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Article Title

A Critical Analysis of Corporate Criminal Liability in Law Number 1 of 2023

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ABSTRACT

Although the codification of corporate criminal liability in Law Number 1 of 2023 marks a paradigmatic advancement in Indonesian criminal law, its implementation is overshadowed by normative vulnerabilities that could undermine legal certainty. This research aims to critically analyze the architecture of corporate criminal liability, as regulated in Articles 45 through 50 of Law Number 1 of 2023, to identify its inherent conceptual and structural problems. Using a normative legal research method supported by statutory and conceptual approaches, as well as systematic interpretation techniques, this study dissects each layer of the norms that construct this liability mechanism. The findings indicate that Law Number 1 of 2023 has progressively expanded the definition of criminal law subjects and the scope of perpetrators to include beneficial owners, while also formulating pragmatic criteria for corporate fault. However, behind this progress, two fundamental problems were identified. First is the normative ambiguity arising from open-ended phrases such as "or that which is equated to it," which risks creating disparities in judicial decisions. Second is a structural disharmony reflected in the functional redundancy between Articles 47 and 49 of Law Number 1 of 2023. It is concluded that the effectiveness of this entire corporate criminal liability framework will heavily depend on the active role of the judiciary as a law-finder (rechtsvinder) to clarify normative obscurities. Therefore, the issuance of technical guidelines by the Supreme Court is an urgent necessity to ensure consistent and just implementation.

Keywords: *Corporation; Criminal Liability; Legal Subject; Normative Ambiguity; Penal Code.*

INTRODUCTION

Globalization and market liberalization have positioned corporations as key drivers of the global economy's dynamics. These business entities no longer function solely as agents of economic development; they have evolved into actors with significant social and political influence that extends beyond national jurisdictions. Their ability to accumulate capital, create employment, and foster technological innovation makes them a fundamental pillar of a nation's progress. However, behind this constructive potential lies a destructive capability that is growing of concern. Their massive financial power and operational reach often create opportunities for complex organized crime. Such offenses range from financial crimes (Firmantoro et al., 2024; Ekawati et al., 2025) and large-scale environmental destruction (Harefa & Nashir, 2025) to systemic corruption capable of destabilizing the state (Ningrum, 2018; Kurniawan, 2023; Behuku et al., 2025; Sugianto et al., 2025).

The presence of corporations in the modern legal constellation is a double-edged sword. On the one hand, they are vital engines for economic activity. On the other hand, they can become instruments or even masterminds behind extraordinary crimes whose impacts extend far beyond individual losses. This phenomenon has been under scrutiny for a long time. As Fukuyama (2014) noted, the damage from corruption in many countries is a direct consequence of the behavior of multinational corporations, which do not hesitate to bribe public officials to advance their business agendas (Satria, 2021). This reality underscores a paradox: entities created for prosperity have the potential to become sources of social and economic calamity.

Historically, criminal law systems faced a fundamental doctrinal challenge in responding to corporate crime, particularly those rooted in the civil law tradition. The classical maxim *societas delinquere non potest* or *universitas delinquere non potest* served as a formidable barrier. This doctrine, influenced by thinkers like Savigny (1867), that a corporation, as an artificial entity, is inherently incapable of committing a criminal act (Hiariej, 2016). It was deemed to lack a mind (*mens rea*) and the ability to perform a physical act (*actus reus*). Consequently, criminal liability could only be imposed upon human beings as natural persons (*natuurlijk persoon*), namely the directors or officers acting on behalf of the corporation.

However, as criminal modi operandi evolved, this classical paradigm proved to be inadequate (Jumaris et al., 2025). Modern crimes have become increasingly organized and are often facilitated by corporate structures, intensifying the pressure for criminal law reform in numerous countries. Ningrum (2018) explains how the common law system adapted more quickly by developing the doctrine of vicarious liability. In contrast, civil law countries, including Indonesia, progressed more slowly. According to Muladi and Priyatno (2010), this development occurred in three stages: the first stage only criminalized corporate officers; the second acknowledged that corporations could commit criminal acts but still imposed liability solely on their officers; and the final stage allowed the corporation itself to be prosecuted and held directly accountable (Satria, 2021).

In Indonesia, the trajectory of this paradigm shift is recorded in its post-independence legislative history. Law Number 1 of 1946, a colonial inheritance, strictly did not recognize corporations as subjects of criminal law. Nevertheless, practical necessity compelled lawmakers to deviate from this principle through various regulations outside the Penal Code. Retnowinarni (2019) notes that Emergency Law Number 7 of 1955 was an early milestone, as it explicitly defined legal entities as subjects that could be penalized. Since then, dozens of special criminal statutes (*lex specialis*) have consistently affirmed the existence of corporate criminal liability, covering fields such as anti-corruption (Ningrum, 2018; Behuku et al., 2025), money laundering (Kurniawan, 2023; Sugianto et al., 2025), prostitution (Cahyono & Jonathan, 2023), environmental law (Harefa & Nashir, 2025), health (Khalid, 2023; Kamran & Syahrul, 2024), personal data protection (Soemitro et al., 2023), customs (Saputra et al., 2025), and capital markets (Hio, 2025; Opit & Frans, 2025).

The fragmentation of regulations across these various special laws ultimately created uncertainty and inconsistency in law enforcement. Responding to this challenge, the enactment of Law Number 1 of 2023 marked a monumental moment of codification. For the first time in Indonesia's criminal law history, corporate criminal liability was regulated comprehensively and integrated into the general criminal law (*lex generalis*). By establishing corporations as subjects of criminal offenses, Law

Number 1 of 2023 officially ended the long-standing legal dualism and affirmed their equal standing with individuals before the criminal law.

Following its enactment, Law Number 1 of 2023 has sparked significant academic discourse. Initial studies have generally welcomed this codification as a progressive step in Indonesia's criminal law reform (Fadhila, 2024; Hanifah, 2024; Mukhlis & Sipatuhar, 2024). Other research has begun to analyze its implications for specific sectors, including corruption (Kurniawan, 2023), taxation (Profianto & Sugeng, 2025), and economic crimes more broadly (Anggrayni et al., 2024; Sugianto et al., 2025). This existing literature has successfully mapped the general significance and scope of the new regulatory framework.

Nevertheless, amidst the optimism surrounding this reform, a crucial analytical gap remains. The majority of current discourse still focuses on the philosophical level and on comparisons with the previous legal regime. No research has yet conducted a "technical test" or an in-depth critical analysis of the normative formulations within the key articles governing corporate criminal liability, namely Articles 45 through 50 of Law Number 1 of 2023. The effectiveness of a law, however, hinges not only on its reformative spirit but also on the precision and clarity of its normative text. It raises the research problem: are the normative formulations in these articles coherently and clearly designed, or do they contain potential ambiguities, multiple interpretations, and overlaps that could become serious obstacles to their future implementation?

The novelty of this research lies in its position as one of the first juridical-dogmatic analyses to specifically dissect the internal vulnerabilities within the text of Articles 45 through 50 of Law Number 1 of 2023. Rather than merely celebrating its enactment, this study adopts a critical stance to identify potential normative problems before the law takes full effect in 2026. Its primary contribution is to provide a preliminary "vulnerability map" for academics, legal practitioners, and law enforcement officials. This map is intended to serve as a foundation for further discussion on the necessity of interpretative guidelines or implementing regulations to anticipate future challenges.

Based on the foregoing background and problem identification, the primary objective of this research is to conduct a critical analysis of the substantive regulations on corporate criminal liability in Articles 45 through 50 of Law No. 1 of 2023, to identify potential multiple interpretations and normative inconsistencies. The practical benefit of this study is to provide constructive input for the development of criminal law science. Furthermore, this research provides considerations for the Supreme Court and the government in developing the necessary guidelines or derivative regulations to achieve legal certainty, justice, and effective enforcement of anti-corporate crime measures in Indonesia.

METHOD

To address the research problem concerning potential ambiguities and normative disharmony, this study is grounded in normative legal research (Qamar & Rezah, 2020). This methodological choice is justified because the primary object of study is the legal text itself (law in books)—specifically, the formulation of Articles 45 through 50 of Law Number 1 of 2023—rather than its real-world implementation (law in action). The research focuses on the dogmatic analysis of the content, structure, and synchronization of legal norms. Consequently, a normative framework is the only relevant and valid approach for dissecting issues of internal coherence and semantic clarity within a legislative product. To sharpen the analysis, this study employs two complementary approaches: the statute approach and the conceptual approach. The statute approach serves as the primary instrument for examining every clause and phrase within the articles that constitute the locus of this research hierarchically and systematically. Meanwhile, the conceptual approach functions to situate these norms within the broader context of criminal law doctrines and theories, thereby ensuring that the resulting interpretations are grounded in a solid theoretical foundation.

Consistent with the characteristics of normative legal research, the data sources consist of legal materials relevant to the issue under investigation (Sampara & Husen, 2016). These materials are classified into two main categories. Primary Legal Materials are the main, authoritative data sources, focusing specifically on Articles 45 through 50 of Law Number 1 of 2023 concerning Corporate Criminal Liability. Subsequently, Secondary Legal Materials are utilized to provide explanations, interpretations, and analytical contexts for the primary materials. This category encompasses a wide range of literature, including criminal law textbooks, national and international scientific journals, and expert legal opinion articles. Additionally, relevant dissertations and prior research on the theme of corporate criminal liability are also used. All legal materials were collected through a systematic library research (documentary study) technique, which involved a critical process of identification, cataloging, and selection to ensure the validity and relevance of the data to the research objectives.

All collected legal materials were then analyzed using a qualitative and prescriptive method (Irwansyah, 2020). Qualitative analysis was applied to describe, interpret, and gain a deeper understanding of the meaning embedded within each norm. The prescriptive aspect, in turn, manifests in the form of arguments and recommendations regarding how these norms should be understood or amended to achieve their legal objectives. The primary analytical tool used to dissect the primary legal materials is legal interpretation. Specifically, several methods of interpretation were applied in combination. Grammatical interpretation was used to parse the literal meaning of every word, phrase, and sentence in the analyzed articles, primarily to identify potential ambiguities in key terms. Next, a systematic interpretation was applied to understand the relationships and linkages between one article and others within Law Number 1 of 2023, in order to detect potential overlaps or normative disharmony. Finally, teleological interpretation was employed to explore the intent and purpose (ratio legis) behind the formulation of the corporate criminal liability norms. It ensures the analysis does not merely stop at the text but also captures the spirit and ideals of the legal reform that the lawmakers sought to achieve. Through this combination of analytical techniques, the research is expected to produce a comprehensive and scientifically defensible answer to the formulated research problem.

RESULTS AND DISCUSSION

Based on the methodological framework previously described, this section presents a critical analysis of the substantive norms governing corporate criminal liability as regulated in Law Number 1 of 2023. The discussion will not proceed in a linear, article-by-article fashion. Instead, it is organized into a series of systematic, thematic examinations to dissect the fundamental pillars of this new legal construction. The analysis will commence by deconstructing the most basic foundation: the reconstruction of the corporation as a subject of criminal law. Subsequently, the discussion will logically progress to unravel the expanded scope of perpetrators, formulate the liability criteria that serve as a proxy for corporate "fault," and explore the available defense mechanisms. The section concludes with a synthesis of the normative problems that could potentially hinder effective implementation. Through this structure, each crucial aspect of the new regulation will be thoroughly scrutinized to achieve the established research objectives.

A. Reconstructing the Subject of Criminal Law: Affirming the Corporation's Existence in Law Number 1 of 2023

The enactment of Law Number 1 of 2023 marks a fundamental paradigm shift in the Indonesian criminal justice system, particularly concerning the recognition of legal subjects. For over seven decades, national criminal law was bound by the legacy of the civil law system, which rigidly adhered to the maxim *societas delinquere non potest*—a principle that negated a corporation's capacity to commit a criminal act. Consequently, Law Number 1 of 1946 inherently recognized only natural persons (*natuurlijk persoon*) as subjects who could be held criminally accountable (Retnowinarni, 2019). Although various special criminal statutes had partially attempted to breach this rigidity, the codification of corporate criminal liability into general criminal law represents a monumental step. The affirmation of the corporation as a subject of criminal offenses in Article 45 section (1) of Law Number 1 of 2023 is more than a mere normative addition; it is a philosophical reconstruction that officially ends the dominance of the old doctrine and lays a new foundation for criminal law enforcement in a complex modern era.

The foundation of this reconstruction is explicitly articulated in the definition of a corporation formulated in Article 146 of Law Number 1 of 2023, a definition later reaffirmed with similar substance in Article 45 section (2). Through grammatical interpretation, it can be identified that Law Number 1 of 2023 adopts an extensive and inclusive definition of a corporation, encompassing "an organized group of persons and/or assets" (Hiariej & Santoso, 2025). This wording unequivocally embraces both incorporated entities (e.g., limited liability companies, foundations, and cooperatives) and unincorporated ones (e.g., firms and limited partnerships). This formulation consciously transcends the narrower, more formalistic confines of the definition of a corporation in the civil law domain. In doing so, the legislators teleologically aimed to close a legal loophole that was frequently exploited by business entities operating without formal legal status to evade criminal prosecution (Mukhlis & Sipatuhar, 2024).

A further implication of this expanded definition is the affirmation of the corporation's equal standing with individuals before the criminal law. The synchronization of this norm becomes evident when Articles 145 and 146 of Law Number 1 of 2023 are systematically connected. These articles stipulate that the phrase "every person" includes both individuals and corporations. It puts an end to the legal dualism that had long persisted, where corporate liability was recognized only in sectoral laws (Hanifah, 2024). By placing this principle in the First Book, which contains general principles, Law Number 1 of 2023 transforms corporate criminal liability from an exception (*lex specialis*) into a general rule (*lex generalis*). Consequently, all offenses formulated in Law Number 1 of 2023, where relevant, can now, mutatis mutandis, be applied to corporate legal subjects, no longer limited to specific offenses like corruption or environmental crimes.

Despite this progressive vision, however, the formulation of the corporate definition in Law Number 1 of 2023 leaves a crucial juridical problem: the existence of the phrase "or that which is equated to it." This phrase constitutes an open legal norm, theoretically designed to provide judges with the flexibility to engage in judicial interpretation (*rechtsvinding*) to anticipate the emergence of new organizational forms not yet identified by the statute. This laudable goal of ensuring the law keeps pace with societal developments is commendable. However, on a practical level, this elastic norm has the potential to become a source of grave legal uncertainty (*rechtsonzekerheid*) and threatens the formal principle of legality.

The absence of clear parameters or criteria in the statute or its official elucidation regarding what can be "equated" with the enumerated forms of corporations opens the door to vast discretionary interpretation by law enforcement and judges. It could trigger disparities or inconsistencies in judicial decisions, where an entity might be deemed a corporation in one court but not in another. Moreover, this ambiguity risks creating a veiled delegation of legislative authority to the judiciary, which could be seen as contradicting the principle of the separation of powers. Thus, although affirming the corporation's existence as a subject of criminal law is a significant advancement, the effectiveness and legal certainty of its implementation will heavily depend on how law enforcement and the judiciary interpret and give meaning to the intentionally left gray area by lawmakers.

B. Expanding the Scope of Perpetrators: From Functional Officers to Beneficial Owners

Having established the corporation as a subject of criminal law, the next juridical challenge to be addressed is the problem of attribution. The fundamental question is: whose actions can be considered those of the corporation? This issue lies at the heart of any corporate criminal liability framework because an abstract, inanimate corporate entity can only act through its human agents—namely, its employees. Therefore, identifying the scope of perpetrators is crucial for determining the starting point of a prosecution. In response to this challenge, Law Number 1 of 2023 not only adopts existing doctrines but also introduces a progressive expansion through the formulation of Articles 46 and 47. Together, these two articles create a multi-layered framework for liability designed to ensnare the intellectual actors behind corporate crimes.

The first layer of this liability framework is articulated in Article 46 of Law Number 1 of 2023, which targets the internal or operational actors of a corporation. Through grammatical interpretation, this article clearly designates two categories of subjects. *First* are the "officers who hold functional positions within the corporate organizational structure." This phrase refers to individuals formally vested with the authority to make decisions, represent the company, and conduct internal supervision, such as directors or managers. *Second* are "persons who, based on an employment or other relationship, act for and on behalf of the corporation or act in the interest of the corporation." This category broadens the scope to include employees or even third parties—such as consultants or agents—who, despite not holding high-level structural positions, are mandated to act on the company's behalf. In essence, this article adopts and reinforces the identification theory, wherein the *actus reus* and *mens rea* of the officers who constitute the directing mind and will of the corporation can be directly attributed to the corporate entity itself (Parindo et al., 2024).

However, the lawmakers recognized that limiting the scope of perpetrators to internal actors alone would be a fatal weakness, especially when confronting the increasingly complex and layered structures of modern corporations. The practice of corporate crime is often driven by individuals or entities who deliberately position themselves outside the formal organizational structure to evade accountability. Anticipating this modus operandi, the legislature made a significant conceptual leap through Article 47 of Law Number 1 of 2023. This article explicitly expands the scope of perpetrators to include "*the party who gives the order, the controller, or the beneficial owner who is outside the organizational structure but can control the Corporation*." The inclusion of this article is a manifestation of applying the doctrine of piercing the corporate veil. Integrating this doctrine into general criminal law is a step that empowers law enforcement to disregard the legal formalities of the corporate entity and pursue the true masterminds.

The concept of the "beneficial owner" stands out as the most significant innovation in Article 47 of Law Number 1 of 2023. This term refers to the natural person who ultimately owns or controls the corporation, whether directly or indirectly, and who receives significant benefits from it, even if their name is not registered as a shareholder or officer. The recognition of this concept in Law Number 1 of 2023 holds immense relevance, particularly in the context of combating corruption and money laundering. As shown by Kurniawan (2023), a primary obstacle in prosecuting corrupt corporations is the difficulty in proving who truly benefits from the proceeds of the crime. Beneficial owners often conceal their ownership through complex shareholding structures and cross-border jurisdictions. By codifying the beneficial owner as a potential perpetrator, Law Number 1 of 2023 provides a more robust legal foundation for law enforcement to not stop at the field-level actors but to continue their pursuit to the apex of the pyramid of power and profit.

Systematically, the relationship between Articles 46 and 47 of Law Number 1 of 2023 reveals a comprehensive criminal policy design. Article 46 imposes liability arising from the day-to-day operations conducted by the corporation's internal organs. Meanwhile, Article 47 functions as an instrument to assign liability at a strategic level, targeting the controlling actors who may not be involved in daily operations but are the architects behind the corporation's criminal policies. This expansion of the scope of perpetrators teleologically aims to ensure that no zone of impunity exists within the corporate structure, whether for those acting within it or those controlling it from the outside. Nevertheless, the future implementation of Article 47 will demand far more sophisticated investigative capacities. Proving the status of a "controller" or "beneficial owner" will require tracing financial flows and power networks that extend beyond the company's formal legal documents.

C. Criteria for Liability: Formulating Corporate Fault in Law Number 1 of 2023

Following the establishment of the scope of perpetrators, the most fundamental juridical problem is to determine the conditions for liability—the criteria that dictate when a criminal act can be attributed to the corporate entity itself. This issue is the nucleus of the debate on corporate *mens rea*. This concept is theoretically difficult to apply to a legal subject devoid of the reason and will of a human being. To overcome this doctrinal impasse, the legislature did not adopt a single theory of law; instead, it adopted a range of theories. Instead, it formulated a pragmatic, hybrid framework through Article 48 of Law Number 1 of 2023. This article serves as the central norm that operationalizes the principle of no punishment without fault (*geen straf zonder schuld*) in the corporate context (Hio, 2025). Rather than searching for a fictitious *mens rea*, this article provides a series of objective criteria that act as a proxy or an external indicator of the collective "fault" committed by, for, and within the corporation.

Through a systematic interpretation, Article 48 of Law Number 1 of 2023 establishes at least five alternative conditions, indicated by the use of the conjunction "and/or." If any one of these is met, criminal liability can be attached to the corporation. The first two criteria are manifestations of the benefit principle: the criminal act either "falls within the scope of its business or activities" or "unlawfully benefits the Corporation." This doctrine had previously been developed in judicial practice, particularly in the field of taxation (Profianto & Sugeng, 2025). These criteria logically connect the unlawful act to the corporation's existence and purpose. By requiring relevance to the scope of business and the acquisition of illegal profits, the lawmakers affirm that a corporation cannot be held responsible for the purely individual actions of its officers if those actions are entirely unrelated to, or even detrimental to, the entity's business interests.

Next, the third criterion takes the analysis to a deeper level: the criminal act was "accepted as corporate policy." It moves beyond mere economic benefit and into the realm of corporate culture. The term "policy" here should not be narrowly interpreted as only written policies. It also encompasses unwritten practices, tolerated customs, or de facto operational standards that are accepted and implemented within the corporate environment. This criterion enables law enforcement to determine whether the criminal act was an isolated incident by a rogue agent or if it reflected the prevailing ethos and modus operandi of the organization. It thus opens the door to proving an organizational fault, where the crime is seen as a product of the existing system and culture, not merely the misconduct of an individual.

The final two criteria shift the focus from active commission to negligent omission: the "Corporation failed to take the necessary steps to prevent..." the act, and the "Corporation allowed the criminal act to occur." It represents the adoption of the concepts of fault in supervision (*culpa in vigilando*) and fault in selection (*culpa in eligendo*). Here, corporate liability arises not because the corporation "committed" the crime, but because it "failed to prevent" the crime from happening. These criteria place a proactive burden on corporations to establish effective compliance systems, risk management, and internal oversight. The failure to build and implement such systems is what constitutes the corporate "fault," regardless of whether top leadership directly knew of or ordered the criminal act committed by their subordinates.

Overall, the formulation in Article 48 of Law Number 1 of 2023 represents a sophisticated codification that incorporates various theories of corporate criminal liability that have developed globally. It implicitly accommodates elements of vicarious liability, the identification theory, and the aggregation theory of collective knowledge. By providing multiple gateways to prove "fault," this article grants prosecutors considerable flexibility. However, this complexity also presents significant evidentiary challenges. Proving that a corporation "allowed" or "failed to prevent" a criminal act requires in-depth forensic audits of its business processes and internal decision-making—a task that demands specialized resources and expertise from law enforcement. Therefore, the practical effectiveness of Article 48 will heavily depend on the criminal justice system's ability to translate these normative criteria into clear and applicable evidentiary standards in the courtroom.

D. Defense Mechanisms: Applying Justification and Excuse Grounds to Corporate Entities

A logical consequence of recognizing corporations as subjects of criminal law is the granting of procedural rights that are balanced and equivalent to those of natural persons, including the right to present a defense in court. In the architecture of criminal law, this defense is manifested in the doctrine of grounds for annulling punishment, which is classically divided into justification grounds and excuse grounds. Justification grounds negate the unlawfulness of the act, whereas excuse grounds negate the culpability of the perpetrator. Historically, this doctrine was developed to evaluate the actions and psychological states of individuals. Therefore, Article 50 of Law Number 1 of 2023 represents a bold and innovative juridical step. This article explicitly grants corporations the right to raise both types of defenses. This move simultaneously invites profound theoretical debate on how these human-centric concepts can be pretty and proportionally transplanted to a non-human entity.

Through grammatical interpretation, Article 50 of Law Number 1 of 2023 states that justification and excuse grounds can be raised by the corporation itself, just as they could previously be raised by the corporation's individual actors, such as functional officers, order-givers, or controllers. However, the article imposes a crucial limiting condition: the grounds must be "directly related to the Criminal Act with which the Corporation is charged." This requirement functions as a safeguard to prevent abuse. In other words, a corporation cannot take refuge behind an officer's irrelevant personal excuse. The defense must be organizational in nature, reflecting a situation or decision attributable to the corporation as a whole entity, rather than merely the personal justification of one of its organs.

The application of justification grounds to corporations is conceptually easier to envision. For instance, a pharmaceutical company that commits a technical violation of drug distribution regulations might be able to plead a state of necessity (*noodtoestand*) if it can prove that its action was the only way to prevent a wider public health crisis. Similarly, a corporation could argue that its actions were based on the execution of a lawful statutory order. The evidentiary challenge, however, remains significant. The corporation must be able to demonstrate through meeting minutes, internal memos, and other decision-making records that the action was a measured and proportional organizational response to the situation it faced, not merely a panic-driven decision by a single manager.

On the other hand, applying excuse grounds to a corporation presents a higher degree of theoretical complexity. How can a non-conscious entity claim duress (*overmacht*) or that it was executing an unlawful order? In this context, the focus of proof must shift from the psychological condition of an individual to the operational condition of the corporation. For example, to prove duress, a corporation would have to demonstrate that the external pressure it faced was so extraordinary that it rendered all standard decision-making mechanisms within the company ineffective, compelling it to commit the criminal act as the only viable alternative. It is no longer a matter of a director's free will, but of the paralysis of the "organizational will" of the corporation itself.

Thus, Article 50 of Law Number 1 of 2023, though seemingly straightforward, opens a new domain in criminal justice practice. It demands that judges no longer think individually, but organizationally. Assessing a corporation's defense will require an in-depth analysis of its corporate governance, compliance culture, and internal decision-making processes. While granting an equal right to a defense, this article also implicitly sets an exceedingly high standard of proof for corporations. Its effectiveness will depend on the ability of jurists to develop clear criteria for distinguishing between a legitimate organizational defense and a fabricated ex post facto justification designed to absolve the corporation of responsibility for a crime that has already been clearly attributed to it.

E. Normative Problems and Potential Disharmony in Implementation

The analysis of the corporate criminal liability architecture in Law Number 1 of 2023 has revealed a normative framework that is both comprehensive and progressive. The lawmakers have meticulously constructed the foundation for the legal subject, expanded the scope of perpetrators, formulated criteria for fault, and provided defense mechanisms. However, beneath this seemingly robust structure, a deeper critical examination uncovers certain conceptual fissures and structural vulnerabilities that could pose serious challenges during the implementation phase. These problems can largely be crystallized into two fundamental issues: *first*, normative ambiguity that could lead to multiple interpretations, and *second*, redundancy that indicates potential structural disharmony between articles.

The first problem presents a latent threat to the principle of legal certainty (*lex certa*), a cornerstone of criminal law. This vulnerability is most apparent in the use of open-ended clauses. As previously analyzed, the phrase "or that which is equated to it" in Article 45 section (2) of Law Number 1 of 2023, which defines the scope of a corporation, creates a juridical gray area. Although intended to provide flexibility, it has the potential to cause uncertainty. Without clear parameters for what entities can be "equated," interpretation becomes highly dependent on the subjective discretion of law enforcement officials. Similar ambiguity is inherent in some of the liability criteria in Article 48 of Law Number 1 of 2023, such as the phrase "accepted as corporate policy," which lacks a standard operational definition.

This lack of precise boundaries is particularly perilous as it opens the door to sharp disparities in law enforcement. As warned by Behuku et al. (2025), disparities in the professional capacity and interpretation of judges in corruption cases have proven capable of absolving large corporations from legal liability, even when state losses are significant. A similar risk is highly likely in the application of Law Number 1 of 2023. One court might interpret a practice as "corporate policy," while another deems it merely the act of a rogue individual. Such inconsistencies not only harm the sense of justice but also erode public trust in the criminal justice system, creating an uncertain business climate for corporations acting in good faith.

The second problem is the potential for structural disharmony arising from overlap or redundancy between the norms regulating perpetrators and those governing liability. A systematic analysis of the relationship between Articles 47 and 49 of Law Number 1 of 2023 reveals an unnecessary duplication. Article 47 has already comprehensively identified that a criminal act can be committed by "the party who gives the order, the controller, or the beneficial owner." Subsequently, Article 49 states, in nearly identical terms, that criminal liability is imposed upon "the party who gives the order, the controller, and/or the beneficial owner." This repetition, though seemingly trivial, is a legislative weakness. It raises a conceptual question: do these two articles serve different functions, or is one of them superfluous?

Such redundancy can have implications for prosecution practices. Prosecutors may face confusion in formulating an indictment: is a beneficial owner charged for "committing" the criminal act under Article 47, or for "being held liable" under Article 49? Although the outcome may be the same, this lack of normative clarity could become a loophole for legal defense teams to contest the validity of the indictment's construction. This disharmony reflects a lack of synchronization in the normative formulation, which, although not fatal, detracts from the clarity and legislative elegance of a codification intended to serve as a primary reference.

Ultimately, these two problems—normative ambiguity and structural disharmony—culminate in one crucial conclusion: the effectiveness of the entire corporate criminal liability framework in Law Number 1 of 2023 will heavily depend on the role of the judiciary. Judges can no longer be a mere mouthpiece of the law (*bouche de la loi*). Instead, they must actively perform their role as a law-finder (*rechtsvinder*) to fill gaps and clarify normative obscurities (Irwan et al., 2025). Without uniform interpretative guidelines, such as those established through Supreme Court regulations or consistent jurisprudence, the ideals of Law Number 1 of 2023, which aim to create legal certainty and substantive justice in handling corporate crime risk, are being eroded into an arena for endless interpretative debates in the courtroom.

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion, it can be concluded that the codification of corporate criminal liability in Law Number 1 of 2023 represents a monumental paradigmatic leap in the history of Indonesian criminal law. Through the series of norms stipulated in Articles 45 through 50, the lawmakers have successfully built a comprehensive liability architecture. This framework affirms the existence of the corporation as a subject of criminal law, expands the scope of perpetrators to include the beneficial owner, formulates pragmatic criteria for corporate fault, and recognizes the corporation's right to utilize defense mechanisms. This framework has fundamentally addressed the legal necessity of prosecuting increasingly complex and organized corporate crime. However, behind this facade of normative progress, a critical analysis reveals inherent vulnerabilities in the form of ambiguity in key phrases and structural disharmony between articles. These weaknesses have the potential to undermine legal certainty and hinder effective law enforcement during the implementation phase.

The identified normative problems carry profound implications that extend beyond mere theoretical debate. Ambiguity in definitions and liability criteria risks creating disparities in judicial decisions, where the fate of a corporation may depend on a judge's subjective interpretation rather than the consistent application of the law. This condition not only undermines the sense of justice but also fosters a climate of uncertainty in the business world. Furthermore, without clear guidelines, the entire edifice of corporate criminal liability in Law Number 1 of 2023 risks becoming a paper tiger—appearing formidable on paper but proving ineffective when confronted with the complexities of evidence in the courtroom. Therefore, proactive measures are required to mitigate these risks before Law Number 1 of 2023 takes full effect.

Drawing from these conclusions, several policy, academic, and practical suggestions are proposed. *First*, on a policy level, it is highly recommended that the Supreme Court of the Republic of Indonesia take the initiative to issue a Supreme Court Regulation to serve as a technical guide for judges. This regulation should provide an authentic interpretation of multi-interpretable phrases such as "or that which is equated to it" (Article 45) and "accepted as corporate policy" (Article 48). The regulation must also clearly define the relationship and function between Articles 47 and 49 to prevent confusion in the formulation of prosecution and indictment. *Second*, on an academic level, this research opens avenues for further empirical-juridical studies after 2026 to evaluate how these normative problems are actually applied and resolved in jurisprudence. Additionally, comparative legal studies on how other countries have addressed similar ambiguities in their corporate criminal legislation could provide valuable insights.

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