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Corporate Criminal Liability for Environmental Harm after the New Indonesian Criminal Code: Harmonizing Attribution, Organizational Fault, and Sanctions

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Abstrak

Berlakunya Undang-Undang Nomor 1 Tahun 2023 tentang KUHP pada 2 Januari 2026 menempatkan pertanggungjawaban pidana korporasi dalam kerangka umum hukum pidana nasional di samping ketentuan sektoral yang telah ada. Artikel ini menganalisis hubungan antara ketentuan korporasi dalam KUHP, UU Penyesuaian Pidana, Pasal 116-119 UU PPLH, dan PERMA No. 13 Tahun 2016. Penelitian menggunakan pendekatan yuridis untuk membedakan atribusi perbuatan, kesalahan organisasi, tanggung jawab individu, hubungan izin administratif dengan unsur pidana, serta kalibrasi sanksi. Hasil analisis menunjukkan kebutuhan membaca UU PPLH sebagai aturan sektoral bersama kerangka umum KUHP tanpa mengubah setiap pelanggaran pegawai menjadi kesalahan korporasi. Artikel menawarkan model tiga tahap: conduct attribution, organizational fault, dan sanction calibration. Model ini merupakan kerangka reasoning yang tetap mensyaratkan pembuktian unsur delik. Pemulihan, denda, perampasan keuntungan, reformasi kepatuhan, dan pembatasan kegiatan harus diterapkan sesuai dasar serta kompetensi masing-masing rezim dan prinsip proporsionalitas.

Keywords: pertanggungjawaban pidana korporasi; tindak pidana lingkungan; KUHP nasional; kesalahan organisasi; pemulihan lingkungan.

Abstract

The entry into force of Law Number 1 of 2023 on the Indonesian Criminal Code on 2 January 2026 places corporate criminal liability within the general architecture of national criminal law alongside pre-existing sectoral provisions. This article examines the relationship among the Criminal Code, the Criminal Adjustment Law, Articles 116-119 of the Environmental Law, and Supreme Court Regulation No. 13 of 2016. The juridical analysis separates attribution of conduct, organizational fault, individual responsibility, the relevance of administrative permits, and sanction calibration. The study argues that the Environmental Law remains a sectoral basis that must be read together with the Criminal Code's general corporate rules without converting every employee violation into corporate fault. A three-stage model conduct attribution, organizational fault, and sanction calibration is proposed as a reasoning framework that still requires proof of the underlying offence. Fines, disgorgement, restoration, compliance reform, and activity restrictions must be tied to their respective legal bases, institutional competences, and proportionality safeguards.

Keywords: *corporate criminal liability; environmental crime; Indonesian Criminal Code; organizational fault; environmental restoration.*

INTRODUCTION

Corporate criminal liability in Indonesia entered a new phase when Law Number 1 of 2023 on the Criminal Code came into force on 2 January 2026. Before that point, corporations had long been recognized as subjects of criminal offences under various special statutes, including environmental, corruption, money-laundering, and certain economic-sector laws. Yet the absence of a general framework in the former Criminal Code meant that attribution theories, standards of fault, the parties who could be held liable, and the available sanctions developed along sectoral lines. The new national Criminal Code changes that position by expressly recognizing corporations as subjects of criminal offences and regulating who may commit a corporate offence, when conduct may be attributed to a corporation, who may be held responsible, and which factors are relevant to sentencing. This shift requires a renewed reading of sectoral statutes that had already regulated corporate liability.

The environmental sector is a particularly important testing ground because ecological harm often arises through complex organizations, divisions of labour, investment decisions, and corporate compliance systems. Harm cannot always be reduced to a single individual decision. It may result from unrealistic production targets, cuts to waste-treatment budgets, a corporate culture that tolerates violations, failure to act on internal reports, or strategies that internalize profits while externalizing environmental costs. The literature on corporate criminal liability shows that models focused only on identifying a "directing mind" or a single officer who embodies corporate fault are often inadequate for modern organizations. The 2023 Criminal Code therefore creates an opportunity to shift the analysis from narrow personification toward organizational fault.[1]

Law Number 32 of 2009 on Environmental Protection and Management has regulated criminal offences committed by business entities through Articles 116 to 119. Article 116 permits prosecution and sanctions against a business entity and/or the person who gives orders or acts as the leader of the activity. Article 117 provides for enhanced punishment of the person giving orders or acting as a leader, Article 118 governs the representation of a business entity in criminal proceedings, and Article 119 provides additional penalties or disciplinary measures such as confiscation of profits, closure of business premises, remediation of the consequences of the offence, performance of neglected obligations, and placement of the company under supervision. This architecture was more advanced than the former Criminal Code, but it was designed before the national Criminal Code established general standards for corporate liability.

Law Number 1 of 2026 on Criminal Adjustment underscores the need to align criminal provisions outside the Criminal Code with Book One of the Criminal Code so as to avoid disparity, duplication, and legal uncertainty. As a consequence, law-enforcement authorities can no longer treat Articles 116-119 of the Environmental Law as an isolated normative island. Those provisions must be read together with Article 45 and the following provisions of the Criminal Code on corporate offences,

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[1] Jeremy Horder, "Corporate Criminal Liability under the Economic Crime and Corporate Transparency Act 2023," *Legal Studies* 45, no. 1 (2025): 133–148, https://doi.org/10.1017/lst.2024.46.

including the criteria that conduct occurs within the scope of the business, unlawfully benefits the corporation, is accepted as corporate policy, results from failures of prevention and compliance, or is tolerated by the corporation. The interaction between these general and special rules is both the source of, and the pathway toward, harmonization.

Attribution is not merely a technical question of proof; it determines who is treated as the moral and legal actor. In large organizations, environmental decisions may pass through long chains of command. If the law always requires proof that the board of directors directly ordered illegal waste disposal, corporations may benefit from delegation structures specifically designed to separate senior management from risky operations. Conversely, if every employee violation is automatically attributed to the corporation, the law effectively creates strict liability inconsistent with the principle of fault. International scholarship frames this debate in terms of identification, vicarious liability, organizational liability, and failure-to-prevent models. Indonesia must identify a combination that fits the wording of the Criminal Code and the distinctive characteristics of environmental crime.[2]

The second issue concerns the relationship between administrative permits and criminal unlawfulness. Many environmentally risky activities operate under approvals, business licences, quality standards, or technical requirements. Under a traditional approach, formal compliance with a permit may create the impression that corporate conduct is not unlawful. Yet a permit should not become a "permit shield" for conduct that plainly violates substantive obligations, is based on false information, or is invoked to justify harm beyond the permitted limits. Developments in European environmental law have moved toward recognizing that compliance with an administrative permit does not necessarily exclude criminality where there is a manifest breach of substantive legal requirements. That development is conceptually relevant to Indonesia, although it must be adapted to the national principle of legality.[3]

The third issue concerns sanctions. A nominal fine that is small in comparison with the economic benefit of a violation may simply be treated as a cost of doing business. In environmental crime, unlawful gains may take the form of savings on waste-treatment costs, avoidance of technological investment, accelerated production, revenue from unlicensed activities, or the transfer of restoration costs to the state and the public. Deterrence analysis suggests that sanctions below the expected gain, adjusted for the probability of enforcement, create an economic incentive to offend. Corporate sentencing must therefore connect fines, disgorgement, restoration costs, and the probability of detection.[4]

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[2] Hartoto Suci Rahayu and Diana Lukitasari, "The Concept of Corporate Criminal Liability in the Law on Information and Electronic Transactions," *IJCLS (Indonesian Journal of Criminal Law Studies)* 6, no. 1 (2021): 83–92, https://doi.org/10.15294/ijcls.v6i1.38400.

[3] Michael G. Faure, "The EU Environmental Crime Directive 2024: A Revolution in EU Environmental Criminal Law?," *Journal of Environmental Law* 36, no. 3 (2024): 323–342, https://doi.org/10.1093/jel/eqae020.

[4] Riku Lindqvist et al., "The Deterrence Effect of Criminal Sanctions against Environmental Crime in Finland: An Application of the Rational Choice Model of Crime," *European Journal of Law and Economics* 58 (2024): 175–200, https://doi.org/10.1007/s10657-024-09818-8.

Environmental criminal law, however, cannot stop at economic deterrence. Ecological harm has temporal and collective dimensions: soil, water, habitats, and community health may remain affected long after criminal proceedings end. A restorative orientation requires sanctions that compel corporations to internalize restoration costs, repair organizational systems, and prevent recurrence. International debates on ecocide and corporate environmental responsibility reflect growing attention to the capacity of business entities to cause large-scale harm through economic structures and organized decision-making. Indonesia need not adopt the concept of ecocide directly to resolve every problem, but the debate reinforces the view that corporate harm must be understood as a systemic issue rather than merely as individual negligence.[5][6]

Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases by Corporations has provided important guidance for the judiciary, including indicators of corporate fault such as obtaining benefits or advantages, allowing an offence to occur, or failing to take preventive measures, mitigate greater consequences, and ensure compliance. These indicators are substantively close to the formulation of the 2023 Criminal Code. That proximity creates an opportunity for harmonization, but it also raises the question of how the Supreme Court Regulation should be positioned after the enactment of a newer and higher-ranking statute. The Regulation remains procedurally important, but the substantive parameters of liability should be derived primarily from the Criminal Code and sectoral legislation.

The novelty of this article lies in a three-stage harmonization model directly linked to the function of each legal norm. Conduct attribution determines whether the act of a person or an organizational process can be connected to corporate activity on the basis of functional position, employment or other relationships, business scope, corporate interest, and control. Organizational fault then assesses whether the corporation is blameworthy by examining indicators such as unlawful benefit, adoption as policy, failure to prevent, tolerance, capacity for control, and the effectiveness of the compliance system, as read jointly under the Criminal Code, the Environmental Law, and Supreme Court Regulation No. 13/2016. Sanction calibration is undertaken only after the offence and the basis of liability have been established, taking into account fault, unlawful gain, ecological harm, restoration capacity, and the risk of recurrence. Separating these stages prevents evidence of an employee's conduct from being treated as automatic proof of corporate fault.[7]

This article addresses three questions. First, what is the position of corporate criminal liability rules after the national Criminal Code and the Criminal Adjustment

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[5] Mohammad Arqon and Danil Mustafa, "Penerapan Restoratif Justice dalam Kecelakaan Lalu Lintas," *Adagium: Jurnal Ilmiah Hukum* 2, no. 2 (2024): 90–107, https://doi.org/10.70308/adagium.v2i2.38.

[6] Danuta Palarczyk, "Ecocide Before the International Criminal Court: Simplicity is Better Than an Elaborate Embellishment," *Criminal Law Forum* 34 (2023): 147–207, https://doi.org/10.1007/s10609-023-09453-z.

[7] Mohammad Arqon et al., "Konsep Pertanggungjawaban Pidana pada Korporasi dalam Kasus Tata Kelola Minyak Mentah dan Produk Kilang PT. Pertamina: Dalam Perspektif Pasal 2 UU Tipikor," *Adagium: Jurnal Ilmiah Hukum* 4, no. 1 (2026): 184–220, https://doi.org/10.70308/adagium.v4i1.331.

Law came into force? Second, where do disharmonies arise among the Criminal Code, the Environmental Law, and Supreme Court Regulation Number 13 of 2016 in relation to attribution and sentencing? Third, how can organizational fault and sanctions be structured to produce both deterrence and ecological restoration? The analysis seeks a construction applicable to different forms of business entity without eliminating the individual responsibility of directors, persons giving orders, controllers, or beneficial owners where their personal contribution is proven.

Corporate criminal liability is increasingly important in environmental governance, which relies heavily on risk-based licensing, technical standards, and self-reporting. When administrative oversight cannot detect or stop violations at an early stage, criminal law serves as a backstop for conduct involving serious fault and danger. This does not mean that every permit violation should be criminalized. On the contrary, the distinction between administrative non-compliance and criminal wrongdoing must be made more explicit. Criminal law is appropriately used where the elements of an offence and fault are present, for example where a corporation knowingly exceeds standards, manipulates data, tolerates an obvious risk, or profits from unlawful cost savings. Criminal enforcement therefore complements rather than replaces administrative supervision.[8]

The changing architecture of the Criminal Code is also relevant to trends in deregulation because simplified business procedures may increase the need for consistent ex post accountability. If the state removes certain administrative barriers without strengthening mechanisms of corporate attribution and prevention, the costs of risk may be shifted to the public. Conversely, liability that is imposed too readily creates uncertainty and may encourage disproportionate defensive compliance. The legal challenge is to strike a balance: corporations should be able to predict the standards of conduct expected of them, while organizational structures, outsourcing, and group complexity must not become loopholes that obscure who benefits and who has the capacity to prevent harm.[9]

RESEARCH METHOD

This study adopts a juridical approach. The primary legal materials include Law Number 1 of 2023 on the Criminal Code, Law Number 1 of 2026 on Criminal Adjustment, Law Number 32 of 2009 on Environmental Protection and Management together with its relevant amendments, and Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases by Corporations. The Constitution is used as the basis for assessing legal certainty and the right to a good and healthy environment. The study does not empirically measure the number of cases or the effectiveness of enforcement; judicial decisions and practice are used only as contextual material where necessary to understand doctrinal problems.

The statutory approach is used to map who may commit a corporate offence, the criteria for liability, grounds of justification and excuse, sentencing parameters,

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[8] Febrian Chandra et al., "The Effectiveness of Environmental Law within Regional Development Policies in Disaster-Prone Areas of Sumatra," *Adagium: Jurnal Ilmiah Hukum* 4, no. 1 (2026): 221–237, https://doi.org/10.70308/adagium.v4i1.335.

[9] M. Arief Amrullah, "Issuance of Business License as a Criminogenic Factor of Environmental Crimes by Corporations," *Jurnal Cakrawala Hukum* 15, no. 1 (2024): 9–20, https://doi.org/10.26905/idjch.v15i1.14365.

and the available sanctions. The conceptual approach distinguishes identification doctrine, vicarious liability, organizational fault, failure to prevent, due diligence, and benefit-based attribution. International literature on corporate criminal liability and environmental crime is used in a limited comparative manner to test the coherence of Indonesia's legal choices.

The analysis proceeds through horizontal and vertical synchronization. Horizontal synchronization compares the corporate provisions of the Criminal Code with Articles 116-119 of the Environmental Law and the indicators in Supreme Court Regulation No. 13/2016, paying attention to matters supplemented by general rules and matters that remain specifically governed by sectoral legislation. Vertical synchronization tests consistency with legality, fault, proportionality, the right to a good and healthy environment, and the purposes of punishment. The three-layer model is then used as a reasoning tool rather than as a substitute for the elements of an offence. The article does not conduct a structured case-law study; accordingly, statements about enforcement patterns are framed as doctrinal risks or investigative recommendations rather than statistical findings.

The study has several limitations. It does not measure the number of corporate cases, patterns of prosecution against managers, the effectiveness of fines, restoration costs, the quality of compliance programs, or the impact of sanctions on workers and communities. Empirical testing of judicial decisions, investigative practice, and the implementation of restoration measures is required to assess the effectiveness of the proposed model.

RESULTS AND DISCUSSION

The Repositioning of Corporate Liability in the National Criminal-Law System

Article 45 of Law Number 1 of 2023 on the Criminal Code expressly recognizes corporations as subjects of criminal offences. This recognition has systemic consequences because corporate liability is no longer merely an exception created by special statutes. The following provisions regulate offences committed by managers holding functional positions, persons acting on the basis of employment or other relationships for and on behalf of or in the interest of a corporation, as well as persons giving orders, controllers, or beneficial owners who may stand outside the formal organizational structure. Through this model, Indonesian law moves beyond the narrow view that only formal directors can connect conduct to a corporation.[10]

Expanding the range of possible actors does not amount to unlimited expansion of liability. The Criminal Code distinguishes conduct carried out in a corporate context from conduct that is attributable to the corporation itself. Criteria such as business scope, unlawful benefit, acceptance as policy, failure to take preventive and compliance measures, or tolerance confirm that organizational blameworthiness remains necessary. This structure is closer to an organizational-failure model than to the classical identification doctrine. Comparative scholarship shows that systems focused solely on identifying the fault of senior officers often fail

[10] Muhammad Wahyu Alfakar et al., "Evolution of Corporate Criminal Liability Models and Theories under Indonesian New Criminal Code," *IJCLS (Indonesian Journal of Criminal Law Studies)* 8, no. 2 (2023): 261–288, https://doi.org/10.15294/ijcls.v8i2.36741.

in large companies because decision-making functions are dispersed and not all information reaches the board.

In the environmental context, the distinction between conduct and fault is crucial. An operator may incorrectly set a valve, causing waste discharges to exceed applicable standards. The operator's act occurs within the scope of employment, but the corporation is not automatically blameworthy if it had designed a compliant system, provided adequate training, maintained its equipment, exercised reasonable supervision, and the incident was genuinely an unforeseeable individual deviation. By contrast, corporate blameworthiness may arise where the incident is the systemic result of cost-cutting, deliberately deferred maintenance, disabled alarms, or ignored internal reports. Organizational fault directs the court to the quality of the system that shaped the conduct.

The Criminal Adjustment Law reinforces the need to read offences outside the Criminal Code together with Book One of the Code, but the relationship between lex generalis and lex specialis must be determined norm by norm. The Environmental Law continues to define environmental offences, the parties who may be prosecuted within its sectoral construction, and certain additional measures. The general provisions of the Criminal Code supplement corporate-subject status, attribution, culpability, and sentencing principles insofar as the special statute does not provide otherwise. Harmonization therefore does not mean displacing Articles 116-119 of the Environmental Law or treating Book One of the Criminal Code as the sole source of law; instead, it requires an inquiry into whether a special rule, a supplementary rule, or a conflict exists and must be resolved under the applicable principles of legislation.

This relationship also affects individual liability. Holding office as a director, manager, controller, or beneficial owner does not in itself establish fault. Personal liability requires a factual and normative connection to the offence, such as issuing an order, exercising control over a material decision, possessing relevant knowledge, tolerating a known risk, or making another contribution that satisfies the required element of fault. This approach avoids scapegoating field managers while also preventing group structures or beneficial ownership from being used as a shield where the evidence demonstrates actual control.[11]

The recognition of beneficial owners and controllers in the Criminal Code is particularly relevant to extractive industries and companies operating through group structures. An operating company may hold only limited assets while investment decisions, production standards, or financial targets are set by a parent entity. Where the evidence shows that an external controller directed a policy that caused the offence, formal structure should not operate as a shield. At the same time, ownership alone is insufficient. There must be evidence of control or contribution that satisfies the requirements of personal liability.

International developments increasingly recognize that corporate liability is important for addressing harm that cannot be fully explained through individual conduct. Literature on international criminal justice has even argued that an

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[11] Andri G. Wibisana, Michael G. Faure, and Raisya Majory, "Error in Personam: Confusion in Indonesia's Environmental Corporate Criminal Liability," *Criminal Law Forum* 32, no. 2 (2021): 247–284, https://doi.org/10.1007/s10609-021-09412-6.

exclusive focus on individuals does not always capture the full structure of wrongdoing where corporations are involved in serious violations and resource exploitation. For Indonesia, the relevant lesson is not an expansion of international jurisdiction, but the principle that an organization may itself be a centre of decision-making and a recipient of benefits independently of the fault of any one person.[12]

The national Criminal Code also provides a basis for evaluating compliance programs. The existence of written policies is not automatically a defence. A corporation that has a code of conduct but does not provide budgets, personnel, inspections, and corrective mechanisms cannot credibly claim to have taken preventive measures. Conversely, a genuine compliance system may support the conclusion that an offence was an individual deviation. The assessment must be substantive: were risks identified, were obligations translated into procedures, were responsibilities clearly assigned, was reporting supported, were violations addressed, and did management respond to warning signs?[13]

The changed position of corporations under the Criminal Code also requires law-enforcement authorities to reorient their investigations. A corporate investigation cannot stop at collecting waste samples and interviewing operators. Investigators must examine decision-making structures, budgets, minutes, emails, production targets, environmental audits, consultants' recommendations, incident reports, whistleblowing records, vendor contracts, and management responses. Such organizational evidence helps determine whether an incident was an accident, rogue-employee conduct, negligence, or corporate policy. Without investigation at the system level, the organizational-fault provisions of the Criminal Code will remain rules on paper.

The 2023 Criminal Code therefore positions corporate criminal liability within general criminal law through a hybrid model. It is not purely vicarious liability because liability still depends on specified criteria, and it is not purely identification doctrine because the relevant actor may be found at different levels or outside the formal structure. The model creates the greatest room for an organizational-fault analysis. The next challenge is to harmonize that model with the Environmental Law and the procedural framework that has operated under Supreme Court Regulation Number 13 of 2016.

An organizational-fault framework must also be capable of reading corporate culture. Corporate policy is not always expressed through written instructions. Production targets that cannot be met without exceeding emission limits, bonuses based solely on volume, repeated tolerance of manipulated reports, or promotion systems that penalize managers who halt production may indicate that violations are structurally accepted. Conversely, a well-drafted code of conduct carries little weight if day-to-day practice shows the opposite. Courts should distinguish paper compliance from effective compliance by examining budget allocations, the

[12] Elies van Sliedregt, "The Future of International Criminal Justice is Corporate," *Journal of International Criminal Justice* 23, no. 1 (2025): 17–26, https://doi.org/10.1093/jicj/mqaf004.

[13] Paulo De Sousa Mendes, "Responsive Regulation, Enforced Self-regulation, and Corporate Liability," *Criminal Law Forum* 33, no. 4 (2022): 285–321, https://doi.org/10.1007/s10609-022-09445-5.

authority of environmental functions, responses to audit findings, escalation mechanisms, and internal consequences for violations.[14]

Another issue concerns parent-subsidiary relationships. Share ownership alone is insufficient to attribute a subsidiary's offence to its parent company. Yet separate legal personality should not become a veil where the parent in fact determines budgets, technology, targets, or decisions that create the relevant risk. The analysis should focus on control and contribution: who controls the relevant decision, who receives risk information, who can halt the activity, and who receives the benefit? This approach respects separate legal personality while preventing corporate-group design from artificially transferring all criminal risk to thinly capitalized operating entities.

Causation in cases of environmental harm also requires careful analysis. Damage to rivers, air, soil, or habitats may have multiple sources and may occur cumulatively. Prosecutors must still prove causation in accordance with the elements of the charged offence, but proof does not necessarily require a single exclusive source. Baseline data, temporal patterns, contaminant characteristics, dispersion models, production records, and evidence of exceedance may together support a strong causal inference. At the same time, courts must not fill scientific uncertainty with an automatic presumption that the nearest company is responsible. The precautionary principle may guide preventive environmental regulation, but a criminal conviction continues to require the applicable criminal standard of proof.

Disharmony between the Criminal Code, the Environmental Law, and Corporate-Crime Procedure

Article 116 of the Environmental Law and the corporate provisions of the Criminal Code overlap, but they are constructed differently. The Environmental Law uses the formula that an offence is committed by, for, or on behalf of a business entity and then identifies the business entity and/or the person giving orders or acting as a leader as parties who may be prosecuted and sanctioned. The Criminal Code provides a more detailed definition of corporate actors and criteria for liability. If Article 116 is read in isolation, a prosecutor may stop at the formal relationship of acting "for or on behalf of" the business entity without explaining why the organization itself is blameworthy. After the Criminal Code came into force, proof should answer two separate questions: can the conduct be attributed to the corporation, and are the criteria for corporate fault satisfied?[15]

Article 118 of the Environmental Law has often been read as ambiguous because it provides that, for certain offences, criminal sanctions are imposed on a business entity represented by the manager authorized to represent it in and outside court as the functional perpetrator. Procedurally, a corporation does require a representative in criminal proceedings, but representation must not be

[14] Lieselot Bisschop, Yogi Hendlin, and Jelle Jaspers, "Designed to Break: Planned Obsolescence as Corporate Environmental Crime," *Crime, Law and Social Change* 78, no. 3 (2022): 271–293, https://doi.org/10.1007/s10611-022-10023-4.

[15] Muhammad Aditya Wijaya and Alif Imam Dzaki, "Corporate Criminal Liability on Environmental Law: Indonesia and Australia," *Mulawarman Law Review* 8, no. 2 (2023): 16–28, https://doi.org/10.30872/mulrev.v8i2.1306.

interpreted as replacing the corporate subject with the manager. The Criminal Code's express recognition of corporations as criminal subjects reinforces this separation: the corporation is a defendant or convicted person in its own right, while the manager appears to represent the legal entity in the proceedings and may also be prosecuted individually where the elements of personal liability are proven.[16]

Supreme Court Regulation Number 13 of 2016 anticipated many of these issues by providing guidance for assessing corporate fault, including benefit, tolerance, and failure to prevent. After the Criminal Code entered into force, those indicators should be understood as procedural guidance that operationalizes statutory provisions rather than as the primary source for expanding the elements of criminal liability. Where a difference arises, the higher-ranking and newer statute must prevail. Harmonization may be achieved by updating the Supreme Court Regulation so that its terminology follows Articles 45-50 of the Criminal Code and does not suggest that judges may create standards of fault outside legislation.

A further disharmony concerns sanctions. Article 119 of the Environmental Law provides disciplinary measures that are particularly relevant to restoration, while the Criminal Code contains a more general system of corporate penalties and measures. Under the principle of lex specialis, environmental restoration measures should be preserved because they directly respond to the character of ecological harm. Sentencing must, however, avoid double counting. For example, mandatory restoration costs should not be counted again as a component of the fine without a clear methodology. Courts should distinguish punishment, disgorgement, compensation or restitution, and restoration so that each instrument has a transparent purpose.[17]

The relationship between administrative permits and criminal liability presents one of the most difficult issues. Many environmental offences depend on breaches of quality standards, licensing obligations, dumping prohibitions, or technical requirements. In some circumstances, a corporation may argue that its conduct was consistent with government approval. A permit, however, should not provide an absolute justification where the corporation concealed facts, exceeded authorized parameters, or knew that actual conditions caused the activity to violate substantive obligations. The development of the 2024 EU Environmental Crime Directive discussed by Faure reflects a move toward a more autonomous form of environmental criminal law, including the possibility of recognizing a manifest breach of substantive requirements despite formal authorization. Indonesia may draw a conceptual lesson from this development without disregarding the need for a clear legal basis.

To preserve legality, the more appropriate principle is that "permit compliance is relevant but not conclusive." If legislation makes authorization an

[16] Muhammad Natsir et al., "Legal Forms Against Corporations as Perpetrators of Environmental Crime in Indonesia: Study Based on the Environmental Protection and Management Law," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 2 (2024): 646–664, https://doi.org/10.22373/sjhk.v8i2.22071.

[17] Nabil Abduh Aqil, Alvi Syahrin, and Wessy Triana, "Implementation of Minister of Environment Regulation Number 7 of 2014 in the Implementation of Additional Criminal for Corporations That Commit Environmental Crime," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 4, no. 1 (2024): 119–146, https://doi.org/10.15294/ipmhi.v4i1.71244.

element of the offence, the existence of a valid permit is of course significant. A permit, however, protects only activities conducted within its material scope. Where a corporation operates beyond authorized capacity, uses different materials, manipulates reports, or fails to satisfy mandatory conditions, it cannot shelter behind an administrative document. If harm occurs despite full compliance with all permit conditions, criminal liability must depend on whether another clearly defined offence covers negligence or the resulting harm; it may not be created by analogy.

Disharmony also appears in the separation between administrative and criminal sanctions. Regulatory enforcement often proceeds through warnings, government coercive measures, suspension, or revocation. Criminal law need not wait until every administrative measure has been exhausted where the statute defines an independent criminal offence. Conversely, a purely administrative violation that does not satisfy the elements of an offence must not be criminalized merely because it has harmful consequences. This distinction is important because deregulation and risk-based licensing may change the form of administrative documentation, while criminal liability must continue to rest on conduct and fault defined by statute.[18]

The measurement of ecological harm is often a weak point in sentencing. Fines that do not reflect illegal gain or restoration costs may lose their deterrent effect. A study of environmental crime in Finland found that actual fines may fall far below the optimal level and that, even after forfeiture, the expected gain from offending may remain positive; the study emphasized the importance of estimating both damage and unlawful benefit. For Indonesia, these findings support the need for a methodology that enables environmental and economic experts to calculate restoration costs, avoided costs, unlawful revenue, and uncertainty in restoration in a transparent manner.

Calculation should not, however, reduce punishment to a purely economic exercise. The environment has values that cannot be fully monetized. Loss of biodiversity, ecosystem functions, cultural sites, or long-term health risks may involve substantial uncertainty. Courts may use ranges, explained precautionary assumptions, and orders for restoration in natura. The ecocide literature reminds us that environmental harm requires a normative perspective that cannot always be reduced to economic instruments or a balance between development interests.[19]

Alongside the risk of under-punishment lies the risk of over-attribution. Large corporations have thousands of employees and daily activities. If every individual offence committed "within the scope of employment" automatically becomes a corporate offence, the company will be held liable without proof of fault. The Criminal Code avoids this risk by providing indicators such as benefit, policy, failure to prevent, and tolerance. Prosecutors must connect at least one indicator, or a combination of indicators, to the conduct. The employment relationship opens the

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[18] Giulia Giardi, "Tricks under Trade: How International Trade Both Facilitates and Is Facilitated by Corporate Environmental Crime in the Waste and Hydrocarbon Sectors," *European Journal of Risk Regulation* 15, no. 3 (2024): 588–601, https://doi.org/10.1017/err.2024.32.

[19] Liana Georgieva Minkova, "Ecocide, Sustainable Development and Critical Environmental Law Insights," *Journal of International Criminal Justice* 22, no. 1 (2024): 81–97, https://doi.org/10.1093/jicj/mqae006.

door to conduct attribution; it is not itself the conclusion that the corporation is at fault.

In companies with complex systems, organizational fault may be established through an accumulation of warning signs. A single warning email may be insufficient; however, a series of audits documenting leaks, rejected budget requests, continued increases in production targets, and the absence of internal sanctions may support an inference that the organization tolerated the risk. Conversely, evidence that management responded to reports, stopped operations, took corrective action, and reported to the regulator may demonstrate genuine preventive measures. This model evaluates organizational conduct longitudinally rather than searching for a "smoking gun" in the form of a written order to pollute.

The literature on state-corporate crime also warns that legal frameworks can become a "regime of permission" where regulation repeatedly allows harmful activities to continue despite evidence of harm. This warning is relevant when courts assess an argument that the company merely followed government policy. Compliance with policy cannot erase obligations that clearly arise from legislation. At the same time, where the state has lawfully granted authorization and no element of a criminal offence is violated, courts must not substitute criminal punishment for policy failure through expansive interpretation.[20]

Taken together, these disharmonies demonstrate the need for national guidance explaining the relationship among the Criminal Code, the Environmental Law, the Criminal Adjustment Law, and the Supreme Court Regulation. Such guidance should not create new offences, but should map the sequence of analysis, evidentiary standards, the respective positions of corporations and managers, and the purpose of each sanction. Without guidance, courts may differ in treating the corporation as the principal offender, treating the manager only as a representative, or combining both without separating their respective bases of fault.[21]

Procedural coherence is particularly important because Supreme Court Regulation Number 13 of 2016 predates the entry into force of the national Criminal Code. The Regulation provides mechanisms for bringing a corporation before the court, assessing corporate fault, and managing the examination process, but its terminology and indicators must now be read together with Articles 45-50 of the Criminal Code. Harmonization does not require the Regulation to be abolished; rather, the Supreme Court should issue guidance or an update expressly explaining how indicators of procedural fault relate to the substantive criteria of the Criminal Code. Without such clarification, judges may either treat the Regulation's indicators as new elements of an offence or, conversely, disregard procedural mechanisms that remain necessary for adjudicating legal entities.

The dependence of environmental crime on administrative norms must also be conceptually limited. Many offences use quality standards, permits, management obligations, or technical requirements as reference norms. This is legitimate so long

[20] Pablo Ciocchini and Joe Greener, "Regimes of Extreme Permission in Southeast Asia: Theorizing State-Corporate Crime in the Global South," *The British Journal of Criminology* 63, no. 5 (2023): 1309–1326, https://doi.org/10.1093/bjc/azac091.

[21] Achmad Irwan Hamzani et al., "Analysis of Law Enforcement Problems Related to Crime of Environmental Degradation Caused by Corporations in Indonesia," *Jurnal Cita Hukum* 11, no. 1 (2023): 149–162, https://doi.org/10.15408/jch.v11i1.29127.

as the criminal elements remain identifiable and determinate. Problems arise if a post-event change to a permit is treated as though it retroactively changes the criminal character of earlier conduct, or if a permit obtained through false information is used as an absolute defence. Permit compliance should be treated as an important fact, but it does not eliminate liability where conduct exceeds the scope of the permit, violates an independent statutory prohibition, or is not covered by the authorization that is invoked.

Concurrent environmental offences, falsification, corruption, and obstruction also require analytical discipline. Manipulation of laboratory results or emissions reports may serve both to conceal an environmental offence and to satisfy the elements of another offence. Cumulative prosecution may be justified where each norm protects a different legal interest and additional conduct is present, but punishment should not duplicate censure for the same element without justification. A charging matrix that separates the act, actor, corporate link, mens rea, harm, and protected interest would help prosecutors and judges explain these relationships transparently.

Reconstructing Organizational Fault and Ecologically Effective Sanctions

The first stage of the reconstruction model is conduct attribution. Conduct may be attributed where it is performed by a functional manager, employee, agent, contractor, or another person connected to the corporation who acts within the scope of the business, for or in the interest of the corporation, or within a relevant chain of control. Attribution should reflect actual function rather than formal title alone. Outsourcing must not be used to avoid responsibility where the corporation determines the risky method of work, but a corporation is also not automatically liable for an independent contractor acting entirely outside its instructions and control.

The second stage is organizational fault. This article proposes six indicators that may be assessed cumulatively: corporate benefit, adoption as policy, failure to prevent, tolerance or acquiescence, control capacity, and compliance quality. Benefit asks whether the violation generated a gain or cost saving. Policy asks whether the conduct was explicitly or implicitly accepted as a way of operating. Failure to prevent examines the steps that should reasonably have been taken. Tolerance evaluates the response to warning signs. Control capacity asks whether the corporation had a real ability to prevent the conduct. Compliance quality asks whether the compliance system was effective in practice rather than merely documented. These indicators operationalize the Criminal Code's structure without creating strict liability.

These indicators also permit a proportionate due-diligence-based defence. A corporation may show that it identified risks, allocated adequate resources, applied appropriate technology, carried out monitoring, addressed violations, and responded to incidents. The defence is not an absolute safe harbour: a program that appears sound on paper may be rebutted by evidence that production targets encouraged violations or management ignored audit findings. Jeremy Horder identifies the conceptual difficulties that arise when corporate liability moves between identification and vicarious approaches and emphasizes the systemic importance of failure-to-prevent principles. The Indonesian context leaves room to develop the preventive principle already reflected in Article 48 of the Criminal Code.[22]

The third stage is sanction calibration. Fines should take into account, at a minimum, illegal gain, avoided costs, the scale of harm, the corporation's economic capacity, the degree of fault, the duration of the violation, and the probability of detection. For large corporations, a nominal statutory maximum may lose its practical effect; lawmakers may therefore consider formulas linked to turnover, profits, or a multiple of illegal gain, subject to clear limits. Ability to pay, however, should not automatically justify an extreme fine; proportionality and the continued feasibility of restoration must also be considered.

Disgorgement must be distinguished from a fine. Its purpose is to remove the benefit so that crime does not remain profitable. If a corporation saves IDR 100 billion by failing to install legally required control technology, a fine of IDR 10 billion has little deterrent effect if the corporation retains the IDR 100 billion gain. Disgorgement restores the economic position, whereas a fine adds censure. Economic research on environmental sanctions supports combining higher fines with reliable forfeiture because the expected gain may remain positive if only one instrument is used.[23]

Environmental restoration should be prioritized as a measurable and supervised measure. A judgment may order a restoration plan, quality targets, a timetable, financial guarantees, independent monitoring, and periodic reporting. Where full restoration is impossible, the corporation may be required to fund ecological compensation linked to the lost ecosystem function. Courts should avoid overly general orders such as "repair the environment" without a baseline, indicators of success, and a verification mechanism. Article 119 of the Environmental Law provides a basis for remedial measures; what is needed is a more precise implementation methodology.

Compliance reform may also form part of the sanction. A corporation may be required to improve governance, appoint an independent compliance officer, strengthen audits, change incentives that encourage violations, provide reporting channels, and report implementation to the court or regulator. In high-risk cases, an independent monitor may be appointed for a defined period. The purpose is not to manage the company permanently, but to address the source of organizational fault established in the case.

Restrictions on or closure of activities should be imposed in accordance with necessity and proportionality. Total closure may affect workers, creditors, and innocent communities, but those consequences cannot become an argument that a company is "too important to punish." Alternatives may include shutting down a particular unit, prohibiting high-risk activities, restricting permits, or placing the company under supervision. The literature on state-corporate harm highlights the danger of repeatedly invoking the economic importance of strategic companies to

[22] Beatriz Albuquerque, "The Interplay between Environmental Crime and Corporate Sustainability Due Diligence," *New Journal of European Criminal Law* 15, no. 2 (2024): 209–224, https://doi.org/10.1177/20322844241253182.

[23] Evi Djuniarti, "The Criminal Liability of Corporations as Crime Perpetrators," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 311–320, https://doi.org/10.30641/dejure.2021.V21.311-320.

preserve hazardous operations. Sanctions should ensure that externalities are not subsidized by the public.[24]

The model must also regulate the relationship between corporate and individual liability through differentiated liability. The corporation is responsible for organizational fault; individuals are responsible for their own contributions and fault. In some cases both may be punished. A director who orders the bypass of a treatment facility may be prosecuted together with the corporation if the conduct was accepted as policy or benefited the company. Conversely, the conviction of a corporation does not automatically prove that every director is guilty. This separation promotes fairness and prevents managers from being used merely as substitutes for the legal entity.

Beneficial owners and controllers should be included in the investigation where the evidence shows actual influence over policy. The Criminal Code provides room for such inquiry. Criminal piercing of the corporate veil, however, must be based on evidence of control and contribution rather than share ownership alone. Relevant indicators may include direct instructions, vetoes over environmental budgets, pressure concerning production targets, involvement in decisions not to comply, or receipt of risk information without action. This standard allows the law to look beyond formal structures where necessary without abandoning the principle of personal culpability.

In multi-entity cases, courts should also avoid "single-company tunnel vision." Corporate groups may divide production, land ownership, financing, and sales among different entities. One entity may carry out the physical act while another sets the budget and receives the benefit. Conduct attribution must follow the factual and legal relationship of each entity. A corporate group does not automatically become a single criminal subject, but several corporations may be liable where each independently satisfies the applicable criteria. This is important to prevent restructuring and special-purpose vehicles from shifting criminal risk to entities with minimal assets.

Permit compliance should be treated as one piece of evidence in assessing fault, neither as an absolute shield nor as an irrelevant fact. A corporation that is transparent with the regulator, complies with permit conditions, reports changes, and responds to risks stands in a different position from one that uses a permit as formal cover. Criminal liability must nevertheless remain grounded in Indonesian environmental offences and the principle of legality. Comparative concepts of authorization or manifest breach are used here only as critical references to show that a permit cannot replace examination of the elements of an offence; those foreign concepts are not adopted as new offences by analogy.

The integration of criminal enforcement with administrative and civil restoration should be built through coordination rather than a merger of competences. Regulators may take administrative measures to stop or remedy violations within their authority; civil litigation may restore losses; criminal proceedings determine offences and fault. Calculations of illegal gain, restoration

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[24] Carlo Nicoli Aldini, “State-Corporate Legal Symbiosis and Social Harm: The Case of the Steel Factory ‘Ilva’ in Taranto, Italy,” *Crime, Law and Social Change* 82 (2024): 893–914, https://doi.org/10.1007/s10611-024-10154-w.

costs, and other payments must avoid double counting of the same objective. The principle of ne bis in idem applies to punishment, while non-criminal legal consequences may proceed where they have different legal bases, objects, and purposes.[25]

Reconstructing organizational fault also improves predictability for businesses. Corporations can understand that liability does not automatically arise from every accident, but that the risk increases where compliance systems are weak, warning signs are ignored, violations generate benefits, or the conduct is accepted as policy. Such predictability can create ex ante incentives for preventive investment. Effective corporate criminal law does not merely punish after harm occurs; it changes organizational calculations before decisions are made.

The purposes of corporate sentencing for environmental crime may combine censure, deterrence, disgorgement, prevention of recurrence, and support for restoration, but each instrument must rest on the appropriate legal basis. Fines and additional penalties or disciplinary measures may be imposed only within criminal-law authority; administrative or civil obligations remain governed by their respective regimes. Sanction calibration should consider fault, provable illegal gain, ecological harm, ability to pay, the need to preserve the feasibility of restoration, effects on innocent parties, and the risk of recurrence. This approach prevents nominal fines from becoming a cost of doing business while also avoiding disproportionate sanctions.

The judicial-reasoning framework may be summarized in five steps. First, establish the environmental offence and its objective and subjective elements. Second, identify the natural person or organizational process that generated the conduct. Third, test the connection between that conduct and the corporation by reference to business scope, corporate interest, control, and relevant benefit. Fourth, assess organizational fault through benefit, policy, prevention, tolerance, control capacity, and compliance quality; evidence of effective compliance may rebut an inference of organizational fault, while formal documents without implementation are insufficient. Fifth, calibrate sanctions only after the basis of liability has been established. The burden of proof remains governed by applicable law, and this model does not create disguised strict liability.

For repeat offenders, calibration should consider compliance history proportionately. Minor, unrelated administrative violations should not automatically aggravate punishment, but a pattern of similar violations, ignored restoration orders, or continuing gains after warnings may strongly indicate tolerance and a need for greater deterrence. Conversely, genuinely voluntary self-reporting, cessation of activities before an order is issued, financing of restoration, and cooperation with the investigation may be treated as mitigating factors without eliminating liability. Such incentives encourage corporations to address incidents promptly rather than conceal them.

Post-judgment restoration must respect the allocation of institutional competences. Courts may order legal consequences within their authority, while

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[25] Adriano, "Multidoor Approach in Law Enforcement against Environmental Crimes by Corporations," *Hang Tuah Law Journal* 8, no. 1 (2024): 77–93, https://doi.org/10.30649/htlj.v8i1.225.

technical measurement, field monitoring, and verification of environmental quality may require implementation by environmental agencies or experts under the applicable legal basis. Where milestones or independent reports are used, the parameters, duration, oversight mechanisms, and consequences of non-compliance should be clearly specified. The model is not intended to expand judicial authority beyond procedural law, but to ensure that lawful restoration orders can be monitored in a measurable manner.

The reconstruction must also avoid treating a compliance program as a formal defence that can simply be purchased. Certification, manuals, or external audits are only a starting point. The relevant inquiry is whether the system has sufficient resources, independence, access to information, authority to halt activities, and effective follow-up on findings. If the program is used primarily to generate documents that conceal actual practices, its existence may strengthen an inference of intent or tolerance. Conversely, a genuinely effective system secretly circumvented by an individual may weaken the basis for organizational fault even though the individual offender remains liable.

From a deterrence perspective, certainty of enforcement is often as important as the severity of punishment. Extremely high fines that are almost never imposed may deter less effectively than a combination of a realistic probability of detection, forfeiture, restoration, and consistently applied sanctions. Lindqvist and colleagues' findings on the design of environmental sanctions underscore the importance of accounting for economic incentives and the possibility that offenders may retain gains from crime. For Indonesia, the implication is the need to strengthen the integration of supervisory data, compliance audits, and financial investigations so that illegal gains can be realistically calculated and confiscated.

CONCLUSION

De lege lata, the Criminal Code places corporations within the general framework of criminal law as subjects of offences, while the Environmental Law continues to provide sectoral environmental offences and liability constructions applicable to business entities and certain individuals. The relationship between the two must be read norm by norm together with the Criminal Adjustment Law. Supreme Court Regulation No. 13/2016 remains relevant as procedural guidance, while the substantive parameters of liability must be aligned with higher-ranking and newer legislation. Not every employee violation constitutes corporate fault, and not every office held by an individual creates personal liability.

As a de lege ferenda and judicial-reasoning framework, this article distinguishes conduct attribution, organizational fault, and sanction calibration. Conduct attribution connects the conduct to corporate activity; organizational fault evaluates benefit, policy, failure to prevent, tolerance, control capacity, and compliance quality; sanction calibration is undertaken only after the offence and fault have been proven and considers illegal gain, ecological harm, restoration capacity, and the risk of recurrence. This structure avoids both an unduly narrow identification doctrine and an overly broad form of automatic vicarious liability.

Sanctions and restoration should be coordinated without merging criminal, administrative, and civil competences. Administrative permits are relevant evidence but not an absolute shield where the elements of an offence are satisfied.

This study has not examined judicial practice, the effectiveness of fines, restoration costs, or the impact of compliance programs; the proposed model should therefore be tested through empirical research on corporate environmental cases before it is used as more settled guidance.

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