictitious entities relevant only in civil law, but rather as subjects with the capacity to commit acts that can be criminally accounted for. This development indicates a shift in legal orientation from individualism to recognition of collective entities. The National Criminal Code accommodates the reality that crimes are not always committed by individuals individually, but also through structured organizational mechanisms. (Rasiwan, 2025a: 1-311) This transformation also emphasizes that criminal law must be able to respond to rapidly evolving economic and social dynamics.

The normative basis for recognizing corporations as perpetrators of criminal acts in the National Criminal Code rests on the principle that every legal subject with the capacity to act must also be responsible for their actions. The differences in regulations between the National Criminal Code and the previous Criminal Code indicate a fundamental transformation in the approach to criminal responsibility. The previous Criminal Code tended to focus on individuals as the sole subject of criminal law, thus not providing space for explicit corporate accountability. The National Criminal Code changes this paradigm by recognizing corporations as perpetrators of criminal acts that can be held directly accountable. This change reflects the need to adapt the law to increasingly complex societal developments. This comparison demonstrates that the National Criminal Code has a broader scope and is more responsive to modern crime phenomena.

The forms and models of corporate criminal liability in the National Criminal Code demonstrate a comprehensive and multi-layered approach. Corporations can be held directly accountable as independent legal entities. (Saputera et al., 2025: 388-394) Joint liability between corporations and their management reflects an integrative approach in modern criminal law. The concept of corporate culpability has undergone significant development with the emergence of collective culpability and structural culpability theories.

Disharmony in corporate criminal liability norms is a structural issue that cannot be ignored in the implementation of the National Criminal Code. Differences in the definition of a corporation, standards of culpability, and models of liability indicate a plurality of

legal constructs that have not been fully integrated. Differences in evidentiary standards and sanction regimes further deepen the complexity of synchronizing corporate criminal law. Sectoral laws often accommodate flexible administrative, scientific, and technical evidence, while the National Criminal Code still adheres to stricter conventional evidentiary principles. (Saputera et al., 2025: 388-394) This disparity creates a dualism in evidentiary standards that can affect law enforcement outcomes.

The principle of lex specialis derogat legi generali plays a strategic role in bridging potential conflicts between the National Criminal Code and sectoral laws. (Fadlly et al., 2026: 1711-1718) The application of this principle provides legitimacy for the validity of specific norms that are more relevant in certain contexts.

Obstacles to proving corporate crime are inherent challenges inherent in the nature of corporations as collective entities. Complex and layered organizational structures create difficulties in identifying the locus and primary perpetrators of a crime. The fragmentation of authority within corporations often blurs lines of accountability, making it difficult for law enforcement to construct a complete criminal event. Conventional, individual-oriented evidentiary approaches are inadequate in this context. A more structural and systemic approach is needed to explore the link between organizational policies and individual actions.

The difficulty in determining mens rea in corporate entities raises conceptual problems in criminal law. Corporations, as abstract entities, lack will in the psychological sense, so the concept of culpability must be constructed normatively. (Asnawi, 2025: 47) Proving the relationship between individual actions and corporate policies is central to determining criminal liability. Law enforcement must be able to prove that individual actions do not stand alone but are instead a manifestation of organizational policy or culture. (Thaher et al., 2026: 221-227)

The gap between the norms of the National Criminal Code and law enforcement practices on the ground indicates serious implementation issues. Normative provisions that recognize corporations as subjects of criminal law have not been fully followed by consistent law enforcement practices. Reality shows that the number of prosecutions against corporations remains relatively low compared to individual perpetrators. This condition reflects structural and cultural barriers within the law enforcement system. Progressive legal norms will not be effective without adequate implementation. This gap demonstrates that legal reform must encompass both normative and practical aspects simultaneously.

The reality of corporate criminal law enforcement in Indonesia demonstrates that various modern corporate crimes are essentially born from organizational system failures, weak corporate governance, and ongoing structural negligence. However, in law enforcement practice, criminal liability still tends to be directed at specific individuals, particularly directors or field officers, while corporations, as the entities that derive the primary economic benefits, are often not positioned as the primary subjects of criminal punishment. This situation demonstrates the tension between the paradigm of individual culpability and the structural and systemic nature of corporate crime.

Suboptimal law enforcement has resulted in low levels of corporate crime prevention. The risk of undetected crimes is increasing, particularly in highly complex sectors. The resulting losses are not only economic but also impact the environment and public welfare. This situation demonstrates that weaknesses in the law enforcement system have broad implications for the public interest. The effectiveness of criminal law as an instrument of social control is being questioned. Declining public trust in the legal system is a further consequence of ineffective corporate criminal law enforcement. The public tends to perceive the law as incapable of reaching perpetrators of crimes with significant economic power. This perception has the potential to undermine the legitimacy of the legal system as a whole. The need for reform in the application of corporate criminal law is becoming increasingly urgent to address these various problems.

c. The Urgency of Criminal Law Politics in the Implementation of Corporate Criminal Law in the National Criminal Code

Corporations, as key actors in the modern economic system, have the capacity to engage in cross-sector and cross-jurisdictional activities that are difficult to monitor conventionally. (Herawati et al., 2025: 2819-2831) The transformation of corporate crime demonstrates a shift from conventional crime to systems- and technology-based crime. Practices such as financial data manipulation, money laundering through digital instruments, and exploitation of regulatory loopholes are key characteristics of modern crime. The development of white-collar crime and technology-based crime further reinforces the urgency of reforming the criminal law approach. These types of crimes are generally committed by perpetrators who hold strategic positions within the organization and utilize their professional expertise. (Situmeang & Meilan, 2025: 87-97) The impacts are not only financial but can also undermine public trust in the economic system and state institutions. The complexity of proving white-collar crime presents a unique challenge for law enforcement. This situation suggests that criminal law must develop more sophisticated instruments to uncover and effectively prosecute corporate crimes.

Economic globalization has expanded the scope of corporate activity beyond national borders, creating new challenges for criminal law enforcement. Multinational corporations can easily relocate their operations or assets to more legally advantageous jurisdictions. This phenomenon creates difficulties in determining jurisdiction and effectively enforcing the law. Corporate crimes in a global context often involve multiple countries with different legal systems. (Herawati et al., 2025: 2819-2831) This situation demands international harmonization and cooperation in criminal law enforcement. Without global coordination, efforts to combat corporate crime will face significant limitations.

The need to reformulate the concept of corporate criminal liability in the National Criminal Code indicates a significant paradigm shift. The shift from individual liability to corporate liability reflects the recognition of corporations as entities with a strategic role in modern crime. (DJ Pratama, 2025: 158-171) This reformulation concerns not only formal recognition but also encompasses evidentiary mechanisms and the imposition of sanctions. A more progressive approach is needed to ensure that criminal law is able to address the realities of corporate crime. This thinking aligns with Herbert L. Packer's view,

which emphasizes the importance of striking a balance between effective law enforcement and the protection of legal rights in the criminal justice system. (Rasiwan, 2025b: 1-267)

Increasing public trust in the legal system is one of the primary goals of corporate criminal law reform. Effective and fair law enforcement will create a positive perception of the legal system. The public will see that the law is capable of reaching all actors, including large corporations. Public trust is a crucial factor in maintaining legal legitimacy. Without such trust, the law will lose its binding power. Criminal law reform must be able to meet public expectations for justice. Contributions to the development of equitable national law and its relevance in realizing the goals of a modern rule of law conclude the political direction of this criminal law. A strong and adaptive legal system will support sustainable national development. (Wijaya et al., 2026: 331-342) Effective corporate criminal law will protect the public interest and create a healthy business climate. This approach aligns with the principle of a rule of law state, which places law as the primary instrument in regulating social life.

3.3. Ideal Concept of Corporate Criminal Liability Reconstruction Based on Structural Errors in National Criminal Law to Realize Legal Benefits

a. Reconstruction of the Corporate Criminal Liability Paradigm Based on Structural Errors

Reducing corporate wrongdoing to management misconduct is a simplification that is not only inadequate but also potentially misleading in the construction of criminal liability. Corporations, as independent legal entities, have a separate legal existence from their individual managers, so errors occurring within a corporation cannot be reduced solely to personal errors. (Surya et al., 2024: 718-726) Normatively, this condition demonstrates that identification theory not only suffers from practical limitations but also contains fundamental conceptual weaknesses.

The lack of norms for explaining collective fault reveals a serious gap in the national criminal law system, particularly in the face of increasingly sophisticated corporate crime. Conventional criminal law still positions fault as an individual attribute that must be proven personally, while in modern organizations, unlawful acts are often the result of the interaction of various functions and policies that individually appear legitimate but cumulatively produce harm. The inability of legal norms to integrate these actions into a single organizational fault creates obstacles in proving and imposing accountability. Doctrines such as vicarious liability, strict liability, and aggregation theory have not fully addressed this need, primarily because their regulations are still limited and have not been explicitly formulated in positive norms. (Yusni & Sigalingging, 2024: 425-437) The disharmony between the development of corporate crime and the classical criminal law paradigm further emphasizes the need for a more adaptive conceptual reconstruction, one that no longer relies on the individualization of fault but instead recognizes fault as a product of the organization's structure, policies, and culture. Without this paradigm update, criminal law has the potential to lose its reach in enforcing justice against corporate crimes that have a broad impact on society and the state.

The distinction between individual fault, organizational fault, and systemic fault is crucial in formulating conceptual boundaries and determining the direction of corporate criminal liability. Individual fault refers to deviant actions committed by specific individuals that violate organizational policy, thereby rendering the corporation in certain positions unaware or even disadvantaged. Organizational fault describes errors stemming from inadequate policies or procedures, but still within certain limits that can be corrected through managerial intervention. (Alhadi et al., 2024: 195-204) Meanwhile, systemic fault represents a deeper level of error, where flaws in the structure, culture, and governance system have become thoroughly integrated into the corporation's operations. At this stage, violations are no longer deviant but rather become part of a recurring and implicitly legitimized pattern. The conceptualization of systemic fault as the highest form of error also represents a new point in the reconstruction of corporate criminal liability, as it provides a theoretical and normative basis for assessing corporate culpability as an autonomous entity fully responsible for the consequences of the system it builds.

The reconstruction of the corporate criminal liability paradigm demands the integration of various theories capable of fully explaining the relationship between actions, errors, and organizational structure as an inseparable whole. Corporate culture theory is centrally relevant because it provides a conceptual foundation for proving the existence of corporate errors that are not rooted in specific individuals, but rather embedded in policies, procedures, and practices that occur repeatedly. The theory of functional perpetration (functioneel daderschap) complements this construction by providing an attributional basis that connects the physical actions of individuals with the responsibility of the corporation as a functional actor. (Mustikasari, 2024) The application of strict liability in corporate criminal liability requires strict limitations so as not to deviate from the principles of justice that are the foundation of criminal law. (DJ Pratama, 2025: 158-171) The reconstruction of the concept of structural error has direct implications for the expansion of the meaning of schuld in the national criminal law system as reflected in the new Criminal Code, which no longer limits errors to the dimensions of dolus and culpa in the classical, individualistic sense. This expansion indicates a conceptual development towards the recognition that errors can stem from the failure of an organization's normative function in carrying out its legal obligations. This paradigm shift also marks a transformation in the criminal law approach from actor-oriented liability to system-oriented liability, which places organizational structure as the object of analysis in determining criminal responsibility. An approach oriented toward individual actors is no longer adequate in explaining the causal relationship between unlawful acts and corporate responsibility, given that corporate crime is often the result of a complex interaction between policies, procedures, and organizational culture.

b. Normative Formulation of Corporate Criminal Responsibility in the National Criminal Code

The formulation of corporate criminal liability in the new Criminal Code demonstrates conceptual weaknesses that directly impact legal certainty, particularly regarding the parameters of corporate fault as the basis for criminal punishment. The existing normative formulation does not provide a clear definition of the construction of corporate

fault, whether it rests on a culpable failure to prevent or is derived from individual culpability through a specific attribution mechanism. This lack of clarity creates ambiguity in determining the locus of fault, potentially leading to difficulties in proving the corporate mens rea element.

The recognition of corporations as subjects of criminal acts as affirmed in Article 45 paragraph (1) of the Criminal Code which states that "Corporations are subjects of Criminal Acts" is a progressive step, but has not been followed by the formulation of operational parameters of error. The provisions of Article 46 which state that corporate crimes are committed by managers or parties acting for and on behalf of the corporation still show an orientation towards individual perpetrators as the starting point for attribution of error. This shows that normative construction still starts from a derivative approach, where corporate errors are drawn from individual actions, not as a manifestation of the organizational system itself. From the perspective of structural error theory, such an approach has not been able to reach the dimensions of errors that originate from policies, culture, and failures of internal control systems. (Alhadi et al., 2024: 195-204) Norm reconstruction demands the inclusion of an explicit formulation regarding the definition of structural errors as a form of error in organizational design, including failure of supervision, neglect of legal risks, and the absence of effective compliance mechanisms. Without a clear formulation, the recognition of corporations as subjects of criminal law has the potential to lose its substantive meaning.

In addition to being based on management actions, the attribution model must accommodate the dimension of organizational policy as a source of corporate culpability. Internal policies that encourage disproportionate target achievement, tolerance of violations, and operational practices that deviate from legal standards can be viewed as forms of institutional will that give rise to criminal liability. This aligns with the corporate culture approach, which positions organizational policy and culture as the primary locus of culpability. On the other hand, the failure of the oversight system is a crucial indicator that strengthens the attribution of blame, particularly when the corporation has a legal obligation to exercise control but fails to exercise it properly. The provisions of Article 47 of the Criminal Code, which expands liability to include those who give orders and those who hold control, demonstrate recognition of the substantive control dimension in determining criminal liability. Furthermore, Article 50 of the Criminal Code, which provides room for corporations to offer justification and excuses, demonstrates that criminal law recognizes corporations as subjects with an equal standing with individuals in defending their legal interests. This reinforces the notion that attribution of blame is based not only on physical actions but also on the quality of the system and the corporation's preventive efforts.

The subsequent reformulation of the burden of proof led to a paradigm shift from individual proof to systemic proof, which assesses the entire corporate structure and culture. The focus of proof is no longer on identifying a single perpetrator, but rather on whether the crime resulted from policies, practices, or failures in the oversight system inherent within the organization. Within this framework, the corporate culture and

corporate fault liability approaches gain relevance as a basis for substantively assessing corporate culpability.

The construction of corporate criminal liability in the National Criminal Code cannot be separated from the need for harmonization with various sectoral legal regimes that have previously specifically regulated corporate crimes. (Saputera et al., 2025: 388-394) The provisions of Articles 45 to 50 of the Criminal Code have provided a general framework that affirms corporations as subjects of criminal acts, but these regulations must be read systematically together with sectoral laws such as the law on the eradication of criminal acts of corruption, environmental law, and the law on money laundering. Article 45 paragraph (1) of the Criminal Code which states that corporations can be held responsible for criminal acts committed for and on behalf of the corporation becomes an umbrella norm that requires synchronization with special provisions that have recognized corporations as perpetrators of crimes in certain sectors. In the criminal regime of corruption, for example, corporations have long been recognized as legal subjects that can be held accountable, especially in the practice of bribery and procurement of goods/services involving business entities. (Januardy & Sangalang, 2026: 3938-3955) Meanwhile, in environmental law, corporate accountability has developed even more progressively through the imposition of sanctions that are not only repressive but also restorative, such as environmental restoration obligations. In money laundering law, corporations often function as instruments to disguise the proceeds of crime, so the regulations emphasize the relationship between controllers, beneficial owners, and corporate entities as a single legal entity.

An ideal reconstruction demands the establishment of an integrated corporate criminal law system, in which the National Criminal Code serves as a normative foundation that unites general principles of corporate criminal liability with specific sectoral regulations. Reconstruction of the normative formulation of corporate criminal liability must ultimately be directed toward the establishment of a legal system that is not only conceptually consistent but also operationally practical. This includes affirming the parameters of structural errors, harmonizing them with sectoral legal regimes, and reformulating evidentiary mechanisms that adapt to the characteristics of modern corporations. This approach demands the courage of legislators to abandon outdated classical paradigms and adopt accountability models that are more responsive to the dynamics of corporate crime. Thus, normative reform is not only an academic necessity but also a practical requirement for realizing an effective, just, and utility-oriented criminal law system.

c. The Ideal Concept of a Corporate Criminalization System Oriented to Legal Benefit

Criticism of the conventional criminal justice system for corporations stems from the fact that the construction of sanctions that have so far relied on criminal fines is not fully able to address the complexity of modern corporate crime. The provisions of the Criminal Code that regulate criminal penalties for corporations do open up space for the imposition of criminal fines as the main sanction, but empirically, fines are often positioned as a cost of doing business that does not have an adequate deterrent effect. When norms are only oriented towards financial punishment without addressing the structural roots of

deviation, the criminal law system loses its corrective power. Even in the construction of Article 45 paragraph (2) of the Criminal Code, which states that "corporate criminal liability does not eliminate criminal liability for those who commit or participate in criminal acts," there appears to be a tendency towards dualism in punishment that is not always followed by systemic change within the corporation. Conventional sanctions also fail to reach the dimensions of corporate culture that are permissive towards violations, so that punishment ends up only as a symbolic repression without transformation of governance. This perspective is in line with the criticism of modern criminal law experts who state that a purely retributive approach is no longer adequate for crimes that are organizational and multi-layered in nature.

Restructuring norms is an urgent need to ensure that corporate criminal liability regulations are clear, operational, and free from multiple interpretations. The principles of lex certa and lex stricta require that every criminal norm be formulated explicitly to avoid uncertainty in its application. (Aisyah & Mangesti, 2026: 2711-2717) Within this framework, norms must explicitly define the criteria for corporate wrongdoing, including parameters for supervisory failure, compliance standards, and indicators of negligence in violation of the law. Recognition of compliance defenses also needs to be formulated normatively as a mechanism that balances the effectiveness of law enforcement and the protection of corporations that have properly fulfilled their legal obligations. Furthermore, the structure of criminal sanctions must be adapted to the nature of corporations as non-physical entities, placing greater emphasis on fines, confiscation of profits, restitution of consequences, and corrective administrative sanctions. Such a reconstruction of norms not only strengthens legal certainty but also creates a corporate criminal liability system that can address the complexities of modern crime more effectively and equitably.

The ideal concept of preventing abuse of power in corporate criminalization must be placed as an inherent element in the reconstruction of a just criminal accountability system, considering that the expansion of legal subjects to corporations has implications for increasing the discretionary space for law enforcement officers. In a normative framework, the recognition of corporations as subjects of criminal acts as emphasized in Article 45 paragraph (1) of the Criminal Code, the principle of legality (nullum crimen, nulla poena sine lege) emphasizes that every action of the apparatus must be based on clear law, so as not to open up excessive room for interpretation. (Wahyuni, 2024: 3051-3061) Friedrich Julius Stahl's thoughts on rechtsstaat place the limitation of power as the main characteristic of a state of law, so that the authority of investigators and public prosecutors must be constructed in a limited, not elastic manner. (Andriani, 2023: 2287-2298) In practice, these limitations must be reflected in strict operational standards regarding the designation of corporate suspects, the confiscation of assets, and the imposition of sanctions that must not exceed the established legal framework. Without clear limitations, the expansion of the corporate liability regime has the potential to give rise to the criminalization of legitimate business policies, which contradicts the principles of legal certainty and protection of economic activity.

The integration of a restorative approach into corporate criminalization is not without conceptual and implementation challenges. One criticism that can be raised is the potential for moral hazard, where corporations may view the recovery mechanism as a "correction cost" that is still tolerable in business calculations. Therefore, the restorative approach must remain integrated with effective deterrence mechanisms, so that recovery does not reduce the deterrent effect, but rather strengthens it through a combination of corrective sanctions and structural disincentives. From a deterrence theory perspective, corporate criminalization should be able to create a deterrent effect that is not only individual, but also systemic in organizational behavior. (Rinanti & Prasetyo, 2025: 2371-2386) However, in practice, the effectiveness of deterrence against corporations is often distorted due to the characteristics of corporations as rational economic entities, which tend to calculate costs and benefits (cost-benefit analysis) in every decision-making.

Ultimately, a corporate criminal justice system oriented toward legal expediency must strike a balance between legal certainty, justice, and expediency. Legal certainty is necessary to provide predictability for business actors, justice is necessary to ensure that accountability is imposed proportionally, while expediency is the ultimate goal, ensuring that criminal law truly provides protection for society. The integration of these three values is the primary foundation for building a criminal law system that is responsive to the dynamics of modern corporate crime. Thus, the proposed concept is not only theoretically relevant but also has strong implementation potential in realizing an effective, adaptive, and substantively just criminal law system in Indonesia.

4. Conclusion

The regulation of corporate criminal liability in the National Criminal Code shows a fairly progressive development compared to the previous Criminal Code regime. The National Criminal Code has recognized corporations as subjects of criminal law that can be held accountable, and regulates the mechanism for imposing responsibility on both corporations and their managers. In addition, the regulation regarding the types of crimes that can be imposed on corporations has also been expanded, including principal and additional crimes. Conceptually, the National Criminal Code has also adopted various doctrines of responsibility such as the identification doctrine, vicarious liability, and the functional approach. However, normatively, these regulations still leave various fundamental weaknesses, especially related to the unclear parameters of corporate fault, the lack of explicit accommodation of the concept of structural error as a basis for accountability, and the still limited technical regulations that have the potential to give rise to multiple interpretations in law enforcement practices. The urgency of implementing corporate criminal law in the National Criminal Code is inextricably linked to the increasing complexity and widespread impact of corporate crime on society, the state, and the economy. In practice, there is a gap between established norms and their implementation, with law enforcement against corporations still not optimal. This is due, in part, to difficulties in proving corporate culpability, particularly in identifying mens rea within complex and multi-layered organizational structures. Furthermore, the limited capacity of law enforcement officials to understand the concept of corporate criminal liability and the suboptimal types of sanctions imposed also hamper the effectiveness of

law enforcement. Compared with countries such as the United States and the United Kingdom, Indonesia remains relatively behind in developing a compliance-based liability model and a corporate legal culture. The ideal concept of regulating corporate criminal liability in national criminal law to realize legal benefits essentially demands a fundamental paradigm reconstruction from an individual liability approach to structural liability, considering that corporate crimes are no longer individual, but rather systemic and rooted in corporate policies, governance, and organizational culture. Therefore, corporate criminal liability must be based on the construction of structural errors that place the failure of the supervisory system, management weaknesses, and negligence as the basis for determining fault. Normatively, this requires the formulation of operational rules with clear and measurable indicators, and the integration of various doctrines such as identification, vicarious liability, and the corporate culture model within a comprehensive legal framework. In the criminal dimension, the orientation of sanctions must shift from merely repressive to a corrective and restorative approach that emphasizes internal system improvement, prevention of recurrence of criminal acts, and restitution of victims' losses, ultimately achieving a balance between legal certainty, justice, and legal benefits while simultaneously encouraging the creation of accountable and integrity-based corporate governance.

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