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The Evolution of Corporate Criminal Liability in Indonesia: A Theoretical and Comparative Analysis of Judgment No. 1405 K/Pid.Sus/2013 and the 2023 Criminal Code

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Abstract

This study examines the evolution of corporate criminal liability in Indonesia through a theoretical and comparative analysis of Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the regulatory framework introduced by Law Number 1 of 2023 concerning the Indonesian Criminal Code. The research aims to analyze how the construction of corporate liability has developed from a model centered on individual attribution of fault toward a more systemic and organizational form of responsibility. This study employs normative legal research with statutory, conceptual, and case approaches. The primary legal materials include the Supreme Court decision and relevant statutory provisions governing corporate criminal liability, while secondary materials consist of scholarly articles and legal literature discussing modern corporate liability doctrines. The findings show that the Supreme Court decision still relies on identification theory, where the actions and intentions of corporate managers are attributed to the corporation. In contrast, the 2023 Criminal Code introduces broader parameters of liability, including failure to prevent, omission, and control by beneficial owners. This shift reflects a significant transformation toward organizational liability, strengthening the effectiveness of criminal law enforcement against corporate crimes in Indonesia.

Keywords: *Corporate criminal liability, Identification theory, Organizational liability, Corporate crime, Indonesian Criminal Code 2023.*

INTRODUCTION

The development of corporations as modern economic entities has transformed the landscape of crime in contemporary society. Corporations are no longer perceived merely as instruments of production; rather, they are increasingly recognized as collective actors capable of causing substantial harm in environmental, economic, and public governance sectors. This transformation challenges the classical foundations of criminal law, particularly the principle of *nulla poena sine culpa* (no punishment without fault), which traditionally associates criminal liability with natural persons. The recognition of corporations as subjects of criminal law reflects the necessity of adapting legal systems to the growing complexity of modern criminal activities and organizational misconduct (Asnawi, 2025; Saipudin et al., 2025; Sari, 2023).

Corporate criminal liability in Indonesia has evolved gradually across various legal sectors before eventually being comprehensively codified within the national criminal law regime. Corporate punishment had previously been accommodated under several special statutes, particularly those concerning environmental crimes. However, the principal issue is no longer whether corporations can be recognized as offenders, but rather how criminal responsibility should be attributed and what liability model should be applied. Corporate economic crimes frequently involve complex decision-making structures and collective organizational processes, thereby requiring approaches that extend beyond traditional individualistic conceptions of culpability (Pratama, Ali, & Nugraha, 2025; Suriadiata, 2025; Widyaningrum et al., 2024).

Within judicial practice, these dynamics are reflected in Supreme Court Decision Number 1405 K/Pid.Sus/2013, which constitutes one of the most significant precedents concerning corporate criminal liability in environmental law. The Supreme Court affirmed that a corporation may be regarded as a criminal offender through the identification of acts committed by directors or managers occupying functional positions within the organizational structure. Nevertheless, this approach remains predominantly grounded in the identification theory, whereby the intentions and actions of corporate executives are equated with those of the corporation itself. Consequently, the decision has not fully embraced liability models based on organizational failure, defective corporate culture, or systemic governance deficiencies (Saipudin et al., 2025; Subaidi & Bahreisy, 2024).

In the context of environmental crimes, there has been a discernible shift toward the application of strict liability principles and the expansion of corporate accountability without the necessity of proving subjective fault. Strict liability in Indonesian environmental law is intended to strengthen ecological protection and overcome evidentiary difficulties associated with establishing *mens rea* within complex corporate structures (Ramdani, Wahyudi, & Putra, 2025). However, its implementation remains inconsistent in practice, with corporate liability often continuing to depend upon proof of personal fault attributable to corporate managers or directors. This inconsistency raises questions regarding the effectiveness of existing liability doctrines in addressing corporate misconduct (Romdoni, 2022; Sintung et al., 2022).

The issue of personal liability of corporate executives also remains a subject of ongoing legal debate. Directors and functional managers are frequently subjected to criminal sanctions for corporate offenses, particularly in environmental crime cases (Sujono, Iryani, & Rae, 2025). This situation generates fundamental questions concerning the boundary between individual liability and corporate liability as distinct legal entities. Excessive emphasis on managerial responsibility may obscure structural failures originating from organizational policies, governance mechanisms, or corporate culture. Consequently, attributing liability solely to individuals risks neglecting systemic factors that facilitate unlawful corporate conduct (Usman, 2023; Widyaningrum et al., 2024).

A significant development subsequently emerged through the enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (*Kitab Undang-Undang Hukum Pidana*). The new Criminal Code explicitly recognizes corporations as criminal law subjects and establishes comprehensive parameters for corporate criminal liability. This reformulation extends liability beyond corporate managers to include commanding parties, controlling persons, and beneficial owners, while also recognizing failures of prevention and supervision as grounds for criminal punishment. Such developments represent a substantial shift from conventional identification-based approaches toward broader conceptions of organizational accountability. Furthermore, the introduction of corporate fines and additional sanctions demonstrates an effort to enhance the effectiveness of corporate punishment within Indonesia’s post-reform criminal justice framework (Biyoto, Hastuti, & Sa’dillah, 2026; Sriwidodo & Tumanggor, 2024; Dewi et al., 2025).

Against this background of doctrinal evolution and competing paradigms, a comparative analysis between Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the corporate liability regime established under the 2023 Criminal Code becomes highly relevant. Such an analysis is necessary to assess the extent to which normative developments have addressed the limitations of earlier approaches and to evaluate the consistency of Indonesia’s corporate criminal liability doctrine. Accordingly, this study aims to examine theoretically and comparatively the evolution of corporate criminal responsibility in Indonesia in order to formulate a more comprehensive understanding of its future direction and doctrinal coherence within the national criminal law system.

RESEARCH METHODS

This study employs a normative legal research method using a conceptual approach and a case approach. The conceptual approach is utilized to analyze the development of corporate criminal liability theories in modern criminal law, including identification theory, vicarious liability, and organizational liability. Meanwhile, the case approach is applied to examine in depth the legal reasoning constructed in Supreme Court Decision Number 1405 K/Pid.Sus/2013, which constitutes one of the most significant judicial precedents concerning corporate criminal punishment in environmental cases. This research also adopts a statute approach by analyzing the provisions of Law Number 1 of 2023 concerning the Indonesian Criminal Code, particularly Articles 45–50, which regulate corporations as subjects of criminal offenses and establish the parameters of their criminal liability.

The study relies on secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include Supreme Court Decision Number 1405 K/Pid.Sus/2013, Law Number 32 of 2009 concerning Environmental Protection and Management, and Law Number 1 of 2023 concerning the Indonesian Criminal Code. Secondary legal materials are derived from journal articles, books, and scholarly studies discussing corporate criminal liability, the concept of beneficial ownership, and the doctrines of failure to prevent and corporate culture. Data were collected through library research and subsequently analyzed using qualitative analysis with a comparative method. This method involves comparing the construction of corporate criminal liability as reflected in judicial decisions with the normative formulation contained in the 2023 Criminal Code in order to identify the paradigm shift from an individual-based liability model toward an organization-based liability model.

RESULTS AND DISCUSSION

Construction and Evolution of Corporate Criminal Liability in the Indonesian Criminal Law System: A Study of Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the 2023 Criminal Code

The construction of corporate criminal liability within the Indonesian legal system reflects a paradigm shift from an individualistic model toward an organizational and collective model of responsibility. Traditionally, criminal law has been founded upon the principle of *actus non facit reum nisi mens sit rea* (an act does not make a person guilty unless the mind is guilty), which doctrinally attaches criminal culpability to human beings as natural persons. However, the development of modern crime, particularly environmental crime, has necessitated recognition that collective entities possessing organizational structures, assets, and institutional intentions may also function as perpetrators of criminal offenses. This recognition has now been explicitly codified in Law Number 1 of 2023 concerning the Indonesian Criminal Code.

Prior to its codification in the 2023 Criminal Code, corporate criminal liability was regulated sectorally through various special statutes. Under Law Number 32 of 2009 concerning Environmental Protection and Management, corporations had already been recognized as criminal subjects through the phrase “every person,” which includes legal entities. Nevertheless, the legislation did not provide systematic and measurable parameters for attributing fault, resulting in judicial practice being largely dependent upon judicial interpretation in determining the relationship between corporate managers and the corporate entity itself.

Supreme Court Decision Number 1405 K/Pid.Sus/2013 constitutes a significant judicial precedent in the development of corporate criminal liability in Indonesia. The case concerned an environmental offense involving the unlawful dumping of waste without authorization in the course of corporate business activities. The legal basis of the prosecution was Article 104 in conjunction with Article 116 of Law Number 32 of 2009 concerning Environmental Protection and Management.

> *“Any person who conducts the dumping of waste and/or materials into environmental media without a permit as referred to in Article 60 shall be punished with imprisonment for a maximum of three years and a fine of up to IDR 3,000,000,000 (three billion rupiah).”*

The Supreme Court affirmed that a corporation may be held criminally liable where a criminal act is committed by directors or individuals occupying functional positions within the organizational structure and acting for and on behalf of the corporation. From a doctrinal perspective, the Court adopted the *identification theory*, under which the intentions and actions of senior corporate officers are identified as the intentions and actions of the corporation itself (*directing mind and will*). Originating from the Anglo-Saxon legal tradition, this theory seeks to overcome the conceptual difficulty that corporations do not possess biological consciousness. Consequently, subjective fault (*mens rea*) is transformed into institutional fault through the attribution of criminal responsibility to senior executives or structural officials. Nevertheless, this model remains limited because it focuses primarily on formal corporate actors and does not adequately address systemic failures, informal power structures, or corporate culture, including situations involving organizational tolerance or omission.

The approach adopted in Supreme Court Decision Number 1405 K/Pid.Sus/2013 differs substantially from the doctrine of *vicarious liability*, which imposes liability upon corporations for acts committed by employees within the scope of their employment without requiring proof of fault on the part of senior management. In contrast, the 2023 Criminal Code introduces a more comprehensive normative framework through Articles 45–50. Article 45 explicitly recognizes corporations as subjects of criminal offenses. Articles 46 and 47 broaden the scope of responsible actors to include functional managers, commanding parties, controlling persons, and beneficial owners. This development demonstrates a transition from a purely identification-based model toward a model grounded in factual control and organizational influence (*functional control theory*).

Article 48 of the 2023 Criminal Code further establishes structured parameters for corporate criminal liability. A corporation may be held liable where: (a) the offense is committed within the scope of its business activities; (b) the offense unlawfully benefits the corporation; (c) the conduct is accepted as corporate policy; (d) the corporation fails to undertake adequate preventive measures; or (e) the corporation tolerates or permits the unlawful conduct. These provisions implicitly incorporate the *failure to prevent doctrine* and the *corporate culture model*, thereby enabling fault to be established on the basis of organizational failure rather than solely through personal misconduct.

The evolution of corporate criminal liability demonstrates a shift from the personalization of fault toward the institutionalization of fault. Supreme Court Decision Number 1405 K/Pid.Sus/2013 represents a transitional phase that remains largely dependent upon identification theory, whereas the 2023 Criminal Code conceptualizes corporate fault within a broader systemic and structural framework.

Accordingly, the construction of corporate criminal liability in Indonesia has evolved from sectoral recognition toward a comprehensive codified system. While Supreme Court Decision Number 1405 K/Pid.Sus/2013 serves as an important milestone in this development, the 2023 Criminal Code introduces a more mature and progressive normative framework by integrating contemporary theories of corporate criminal liability into the national criminal law system.

Table 1. Comparison of Corporate Criminal Liability Construction between Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the 2023 Criminal Code

Aspect	Supreme Court Decision Number 1405 K/Pid.Sus/2013	2023 Criminal Code
Legal Basis	Article 104 in conjunction with Article 116 of Law No. 32 of 2009	Articles 45–50
Status of Corporation	Recognized through judicial interpretation	Explicitly recognized
Dominant Theory	Identification Theory	Organizational Fault and Failure to Prevent
Responsible Subjects	Functional managers	Corporation, managers, commanding parties, controlling persons, and beneficial owners
Model of Fault Attribution	Personal-to-corporate	Systemic and structural

Table 1 demonstrates fundamental differences in the construction of corporate criminal liability between the jurisprudential approach reflected in Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the codified approach adopted by the 2023 Criminal Code. Under the Supreme Court decision, liability remains dependent upon identifying the actions and intentions of corporate managers as representations of the corporation itself. Consequently, corporate fault is derived from the fault of specific individuals occupying strategic positions. This approach indicates a relatively limited conception of liability that remains focused on formal actors and may overlook broader structural dimensions within the corporation.

Conversely, the 2023 Criminal Code adopts a more comprehensive and progressive approach by shifting the focus from the personalization of fault toward the recognition of institutional fault. Through the expansion of liable subjects and the incorporation of liability parameters based upon omission and failure of prevention, Indonesian criminal law increasingly accommodates the complexity of modern corporate crime. Corporations are therefore no longer regarded merely as passive entities whose liability depends exclusively upon their managers. Instead, they are recognized as active legal subjects capable of bearing responsibility for organizational culture, internal policies, and ineffective control mechanisms that facilitate unlawful conduct.

Differences in Paradigm Between Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the 2023 Criminal Code: The Shift in Liability Models and Its Implications for Law Enforcement Effectiveness

The paradigm shift between Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the 2023 Criminal Code can be observed from their respective conceptual foundations concerning the attribution of fault. The Supreme Court decision was grounded in an individualized liability approach, whereby corporate liability was derived from the actions and culpability of corporate managers. In contrast, the 2023 Criminal Code develops a collectivized conception of fault by recognizing the existence of systemic organizational wrongdoing, including deficient corporate culture, institutional tolerance of unlawful conduct, and failures in internal governance mechanisms. This transition reflects a broader evolution in criminal law from a person-centered model of liability toward an organization-centered framework that acknowledges the autonomous role of corporations in generating criminogenic risks.

Within Supreme Court Decision Number 1405 K/Pid.Sus/2013, evidentiary assessment primarily focused on the concrete act of unlawfully dumping waste without a permit. The elements of the offense were established through the causal relationship between the prohibited conduct and its environmental consequences. However, the judgment did not undertake a comprehensive examination of corporate policies, compliance mechanisms, or internal supervisory structures. As a result, corporate fault was conceptualized as derivative of individual misconduct rather than as an independent manifestation of organizational failure. Consequently, the corporation's liability remained contingent upon the ability to attribute culpability to specific managerial actors.

The 2023 Criminal Code introduces a substantially different framework by incorporating failure to prevent and organizational omission as independent grounds of corporate criminal liability. This approach reflects the concept of *due diligence obligation*, which imposes a legal duty upon corporations to establish and maintain effective compliance systems capable of preventing criminal conduct within their organizational structures. Under this model, liability may arise even in the absence of demonstrable personal intent (*mens rea*) on the part of corporate managers, provided that the corporation failed to implement reasonable preventive measures or tolerated unlawful conduct occurring within its sphere of activity.

Article 48 of Law Number 1 of 2023 provides that a corporation may be held criminally liable where:

> *"The corporation fails to undertake necessary measures to prevent criminal conduct, mitigate greater adverse consequences, and ensure compliance with applicable legal provisions in order to avoid the commission of criminal offenses."*

This provision reflects a significant transition from the traditional *subjective fault model* toward a framework of *objective organizational liability*. Such an approach is particularly responsive to the realities of contemporary multinational corporations characterized by complex, decentralized, and layered governance structures. The implications for law enforcement effectiveness are substantial. Under the previous paradigm, proving the *mens rea* of individual managers frequently constituted a significant evidentiary obstacle. Under the new framework, the focus shifts toward identifying systemic failures, thereby broadening the scope of proof and facilitating the attribution of liability to organizational deficiencies rather than exclusively to individual wrongdoing.

Furthermore, the expansion of liable parties to include controlling persons and beneficial owners under the 2023 Criminal Code significantly reduces the possibility of exploiting corporate structures as legal shields against criminal responsibility. This development closely resembles the doctrine of *piercing the corporate veil* within the criminal law context, whereby individuals exercising actual control over corporate decision-making processes may be held accountable despite the formal separation between the corporation and its stakeholders. Consequently, the law becomes better equipped to address sophisticated forms of corporate misconduct involving hidden ownership structures and indirect control mechanisms.

The new paradigm also strengthens deterrence through the imposition of additional sanctions and financial penalties proportionate to the unlawful benefits obtained by the corporation. Such an approach effectively internalizes the social costs of corporate wrongdoing into the corporation's economic structure, thereby reducing incentives for non-compliance. Nevertheless, the effectiveness of these reforms ultimately depends upon the institutional capacity of law enforcement agencies to investigate complex corporate structures, identify controlling relationships, and uncover internal decision-making processes. Without sophisticated corporate investigations and adequate forensic capabilities, progressive legal norms may fail to achieve their intended practical impact.

The foregoing developments demonstrate that the Indonesian criminal justice system is moving toward a model of liability that is more responsive to the realities of modern corporate crime. This transformation is substantive rather than merely symbolic. The differences between Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the 2023 Criminal Code represent a fundamental doctrinal shift in corporate criminal liability: from the personalization of fault to the institutionalization of fault, from a reactive model of punishment to a preventive model of governance, and from a sectoral approach to a comprehensive systemic framework.

Table 2. Paradigmatic Differences in Corporate Criminal Liability Between Supreme Court Decision Number 1405 K/Pid.Sus/2013 and the 2023 Criminal Code

Dimension	Supreme Court Decision Number 1405 K/Pid.Sus/2013	2023 Criminal Code
Paradigm	Individual Liability	Organizational Liability
Focus of Proof	Conduct of Corporate Managers	Systemic Failure and Corporate Policy
Scope of Liable Actors	Corporate Managers	Corporation, Controlling Persons, and Beneficial Owners
Fault Model	Subjective Fault	Objective-Structural Fault
Preventive Effectiveness	Limited	More Preventive and Compliance-Oriented

Table 2 further confirms the existence of a significant paradigm shift from an individual-based liability model toward an organization-based liability framework within Indonesian criminal law. In Supreme Court Decision Number 1405 K/Pid.Sus/2013, the principal focus remained on the conduct and culpability of corporate managers as representatives of the corporation. Consequently, criminal liability depended heavily upon the ability to establish a connection between the *mens rea* of individual actors and the criminal conduct committed. This approach resulted in a relatively narrow scope of accountability and was often incapable of addressing systemic corporate practices, including organizational tolerance, inadequate supervision, or structural deficiencies in compliance systems.

By contrast, the 2023 Criminal Code expands the dimensions of liability by emphasizing failures in corporate systems, policies, and governance structures. This approach enhances the effectiveness of criminal law enforcement because liability no longer depends exclusively upon proving individual malicious intent. Instead, it may be established through evidence demonstrating organizational negligence in fulfilling legal obligations and due diligence requirements. Accordingly, the new paradigm not only strengthens the repressive function of criminal law but also promotes preventive compliance by requiring corporations to maintain effective internal control mechanisms. At the same time, it closes opportunities for the misuse of corporate entities as instruments for evading criminal responsibility, thereby ensuring a more comprehensive and effective framework for addressing corporate crime in Indonesia.

CONCLUSION

Corporate criminal liability within the Indonesian criminal law system has undergone a significant evolution from an individual-based model of fault attribution toward a more systemic and organization-oriented framework of responsibility. This development is reflected in the comparison between Supreme Court Decision Number 1405 K/Pid.Sus/2013, which relied predominantly on the *identification theory* by attributing corporate fault to the conduct of managers occupying functional positions within the corporate structure, and Law Number 1 of 2023 concerning the Criminal Code, which explicitly recognizes corporations as subjects of criminal offenses and broadens the basis of liability through the concepts of failure to prevent, organizational tolerance, and factual control. This shift demonstrates a fundamental transformation in the paradigm of Indonesian criminal law toward a more comprehensive, preventive, and responsive model of corporate criminal liability that is better equipped to address the complexities of contemporary corporate crime.

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