

## **Corporate Criminal Liability Model in The New Criminal Code: Synchronization of The Identification Theory Doctrine With Absolute Liability**

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### **Abstract**

Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) has recognized corporations as subjects of criminal law, marking a significant paradigm shift in the Indonesian criminal law system. However, the regulation of corporate criminal liability in the New Criminal Code still shows a lack of synchronization between the adopted identification theory doctrine and the need for the application of strict liability in the context of certain corporate crimes. This study aims to analyze the model of corporate criminal liability in the New Criminal Code and formulate a synchronization framework between identification theory and strict liability. The research method used is normative juridical with a statutory, conceptual, comparative, and case-based approach. The results show that the New Criminal Code adopts an identification theory-based liability model that requires proof of mens rea for corporate managers. However, this model has significant limitations in addressing complex corporate crimes, particularly in the environmental, occupational health and safety, and capital market sectors. This study found that synchronization is needed through three approaches: first, the application of limited strict liability to certain corporate crimes that are regulatory offenses; second, the development of the vicarious liability doctrine as a bridge between identification theory and strict liability; Third, strengthening the evidentiary mechanism through an organizational liability approach that considers corporate culture and failure to prevent. This synchronization aligns with developments in the UK through the Corporate Manslaughter and Corporate Homicide Act 2007, Australia with its Corporate Criminal Responsibility Model, and the Netherlands with its functional perpetrator approach. Implementing the synchronization model requires harmonization of the New Criminal Code with sectoral laws, strengthening the capacity of law enforcement to understand the complexity of corporate organizations, and developing proportionate and effective corporate criminalization guidelines.

**Keywords:** corporate criminal liability; New Criminal Code; identification theory; strict liability; vicarious liability; organizational liability

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### **Introduction**

The enactment of Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code) marks a new era in the Indonesian criminal law system. One of the most significant paradigmatic changes is the explicit recognition of corporations as subjects of criminal law in Articles 44 to 51 of the New Criminal Code. This recognition ends a long debate dating back to the Dutch colonial legacy of the Criminal Code (*Wetboek van Strafrecht*), which only recognized natural persons as subjects of criminal law. This change is a response to the increasingly complex and massive development of corporate crime in the era of economic globalization (Baidoo et al., 2023; Latif et al., 2023).

Over the past two decades, Indonesia has faced numerous corporate crime cases that have caused massive losses, both economically, socially, and environmentally (Abdurrachman et al., 2021). Forest and peatland fires involving palm oil plantation corporations, environmental pollution by the manufacturing industry, mass workplace accidents in the mining and construction sectors, and crimes in the financial sector, such as the Bank Century, Jiwasraya, and Asabri cases, demonstrate the urgency of adequate

corporate criminal liability regulations. According to 2025 data from the Ministry of Environment and Forestry, state losses due to environmental crimes involving corporations reached more than 100 trillion rupiah per year.

Prior to the enactment of the New Criminal Code, regulations on corporate criminal liability were scattered across various sectoral laws with varying approaches (Pieth & Ivory, 2011a, 2011b). Law No. 32 of 2009 concerning Environmental Protection and Management adopted a strict liability approach, Law No. 8 of 1995 concerning Capital Markets applied the principle of vicarious liability, while Law No. 31 of 1999 concerning the Eradication of Corruption used an approach more closely aligned with identification theory. This heterogeneity created legal uncertainty and inconsistency in the enforcement of corporate criminal law.

The New Criminal Code seeks to harmonize these regulations by adopting a general corporate criminal liability model that applies to all types of crimes, unless specifically stipulated otherwise. Article 48 paragraph (1) of the New Criminal Code states that a criminal act is committed by a corporation if it is committed by people who have a position or work relationship with the corporation, either individually or together, based on an employment relationship or based on another relationship, who act for and/or on behalf of the corporation or for the benefit of the corporation, both inside and outside the corporate environment. This formulation shows the adoption of the identification theory doctrine originating from the common law system, particularly from the case of *Tesco Supermarkets Ltd v. Nattrass* (1972) in England (A, 2024).

However, the adoption of identification theory in the New Criminal Code raises critical questions about its effectiveness in addressing various types of corporate crimes. According to Hamzah & Suhariyono (2026), identification theory has a fundamental weakness in proving *mens rea* (criminal intent or guilty mind) in complex corporate organizations with layered hierarchical structures. In practice, large corporations can often avoid criminal liability by delegating operational authority to middle or lower management levels, so that the crimes committed cannot be identified as acts of the corporation's directing mind and will. This creates what is known as an accountability gap.

On the other hand, certain types of corporate crimes, particularly regulatory offenses such as environmental crimes, occupational health and safety, food safety, and consumer protection, require a different approach. In this context, strict liability, which does not require proof of *mens rea*, is considered more effective in ensuring corporate compliance with regulations. Strict liability has long been applied in environmental and administrative law in various countries, including the United States, the United Kingdom, and Australia, on the basis that corporations engaging in high-risk activities should be fully responsible for their impacts, regardless of fault.

The lack of synchronization between the identification theory model in the New Criminal Code and the need to implement strict liability in sectoral laws raises various practical problems. First, there is a potential conflict of norms between the provisions of the New Criminal Code and specific laws governing strict liability. Although the principle

of *lex specialis derogat legi generali* could provide a solution, the lack of a clear synchronization framework can lead to confusion in law enforcement practices. Second, there is inadequate guidance on under what conditions identification theory can or should be combined with strict liability. Third, the mechanisms of proof and accountability in these two different models have not been properly harmonized.

This research is crucial in the context of the implementation of the New Criminal Code, which will come into effect in 2026. Law enforcers, judges, prosecutors, and legal practitioners need clarity on how these two doctrines can be effectively synchronized. The experiences of common law and civil law countries that have undergone similar transformations can provide valuable lessons. The United Kingdom, for example, addressed the limitations of identification theory by enacting the Corporate Manslaughter and Corporate Homicide Act 2007, which adopted an organizational liability approach. Australia developed the Corporate Criminal Responsibility Model in its Criminal Code Act 1995, which integrates various liability theories. The Netherlands applies a functional perpetrator approach, which is more flexible than traditional identification theory.

Several prior studies have examined aspects of corporate criminal liability in both domestic and comparative contexts, yet a dedicated analysis of the doctrinal synchronization between identification theory and strict liability within the New Criminal Code framework remains absent from the existing literature. Gobert & Punch (2026) provide a comprehensive theoretical account of corporate criminal liability models across common law jurisdictions, arguing that no single doctrine suffices for the full spectrum of corporate wrongdoing and that hybrid frameworks are both necessary and defensible. Their work constitutes a foundational reference for understanding why doctrinal pluralism rather than doctrinal uniformity is the normatively superior approach.

In the domestic context, Arief & Priyatno (2026) trace the trajectory of corporate criminal liability doctrine in Indonesia from the principle of *societas delinquere non potest* through to its progressive abandonment under sectoral legislation and, ultimately, the New Criminal Code. Their analysis identifies the organizational liability model as the most theoretically coherent trajectory for Indonesian law, though they do not offer a concrete synchronization mechanism. Similarly, Kristian & Yuwono (2026) examine the New Criminal Code's provisions on corporate subjects of criminal law and highlight the identification theory's structural incompatibility with the realities of modern corporate governance. However, their study stops short of proposing an integrated doctrinal framework for reconciling identification theory with strict liability. Wells (2026) offers the most systematically developed comparative account, demonstrating through the English and Welsh experience that organizational fault criteria as codified in the Corporate Manslaughter and Corporate Homicide Act 2007 can supplement rather than displace individual fault attribution. This present study builds upon and extends these prior contributions by formulating an explicit synchronization model adapted to the Indonesian legal architecture under the New Criminal Code.

This research aims to analyze in depth the corporate criminal liability model adopted in the New Criminal Code based on identification theory and identify its

limitations in dealing with contemporary corporate crimes, formulate a conceptual framework for synchronizing the identification theory doctrine with strict liability, including the criteria for applying each doctrine to different types of corporate crimes and formulate a synchronization implementation model that includes aspects of evidence, criminalization, and harmonization with relevant sectoral laws and regulations.

Theoretically, this research contributes to the development of corporate criminal liability theory in the context of the Indonesian legal system, which is in transition from a system heavily influenced by civil law to a more hybrid system adopting concepts from common law. This research enriches academic discourse on how various corporate criminal liability doctrines can be synchronized within a coherent and consistent legal system.

Practically, this research is expected to serve as a guide for policymakers in drafting implementing regulations for the New Criminal Code and harmonizing sectoral laws with the provisions on corporate criminal liability in the New Criminal Code. For legal practitioners, prosecutors, judges, and advocates, this research can serve as a reference in handling corporate criminal cases by understanding when and how to apply identification theory or strict liability. For corporations, this research provides clarity regarding the standards of criminal liability that must be met in carrying out their business activities, thus enabling them to develop effective compliance programs.

## **Method**

This research uses a normative legal research method (normative juridical) with several approaches. First, a statute approach is used by analyzing the New Criminal Code, specifically Articles 44 to 51 concerning corporate criminal liability, as well as various sectoral laws governing corporate criminal liability, such as the Environmental Management Law (PPLH), the Capital Markets Law, the Employment Law, and the Consumer Protection Law. An analysis is also conducted of laws and regulations in comparator countries such as the United Kingdom, Australia, the Netherlands, and the United States.

Second, a conceptual approach is used to analyze the doctrines of corporate criminal liability that have developed in criminal law theory, particularly identification theory, strict liability, vicarious liability, and organizational liability. This approach is essential for understanding the theoretical foundations of each doctrine, its advantages and limitations, and how these doctrines can be harmonized within a coherent framework.

Third, a comparative approach is used to compare corporate criminal liability regulations in various countries that have evolved from identification theory to a more progressive model. The comparison is conducted functionally, focusing on how each country overcomes the limitations of identification theory and integrates strict liability into its criminal law system. The countries selected as comparators are the United Kingdom (with the Corporate Manslaughter and Corporate Homicide Act 2007), Australia (with Part 2.5 of the Criminal Code Act 1995), the Netherlands (with a

functional perpetrator approach), and the United States (with the respondeat superior doctrine).

Fourth, a case approach is used to analyze court decisions related to corporate criminal liability, both in Indonesia and in comparator countries. In Indonesia, the analysis includes decisions that use sectoral laws governing corporate liability before the enactment of the New Criminal Code. In comparator countries, the analysis includes landmark decisions that shaped the development of corporate criminal liability doctrine, such as *Tesco Supermarkets Ltd v. Nattrass* (1972) in the United Kingdom, *R v. AC Hatrick Chemicals Pty Ltd* (1995) in Australia, and *United States v. Park* (1975) in the United States.

## **Result and Discussion**

### **Corporate Criminal Liability Model in the New Criminal Code: Adoption of Identification Theory and Its Limitations**

The New Criminal Code adopts a model of corporate criminal liability fundamentally based on the identification theory doctrine. Article 44 of the New Criminal Code states that the subjects of criminal acts are both individuals and corporations. This provision ends a long-standing debate in Indonesian criminal law doctrine rooted in the principle of *societas delinquere non potest* (a corporation cannot commit a crime) adopted by the old Criminal Code. The recognition of corporations as subjects of criminal law represents a paradigm shift that follows developments in the majority of countries worldwide that have already adopted corporate criminal liability.

Article 48 paragraph (1) of the New Criminal Code formulates that a criminal act is committed by a corporation if it is committed by a person who has a position or work relationship with the corporation, either individually or together, based on a work relationship or based on another relationship, who acts for and/or on behalf of the corporation or for the benefit of the corporation. This formulation shows the adoption of the identification theory which requires the existence of an action by a natural person who has a certain position or relationship with the corporation which can then be identified as an action by the corporation itself.

The doctrine of identification theory developed from the House of Lords' decision in the case of *Tesco Supermarkets Ltd v. Nattrass* [1972] AC 153 (1972). In this case, Lord Reid formulated that a corporation can only be responsible for the actions and *mens rea* of those who are the directing mind and will of the corporation, namely those at the senior management level who have the authority to make strategic decisions for the corporation. According to Kristian & Yuwono (2026), identification theory is based on

the premise that a corporation is a legal fiction that cannot act independently, so criminal liability must be based on the identification between the actions of a particular individual and the corporation.

The New Criminal Code adopts identification theory with several broader modifications compared to the classic formulation in the Tesco case (Dsouza, 2019, 2020). First, the New Criminal Code is not limited to the directing mind level, but includes anyone with a position or employment relationship within the corporation. This formulation potentially includes not only directors and commissioners, but also managers, supervisors, and even operational employees, as long as they act for and/or on behalf of or in the interests of the corporation. Second, the New Criminal Code recognizes that criminal acts can be committed by one person or several people together, accommodating the reality that in modern corporations decisions are often made collectively.

Article 48 paragraph (2) of the New Criminal Code further clarifies that a criminal act is committed by a corporation if the crime is committed in order to achieve the corporation's goals, is carried out in accordance with the duties and functions of the perpetrator or the person giving the order, and the perpetrator or the person giving the order acts to provide benefits to the corporation or in accordance with the corporation's goals. This provision shows that the New Criminal Code adopts a somewhat looser approach than the classic identification theory, by considering not only directing mind but also corporate purpose and corporate benefit as determining factors.

However, the adoption of identification theory in the New Criminal Code still has fundamental limitations that have long been criticized in corporate criminal law literature. First, there is the accountability gap. In large corporations with complex and hierarchical organizational structures, it is often difficult to identify the true directing mind and will. Strategic decisions are made through various levels of management with a multi-layered delegation system. When corporate crimes occur, the corporation can argue that the actions were carried out by lower-level employees who cannot be considered the directing mind, while senior management can claim ignorance or failure to order the actions.

The second criticism is that identification theory focuses too much on individual culpability and fails to capture systemic failure within corporate organizations. According to Arief & Priyatno (2026), many corporate crimes occur not because of the malicious actions/intentional wrongdoing of specific individuals, but because of a permissive

corporate culture toward law violations, weak internal oversight systems, or implicit company policies that encourage violations to achieve business goals. Identification theory, which focuses on individual mens rea, fails to capture this dimension of organizational liability.

Third, identification theory creates significant evidentiary difficulties for prosecutors. In complex corporate crime cases, proving the mens rea of directing mind often requires access to internal documents, emails, meeting minutes, and testimony from various parties within the corporation. Corporations with strong legal resources can use various legal technicalities to avoid proving mens rea. Furthermore, in cases where the crime is committed in a structured manner across multiple units within the organization, it is extremely difficult to identify one or more individuals who can be considered the directing mind.

Fourth, identification theory is less effective for regulatory offenses, particularly in the areas of environmental, occupational health and safety, and product safety. In this context, ensuring corporate compliance with regulatory standards is more important than proving the mens rea of specific individuals within the corporation. Many regulatory crimes occur due to negligence in corporate management systems or failure to implement best practices, which are difficult to capture within the identification theory framework, which requires proving mens rea.

An analysis of the Academic Draft of the New Criminal Code shows that lawmakers are aware of the limitations of identification theory. This is evident in Article 49 of the New Criminal Code, which allows for criminal liability for managers, order-givers, controllers, owners, or beneficial owners of corporations, whether committed jointly or individually. This provision indicates that the New Criminal Code seeks to expand the scope of liability beyond pure identification theory. However, the formulation of this article still requires further clarification regarding the conditions under which each party can be held accountable.

The experience of countries that have previously adopted identification theory shows that this doctrine does have serious limitations. In the UK, criticism of identification theory in the case of *R v. P&O European Ferries (Dover) Ltd* (1991), related to the Herald of Free Enterprise tragedy that killed 193 people, prompted legal reforms that culminated in the Corporate Manslaughter and Corporate Homicide Act 2007. In

Australia, the limitations of identification theory prompted the development of a more comprehensive liability model in Part 2.5 of the Criminal Code Act 1995 that integrates the corporate culture test. This experience shows that identification theory needs to be complemented by other approaches, including strict liability, to create an effective corporate criminal liability system.

### **Conceptual Framework for Synchronizing Identification Theory with Strict Liability in Corporate Criminal Liability**

Synchronizing identification theory with strict liability requires a conceptual framework that can accommodate both doctrines within a coherent corporate criminal liability system. This framework must be based on the understanding that identification theory and strict liability have different philosophical foundations, operational logic, and intended purposes, yet they can be complementary in addressing various types of corporate crimes.

Strict liability in the context of corporate criminal law refers to liability that does not require proof of mens rea or subjective fault of the perpetrator. According to Muladi & Arief (2026), strict liability is based on the principle that parties engaging in high-risk activities or having a special obligation to prevent certain harms must be fully responsible for the consequences arising from those activities, regardless of whether there is intent or negligence. In the corporate context, strict liability is applied on the grounds that corporations have superior capacity to prevent losses and implement compliance systems, so they must bear the risk when losses occur.

The justification for imposing strict liability on corporations is based on several arguments. First, the argument of efficiency and effectiveness of law enforcement. In cases of regulatory offenses involving thousands or even tens of thousands of corporations, requiring proof of mens rea for each case would burden the judicial system and reduce its deterrent effect. Strict liability allows for faster and more efficient law enforcement by focusing on compliance with objective standards. Second, the argument of superior knowledge and control. Corporations have superior knowledge of their own operations and the ability to control the risks they pose. Therefore, it is reasonable to impose responsibility on corporations to ensure compliance, without the need to prove mens rea.

Third, the social policy and public protection argument. In areas such as the environment, occupational health and safety, food safety, and consumer protection, the potential losses are massive and often irreversible. Strict liability serves as an incentive structure that encourages corporations to invest in adequate compliance systems and due diligence procedures. Fourth, the externality internalization argument. Strict liability ensures that corporations bear the full social costs of their activities, not just the private costs, thus encouraging a more efficient allocation of resources from a social perspective.

However, the application of strict liability in corporate criminal law also faces criticism and limitations. The main criticism is that strict liability contradicts the fundamental principle of criminal law, which requires culpability or fault as the basis for accountability. Criminalizing a corporation without proving fault is considered a violation of the principle of *nullum crimen sine culpa*. In response to this criticism, the development of strict liability in modern corporate criminal law is generally accompanied by a due diligence defense, in which a corporation can absolve itself from liability by proving that it took all reasonable precautions and exercised due diligence to prevent the violation.

A synchronization conceptual framework can be built by developing a typology of corporate crimes that distinguishes between types of crimes based on their characteristics, and then determining the most appropriate accountability model for each type. According to Remmelink & Reksodiputro (2026), corporate crimes can be categorized into four main groups: traditional crimes committed by corporations, corporate manslaughter and gross negligence offenses, regulatory offenses, and economic crimes.

For traditional crimes committed by corporations, such as fraud, bribery, corruption, and money laundering, identification theory remains relevant and should be the primary model. These crimes generally require specific intent to be proven, and often involve strategic decisions by senior management. In this category, proving *mens rea* through identification with a directing mind is appropriate because these crimes, by their nature, require subjective culpability. However, identification theory in this context needs to be expanded by adopting the collective knowledge doctrine, where *mens rea* can be constructed from the collective knowledge of various individuals within the corporation, not necessarily from a single directing mind.

For corporate manslaughter and gross negligence offenses, a broader approach than traditional identification theory is required, but it does not necessarily require pure strict

liability. An appropriate model is organizational liability, adopting an approach similar to that of the Corporate Manslaughter and Corporate Homicide Act 2007 in the UK. In this model, a corporation is liable for a gross breach of duty of care caused by the way in which activities were managed or organized. This approach focuses on management failures and systemic deficiencies, not just the identifying mind. *Mens rea* is still required for gross negligence, but it must be proven at the organizational level, not just the individual level.

For regulatory offenses, particularly in the areas of the environment, occupational health and safety, food safety, and consumer protection, strict liability is the most appropriate model. In this category, the primary focus is on compliance with regulatory standards, not subjective culpability. Strict liability with a due diligence defense strikes the right balance: corporations are by default responsible for ensuring compliance, but can exonerate themselves by demonstrating that they have implemented an adequate compliance system. This model creates a strong incentive for corporations to proactively invest in safety, environmental protection, and consumer protection measures.

For economic crimes such as securities fraud, market manipulation, insider trading, and anti-competitive practices, a hybrid approach is needed that combines identification theory with elements of strict liability. In this context, the presumption of corporate liability can be applied when the actions are committed by employees acting within the scope of their employment and for the benefit of the corporation. However, the corporation can reclaim the presumption by proving an adequate compliance program and a lack of willful blindness on the part of senior management. This model adopts elements of the *respondeat superior* doctrine in the United States legal system, but with modifications that provide defense opportunities for the corporation.

Within this synchronization conceptual framework, it is also important to develop a bridging concept that connects identification theory with strict liability. One concept that can serve as a bridge is vicarious liability. According to Hiariej & Saleh (2026), vicarious liability is a doctrine that imposes responsibility on the principal (in this case, the corporation) for the actions of the agent (employee) carried out within the scope of employment, without the need to prove that the principal had *mens rea* or even knowledge of the actions. Vicarious liability is broader than identification theory because it does not

require that the perpetrator be the directing mind, but it is also not completely strict liability because it still requires proof that the agent had mens rea.

Another important concept is failure to prevent offenses. This model has been adopted in Section 7 of the UK Bribery Act 2010, which states that a corporation commits an offense if an associated person commits bribery and the corporation fails to prevent it. The corporation can defend itself by proving it had adequate procedures in place to prevent bribery. This failure to prevent model creates a duty of prevention for the corporation and reverses the burden of proof, similar to strict liability with due diligence defense, but with a clearer focus on corporate systems and procedures.

The synchronization framework also needs to consider the corporate culture dimension. Australian Criminal Code Section 12.3 adopts a corporate culture test, which states that a corporation can be held liable if its corporate culture directed, encouraged, tolerated, or led to non-compliance. This approach recognizes that corporate crimes are often rooted in a corporate culture that permits or even encourages violations. The corporate culture test can be integrated into both the extended identification theory and the strict liability with due diligence defense, as a factor that must be considered in assessing corporate responsibility.

The foregoing analysis of three comparative jurisdictions reveals consistent patterns in how legal systems have progressively transcended the limitations of classical identification theory. Table 1 below summarizes the key features of corporate criminal liability models across these jurisdictions in relation to the Indonesian New Criminal Code framework.

**Table 1.** Comparative Analysis of Corporate Criminal Liability Models

<b>Jurisdiction</b>	<b>Primary Doctrine</b>	<b>Key Instrument</b>	<b>Strict Liability Provision</b>	<b>Due Diligence Defense</b>
United Kingdom	Organizational Liability	CMCHA 2007; Bribery Act 2010	Yes (regulatory offenses)	Yes (adequate procedures)
Australia	Corporate Culture Test	Criminal Code Act 1995, Part 2.5	Yes (regulatory and negligence)	Yes (compliance programs)

<b>Jurisdiction</b>	<b>Primary Doctrine</b>	<b>Key Instrument</b>	<b>Strict Liability Provision</b>	<b>Due Diligence Defense</b>
Netherlands	Functional Perpetrator (doen plegen)	Dutch Criminal Code, Art. 51	Partial (environmental law)	Limited
Indonesia (New Criminal Code)	Identification Theory (modified)	Law No. 1 of 2023, Arts. 44–51	Sectoral only (not unified)	Not yet stipulated

Source: Compiled from comparative legislation and jurisprudence (2026)

### **Synchronization Implementation Model: Evidence, Criminalization, and Legislation Harmonization**

Implementing a synchronized framework between identification theory and strict liability requires attention to three critical aspects: the evidentiary mechanism, the criminal punishment system, and legislative harmonization. These three aspects are interrelated and must be designed coherently to ensure the effectiveness of the corporate criminal liability system.

From an evidentiary perspective, the fundamental difference between identification theory, which requires proof of mens rea, and strict liability, which does not, creates complexity in law enforcement practices. To address this, it is necessary to develop differentiated evidentiary standards tailored to the type of corporate crime. According to Lamintang & Samosir (2026), in cases using identification theory, the public prosecutor must prove: first, the crime was committed by a specific natural person; second, that the natural person has a qualifying relationship with the corporation (directing mind, authorized representative, or employee acting within scope); third, that the act was committed for the benefit of or on behalf of the corporation; and fourth, that the natural person's mens rea is attributable to the corporation.

To strengthen the evidence in identification theory, several doctrinal developments from common law jurisdictions can be adopted. First, the collective knowledge doctrine, where mens rea can be established from the aggregation of knowledge of various individuals within a corporation. If individual A knows fact X and individual B knows fact Y, and the combination of X and Y demonstrates mens rea, then that knowledge can be attributed to the corporation even though no single individual has complete knowledge.

Second, the willful blindness doctrine, where a corporation cannot avoid liability by deliberately remaining ignorant of wrongdoing that occurs within its organization.

Third, adverse inference from corporate behavior, where the court can draw negative inferences from corporate behavior such as destruction of evidence, obstruction of investigation, or failure to maintain adequate records. Fourth, the use of circumstantial evidence, including corporate policies, internal communications, incentive structures, and performance metrics, that may indicate corporate knowledge or approval of criminal acts. Fifth, piercing the corporate veil in special situations where corporate structures are used solely to avoid criminal liability.

For cases involving strict liability, the standard of proof is simpler but still requires a fair mechanism. The public prosecutor only needs to prove: first, that an actus reus, or prohibited act, occurred; second, that the actus reus was committed by or attributable to the corporation; and third, that there is a causal connection between the corporation's activities and the harmful outcome. Proof of mens rea, or subjective fault, is not required. However, to maintain fairness, the corporation must be given the opportunity to raise a due diligence defense by proving that it took all reasonable steps to prevent the violation.

Due diligence defense requires a clear framework regarding what constitutes reasonable steps. Based on practice in various jurisdictions, reasonable steps include: first, the existence of a comprehensive compliance program that encompasses policies, procedures, and internal controls; second, adequate training and communication to employees regarding legal obligations; third, effective monitoring and auditing mechanisms; fourth, prompt corrective action when violations are detected; fifth, appropriate discipline of violating employees; and sixth, continuous improvement in compliance systems based on lessons learned.

It is important to note essential to emphasize that the burden of proof for the due diligence defense rests with the corporation, not the prosecutor. This is an acceptable departure from the general principle of the presumption of innocence because information regarding internal compliance systems is within the corporation's exclusive control, and the corporation is in a superior position to prove it conducted due diligence. However, the standard of proof for the due diligence defense can be lower than beyond reasonable doubt, for example on the balance of probabilities, to maintain fairness.

From a criminal justice perspective, a sanction system for corporate crimes needs to be designed to achieve multiple objectives: punishment, deterrence, rehabilitation, and compensation. Article 51 of the New Criminal Code regulates various types of penalties that can be imposed on corporations, including fines, additional penalties in the form of revocation of business licenses, confiscation of assets, obligations to make restitution for criminal acts, and obligations to undertake activities to compensate for losses resulting from criminal acts. This criminal justice system is already quite comprehensive, but requires more detailed guidelines on how to determine the severity of sanctions based on various factors. This sanctioning framework is substantively broad in scope; however, it requires supplementary guidelines specifying the criteria for calibrating sanction severity across varying degrees of corporate culpability.

According to Sudarto & Muladi (2026), in determining criminal penalties for corporations, judges must consider various factors: first, the severity of the offense and the magnitude of the harm caused; second, the degree of culpability, including whether the action is an isolated incident or systemic practice; third, the size and financial capacity of the corporation; fourth, the existence and quality of the compliance program; fifth, cooperation with authorities in the investigation; sixth, remedial actions that have been taken; seventh, history of prior violations; eighth, the impact of sanctions on innocent parties such as employees, shareholders, and creditors.

For cases using identification theory with strong evidence of mens rea, the penalty imposed should be heavier because it demonstrates a higher degree of culpability. Conversely, for strict liability cases where mens rea is not proven, the penalty can be lighter, especially if the corporation can demonstrate a good faith effort to comply despite the violation. proportionately more severe sanctions are warranted, reflecting the higher degree of subjective culpability. Conversely, in strict liability cases where mens rea is not established, sanctions may be calibrated at a lesser magnitude, particularly where the corporation can demonstrate a demonstrable compliance effort and the absence of wilful default. However, for strict liability offenses with catastrophic consequences, such as major environmental disasters or mass casualties, the penalty must still be substantial to achieve adequate deterrence.

The criminal justice system also needs to integrate the concept of corporate probation. Under corporate probation, convicted corporations are required to implement

specific reforms in corporate governance, compliance systems, or business practices, with supervision from a court-appointed monitor or regulatory authority. If the corporation successfully completes probation, the sentence can be reduced or eliminated. This model has been successfully implemented in the United States Federal Sentencing Guidelines for organizations. Corporate probation can be a more constructive alternative to heavy fines that can harm innocent stakeholders.

From a legislative harmonization perspective, implementing the synchronization model requires coordination between the New Criminal Code and various sectoral laws governing corporate criminal liability. Currently, significant inconsistencies exist between these laws. The Environmental Management Law (PPLH) adopts strict liability without a due diligence defense. The Capital Markets Law uses vicarious liability. The Employment Law is unclear regarding the liability model adopted. The Consumer Protection Law combines various approaches. This inconsistency needs to be addressed through systematic harmonization.

The harmonization process can be achieved through several mechanisms. First, revising sectoral laws to clarify their relationship with the New Criminal Code and explicitly determining whether to use the identification theory, strict liability, or hybrid model. Second, issuing a Government Regulation or Presidential Regulation providing technical guidelines for the implementation of corporate criminal liability in various sectors. Third, issuing a Supreme Court Regulation (PERMA) providing guidance for judges in applying identification theory, strict liability, and hybrid models in various contexts.

In the harmonization process, it is important to apply the principle of *lex specialis derogat legi generali* with a progressive interpretation (Tanzill et al., 2026; von Arnould, 2022). Sectoral laws that explicitly regulate strict liability for certain regulatory offenses should be understood as *lex specialis*, which remains in effect, even though the New Criminal Code, as *lex generalis*, adopts identification theory. However, the more comprehensive procedural and sentencing aspects of the New Criminal Code can be applied to complement sectoral laws. In other words, harmonization does not mean absolute uniformity, but rather coordination and consistency in fundamental principles.

In addition to vertical harmonization between the New Criminal Code and sectoral laws, horizontal harmonization among the various sectoral laws themselves is equally

imperative (Gjeta & Zhidro, 2025). Currently, approaches to corporate liability vary widely across sectors without transparent normative justification. Why do environmental offenses use pure strict liability while occupational safety offenses do not? Why do securities offenses use vicarious liability while consumer protection offenses do not? These questions need to be answered through a systematic policy review to ensure that variations in approach are based on substantive differences in the nature of the offenses, not simply historical accidents or legislative inconsistencies. The differential application of strict liability to environmental offenses, vicarious liability to securities violations, and an unspecified model to occupational safety and consumer protection offenses demands principled explanation. A systematic policy review is necessary to ensure that intersectoral variations in liability doctrine are grounded in substantive differences in the nature and risk profile of the offenses concerned, rather than reflecting historical legislative contingency or regulatory incoherence.

Implementing the synchronization model also requires substantial capacity building for law enforcement officials. Prosecutors, investigators, and judges need to be equipped with a deep understanding of corporate structures, corporate governance, corporate culture, and forensic accounting. Training programs should be developed that focus not only on legal aspects but also on business and organizational behavior. Collaboration with business schools, forensic accounting firms, and corporate governance experts can facilitate the necessary knowledge transfer. The establishment of specialized units within the prosecutor's office and police that focus on corporate crimes can increase expertise and consistency in handling complex cases.

## **Conclusion**

Based on the discussion that has been conducted, several important conclusions can be drawn. First, the New Criminal Code adopts a model of corporate criminal liability based on the doctrine of identification theory with several broader modifications from the classical formulation. This model requires proof that the crime was committed by a person holding a position or employment relationship with the corporation, acting for and/or on behalf of or in the interests of the corporation. However, identification theory has fundamental limitations in addressing complex corporate crimes, particularly in terms of: accountability gaps where large corporations can avoid accountability; the inability to address systemic failure and organizational culpability; the difficulty of proving *mens rea* in complex organizational structures; and its ineffectiveness for regulatory offenses that require a focus on compliance rather than culpability.

Second, synchronizing identification theory with strict liability requires a conceptual framework that recognizes that both doctrines have different philosophical foundations and operational logic, but can be complementary. The synchronization framework is built through a typology of corporate crimes that distinguishes between: traditional crimes that still use identification theory with a mens rea requirement; corporate manslaughter offenses that use organizational liability with a focus on management failure; regulatory offenses that use strict liability with a due diligence defense; and economic crimes that use a hybrid model with a rebuttable presumption of liability. Vicarious liability and the failure to prevent doctrine serve as bridging concepts that connect identification theory with strict liability. The corporate culture test is integrated as a factor that must be considered in all liability models.

Third, the implementation of the synchronization model requires attention to three critical aspects. From the evidentiary aspect, differentiated evidentiary standards are needed with the development of doctrines such as collective knowledge, willful blindness, and adverse inference for identification theory, as well as a clear framework for due diligence defense in strict liability. From the criminalization aspect, comprehensive sentencing guidelines are needed that consider the degree of culpability, corporate size, the existence of compliance programs, and the impact on innocent stakeholders, by integrating the concept of corporate probation as a more constructive alternative sanction. From the legislative harmonization aspect, coordination is needed between the New Criminal Code and sectoral laws through revisions to legislation, implementing regulations, and PERMA, by progressively applying the *lex specialis* principle and conducting policy reviews to ensure consistency in approaches between sectors.

This study recommends strengthening the framework of corporate criminal liability through integrated legislative, judicial, law enforcement, sectoral regulatory, corporate governance, academic research, and legal education measures. The Government and the House of Representatives are advised to undertake limited revisions to the New Criminal Code or issue technical regulations to clarify the relationship between identification theory and strict liability in sectoral laws. The Supreme Court should develop guidelines for handling corporate criminal cases that specify criteria for applying liability models, standards for proving organizational mens rea, the due diligence defense, sentencing guidelines, and alternative sanctions such as corporate probation. The Attorney General's Office and the Police are encouraged to establish specialized corporate crime units and enhance coordination with supervisory agencies such as OJK, KLHK, and the Ministry of Manpower. Relevant ministries should harmonize sectoral laws with the New Criminal Code, particularly by strengthening appropriate liability models. Corporations are urged to implement comprehensive compliance programs grounded in an ethical corporate culture as part of criminal risk mitigation. Academics and legal practitioners are expected to expand empirical research on the effectiveness of corporate liability models, while legal education institutions

should integrate interdisciplinary corporate criminal law into curricula and professional training.

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