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Reformulating Corporate Criminal Liability in Indonesia: Strict Liability, Organisational Fault and the Prevention of Economic Crime

Hilmy Aditya Rafshanjani Yasyashi[1*], Muhammad Rafi Athaya Santoso[2], Sabrina Aggraeni[3], Najwa Elnissa Erwin[4], Muhammad Luthfie Hakim[5]

[1] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[2] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[3] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[4] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[5] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
*Corresponding author email: hilmyadittya02@gmail.com

Abstract

Corporations commit or enable much of the economic crime that harms the state and the public, yet Indonesian criminal law, which is built on the principle of fault, finds it hard to prove the mental state of a corporation that acts through layered management. This article asks whether strict liability is part of Indonesian corporate criminal liability, whether it can improve the prevention of economic crime, and how corporate liability should be reformulated. It is a normative legal study that uses statutory and conceptual approaches to Law No 1 of 2023 on the Criminal Code, Supreme Court Regulation No 13 of 2016, sectoral statutes on corruption, money laundering, competition and the environment, and the scholarly literature. The study finds that the Criminal Code permits strict liability only where a statute so provides, and that the sectoral provisions examined, apart from civil environmental liability, do not dispense with fault: they attribute liability to the corporation through benefit, policy, tolerance or failure to prevent, which is organisational fault. Evidence that strict liability itself deters economic crime is thin, and enforcement is hampered by fragmented norms, individual-centred proof and fine-only sanctions. The article proposes a compliance-based model of liability, with an explicit failure-to-prevent standard, a compliance defence, structural sanctions and harmonisation with the new procedural law.

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Keywords

Corporation; Liability; Strict; Compliance; Prevention; Indonesia

Introduction

Indonesian criminal law accepted corporations as subjects of criminal law only gradually. The colonial Criminal Code treated only natural persons as offenders, and corporations entered through special statutes, beginning with the Corruption Law of 1999, before Law No 1 of 2023 on the Criminal Code made them subjects in general terms.[1] The change responds to a practical problem. Economic crime is committed through companies whose decisions are collective, whose authority is divided in layers and whose records are formally in order, so that the individual who held the guilty mind is difficult to identify even when loss to the state is plain. A system that demands proof of fault, intent or negligence, from a natural person before a corporation can be convicted risks letting the most harmful conduct go unpunished.[2]

One answer that is often proposed is strict liability, under which a person is liable once the elements of the prohibited act are shown, whatever the person's state of mind.[3] Supporters argue that it simplifies proof and that the threat of liability without fault pushes corporations towards due diligence, internal control and compliance, so that the doctrine serves prevention as well as punishment.[4] Critics point to the principle of fault, to the presumption of innocence and to the risk of over-criminalisation. In Indonesia the discussion is also confused by terminology: strict liability, vicarious liability, identification and 'organisational' or 'corporate' fault are often treated as one thing, and provisions that in truth attribute liability to a corporation because it benefited from or tolerated an offence are described as strict liability.

Earlier Indonesian studies have explained the concept and have reported its use in environmental law,[5] in the prosecution of corporations for illegal logging and forest

[1] Law No 1 of 2023 on the Criminal Code (Indonesia), art 45.

[2] Sutan Remy Sjahdeini, *Pertanggungjawaban Pidana Korporasi [Corporate Criminal Liability]* (Jakarta: Kencana Prenada Media Group, 2017) at 76.

[3] Hamzah Hatrik, *Asas Pertanggungjawaban Korporasi dalam Hukum Pidana Indonesia: Strict Liability dan Vicarious Liability [The Principle of Corporate Liability in Indonesian Criminal Law: Strict Liability and Vicarious Liability]* (Jakarta: RajaGrafindo Persada, 1996) at 13.

[4] Muladi & Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi [Corporate Criminal Liability]* (Bandung: Kencana, 2015) at 102-105.

[5] Saskia Eryarifa, "Asas Strict Liability dalam Pertanggungjawaban Pidana Korporasi pada Tindak Pidana Lingkungan Hidup [The Principle of Strict Liability in Corporate Criminal Liability for Environmental Crimes]" (2022) 1:2 *Triwangsa Hukum* 103.

burning,[67] in corruption cases[89] and in economic crimes that harm state finances.[10] Studies of fragmented norms and evidentiary difficulty conclude that strict liability remains weak in practice.[11] Most of these studies were written before 2 January 2026, when the new Criminal Code took effect, and they concentrate on the environmental field. Few ask which of the provisions called strict liability really dispense with fault, and fewer connect the concept to the compliance-based models of liability discussed abroad.[1213] This article fills that gap. Its contribution is to test, provision by provision, whether Indonesian corporate liability is strict in the legal sense, and to argue that the preventive aim the earlier literature rightly seeks is better pursued by a reformulated organisational-fault model than by extending liability without fault.

Three research questions follow. First, how is strict liability conceived in the criminal liability of corporations, and to what extent does Indonesian law adopt it? Second, can strict liability, or the corporate liability regime that Indonesian law now has, improve the prevention of economic crime? Third, how should corporate criminal liability be reformulated to make it effective and preventive? The purpose is to answer these questions and to propose a coherent reform.

Method

This is normative (doctrinal) legal research with a descriptive-analytical design. It uses a statute approach and a conceptual approach, with a limited case approach. No fieldwork was done and no interviews were held. The primary legal materials are Law No 1 of 2023 on the Criminal Code, Law No 31 of 1999 on the eradication of corruption (as amended by Law No 20 of 2001), Law No 8 of 2010 on money

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[6] Astri Safitri Nurdin, M Abas & D Guntara, "Pertanggungjawaban Pidana Korporasi Berdasarkan Asas Strict Liability terhadap Praktik Illegal Logging di Indonesia [Corporate Criminal Liability Based on Strict Liability for Illegal Logging in Indonesia]" (2022) 7:2 *Justisi: Jurnal Ilmu Hukum* 1 at 8.

[7] Zilmi Haridhi, Ari Ghazy Putra Asto & Shanaz Salsabila Al-Zamru, "Reformulasi Sistem Pembuktian Peradilan Pidana terhadap Penerapan Asas Strict Liability sebagai Bentuk Pertanggungjawaban Pidana oleh Korporasi terhadap Tindak Pidana Pembakaran Hutan [Reformulating the Evidentiary System of Criminal Adjudication for the Application of Strict Liability as Corporate Criminal Liability for Forest Burning]" (2022) 1:1 *Recht Studiosum Law Review* 4.

[8] Aghia Khumaesi Suud, "Analisis Penerapan Konsep Pertanggungjawaban Mutlak (Strict Liability) dalam Kasus Korupsi [Analysis of the Application of Strict Liability in Corruption Cases]" (2023) 52:2 *Masalah-Masalah Hukum* 153.

[9] Jurais M Saleh, "Dari Klausul 'Menguntungkan Korporasi' ke Pertanggungjawaban Pidana: Analisis Yuridis Pertanggungjawaban Korporasi dalam Tindak Pidana Korupsi [From the 'Benefiting the Corporation' Clause to Criminal Liability: A Legal Analysis of Corporate Liability in Corruption Crimes]" (2025) 3:4 *ALADALAH: Jurnal Politik, Sosial, Hukum dan Humaniora* 127.

[10] Andrew Wijaya & Widyawati Boediningsih, "Pertanggungjawaban Pidana Korporasi atas Kejahatan Ekonomi yang Merugikan Keuangan Negara [Corporate Criminal Liability for Economic Crimes that Harm State Finances]" (2025) 5:3 *Jurnal Ilmu Hukum, Humaniora dan Politik*.

[11] Ridho Kurniawan & Siti Nurul Intan Sari D, "Pertanggungjawaban Pidana Korporasi Berdasarkan Asas Strict Liability (Studi Pembaharuan Hukum Pidana Lingkungan Hidup) [Corporate Criminal Liability Based on Strict Liability (A Study of the Reform of Environmental Criminal Law)]" (2024) *Jurnal Yuridis* 153 at 158-159.

[12] Andrew Weissmann & David Newman, "Rethinking Criminal Corporate Liability" (2007) 82:2 *Indiana Law Journal* 411.

[13] Fabian Teichmann, Chiara Wittmann & Sonia Boticiu, "Compliance as a Form of Defense against Corporate Criminal Liability" (2023) 1 *Journal of Economic Criminology* 100004.

laundering, Law No 5 of 1999 on competition, Law No 32 of 2009 on environmental protection and management, Law No 6 of 2023 on job creation, and Supreme Court Regulation No 13 of 2016. The one court matter examined, a civil environmental lawsuit against a plantation company, is taken from the report of the Supreme Court's own news service, because the decision itself was not available to the authors. The secondary materials are books and journal articles in Indonesian and English on corporate criminal liability, strict liability and compliance, selected for relevance to the three research questions and for the clarity of their citation details; works whose details could not be confirmed were left out. The materials were collected by documentary and literature study and analysed qualitatively: the provisions were interpreted systematically, classified by the basis on which they attribute liability to the corporation (fault, benefit, tolerance, failure to prevent, or liability without fault) and evaluated against the aims of prevention, legal certainty and fairness. The study is limited to law and doctrine: it does not measure deterrence or describe the enforcement practice of the courts, and conclusions about effect are therefore stated as arguments, not findings.

Results and Discussion

Strict Liability and the Liability of Corporations: Concepts

Strict liability is a form of liability in which the prosecution need not prove intent or negligence as to at least one element of the offence; the person is liable because the prohibited act, or its prohibited consequence, occurred.[14] It is usually justified for regulatory offences that protect the public, in activities that a person chooses to undertake and that carry a known social risk. The justification is not that moral blame is irrelevant but that, in these fields, the aim of the law is to secure compliance and to allocate the risk of harm to the one who profits from the activity and can control it. A moral stigma that is attached to conviction is the reason why the doctrine is confined to offences of limited gravity, and why many writers insist on proportionality and clear statutory authorisation.

Four ways of making a corporation criminally liable should be kept apart. Under the doctrine of identification, the acts and mental state of senior persons who are the 'directing mind' of the company are treated as those of the company. Under vicarious liability, the corporation answers for the acts of employees or agents done within the scope of their work and for its benefit; this is liability for the acts of

[14] AP Simester (ed), *Appraising Strict Liability* (Oxford: Oxford University Press, 2005).

another, though it may still require fault on the part of that other person. Under strict liability, the corporation is liable for the prohibited act or result without proof of fault as to it. Under organisational (or corporate) fault, the corporation is blamed for its own failure: for a defective structure, policy or culture, or for failing to prevent an offence by its people.[15] Indonesian writers often describe strict liability as the most absolute form of vicarious liability and say that Indonesian law uses a hybrid of the doctrines.[16] The distinction matters because the four models lead to different questions of proof, different defences and different incentives for the corporation.

The two doctrinal sources most often cited in the Indonesian literature must be used with care. The book edited by Simester examines strict liability in criminal law in general; its contributors debate its justification and its limits, but the volume is not a study of economic crime or of corporations. The study by Cappelletti is a comparative account of the reasons given for strict liability in tort (private law) in England, the United States, France and Italy, among them risk, accident avoidance, loss spreading and victim protection.[17] Its arguments about risk and responsibility for chosen activities can be used by analogy, but it is not authority for the effect of strict liability on corporate crime, and the claims sometimes made on its behalf in the literature on economic crime go beyond what it studies.

Corporate Criminal Liability in Indonesian Law: Is It Strict?

It is often said that the Indonesian Criminal Code does not recognise strict liability because it follows the principle of fault. This is correct as a general rule but incomplete. Law No 1 of 2023 states the rule in Article 36: a person is liable only for an offence committed intentionally or negligently.[18] Article 37 then provides two exceptions where a statute so determines: a person may be punished merely because the elements of the offence are fulfilled, without regard to fault, or may be held liable for an offence committed by another.[19] The Code therefore authorises strict and vicarious liability, but only by statute and not as a general rule for corporations. A secondary report indicates that Law No 1 of 2026 on criminal adjustment has since changed Article 37 and removed the second exception; the

[15] Sjahdeini, *supra* note 2 at 76.
[16] Hatrik, *supra* note 3 at 13.
[17] Marco Cappelletti, *Justifying Strict Liability: A Comparative Analysis in Legal Reasoning* (Oxford: Oxford University Press, 2022).
[18] Law No 1 of 2023, *supra* note 1, art 36.
[19] *Ibid*, art 37.

wording in force should be checked against the official text.[20] In either version, the Code does not make corporate liability strict by itself.

The Code's provisions on corporations are the reverse of strict. Article 45 makes corporations subjects of criminal law, and covers limited-liability companies, foundations, cooperatives, state-owned and regional enterprises and equivalent bodies.[21] Article 46 treats as an offence by the corporation an offence committed by management in a functional position, or by a person who acts on the basis of an employment or other relationship, for or on behalf of the corporation or in its interest, within the scope of its business.[22] Article 47 extends the category to those outside the structure who give orders, hold control or are beneficial owners.[23] Article 48 then lists conditions on which such an offence may be attributed to the corporation: that it falls within the corporation's business or activity as set out in its articles, that it unlawfully benefits the corporation, that it was accepted as corporate policy, that the corporation failed to take the steps needed to prevent it and to prevent greater harm or to ensure compliance, and that the corporation tolerated it.[24] These are criteria of organisational fault: the corporation is liable because of what it gained, accepted or failed to prevent. They do not reverse the burden of proof and they do not remove the need to prove the corporate link to the offence. The reading that Article 48 allows a judge to require the corporation to prove its innocence once the act is shown, which is sometimes advanced, has no basis in the text. The Code is thus better described as a compliance-sensitive attribution model than as a strict-liability model.

Supreme Court Regulation No 13 of 2016 points the same way. It guides judges to find a corporation at fault where it obtained a benefit or advantage from the offence, where it allowed the offence to occur, or where it did not take the steps needed to prevent the offence, to prevent greater impact and to ensure compliance with the law.[25] These indicators are the origin of the 'failure to prevent' element that Law No 1 of 2023 later enacted. The Regulation is a procedural instrument, so it cannot create liability without fault, and, so far as could be established, it has not been revoked by the new Code; its fit with Law No 20 of 2025 on criminal procedure,

[20] "Baru Berlaku Langsung Diubah, Berikut Pasal KUHP Baru yang Disesuaikan [Barely in Force and Already Amended: The Articles of the New Criminal Code That Were Adjusted]", *Dandapala*, online: <https://dandapala.com/article/detail/baru-berlaku-langsung-diubah-berikut-pasal-kuhp-baru-yang-disesuaikan>.
[21] Law No 1 of 2023, *supra* note 1, art 45.
[22] *Ibid*, art 46.
[23] *Ibid*, art 47.
[24] *Ibid*, art 48.
[25] Supreme Court Regulation No 13 of 2016 on Procedures for Handling Criminal Cases by Corporations (Indonesia), art 4.

which has applied since 2 January 2026, still needs to be reviewed.[26] Statements in the literature that the Regulation 'reinforces' strict liability should be understood to mean that it simplifies proof by allowing the court to infer corporate fault from benefit, tolerance and failure to prevent, not that fault is dispensed with.[27]

The relation between Articles 37 and 48 deserves emphasis because it is the key to the whole subject. Article 48 answers the question when an offence is attributable to a corporation; Article 37 answers the different question whether fault must be proved for the offence itself. A statute that defines a regulatory offence without a mental element, and that is designated as imposing liability without fault, can therefore be applied to a corporation through Articles 45 to 48, so that the corporation need not be shown to have intended the prohibited result. Even then, the attribution criteria of Article 48 remain to be satisfied, and it is only the mental element of the underlying offence that falls away. This layered reading explains why some sectoral offences can be strict as to their elements while the corporate provisions remain fault-sensitive, and why a general statement that 'Indonesia applies strict liability to corporations' is misleading. The proper question is always which offence is in issue, whether the legislature has designated it as one without fault, and on what ground the act is attributed to the corporation.

The sectoral statutes need to be read in the same way. Table 1 sets out the position. Law No 31 of 1999 on corruption provides in Article 20 that when an offence is committed by or on behalf of a corporation, prosecution may be brought against the corporation, its management or both, and that the maximum fine for a corporation is increased by one-third.[28] Studies that call this strict liability stress the shift of attention from individual intent to the corporation's benefit,[29][30] but the Article attributes liability through the acts of persons connected with the corporation and does not abolish fault. The provision on the corporation in the Money Laundering Law imposes the sanction on the corporation, its controlling personnel or both when the offence is done or ordered by controlling personnel, in the corporation's aims and for its benefit; that too is attribution through the controlling mind and benefit.[31] The Competition Law provides criminal penalties for certain violations, but cartel

[26] Law No 20 of 2025 on Criminal Procedure (Indonesia).

[27] R Rodliyah, A Suryani & L Husni, "Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) dalam Sistem Hukum Pidana Indonesia [The Concept of Corporate Criminal Liability (Corporate Crime) in the Indonesian Criminal Law System]" (2020) 5:1 *Jurnal Kompilasi Hukum* 191 at 200.

[28] Law No 31 of 1999 on the Eradication of Corruption Crimes, as amended by Law No 20 of 2001 (Indonesia), art 20.

[29] Saleh, *supra* note 9.

[30] Suud, *supra* note 8.

[31] Law No 8 of 2010 on the Prevention and Eradication of Money Laundering (Indonesia), art 6.

enforcement is mainly administrative and carried out by the competition commission, so it cannot be cited as proof of criminal liability without fault.[32]

Table 1. Basis of corporate liability in the principal Indonesian instruments

Instrument	How liability is attributed to the corporation	Role of fault	Strict liability?
Law No 1 of 2023, arts 45-48	Offence by functional management, order-givers, controllers or beneficial owners; business scope; benefit; policy; failure to prevent; tolerance	Organisational fault; no reversal of the burden of proof	Not by itself; art 37 permits it where a statute so provides
Perma No 13 of 2016, art 4	Benefit from the offence; allowing it; failure to take preventive and compliance steps	Fault of the corporation inferred from these indicators	No (procedural guidance)
Law No 31 of 1999, art 20	Offence by or on behalf of the corporation; prosecution of the corporation and/or management	Fault of the connected persons remains relevant	Not established
Law No 8 of 2010, art 6	Offence done or ordered by controlling personnel, within the corporation's aims and for its benefit	Controlling mind and benefit	No
Law No 32 of 2009, art 88	Civil liability of those whose activity uses or produces hazardous waste or threatens the environment	Civil liability without proof of fault, narrowed by the Job Creation legislation	Yes, but in civil law only
Law No 32 of 2009, criminal provisions	Offences defined by intent, negligence or specified conditions; corporate attribution under art 116	Fault or specified elements remain	Not established; limited

Source: analysis by the authors of the instruments cited.

Environmental law is the one field where strict liability is real, but it is civil. Article 88 of Law No 32 of 2009 makes those whose activities use or produce hazardous and toxic materials, produce such waste or threaten the environment responsible for the loss, and the original text added that this was 'without the need to prove fault'.[33] That is the basis of the line of civil suits by the state for restoration after forest and land fires. In one reported example, a ministry sued a palm-oil company whose concession of about 2,358 hectares had burned, causing damage to peatland, and the court of first instance in Pangkalan Bun granted the claim on the basis of strict liability, holding that the plaintiff needed to prove only the damage and the causal link between the fire and the damage, not negligence on the part of the defendant.[34] This decision is civil. It shows the character of strict liability in environmental law, a risk-allocation rule for restoring harm, but it cannot show that a corporation has been convicted of a crime without fault. Studies of land burning that apply the theory of strict liability to corporate offenders argue for extending

[32] Law No 5 of 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition (Indonesia).

[33] Law No 32 of 2009 on Environmental Protection and Management (Indonesia), art 88.

[34] Andy Narto Siltor, "Landmark Decision: Strict Liability Korporasi atas Kegiatan Usaha yang Berisiko bagi Lingkungan Hidup [Landmark Decision: Corporate Strict Liability for Business Activities that Endanger the Environment]", *Marinews Mahkamah Agung (30 June 2025)*, online: <https://marinews.mahkamahagung.go.id/putusan/strict-liability-korporasi-atas-kegiatan-usaha-0mK>.

the same logic to criminal liability,[35] and the call to use it in the evidentiary system of criminal trials is a recurring one.[36] The criminal provisions of the same Law, however, define offences by reference to intent, negligence or specified conditions, for example in the offences of intentional and negligent pollution, and Article 116 deals with attribution to the corporation and its leaders. The Job Creation legislation, Law No 6 of 2023, then amended Article 88 and removed the words on proof of fault, which has been criticised as weakening the environmental protection that strict liability was meant to secure.[37][38] The accurate statement is therefore that strict liability applies in Indonesian environmental law as a civil rule, that its text has been narrowed, and that environmental crime by corporations is still prosecuted on fault-based or attribution-based elements.

Two further points correct frequent overstatements. First, the development from colonial law, which knew no corporate criminal liability, to the Corruption Law and then to the Criminal Code has been attributed to international influence, and the Anglo-American systems are often cited as precedents, with the result that Indonesia is said to be moving towards a criminal justice system more inclusive of corporate entities;[39] but the Indonesian solution is not a copy of strict liability in those systems. It is closer to a statutory mix of identification, vicarious attribution and corporate failure to prevent. Second, international scholarship on corporate accountability is increasingly concerned with corporate liability as a means of reaching harm that is organised and collective, even in international criminal law.[40] That trend supports a model of liability designed for corporations as organisations, which is the direction in which the Indonesian provisions are moving.

Strict Liability, Evidence and Fairness

The practical attraction of strict liability is evidentiary. The prosecutor shows that the prohibited act occurred in the corporation's activity and that it caused the prohibited result, and need not reconstruct who decided what, with which knowledge. Where activities are large-scale and high-risk, as in forest fires or

[35] Syarif Nurhidayat & Arif Rusman Sutiana, "Pertanggungjawaban Pidana Korporasi pada Pembakaran Lahan Berdasarkan Teori Strict Liability: Kasus PT Surya Panen Subur [Corporate Criminal Liability for Land Burning Based on the Theory of Strict Liability: The Case of PT Surya Panen Subur]" (2018) 1:1 *Undang: Jurnal Hukum* 43.

[36] Haridhi, Asto & Al-Zamru, *supra* note 7 at 4-5.

[37] Law No 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No 2 of 2022 on Job Creation (Indonesia).

[38] Fina Rosalina, "De-Orientasi Konsep Strict Liability dan Potensi Kerugian Perekonomian Negara: Koreksi atas Paradigma Perlindungan Lingkungan Hidup dalam Undang-Undang Cipta Kerja [De-Orientation of the Concept of Strict Liability and the Potential Loss to the State Economy: A Correction of the Environmental Protection Paradigm in the Job Creation Law]" (2023) 3:1 *Jurnal Penelitian Ilmu Sosial dan Eksakta* 59.

[39] Muhammad Rizaldi Hendriawan, "Politics of Criminal Law Liability of Corporate Criminals in Indonesia" (2022) *YURIS: Journal of Court and Justice* 25.

[40] Elies van Sliedregt, "The Future of International Criminal Justice Is Corporate" (2025) 23:1 *Journal of International Criminal Justice* 17, DOI: <10.1093/jicj/mqaf004>.

industrial pollution, this removes a barrier that individual-centred proof creates.[41] It also answers the objection that a corporation has no mind of its own. Interpreting the 'mind' of a company through its managers makes liability depend on how well its internal structure hides decisions, a perverse incentive for ever more complex structures.

The disadvantages are equally real. A corporation held liable without fault may be punished although it did everything that could reasonably be asked of it; this offends the principle that criminal liability requires blameworthiness, and it weakens the reason to invest in compliance if compliance gives no protection. The risk is greater for small businesses, which cannot absorb legal risk as large corporations can. A reversal of the burden of proof, which the literature sometimes links to strict liability, raises a separate difficulty with the presumption of innocence. For these reasons the better view in the literature is that strict liability should be confined to defined categories of offence that protect the public, carry limited stigma and sanctions, and are expressly designated by statute, a restriction that is also the logic of Article 37 of the Criminal Code.[42] Extending liability without fault to serious economic crime such as corruption, which carries heavy penalties and moral condemnation, would not meet that test.

The constitutional dimension supports a limited use. The right to a good and healthy environment is guaranteed by Article 28H(1) of the Constitution, and a victim-oriented and public-interest-oriented criminal law can justify stricter standards for corporations that put the public environment at risk.[43] Yet the same text of criminal law that protects the public must protect the accused. A formula that satisfies both is liability that depends on the corporation's failure to control a risk it created, which retains a normative link between conduct and liability, instead of liability that depends on the mere occurrence of harm.

Proportionality of sanctions is the last safeguard. The case for liability without fault is strongest where the penalty is modest, so that conviction carries little stigma and the main consequence is a financial or regulatory one. If the sanctions available for a given offence include imprisonment of managers, large fines or the dissolution of the corporation, the lack of a fault requirement becomes harder to defend. Legislators who wish to designate an offence as strict should therefore set the penalty to match, and should consider whether an administrative sanction would

[41] Haridhi, Asto & Al-Zamru, *supra* note 7 at 4-5.
[42] Law No 1 of 2023, *supra* note 1, art 37.
[43] Constitution of the Republic of Indonesia 1945, art 28H(1).

serve prevention equally well with less cost to fairness. This is the reasoning that underlies the restriction of strict liability to specified offences, and it explains why the doctrine is more defensible for environmental licensing breaches than for corruption or money laundering.

Can Strict Liability Prevent Economic Crime?

The preventive claim rests on a theory of rational choice by firms. A corporation weighs the profit of non-compliance against the likely cost of liability; if liability is easier to establish, the expected cost rises and the firm invests in internal control, monitoring and care. This is the argument that the Indonesian literature draws from the general discussion of strict liability, that the doctrine functions as a tool of compliance and not only as moral judgment, and that it is justified when the activity is voluntarily undertaken and carries risk.[44] It fits economic crime, which is usually committed by breach of administrative norms and practices that look lawful, in structures where individual intent is hard to show, and which is calculated by people who respond to legal risk.[45] In the field of state finances, the Indonesian literature adds that corporate economic crime causes losses that reduce the government's ability to provide services, so that clear corporate liability protects the public interest.[46]

The argument has limits, and the evidence for it is thinner than the literature suggests. First, the justification of strict liability in the comparative literature concerns offences that are minor, regulatory and typically attached to a licence or a duty, not offences of the gravity of corruption or large-scale financial fraud.[47] Second, the theoretical support from the tort literature is of a different kind: it shows why risk-bearers may be made to pay for harm, not that criminal liability without fault deters crime.[48] Third, empirical study of enforcement against corporations in Europe, which examined 50 cases of corporate liability in five countries, found that enforcement systems and practices are sub-optimal for deterrence, and that enforcement in competition cases tends to be more efficient than in foreign-bribery and anti-money-laundering cases.[49] The finding is not about strict liability as such, but it shows that deterrence depends on the whole enforcement system: detection,

[44] Simester, *supra* note 14.
[45] Heri Setyawan, *Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana di Bidang Ekonomi [Corporate Criminal Liability for Economic Crimes]* (Yogyakarta: CV Social Politic Genius (SOPUGEN), 2021).
[46] Wijaya & Boediningsih, *supra* note 10.
[47] Simester, *supra* note 14.
[48] Cappelletti, *supra* note 17.
[49] Emmanuelle Auriol, Erling Hjelmeng & Tina Søreide, *The Economics of Corporate Liability and Enforcement* (Norwegian Competition Authority, Report 4/2021, 2021).

the size and kind of sanction, and the quality of proof. A rule that eases conviction does little if cases are not detected, are settled for fines that are small in relation to profit, or are not followed by changes in the firm.

Prevention is therefore best understood as a product of three elements: a credible risk of liability, a sanction large and structural enough to change behaviour, and a legal standard that tells corporations what they must do to avoid liability. Strict liability supplies only the first, and it may undermine the third. If a corporation is liable however careful it was, the standard tells it nothing about what care is required, and rational firms may conclude that compliance expenditure cannot reduce their legal risk. A standard that makes the corporation's system of prevention the test of liability gives the opposite signal: investment in effective compliance reduces exposure. This is the central argument of this article, and it is consistent with the observation in the Indonesian literature that the preventive effect depends on internal control, due diligence and anti-corruption programmes.[50]

Obstacles in Practice

Reported studies of enforcement identify three obstacles that explain why the doctrine, however defined, has had limited effect. The first is fragmentation. Provisions that resemble strict liability are scattered in sectoral statutes and are not set out as an independent regime of corporate liability, so that courts and prosecutors continue to prove fault attributable to the corporation through its officers.[51] Studies of illegal logging find that where corporations are formally recognised as subjects of criminal law, liability without fault has been applied mostly in civil compensation claims, while criminal liability for forest damage still depends on proof of a causal link between the acts of corporate officers and the harm.[52] The same pattern is reported for environmental offences, where the criminal provisions keep fault-based elements and the burden of proof is heavy.[53]

The second obstacle is the individual-centred approach of enforcement. Because investigators and prosecutors are trained to identify a natural person with a guilty mind, they continue to look for the human actors behind the corporation instead of asking whether the corporation's own conduct and organisation failed. Where the norm is ambiguous about whether fault is required, this tendency prevails and the simplification of proof that strict liability promises is lost.[54] Procedural law has not

[50] Saleh, *supra* note 9.
[51] Nurdin, Abas & Guntara, *supra* note 6 at 8.
[52] *Ibid* at 23.
[53] Kurniawan & Sari, *supra* note 11 at 165-166.
[54] Nurdin, Abas & Guntara, *supra* note 6 at 15.

been designed to support a different approach; the Criminal Procedure Code of 1981, and the doctrine built on it, assumed an individual accused, as the literature on the evidentiary system observes. Law No 20 of 2025 now applies, and whether it supplies the procedure for corporate suspects and defendants required by Law No 1 of 2023 should be reviewed in the harmonisation recommended below.[55]

The third obstacle is the model of sanctions. It is commonly observed that corporate sentences are limited to fines, that fines may be small in relation to the benefits of the offence and absorbable by large companies, and that sanctions seldom address the sources of the offence, such as weak controls or a profit-driven culture; no systematic data on corporate sentences under Perma No 13 of 2016 were located, so this remains an impression to be tested. The Criminal Code provides, in addition to fines, additional penalties and measures for corporations that include restrictions on or closure of business activity; their use in practice should be monitored. A system that punishes after the event and imposes only monetary penalties remains reactive. A rule on liability, however expansive, cannot prevent crime if the sanction has no effect on how the corporation is run. The point is made also by economists, who show that the form and size of corporate sanctions determine whether enforcement deters.[56]

Reformulating Corporate Criminal Liability

The analysis above suggests that the weakness is not that Indonesian law lacks strict liability but that it lacks a clear and operational liability framework for corporations that links punishment to the corporation's own failure. Four elements of reformulation are proposed. Table 2 summarises them.

First, the basis of liability should move from the individual fault of officers to risk-based organisational fault. The test would be whether the corporation failed to control risks that its own business creates. Article 48 of the Criminal Code and Article 4 of Perma No 13 of 2016 already contain this idea in the 'failure to prevent' and 'failure to ensure compliance' criteria. They should be developed into an operational standard, by regulation or by a Supreme Court guideline, that lists what a reasonable system of prevention contains: a risk assessment, a compliance function with authority and independence, training, reporting channels, due diligence on third parties, audit and response to detected violations. This is not the abolition of fault but its re-location, from the mind of a person to the quality of the corporate system. It is the direction advocated in foreign scholarship, which

[55] Law No 20 of 2025, *supra* note 26.
[56] Auriol, Hjelmeng & Søreide, *supra* note 49.

proposes that the absence of reasonable preventive procedures be an element of corporate liability for employee crime, in place of automatic liability for the acts of employees.[57]

Second, compliance should be treated as the benchmark of liability and as a defence. Where a corporation shows that it had, and implemented, an effective compliance system at the time, the court should be able to find that the offence is not attributable to the corporation, or to reduce the sanction, while the individuals remain liable. Conversely, where no adequate system existed, the failure itself should be a sufficient ground for corporate liability without proof of the personal intent of managers. Comparative writing on compliance as a defence stresses that objective standards of internal control, supervision and early detection are needed so that the defence cannot be satisfied by a paper programme.[58] A compliance defence gives corporations a reason to invest and gives prosecutors a clear test, and it answers the fairness objection to liability without fault.

Third, sanctions should be designed to produce structural change. Besides fines proportionate to benefit and to the size of the firm, the available measures should include restrictions on activity, orders to reform internal systems, supervision by a competent authority and, in serious cases, closure; the Criminal Code already supplies a range of additional penalties for corporations and the courts should be encouraged to use them as a package with the fine. The measures should be linked to the failure found: where the cause was a weak control system, the order should require its repair, and its implementation should be monitored.[59]

Fourth, norms and institutions should be harmonised. Sectoral statutes should be reviewed so that the same basis of corporate liability applies across fields; where the legislature decides to retain strict liability, as in environmental regulation, it should do so expressly under Article 37 of the Criminal Code, for defined offences with limited penalties. The Supreme Court's guidance in Perma No 13 of 2016 should be revised in the light of Law No 1 of 2023 and Law No 20 of 2025. Investigators, prosecutors and judges need training in assessing corporate systems, since the new standard depends on understanding how a corporation is organised and whether its controls work.

Table 2. Proposed reformulation of corporate criminal liability

Element	Present position	Proposal	Expected effect

[57] Weissmann & Newman, *supra* note 12.
[58] Teichmann, Wittmann & Boticiu, *supra* note 13.
[59] Auriol, Hjelmeng & Søreide, *supra* note 49.

Basis of liability	Attribution through officers, benefit, tolerance or failure to prevent (art 48; Perma art 4)	Operational standard of organisational fault: failure to control the risks of the business	Liability fits the corporation as an organisation; less dependence on individual intent
Compliance	Relevant to 'failure to prevent' but without content	Statutory or judicial list of components of an effective system; compliance as benchmark and defence	Incentive to invest; objective test for courts
Sanctions	Mostly fines in practice; additional penalties available	Fines proportionate to benefit combined with structural orders and supervision	Deterrence and change in corporate behaviour
Harmonisation	Fragmented sectoral norms; Perma of 2016	Review of sectoral statutes; strict liability only by express statute under art 37; revised Perma; training	Legal certainty and consistent enforcement

Source: proposal of the authors, drawing on the instruments and studies cited.

Objections and Safeguards

Four objections to the proposed model should be addressed. The first is that a compliance standard may become a paper exercise: corporations adopt policies, manuals and certificates that look adequate but are not applied, and a defence built on them would reward form over substance. The answer lies in how the standard is framed. The test must be one of effective implementation at the time of the offence, judged by evidence of resources, authority, training, monitoring and response to red flags, and the court should be able to look behind documents. Comparative writing on compliance as a defence makes the same point when it calls for objective criteria for internal control and early detection.[60] The more demanding the evidence required, the less the defence can be used merely to avoid liability.

The second objection concerns the burden of proof. If the prosecution must prove that the corporation had no adequate system, the difficulty of proof is only moved from the individual's mind to the corporation's organisation. The reformulation can respond in two ways. The failure to prevent can be treated as an element that the prosecution proves, which is the position taken in the foreign proposal that the absence of reasonable procedures be an element of liability;[61] or, once the offence and its connection with the corporation are proved, an evidential burden can be placed on the corporation to put forward evidence of its system, because only the corporation holds that information, while the legal burden of persuasion remains with the prosecution. The second route accepts a limited shift of the evidential burden that may be defended on grounds of access to information, but it stops short of the full reversal that raises problems for the presumption of innocence. Either

[60] Teichmann, Wittmann & Boticiu, *supra* note 13.
[61] Weissmann & Newman, *supra* note 12.

route requires an express legal basis, and is better set out in a statute or a Supreme Court regulation than left to judicial inventiveness.

The third objection is that the model burdens small and medium-sized enterprises, for which an elaborate compliance system is costly. The standard should therefore be proportionate: what is reasonable for a listed company with several thousand employees differs from what is reasonable for a family firm, and the law should say so. The risk of excessive burden is, however, one more reason not to extend strict liability, which would impose liability on small firms whatever precautions they took. Strict liability may weigh heavily on small corporations, and any expansion of liability must be accompanied by safeguards against its abuse by officials, such as clear statutory criteria, reasoned decisions and review by the courts.

The fourth objection is that attention to corporate organisation might reduce the liability of individuals. It should not. Article 47 of the Criminal Code allows liability to be imposed on order-givers, controllers and beneficial owners, and corporate liability does not displace theirs.[62] The two serve different purposes: individual liability marks personal blame, and corporate liability creates an incentive for the firm to organise itself so that offences are not committed. A well-designed regime lets both operate, and the findings of a corporate investigation into the failures of an organisation can themselves assist the identification of responsible individuals. Taken together, the objections show that the proposal depends on the care with which the standard is drafted and applied, and justify a gradual introduction: first through a Supreme Court guideline and sectoral regulation for high-risk fields such as natural resources, financial services and public procurement, then through general legislation once experience is gathered.

Comparison with Earlier Research

The article agrees with earlier Indonesian studies that corporate liability is hampered by fragmented norms and by the persistence of fault-based proof,[6364] and that preventive aims require internal control and due diligence.[65] It differs on two points. Most of those studies treat the provisions they examine as strict liability, whereas the provision-by-provision reading in Table 1 shows that, outside civil environmental liability, the provisions turn on benefit, tolerance and failure to prevent, which are forms of organisational fault. It also differs in its remedy. Where

[62] Law No 1 of 2023, *supra* note 1, art 47.
[63] Nurdin, Abas & Guntara, *supra* note 6 at 15.
[64] Kurniawan & Sari, *supra* note 11 at 165-166.
[65] Saleh, *supra* note 9.

earlier work calls for wider adoption of strict liability in the evidentiary system,[66] this article proposes an operational failure-to-prevent standard with a compliance defence. In this it draws on comparative writing on corporate liability and compliance,[67][68] and it adds that the Indonesian literature on the economics of enforcement is still too small to test the premise that easier conviction deters.[69] Finally, it updates the discussion to the Criminal Code and the Code of Criminal Procedure that apply from 2 January 2026, which none of the earlier studies reviewed could take into account.

Conclusion

The first research question concerned the place of strict liability in Indonesian corporate criminal liability. The answer is that the Criminal Code authorises strict liability only where a statute provides, and that the corporate provisions of the Code, of Perma No 13 of 2016 and of the sectoral statutes studied do not dispense with fault. They attribute offences to the corporation by benefit, policy, tolerance and failure to prevent, which is organisational fault. Strict liability in the proper sense exists in environmental law, but as a civil rule whose text was narrowed in 2023. The claim that strict liability has been adopted in corporate crime generally, and in corruption and competition law in particular, is not supported by the provisions.

The second question concerned prevention. The argument that a corporation which risks liability irrespective of fault will strengthen internal control is plausible, but the evidence from comparative research is limited and does not isolate strict liability from enforcement as a whole. The prospects for prevention are better if the law tells the corporation what it must do to avoid liability, and if sanctions reach its structures. The obstacles to prevention in Indonesia are fragmented norms, an individual-centred practice of proof and fine-based sanctions.

The third question concerned reformulation. The article recommends an operational standard of organisational fault based on failure to control the corporation's own risks; compliance as both benchmark and defence; sanctions that combine proportionate fines with structural orders and supervision; and harmonisation of sectoral statutes, Perma No 13 of 2016 and the new procedural law, with strict liability confined to offences expressly designated by statute. These

[66] Haridhi, Asto & Al-Zamru, *supra* note 7 at 4-5.
[67] Weissmann & Newman, *supra* note 12.
[68] Teichmann, Wittmann & Boticiu, *supra* note 13.
[69] Auriol, Hjelmeng & Søreide, *supra* note 49.

steps retain the authors' underlying conclusion, that corporate liability should be reformed to prevent economic crime and not only to punish it, while correcting the premise that the means is strict liability.

The study has limits. It is a doctrinal analysis; it does not examine a sample of corporate prosecutions or sentences, relies on one reported civil decision, and cannot measure deterrence. Several amendments are recent, and the text of Article 37 of the Criminal Code and the interaction of Perma No 13 of 2016 with Law No 20 of 2025 need confirmation against the official texts and developing practice. Future research should analyse decisions on corporations under Law No 1 of 2023, compare sanctions and compliance outcomes, and test the proposed standard against the experience of other jurisdictions.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials and literature used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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