

## **A Deconstruction of Corporate Responsibility in Criminal Law**

Reda Manthovani <sup>1\*</sup> Erni Mustikasari <sup>2</sup>, Mukhlis <sup>3</sup>, Naglaa Fathy El Dessouky <sup>4</sup>

<sup>1</sup> The Deputy Attorney General for Intelligence of the Republic of Indonesia, Jakarta, Indonesia.

<sup>2</sup> Coordinating Ministry for Political and Security Affairs of the Republic of Indonesia, Jakarta, Indonesia.

<sup>3</sup> Sekolah Tinggi Ilmu Hukum Adhyaksa, Jakarta, Indonesia.

<sup>4</sup> University of Bahrain, Zallaq, Bahrain.

\*Corresponding Author: redamanthovani@univpancasila.ac.id

### **Abstract**

The recognition of corporate crime as a form of criminal participation raises critical issues regarding the scope and classification of corporate criminal responsibility in Indonesia. Despite its significance, there is currently no rigid legal framework providing clear guidelines on this matter. This study aims to establish an ideal framework for corporate criminal liability by applying a taxonomic method to classify types of criminal participation. Employing a normative legal research design with a legislation-based approach, the study analyzes both primary and secondary legal materials through deductive reasoning. The findings highlight two main points. First, a legal deconstruction is necessary to comprehend corporate crime as an evolving form of criminal participation, taking into account traditional attribution methods, existing legal practices, and reforms proposed in the draft Indonesian Criminal Code. Second, two predominant models for understanding corporate liability emerge: one that considers corporate actors' criminal participation as part of their organizational duties, and another that focuses on individual actors' involvement within the corporate structure. The study concludes that a normative reconstruction and clear classification of corporate crimes are essential to provide legal certainty and uphold justice. This framework aims to provide clearer guidelines for attributing criminal liability in corporate contexts in Indonesia.

**Keywords:** Corporate; Criminal; Deconstruction; Responsibility; Typology;



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### **Introduction**

The shift in the concept of participation in criminal acts in criminal law from simple individual responsibility to involving corporate responsibility because corporations are recognized as subjects of criminal acts in Indonesia remains widely debated.<sup>1</sup> The development of the complexity of types and typologies of crime has an extraordinary impact when it involves corporations.<sup>2</sup> Therefore, several international conventions on crimes having

<sup>1</sup> Martitah Martitah and others, 'Insufficient Criminal Justice System Response to the Severity of Domestic Violence during the Pandemic in Indonesia', *Heliyon*, 10.14 (2024), e33719 <https://doi.org/10.1016/j.heliyon.2024.e33719>

<sup>2</sup> Abhishek Negi, Mohammed Irshad, and Resti Dian Luthviati, 'Deconstructing Attributes of Constitutional Legitimacy: A Case Study of Indian Constitution', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 1–26 <https://doi.org/10.53955/jhcls.v4i1.114>

a significant effect on civilization and the economy have recognized that corporations as entities are considered capable of committing crimes so that they can be punished, such as the Strasbourg Convention of 1998, the Palermo Convention of 2000, and the New York Convention of 2003.<sup>3</sup>

These conventions are based on allegations of corporate crimes that cause material and formal losses. For example, the industrial tragedy that triggered a major disaster in India was caused by a mistake in corporate policy, a gas leak from Union Carbide India Limited causing 15,000 deaths. The company that produced a mixture of chemical compounds for botanical pesticides exploded because it ignored safety standards and maintenance procedures due to excessive cost savings.<sup>4</sup> The gas leak released methyl isocyanate gas and other chemicals that triggered the most significant environmental and human disaster, which caused 558,125 people to be injured and permanently disabled, 15,000 people to die, and 10 out of 1000 children born after the disaster to suffer growth problems due to chemical toxins, and this disaster is known as the Bhopal tragedy.<sup>5</sup>

Another case was the pollution of Minamata Bay by mercury metal, which then poisoned the fish in the bay. The residents of Minamata City, Kumamoto Prefecture, in Japan, consumed fish from the bay, they were poisoned a substance known as Minamata, a syndrome of nerve dysfunction due to mercury metal poisoning. The mercury metal was from the mercury waste from the Chisso battery factory, which was dumped irresponsibly without permission and without management into the sea, then it polluted Minamata Bay.<sup>6</sup> Eventually, the factory closed, forcing the Minamata residents to pay approximately 26.6 million dollars in damages. At the acute level, the symptoms of Minamata disease worsened, accompanied by paralysis, insanity, falling into a coma, and finally, death. All the tragedies involving the company made the business of a business also need to be fenced with criminal instruments, especially for crimes that have an extraordinary impact on the environment and humans, even future generations<sup>7</sup>.

Cases in Indonesia, such as the Indosat where PT Indosat was never named as a defendant, were included in a demand for compensation in a case

<sup>3</sup> Randikha Prabu Raharja Sasmita, Sigid Suseno, and Patris Yusrian Jaya, 'The Concept of Reasons for Eliminating Corporate Crime in Criminal Law in Indonesia', *Heliyon*, 9.11 (2023), e21602 <https://doi.org/10.1016/j.heliyon.2023.e21602>

<sup>4</sup> Ingrid Eckerman, 'Bhopal Gas Catastrophe 1984: Causes and Consequences', in *Encyclopedia of Environmental Health* (Elsevier, 2019), pp. 272–87 <https://doi.org/10.1016/B978-0-12-409548-9.01903-5>

<sup>5</sup> R.K. Bisarya and Swaraj Puri, 'The Bhopal Gas Tragedy—A Perspective', *Journal of Loss Prevention in the Process Industries*, 18.4–6 (2005), 209–12 <https://doi.org/10.1016/j.jlp.2005.07.006>

<sup>6</sup> Akito Matsuyama and others, 'Trends in Mercury Concentrations and Methylation in Minamata Bay, Japan, between 2014 and 2018', *Marine Pollution Bulletin*, 173 (2021), 112886 <https://doi.org/10.1016/j.marpolbul.2021.112886>

<sup>7</sup> Matsuyama Akito and others, 'Reevaluation of Minamata Bay, 25 Years after the Dredging of Mercury-Polluted Sediments', *Marine Pollution Bulletin*, 89.1–2 (2014), 112–20 <https://doi.org/10.1016/j.marpolbul.2014.10.019>

against Indar Atmanto, the director of Indosat M2. In the first instance, court decision No. 01/Pid.Sus/2013/PN. Jkt.Pst sentenced the corporation to pay compensation. However, at the appeal level, the high court panel in decision No. 33/PID/TPK/2013/PT.DKI refused to punish the corporation that was not named a defendant because this additional punishment must always follow the main sentence, namely to whom the main sentence is imposed, because it is unlawful if the main sentence and additional punishment are imposed on another legal subject, or in this case, the other legal subject is not charged.<sup>8</sup> Additionally, at the Cassation and Review level, the judges looked over the appellate court's decision and gave a criminal sentence to the corporation, even though it was not named as the defendant. They mainly considered that, even though the public prosecutor did not directly charge the corporation, the defendant was acting as the president director, which allowed them to impose extra punishment in the form of compensation money on the corporation. The debate is that the corporation was uncharged in the prosecutor's demands, but the judge still found Indosat M2 guilty. The point of debate is that in the prosecutor's demands, the corporation was uncharged, but the judge still found Indosat M2 guilty.<sup>9</sup>

In the field of corruption, from 2010 to 2011, the Banjarmasin District Attorney's Office, South Kalimantan, dragged PT Giri Jaladhi Wana (PT GJW) to court for corruption in the construction and management of the Antasari Sentra Market, Banjarmasin. PT GJW was sentenced to six months in prison and to pay a fine of Rp 1,300,000,000.00 or the difference in the shortfall in the replacement money imposed earlier on its management.<sup>10</sup> At the appeal level, the Banjarmasin High Court upheld the verdict of the first instance court based on the decision 04/PID.SUS/2011/PT.BJM but added a fine of Rp 17,000,000.00. PT GJW was made a defendant, prosecuted, and sentenced after its management received an *inkracht* criminal decision. The judge in the corporate case added a fine based on the difference in the replacement money penalty imposed on its management. In this case, there seems to be a unification of punishment between the management and the corporation, even though the judge's decision and the type of crime are different. This is the first case where an unlawful act against a corporation has been proven to be a corruption crime, since several laws regulating corporate crimes were issued.<sup>11</sup>

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<sup>8</sup> Abdul Hayy Nasution, Edi Setiadi, and Yeti Sumiati, 'Authorities Of Civil Servant Investigates In Conducting Investigations On Acts Of Corporate Maladministration In Telecommunications According To Law No. 36 Of 1999 Concerning Telecommunications Adjusted To The Principle Of Legal Certainty', *International Journal of Social Science*, 2.5 (2023), 2235–46 <https://doi.org/10.53625/ijss.v2i5.4952>

<sup>9</sup> Hariman Satria Satria, 'Pembuktian Kesalahan Korporasi Dalam Tindak Pidana Korupsi', *INTEGRITAS*, 4.2 (2018), 29 <https://doi.org/10.32697/integritas.v4i2.255>

<sup>10</sup> Iwan Kurniawan, 'Kriteria Untuk Menentukan Bentuk-Bentuk Tindak Pidana Dan Pertanggungjawaban Pidana Dari Korporasi Yang Melakukan Tindak Pidana Korupsi', *UNES Law Review*, 5.3 (2023), 1285–1306 <https://doi.org/10.31933/unesrev.v5i3.444>

<sup>11</sup> Kurniawan.

Two factors determine whether corporations should receive moral punishment for unlawful actions: the impact of losses and errors in court practices.<sup>12</sup> The modern corporations can harm society, which is why they must be morally punished for illegal actions. The resources of corporations also allow corporations to influence society significantly if their actions violate the law and cause real harm to society. However, such influence is primarily associated with moral values, essential factors for determining which actions violate the ethical values of society and which parties can be punished.<sup>13</sup>

This fact has led to the development of the corporate criminal liability system. Corporations can be criminally responsible on their own, even if the consequences accept them as autonomous criminal subjects, such responsibility should be recognized without the need to identify the fault of individuals in the corporation.<sup>14</sup> Although it is recognized that the impact of damage caused by corporations is much greater than that caused by individuals, bringing corporations into the criminal law concept is not easy. A corporation, as a subject of a criminal act, must fulfill both the objective and subjective elements of a crime. The academic debate continues because it questions whether a corporation can meet the objective and subjective elements even though it does not have a physical or psychological condition that can be linked to its actions so that it is sufficiently declared reprehensible. With that, it becomes a new challenge for criminal law to explain the shift and expansion of corporations as subjects of criminal law that can be burdened with criminal responsibility.<sup>15</sup>

Apart from the debate on whether corporations can be punished, another issue, as significant in criminal law, is individualized. Criminal individualization is characterized by several distinct features;<sup>16</sup> criminal responsibility is personal/individual (personal principle); punishment is only given to the guilty person (culpability principle: no punishment without fault); and punishment must be adjusted to the characteristics and conditions of the perpetrator. This implies that judges should have the

<sup>12</sup> Rais Torodji and others, 'The Role of the Corporate Penalty System on Environmental Regulation', *Journal of Human Rights, Culture and Legal System*, 3.3 (2023), 600–624 <https://doi.org/10.53955/jhcls.v3i3.179>

<sup>13</sup> Nadja Capus and Melody Bozinova, 'Impression Management in Corporate Corruption Settlements: The Storied Self of the Prosecutorial Authority', *International Journal of Law, Crime and Justice*, 73 (2023), 100578 <https://doi.org/10.1016/j.ijlcrj.2023.100578>

<sup>14</sup> Bambang Sugeng Rukmono, Pujiyono Suwadi, and Muhammad Saiful Islam, 'The Effectiveness of Recovering Losses on State Assets Policy in Dismissing Handling of Corruption', *Journal of Human Rights, Culture and Legal System*, 4.2 (2024), 299–330 <https://doi.org/10.53955/jhcls.v4i2.259>

<sup>15</sup> Mercedes Rosello, 'Regional Fishery Management Organisation Measures and the Imposition of Criminal and Administrative Sanctions in Respect of High Seas Fishing', *Marine Policy*, 144 (2022), 105213 <https://doi.org/10.1016/j.marpol.2022.105213>

<sup>16</sup> Naz Sayari and Bill Marcum, 'Reducing Risk in the Emerging Markets: Does Enhancing Corporate Governance Work?', *BRQ Business Research Quarterly*, 21.2 (2018), 124–39 <https://doi.org/10.1016/j.brq.2018.01.002>

freedom to choose the type and severity of criminal sanctions, and they should have the ability to modify the punishment during its implementation.<sup>17</sup> This means that criminal law should not recognize vicarious criminal liability. However, the development of society has influenced values in the economic system, making several acts reprehensible and, therefore, necessary to punish.

The development of corporate criminal liability in Indonesia itself was influenced by Dutch colonization. Conversely, in 1976, the Dutch Criminal Code underwent a revision that addressed corporate criminal liability. The Dutch Criminal Code classifies acts by corporations that can be punished, and the corporation itself can be punished along with those who instruct the act and those who provide instructions to carry out the prohibited act.<sup>18</sup> Although the Dutch Criminal Code has changed the concept of corporate criminal liability, the Indonesian Criminal Code still uses the old concept that does not regulate this matter. Indonesia has adopted many aspects of Dutch criminal law. When the Netherlands implemented corporate criminal liability, Indonesia followed suit by including it in Emergency Law Number 17 of 1951 concerning the Hoarding of Goods, marking it as the first law to recognize this concept. After that, it was also continued with Emergency Law Number 7 of 1955 concerning the Investigation, Prosecution, and Trial of Economic Crimes. However, when corporations are recognized as subjects of criminal acts, there are no regulations regarding corporations as new perpetrators of crimes other than individuals in the general part of criminal law for recodification and unification, so when applied in several rules that apply specifically, law enforcers can only read that when a corporation is guilty, only the corporation and its managers can be prosecuted and punished, without an explanation of how the corporation can commit a crime (*actus reus*) and be at fault (*mens rea*).<sup>19</sup>

The lack of explanation also causes practitioners to use the identification theory, where criminal acts and corporate errors are identified based on corporate management's criminal acts and mistakes. As a result, when the criminal acts (*actus reus*) and errors (*mens rea*) of corporate governance are identified, the corporation is automatically considered to have committed a crime. The corporation is deemed guilty as if it were an accessory to the primary offender, the corporate management. This means that when the law does not explain further, people will always interpret that the corporation will always be prosecuted together with its management if criminal acts and

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<sup>17</sup> Nishith Prakash, Marc Rockmore, and Yogesh Uppal, 'Do Criminally Accused Politicians Affect Economic Outcomes? Evidence from India', *Journal of Development Economics*, 141 (2019), 102370 <https://doi.org/10.1016/j.jdeveco.2019.102370>

<sup>18</sup> Martitah and others.

<sup>19</sup> Tingting Duan, Xue Yang, and Zhe Zhang, 'The Improvement of Legal System, Entrepreneur Immigration, and Corporate Cash Holdings', *International Review of Financial Analysis*, 89 (2023), 102776 <https://doi.org/10.1016/j.irfa.2023.102776>



management errors are identified.<sup>20</sup> Meanwhile, when the corporation is sued alone, or the corporate administrator is sued alone, the formulation of corporate criminal liability in the text of the law has not been explained in legal practice until now. This situation has led to various legal issues, such as the misuse of authority by law enforcement officers who apply the law based on their subjective interpretations. Meanwhile, the defendant and legal counsel representing the defendant as a corporate administrator will always object because they feel they are only carrying out their duties and obligations functionally or on the corporation's behalf.<sup>21</sup>

This study answers how corporate criminal liability in Indonesia should be applied in several cases. Legal deconstruction is a technique used to help re-explain the meaning of the law that regulates corporate criminal liability. Legal deconstruction, as a way of analyzing, will change how to understand the law about corporate criminal liability, which is set as a standard rule but can lead to personal and uncertain interpretations. This study also aims to decide how to hold corporations responsible for crimes by using a function-based legal classification, making it easier to understand and prove criminal charges against both corporations and individuals related to them. The classification shows that corporations can act as independent criminals, meaning they can commit crimes on their own, help others commit crimes, or lead criminal activities.

This understanding will support future law enforcement in cases involving corporations and highlight that not every situation indicating corporate involvement will lead to corporate criminal liability. The compilation of this typology classification of criminal participation shows corporations as autonomous criminal subjects, hence they can become the perpetrators of crimes, accompanying perpetrators, assisting perpetrators, or perpetrators who direct and lead criminal acts to provide confidence for future criminal law enforcement against every case where corporations are involved in it, as well as other insights that not all facts that indicate corporate involvement must end with corporate criminal liability. The typology classification of criminal participation is presented as a graphic presentation of various cases and court decisions that meet the predetermined classification groups so that the actual perpetrators can be determined.<sup>22</sup>

Previous research by Andrew Weissmann discusses what is called corporate crime, where corporations are under United States federal law. Corporations will be criminally liable if their employees or agents commit

<sup>20</sup> Kendyl Salcito and others, 'Assessing Corporate Project Impacts in Changeable Contexts: A Human Rights Perspective', *Environmental Impact Assessment Review*, 47 (2014), 36–46 <https://doi.org/10.1016/j.eiar.2014.03.004>

<sup>21</sup> Luís Fonseca, Katerina Nikalexi, and Elias Papaioannou, 'The Globalization of Corporate Control', *Journal of International Economics*, 146 (2023), 103754 <https://doi.org/10.1016/j.jinteco.2023.103754>

<sup>22</sup> Abdul Kadir Jaelani and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021) <https://doi.org/10.53955/jhcls.v1i1.5>

crimes related to their duties in the corporation or if at least part of their actions intends to benefit the corporation. Additionally, Andrew explains the development of the theory of corporate criminal liability in federal courts, which holds corporations accountable for the actions of their subordinates through the identification theory. The public prosecutor must prove that the corporation has failed to create effective policies and procedures to prevent the crime from occurring. *Actus reus* and *mens rea* are only found when an individual can be linked to the corporation when the action is carried out with a specific individual's psychological condition.<sup>23</sup>

Another research by Harmen Van der Wilt explores the opportunities and possibilities to introduce corporate criminal liability in international criminal law in general and its relationship to the personal liability of corporate leaders. At this level, proof of *actus reus* and *mens rea* is required as a substantial contribution to prove the case, meaning that knowledge of the crime and the will to facilitate it are needed. After that, it is necessary to trace whether the actions or will of the individual can be linked to the corporation. Does the crime occur in the daily activities of the corporation, does the corporation have control over the person and the company's procedures, and is there explicit approval from the corporation for the action, and does the action benefit the corporation.<sup>24</sup>

This research wants to help law enforcers always be precise and consistent in determining criminal liability involving corporations in criminal acts. The researcher starts by breaking down the idea of a corporation in relation to corporate crime, which was previously seen as just the actions and mistakes of its management. Using legal reasoning, the researcher shows that a corporation is an extension of the person committing the crime, fitting into the idea of participation in criminal acts, known as criminal law participation. Research using a comparative approach to the Dutch legal system also yielded this deconstruction.

The concept of the corporation as an extension of the perpetrator of the crime's participation also allows for the development of subsequent innovations in the form of a typology classification of corporate involvement in criminal acts. This classification is formed through legal taxonomy. Legal taxonomy plays a role in creating classifications by providing a structured framework for law enforcers to determine if facts in corporate-related criminal cases meet the criteria for corporate criminal responsibility. Taxonomy is a branch of scientific classification for a condition with predetermined rules. These rules generalize certain conditions to find

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<sup>23</sup> Andrew Weissmann, Chao Ji, and Kan Shao, 'Rethinking Criminal Corporate Liability', *Environment International*, 161 (2007), 107135  
<https://doi.org/10.1016/j.envint.2022.107135>

<sup>24</sup> H. van der Wilt, 'Corporate Criminal Responsibility for International Crimes: Exploring the Possibilities', *Chinese Journal of International Law*, 12.1 (2013), 43-77  
<https://doi.org/10.1093/chinesejil/jmt010>

differences in the most minor units <sup>25</sup>. Taxonomy is critical to provide consistency in viewing cases that occur with applicable law. This consistency is a novelty that creates a tool for policymakers to reformulate future laws in the modern criminal law landscape. The classification of how companies can be involved in crimes is based on different factors that help researchers develop methods for studying cases involving companies, including legal checks, analysis flow (path analysis), and categorizing criminal involvement based on the evidence of the crime (*actus reus*) and the company's intent (*mens rea*). The classification of criminal participation typology will help law enforcers decide whether a corporation carried out an act or whether the perpetrator of the crime only uses the corporation as a cover to facilitate his evil activities, either as a tool or a shell. To see how the taxonomy process can work, it needs to be tested with several cases related to corporations.

## Methodology

This is normative legal research based on an analysis of primary and secondary legal materials.<sup>26</sup> It creates new ideas, theories, or suggestions for solving issues related to how corporations are involved in crimes, which affect their legal responsibility by categorizing different types of crimes. This study uses a case study approach to analyze real cases related to the typology of criminal acts. The data collection technique used in this study is a literature study. Legal materials are obtained by collecting relevant laws and regulations, books, academic works, and international and national journals. The analysis technique used is deductive logic, a way of thinking that starts with the understanding that something also applies to all events of that type. Deductive logic requires a tool called a syllogism, which is an argument consisting of three propositions called major premises, minor premises, and conclusions.<sup>27</sup>

## Results and Discussion

### *Legal Deconstruction of Corporate Criminal Liability in Indonesia*

Legal deconstruction is a critical analysis tool to show that law is not a matter of neutral rules but a product of politics, power, and historical sequences,<sup>28</sup> so it must continue to be criticized for producing justice. In the context of corporations as subjects of criminal acts, the location of legal deconstruction is in how corporations act, are guilty, and must be held accountable for their mistakes. The concept of corporate criminal liability in

<sup>25</sup> Mochamad Ramdhan Pratama and Mas Putra Zenno Januarsyah, 'Penerapan Sistem Pertanggungjawaban Pidana Korporasi Sebagai Subjek Tindak Pidana Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi', *Jurnal Wawasan Yuridika*, 4.2 (2020), 240 <https://doi.org/10.25072/jwy.v4i2.350>

<sup>26</sup> Andri Gunawan Wibisana, 'Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya', *Jurnal Hukum & Pembangunan*, 49.2 (2019), 471 <https://doi.org/10.21143/jhp.vol49.no2.2014>

<sup>27</sup> Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law', *Erasmus Law Review*, 2016 <https://doi.org/10.5553/ELR.000055>

<sup>28</sup> Wibisana.



several laws in Indonesia is formulated the same, namely that a person is a person and a corporation, and in the case of a corporation committing a crime, charges and criminal penalties can be imposed on the corporation and corporate management. The formulation of the text is included without explanation, thus giving rise to legal interpretations.<sup>29</sup> Meanwhile, the more widely understood meaning posits a) a corporation is an extension of a person; b) if a corporation is guilty, then an identifiable person is needed so that the actions and mistakes of that person become the actions and mistakes of the corporation. Because the existing provisions designate the management as an alternative that can be prosecuted and punished, then the actions and mistakes of the management are identified as the actions and mistakes of the corporation; and c) if the corporation is guilty, then the management of the corporation, regardless of whether it is related to the crime, will also be prosecuted and punished.<sup>30</sup>

Legal deconstruction studies corporate crimes, beginning with how corporations came to be seen as capable of committing crimes on their own, and what legal ideas support the notion that corporations can be held criminally responsible, including the breakdown of corporate criminal responsibility in the future Draft Law on the Criminal Code.<sup>34</sup> Deconstruction of corporate criminal liability as a new view related to corporate crime is needed to avoid getting trapped in an absolute understanding. This study classifies thoughts on the deconstruction of law on corporate criminal liability into three frameworks.

*First*, the subject of corporate crime is deconstructed as a form of criminal participation development. Initially, the concept of criminal involvement in criminal law took the form of individual criminal responsibility, which holds a person accountable only if they have participated in a criminal act.<sup>35</sup> This means no classification for representative responsibility. However, the concept of criminal responsibility has expanded to include legal entities and corporations as subjects in criminal law that can be held accountable for criminal actions. This means that the criminalization of legal entities can be regulated, such as the treatment of people.

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<sup>29</sup> Abdurrahman Alhakim and Eko Sponyono, 'Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi', *Jurnal Pembangunan Hukum Indonesia*, 1.3 (2019), 322–36 <https://doi.org/10.14710/jphi.v1i3.322-336>

<sup>30</sup> Rodliyah Rodliyah, Any Suryani, and Lalu Husni, 'Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia', *Journal Kompilasi Hukum*, 5.1 (2021), 191–206 <https://doi.org/10.29303/jkh.v5i1.43>

<sup>34</sup> Tejal Jesrani and Daimiris Garcia, 'Gendered SLAPPs: Addressing Criminal Prosecutions against Exposers of Sexual and Gender-Based Violence under International Human Rights Law', *International Journal of Law, Crime and Justice*, 80 (2025), 100729 <https://doi.org/10.1016/j.ijlcj.2025.100729>

<sup>35</sup> Padil, 'Karakteristik Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi', *Jurnal IUS Kajian Hukum Dan Keadilan*, 4.1 (2016) <https://doi.org/https://doi.org/10.12345/ius.v4i1.280>

Normatively, the concept of participation (*deeming*) to become a perpetrator of a crime is not fulfilled, hence the concept of criminal law provides an idea that can explain that a perpetrator can be punished even though he does not carry out his actions himself. Meanwhile, participation in a crime is carried out by several perpetrators working together to realize the goal that becomes a crime. Participation in a crime means that the person is held responsible for the crime because they were involved with others, which expands their legal responsibility for what happened.<sup>36</sup>

This concept also explains that what is expanded is not the person, but the subject's actions can be punished. This means that in criminal law, only people (humans) were initially considered subjects of criminal acts, but now corporations can also be punished. This expansion does not mean that there are more people, but rather the scope of the subject of criminal law itself. This change emphasizes that the focus is not on making corporations into people but on providing space for corporate actions to be held criminally accountable.

When the law designates a corporation as a person, it is absurd because a corporation is not a person and never will be, even though it is often called an artificial person and the law usually punishes every person. Criticism of corporations as an extension of people is based on three things: corporations are not humans (natural individuals); corporations do not have the will, consciousness, and morality of humans; and ontologically, corporations are not people and are not fully treated as people.<sup>37</sup> That is, calling it an expansion of a person legally is considered imprecise. A deconstructive reading is deemed to hide the failure of the legal system to clearly distinguish between individual legal subjects and collective or artificial legal subjects. In a deconstructive manner, it should be reformulated explicitly into two classifications, namely people and corporations.<sup>38</sup> This means that in the formulation of criminal law, it is not enough to simply state that "every person" can be punished and then include corporations as if they were included in it. However, it is necessary to explicitly state that corporations are distinct subjects of criminal law, at least through the compilation of special articles on corporate criminal liability and the classification of various forms of punishment, sanctions, and relevant evidentiary processes. This is because a corporation cannot be imprisoned.

The concept of criminal responsibility needs to be assessed as a unified form of participation in criminal acts because criminal law has a perspective on fair labeling, especially when determining responsibility and sentencing. It

<sup>36</sup> Treena Wilkie and others, 'Criminal Responsibility', in *Encyclopedia of Forensic and Legal Medicine* (Elsevier, 2025), pp. 858–65 <https://doi.org/10.1016/B978-0-443-21441-7.00093-5>

<sup>37</sup> Hari Sutra Disemadi and Nyoman Serikat Putra Jaya, 'Perkembangan Pengaturan Korporasi Sebagai Subjek Hukum Pidana Di Indonesia', *JURNAL HUKUM MEDIA BHAKTI*, 3.2 (2020) <https://doi.org/10.32501/jhmb.v3i2.38>

<sup>38</sup> Pratama and Januarsyah.

is essential to realize that the management is not a representation of the corporation but part of the form of corporate participation in criminal acts, although the management is considered to have a significant role in directing the realization of the crime. Therefore, it is punished the same as the corporation as the main perpetrator by seeing that the corporation is a form of participation in criminal acts in a special form so that it cannot take the form of doing (*plegen*), ordering to do (*doen plegen*), participating (*medeplegen*), persuading or moving to do (*uitlokking*) or participation in a form that is also special, namely assistance (*medeplichtigheid*) which has a fundamental difference in terms of the involvement in crimes.<sup>39</sup>

*Second*, the legal deconstruction approach challenges the traditional method of determining attribution obligations based on legal practice and development. The conventional approach to corporate criminal liability focuses on employees' state of mind, which can be attributed to the state of mind of the corporate entity. Based on this approach, two models are found. The first is the identification model used in the UK and Canada, where the corporation is directly responsible when senior officers and employees act wrongly, as the state of mind of senior employees is the state of mind of the corporation. Under the vicarious liability model used in the United States, the corporation is indirectly liable on the basis that the individual's state of mind in the employment relationship can be imputed to the corporation. Both models rely on derivative liability because the corporation can only be guilty if individual responsibility is established. Besides these two models, other rules also use the attribution method to determine the actions and intent of the corporation, like the aggregation doctrine.<sup>40</sup>

Although there are several doctrines used in proving corporate criminal liability with attribution mode, considering that the most popular doctrine used in reading the formulation of laws in Indonesia is the identification doctrine, the doctrine in question needs to be deconstructed to find its true meaning compared to the concept of corporate criminal liability in the concept of expanding the subject of criminal acts. Several formulations of laws, such as the law on the eradication of criminal acts of corruption, the law on the eradication of criminal acts of human trafficking, the law on criminal acts of fisheries, the law on criminal acts of health, and many other laws, determine that when a corporation commits a crime, prosecution is directed at the corporation and the management of the corporation, generally constructing that if a corporation commits a crime, prosecution and criminal

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<sup>39</sup> Paulus Aluk Fajar Dwi Santo, 'Tinjauan Tentang Subjek Hukum Korporasi Dan Formulasi Pertanggungjawaban Dalam Tindak Pidana', *Humaniora*, 3.2 (2012), 422 <https://doi.org/10.21512/humaniora.v3i2.3342>

<sup>40</sup> Robin Christmann and Dennis Klein, 'Game Theory, Compliance, and Corporate Criminal Liability: Insights from a Three-Player Inspection Game', *Decision Analytics Journal*, 11 (2024), 100431 <https://doi.org/10.1016/j.dajour.2024.100431>

sanctions can be carried out against the corporation and its management.<sup>41</sup> The formulation of the text is left hanging without explaining what is meant by the corporate administrator who can be prosecuted but indicating that the corporate administrator is a person who should be identified. The absence of a detailed explanation causes various problems that make it difficult for law enforcers to practice their prosecution. Therefore, three forms of special deconstruction of the law are needed.

The first deconstruction, regarding the identification theory, states that corporate managers can also be prosecuted criminally; managers are people who have the authority as corporate leaders. Corporate managers identify the meaning of declaring a corporation guilty, a concept commonly associated with corporate criminal liability.<sup>42</sup> However, from a practical perspective, this identification theory is tricky when identifying employees who commit wrongdoing or have guilty thoughts. From a conceptual standpoint, this approach also does not reflect the complex interactions between human actors and corporations, which are organized groups of people. In this study, the criticism of breaking criminal law principles in the identification theory looks at the people involved and their actions, especially those in official positions within the corporation.<sup>43</sup>

The subject of a crime bears his fault, not the fault of another subject of the crime. This is an absolute and universal basic principle in the theory of criminal responsibility, which is born from the highest moral source, God. Regardless of the set of moral principles adopted, there exists a conceptual bond between moral responsibility and the imposition of blame and punishment. Any set of moral tenets teaches that blame and punishment must still be imposed only on those who commit wrongful acts and not on related or unrelated third parties. Attributing the fault of a leader or corporate administrator simply because they have an official position in the corporation is against the teaching of fault. At the same time, functional behavior is cautious when transferring criminal responsibility from subordinates to functionaries, with the tightening of the limited conditions of "power" and "acceptance of criminal acts." This concept differs from the doctrine of respondents' superiority in civil law. When the case of *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* embodied the theory of identification and illustrated that the corporate director is a dual personality (alter ego) of the corporation, then the corporation becomes a fictional character whose behavior, speech, or thoughts are intentionally represented

<sup>41</sup> Fabian Teichmann, Chiara Wittmann, and Sonia Boticiu, 'Compliance as a Form of Defense against Corporate Criminal Liability', *Journal of Economic Criminology*, 1 (2023), 100004 <https://doi.org/10.1016/j.jeconc.2023.100004>

<sup>42</sup> Peter J. Buckley and others, 'International Business Theory and the Criminal Multinational Enterprise', *Journal of World Business*, 59.5 (2024), 101553 <https://doi.org/10.1016/j.jwb.2024.101553>

<sup>43</sup> Yogi Yasa Wedha and others, 'Unraveling the Complex Policies Regulating Conflicts of Interest and Criminal Corruption', *Journal of Human Rights, Culture and Legal System*, 5.1 (2025), 33–59 <https://doi.org/10.53955/jhcls.v5i1.486>

by the corporate director because the corporate director is its avatar.<sup>44</sup> This means that just saying someone is a corporate administrator because they hold a formal job in the company is not enough to fairly blame the corporation, and it could lead to unfair legal consequences for individuals.

When people with official positions in a corporation attribute their actions and mistakes solely to the corporation, the corporation becomes a fictional entity, driven by the actions and thoughts of these individuals (corporate administrators). The people with official positions carry out the corporation's actions and thoughts. When a corporation faces a lawsuit, one can interpret the actions as coming from the same perpetrator.<sup>45</sup> Then, how to explain when the corporate administrator's prosecution follows a corporation's trial, the same person who fills the personality of the empty container is prosecuted. Of course, the scenario violates the principle of *nebis in idem*, where an act with the same legal facts carried out by the same subject is prosecuted twice.

The second deconstruction involves the concept of actual leadership or de facto manager (*feitelijkeleidinggeven en opdrachtgeven*), an alternative object of prosecution when a corporation is guilty. The concept of *feitelijkeleidinggeven en opdrachtgeven*—the perpetrator who directs and accepts the crime (*feitelijkeleidinggeven*)—is known in Dutch criminal law as part of the corporation's participation in the crime. When a corporation commits a crime, corporate criminal liability in the Netherlands provides another alternative to prosecuting *feitelijkeleidinggeven*, the perpetrator who directs the crime. Initially, *feitelijkeleidinggeven* also only recognized natural persons, the same as the identification doctrine, where corporate leaders who can represent the corporation tend to be more easily proven as the director of the crime. In the case of the perpetrator who actually directed the crime being prosecuted, then the prosecution against him is not because he reflects the behavior of the corporation but because *feitelijkeleidinggeven* has a form of criminal participation that is different from the corporation.<sup>46</sup>

The difference with the identification theory is that the actions and mistakes of de facto managers are not used to identify the actions and mistakes of corporations but to determine their mistakes. If their actions and mistakes are identified, it should be determined whether a criminal act within the corporation occurred because they did not take corrective action, thus failing to prevent it. The contribution in question is, of course, related to

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<sup>44</sup> G.N. Cerqueira Sopas de Melo Bandeira, "Corruption" and Social and Economic Criminal Law: Criminology, Criminal Policy, Political Science and Law & Economics – A New Idea about Criminal Liability of Legal Entities', *Tékhne*, 11.2 (2013), 105–13 <https://doi.org/10.1016/j.tekhne.2013.10.002>

<sup>45</sup> Thomas Schröder, 'Corporate Crime, the Lawmaker's Options for Corporate Criminal Laws and Luhmann's Concept of "Useful Illegality"', *International Journal of Law, Crime and Justice*, 57 (2019), 13–25 <https://doi.org/10.1016/j.ijlcrj.2019.01.004>

<sup>46</sup> Joycelyn M. Pollock, 'Principles of Criminal Liability', *Criminal Law*, 2013 <https://doi.org/https://doi.org/10.1016/B978-1-4557-3052-0.00002-X>



the power and how big the de facto manager's position of power and authority is to stop the criminal act in question.<sup>47</sup>

The next question is why one should prosecute the corporate administrators. Corporate administrators do process representative and management functions. Therefore, they judge corporate errors. However, corporate administrators do not always direct criminal acts, so they deserve imprisonment. The issue of prosecuting and convicting someone just because of their formal position in a corporation raises considerations of justice.<sup>48</sup> Therefore, corporate administrators can be punished for failing to carry out their mandate in carrying out their representative and management functions as a corporation by imposing fines and additional penalties, while the perpetrator who directs the criminal acts in the corporation, if he is a person, will indeed be approached with a personal approach, namely imprisonment and fines and, in certain circumstances, with additional penalties, if the corporation is subject to fines and additional penalties because the corporation does not have a body that can be locked up. That is why the concept of *feitelijkeleiding* given provides a better alternative object of prosecution in the principle of choice of prosecution without having to violate the individualization of criminal law, which is based on the principle of criminal responsibility without fault and *nebis in idem*.<sup>49</sup>

The third deconstruction is the prosecution of corporate administrators. As in the law, the preparation of the indictment is carried out based on the object to be prosecuted, whereas in the case of a criminal act committed by a corporation, the indictment is addressed to the corporation, the administrators, or both. Corporations are prosecuted for committing a crime by attribution or violating organizational obligations. In contrast, corporate administrators are prosecuted by deconstructing the prosecution of corporate administrators by adjusting to the concept of *feitelijkenleiding* given so that the principles and concepts in criminal law dogmatics can still be maintained.<sup>50</sup>

The prosecution of corporate administrators can be deconstructed as follows: (1) corporate administrators can only be prosecuted if the corporation is guilty, in the form of an accessory to the corporation's mistake. This procedure is done so that prosecuting the same criminal subject and the

<sup>47</sup> Petter Gottschalk, 'White-Collar Criminals in Norway: An Empirical Study', *International Journal of Law, Crime and Justice*, 40.3 (2012), 211–22 <https://doi.org/10.1016/j.ijlcj.2012.03.005>

<sup>48</sup> Andika Temanta Purba and T. Keizerina Devi Azwar, 'Perbandingan Kasus Pertanggungjawaban Pidana Korporasi Terhadap Kecelakaan Lalu Lintas Di Indonesia Dan Amerika Serikat', *Res Nullius Law Journal*, 6.2 (2024), 82–97 <https://doi.org/10.34010/rnlj.v6i2.11892>

<sup>49</sup> Aditya Wahyu Saputro, Rayhan Andyara Milono, and Shafira Anna Medina, 'Pertanggungjawaban Pidana Korporasi Oleh Pengurus Dalam Kasus Karhutla Karena Unknown Cause: Perspektif Ekonomi Dan Lingkungan', *Jurnal Hukum Lex Generalis*, 2.12 (2021), 1077–99 <https://doi.org/10.56370/jhlg.v2i12.146>

same legal facts more than once can be avoided. This is to prevent breaking the rule of *nebis in idem*; (2) the corporate leaders being prosecuted are those who lead the criminal act, meaning they are directly involved in the crime (*actus reus*) and are responsible for not taking corrective actions within the corporation, ensuring that the principle of legality regarding individual responsibility is still maintained; (3) Corporate directors are only prosecuted in three cases: there are corporate directors whose authority allows them to do more than other directors to prevent criminal acts but fail to do so; consideration of the principle of absurdity in cases where the corporation does not have assets; and consideration based on benefits when the prosecution of the corporation will break the foundations of the economy or cause unemployment.<sup>51</sup>

*Third*, the draft criminal code deconstructs corporate criminal liability. In the draft criminal code, in principle, it is necessary to understand deconstructivity that (1) corporations are recognized as perpetrators of criminal acts. This also implies that corporations, as subjects of criminal acts, possess autonomous rights and obligations under criminal law. Therefore, they can commit criminal acts or their mistakes regardless of their management; (2) corporations as subjects of criminal acts have nothing to do with the requirement of having certain assets. In line with that, corporations can be in the form of legal entities or not legal entities; (3) corporate criminal liability is proven by two criminal responsibilities, namely the organizational obligation model and the attribution model; (4) In the case where a corporation is guilty of committing a crime, the person being prosecuted is the corporation and the perpetrator who directed the crime; (5) prosecution of a corporation is carried out because the corporation is the perpetrator of the crime, which is an extension of the subject that can be punished. The perpetrator who directs the crime is limited to the administrator or person with an official position leading the corporation. However, the corporation's leader is the easiest to identify in corporate criminal liability.<sup>52</sup>

It is necessary to reformulate the concept of corporate criminal liability in the draft law on the criminal code, including the definition, namely reformulating Article 45 paragraph 1 to become the subject of a criminal act is a person and a corporation. A corporation is a synthesis consisting of an organized group of people and assets, both legal and non-legal entities. The formulation of the 2022 Criminal Code is excellent; the reformulation of the addition of the word "synthetic" actually needs explanation but simplifies the mention of one by one the forms of legal entities or non-legal entities that are

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<sup>51</sup> Monika Atkins, 'Should Banks Face Criminal Prosecution for Breaches of Money Laundering Regulations or Are Civil Fines Effective. Analysis of the Significance of the First Ever Criminal Conviction of a Bank (NatWest) for Breaches of the Money Laundering Regulations', *Journal of Economic Criminology*, 6 (2024), 100097 <https://doi.org/10.1016/j.jeconc.2024.100097>

<sup>52</sup> Lakso Anindito, 'Lingkup Tindak Pidana Korupsi Dan Pembuktian Kesalahan Dalam Sistem Pertanggungjawaban Pidana Korporasi Di Indonesia, Inggris, Dan Prancis', *INTEGRITAS*, 3.1 (2017), 1 <https://doi.org/10.32697/integritas.v3i1.138>

equated with corporations. Regarding corporate criminal liability, reformulating Article 49 as part of the crime of participation in a specific way, like in the Criminal Acts Chapter, means that if the lawmakers follow a dualistic view, they see participation as its own separate crime.

### ***Typologies of Criminal Participation in Determining Criminal Responsibility through Legal Taxonomy***

The typology of criminal participation groups forms a person's involvement in a crime based on the level of involvement and role in carrying out the crime. Meanwhile, legal taxonomy is a method of legal classification that groups legal norms or subjects into structured categories to facilitate analysis, proof, and determination of legal responsibility.<sup>53</sup> This study discusses about how different types of people involved in crimes are categorized in two types; corporate actors based on their organizational duties and individual actors connected to corporations based on how responsibility is assigned.<sup>54</sup>

*First*, the organizational liability model presents a typology of corporate actors' participation in criminal acts. The organizational liability model is a model of criminal responsibility that emphasizes systemic errors or organizational culture, not only the individual mistakes of the perpetrators. In the organizational liability model, because it is carried out non-functionally and directly in proving criminal acts and corporate errors, there is no need for a corporate scope assessment parameter. If a corporation commits a criminal act and the error is proven through circumstances showing an organizational culture that tolerates such acts, then the corporation is held responsible.<sup>55</sup>

In this approach, there is no need to prove that corporations have committed a crime, either functionally or through specific individuals. Nonetheless, it suffices to demonstrate that a condition, system, or organizational culture, such as a lack of adherence to standard operating procedures, encourages crime. Regarding the need for cooperative scope parameters, there is no need to prove whether the perpetrator has a high or low position, primarily since the organizational system reflects negligence or tolerance for criminal acts. But the organizational obligation model doesn't ignore individual roles, as direct perpetrators, assistants, or advocates can still exist. This means that the organizational obligation model also allows for

<sup>53</sup> Ridwan Arifin, 'Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencucian Uang Dalam Prinsip Hukum Pidana Indonesia (Corporate Responsibility on Money Laundering Crimes on Indonesian Criminal Law Principle)', *Jurnal Mercatoria*, 12.1 (2019) <https://doi.org/10.31289/mercatoria.v12i1.2349>

<sup>54</sup> Ujang Charda S, 'Makna Korporasi Sebagai Subjek Hukum Dalam Pembaharuan KUHP Indonesia', *Jurnal Innovative*, 4.3 (2024) <https://doi.org/https://doi.org/10.31004/innovative.v4i3.10802>

<sup>55</sup> Alison Cronin, 'The Important Role of Civil Class Actions in the Enforcement of Corporate Criminal Law', *Journal of Economic Criminology*, 6 (2024), 100106 <https://doi.org/10.1016/j.jeconc.2024.100106>

participation in criminal acts by corporate actors in other forms. With that, three typological forms are classified, including

The first typology is corporation as the perpetrator of the crime in the organizational liability mode. In this typology, the corporation commits all crimes alone. Proof is carried out from all circumstances that can be connected to the corporation, such as every policy, procedure, practice, company attitude, chain of command, supervision that is lacking, and a company culture that tolerates or encourages the occurrence of criminal acts. If other circumstances are proven and there is no reason to eliminate the crime (*strafuitsluitingsgronden*), corporate criminal liability is formed.<sup>56</sup>

Proof that a corporation is a perpetrator of a crime is obtained through an assessment of internal policies and procedures, operational practices or habits, corporate attitudes and culture, failure of the supervisory system, and an unaccountable chain of command. This means that if these circumstances are proven and all the crimes are met, there is no reason to eliminate them (such as no coercion or force majeure). The corporation is fully criminally responsible, even though no specific individual is charged with a crime and no co-creators, orderers, or assistants exist. The unique features of this typology include the involvement of a corporate perpetrator, a single involvement type, evidence derived from the organization's structure and culture, and a focus on systemic errors, which typically classify large-scale and structural corporate crimes.<sup>57</sup>

The second typology is corporations as the perpetrators of crimes using other corporations as tools (instrumental vehicles). Corporations commit crimes with non-functional elements; the corporation itself can fulfill the aspects of the crime, although in carrying them out, it uses other corporations as vehicles to facilitate its evil goals. In other words, the corporation acts as the main perpetrator. However, it neither directly executes the criminal act nor uses other corporations as tools to carry out the planned crime.<sup>58</sup> Proof of corporate crimes and errors is carried out by conducting due diligence research on every policy, procedure, practice, company attitude, chain of command, and supervision that is lacking, as well as a company culture that tolerates or encourages criminal acts. Corporate criminal liability is formed if other circumstances are proven, and there is no reason to eliminate the criminal act (*strafuitsluitingsgronden*) either formally or materially.

The third typology is corporations as perpetrators of crimes using other corporations as shells. Corporations commit crimes with non-functional

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<sup>56</sup> Syah Awaluddin and others, 'Literasi Hukum: Typologi Kejahatan Investasi Dan Manajemen Investasi Efektif', *Cakrawala: Jurnal Pengabdian Masyarakat Global*, 1.3 (2022), 14–23 <https://doi.org/10.30640/cakrawala.v1i3.3935>

<sup>57</sup> Siba Prasada Panigrahi and Deepika Swain, 'The Three Faces of Anti-Heroic Leaders: Egocentricity, Psychopathy and Criminality', *Journal of Economic Criminology*, 8 (2025), 100159 <https://doi.org/10.1016/j.jeconc.2025.100159>

<sup>58</sup> Giovanni Nicolazzo, 'Criminal Participation in the Legal Economy during a Health Crisis: A Screening of the Italian Economy during 2020 and 2021', *Journal of Economic Criminology*, 8 (2025), 100155 <https://doi.org/10.1016/j.jeconc.2025.100155>

elements that fulfill their crimes and mistakes by using other corporations as shells to cover up their crimes. If a corporation is found to be directly involved in a crime, this can be shown through careful research into its policies, procedures, practices, attitudes, management structure, and lack of oversight, along with a company culture that allows or supports criminal behavior. Corporate criminal liability is formed if other circumstances are proven, and there is no reason to eliminate the crime (*strafuitsluitingsgronden*) either formally or materially.<sup>59</sup>

The three types mentioned above indicate that in the way organizations are held responsible, a company's criminal liability is not based on individual actions anymore, but is demonstrated through its internal structures, culture, and policies that enable criminal activities to happen.<sup>60</sup> Hence, the first Typology shows that the corporation's role fulfills the elements of the crime itself. The second typology shows that the corporation controls another corporation as the executor of the crime, and while the last typology indicates that the corporation uses a shell corporation to hide the crime or assets. The three typologies prove that the corporation has a collective will (corporate will) and a system that can form mistakes (*mens rea*) and actions (*actus reus*). So, theoretically, practically, and normatively, the corporation can be a complete subject of the crime, not merely as an accessory or administrative entity.

*Second*, in the attribution model, the typology of participation in criminal acts by individual perpetrators is related to corporations. The concept of attribution capital focuses on whether the individual's actions can be attributed or considered corporate actions, so the answer refers to the corporation's ability to be held criminally responsible, even though the individual is the one who committed the physical crime. The assessment of the parameters of the criminal act is seen from the term of office, on behalf of or for the corporation's benefit, and using resources, facilities, or authority from the corporation. Assessing the parameters necessitates determining if the corporation bears the burden of responsibility. This implies that the attribution model derives corporate criminal responsibility from individual actions. Attribution is only possible if the person's actions fall within the organization's duties and interests.<sup>61</sup> Therefore, the corporation can

<sup>59</sup> Corianna E. Sichel and others, 'Patterns and Contexts of Polysubstance Use among Young and Older Adults Who Are Involved in the Criminal Legal System and Use Opioids: A Mixed Methods Study', *Journal of Substance Abuse Treatment*, 143 (2022), 108864 <https://doi.org/10.1016/j.jsat.2022.108864>

<sup>60</sup> Anita Lavorgna and Anna Sergi, 'Types of Organised Crime in Italy. The Multifaceted Spectrum of Italian Criminal Associations and Their Different Attitudes in the Financial Crisis and in the Use of Internet Technologies', *International Journal of Law, Crime and Justice*, 42.1 (2014), 16–32 <https://doi.org/10.1016/j.ijlcrj.2013.11.002>

<sup>61</sup> Barbara Del Bosco and Nicola Misani, 'Keeping the Enemies Close: The Contribution of Corporate Social Responsibility to Reducing Crime against the Firm', *Scandinavian Journal of Management*, 27.1 (2011), 87–98 <https://doi.org/10.1016/j.scaman.2010.10.003>



legitimately charge only behavior that has a structural and functional relationship. This typology rises to other alternative typologies.

The first typology is corporations as perpetrators of crimes in attribution mode. In this typology, corporations fulfill their crime formulation. However, the corporation is also considered to have accepted the action through the actions of material actors, which are tested with various parameters that can link the crime to the corporation's scope through attribution. This means that the corporation fulfills the crime formulation indirectly through the actions of individuals who "become themselves" because of their role, authority, and structural relationships. Proof is carried out by identifying material actors, attribution parameter tests, and acceptance by the corporation, including whether an action is known, justified, or ignored by the corporation and whether there is systemic neglect. Assume that the corporation meets all the parameters of the attribution test. In that case, the individual's actions can be attributed to the corporation, so the corporation is considered a perpetrator of the crime who must be burdened with criminal responsibility.<sup>62</sup>

The second is corporations as perpetrators of crimes with the possibility of suing individuals who receive personal benefits. In the case where the parameters of corporate behavior are met, there is the fact that the directors, leaders, or agents of the corporation also receive personal benefits from the crime. In addition to fulfilling corporate behavior, the directors, leaders, or agents of the corporation who consciously fulfill the elements of their crime and are aware of their actions are also personally responsible. In this case, there is corporate criminal liability, individual liability, and separate prosecution for both, and each can be prosecuted independently.<sup>63</sup> Thus, Typology 2 in the attribution model shows that corporate criminal liability does not eliminate individual responsibility. Suppose the individual perpetrator acts within the scope of corporate responsibility but simultaneously gains personal benefits from the crime. In that case, both can be held criminally responsible independently and in parallel. This aligns with the principles of justice, proportionality, and effectiveness of corporate criminal law enforcement.

The last typology is corporate behavior attribution, is not fulfilled, so there is individual responsibility. Although there is no corporate criminal responsibility because corporate behavior is not fulfilled, individual criminal responsibility is still possible. In this typology, when the actions of people in employment relationships or other relationships are associated with the parameters of the corporate scope, it turns out that there is no attributable

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<sup>62</sup> Barbara Apaalabono Atanga, Xunyue Xue, and Anna S. Mattila, 'The Impact of Corporate Sociopolitical Activism (CSA) on Brand Attitude', *International Journal of Hospitality Management*, 107 (2022), 103290 <https://doi.org/10.1016/j.ijhm.2022.103290>

<sup>63</sup> Leah Shipton and Peter Dauvergne, 'The Influence of Home Country Institutions on the Adoption of Corporate Social Responsibility Policies by Transnational Mining Corporations', *The Extractive Industries and Society*, 10 (2022), 101077 <https://doi.org/10.1016/j.exis.2022.101077>

behavior, so people in employment relationships or other relationships do not act as material actors of the corporation. Meanwhile, the management or agent of the corporation fulfills all the elements of the crime and acts with the awareness and intent typical of a natural person (*natuurlijke person*).<sup>64</sup> Thus, Typology 3 in the attribution model confirms that not all individual actions in an organization can be charged to the corporation. When the results of the attribution test show that the action was carried out outside the scope of corporate responsibility, then the corporation cannot be held criminally responsible. On the other hand, individuals who fulfill the elements of the crime personally remain responsible as the main perpetrator based on their capacity as a natural person (*natuurlijke person*).

Therefore, Typology 1 corporations can be categorized as subjects of criminal acts because if individual actions can be attributed in their entirety to the scope of corporate responsibility (for example, through position, authority, or internal policies), then the elements of the crime are fulfilled by the corporation indirectly, and the corporation is considered the main perpetrator. Typology 2 states that corporations remain subjects of criminal acts, even though individual perpetrators also receive personal benefits. But if the act is done within the cooperative's scope and can be attributed, the corporation is also liable. Meanwhile, in Typology 3, because the attribution is not fulfilled, the corporation is not considered a subject of criminal acts because it is carried out by individuals outside the scope of the organization's authority and responsibility, and there is no tolerance, benefit, or acceptance from the corporation. Therefore, the act cannot be attributed to the corporation; the responsibility is only on the individual.

## Conclusion

The legal deconstruction analyzes the shift and expansion of criminal law subjects that influence corporate criminal liability. This study shows that legal deconstruction is needed in three areas: first, deconstruction of corporate crime as a form of development of criminal participation; legal deconstruction of the traditional approach to determining attribution obligations according to legal practice and development; and deconstruction of corporate criminal liability in the draft criminal code. Second, this study shows two models that help understand how corporations can be held responsible for crimes: one looks at how corporate actors participate in criminal acts based on their organizational roles, and the other examines how individual actors connected to corporations are involved in crimes. Therefore, normative deconstruction and crime classification are needed to ensure legal certainty and justice.

<sup>64</sup> Michael J Lynch and Lenny A Krzycki, 'Popular Culture as an Ideological Mask', *Journal of Criminal Justice*, 26.4 (1998), 321–36 [https://doi.org/10.1016/S0047-2352\(98\)00011-7](https://doi.org/10.1016/S0047-2352(98)00011-7)

## References

- Abdul Hayy Nasution, Edi Setiadi, and Yeti Sumiati, 'Authorities Of Civil Servant Investigates In Conducting Investigations On Acts Of Corporate Maladministration In Telecommunications According To Law No. 36 Of 1999 Concerning Telecommunications Adjusted To The Principle Of Legal Certainty', *International Journal of Social Science*, 2.5 (2023), 2235–46 <https://doi.org/10.53625/ijss.v2i5.4952>
- Akito, Matsuyama, Yano Shinichiro, Hisano Akihiro, Kindaichi Michiaki, Sonoda Ikuko, Tada Akihide, and others, 'Reevaluation of Minamata Bay, 25 Years after the Dredging of Mercury-Polluted Sediments', *Marine Pollution Bulletin*, 89.1–2 (2014), 112–20 <https://doi.org/10.1016/j.marpolbul.2014.10.019>
- Alhakim, Abdurrahman, and Eko Soponyono, 'Kebijakan Pertanggungjawaban Pidana Korporasi Terhadap Pemberantasan Tindak Pidana Korupsi', *Jurnal Pembangunan Hukum Indonesia*, 1.3 (2019), 322–36 <https://doi.org/10.14710/jphi.v1i3.322-336>
- Anindito, Lakso, 'Lingkup Tindak Pidana Korupsi Dan Pembuktian Kesalahan Dalam Sistem Pertanggungjawaban Pidana Korporasi Di Indonesia, Inggris, Dan Prancis', *INTEGRITAS*, 3.1 (2017), 1 <https://doi.org/10.32697/integritas.v3i1.138>
- Atanga, Barbara Apaalabono, Xunyue Xue, and Anna S. Mattila, 'The Impact of Corporate Sociopolitical Activism (CSA) on Brand Attitude', *International Journal of Hospitality Management*, 107 (2022), 103290 <https://doi.org/10.1016/j.ijhm.2022.103290>
- Atkins, Monika, 'Should Banks Face Criminal Prosecution for Breaches of Money Laundering Regulations or Are Civil Fines Effective. Analysis of the Significance of the First Ever Criminal Conviction of a Bank (NatWest) for Breaches of the Money Laundering Regulations', *Journal of Economic Criminology*, 6 (2024), 100097 <https://doi.org/10.1016/j.jeconc.2024.100097>
- Bandeira, G.N. Cerqueira Sopas de Melo, "'Corruption" and Social and Economic Criminal Law: Criminology, Criminal Policy, Political Science and Law & Economics – A New Idea about Criminal Liability of Legal Entities', *Tékhne*, 11.2 (2013), 105–13 <https://doi.org/10.1016/j.tekhne.2013.10.002>
- Bisarya, R.K., and Swaraj Puri, 'The Bhopal Gas Tragedy—A Perspective', *Journal of Loss Prevention in the Process Industries*, 18.4–6 (2005), 209–12 <https://doi.org/10.1016/j.jlpi.2005.07.006>
- Del Bosco, Barbara, and Nicola Misani, 'Keeping the Enemies Close: The Contribution of Corporate Social Responsibility to Reducing Crime against the Firm', *Scandinavian Journal of Management*, 27.1 (2011), 87–98 <https://doi.org/10.1016/j.scaman.2010.10.003>
- Buckley, Peter J., Peter Enderwick, Linda Hsieh, and Oded Shenkar, 'International Business Theory and the Criminal Multinational

- Enterprise', *Journal of World Business*, 59.5 (2024), 101553  
<https://doi.org/10.1016/j.jwb.2024.101553>
- Capus, Nadja, and Melody Bozinova, 'Impression Management in Corporate Corruption Settlements: The Storied Self of the Prosecutorial Authority', *International Journal of Law, Crime and Justice*, 73 (2023), 100578  
<https://doi.org/10.1016/j.ijlcj.2023.100578>
- Christmann, Robin, and Dennis Klein, 'Game Theory, Compliance, and Corporate Criminal Liability: Insights from a Three-Player Inspection Game', *Decision Analytics Journal*, 11 (2024), 100431  
<https://doi.org/10.1016/j.dajour.2024.100431>
- Cronin, Alison, 'The Important Role of Civil Class Actions in the Enforcement of Corporate Criminal Law', *Journal of Economic Criminology*, 6 (2024), 100106  
<https://doi.org/10.1016/j.jeconc.2024.100106>
- Disemadi, Hari Sutra, and Nyoman Serikat Putra Jaya, 'Perkembangan Pengaturan Korporasi Sebagai Subjek Hukum Pidana Di Indonesia', *JURNAL HUKUM MEDIA BHAKTI*, 3.2 (2020)  
<https://doi.org/10.32501/jhmb.v3i2.38>
- Duan, Tingting, Xue Yang, and Zhe Zhang, 'The Improvement of Legal System, Entrepreneur Immigration, and Corporate Cash Holdings', *International Review of Financial Analysis*, 89 (2023), 102776  
<https://doi.org/10.1016/j.irfa.2023.102776>
- Eckerman, Ingrid, 'Bhopal Gas Catastrophe 1984: Causes and Consequences', in *Encyclopedia of Environmental Health* (Elsevier, 2019), pp. 272-87  
<https://doi.org/10.1016/B978-0-12-409548-9.01903-5>
- Fonseca, Luís, Katerina Nikalexi, and Elias Papaioannou, 'The Globalization of Corporate Control', *Journal of International Economics*, 146 (2023), 103754  
<https://doi.org/10.1016/j.jinteco.2023.103754>
- Gottschalk, Petter, 'White-Collar Criminals in Norway: An Empirical Study', *International Journal of Law, Crime and Justice*, 40.3 (2012), 211-22  
<https://doi.org/10.1016/j.ijlcj.2012.03.005>
- Hutchinson, Terry, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law', *Erasmus Law Review*, 2016  
<https://doi.org/10.5553/ELR.000055>
- Jaelani, Abdul Kadir, and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court's Decision Number 76/PUU-XV/2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021)  
<https://doi.org/10.53955/jhcls.v1i1.5>
- Jesrani, Tejal, and Daimiris Garcia, 'Gendered SLAPPs: Addressing Criminal Prosecutions against Exposers of Sexual and Gender-Based Violence under International Human Rights Law', *International Journal of Law, Crime and Justice*, 80 (2025), 100729  
<https://doi.org/10.1016/j.ijlcj.2025.100729>
- Joycelyn M. Pollock, 'Principles of Criminal Liability', *Criminal Law*, 2013  
<https://doi.org/https://doi.org/10.1016/B978-1-4557-3052-0.00002-X>

- Kurniawan, Iwan, 'Kriteria Untuk Menentukan Bentuk-Bentuk Tindak Pidana Dan Pertanggungjawaban Pidana Dari Korporasi Yang Melakukan Tindak Pidana Korupsi', *UNES Law Review*, 5.3 (2023), 1285–1306 <https://doi.org/10.31933/unesrev.v5i3.444>
- Lavorgna, Anita, and Anna Sergi, 'Types of Organised Crime in Italy. The Multifaceted Spectrum of Italian Criminal Associations and Their Different Attitudes in the Financial Crisis and in the Use of Internet Technologies', *International Journal of Law, Crime and Justice*, 42.1 (2014), 16–32 <https://doi.org/10.1016/j.ijlcj.2013.11.002>
- Lynch, Michael J, and Lenny A Krzycki, 'Popular Culture as an Ideological Mask', *Journal of Criminal Justice*, 26.4 (1998), 321–36 [https://doi.org/10.1016/S0047-2352\(98\)00011-7](https://doi.org/10.1016/S0047-2352(98)00011-7)
- Martitah, Martitah, Dewi Sulistianingsih, Rahmawati Mohd Yusoff, and Noraini Ismail, 'Insufficient Criminal Justice System Response to the Severity of Domestic Violence during the Pandemic in Indonesia', *Heliyon*, 10.14 (2024), e33719 <https://doi.org/10.1016/j.heliyon.2024.e33719>
- Matsuyama, Akito, Shinichiro Yano, Yoko Taniguchi, Michiaki Kindaichi, Akihide Tada, and Minoru Wada, 'Trends in Mercury Concentrations and Methylation in Minamata Bay, Japan, between 2014 and 2018', *Marine Pollution Bulletin*, 173 (2021), 112886 <https://doi.org/10.1016/j.marpolbul.2021.112886>
- Negi, Abhishek, Mohammed Irshad, and Resti Dian Luthviati, 'Deconstructing Attributes of Constitutional Legitimacy: A Case Study of Indian Constitution', *Journal of Human Rights, Culture and Legal System*, 4.1 (2024), 1–26 <https://doi.org/10.53955/jhcls.v4i1.114>
- Nicolazzo, Giovanni, 'Criminal Participation in the Legal Economy during a Health Crisis: A Screening of the Italian Economy during 2020 and 2021', *Journal of Economic Criminology*, 8 (2025), 100155 <https://doi.org/10.1016/j.jeconc.2025.100155>
- Padil, 'Karakteristik Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Korupsi', *Jurnal IUS Kajian Hukum Dan Keadilan*, 4.1 (2016) <https://doi.org/https://doi.org/10.12345/ius.v4i1.280>
- Panigrahi, Siba Prasada, and Deepika Swain, 'The Three Faces of Anti-Heroic Leaders: Egocentricity, Psychopathy and Criminality', *Journal of Economic Criminology*, 8 (2025), 100159 <https://doi.org/10.1016/j.jeconc.2025.100159>
- Prakash, Nishith, Marc Rockmore, and Yogesh Uppal, 'Do Criminally Accused Politicians Affect Economic Outcomes? Evidence from India', *Journal of Development Economics*, 141 (2019), 102370 <https://doi.org/10.1016/j.jdeveco.2019.102370>
- Pratama, Mochamad Ramdhan, and Mas Putra Zenno Januarsyah, 'Penerapan Sistem Pertanggungjawaban Pidana Korporasi Sebagai Subjek Tindak Pidana Dalam Undang-Undang Pemberantasan Tindak Pidana Korupsi', *Jurnal Wawasan Yuridika*, 4.2 (2020), 240



<https://doi.org/10.25072/jwy.v4i2.350>

Purba, Andika Temanta, and T. Keizerina Devi Azwar, 'Perbandingan Kasus Pertanggungjawaban Pidana Korporasi Terhadap Kecelakaan Lalu Lintas Di Indonesia Dan Amerika Serikat', *Res Nullius Law Journal*, 6.2 (2024), 82–97 <https://doi.org/10.34010/rnlj.v6i2.11892>

Ridwan Arifin, 'Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencucian Uang Dalam Prinsip Hukum Pidana Indonesia (Corporate Responsibility on Money Laundering Crimes on Indonesian Criminal Law Principle)', *Jurnal Mercatoria*, 12.1 (2019) <https://doi.org/10.31289/mercatoria.v12i1.2349>

Rodliyah, Rodliyah, Any Suryani, and Lalu Husni, 'Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia', *Journal Kompilasi Hukum*, 5.1 (2021), 191–206 <https://doi.org/10.29303/jkh.v5i1.43>

Rosello, Mercedes, 'Regional Fishery Management Organisation Measures and the Imposition of Criminal and Administrative Sanctions in Respect of High Seas Fishing', *Marine Policy*, 144 (2022), 105213 <https://doi.org/10.1016/j.marpol.2022.105213>

Rukmono, Bambang Sugeng, Pujiyono Suwadi, and Muhammad Saiful Islam, 'The Effectiveness of Recovering Losses on State Assets Policy in Dismissing Handling of Corruption', *Journal of Human Rights, Culture and Legal System*, 4.2 (2024), 299–330 <https://doi.org/10.53955/jhcls.v4i2.259>

Salcito, Kendyl, Burton H. Singer, Gary R. Krieger, Mitchell G. Weiss, Mark Wielga, and Jürg Utzinger, 'Assessing Corporate Project Impacts in Changeable Contexts: A Human Rights Perspective', *Environmental Impact Assessment Review*, 47 (2014), 36–46 <https://doi.org/10.1016/j.eiar.2014.03.004>

Santo, Paulus Aluk Fajar Dwi, 'Tinjauan Tentang Subjek Hukum Korporasi Dan Formulasi Pertanggungjawaban Dalam Tindak Pidana', *Humaniora*, 3.2 (2012), 422 <https://doi.org/10.21512/humaniora.v3i2.3342>

Saputro, Aditya Wahyu, Rayhan Andyara Milono, and Shafira Anna Medina, 'Pertanggungjawaban Pidana Korporasi Oleh Pengurus Dalam Kasus Karhutla Karena Unknown Cause: Perspektif Ekonomi Dan Lingkungan', *Jurnal Hukum Lex Generalis*, 2.12 (2021), 1077–99 <https://doi.org/10.56370/jhlg.v2i12.146>

Sasmita, Randikha Prabu Raharja, Sigid Suseno, and Patris Yusrian Jaya, 'The Concept of Reasons for Eliminating Corporate Crime in Criminal Law in Indonesia', *Heliyon*, 9.11 (2023), e21602 <https://doi.org/10.1016/j.heliyon.2023.e21602>

Satria, Hariman Satria, 'Pembuktian Kesalahan Korporasi Dalam Tindak Pidana Korupsi', *INTEGRITAS*, 4.2 (2018), 29 <https://doi.org/10.32697/integritas.v4i2.255>

Sayari, Naz, and Bill Marcum, 'Reducing Risk in the Emerging Markets: Does Enhancing Corporate Governance Work?', *BRQ Business Research*

- Quarterly, 21.2 (2018), 124–39  
<https://doi.org/10.1016/j.brq.2018.01.002>
- Schröder, Thomas, 'Corporate Crime, the Lawmaker's Options for Corporate Criminal Laws and Luhmann's Concept of "Useful Illegality"', *International Journal of Law, Crime and Justice*, 57 (2019), 13–25  
<https://doi.org/10.1016/j.ijlcrj.2019.01.004>
- Shipton, Leah, and Peter Dauvergne, 'The Influence of Home Country Institutions on the Adoption of Corporate Social Responsibility Policies by Transnational Mining Corporations', *The Extractive Industries and Society*, 10 (2022), 101077  
<https://doi.org/10.1016/j.exis.2022.101077>
- Sichel, Corianna E., Daniel Winetsky, Stephanie Campos, Megan A. O'Grady, Susan Tross, Jane Kim, and others, 'Patterns and Contexts of Polysubstance Use among Young and Older Adults Who Are Involved in the Criminal Legal System and Use Opioids: A Mixed Methods Study', *Journal of Substance Abuse Treatment*, 143 (2022), 108864  
<https://doi.org/10.1016/j.jsat.2022.108864>
- Syah Awaluddin, Mar'atun Shalihah, Evy Savitri Gani, Nadif Hidayat Pattimura, and Ilham Ohoirenan, 'Literasi Hukum : Typologi Kejahatan Investasi Dan Manajemen Investasi Efektif', *Cakrawala: Jurnal Pengabdian Masyarakat Global*, 1.3 (2022), 14–23  
<https://doi.org/10.30640/cakrawala.v1i3.3935>
- Teichmann, Fabian, Chiara Wittmann, and Sonia Boticiu, 'Compliance as a Form of Defense against Corporate Criminal Liability', *Journal of Economic Criminology*, 1 (2023), 100004  
<https://doi.org/10.1016/j.jeconc.2023.100004>
- Torodji, Rais, Hartiwiningsih Hartiwiningsih, I Gusti Ayu Ketut Rachmi Handayani, and Muhammad Nur, 'The Role of the Corporate Penalty System on Environmental Regulation', *Journal of Human Rights, Culture and Legal System*, 3.3 (2023), 600–624  
<https://doi.org/10.53955/jhcls.v3i3.179>
- Ujang Charda S, 'Makna Korporasi Sebagai Subjek Hukum Dalam Pembaharuan KUHP Indonesia', *Jurnal Innovative*, 4.3 (2024)  
<https://doi.org/10.31004/innovative.v4i3.10802>
- Wedha, Yogi Yasa, I Made Hendra wijaya, Hudali Mukti, and Arida Turymshayeva, 'Unraveling the Complex Policies Regulating Conflicts of Interest and Criminal Corruption', *Journal of Human Rights, Culture and Legal System*, 5.1 (2025), 33–59  
<https://doi.org/10.53955/jhcls.v5i1.486>
- Weissmann, Andrew, Chao Ji, and Kan Shao, 'Rethinking Criminal Corporate Liability', *Environment International*, 161 (2007), 107135  
<https://doi.org/10.1016/j.envint.2022.107135>
- Wibisana, Andri Gunawan, 'Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya', *Jurnal Hukum & Pembangunan*, 49.2 (2019), 471  
<https://doi.org/10.21143/jhp.vol49.no2.2014>

- Wilkie, Treena, Lisa Ramshaw, Sumeeta Chatterjee, Kiran Patel, and Graham Glancy, 'Criminal Responsibility', in *Encyclopedia of Forensic and Legal Medicine* (Elsevier, 2025), pp. 858–65 <https://doi.org/10.1016/B978-0-443-21441-7.00093-5>
- van der Wilt, H., 'Corporate Criminal Responsibility for International Crimes: Exploring the Possibilities', *Chinese Journal of International Law*, 12.1 (2013), 43–77 <https://doi.org/10.1093/chinesejil/jmt010>