

# THE CONSTRUCTION OF CORPORATE FAULT RELATED TO CORPORATE CRIMINAL ACTS IN THE NEW CRIMINAL CODE: IMPLICATIONS AND FORMULATIONS

Joice Soraya<sup>1</sup>, Wahyu Prawesthi<sup>2</sup>

Universitas Wisnu Wardhana Malang<sup>1</sup>, Universitas Dr Soetomo Surabaya<sup>2</sup>

[joicewijayas99@gmail.com](mailto:joicewijayas99@gmail.com)<sup>1</sup>, [wahyu.prawesthi@unitomo.ac.id](mailto:wahyu.prawesthi@unitomo.ac.id)<sup>2</sup>

## Articles Info

Received: 12 -04- 2023

Revised: 17 -05- 2023

Accepted: 31 -06- 2023

### Keywords:

Tindak Pidana Korporasi,  
Corporate Fault,  
RKUHP,  
Pertanggungjawaban  
Pidana Korporasi,  
Kepastian Hukum.

## Abstract

*In the development of modern criminal law, corporate crime has become a primary concern because corporations, as separate legal entities from the individuals within them, are increasingly involved in various widespread legal violations. Therefore, discussions regarding the construction of "corporate fault" in the new Draft Criminal Code (RKUHP) have become crucial to provide legal certainty and justice in handling criminal acts committed by corporations. This research aims to formulate the appropriate formulation in constructing "corporate fault" related to corporate criminal acts in the new Draft Criminal Code (RKUHP), considering the legal, economic, and business implications that may arise. This research uses a normative legal research method with legislative and conceptual approaches. The results of the analysis will be presented in descriptive-analytical form. The research findings indicate that the appropriate formulation in constructing "corporate fault" related to corporate criminal acts in the new RKUHP is by adopting the concept of corporate criminal liability that allows corporations to be held accountable for the actions or omissions of individuals acting on behalf of or for the benefit of the corporation. However, the new RKUHP needs to clearly define the definition of a corporation, criteria and conditions under which a corporation can be held accountable, types of criminal acts and applicable sanctions, as well as a proportional accountability mechanism while still adhering to criminal law principles, best practices from other countries, human rights protection, legal certainty, investment climate, and practical aspects of law enforcement. This formulation should be comprehensive and balanced to provide legal certainty, justice, and support national economic growth by considering legal implications, appropriate law enforcement mechanisms and evidence, legal certainty aspects, investment climate, corporate compliance and risk management, as well as legitimate business continuity.*

Mustaqim, Yenny Febrianty, Ardian, Mustika Mega Wijaya: *MODEL KEPEMIMPINAN ORGANISASI DALAM*

## I. Introduction

In the development of modern criminal law, corporate crime has become a primary concern. Corporations, as legal entities separate from the individuals within them, are increasingly involved in various legal violations. These violations can have broad impacts on society, the environment, and the economy. (Manullang & Pasaribu, 2020) Therefore, it is important to ensure that corporations can be held criminally accountable for their actions.

Although the current Criminal Code (KUHP) does not specifically regulate this matter, some laws outside the Criminal Code have recognized corporations as legal subjects that can be criminally liable. However, such regulations are still limited and do not cover all aspects of corporate criminal acts. Therefore, the discussion regarding the construction of "corporate fault" in the Draft Criminal Code (RKUHP) has become very important to provide legal certainty and justice in dealing with criminal acts committed by corporations. (Amirullah, 2012)

In Indonesia, the regulations regarding corporate criminal liability are still limited within the current Penal Code (KUHP). The Penal Code, which is a legacy from the Dutch colonial era, has not comprehensively regulated corporate criminal offenses. (Kusumo, 2008) Therefore, the government is currently drafting a new Penal Code (KUHP) that is expected to address the challenges of modern criminal law, including regulating corporate criminal liability more effectively.

In the draft of the new Penal Code, there are provisions regarding "corporate fault" or corporate wrongdoing. This concept acknowledges that corporations can commit crimes and be held accountable for their own wrongdoing, regardless of the actions of individuals within them. The implementation of the "corporate fault" concept in the new Penal Code will have significant implications for the enforcement of criminal law against corporations in Indonesia. (Sriwidodo, 2022) This concept becomes highly relevant considering that corporations are legal entities distinct from individuals, thus requiring specific mechanisms to determine when corporations can be held criminally accountable. One relevant piece of legislation to this research is Law Number 40 of 2007 concerning Limited Liability Companies. This law recognizes corporations as legal subjects separate from shareholders, directors, and employees. However, this law does not specifically regulate corporate criminal liability. Additionally, Law Number 32 of 2009 concerning Environmental Protection and Management also regulates corporate criminal liability in cases of environmental violations. This law acknowledges that corporations can face criminal sanctions if proven to commit environmental crimes. However, this regulation is still limited to the field of environmental protection.

Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001. In Article 1 paragraph 1, this law states that "a corporation is a collection of individuals and/or wealth that is organized whether it is a legal entity or not a legal entity." Furthermore, Article 20 stipulates that in cases where corruption is committed by or on behalf of a corporation, prosecution and punishment can be imposed on the corporation and/or its management. However, the regulation in this law is limited to corruption offenses only, while corporations can commit various other types of crimes such as environmental crimes, human rights violations, economic crimes, and so on. Therefore, a more comprehensive regulation regarding corporate criminal liability in the new Criminal Code becomes crucial to provide legal certainty and justice in handling crimes committed by corporations.

With the introduction of the concept of "corporate fault" in the new Criminal Code, further research is needed to analyze its implications and proper formulation for its application. This research will examine how the construction of "corporate fault" in the new Criminal Code is formulated, as well as the appropriate formulation for effective implementation in criminal law enforcement against corporations in Indonesia. Thus, this research is expected to contribute to strengthening law enforcement and justice in cases of corporate crime. The research problem formulation in this study is as follows:

- a. What is the appropriate formulation in constructing "corporate fault" related to corporate criminal acts in the new Draft of the Criminal Code (RKUHP)?
- b. What are the legal, economic, and business implications that need to be considered in constructing "corporate fault" related to corporate criminal acts in the new RKUHP?

## 2. Research Method

This research will use the normative legal research method. This method is chosen because the main focus of the research is to examine the construction of "corporate fault" related to corporate criminal acts in the new Draft Criminal Code (RKUHP) from a positive legal perspective. The approaches used in this research are statutory approach and conceptual approach.

The statutory approach involves examining statutory regulations related to corporate criminal liability, both in the current Criminal Code (KUHP) and in the new RKUHP. Additionally, other laws governing corporate criminal liability, such as Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001, and other relevant statutory regulations will be examined. Meanwhile, the conceptual approach involves examining legal concepts and doctrines

related to corporate criminal liability, such as the concepts of "corporate fault," "corporate crime," "corporate liability," and other related concepts. This study will be conducted by reviewing legal literature, including books, journals, and other relevant sources related to the research topic.

In this research, primary, secondary, and tertiary legal materials will be used. Primary legal materials include statutory regulations related to the research topic, such as the Criminal Code, RKUHP, Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, and other relevant statutory regulations. Secondary legal materials include legal literature such as books, journals, research findings, and other sources discussing legal concepts and doctrines related to corporate criminal liability. Tertiary legal materials include legal dictionaries and legal encyclopedias used to assist in understanding the legal terms used in this research.

Data collection techniques in this research will involve library research on the aforementioned legal materials. After data collection, legal material analysis will be conducted using qualitative analysis methods, interpreting and constructing these legal materials systematically and logically. The results of the analysis will be presented in the form of analytical-descriptive to answer the research problem formulation regarding the appropriate formulation in constructing "corporate fault" related to corporate criminal acts in the new RKUHP, as well as legal, economic, and business implications that need to be considered.

### 3. Results And Discussion

#### **A. The precise formulation in constructing "Corporate Fault" concerning Corporate Criminal Offenses in the Draft Bill of the New Criminal Code.**

In formulating the construction of "corporate fault" related to corporate criminal acts in the new Draft Criminal Code (RKUHP), it is necessary to conduct an in-depth study of the concept of corporate criminal liability and how it is practiced in positive law in Indonesia. Generally, the concept of "corporate fault" refers to the principle that corporations can be held criminally liable for actions or omissions committed by individuals acting on behalf of or for the benefit of the corporation.(Sriwidodo, 2022) Here are some important points that need to be considered:

In the new Criminal Code Bill (RKUHP), it is necessary to formulate clearly the definition and scope of "corporation" that can be held criminally accountable. This definition is crucial to provide legal certainty and avoid ambiguity in its application. Based on Article 1 number 26 of the 2019 RKUHP, "A corporation is an organized group of people and/or assets, whether legal entities or non-legal entities."(Sriwidodo, 2019) This definition is quite broad and can encompass various types of business entities, such as limited liability companies, foundations, associations, and even non-profit organizations. Furthermore, the new RKUHP (Criminal Code Draft) needs to clearly regulate the criteria

or conditions under which a corporation can be held criminally liable. In this regard, the new RKUHP can adopt the concept of "corporate fault" that has been developed in corporate criminal law in various countries.(Lubis, 2022) This concept essentially allows corporations to be held criminally accountable for the actions or omissions committed by individuals acting on behalf of or in the interests of the corporation. Furthermore, the new Criminal Code Bill needs to regulate in detail the types of criminal acts that can be imposed on corporations. In this regard, the new Criminal Code Bill can adopt the approach used in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001. In Article 20 paragraph (2), this law states that "Corruption crimes are committed by corporations if the crime is committed by individuals, whether based on employment relationships or other relationships, acting within the corporate environment either individually or collectively".(Safitri et al., 2021)

In addition, the new Criminal Code (RKUHP) also needs to regulate the types of sanctions that can be imposed on corporations proven to have committed criminal acts. In this regard, the new RKUHP can adopt the approach used in Law Number 7 of 2014 concerning Trade, which in Article 108 regulates that sanctions that can be imposed on corporations include fines, additional penalties, and disciplinary actions. Fines imposed on corporations can be increased by up to 1/3 of the fines imposed on individuals. Meanwhile, additional penalties can include revocation of business licenses, revocation of legal entity status, dismissal of management, and prohibition on management from holding certain positions. As for disciplinary actions, they can include placing the corporation under supervision for a certain period of time.(Reza, 2015)

In formulating the "corporate fault" construction in the new Criminal Code, it is also necessary to consider the mechanism of corporate criminal liability proportionally. This means that regulations are needed regarding when criminal liability is imposed only on managers or employees of the corporation directly involved in the criminal act, and when criminal liability can also be imposed on the corporation as a legal entity.(Silaban, 2022) In this regard, the new Criminal Code can adopt a "mixed" approach that combines individual accountability and corporate accountability.

It should also be noted that the formulation of "corporate fault" in the Criminal Code must be in line with criminal law principles such as legality, culpability, and utility. This means that the construction of "corporate fault" must have a clear legal basis, can only be applied to corporations that are truly at fault, and provide benefits in efforts to prevent and eradicate corporate criminal activities. In formulating the appropriate formulation, the Criminal Code can also adopt best practices from other countries that have already regulated corporate criminal liability, such as the United States, United Kingdom, Australia, and the Netherlands.(Sriwidodo, 2022) However, it must certainly be adapted to the legal and cultural context in Indonesia. Additionally, other aspects need to be considered such as the protection of human rights, legal certainty, and the impact on

investment climate and national economy.

Lastly, the formulation of "corporate fault" in the new Criminal Code draft should also consider practical aspects in law enforcement. For example, regulations are needed regarding who is authorized to represent corporations in legal proceedings, the mechanism for seizing corporate assets, and how to enforce criminal judgments against corporations.(Abdullah, 2022) In this regard, the new Criminal Code (RKUHP) can only adopt the arrangements that have already been established in Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes. Considering the various aspects above, the formulation of "corporate fault" in the new RKUHP is expected to provide legal certainty and justice in dealing with criminal acts committed by corporations, as well as creating a deterrent effect for corporations committing criminal acts.

#### **B. The Legal, Economic, and Business Implications to be Considered in Constructing 'Corporate Fault' Related to Corporate Criminal Offenses in the New Criminal Code Bill**

In constructing "corporate fault" related to corporate criminal offenses in the new Draft Criminal Code (RKUHP), it is necessary to consider various implications, both legally, economically, and in business terms. This is important to ensure that the regulation not only provides legal certainty and justice but also does not hinder legitimate economic and business activities.(Abdullah, 2022) Therefore, in formulating this concept, in-depth studies are needed to minimize the negative impacts and maximize the benefits obtained.

##### **Legal Implications**

Legally, the construction of "corporate fault" in the new Criminal Code Draft (RKUHP) will affect the implementation of corporate criminal liability in Indonesia. This certainly must be in line with the principles of criminal law that apply, such as the principle of legality, the principle of guilt, and the principle of utility. As regulated in Article 1 paragraph (1) of the current Criminal Code (KUHP), "No act can be punished except under the strength of criminal rules in the legislation that existed before the act was committed." (Lubis, 2022)

Another legal implication pertains to law enforcement mechanisms and the criminal justice system. Law enforcement agencies such as the police, prosecution, and courts must have a deep understanding of the concept of "corporate fault" and how to apply it in cases of corporate crimes. This requires intensive training and socialization to prevent errors in legal application.(Saputra, 2024) In addition, it is also necessary to consider the mechanisms of evidence and the standards of evidence that will be used in cases of corporate criminal acts. Considering that corporations are legal entities different from individuals, proving corporate wrongdoing requires a different approach as

well.(Andreas & Laracaka, 2019) In this case, it can refer to practices in other countries that have already regulated corporate criminal liability.

Economic and Business Implications From an economic and business perspective, the construction of "corporate fault" in the new Criminal Code Bill can have quite significant impacts. First, the threat of criminal prosecution for corporations can encourage companies to pay more attention to legal compliance in conducting their business activities. This can certainly create a healthier and fairer business climate.(Abdullah, 2022) However, on the other hand, if the formulation of "corporate fault" is not precise and too strict, it is not impossible that it will cause fear and reluctance for investors to invest their capital in Indonesia. As stipulated in Article 33 paragraph (4) of the Constitution of the Republic of Indonesia Year 1945, "The national economy shall be organized on the basis of economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental awareness, self-reliance, and by maintaining the balance of progress and the unity of the national economy." (Sriwidodo, 2022) Therefore, a balanced and proportional formulation is required in regulating corporate criminal liability. In addition to providing a deterrent effect for corporations committing criminal acts, the construction of "corporate fault" must also consider the interests of the business world and investment climate in Indonesia.

Another implication from the business perspective is related to risk management in a corporation. With the threat of criminal liability, corporations will be required to have a better and more effective risk management system to prevent criminal activities within the corporate environment.(Sukoco & Azmi, 2022) This will certainly increase corporate operational costs, especially for large-scale corporations with complex organizational structures. However, the implementation of good risk management can actually provide long-term benefits to corporations. With effective preventive systems in place, corporations can avoid legal, financial, and reputational risks that may arise from criminal activities committed by the corporation or individuals within its corporate environment.(Balian et al., 2010)

From a business perspective, the regulation of "corporate fault" in the Criminal Code Draft Bill (RKUHP) will have implications for corporations in conducting their business activities. Corporations will be required to be more cautious and increase compliance with the law in their operational activities. This is in line with the principles of good corporate governance, as regulated in Law Number 40 of 2007 concerning Limited Liability Companies. Article 97 paragraph (3) of that law states that "the Company is obliged to have procedures to ensure compliance with the provisions of applicable laws and regulations."

From an economic perspective, the regulation of "corporate fault" in the RKUHP can have both positive and negative implications. The positive implication is the increase in trust and legal certainty for investors and business actors, due to clear rules in handling

corporate crimes. However, on the other hand, this regulation can also have negative implications if not formulated correctly. For example, if the rules are too stringent or impose overly harsh penalties, it could hinder economic activities and investment, as well as create uncertainty for business actors.(Damanik, 2020) Therefore, in formulating the construction of "corporate fault," its impact on the investment climate and the national economy must be considered. The Criminal Code Bill (RKUHP) should be able to provide a balance between law enforcement efforts and protection of legitimate economic and business activities.

With the regulation of "corporate fault" in the Criminal Code Bill, corporations must enhance efforts in preventing and early detection of possible criminal activities within their business environment. This can be achieved by strengthening internal control systems, enhancing the role and responsibility of the board of commissioners, and fostering a culture of legal compliance within the corporate organization. Additionally, corporations should also prepare strategies and mechanisms to address potential legal processes related to "corporate fault." (Ardiansyah, 2019) For example, by forming a special legal team, improving the quality of internal audits, and building good relationships with law enforcement and regulators.

In this context, corporations also need to consider the implications for their business continuity if they are subject to sanctions under the Criminal Code Bill, such as revocation of business permits or dissolution of the corporation. Therefore, corporations must undertake adequate risk mitigation to anticipate such possibilities. Considering the various legal, economic, and business implications, it is hoped that the construction of "corporate fault" in the Criminal Code Bill can provide legal certainty, justice, and create a healthy and conducive business environment for national economic growth. Therefore, in formulating the new "corporate fault" construction in the Criminal Code Bill, a comprehensive study involving various stakeholders such as academics, legal practitioners, entrepreneurs, and the government is necessary. Thus, it is expected that a precise and balanced formulation can be obtained, providing legal certainty, justice, and supporting economic growth and a conducive investment climate in Indonesia.

#### **4. Conclusion**

The precise formulation in constructing "corporate fault" regarding corporate criminal offenses in the new Criminal Code (RKUHP) is by adopting the concept of corporate criminal liability, which allows corporations to be held accountable for the actions or omissions of individuals acting on behalf of or for the benefit of the corporation. The new RKUHP needs to clearly define the concept of corporations, criteria and conditions for when corporations can be held accountable, types of criminal offenses and sanctions that can be imposed, as well as a proportional accountability mechanism

while still considering criminal law principles, good practices from other countries, human rights protection, legal certainty, investment climate, and practical aspects of law enforcement.

In constructing "corporate fault" concerning corporate criminal offenses in the new RKUHP, legal implications such as alignment with criminal law principles, appropriate law enforcement mechanisms and burden of proof, and aspects of legal certainty need to be considered. From an economic perspective, it is necessary to ensure an investment climate and conducive business activities with a proportional formulation to avoid hindering legitimate business. Meanwhile, from a business standpoint, corporations must enhance compliance and risk management effectively, without being burdened by excessive costs that may harm business sustainability. Thus, a comprehensive and balanced formulation is required to provide legal certainty, justice, and support national economic growth.

### References

- Abdullah, D. (2022). *REKONSTRUKSI PENGATURAN PERTANGGUNGJAWABAN PIDANA KORPORASI DI BIDANG LINGKUNGAN HIDUP YANG BERBASIS NILAI KEADILAN*. Universitas Islam Sultan Agung.
- Amirullah, A. (2012). Korporasi dalam Perspektif Subyek Hukum Pidana. *Al-Daulah: Jurnal Hukum Dan Perundangan Islam*, 2(2), 139–160. <https://doi.org/10.15642/ad.2012.2.2.139-160>
- Andreas, M. N., & Laracaka, R. (2019). Analisa Ekonomi terhadap Hukum dalam Pemidanaan Partai Politik melalui Pertanggungjawaban Korporasi dalam Perkara Tipikor. *Jurnal Antikorupsi*, 5(1), 127–167.
- Ardiansyah, I. (2019). SOLUSI DALAM PENEGAKAN HUKUM TERHADAP TINDAK PIDANA KORPORASI DITINJAU DARI ASPEK KRITERIA DAN POLA PEMIDANAAN. *UIR Law Review*, 3(1), 61–72. [https://doi.org/10.25299/uirlrev.2019.vol3\(01\).2095](https://doi.org/10.25299/uirlrev.2019.vol3(01).2095)
- Balian, J. D., Wherry, J. C., Malhotra, R., & Perentesis, V. (2010). Roadmap to risk evaluation and mitigation strategies (REMS) success. *Therapeutic Advances in Drug Safety*, 1(1), 21–38. <https://doi.org/10.1177/2042098610381419>
- Damanik, Y. G. (2020). Problematika Pencegahan dan Kejahatan di Bidang Ekonomi. *Jurnal Hukum Lex Generalis*, 1(4), 59–71. <https://doi.org/10.56370/jhlg.v1i4.208>
- Kusumo, B. A. (2008). Pertanggungjawaban Korporasi dalam Hukum Pidana di Indonesia. *Jurnal Wacana Hukum*, 7(2). <https://doi.org/https://dx.doi.org/10.33061/1.jwh.2008.7.2.333>
- Lubis, M. R. (2022). *MENGURAI PENGATURAN PENEGAKAN HUKUM TERHADAP TINDAK PIDANA KORPORASI DI INDONESIA*. CV. Tungga Esti.
- Manullang, H., & Pasaribu, R. Y. (2020). Pertanggungjawaban Pidana Korporasi. In *LPPMUHN Press*.
- Reza, A. A. (2015). *Pertanggungjawaban Korporasi dalam Rancangan KUHP*. Institue for Criminal Justice Reform.
- Safitri, S. S., Setiawati, A. M. M., & Aprilinda, C. A. (2021). Menyoal Pertanggungjawaban Pidana

dan Alasan Penghapusan Pidana Korporasi Terhadap Tindak Pidana Korupsi dalam RKHUP. *Jurnal Hukum Lex Generalis*, 2(12), 1297–1318.  
<https://doi.org/10.56370/jhlg.v2i12.153>

Saputra, F. R. (2024). *PERTANGGUNGJAWABAN PIDANA KORPORASI DALAM TINDAK PIDANA DI BIDANG KEPABEANAN DI INDONESIA*. Universitas Jambi.

Silaban, R. (2022). *REKONSTRUKSI REGULASI PERTANGGUNGJAWABAN PIDANA KORPORASI SEBAGAI PELAKU TINDAK PIDANA LINGKUNGAN HIDUP BERBASIS NILAI KEADILAN*. Universitas Islam Sultan Agung.

Sriwidodo, J. (2019). *KAJIAN HUKUM PIDANA INDONESIA "Teori dan Praktek."* Kepel Press.

Sriwidodo, J. (2022). *PERTANGGUNJAWABAN KEJAHATAN KORPORASI DALAM SISTEM HUKUM PIDANA DI INDONESIA*. Kepel Press.

Sukoco, S., & Azmi, F. (2022). KOMPONEN-KOMPONEN MANAJEMEN RESIKO DALAM APLIKASI RESIKO KREDIT (PEMBIYAAAN) DI BANK SYARIAH INDONESIA UNIT PANDAN TAPANULI TENGAH. *Warta Dharmawangsa*, 16(3), 522–530.  
<https://doi.org/10.46576/wdw.v16i3.2244>