



Corporate Criminal Responsibility in the Context of Sexual Violence Crimes in Indonesia: A Legal Analysis

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Abstract

Corporate criminal responsibility represents one of the most significant evolutions in modern criminal law. Historically, Indonesia's criminal justice system, inherited from the Dutch *Wetboek van Strafrecht*, recognized only individuals as subjects of criminal law, adhering to the classical doctrine *societas delinquere non potest* a corporation

cannot commit a crime. However, the growing influence of corporations in economic and social spheres has exposed their potential role in facilitating or concealing criminal acts, including environmental violations, corruption, and sexual violence. The problem addressed in this study is the limited application and enforcement of corporate criminal liability in Indonesia, particularly concerning sexual violence within institutional or organizational settings, despite the existence of Law No. 1 of 2023 on the Criminal Code and Law No. 12 of 2022 on Sexual Violence Crimes. The main objective is to analyze the doctrinal foundations, enforcement challenges, and justice-based implications of holding corporations accountable for sexual violence offenses under Indonesian law. Employing a normative juridical methodology with descriptive-analytical and comparative approaches, the study examines statutory instruments, court decisions, and legal doctrines, including the principles of *mens rea*, vicarious liability, and identification theory. The findings reveal that Indonesia's legal framework has formally recognized corporate criminal responsibility but still faces conceptual and procedural ambiguities, especially in attributing intent (*mens rea*) to corporations for crimes of a personal nature. Enforcement remains inconsistent due to weak prosecutorial mechanisms, absence of judicial precedents, and limited institutional coordination. Nonetheless, recent reforms particularly Articles 45 and 48 of Law No. 1 of 2023 and Article 18 of Law No. 12 of 2022 signify a transformative shift toward institutional accountability and gender-sensitive justice. In conclusion, effective corporate liability for sexual violence requires harmonization of overlapping laws, clearer doctrinal interpretation of *mens rea*, stronger enforcement capacity, and victim-centred mechanisms. Integrating preventive compliance systems, ethical governance, and restorative justice principles will ensure that corporate accountability contributes to fairness, deterrence, and the protection of human dignity within Indonesia's evolving criminal justice framework.

Keywords: Corporate, criminal, responsibility, sexual violence, justice-based approach, Indonesia

1.1 INTRODUCTION

In contemporary legal systems, corporations are no longer viewed merely as artificial entities created for economic purposes, but as active participants in social and legal relations capable of influencing communities, economies, and even governance. A corporation is recognized as a distinct legal entity, separate from its shareholders or managers, possessing rights and obligations under the law (John Morley & Taisu Zhang, 2022).

This legal status enables it to own property, enter into contracts, and importantly to be held accountable for violations of law. The principle of corporate criminal responsibility reflects this modern understanding: that organizations, through their operations, decision-making structures, and policies, may engage in or facilitate criminal behavior. Within the Indonesian legal system, this principle has evolved significantly, particularly with the enactment of Law on the Criminal Code, which firmly establishes corporations as subjects of criminal law alongside individuals (*Law No. 1 of 2023 on the Criminal Code- Indonesia*).

In the 21st century, corporate crimes have become a growing concern as corporations are increasingly exploited for unlawful gain under legal protection. Their separate legal status often shields individuals from accountability for offenses such as fraud, corruption, and sexual violence within institutions (Singh, 2021).

Historically, Indonesia's criminal law system inherited its foundation from the Dutch colonial *Wetboek van Strafrecht*, which, when adopted in 1918 and later formalized as the Indonesian Criminal Code in 1946, did not recognize corporations as criminally liable entities. The classical doctrine of *societas delinquere non potest* meaning 'a corporation cannot commit a crime' dominated early jurisprudence. Crimes were considered acts committed solely by natural persons with moral capacity (Butt, S. 2023). However, as Indonesia's economy developed and corporations gained substantial social and financial influence, the limitations of this doctrine became evident. Corporate structures were increasingly used to facilitate crimes ranging from environmental destruction and financial fraud to labor exploitation and, more recently, sexual violence within corporate or institutional settings (Thee, 2015).

The recognition of corporations as potential perpetrators of crime emerged gradually through special statutes outside the Criminal Code. Laws such as **Law No. 32 of 2009 on Environmental Protection and Management**, **Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering**, and **Law No. 21 of 2007 on the Eradication of Human Trafficking** explicitly recognized corporate liability. These sectoral developments marked a departure from the traditional individual-centric approach, acknowledging that corporate negligence or policy-driven misconduct could have devastating social consequences (Van Sliedregt, 2025).

1.2 Literature Review

Adami Chazawi quotes Moeljatno, who defines a criminal conduct as any human behavior that is expressly forbidden by law and that has a particular punishment for violators. The core of criminal culpability, according to his concept, is the presence of a legal ban and the prospect of punishment that goes along with it (Samadova & Gadimov, 2025).

The term corporation, which comes from the Latin *corpore*, which means body, describes a legal entity that has rights, responsibilities, and a personality apart from that of its members. The idea of a corporation in Indonesian law is strongly related to civil law legal entities (*rechtspersoon*). While Sudikno Mertokusumo and Subekti, a corporation is a *legal body* that can act in law. Teguh Prasetyo notes that, in criminal law, *corporation* refers not only to legal entities but also to other organized groups capable of committing crimes (Azhari, 2020).

In Indonesian criminal law, a criminal act refers to conduct subject to punishment. Sexual violence crimes, as defined in **Law No. 12 of 2022 on Sexual Violence Crimes**, encompass acts of coercion, harassment, exploitation, and other violations of sexual integrity. This law, enacted jointly by the House of Representatives (DPR) and the President, establishes a comprehensive legal framework for preventing, addressing, and sanctioning sexual violence. Importantly, **Article 18** introduces a major reform by recognizing corporations as possible perpetrators, reflecting

Indonesia's growing commitment to criminal accountability and institutional responsibility in combating sexual violence (Darmawan, Nugraha, & Sihombing, 2024).

Edwin Sutherland's 1949 study on white-collar crime was the first to expose the severe societal and economic harm caused by corporate offenses. He demonstrated that corporate criminals often inflict greater losses than conventional offenders a reality underscored by the 2008 global financial crisis, which led to over 50 million job losses and widespread home foreclosures. His work established the foundation for recognizing corporate criminal liability as essential to modern legal accountability (Braithwaite, 2020).

Aishwarya Pandey's study on Corporate Crime and Penal Policy in India provides valuable insights that can be comparatively applied to the Indonesian context. The research underscores the importance of a proactive legal and institutional framework in addressing corporate crime an approach that remains highly relevant for Indonesia as it continues to strengthen its corporate accountability mechanisms. Pandey highlights key deficiencies in India's penal and regulatory systems, particularly the lack of preventive measures and weak enforcement structures, which often result in reactive rather than preventive responses to corporate misconduct (Anudeep, 2024).

Drawing parallels, Indonesia faces similar challenges in ensuring effective corporate governance and compliance within its legal system. Like India, Indonesia's framework anchored in laws such as the *Criminal Code (Law No. 1 of 2023)* and sectoral regulations requires stronger internal control mechanisms, ethical business practices, and a more proactive judiciary to deter corporate crimes. Pandey's emphasis on internal governance, ethical standards, and preventive enforcement offers a valuable model for Indonesia in developing a more justice-oriented and preventive corporate criminal policy (Anudeep, 2024).

Pradeep Kumar Singh's analysis of Corporate Criminal Liability in India emphasizes that corporate crime, as an organized socioeconomic offense, is difficult to detect and prosecute because corporations lack physical and mental capacities like natural persons. His argument highlights the need for modern legal systems such as Indonesia's under Law No. 1 of 2023 and Law No. 12 of 2022 to adopt clear mechanisms for attributing intent and ensuring accountability, so corporations can be effectively held responsible for crimes causing social and economic harm (Singh, 2021).

1.3 Corporate Criminal Responsibility and Sexual Violence Crimes

One of the most pressing issues in contemporary criminal discourse is the intersection between corporate responsibility and sexual violence crimes. Sexual violence, particularly in workplaces, educational institutions, and other organized environments, is no longer viewed solely as an individual moral failure but as a systemic problem often perpetuated or concealed by corporate culture, power hierarchies, and institutional negligence. Corporate

entities can become enablers of sexual crimes by failing to establish protective mechanisms, ignoring complaints, or creating coercive working environments that facilitate abuse (Côté-Lussier, et al; 2020).

In Indonesia, this issue has gained urgency following several high-profile cases involving harassment and abuse within corporate, educational, and entertainment sectors. Despite the enactment of **Law No. 12 of 2022 on the Crime of Sexual Violence**, which expands definitions of sexual violence and strengthens victim protection, enforcement remains heavily individual-oriented. The legal system rarely attributes liability to corporations, even in cases where the environment or corporate structure clearly contributed to the commission or concealment of the offense. This gap highlights a critical weakness in Indonesia's approach: the absence of a robust legal framework explicitly connecting corporate criminal responsibility to sexual violence crimes. (*International Commission of Jurists, 2023*).

The Criminal Code of Indonesia, corporations can now be prosecuted for offenses committed in the name or for the benefit of the corporation, provided that such acts are within the scope of its business activities and result from corporate decisions or neglect. The criminal code opens the door to hold corporate entities accountable for facilitating or failing to prevent acts of sexual violence within their institutions. However, its implementation remains uncertain, given the lack of judicial precedents, clear prosecutorial guidelines, and established mechanisms for assessing corporate 'mens rea' in the context of sexual crimes (*Supreme Court Regulation No. 13 of 2016*).

Sexual assault is a problem that violates social, moral, and religious norms in addition to the law. Given that women and children are the main victims of these crimes, public fury is reasonable. According to Andika Wijaya and Wida Peace Ananta, sexual violence is inextricably linked to the larger problem of sexual deviance, which includes rape, underage sex, and premarital sex all of which are seen to be transgressions of moral and religious norms in Indonesia. Such behaviors violate social norms that support civilization and go against the sacredness of human relationships (*Lin, 2022*).

Like all crimes, sexual violence presupposes both a perpetrator and a victim, and victims are not always individual persons they may include social groups. Women are the most vulnerable due to Indonesia's entrenched patriarchal culture, which positions them as subordinate to men and objectifies them sexually (Maharani, 2024). Sexual violence occurs in both private and public spaces at home, on public transportation, in workplaces, or even in educational institutions. The problem also extends to the digital sphere, with the rise of online gender-based violence (OGBV), including the non-consensual distribution of sexual content. Women are disproportionately targeted in such electronic-based sexual offenses, which have become a major concern in Indonesia (Hearn et al., 2023).

The significance of this research lies in its justice-based approach, which seeks to harmonize accountability, fairness, and victim protection. The study not only contributes to doctrinal analysis but also aims to promote a more responsive and gender-sensitive criminal justice system that recognizes the role of institutions in either preventing or perpetuating harm.

1.4 Research Methodology

This study employs a normative juridical research method with a descriptive-analytical nature, focusing on the legal framework of corporate criminal responsibility in sexual violence crimes in Indonesia. The approach emphasizes the analysis of written legal norms, doctrines, and court decisions using statutory, conceptual, and comparative methods. The statutory approach reviews key laws such as the 1945 Constitution, Law No. 1 of 1946, Law No. 39 of 1999 on Human Rights, Law No. 12 of 2022 on Sexual Violence Crimes, and Law No. 1 of 2023 on the Criminal Code. The conceptual approach explores theories of *mens rea*, and vicarious liability.

The research relies on secondary data obtained through library research, including primary legal materials laws, regulations, and court rulings, secondary materials (books, journals, and expert opinions), and tertiary materials (legal dictionaries and encyclopedias). Data are analyzed qualitatively through interpretative and deductive reasoning to assess gaps, inconsistencies, and enforcement challenges in Indonesian law. The study aims to propose a justice-based reconstruction of criminal provisions governing corporate liability for sexual violence, ensuring stronger protection of victims, improved corporate accountability, and alignment with Indonesia's human rights and legal reform objectives.

1.5 Corporate Criminal Responsibility in Indonesia's Legal Framework

In 2022, Indonesia enacted the Law on Sexual Violence Crimes, marking a significant reform in the country's criminal legislation. This law identifies and criminalizes ten distinct types of sexual violence as offenses subject to punishment. It aims to prevent these crimes through deterrence, coordination, and systematic monitoring by both national and regional law enforcement agencies. Furthermore, the legislation presents a dual strategy that merges punitive measures with rehabilitative actions and differentiates between primary and supplementary penalties, thereby extending accountability to both individuals and corporations implicated in sexual violence offenses ((Santoso & Satria, 2023)

Under **Article 18 of Law No. 12 of 2022**, corporations convicted of sexual violence face fines between five and fifteen billion rupiah (Rp 5,000,000,000–Rp 15,000,000,000) and may be subject to additional penalties such as confiscation of assets, revocation of business licenses, suspension of operations, or dissolution. However, this expansion of criminal liability raises interpretative challenges particularly regarding how a corporation, as a legal entity, can fulfill the *mens rea* (criminal intent) element in such crimes, which are inherently personal and sexual in nature (Prakash, 2024).

Article 45(1) of *Indonesia's 2023 Criminal Code* establishes the principle of corporate criminal responsibility, explicitly recognizing corporations as subjects of criminal law. The provision further clarifies that the term 'corporation' encompasses a wide range of legal entities including limited liability companies (PT), foundations, cooperatives, state- and region-owned enterprises, and similar organizations as well as associations, whether

incorporated or not, and business entities such as firms and partnerships, in accordance with prevailing legal provisions (Widyaningrum,2024).

In addition, **Article 188 of the Criminal Code** stipulates that corporations may be subjected to both principal and supplementary penalties. The principal sanction imposed on a corporation is a monetary fine, while the supplementary penalties may involve compensation payments, restitution or remediation of the harm caused by the offense, and the fulfillment of previously neglected legal obligations.

The principle of corporate accountability, particularly concerning management responsibility, is reflected in **Article 46(2) of Law No. 7 of 1992**. This provision stipulates that if the activities referred to in paragraph (1) are conducted by a legal entity such as a limited liability company, association, foundation, or cooperative criminal prosecution may be directed toward the individuals who issued the orders, those who led or managed the actions, or both. In the context of banking corporations, this establishes the basis for holding corporate executives criminally liable under Indonesia's criminal law framework (Sirait, Ghufon, & Provisky, 2022).

The enforcement of legal sanctions against corporate crimes in Indonesia is grounded in several statutory frameworks that define and regulate corporate criminal liability. One of the key instruments is **Law No. 40 of 2007 on Limited Liability Companies (PT)**, which establishes that a corporation may be held criminally liable for offenses committed by its employees in the course of conducting company activities. This principle is reinforced by other special laws, such as **Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes (TPPU)** and **Law No. 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition**, both of which provide the legal basis for prosecuting specific forms of corporate wrongdoing (Amiati, Adhryansah, & Prihandono, 2024).

Further elaborating this framework, Article 46 of the Criminal Code defines “corporate criminal acts” as offenses carried out by individuals who hold functional positions within a corporate structure or who act on behalf of or for the benefit of the corporation. These acts are often connected to employment or contractual relationships. The Code also adopts the identification theory, recognizing that liability may extend beyond direct perpetrators to those exercising control or decision-making power. Complementing this, Article 47 broadens the scope of liability to include individuals outside the corporation's formal structure such as supervisors, controllers, or beneficial owners when they play a significant role in facilitating or directing the commission of a corporate crime (Amiati, Adhryansah, & Prihandono, 2024).

An essential reference point in understanding corporate criminal liability in Indonesia is **Supreme Court Regulation No. 13 of 2016** concerning Procedures for Handling Criminal Cases by Corporations (SC Regulation No. 13/2016). This regulation laid the groundwork for defining and prosecuting corporate crimes, many of which have since been integrated into Law No. 1 of 2023 (the new Criminal Code). The updated code not only adopts several key provisions

from the earlier regulation but also introduces significant revisions and broader interpretations, expanding the legal scope and mechanisms for addressing corporate criminal responsibility (Sari, 2023).

Under Article **4(2) of SC Regulation No. 13/2016**, a corporation can be held criminally liable if: (a) it gains profit or benefit from a criminal act or if the act is carried out in its interest; (b) it permits the criminal act to occur; or (c) it fails to take concrete preventive measures to avoid or mitigate the consequences of the act, including ensuring compliance with applicable laws. **Article 48 of Law No. 1 of 2023** revises and extends this provision. While maintaining the second and third criteria, it adds that corporations may also be held liable when: (I) the offense is part of their business operations or activities stipulated in their Articles of Association or other binding regulations; (II) the offense provides the corporation with an unlawful benefit; or (III) the act is recognized as corporate policy (Sjawie, 2018).

1.6 Corporate Criminal Liability and Aiding and Abetting under Indonesian Law

The evolution of corporate criminal liability in Indonesia reflects a gradual refinement of legal doctrines through successive legislative reforms. One notable development is seen in the linguistic and structural shift from **Supreme Court Regulation No. 13 of 2016 to Law No. 1 of 2023** on the Criminal Code. While the former employed the term ‘or,’ implying alternative grounds for liability, the latter adopts “and/or,” thus allowing cumulative or independent fulfillment of liability elements. The Elucidation of Article 48 further clarifies that prosecution may extend to the corporation itself, its management, or both, depending on their degree of involvement and the benefits gained from the offense. This reflects a more flexible and comprehensive framework for corporate accountability (Sjawie, 2018).

Complementing this development, the Regulation of the Attorney General No. Per-028/A/JA/10/2015 provides procedural guidance on handling criminal cases involving corporations. Much like the Supreme Court Regulation, it emphasizes procedural consistency while allowing higher legislation to define substantive corporate liability. Although the former Criminal Code (KUHP) did not explicitly recognize corporations as legal subjects, Article 103 enabled the application of its general principles to special laws, such as Law No. 31 of 1999 on the Eradication of Corruption and Law No. 32 of 2009 on Environmental Protection and Management. These laws explicitly hold corporations criminally liable when offenses are conducted by individuals within their organizational framework or for their benefit (Sari, 2023).

In addition, aiding and abetting is a crucial component of Indonesia’s criminal liability system. Under **Article 56 of the old KUHP and Article 21 of Law No. 1 of 2023**, liability arises when an individual intentionally provides opportunities, means, or information facilitating a crime. Legal scholars such as R. Soesilo and Wirjono highlight that the *mens rea* must demonstrate intent to assist, distinguishing Indonesian law from international criminal law, which often accepts mere knowledge as sufficient. Furthermore, Indonesian law sets a temporal limitation assistance must occur before or during the commission of the crime unlike international law, which allows liability even for acts committed afterward (Moeljatno in Chazawi, 2020).

Several sectoral laws also reinforce Indonesia's stance on corporate criminal liability. Article 4 of Law No. 21 of 2007 stipulates that corporations involved in human trafficking through corporate personnel may face fines up to three times the standard amount. Likewise, Article 33 of Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers imposes criminal sanctions and fines on corporations facilitating illegal worker placements. These provisions aim to deter corporate involvement in the exploitation of migrant workers, a serious human rights violation. Under Article 2 of Law No. 21 of 2007, trafficking for exploitation is punishable by imprisonment ranging from three to fifteen years, extendable to twenty years if it results in physical or psychological harm. Meanwhile, Articles 81 and 83 in conjunction with Articles 69 and 68 of Law No. 18 of 2017 provide additional penalties for corporate entities complicit in such exploitation (Badjree & Sa'diyah, 2024).

1.7 Conclusion and Recommendations

The evolution of corporate criminal responsibility in Indonesia reflects a paradigm shift from traditional doctrines of individual culpability toward a broader acknowledgment of collective and institutional accountability. Historically, the Indonesian Criminal Code (KUHP) inherited from Dutch colonial law did not recognize corporations as legal subjects capable of committing crimes, adhering to the principle of *societas delinquere non potest*. However, modern socio-economic realities have demonstrated that corporations—through their organizational policies, managerial decisions, and systemic negligence can inflict substantial harm comparable to or greater than that caused by individuals. The enactment of Law No. 1 of 2023 on the Criminal Code (New KUHP) and Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) therefore marks a critical turning point in Indonesia's criminal justice system, explicitly positioning corporations as subjects of criminal law.

The current legal framework establishes both substantive and procedural mechanisms for holding corporations accountable. Under Article 45 and 48 of Law No. 1 of 2023, corporations can now be prosecuted when offenses are committed for their benefit, within the scope of their business activities, or as part of corporate policy. Similarly, Article 18 of Law No. 12 of 2022 imposes heavy fines and additional sanctions, such as license revocation or dissolution, on corporate entities convicted of sexual violence offenses. Complementary regulations such as Supreme Court Regulation No. 13 of 2016 and Attorney General Regulation No. Per-028/A/JA/10/2015 provide procedural guidance for investigating and prosecuting corporate crimes, bridging the gap between theory and enforcement.

Despite these advancements, several structural and doctrinal challenges persist. The foremost issue lies in attributing *mens rea* (criminal intent) to an artificial entity, particularly in crimes like sexual violence that inherently involve human emotion and intent. While the new Criminal Code adopts the identification and vicarious liability doctrines, the practical mechanisms for proving a corporation's culpability remain ambiguous. Moreover, institutional barriers including weak enforcement, limited prosecutorial expertise, and lack of coordination between judicial and administrative agencies continue to hinder effective implementation. The absence of consistent judicial precedents on corporate liability in sexual violence cases further compounds uncertainty and limits deterrence.

Sexual violence, whether physical, psychological, or digital, represents not only a legal violation but also an affront to human dignity and equality. When such crimes occur within institutional or corporate settings, the responsibility extends beyond individual perpetrators to the organizational structures that enable, conceal, or fail to prevent the abuse. Hence, corporate accountability in cases of sexual violence must be viewed as part of Indonesia's broader commitment to gender justice, human rights, and good governance. Effective implementation of the laws requires not only punitive measures but also preventive and restorative approaches that ensure institutional reform, victim protection, and societal awareness.

Recommendation

Clarify Doctrinal Foundations of Corporate Mens Rea: The legislature and judiciary should develop clear interpretative guidelines on how *mens rea* applies to corporations, particularly in non-economic crimes such as sexual violence. This could involve adopting the corporate culture and collective knowledge doctrines, which assess the cumulative intent or negligence of corporate leadership and decision-making bodies rather than focusing solely on individual actors.

Strengthen Enforcement Mechanisms: The Attorney General's Office and National Police should establish specialized units for corporate crime and sexual violence, integrating forensic, financial, and digital expertise. Inter-agency coordination must be improved to prevent overlapping jurisdiction and to ensure that investigations against corporations proceed transparently and efficiently. **Enhance Corporate Governance and Compliance Systems:** Corporations should be legally required to adopt internal compliance mechanisms, ethical conduct codes, and independent grievance committees to detect and prevent sexual violence. Mandatory annual audits of workplace safety and gender-sensitivity training should be incorporated into licensing and certification requirements.

Judicial and Prosecutorial Training: Continuous professional development programs for judges and prosecutors are necessary to improve their understanding of corporate criminal liability. Specialized judicial chambers could be established to handle complex corporate crime cases, including those involving sexual offenses.

Integrate Victim-Centric Approaches: Enforcement should prioritize restitution, psychological support, and protection for victims, ensuring that corporate entities assume responsibility for both compensation and rehabilitation. The inclusion of restorative justice elements such as corporate apologies, funding of rehabilitation programs, or institutional reforms can supplement punitive sanctions.

Harmonize Overlapping Laws and Regulations: To prevent normative conflicts, existing laws such as the Law on Sexual Violence Crimes (No. 12/2022), the Criminal Code (No. 1/2023), and sectoral statutes like the Environmental Law and Anti-Corruption Law should be systematically harmonized. A unified legal definition of corporate criminal responsibility would promote consistency and predictability in enforcement.

Future reforms should consider establishing an independent Corporate Accountability Commission tasked with monitoring, investigating, and recommending prosecution of corporate entities involved in severe rights violations. Additionally, empirical research should be expanded to examine judicial trends, corporate responses, and victim outcomes under the new laws.

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