UNTAG Law Review (ULREV)
Volume 10, Issue 1, MEI 2026, PP 50-65
ISSN 2549-4910 (online) & ISSN 2579-5279 (print)
http://jurnal.untagsmg.ac.id/indeks.php/ulrev/indeks
www.fakhukum.untagsmg.ac.id

Legal Analysis of Criminal Liability of Directors and Commissioners in Corporate Crimes

Tri Sandi[1], Zefri Ansari[2], Peter Valentino Munthe[3], Sumarno[4], Suci Ramadani[5]
[1,2,3,4,5] Panca Budi Development University, Medan, Indonesia
**sanditri764@gmail.com*

Submission:
2026-05-09
Review:
2026-05-19
Accepted:
2026-05-25
Publish:
2026-05-30

ABSTRACT; *This study examines the role of directors and commissioners in corporate crimes from the perspective of criminal liability based on developments in national criminal law. The enactment of Law Number 1 of 2023 concerning the Criminal Code brought about important changes because corporations are expressly recognized as subjects of criminal acts as regulated in Article 45, while Articles 46 to 49 regulate the expansion of perpetrators, criteria for corporate crimes, and parties who can be held accountable, including managers, order givers, controllers, and beneficial owners. This study uses a normative legal research method with a statutory and conceptual approach. The results show that directors have a strategic position in corporate crimes because they carry out the functions of management, decision-making, and operational control of the company. Meanwhile, commissioners have a supervisory and advisory function to directors, so that their accountability can arise if there is negligence, approval, serious negligence, or factual control over criminal acts committed by the corporation. From a criminal law perspective, the accountability of directors and commissioners cannot be based solely on formal positions, but must be proven through the relationship between authority, errors, actions, corporate profits, corporate policies, and failure to carry out prevention and legal compliance. This research confirms that the theories of identification, vicarious liability, organizational culpability, and piercing the corporate veil can be used to understand the human involvement behind corporations. Therefore, corporate criminal liability must be balanced, not allowing corporations to act as a shield for crimes, but also not criminalizing directors and commissioners without a clear basis for culpability.*

Keywords: *Corporate Crime, Directors and Commissioners, Criminal Liability*

INTRODUCTION

The development of modern criminal law demonstrates the expansion of criminal law subjects from solely natural persons to also encompass legal entities or corporations. In classical criminal law, criminal liability was primarily directed at individuals because punishment was understood as a response to individual wrongdoing.[1]

However, developments in the business world, the complexity of economic transactions, and the increase in crimes committed through corporate structures have changed this perspective. Corporations can no longer be positioned solely as legal entities engaged in economic activity, but can also be the means, perpetrators, or beneficiaries of a crime. In practice, corporate crime often occurs not solely due to the actions of a single individual, but also due to business decisions, internal policies, systemic negligence, weak oversight, or an organizational culture that disregards the law.[2]

In the context of the development of criminal law in Indonesia, regulations regarding corporate crimes have gained increasing significance following the enactment of Law Number 1 of 2023 concerning the Criminal Code. The introduction of the new Criminal Code marks a fundamental shift in the national criminal law system, as for the first time, corporations are explicitly recognized as subjects of criminal acts within the general provisions of criminal law. Article 45 paragraph (1) states that corporations are subjects of criminal acts, while Article 45 paragraph (2) expands the scope of corporations to include various forms of legal entities and business entities, such as limited liability companies, foundations, cooperatives, state-owned enterprises, regional-owned enterprises, firms, limited partnerships, and associations, both incorporated and unincorporated, in accordance with statutory provisions.

These regulations demonstrate a paradigm shift from the classic doctrine of societas delinquere non potest to the recognition of corporations as entities capable of being held criminally accountable independently. The recognition of corporations as subjects of criminal offenses in Law Number 1 of 2023 concerning the Criminal Code has broad legal implications, particularly regarding the status and responsibilities of corporate organs. Within a Limited Liability Company (LLC) structure, the board of directors primarily functions as the body that manages and represents the company, while the board of commissioners oversees and provides advice on board policies.

The status and functions of these corporate organs are regulated in Law Number 40 of 2007 concerning Limited Liability Companies, which stipulates that the company's organs consist of the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. Therefore, when a corporation is

[1] Isa, Saptha Nugraha, et al. "Tanggung jawab pidana direksi dan korporasi dalam tindak pidana penggelapan pajak." *Journal of Law Review* 4.2 (2025): 61-75.

[2] Sujono, Salsabilla, Dewi Iryani, and Gradios Nyoman Tio Rae. "Pertanggungjawaban Pidana Direktur Atas Tindak Pidana Korporasi Lingkungan Hidup." *Viva Themis: Jurnal Ilmu Hukum dan Humaniora* 8.2 (2025): 496-513.

positioned as a subject of criminal offenses, the actions, policies, and omissions of these corporate organs have the potential to result in criminal liability, both for the corporation itself and for the management acting on its behalf.

Furthermore, regulations regarding Limited Liability Companies have also evolved through Law Number 6 of 2023 concerning Job Creation, which amends several provisions of the Limited Liability Company Law, particularly regarding the simplification of business entities and the regulation of companies that meet the criteria for micro and small businesses.

These changes demonstrate an effort to harmonize developments in the business world with the need for national legal reform. However, the expanded recognition of corporations as subjects of criminal law also raises new challenges regarding the limits of criminal liability for corporate organs, particularly directors and commissioners, in carrying out their management and supervisory functions. Therefore, the regulation of corporate criminal liability in the new Criminal Code is a crucial issue that requires further in-depth study, particularly in determining the relationship between corporate misconduct and management misconduct in criminal law enforcement practices in Indonesia.[3]

In the construction of corporate criminal liability, the positions of directors and commissioners cannot be automatically equated because each organ has different functions, authorities, and levels of involvement in corporate activities. The board of directors is essentially a corporate organ directly involved in management actions, strategic decision-making, business implementation, and corporate representation both inside and outside the courts. Therefore, in various corporate crimes, the board of directors is often viewed as the party closest to the issuance of policies or actions that give rise to criminal consequences. Conversely, the board of commissioners essentially performs a supervisory and advisory function to the board of directors, so their involvement in the company's operational activities is not as direct as that of the board of directors.

However, the commissioner's position as a supervisory organ does not automatically exempt them from the possibility of criminal liability. In the practice of corporate crime, commissioners cannot always hide behind the excuse that they are only performing a formal supervisory function. Criminal liability for commissioners can arise if there is active or passive involvement that contributes to the occurrence of a corporate crime. This can occur, for example, when commissioners approve policies that violate the law, knowingly allow a crime to occur, acting as actual controllers of the company, or failing to exercise their supervisory function effectively, thereby allowing the crime to continue. Therefore, the primary legal issue lies not in whether directors and commissioners are always responsible for corporate crimes, but rather in determining when and under what circumstances directors and commissioners can be held criminally liable based on their respective levels of involvement, authority, and culpability.

[3] Alimudin, Galu Cika. "Pertanggungjawaban Pidana Direksi dan Komisaris BUMN Pasca Revisi Undang-Undang Nomor 16 Tahun 2025." *RIGGS: Journal of Artificial Intelligence and Digital Business* 4.4 (2026): 4822-4833.

The normative basis for this issue is strengthened in Law Number 1 of 2023 concerning the Criminal Code, specifically Article 46, which states that a criminal act by a corporation is a crime committed by a manager holding a functional position within the corporation's organizational structure or by a person who, based on an employment relationship or other relationship, acts for and on behalf of the corporation or in the corporation's interests within the scope of the corporation's business or activities, either individually or jointly. This formulation demonstrates that corporate criminal liability is not limited to the corporation as a legal entity but can also extend to individuals who have a functional and factual relationship with the corporation's actions.

The provisions of Article 46 are highly relevant in determining the position of directors because directors are clearly administrators with a functional position within the corporate organizational structure. However, this norm also opens up room for accountability for other parties acting for and on behalf of the corporation or in the interests of the corporation, as long as their actions remain within the scope of the corporation's business or activities. With such a broad formulation, it is not impossible for commissioners to also be held criminally liable if proven to have played a role, influenced, approved of, or allowed the occurrence of corporate crimes. Therefore, the application of criminal liability to directors and commissioners must be carried out proportionally, taking into account the function of the position, level of control, form of involvement, and elements of fault that can be proven in each concrete case.[4]

The provisions regarding corporate criminal liability in Law Number 1 of 2023 concerning the Criminal Code are not limited to managers formally within the corporate organizational structure but also encompass parties who actually exercise control over the corporation. This is emphasized in Article 47, which states that criminal acts by corporations can be committed by those who give orders, hold control, or beneficially own the corporation who are outside the organizational structure but are able to control the corporation. This provision is crucial for the development of corporate criminal law because, in modern business practices, control over a corporation is not always exercised by those who formally serve as directors or managers. In many cases, the actual controllers are located within the formal corporate structure, such as beneficial owners, informal control holders, or certain parties who actually determine policy direction and derive economic benefits from corporate activities without being officially listed in company documents.

Therefore, corporate criminal law cannot be limited to a formalistic approach that only examines structural positions but must also be able to identify those who actually control corporate decisions, policies, and profits. This approach is necessary to prevent the misuse of legal entities as a means of protection for certain parties seeking to avoid criminal liability through a formal separation between company controllers and managers. Therefore, the provisions of Article 47 demonstrate a

[4] Hidayatullah, Hidayatullah, Diding Rahmat, and Lenny Nadriana Nadriana. "PERTANGGUNGJAWABAN HUKUM DEWAN KOMISARIS ATAS PELAPORAN KEUANGAN KORPORASI." *Journal of Governance and Public Administration* 3.2 (2026): 223-233.

modern criminal law orientation that emphasizes the substance of control and factual relationships rather than merely administrative positions within the corporate organizational structure.[5]

Furthermore, Law Number 1 of 2023 concerning the Criminal Code, through Article 48, provides criteria for when a corporation can be held accountable for criminal acts. This provision states that corporate criminal acts can be held accountable if the act falls within the scope of the corporation's business or activities, unlawfully benefits the corporation, is accepted as corporate policy, the corporation fails to take necessary preventive measures and comply with the law, or the corporation allows the crime to occur. This formulation demonstrates that corporate criminal liability is not based solely on the unlawful act itself, but also on the corporation's failure to establish a system of oversight, compliance, and prevention of criminal acts.

This regulation places the position of directors and commissioners in a strategic position in determining whether or not a corporation is criminally liable. Directors have primary responsibility for establishing a management system, corporate governance, controlling business activities, and complying with the law. Meanwhile, commissioners have an oversight function over the company's management policies and operations. Therefore, if a corporate crime occurs due to unlawful policies, negligence, a weak oversight system, or the absence of compliance mechanisms, the legal standing of directors and commissioners must be tested. This test cannot be conducted solely on the basis of formal positions, but must also consider the relationship between authority, actions, knowledge, negligence, profits obtained, and the criminal consequences arising from corporate activities.

From a criminal law theory perspective, the issue of corporate criminal liability can be analyzed through several theoretical approaches. First, the identification theory holds that the actions and intentions of certain parties who mastermind or control a corporation can be considered the actions and intentions of the corporation itself. Second, the vicarious liability theory allows corporations to be held accountable for the actions of individuals who work for or act for the corporation's interests within the scope of their work. Third, the organizational fault theory attributes corporate culpability to weaknesses in organizational systems, corporate culture, negligence, and failure to prevent violations of the law. Fourth, the theory of piercing the corporate veil suggests the possibility of piercing the veil of legal entity if the corporation is used as a means to commit violations of the law or avoid criminal responsibility.

Based on this description, a study of the criminal liability of directors and commissioners in corporate crimes is crucial. Corporate criminal law should not only focus on legal entities as abstract entities, but must also be able to identify the concrete roles of the individuals behind corporate activities. Corporations, in essence, cannot think, make decisions, or take action without human beings managing, controlling, giving orders, supervising, or allowing criminal acts to occur. However,

[5] Pardamean, Michael Christoper. "Pertanggungjawaban Direksi Atas Tindak Pidana Korporasi." *UNES Law Review* 6.2 (2023): 7366-7373.

criminal law should not rashly impose criminal liability on directors or commissioners solely based on their formal positions. Criminal liability must still be based on fault, authority, the relationship between actions and positions, and actual contributions to the occurrence of corporate crimes.

PROBLEM

How is corporate criminal liability regulated under Law Number 1 of 2023 concerning the Criminal Code?

What is the role of directors and commissioners in corporate crimes from the perspective of criminal liability and corporate law?

RESEARCH METHODS

This research uses a normative legal research method, namely research that relies on the study of positive legal norms, legal principles, criminal law theory, and legal doctrine regarding corporate criminal liability. The approaches used are the statutory approach and the conceptual approach. The statutory approach is carried out by examining Law Number 1 of 2023 concerning the Criminal Code, Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 6 of 2023 concerning Job Creation, and Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

The conceptual approach is used to analyze the concept of corporations as subjects of criminal law, the criminal liability of managers, the position of directors, the supervisory function of commissioners, identification theory, vicarious liability theory, organizational fault theory, and the principle of piercing the corporate veil. Legal materials are analyzed qualitatively by interpreting legal norms, linking them to criminal law theory, and then drawing conclusions argumentatively.

DISCUSSION

Regulation of Corporate Criminal Liability According to Law Number 1 of 2023 concerning the Criminal Code

The provisions regarding corporate criminal liability in Law Number 1 of 2023 concerning the Criminal Code represent a fundamental reform in the national criminal law system. Prior to the enactment of the new Criminal Code, corporations had not been explicitly positioned as subjects of criminal law within the general provisions of the colonial Criminal Code. Previously, corporate criminal liability developed partially through various sectoral laws, such as regulations on corruption, money laundering, the environment, taxation, and banking. This situation resulted in regulations regarding corporations as perpetrators of criminal acts being scattered and lacking a uniform general basis within the national criminal law system. The introduction of the new Criminal Code then brought about fundamental changes by positioning corporations as subjects of criminal acts within the general provisions of criminal law, thereby providing a stronger conceptual and normative basis for law enforcement officials in prosecuting corporations and the parties involved in them.[6]

This recognition is emphasized in Article 45 paragraph (1) of Law Number 1 of 2023 concerning the Criminal Code, which states that corporations are subjects of criminal acts. Although formulated briefly, this provision has very broad legal consequences because the subjects of criminal acts are no longer limited to individuals, but also include certain business entities and organizations as legal entities that can be held criminally responsible. Furthermore, Article 45 paragraph (2) expands the scope of the definition of corporations to include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regional-owned enterprises, firms, limited partnerships, associations with legal entities or without legal entities, as well as other forms of business entities that are considered the same based on the provisions of statutory regulations. With this formulation, the concept of corporations in the new Criminal Code is not only limited to limited liability companies as a form of modern company, but also includes various forms of organizations and business entities that in practice can become a means or perpetrator of criminal acts.[7]

The broad scope of the definition of a corporation is crucial in the context of criminal law enforcement because corporate crimes are not always committed by large, limited liability companies. In practice, various forms of crime can be committed through foundations, cooperatives, state-owned enterprises, regionally-owned enterprises, firms, limited partnerships, associations, and even non-legal entities. Therefore, the approach used in the new Criminal Code demonstrates that criminal law no longer focuses on the formal form of a legal entity, but rather on the function and role of that entity in a crime. Thus, criminal law becomes more adaptable in addressing various forms of organizations used as means, perpetrators, or beneficiaries of a crime.

In addition to affirming corporations as subjects of criminal acts, Law Number 1 of 2023 concerning the Criminal Code also provides a definition of when a crime can be categorized as a criminal act by a corporation. This is regulated in Article 46 which states that criminal acts by corporations are criminal acts committed by managers who have functional positions in the corporate organizational structure or by people who, based on employment relationships or other relationships, act for and on behalf of the corporation or in the interests of the corporation, within the scope of the corporation's business or activities, either individually or jointly. This provision shows that corporate crimes are not always committed directly by the highest organs

[6] Indrapradja, Irwan Saleh. "Kajian Yuridis Terhadap Tanggung Jawab Direksi Dan Dewan Komisaris Pada Struktur Organisasi Perseroan Terbatas Yang Bersifat Kolegialitas Menurut Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas." *Jurnal Ilmiah Magister Ilmu Administrasi* 13.1 (2020).

[7] Simanullang, Soef CL. "Pertanggungjawaban Pidana Komisaris PT Yang Melakukan Tindak Pidana Perpajakan." (2023).

of the company, but can be committed by various parties who have employment relationships or functional relationships with the corporation.[8]

The formulation of Article 46 also demonstrates that corporate criminal liability is based on the relationship between the perpetrator and the corporation's interests. Therefore, an act can be categorized as a corporate crime if it is committed for and on behalf of the corporation or in the interests of the corporation within the scope of its business activities. This approach allows law enforcement to reach not only directors or formal administrators, but also employees, agents, or other parties who actually carry out the corporation's interests. Therefore, the provisions in the new Criminal Code reflect the modern development of corporate criminal law, which no longer focuses solely on the formal structure of the organization, but also on the functional relationships and benefits the corporation derives from a crime.

Article 47 of Law Number 1 of 2023 further expands the definition of corporate crime. This article states that, in addition to the provisions referred to in Article 46, criminal acts by corporations can be committed by those who give orders, hold control, or have beneficial ownership of the corporation who are outside the organizational structure but who can control the corporation. This norm is crucial because corporate criminal law often faces the problem of hidden control. In many cases, the person who enjoys the most benefits or directs corporate policy is not always listed as a director, commissioner, or formal administrator. They may be outside the structure but actually determine the direction of the corporation.

Article 47 demonstrates that national criminal law is beginning to recognize the importance of a factual approach in interpreting corporate criminal liability. Formal position remains important, but it is not the sole basis. Law enforcement must be able to trace who gives orders, who controls, and who the beneficial owner is who profits from the crime. In corporate criminal law theory, this approach is related to the theory of piercing the corporate veil.[9] Legal entities do have a separate legal personality from the individuals behind them. However, this separation should not be used as a shield to conceal crimes. If a corporation is used as a tool to commit a crime, then the veil of legal entity must be penetrated to find the real controller.

Furthermore, Article 48 of Law Number 1 of 2023 is the key to determining whether a corporation can be held criminally liable. This article states that criminal acts by corporations as referred to in Articles 46 and 47 can be held criminally liable if several conditions are met. First, the crime falls within the scope of business or activities as stipulated in the articles of association or other provisions applicable to the corporation. Second, the crime unlawfully benefits the corporation. Third, the crime is accepted as corporate policy. Fourth, the corporation fails to take the

[8] Heryndra, M. Fadra. *Kajian Yuridis Kriteria Tentang Personil Pengendali Korporasi Terkait Pertanggungjawaban Pidana Korporasi Berdasarkan Pasal 6 Ayat (1) Undang-undang Republik Indonesia Nomor 8 Tahun 2010 Tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang*. Diss. Brawijaya University, 2014.

[9] Pissani, Raka Gani. *Tanggung Jawab Direksi Terhadap Tindak Pidana Yang Bertujuan Memperkaya Korporasi Lain (Studi Kasus Putusan Mahkamah Agung Nomor 41/PK/PID. SUS/2015)*. Diss. Universitas Kristen Indonesia, 2021.

necessary steps to prevent, mitigate greater impacts, and ensure compliance with applicable legal provisions to avoid the crime. Fifth, the corporation allows the crime to occur.

The provisions of Article 48 indicate that corporate culpability is not only determined by active action, but also by failure to prevent and neglect. This is the essence of the theory of organizational culpability. A corporation can be deemed guilty if its system allows violations to occur, its policies encourage violations, its management ignores legal compliance, or its oversight mechanisms are ineffective. In corporate cases, culpability does not always manifest itself in simple malicious intent. Errors can arise from work patterns, business culture, unrealistic business targets, internal policies that ignore legal risks, weak audits, or the absence of compliance procedures.[10]

Article 49 of Law Number 1 of 2023 further clarifies who can be held accountable. This article states that liability for criminal acts by corporations can be imposed on the corporation, its functional management, those who give orders, those who control, and/or the beneficial owners of the corporation. This formulation demonstrates that corporate criminal liability can operate at several levels. First, the corporation as an entity can be held accountable. Second, functional management can be held accountable. Third, those who give orders or those who control can be held accountable. Fourth, the beneficial owners behind the corporation can also be held accountable.

This provision in Article 49 is important to avoid two extremes. The first extreme is to punish only the corporation, allowing the individuals who make decisions to take cover under the legal entity. The second extreme is to punish only individuals, leaving the corporation's profits secure. The new Criminal Code paves the way for liability to be imposed on both, depending on the role, culpability, and relationship to the crime. With this construction, corporate criminal law becomes fairer because it can encompass both the entities and the individuals behind them.

In the practice of case handling, Supreme Court Regulation Number 13 of 2016 remains crucial because it provides technical guidelines regarding the procedures for handling criminal cases by corporations.[11] This Regulation was issued to provide legal certainty and guidance for judges in examining and deciding criminal cases committed by corporations, particularly since previously the mechanism for handling corporate cases had not been regulated in detail in other laws and regulations.

Article 4 paragraph (2) of Supreme Court Regulation Number 13 of 2016 contains important guidelines for judges in assessing corporate culpability. This provision states that judges can assess corporate culpability if, among other things, the corporation obtains a profit or benefit from the crime, or the crime is committed

[10] Sembiring, Imanuel, et al. "Pertanggungjawaban Pidana Perseroan Terbatas dan Pertanggungjawaban Pidana Direksi dalam Tindak Pidana Lingkungan." *Locus Journal of Academic Literature Review* (2023): 371-376.

[11] Kurniawan, Kukuh Dwi, and Dwi Ratna Indri Hapsari. "Pertanggungjawaban pidana korporasi menurut vicarious liability theory." *Jurnal Hukum Ius Quia Iustum* 29.2 (2022): 324-346.

for the benefit of the corporation, the corporation allows the crime to occur, or the corporation fails to take the necessary steps to prevent it, prevent a greater impact, and ensure compliance with applicable legal provisions to avoid the crime. This formulation aligns closely with Article 48 of Law Number 1 of 2023, therefore Supreme Court Regulation Number 13 of 2016 remains relevant as a guideline for corporate criminal justice practice.

From these provisions, it can be concluded that corporate criminal liability in the new Criminal Code is based on several principles. First, corporations are subject to criminal acts. Second, corporate crimes can be committed by managers, employees, parties acting on behalf of the corporation, those giving orders, those in control, or beneficial owners. Third, corporate accountability is assessed based on the scope of activities, profits earned, corporate policies, failure to prevent, and omissions. Fourth, accountability can be imposed on the corporation and/or the individuals behind the crime. Fifth, corporate criminal law demands a real compliance system, not just a formality.

The Role of Directors and Commissioners in Corporate Crimes Reviewed from the Perspective of Criminal Liability and Corporate Law

The role of directors and commissioners in corporate crimes must be understood from both perspectives: criminal law and corporate law. From a criminal law perspective, directors and commissioners can be held accountable if they are connected to a criminal act committed by a corporation.[12] This connection can include orders, approval, control, inaction, serious negligence, or failure to fulfill preventive obligations. From a corporate law perspective, directors and commissioners have distinct functions. Directors carry out management, while commissioners carry out supervision and provide advice. This distinction is important to ensure that criminal liability is not generalized.

Article 1, number 2, of Law Number 40 of 2007 concerning Limited Liability Companies states that the company's organs are the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. Article 1, number 5, states that the Board of Directors is the authorized and fully responsible organ of the company for the company's interests in accordance with the company's purposes and objectives and represents the company both inside and outside of court in accordance with the provisions of the articles of association. Article 1, number 6, states that the Board of Commissioners is the company's organ tasked with carrying out general and/or specific supervision in accordance with the articles of association and providing advice to the Board of Directors. This formulation indicates that the board of directors is the managing organ, while the board of commissioners is the supervisory organ.[13]

[12] Darmawan, Wasistha Budiarja. "Tinjauan Hukum Pidana Terhadap Pertanggungjawaban Pidana Lingkungan Yang Dilakukan Oleh Korporasi (Studi Putusan Nomor 1405K/PID. SUS/2013)." *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 4.2 (2015): 192-200.

[13] Lubis, Muhammad Ansori, and Muhammad Siddiq. "Analisis Yuridis Pertanggungjawaban Pidana Terhadap Korporasi Atas Pengrusakan Hutan." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 3.1 (2021): 35-65.

The board of directors' position as a management body places them most exposed to the potential for corporate crime. Article 92 paragraph (1) of the Limited Liability Company Law states that the Board of Directors manages the company in the interests of the company and in accordance with the company's purposes and objectives. This article indicates that all actions in the company's management fall within the board of directors' responsibility. If a decision is made in violation of criminal law during such management, the board must be examined to determine whether the board of directors knew about, approved of, ordered, benefited from, or at least negligently prevented the crime from occurring.

Article 97 paragraph (1) of the Limited Liability Company Law states that the Board of Directors is responsible for managing the company as referred to in Article 92 paragraph (1). Article 97 paragraph (2) states that each member of the Board of Directors must carry out such management in good faith and with full responsibility. Furthermore, Article 97 paragraph (3) states that each member of the Board of Directors is fully and personally responsible for the company's losses if they are guilty or negligent in carrying out their duties. Although this provision falls within the corporate law regime and is more closely related to a company's internal civil liability, the norm can be used to interpret the standard of prudence of directors from a corporate criminal perspective. Directors may not operate the corporation haphazardly, tolerate violations, or use business targets as justification for criminal acts.

In relation to the new Criminal Code, the position of directors can be directly linked to Articles 46, 48, and 49 of Law Number 1 of 2023. Directors are among the administrators who hold functional positions within the corporate organizational structure. If directors commit a crime within the scope of corporate business, for the benefit of the corporation, or through corporate policy, the crime can be construed as a criminal offense by the corporation. If directors give orders or otherwise control the actions, criminal liability can also be imposed on the directors personally.

However, criminal liability for directors cannot be based solely on their position. A director is not automatically guilty simply because a crime occurs within the corporation. A link between the criminal act and their function and authority must be proven.[14] These relationships can include direct orders, approval of unlawful policies, acceptance of benefits, condoning known violations, or failing to establish a compliance system that would have prevented criminal activity. In other words, a directorship is an entry point for analysis, not the ultimate proof of wrongdoing.

Unlike directors, commissioners do not essentially carry out the day-to-day management of the company. Article 108 paragraph (1) of the Limited Liability Company Law states that the Board of Commissioners supervises management policies, the general course of management, both regarding the company and its business, and provides advice to the Board of Directors. Article 108 paragraph (2) states that such

[14] Sinaga, Lestari Victoria, and Citra Indah Lestari. "Analisis Yuridis Pertanggungjawaban Direksi Terhadap Pailitnya Suatu Perseroan Terbatas." *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana* 3.1 (2021): 25-34.

supervision and advice are carried out in the interests of the company and in accordance with the company's aims and objectives. Therefore, commissioners have a legal obligation to supervise, not merely to hold formal positions within the company's structure.

Article 114 paragraph (1) of the Limited Liability Company Law states that the Board of Commissioners is responsible for supervising the company as referred to in Article 108 paragraph (1). Article 114 paragraph (2) states that each member of the Board of Commissioners must act in good faith, with prudence, and responsibly in carrying out their duties of supervision and providing advice to the Board of Directors. Article 114 paragraph (3) even states that each member of the Board of Commissioners is personally liable for company losses if they are guilty or negligent in carrying out their duties. This norm demonstrates that commissioners are not passive organs. While commissioners do not manage the day-to-day operations of the company, they still have supervisory obligations that can give rise to liability if they are negligent.

In the context of corporate crimes, commissioners can be held criminally liable in several circumstances. First, if the commissioner participates in approving a corporate policy that they know violates the law. Second, if the commissioner knows of a crime but allows it to occur. Third, if the commissioner actually controls the corporation beyond their normal supervisory function. Fourth, if the commissioner gives orders or holds control as referred to in Article 47 of the new Criminal Code. Fifth, if the commissioner fails to carry out their supervisory function seriously, resulting in a crime due to clear negligence.[15] However, just like directors, commissioners cannot automatically be convicted simply because a crime occurs within the corporation. The elements of fault, a relationship of authority, knowledge, negligence, or contribution to the crime must still be proven.

The connection between Article 48 of the new Criminal Code and the obligations of commissioners is crucial. Article 48 states that corporations can be held accountable if they fail to take preventative measures, fail to prevent greater impacts, fail to ensure legal compliance, or allow criminal acts to occur. The supervisory function of commissioners falls squarely within this area. While commissioners are not operational implementers, they are obligated to oversee the implementation of management policies in accordance with the law. If the oversight system is not operational, reports of violations are ignored, internal audits are not followed up, or commissioners turn a blind eye to violations that benefit the corporation, then this supervisory function can become the basis for an assessment of culpability.

In the identification theory, the actions and intentions of key corporate organs can be considered the actions and intentions of the corporation. The board of directors, as the primary administrators, is often at the center of this theory because board decisions can reflect corporate policy. If the board of directors establishes a business strategy that violates the law, the board's intentions can be attributed to the corporation. If commissioners participate in directing policies or approving unlawful

[15] Turyono, Turyono. *Tinjauan Yuridis Pertanggungjawaban Direktur Perseroan Terbatas Yang Telah Selesai Masa Jabatannya*. Diss. Prodi Ilmu Hukum, 2018.

actions, they can also be included in the identification analysis. However, the identification theory must be used cautiously, as not all individual actions within a corporation automatically constitute corporate actions. It must be determined whether the individual has sufficient standing, authority, and function to represent the corporation's will.[16]

The theory of vicarious liability is also relevant in corporate crimes. Based on this theory, a corporation can be held responsible for the actions of individuals working or acting in the corporation's interests. In the context of directors and commissioners, this theory explains why a corporation can be held responsible for the actions of directors or parties acting within the scope of corporate activities. However, this theory should not be used arbitrarily to shift blame indefinitely. The new Criminal Code still stipulates that the act must be within the scope of the corporation's business or activities, unlawfully benefit the corporation, be accepted as policy, or occur due to a failure to prevent or omit action.

The organizational fault theory is the most relevant theory for understanding the relationship between directors, commissioners, and the corporation. In this theory, fault is not always seen as an individual's malicious intent, but as an organizational failure. A corporation can be considered guilty if it lacks a compliance system, fails to conduct oversight, fails to respond to warnings, fails to take action against violations, or allows a work culture that encourages violations of the law. Directors are responsible for establishing compliance and internal control systems. Commissioners are responsible for overseeing the effectiveness of these systems. Therefore, corporate criminal liability must be assessed in light of the quality of corporate governance. Corporations that claim to comply with the law but lack criminal prevention mechanisms actually open up opportunities for criminal liability.

On the other hand, the theory of piercing the corporate veil is crucial to prevent the misuse of corporations as a legal shield. The basic principle of a limited liability company is to separate the company's assets from the personal assets of shareholders, directors, and commissioners. However, this separation should not be used to conceal criminal activity. The Limited Liability Company Law itself recognizes exceptions to the principle of limited liability, for example, if the company is exploited in bad faith for personal gain or is involved in an unlawful act. In the context of corporate crime, if directors, commissioners, controlling shareholders, or beneficial owners use the corporation as a means of committing a crime, liability does not stop with the legal entity.[17]

Thus, the roles of directors and commissioners in corporate crimes must be formulated in a balanced manner. Directors face a more direct risk of liability because they manage and represent the corporation. Commissioners face liability in the areas of supervision, inaction, approval, or factual control. Neither can fully protect themselves

[16] Saktiawan, Baru, et al. "Pertanggungjawaban Korporasi dalam Tindak Pidana Perpajakan di Indonesia:: Kajian Yuridis atas Putusan Asia Agri Group, PT Gemilang Sukses Garmindo, dan PT Rudi Mapan Jaya." *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 23.2 (2025): 30-45.

[17] [17] Permana, Sandhi Bagus. "Pertanggungjawaban Beneficial Owner terhadap Tindak Pidana Korporasi di Bidang Pasar Modal di Tinjau dari KUHAP." *Jurnal Hukum Lex Generalis* 7.4 (2026).

under legal entity protection if proven to be connected to a crime. However, neither can be punished solely based on their positions. Criminal law requires proof of fault, whether intentional, negligent, inaction, orders, control, or failure to fulfill legal obligations.

Based on this description, it can be emphasized that the new Criminal Code strengthens the position of criminal law in prosecuting corporate crimes. However, its effectiveness depends heavily on the ability of law enforcement to distinguish between corporate misconduct, misconduct by directors, misconduct by commissioners, misconduct by employees, and misconduct by actual controllers. In corporate crimes, the focus should be not simply on the title of the position, but also on who made the decision, who knew about it, who allowed it, who benefited, and who failed to fulfill their preventive obligations. This is where corporate criminal liability becomes a crucial tool for uncovering crimes hidden within the corporate structure.

CONCLUSION

Corporate criminal liability in Indonesian criminal law gained a stronger foundation following the enactment of Law Number 1 of 2023 concerning the Criminal Code. Articles 45 to 49 of the new Criminal Code affirm that corporations are subjects of criminal offenses. Corporate crimes can be committed by directors, parties working or acting on behalf of the corporation, those giving orders, those in control, and beneficial owners. Liability can be imposed on both the corporation and the individuals behind the crime. This regulation demonstrates that national criminal law has shifted from solely individual liability to liability encompassing organizational crimes, policies, omissions, and corporate systems. Directors and commissioners have distinct roles in corporate crimes. Directors are in management positions, thus closer to decision-making, policy implementation, and operational control. Commissioners are in supervisory positions, and therefore accountable for their oversight, advisory, omission, approval, or factual control functions. Directors and commissioners are not automatically criminally liable simply because of their positions, but can be held accountable if proven to have a connection to a criminal act, whether through orders, approval, control, omission, serious negligence, corporate gain, or failure to establish and oversee a legal compliance system. Therefore, criminal liability for directors and commissioners must remain based on the principles of fault, authority, relationship of acts, and legally valid proof.

REFERENCES

Alimudin, Galu Cika. "Pertanggungjawaban Pidana Direksi dan Komisaris BUMN Pasca Revisi Undang-Undang Nomor 16 Tahun 2025." *RIGGS: Journal of Artificial Intelligence and Digital Business* 4, no. 4 (2026): 4822–4833.

Darmawan, Wasistha Budiarja. "Tinjauan Hukum Pidana terhadap Pertanggungjawaban Pidana Lingkungan yang Dilakukan oleh Korporasi: Studi Putusan Nomor 1405K/Pid.Sus/2013." *Recidive: Jurnal Hukum Pidana dan Penanggulangan Kejahatan* 4, no. 2 (2015): 192–200.

Heryndra, M. Fadra. *Kajian Yuridis Kriteria tentang Personil Pengendali Korporasi Terkait Pertanggungjawaban Pidana Korporasi Berdasarkan Pasal 6 Ayat (1) Undang-Undang Republik Indonesia Nomor 8 Tahun 2010 tentang Pencegahan* *dan Pemberantasan Tindak Pidana Pencucian Uang*. Disertasi. Universitas Brawijaya, 2014.

Hidayatullah, Diding Rahmat, dan Lenny Nadriana. "Pertanggungjawaban Hukum Dewan Komisaris atas Pelaporan Keuangan Korporasi." *Journal of Governance and Public Administration* 3, no. 2 (2026): 223–233.

Indrapradja, Irwan Saleh. "Kajian Yuridis terhadap Tanggung Jawab Direksi dan Dewan Komisaris pada Struktur Organisasi Perseroan Terbatas yang Bersifat Kolegialitas Menurut Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas." *Jurnal Ilmiah Magister Ilmu Administrasi* 13, no. 1 (2020).

Isa, Saptha Nugraha, dkk. "Tanggung Jawab Pidana Direksi dan Korporasi dalam Tindak Pidana Penggelapan Pajak." *Journal of Law Review* 4, no. 2 (2025): 61–75.

Kurniawan, Kukuh Dwi, dan Dwi Ratna Indri Hapsari. "Pertanggungjawaban Pidana Korporasi Menurut *Vicarious Liability Theory*." *Jurnal Hukum Ius Quia Iustum* 29, no. 2 (2022): 324–346.

Lubis, Muhammad Ansori, dan Muhammad Siddiq. "Analisis Yuridis Pertanggungjawaban Pidana terhadap Korporasi atas Pengrusakan Hutan." *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 3, no. 1 (2021): 35–65.

Pardamean, Michael Christoper. "Pertanggungjawaban Direksi atas Tindak Pidana Korporasi." *UNES Law Review* 6, no. 2 (2023): 7366–7373.

Permana, Sandhi Bagus. "Pertanggungjawaban *Beneficial Owner* terhadap Tindak Pidana Korporasi di Bidang Pasar Modal Ditinjau dari KUHAP." *Jurnal Hukum Lex Generalis* 7, no. 4 (2026).

Pissani, Raka Gani. *Tanggung Jawab Direksi terhadap Tindak Pidana yang Bertujuan Memperkaya Korporasi Lain: Studi Kasus Putusan Mahkamah Agung Nomor 41/PK/Pid.Sus/2015*. Disertasi. Universitas Kristen Indonesia, 2021.

Saktiawan, Baru, dkk. "Pertanggungjawaban Korporasi dalam Tindak Pidana Perpajakan di Indonesia: Kajian Yuridis atas Putusan Asia Agri Group, PT Gemilang Sukses Garmindo, dan PT Rudi Mapan Jaya." *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 23, no. 2 (2025): 30–45.

Sembiring, Imanuel, dkk. "Pertanggungjawaban Pidana Perseroan Terbatas dan Pertanggungjawaban Pidana Direksi dalam Tindak Pidana Lingkungan." *Locus Journal of Academic Literature Review* (2023): 371–376.

Simanullang, Soef C. L. "Pertanggungjawaban Pidana Komisaris PT yang Melakukan Tindak Pidana Perpajakan." 2023.

Sinaga, Lestari Victoria, dan Citra Indah Lestari. "Analisis Yuridis Pertanggungjawaban Direksi terhadap Pailitnya Suatu Perseroan Terbatas." *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana* 3, no. 1 (2021): 25–34.

Sujono, Salsabilla, Dewi Iryani, dan Gradios Nyoman Tio Rae. “Pertanggungjawaban Pidana Direktur atas Tindak Pidana Korporasi Lingkungan Hidup.” *Viva Themis: Jurnal Ilmu Hukum dan Humaniora* 8, no. 2 (2025): 496–513.

Turyono. *Tinjauan Yuridis Pertanggungjawaban Direktur Perseroan Terbatas yang Telah Selesai Masa Jabatannya*. Disertasi. Program Studi Ilmu Hukum, 2018.

PERATURAN PERUNDANG-UNDANGAN

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana. Undang-undang ini penting karena mengatur KUHP nasional dan memuat pengakuan korporasi sebagai subjek tindak pidana dalam Pasal 45 sampai dengan Pasal 50.

Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas. Undang-undang ini mengatur organ perseroan, kedudukan Direksi, Dewan Komisaris, RUPS, serta tanggung jawab pengurusan dan pengawasan dalam perseroan.

Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang.

Undang-Undang Nomor 16 Tahun 2025 tentang Perubahan Keempat atas Undang-Undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara. Aturan ini relevan apabila pembahasan dikaitkan dengan pertanggungjawaban direksi dan komisaris pada BUMN.

Undang-Undang Nomor 19 Tahun 2003 tentang Badan Usaha Milik Negara.

Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang.

Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

Undang-Undang Nomor 7 Tahun 2021 tentang Harmonisasi Peraturan Perpajakan.

Kitab Undang-Undang Hukum Acara Pidana.

Peraturan Mahkamah Agung Nomor 13 Tahun 2016 tentang Tata Cara Penanganan Perkara Tindak Pidana oleh Korporasi. PERMA ini relevan karena menjadi pedoman teknis penanganan perkara pidana korporasi di pengadilan.

Peraturan Otoritas Jasa Keuangan Nomor 33/POJK.04/2014 tentang Direksi dan Dewan Komisaris Emiten atau Perusahaan Publik.

Peraturan Otoritas Jasa Keuangan Nomor 21/POJK.04/2015 tentang Penerapan Pedoman Tata Kelola Perusahaan Terbuka.