

THE ESSENCE OF CORPORATE CRIMINAL LIABILITY IN THE INDONESIAN CRIMINAL LAW

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Abstract

The growing scope of corporate activities across various sectors has created an urgency to recognize corporations as subjects of criminal law. Historically, Indonesia's criminal law system has not explicitly regulated this matter; however, through the New Penal Code and various sectoral laws, there has been an expansion in recognizing non-human legal subjects. This paper examines the essence of corporate criminal liability from ontological, epistemological, and axiological perspectives. This research is a normative legal study. The approaches employed in this research include statutory, conceptual, philosophical, and case-based approaches. The theoretical framework used as an analytical tool comprises the theories of legal fiction, concession, and corporate aggregate, realist theory, symbolic theory, contract convergence theory, John Rawls' theory of justice, and utilitarianism. The findings indicate that, in modern criminal law, corporations are recognized as autonomous legal subjects with the capacity to act and bear responsibility independently. Realist and organic approaches serve as the primary foundations, replacing classical views that attribute liability solely to individual corporate officers. The essence of corporate criminal liability in Indonesian criminal law lies in the recognition that corporations are legal entities capable of acting and being held criminally accountable. This approach targets not only individuals but also corporate entities whose structures and policies may lead to the commission of criminal offenses.

Keywords: Liability, Legal Subject, Corporate Crime.

INTRODUCTION

Changes in the structure of the global economy and the increasing complexity of corporate activities across various sectors from extractive industries and digital finance to public services have shifted the landscape of crime from one primarily involving individual actors to one characterized by systemic and collective offenses. In this context, organized crime continues to evolve within transnational markets, capitalizing on the waves of globalization to expand its reach and influence. These criminal networks operate not only within the illegal sector, which is traditionally their domain, but also penetrate the legal economy, creating widespread destructive impacts across economic, criminal, political, and social dimensions. The motivations driving perpetrators to reinvest their wealth into the legal sector are diverse, ranging from money laundering and the pursuit of further profits to the establishment of social legitimacy through territorial control and infiltration into formal structures of the state and market¹.

Such a situation often poses significant challenges to conventional law enforcement, which remains focused on individuals as the primary offenders. This challenge necessitates a new, more progressive paradigm. The recognition of corporations as subjects of criminal law is not merely a theoretical demand, but a practical necessity in responding to the aforementioned threats. This reconstruction involves the refinement of both substantive and procedural criminal

law instruments to effectively address collective responsibility and to accommodate the evidentiary processes required for crimes committed through corporate structures.

Within the horizon of legal philosophy, the exclusive focus on the individual as the sole subject in criminal acts represents a residual element of the liberal-positivist paradigm, which places individual free will at the center of moral and legal responsibility. However, contemporary socio-economic configurations characterized by the complexity of institutional structures, particularly corporations as entities capable of acting, influencing, and accumulating systemic impacts—demand a fundamental revision of this normative framework. Referring to Michel Foucault's conception of power as dispersed within various relationships and possessing strategic scope², as well as Hannah Arendt's critique of Adolf Eichmann concerning the *banality of evil* that arises within systems lacking a clearly identifiable individual³, it becomes evident that an anthropocentric approach to criminal law is no longer adequate. The recognition of corporations as subjects of criminal law is not merely a theoretical articulation, but rather a practical necessity grounded in the demands of structural justice. Therefore, the reconstruction of the criminal justice system must include a redefinition of collective responsibility and a transformation of both substantive and procedural legal instruments, in order to enable the tracing and prosecution of crimes embedded within modern institutional architectures.

A similar paradigmatic approach is also necessary in the Indonesian context, which historically inherited the *Wetboek van Strafrecht voor Nederlandsch-Indië* (the colonial Criminal Code), which did not explicitly recognize corporations as subjects of criminal law. This Criminal Code was drafted under the assumption that perpetrators of criminal acts are natural persons (*natuurlijke personen*). As a result, a legal vacuum emerged in prosecuting collective entities involved in criminal activities. To address this gap, sectoral criminal laws were developed, such as the Environmental Law, the Law on Corruption Crimes, and the Law on Money Laundering, all of which explicitly recognize corporations as entities that can bear criminal liability. This development culminated in the enactment of the New Criminal Code (Law No. 1 of 2023), which adopts a more modern approach.

Philosophically, imposing criminal liability on corporations requires a fundamental revision of classical concepts in criminal law. The retributivist tradition, rooted in the principles of *actus reus* and personal *mens rea*, is insufficient to address systemic and structured crimes such as corporate crimes. Corporations do not possess conscience or intentionality in the human sense, but they do have structures and decision-making mechanisms that reflect a collective will.

Theoretically, in the landscape of modern law, a corporation is no longer merely regarded as a collection of individuals, but rather as a legal person endowed with its own legal rights and obligations. However, when a corporation commits a legal violation, particularly a criminal offense, a fundamental question arises concerning the nature of its criminal liability. This issue necessitates an inquiry that is not solely normative and technical in nature, but also philosophical, encompassing ontological, epistemological, and axiological dimensions.

Secara ontologis, problematika yang mengemuka bersifat paradoksal: korporasi, sebagai konstruksi metafisis yang tak berkesadaran dan tanpa kehendak moral, justru dihadirkan dalam

lanskap hukum pidana sebagai subjek yang seolah memiliki tanggung jawab etis. Ini menimbulkan pertanyaan ontologis yang mendalam: dapatkah entitas yang tidak memiliki eksistensi dalam ranah kesadaran dinisbahkan dengan kehendak untuk bersalah?

Secara epistemologis, tantangannya adalah bagaimana pengetahuan hukum mengakses kebenaran tentang kesalahan kolektif. Dalam ruang organisasional yang kompleks dan hierarkis, pembuktian kesalahan bukan lagi perihal individu, melainkan konstruksi sistemik yang tercermin dalam kebijakan, kultur, dan representasi melalui agen-agen korporasi. Maka lahirlah epistemologi atribusi, seperti *identification theory* yang mencari personifikasi kehendak dalam individu kunci, dan *vicarious liability* yang menempatkan tanggung jawab secara substitutif demi menjaga keutuhan struktur pertanggungjawaban.

Secara aksiologis, pidana korporasi harus diletakkan dalam dialektika nilai: antara keadilan sebagai kehendak moral universal, kemanfaatan sebagai prinsip utilitarian yang melayani kepentingan sosial, dan kepastian hukum sebagai syarat rasionalitas sistem hukum. Tanggung jawab pidana korporasi tak hanya berorientasi pada pembalasan, tetapi juga pada transformasi: mencegah deviasi, menumbuhkan kepatuhan, dan mereformasi sistem secara berkelanjutan.

Considering the complexity of corporate entities as legal subjects in modern society, this research holds significant importance in formulating the essence of corporate criminal liability from both philosophical and systemic perspectives. This approach necessitates a re-examination of the ontological foundation namely, the existence of corporations as collective entities capable of acting and generating legal consequences; the epistemological dimension how legal knowledge regarding liability is constructed, limited, and applied to non-human actors; and the axiological dimension the substantive values of justice sought through the mechanism of punishment. By investigating these three dimensions in an interdependent manner, this study aspires to produce a conceptual framework that is not only theoretically coherent but also responsive and applicable to the needs of Indonesia's criminal justice system. Furthermore, it aims to engage in constructive dialogue with the evolving landscape of global criminal law, which is continuously in the process of *becoming* an unfinished process that remains open to new meanings, as articulated by Heidegger³. Hence, the approach to corporate criminal liability requires liberation from a closed and ahistorical normative-positivist framework. Law can no longer be understood merely as a static set of rules, but rather as a hermeneutic space that necessitates continual interpretation of the law's existence in relation to transformations in social, economic, and technological structures.

METHODE

The type of research used in this study is normative legal research, which treats law as a system of norms. This type of research examines the principles, norms, and rules contained in legislation, court decisions, agreements, and doctrines (teachings). According to Peter Mahmud Marzuki, normative legal research (legal research) aims to discover coherence truth, specifically whether legal rules align with legal norms, whether commands or prohibitions are consistent with legal principles, and whether an individual's actions are in accordance with legal norms (not just legal rules) or legal principles.⁴ As a form of legal research, and in line

with the unique characteristics of jurisprudence, several approaches are employed in normative legal research, including:⁵ (a) the Statute Approach, (b) the Conceptual Approach, (c) the Analytical Approach, (d) the Comparative Approach, (e) the Historical Approach, (f) the Philosophical Approach, and (g) the Case Approach. This research utilizes library materials or secondary data, which include primary, secondary, and tertiary legal materials. The collection of legal materials is conducted through documentary studies related to the constitutional responsibilities of the state in fulfilling the right to education for children with disabilities. The collected legal materials are then analyzed through a series of consistent, systematic, and aesthetic activities. This series of activities involves presenting, examining, systematizing, interpreting, and evaluating the entirety of the data or legal materials available.

RESULTS AND DISCUSSION

1. From Legal Fiction to Criminal Entity: Reconstructing Corporations in the Constellation of Contemporary Legal Subjects

In general, criminal law governs behavior that is prohibited in social life by designating individuals as legal subjects responsible for compliance with legal norms. The primary focus is on individuals, either as active perpetrators or due to negligence, who may be subject to sanctions by the state if they violate legal provisions. This view emphasizes that the core of legal norms lies in the regulation of obligations, not merely the granting of rights, thus prioritizing the control of the actions of legal subjects who are required to act or to refrain from certain actions⁶.

Currently, the law considers all natural persons to have legal personality, although their capacity for criminal responsibility may vary depending on their age and status⁷. Certain individuals who are legally recognized as persons may be excluded from criminal liability, such as children and the mentally ill⁸. In some historical cases, slaves and women were also excluded from the definition of legal subjects. Additionally, in Ancient Roman criminal law, magistrates with full imperium were exempt from criminal charges during their tenure, and this also applied to the emperor⁹. However, in contemporary criminal law, the concept of personhood includes both natural persons and legal entities. It is undeniable that political pragmatism influences many decisions related to criminal policy¹⁰.

Historically, corporations were created to regulate the Roman Catholic Church and other religious institutions in medieval Europe¹¹. The concept of the corporation has deep historical roots in the religious and social institutions of medieval Europe. At that time, corporations were not created as economic or business entities as we know them today, but rather as legal organizational structures to regulate and manage religious institutions especially the Roman Catholic Church and other religious organizations such as monasteries, monastic orders, and theological colleges. Within the Romano-Canonical legal system (*Corpus Juris Civilis* and Canon Law), a corporation was understood as a *persona ficta* or “artificial person”, namely a legal subject created by law to possess its own rights and obligations, distinct from the existence or identity of its members¹².

In the past, social institutions such as religious and charitable organizations acquired the status of legal subjects through official charters granted by authorized authorities. According to Gregory A. Mark, this recognition enabled such institutions to act independently, including owning and managing property. This practice formed the foundation for the development of the *persona ficta* concept in European law namely, the recognition of non-human entities as autonomous and enduring legal subjects. As a result, property rights were not inherited by individual members nor returned to the state upon the death of administrators, but remained with the institution as a continuing legal entity¹³.

The concept of the corporate legal subject allows a group of people to act collectively as a single legal entity, separate from its members, with perpetual legal existence. This concept enables such community entities to manage public assets in a collective name¹⁴. Until the 16th century, corporations were used for various institutions such as cities, districts, universities, colleges, hospitals, social organizations, bishops, monasteries, and other institutions¹⁵. Recognition of these institutions as corporations allowed them to act as collective legal subjects with rights and obligations distinct from those of the individuals within them.

Epistemologically, corporations are not merely business entities but organizations institutionalized through a charter to perform social, religious, and administrative functions, with the legal capacity to own property, enter into contracts, and participate in legal processes independently from their members. Margaret M. Blair asserts that the word *corporation* derives from the Latin *corpus*, meaning body, because the law recognizes that a group of individuals forming a corporation can act as a single body or legal person¹⁶. This reflects the process of giving a body to something through incorporation¹⁷. Formally, Robert Hessen states that corporations, unlike other organizations, are creatures of the state because they require government authorization to exist¹⁸. According to J.E. Post, L.E. Preston, and S. Sachs in their work *Redefining the Corporation*, corporations are more complex and diverse entities than merely profit-oriented legal bodies. They describe a corporation as "an organization engaged in mobilizing resources for productive use to create wealth and other benefits for a variety of stakeholders"¹⁹.

Many legal scholars discussing corporations refer to large businesses or business entities rather than other forms of associations²⁰. Peter F. Drucker emphasizes that a corporation is "a large-scale business enterprise usually incorporated in the corporate form"²¹. According to Gower, American lawmakers tend to use the term *corporation* to refer to business entities, while lawmakers in England prefer the term *company*²². F.W. Maitland views corporations as groups of individuals acting as legal entities with independent legal personality, possessing rights and obligations separate from their members. M. Blair adds that single corporations are established so that property and contracts involved are not personally owned but belong to the corporation itself and are transferred to its successors. However, Maitland criticizes the concept of a single corporation as an underdeveloped extension of the theory of the corporation as a *persona ficta*²³.

In the Indonesian Criminal Code²⁴ (hereinafter referred to as the New Criminal Code), corporations are regulated as legal subjects under Article 45 paragraph (1) of the respective

law, which affirms that “A corporation is a subject of a criminal act.” This definition provides a broader meaning of a corporation as previously understood, namely as a legal entity possessing legal personality.

The regulation of corporations as subjects of criminal law in various countries shows that corporations are understood as organized entities consisting of persons and/or property, whether incorporated or not. The comparative study in this research analyzes criminal provisions in the United States, the United Kingdom, Australia, Canada, Singapore, New Zealand, France, and the Netherlands, which not only explicitly regulate corporations as criminal legal subjects but also recognize criminal liability for collective entities, even if not formally incorporated.

1) United States

In the *Model Penal Code*, §1.13, General Definitions, subsection (8) states that: “Person”, “he”, and “actor” include any natural person and, where relevant, a corporation or unincorporated association. In §1.13 – General Definitions, specifically in subsection (8), it is clearly stated²⁵.

2) Singapore

Under the *Singapore Penal Code 1871* and its subsequent amendments, the definition of “person” and “legal body” or “corporation” is regulated in Section 11. This section provides a broad definition of the term “person” in the context of Singaporean criminal law. The term “person” includes corporations, associations, and legal persons, whether incorporated or unincorporated.

3) New Zealand

In New Zealand’s *Crimes Act 1961*, definitions of “person” and “legal body” or “corporation” are stipulated in Section 2. This section clarifies who may be deemed a legal subject responsible for criminal acts. Section 2 of the *Crimes Act 1961* of New Zealand provides the following definitions: (1) In this Act, unless the context otherwise requires: (a) “person” includes a body of persons, whether corporate or unincorporate; (b) “body corporate: means a corporation, whether incorporated in New Zealand or elsewhere; (c) “corporation” includes a company, society, or any other body corporate²⁶.

4) United Kingdom

In the *Interpretation Act 1978*, it is stipulated that the term “person” includes a body of persons, whether incorporated or unincorporated. Article 5 of this Act states: “Person includes a body of persons corporate or unincorporate.”²⁷ This includes corporations, companies, associations, and other forms of organizations recognized as legal entities capable of performing legal acts, such as holding rights and obligations²⁸. Additionally, the *Corporate Manslaughter and Corporate Homicide Act 2007* provides further elaboration²⁹.

5) Canada

The *Canadian Penal Code 2004* uses the term “organization” to refer to groups of persons who may be subject to criminal law. As stipulated in Sections 2 and 22.1: “Everyone, person, and owner, and similar expressions, include Her Majesty and an organization”. In Canadian criminal law, terms like “everyone,” “person,” or “owner” explicitly include entities such as the Crown (Her Majesty) and organizations. Section 22.1 provides the legal basis for holding organizations criminally liable.

6) The Netherlands

In the *Dutch Penal Code (Wetboek van Strafrecht)*, natural persons are contrasted with legal persons (*rechtspersonen*). Article 51(1) states: “*Strafbare feiten kunnen worden gepleegd door natuurlijke personen en rechtspersonen*” (“Criminal offenses may be committed by natural persons and legal persons”)³⁰.

Countries such as the United States, United Kingdom, Canada, and Singapore explicitly recognize corporations and other collective entities as criminal legal subjects through terms such as *person* or *organization*, enabling legal enforcement against both formal legal entities and informal groups. In Indonesia, the old Criminal Code did not clearly regulate this matter. However, the new Criminal Code has provided a strong normative basis by recognizing corporations as criminal legal subjects in Article 45. Nevertheless, future challenges lie in the consistent application and strengthening of legal instruments, drawing lessons from other jurisdictions.

In the evolution of modern legal thought, the concept of the corporation as a legal person or collective entity has become one of the most significant perspectives in legal development particularly concerning the necessity of corporate accountability in criminal liability³¹. Andrew E. Taslitz notes that the corporation, as the most prominent organization that views itself as a legal person, reflects the legal paradigm of a collective entity. This view is pivotal in modern legal discourse, particularly regarding legal personality and collective responsibility³². He argues: “The sooner the idea of corporate personality as a pure legal fiction is abandoned, the sooner will some logical theory of corporate responsibility both civil and criminal be evolved”³³. Furthermore, Taslitz contends³⁴ that in some ways, corporations are indeed “*super-persons*” because they can exist indefinitely, whereas natural persons are limited by mortality.

In the modern legal paradigm, corporations are recognized as legal persons possessing independent legal rights and obligations. Through legal fiction, the actions of directors or executives are attributed to the corporation itself, positioning the corporation as a legal and moral agent despite its lack of human consciousness. H.F. Van Hattum affirms that a corporation has the capacity to act independently in various legal domains such as contracts, asset ownership, and the execution of obligations. This affirms its status as a legitimate collective legal subject within modern legal systems, thereby separating corporate liability from the individuals who manage or own its shares³⁵.

2. The Nature of Corporate Criminal Liability in Indonesian Criminal Law

According to Roeslan Saleh, the discussion is not merely about the concept of criminal liability, but rather about the standards of being capable of bearing responsibility. Therefore, criminal liability is deemed necessary³⁶, with regard to criminal liability, two major schools of thought are often discussed: determinism and indeterminism. Both focus on the relationship between individual free will and the presence or absence of fault in criminal acts³⁷.

Roscoe Pound, in *An Introduction to the Philosophy of Law*, expressed his view on criminal liability or *liability*, as follows: "... use the simple word 'liability' for the situation whereby one exact legally and other is legally subjected to the exaction."³⁸. Systematically, Pound further elaborated on the development of the liability concept, which he defined as the obligation to provide reparation imposed on a person who has caused harm. The measure of "compensation" is no longer based on a retributive value that must be "paid," but rather on the perspective of the harm or suffering caused by the perpetrator's actions³⁹.

In addition to Pound's view, various other approaches have been developed to formulate the concept of "liability" in criminal law. These approaches reflect different perspectives on the relationship between the offender, the criminal act, and the element of fault, while also highlighting the importance of factors such as free will, the psychological condition of the perpetrator, and the purpose of imposing criminal sanctions. N.E. Algra states⁴⁰ that, lexically, *toerekenbaarheid* means being accountable for a punishable act or being held responsible for one's own actions if the fault (intent) of the perpetrator is proven (elementary elements) and no grounds for justification or excuse are present. According to Martias Gelar Imam Radjo Mulano⁴¹, *Teorekeningsvatbaarheid* means the capacity to be held criminally responsible. This capacity is one of the elements of fault, implying that a person can be held accountable for a certain act if they can determine their will in accordance with reason.

Criminal liability requires the presence of fault as a primary element. It is not sufficient to merely establish *actus reus* (the unlawful act); it must also be proven that there was *mens rea* or *schuld* (fault). Scholars such as Sudarto, Herman Kantorowicz, and Moeljatno emphasize that punishment is only legitimate if the offender can be personally held accountable, with proof of fault being an absolute requirement. This underscores the importance of substantive justice in criminal law. There are three fundamental concepts in criminal law: a) the unlawful nature of the act (*unrecht*), b) fault (*schuld*), and c) the punishment (*strafe*)⁴²

Regarding criminal liability, Alf Ross states that "criminal liability not only means 'rightfully sentenced' but also 'rightfully accused'"⁴³. Criminal liability is, first and foremost, a condition inherent in the perpetrator at the time of committing the offense. Furthermore, it involves linking this condition with the act and the appropriate sanction to be imposed. Thus, the examination is conducted in two directions. First, criminal liability is placed in the context of the factual conditions of sentencing⁴⁴, carrying a preventive aspect. Second, criminal liability constitutes a legal consequence⁴⁵ of the existence of such factual conditions, forming part of the repressive aspect of criminal law. "It is this connection between conditioning facts and conditioned legal consequences which is expressed in the statement about responsibility"⁴⁶

Based on the above concept of criminal liability, it can be stated that “criminal liability relates to the conditions that justify sentencing and the legal consequences thereof”⁴⁷

According to Van Hamel, criminal liability is a condition that reflects an individual’s normal state and psychological maturity. This condition entails three types of capacities: (a) the capacity to understand the meaning and consequences of one’s actions; (b) awareness that the act is unjustified or socially forbidden; and (c) the capacity to control one’s conduct⁴⁸. The purpose of punishment is required to understand the nature and legal basis of criminal sanctions. Franz von Liszt raised the problem of the nature of punishment in law, stating *rechtsgüterschutz durch rechtsgutsverletzung* that is, protecting legal interests by violating legal interests. In that context, Hugo De Groot also stated *malum passionis (quod intelligitur) propter malum actionis*, which means suffering from evil due to evil acts⁴⁹.

From this conceptual horizon, the author formulates three essential characteristics that represent the main classifications distinguishing criminal sanctions from other types of sanctions. First, punishment constitutes a form of suffering consciously imposed on the offender as a reaction to legal violations. Second, punishment may only be imposed by a legitimate authority namely, the state through law enforcement officers, particularly judges, based on statutory regulations. Third, punishment can only be imposed on a legal subject who has been legally and convincingly proven to have committed a criminal act. In this regard, criminal liability requires a connection between *actus reus* (the unlawful act) and *mens rea* (the perpetrator’s fault), so that punishment may only be imposed if the offender is truly accountable under the law.

Corporate criminal liability is essentially consistent with the general concept in criminal law, namely that liability arises from the doctrine of fault, known as *mens rea*. This doctrine affirms that a person cannot be punished solely for committing a prohibited act (*actus reus*), but must also possess a guilty mind, negligence, or a blameworthy mental state. This principle is reflected in the maxim, *an act does not make a person guilty unless the mind is legally blameworthy*. In the corporate context, criminal liability also requires an element of fault, although its form must be adapted to the characteristics of a collective entity, which lacks consciousness like that of an individual but may nonetheless be held accountable through its decision-making structure and corporate governance mechanisms.

The basic justification for punishment is often linked to various classical figures and approaches in penal theory, such as Cesare Beccaria: “*It is better to prevent crimes than to punish them*”⁵⁰, Immanuel Kant: “*Punishment is justified only when it is proportional to the crime and is imposed as a means of preserving justice*”⁵¹, and John Rawls: “*Justice is the first virtue of social institutions, as truth is of systems of thought*”⁵², among others.

These various justifications for punishment create challenges when conflicts arise between differing goals. One key conflict is between justifications focused on preventing future crimes either by deterring the offender or others and those emphasizing the protection of the individual offender’s rights from excessive punishment. This tension reflects the dilemma between individual justice and collective interest in penal practice. As Barbara Hudson states:⁵³

“Difficulties arise, however, because the reasons may conflict. Generally, such conflicts are between reasons based on preventing crime (either by the same offender doing it again, or potential offenders), and the idea that punishment is because the offender deserves it. Furthermore, there is a perennial and unavoidable tension between protecting the rights of offenders not to be punished more than they deserve, and protecting the rights of the public not to be victims of crime.”

The rationales for imposing punishment may be classified into two categories: those focused on preventing future crimes and those focused on punishing past conduct. Theories that view the objective of punishment as crime prevention typically align with the utilitarian school of thought⁵⁴, derived from utilitarian moral-political philosophy, or consequentialists⁵⁵, who justify punishment based on future outcomes, or reductionists⁵⁶, who see punishment as a means of reducing crime.

Conversely, backward-looking penal theories are known as retributive theories, which view punishment as a deserved response to the offender's past conduct. Herbert L. Packer asserts that this theory is based on the notion that criminals deserve to be punished because they are responsible for their actions and ought to receive their just deserts. Packer affirms⁵⁷: *“The retributive view rests on the idea that it is right for the wicked to be punished: because man is responsible for his actions, he ought to receive his just deserts.”* This view comes in two main versions: the *revenge theory* and the *expiation theory*⁵⁸.

According to Packer, there are two versions of the retributive view: the *revenge theory* and the *expiation theory*⁵⁹. These classifications were also discussed by Andrew von Hirsch within Barbara Hudson's framework, distinguishing between punishment theories that emphasize crime prevention and those focusing on retribution for past offenses⁶⁰. The objectives of punishment include:

a. Retributive Purpose

Herbert L. Packer argues that the retributive view is rooted in the concept that a criminal (*wicked man*) has a right to be punished, because every individual must be held accountable for their actions. Retributive theory, as a justification for punishment, is grounded in deep human experience and reflects legal principles that are retributive in nature. This theory is retrospective and refers to the principle of *lex talionis*, found in various legal traditions: *lex talionis an eye for an eye, a tooth for a tooth, a life for a life*⁶¹.

b. Rehabilitation and Public Protection

The utilitarian view of punishment emphasizes the consequences of punishment in improving social welfare, with two main objectives: first, rehabilitation, which aims to reform the offender to function positively in society and avoid reoffending; second, public protection, which focuses on crime prevention through deterrence, both for the offender and the general public, to maintain public order and safety.

In relation to corporate crime, it is a form of criminality whose impact often surpasses that of conventional crime, both in terms of financial loss and human casualties. In fact, corporate

crime causes significantly greater financial losses. For comparison, the Federal Bureau of Investigation (FBI) estimates that there are approximately 14,000 homicides per year in the United States, while deaths either directly or indirectly resulting from corporate crimes reach as many as 54,000 annually⁶². Unsurprisingly, many countries, including the United Kingdom, have enacted specific legislation, such as the UK Corporate Manslaughter and Corporate Homicide Act in 2007⁶³. A similar law exists in Australia, particularly in New South Wales, under a different term: Industrial Manslaughter⁶⁴. Even in Asia, countries like Hong Kong have introduced comparable legal provisions⁶⁵. In Indonesia, corporate criminal liability began to be formally recognized with the enactment of Law No. 7 of 1955 on Economic Crimes, which marked the initial milestone in acknowledging corporations as legal subjects under criminal law. However, for several decades, no specific procedural criminal law regulated the handling of criminal cases involving corporations, which contributed to the scarcity of prosecutions against such entities. The issuance of Supreme Court Regulation (PERMA) No. 13 of 2016 subsequently represented a significant breakthrough by providing a legal foundation and technical guidance for law enforcement officials to handle corporate criminal cases more effectively and systematically. This development reflects a paradigm shift in Indonesian criminal law's view of corporations from merely being seen as objects behind the actions of individuals within them, toward recognition of their independent capacity to act and be held accountable. This underscores that corporate criminal liability is no longer a mere technical issue, but rather necessitates a stronger philosophical foundation.

First, from an ontological perspective, the core foundation of corporate criminal liability lies in the existential recognition of corporations as legal subjects. In modern legal systems, corporations are no longer merely considered as collectives of individuals or administrative constructs but are treated as legal persons capable of independently acting within a legal capacity. This view is grounded in legal personality theories, such as the fiction theory, realist theory, and real entity theory, as proposed by thinkers like Otto von Gierke and F.W. Maitland. Through legal fiction, the legal system attributes the actions of corporate organs, such as directors and executives, as the actions of the corporation itself. This philosophical conception forms the basis for treating corporations as autonomous legal entities, even if they lack human will or consciousness, thereby enabling the imposition of criminal liability.

Second, from an epistemological standpoint, corporate criminal liability presents challenges in proving the element of fault (*mens rea*). Unlike individuals, corporations lack a soul or personal consciousness that can serve as a basis for assessing intent. Accordingly, attribution theories have been developed to explain how fault can be constructed within collective organizations. The *identification theory* attributes the fault of high-ranking officials to the corporation; *vicarious liability* renders the corporation liable for the acts of its agents; while the *corporate culture theory* traces liability through the norms, culture, and internal policies that enable or encourage legal violations. Peter A. French, through the concept of *Corporate Internal Decision Structure*, demonstrated that corporations possess decision-making systems that allow for the attribution of collective will. Hence, the epistemology of corporate criminal liability rests on the analysis of internal structures, rather than solely on individual intent.

Third, from an axiological perspective, imposing criminal sanctions on corporations reflects the values of justice, utility, and legal certainty. The aims of criminal punishment are not solely retributive, intended to exact retribution for wrongdoing, but also preventive and corrective. Muladi refers to this as *teleological retributivism* an integrative approach that combines moral objectives (retribution) with social functions (utility). Punishing corporations carries important implications for the protection of public interests from the widespread impact of corporate crimes, such as environmental destruction, consumer rights violations, and economic crimes. Duska and Donaldson emphasize that corporations bear moral responsibilities toward stakeholders, since the impacts of their decisions extend far beyond shareholders to include the wider public. Therefore, criminal law should function not only as a punitive mechanism but also as an educative tool and a catalyst for transforming corporate culture toward legal and ethical compliance.

By considering these ontological, epistemological, and axiological dimensions, corporate criminal liability does not contradict the fundamental principles of criminal law but rather represents a rational extension of classical doctrines. Ontologically, corporations can be regarded as independent legal subjects; epistemologically, the legal system provides instruments to link fault to organizational structures; and axiologically, corporate punishment contributes meaningfully to social justice and legal order. Consequently, modern legal systems are required to develop responsive and adaptive juridical instruments to ensure the effective prosecution of corporate crimes amid the complexities of economic globalization and the dynamics of collective criminality.

CONCLUSION

1. The reconstruction of corporations as criminal entities reflects a shift from mere legal fiction toward a genuine recognition of their legal and moral capacity as collective legal subjects. In the modern legal paradigm, corporations are no longer perceived merely as extensions of the actions of the individuals within them, but as autonomous entities capable of holding rights, obligations, and criminal liability independently. Through this construction, the law separates the identity and responsibility of the corporation from its managers or shareholders, thereby enabling more just and effective enforcement of the law against crimes committed within institutional frameworks.
2. The essence of corporate criminal liability in Indonesian criminal law lies in the acknowledgment that a corporation is a legal subject with its own existence and capacity to act independently within the legal domain. In this context, criminal liability is no longer directed solely at individual perpetrators, but also at the corporate entity which, through its structure and policies, may commit or contribute to the commission of criminal acts. This recognition marks a shift from an individualistic paradigm toward a structural-collective approach in modern criminal law, further reinforced by normative instruments such as Supreme Court Regulation (PERMA) No. 13 of 2016.

Footnote

- 1) *Organized Crime and the Legal Economy The Italian Case*, United Nations Interregional Crime and Justice Research Institute (UNICRI), (2016), Viale Maestri del Lavoro, 10, p. 21
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