

LEGAL ENTITIES IN CORPORATE CRIME AND ITS IMPLICATIONS FOR LEGAL CERTAINTY: A STUDY OF LAW ENFORCEMENT AGAINST BUSINESS ENTITIES

Fadlan

Fakultas Hukum Universitas Batam

email: fadlan@univbatam.ac.id

Received : 25 August 2025

Revised : 01 September 2025

Accepted : 20 September 2025

Published : 29 September 2025

DOI : <https://doi.org/10.59733/jishup.v3i3.184>

Publish Link : <https://jishup.org/index.php/ojs>

Abstract

The abuse of legal personality in corporate crime has become an increasingly complex phenomenon in line with the development of the business sector and modern corporate structures. Legal entities, which are fundamentally established to facilitate economic activities and provide legal certainty, are in practice often misused as instruments to evade legal liability, whether through engineered business structures, artificial separation of assets, or the shifting of responsibility to specific individuals. Such conditions give rise to serious problems concerning legal certainty, particularly in the enforcement of law against business entities as subjects of law. This study aims to analyze the forms of abuse of legal personality in corporate crime and their implications for legal certainty within the law enforcement system in Indonesia. The research employs a normative legal research method with a statutory approach and a conceptual approach, supported by an examination of court decisions related to the enforcement of law against business entities. The data are analyzed qualitatively to assess the consistency in the application of the principles of corporate liability and the effectiveness of the sanctions imposed. The findings indicate that the abuse of legal personality in corporate crime remains difficult to address optimally due to weak interpretations of the concept of corporate liability and a law enforcement tendency that focuses primarily on individual perpetrators. This condition results in low legal certainty and the failure to achieve the objectives of justice and deterrence for corporations. Therefore, it is necessary to strengthen law enforcement through progressive legal interpretation, the application of the piercing the corporate veil principle, and the harmonization of regulations on corporate liability in order to ensure legal certainty and corporate accountability.

Keywords: corporate crime, corporate liability, legal certainty.

INTRODUCTION

Legal liability is closely connected to the determination of subjects of criminal law. Subjects of law as stipulated in statutory provisions are perpetrators of criminal acts who can be held accountable for all legal actions they commit as a manifestation of responsibility arising from their fault toward others (victims). Crimes committed by corporations often result in corporate crime victims who suffer losses. The scope of corporate crime victims is broader than that of victims of crimes in general, both in terms of the number of victims and the magnitude of the losses incurred. Therefore, corporate crime victims require special attention in the prevention and control of corporate crime, particularly through the imposition of corporate criminal liability toward such victims. Civil business entities constitute one form of business organization that plays a significant role in the economic activities of society, especially within the small and medium enterprise sector. Juridically, civil business entities are grounded in the provisions of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata). The main characteristics of civil business entities lie in the civil law relationships among partners, which are based on agreements, mutual trust, and shared responsibility in conducting business activities. In practice, civil business entities are often chosen due to their managerial flexibility and the simplicity of their establishment procedures compared to incorporated business entities. Nevertheless, the absence of legal entity status gives rise to complex juridical consequences, particularly concerning the separation of assets, legal liability, and the legal standing of partners vis-à-vis third parties. In civil business entities, business assets are not fully separated from the personal assets of the partners, thereby increasing potential legal and economic risks in the event of default or disputes. These issues become increasingly complex when civil

business entities engage in legal relationships with third parties, whether in business contracts, procurement of goods and services, or financing activities. The lack of clarity regarding the boundaries of liability between the business entity and its partners frequently leads to divergent interpretations in law enforcement practice, including in court decisions. This gap phenomenon indicates a disparity between classical civil law norms and the demands of modern business practices that require legal certainty and balanced protection for all parties. Furthermore, economic development and the dynamics of the business environment have driven civil business entities to operate on an increasingly large scale and with greater complexity. This condition raises fundamental questions regarding the relevance and adequacy of the legal regulation of civil business entities in addressing contemporary challenges, particularly with respect to legal liability, risk management, and the protection of creditors and business partners. Accordingly, a comprehensive legal study of civil business entities is required, not only from a normative perspective but also from an empirical perspective that reflects actual practices in the field. Corporate liability is crucial to be imposed because it would be highly unjust if companies that disregard established regulations were able to evade legal accountability, despite the fact that their actions cause harm to society. Corporate crimes that result in losses to victims underscore the need for special attention, as the impact of such crimes is broader than that of ordinary crimes, both in terms of the number of victims and the extent of the losses suffered. Given the negative consequences arising from corporate crime and the imbalance between *das sollen* and *das sein*, the author is motivated to examine crimes or criminal acts committed by corporations and the issue of their liability. Based on the foregoing discussion, this research is important to analyze the legal standing, patterns of liability, and juridical implications of business activities carried out by civil business entities. This study is expected to contribute academically to the development of civil law, as well as to provide practical recommendations for policymakers and business actors in order to create a business climate that is just and oriented toward legal certainty.

RESEARCH

1. How is the legal regulation concerning crimes committed by corporations and their liability structured?
2. How is the implementation of legal sanctions carried out, and what factors constitute the obstacles or constraints in addressing crimes committed by corporations and their liability?

CONCEPTUAL AND METHODOLOGY

Within a paradigmatic approach to scholarly journal writing in the scientific field, it is essential to establish and lay a solid foundation that serves as a reference and framework of thought in conducting a series of analyses of the issues presented in this study. Therefore, from the outset, it is necessary to emphasize the determination and application of theoretical and conceptual frameworks as analytical tools for examining the problems discussed in this journal article. Based on the foregoing explanation, this research employs a theoretical and conceptual framework that serves as a fundamental reference grounded in a paradigmatic perspective. The framework is derived from the grand theory proposed by Lawrence M. Friedman. According to Friedman's legal system theory, the effectiveness and success of law enforcement depend on three essential elements of the legal system: the legal structure (structure of the law), the legal substance (substance of the law), and legal culture (legal culture). The legal structure relates to law enforcement institutions and apparatuses; legal substance encompasses statutory regulations; and legal culture refers to the living law embraced and practiced within society.

The structure of the legal system includes elements such as the number and scale of courts, their jurisdiction—including the types of cases they are authorized to examine—and procedural mechanisms, including appellate procedures from one court to another. This study adopts a descriptive method with normative and sociological legal research approaches. A normative legal approach is employed to analyze statutory provisions and legal doctrines, while empirical data are obtained through field research. The research methodology applied depends on the type of research conducted. In general, social research, including legal research, may be examined from various perspectives, such as its nature, form, objectives, application, and disciplinary orientation. In terms of its nature, research may be classified as exploratory, descriptive, or explanatory. From the perspective of its form, research may be categorized as diagnostic, prescriptive, or evaluative.

DISCUSSION

1. Legal Regulation of Crimes Committed by Corporations and Corporate Liability

The development of the business sector and industrialization has positioned corporations as central actors in Indonesia's economic and social activities. Beyond their contribution to economic growth, corporations also possess the potential to engage in criminal conduct that causes extensive harm to individuals, society, and the state. Corporate crime is not limited to economic losses but may also adversely affect the environment, labor relations, consumer

protection, and public governance. Accordingly, the legal regulation of crimes committed by corporations and the issue of corporate liability constitute a crucial concern within the national legal system. From the perspective of civil law, corporate liability is rooted in civil legal relationships arising from contractual obligations and tortious acts. The Indonesian Civil Code provides the normative foundation for the imposition of civil sanctions against corporations, including compensation for damages, performance of obligations, annulment of contracts, and other forms of legal remedies. The primary objective of civil liability is to restore the injured party to their original position and to ensure legal protection for those harmed by corporate conduct. However, in practice, determining fault and identifying the responsible legal subject often encounter significant obstacles, particularly when unlawful acts are committed by corporate organs or employees in the course of business activities. In the realm of criminal law, the recognition of corporations as subjects of criminal liability represents an important development in modern law enforcement. Various statutory regulations in Indonesia have incorporated corporate criminal liability, both within general provisions and sectoral legislation. Corporate criminal liability is intended to create a deterrent effect and to prevent the recurrence of similar offenses through the imposition of criminal sanctions, such as fines, confiscation of illicit gains, suspension of business activities, and revocation of business licenses. Nevertheless, the practical application of corporate criminal liability continues to face challenges, especially with regard to the evidentiary standards for establishing fault, determining the nexus between individual conduct and corporate responsibility, and ensuring the effectiveness of the sanctions imposed.

The dualistic regulation of corporate liability under civil and criminal law generates distinct dynamics in law enforcement practice. On the one hand, civil law emphasizes compensation and restorative justice for victims, while criminal law focuses on punishment and deterrence. On the other hand, the absence of uniform concepts and standards for corporate liability may result in legal uncertainty and inconsistent application in practice. This situation underscores the necessity of a comprehensive examination of the synchronization and harmonization of legal regulations governing corporate crime within both legal regimes. The designation of corporations as both perpetrators and accountable entities is motivated by the evolving nature of corporate structures and operations. In certain offenses, holding only corporate managers criminally liable has proven insufficient. In corruption cases, for instance, fines imposed on individual managers may be disproportionately small compared to the economic benefits obtained by the corporation through the commission of the criminal act. This imbalance highlights the importance of imposing liability directly on the corporate entity.

Special Criminal Law constitutes a category of criminal legislation that deviates from general criminal law, both in terms of substantive and procedural aspects, due to specific legal interests requiring protection. Examples include Emergency Law No. 7 of 1955 on Economic Crimes, Law No. 15 of 1985 on Electricity, Law No. 5 of 1997 on Psychotropics, Law No. 22 of 1997 on Narcotics, Law No. 23 of 1997 on Environmental Protection, and Law No. 20 of 2001 on the Eradication of Corruption. A distinctive feature of these statutes is the expansion of legal subjects to include corporations as entities that may be held criminally liable—an approach not explicitly recognized in the traditional framework of the Civil Code. Normatively, Indonesian civil law has long provided mechanisms for imposing sanctions on corporations, particularly through provisions on breach of contract and tort as regulated in the Civil Code. Civil sanctions may take the form of compensation, performance of obligations, annulment of agreements, or other remedial measures aimed at restoring the rights of the injured party. In the corporate context, such sanctions are directed at business entities as legal actors engaged in economic activities that generate legal consequences for others. When analyzed philosophically, juridically, and sociologically, the enforcement of law against corporate crime ultimately concerns the effectiveness of law itself. Legal effectiveness reflects a general strategy of problem formulation that compares legal reality with legal ideals. Specifically, it highlights the gap between law in action and law in theory, or, in other words, the relationship between law in the books and law in action. This analysis demonstrates that the effectiveness of corporate criminal liability depends not only on normative regulation but also on consistent and responsive implementation within the broader legal system.

2. Implementation of Legal Sanctions and Obstacles in the Enforcement of Corporate Liability

Corporations, as subjects of civil law, occupy a strategic position within legal relations and economic activities. In civil law practice, corporations engage in various legal obligations arising from contractual relationships as well as from unlawful acts. Accordingly, the imposition of sanctions on corporations from a civil law perspective serves as an essential instrument to ensure legal certainty, protect the rights of parties, and promote justice in legal relations. Nevertheless, the practical implementation of civil sanctions against corporations continues to encounter numerous obstacles. One of the primary challenges lies in proving fault and determining the form of corporate liability, particularly when harmful acts are committed by corporate organs such as directors or employees. This situation often generates debate regarding the boundary between the personal liability of corporate officers and the liability of the

corporation as a civil law subject. In addition, the effectiveness of civil sanctions against corporations is significantly influenced by the execution of court judgments. In many cases, final and binding court decisions are difficult to enforce due to issues related to corporate assets, complex organizational structures, or deliberate attempts to evade liability through legal engineering. As a result, the fundamental objectives of civil sanctions—namely, compensation for losses and the creation of a deterrent effect—are not fully achieved. These conditions reveal a gap between civil law norms governing corporate sanctions and the realities of their implementation in practice. This gap underscores the need for an in-depth analysis of how civil sanctions against corporations are applied, the extent of their effectiveness, and the factors that influence their success. Such an analysis is particularly relevant in examining the role of judges, law enforcement authorities, and available legal mechanisms in ensuring the fair and effective enforcement of civil sanctions.

As legal subjects, corporations may incur liability arising from statutory provisions or general legal principles, as well as from the acts or omissions of their directors, employees, or agents. However, the liability of a director or agent cannot be automatically attributed to the corporation without first establishing that the corporation itself has violated specific legal obligations. Only after such a violation is identified can responsibility be assessed to determine whether the fault lies with the individual actor or the corporation. Where a corporation has taken appropriate remedial measures, criminal liability may not be imposed upon it. Corporate criminal liability may only arise when the corporation fails to comply in good faith with court orders or neglects to take adequate action in response to unlawful conduct committed by its employees. In this context, corporate fault is not assessed solely at the moment the offense occurs, but rather in the corporation's failure to respond appropriately to the misconduct.

This approach has several advantages, particularly in requiring corporations to conduct internal investigations rather than relying exclusively on state authorities. Such a mechanism not only conserves public resources but also acknowledges that corporations are often best positioned to understand and penetrate their own complex organizational structures. Moreover, this approach aligns with one of the primary objectives of corporate criminal liability, namely, to compel corporations to reform deficient policies and practices in order to prevent the recurrence of similar misconduct. From a theoretical perspective, a corporation may be considered to have delegated authority to act within its operational domain to its employees. On this basis, the corporation should bear responsibility for unlawful acts committed by its agents, which provides justification for the application of the doctrine of vicarious liability. The rationale underlying this doctrine is that optimal prevention can be achieved by holding corporations accountable for the actions of their representatives. However, significant challenges remain in the application of vicarious liability, particularly in relation to crimes requiring proof of *mens rea*. One major issue is the lack of empirical evidence demonstrating that this approach constitutes the most effective means of achieving deterrence. The use of law as an instrument of social control reflects the function of law in regulating social behavior, identifying deviations from legal norms, and determining appropriate sanctions for such deviations. Ronny Hanitijo Soemitro argues that deviant behavior is inherently dependent on social control, as it is social control mechanisms that define which behaviors are considered deviant. The severity of deviation is determined by the quality and intensity of the social control to which the behavior is subject. In this sense, law primarily formulates norms that classify certain behaviors as prohibited and attaches sanctions to such prohibitions, thereby adapting to the prevailing social realities within society.

In response to these challenges, several approaches may be adopted to strengthen the enforcement of corporate liability. First, there is a need to reinforce and clarify the regulation of corporate civil liability in order to provide greater legal certainty for all parties. The general provisions of the Civil Code should be interpreted progressively or supplemented by sector-specific regulations that explicitly define the scope of corporate liability, particularly with respect to asset separation, the extent of responsibility, and the involvement of corporate organs in unlawful acts. Second, the application of corporate liability in civil law should adopt a more substantive rather than purely formal approach. Judges are expected to consider the realities of corporate control and the economic benefits derived from harmful conduct, so that liability is not imposed solely on individuals but also on the corporation as the entity that ultimately benefits from such conduct. Third, the optimization of compensation mechanisms as civil sanctions against corporations must be strengthened to ensure genuine restorative and preventive effects. Compensation should not be limited to actual losses but should also take into account immaterial damages, environmental harm, and potential long-term losses resulting from corporate misconduct. In this way, civil sanctions may function as instruments of restorative justice within civil legal relations. Fourth, the effectiveness of enforcing civil court judgments against corporations must be enhanced. Law enforcement authorities, particularly judicial and execution bodies, should be equipped with more robust mechanisms to trace and execute corporate assets in order to prevent the evasion of legal obligations. The reinforcement of the principle of good faith and the prohibition of abuse of legal personality are essential to preventing corporations from avoiding liability through manipulative business

structures. Fifth, the resolution of civil disputes involving corporate crime should be encouraged through fair and effective alternative dispute resolution mechanisms, without undermining victims' rights to adequate compensation. Mediation and negotiation may serve as efficient avenues for recovery, provided that they are conducted transparently and uphold the principle of corporate accountability. Through strengthened regulation, progressive legal interpretation, and effective enforcement and execution of judgments, the resolution of corporate crimes through civil law mechanisms is expected to provide optimal legal protection for victims while simultaneously encouraging corporations to conduct their business activities responsibly and in accordance with principles of justice. In line with Progressive Legal Theory and the Utilitarian School of thought, law is created to achieve specific objectives, namely the establishment of social order, security, harmony, and balance within society. As noted by Darji Darmodiharjo and Sidharta, law serves multiple functions, one of which is as a system of social control. In this function, law establishes norms that regulate individual behavior in relation to the interests of others, thereby delineating permissible conduct and imposing sanctions for deviations in order to maintain social equilibrium.

CONCLUSION

1. The designation of corporations as both perpetrators and subjects of legal liability is motivated by the evolution and increasing complexity of corporate structures and operations. In certain categories of offenses, holding only corporate managers or officers criminally liable has proven insufficient. Corporate intent must therefore be identified through individuals who, for specific purposes, may be regarded as agents representing the directing mind and will of the corporation. These individuals function as the true decision-makers who formulate and implement corporate policies and actions, thereby enabling the attribution of liability to the corporation itself.
2. In order to minimize and effectively address corporate crime, coordinated and cooperative actions among various stakeholders are essential. A corporation is inherently an abstract entity that lacks independent reasoning and physical existence; consequently, its actions and intentions are manifested through the minds of those who control and direct its operations. When the directing mind of a corporation is at fault, such fault must be attributed to the corporation. This conceptual understanding forms the basis for imposing corporate liability as a mechanism to ensure accountability and prevent corporate misconduct.

RECOMMENDATIONS

1. It is necessary to establish clear and detailed statutory regulations defining corporations as legal subjects and specifying the circumstances under which a corporation may be deemed to have committed unlawful acts under both civil and criminal law. Such regulations should determine who may be held liable and subjected to sanctions, particularly with respect to the fulfillment and restoration of victims' rights, including compensation for losses arising from corporate crimes.
2. Enhanced supervision of corporate activities should be implemented through the application of the principles of good corporate governance. Transparency, accountability, and legal compliance must serve as fundamental standards in corporate management in order to prevent legal violations and conflicts with the community. Furthermore, strengthening legal education for business actors, reinforcing business ethics, and implementing robust internal compliance systems within corporations are expected to constitute strategic measures for minimizing the potential for disputes and legal violations in the future.

REFERENCES

1. Friedman, L. M. (1990). *Legal Theory: Philosophical Idealism and the Problem of Justice* (Translated by Muhamad Arifin; Edited by Achmad Nasir Budiman & Suleman Saqib). Jakarta: Rajawali Press.
2. Hamzah, A. (1990). *The Indonesian Criminal Code (KUHP) and Criminal Procedure Code (KUHP)*. Jakarta: Rineka Cipta.
3. Huda, C. (n.d.). From "No Crime Without Fault" to "No Criminal Liability Without Fault". Jakarta: Kencana.
4. Kusumaatmadja, M. (2002). *Legal Concepts in Development*. Bandung: Alumni. See also Salman, O. S. (2012). *Philosophy of Law: Development and Dynamics of Legal Issues*. Bandung: Refika Aditama.
5. Hamidi, J. (2006). *The Indonesian Legal Revolution: Meaning, Status, and Legal Implications of the Proclamation of Independence of 17 August 1945 within the Indonesian Constitutional System*. Jakarta:

LEGAL ENTITIES IN CORPORATE CRIME AND ITS IMPLICATIONS FOR LEGAL CERTAINTY: A STUDY OF LAW ENFORCEMENT AGAINST BUSINESS ENTITIES

Fadlan

-
- | | | | | |
|------------|--------|-------------|-------|--------|
| Konstitusi | Press; | Yogyakarta: | Citra | Media. |
|------------|--------|-------------|-------|--------|
6. Compare with Rasjidi, L., & Putra, I. B. W. (2012). *Law as a System*. Bandung: Fikahari Aneska.
 6. Rumengan, J., & Idham. (n.d.). *Qualitative and Quantitative Research Methods*. Bandung: Citapustaka Media.
 7. Ministry of Education and Culture of the Republic of Indonesia. (n.d.). *Great Dictionary of the Indonesian Language (Kamus Besar Bahasa Indonesia/KBBI)*. Definition of exhibitionism: a condition in which an individual derives sexual gratification from exposing their genitals to unwilling observers.
 8. Muladi, & Dwidja Priyatno. (2010). *Corporate Criminal Liability*. Jakarta: Kencana.
 9. Mahmud, M., & Surbakti, F. A. (2010). *Criminal Law Policy on Corporate Crime*. Jakarta: Sofmedia.
 10. Raharjo, S. (2000). *Legal Science*. Bandung: Citra Aditya Bakti.
 11. Sahetapy, J. E. (2002). *Corporate Crime*. Bandung: Refika Aditama.
 12. Sugiyono. (2013). *Quantitative, Qualitative, and R&D Research Methods*. Bandung: Alfabeta.
 13. Lubis, S. (1994). *Philosophy of Science and Research*. Bandung: Mandar Maju.