

Determining Corporate *Mens Rea* Through Strict Liability and Vicarious Liability in Corporate Crimes

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Abstract

This study examines how corporate mens rea can be determined through strict liability and vicarious liability within the context of modern corporate criminal responsibility, with a particular focus on the Indonesian legal system. The research adopts a normative juridical approach, combining conceptual analysis, statutory interpretation, and examination of judicial practice, including the application of PERMA No. 13/2016 and KUHP 2023. The findings show that strict liability constructs corporate mens rea by presuming fault from harmful outcomes or regulatory violations, making it suitable for public-welfare and high-risk regulatory offenses. Meanwhile, vicarious liability attributes the mental state of corporate agents to the corporation, enabling the prosecution of intentional offenses such as corruption, fraud, and financial crime. Indonesia applies both doctrines but in a fragmented and inconsistent manner across sectoral statutes. The absence of harmonization, limited investigative capacity, unclear evidentiary standards for structural fault, and lack of compliance-based defenses undermine effective enforcement. This study concludes that strict liability and vicarious liability should function as complementary mechanisms for establishing corporate mens rea, and that Indonesia requires a more coherent, integrated framework to enhance accountability and align with global developments in corporate criminal law.

Keywords: Corporate Criminal Liability; Corporate Mens Rea; Indonesia; Strict Liability; Vicarious Liability

Abstrak

Penelitian ini mengkaji bagaimana mens rea korporasi dapat ditentukan melalui doktrin strict liability dan vicarious liability dalam kerangka pertanggungjawaban pidana korporasi modern, dengan fokus khusus pada sistem hukum Indonesia. Penelitian menggunakan metode yuridis normatif melalui analisis konseptual, penafsiran peraturan perundang-undangan, serta telaah praktik peradilan, termasuk penerapan PERMA No. 13 Tahun 2016 dan KUHP 2023. Hasil penelitian menunjukkan bahwa strict liability membentuk mens rea korporasi dengan mengandaikan kesalahan dari timbulnya kerugian atau pelanggaran regulasi, sehingga cocok untuk tindak pidana berbasis risiko tinggi dan perlindungan masyarakat. Sebaliknya, vicarious liability mengatribusikan kesalahan individu kepada korporasi, sehingga efektif untuk menangani tindak pidana yang



Submitted: November 21, 2025 | Revised: April 22, 2026 | Accepted: April 23, 2026 | Published: May 8, 2026

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mensyaratkan niat seperti korupsi, penipuan, dan pencucian uang. Indonesia menerapkan kedua doktrin tersebut, namun secara sektoral dan belum konsisten. Kurangnya harmonisasi, terbatasnya kapasitas penegak hukum, tidak jelasnya standar pembuktian kesalahan struktural, serta ketiadaan pembelaan berbasis kepatuhan melemahkan efektivitas penegakan hukum. Penelitian ini menyimpulkan bahwa strict liability dan vicarious liability harus dipandang sebagai mekanisme komplementer dalam membangun mens rea korporasi, dan Indonesia perlu kerangka yang lebih koheren untuk meningkatkan akuntabilitas serta selaras dengan perkembangan global.

Kata kunci: *corporate mens rea; Indonesia; pertanggungjawaban pidana korporasi; strict liability; vicarious liability*

INTRODUCTION

Corporate criminal liability has become one of the most dynamic and complex areas of contemporary criminal law. As economic activity becomes increasingly global, technologically sophisticated, and organizationally fragmented, corporations today possess the capacity to inflict social and economic harm on a scale far greater than that of individual offenders. Environmental degradation, financial misconduct, consumer exploitation, industrial disasters, money laundering, and transnational corruption demonstrate that modern corporate crime frequently originates not from isolated acts of individual wrongdoers but from institutional structures, operational decisions, and incentive systems embedded within organizations.(Lalu Saipudin, Salim HS., Rodliyah, 2025)

The challenge of determining corporate mens rea is not merely theoretical. It has profound practical implications for the effectiveness, fairness, and legitimacy of criminal enforcement. If the law imposes excessive liability on corporations without a sound basis for attributing fault, it risks undermining legal certainty, discouraging legitimate business activity, and violating the principle of culpability. Conversely, if the law fails to hold corporations accountable for structural or systemic wrongdoing, harmful corporate conduct may go unchecked, thereby undermining the protective and preventive purposes of criminal regulation. A coherent doctrinal framework for attributing mens rea to corporations is therefore indispensable for balancing deterrence, fairness, and accountability within modern criminal justice systems.(Dinesh Babu Eedi, 2013)

Among the various doctrinal approaches, two frameworks strict liability and vicarious liability have emerged as the most influential mechanisms for constructing corporate mens rea. These doctrines differ sharply in their theoretical foundations and practical implications. Strict liability dispenses with the requirement to prove subjective fault, imposing liability on a corporation solely because it committed a prohibited act or generated a prohibited risk. By contrast, vicarious liability attributes the culpability of corporate agents to the corporation when those agents act within the scope of their employment and for the corporation's benefit. While strict liability conceptualizes corporate fault as an objective regulatory mechanism, vicarious liability treats the corporation as an extension of its human actors. Despite these differences, both doctrines serve the common objective of enabling the law to establish corporate culpability in circumstances where traditional individual-focused mens rea analysis is inadequate.(Sari, 2023)

The increasing complexity of corporate structures and the diffusion of decision-making authority have strengthened the relevance of these doctrines. Traditional models such as the identification doctrine, which attributes mens rea only to senior management have proved insufficient for capturing the realities of modern corporate wrongdoing. In many cases, corporate crime results not from deliberate decisions by top executives but from lower-level employees, informal organizational practices, systemic failures of oversight, or risk-generating corporate cultures. Strict liability and vicarious liability offer alternative routes for attributing responsibility in such contexts: strict liability by presuming fault, and vicarious liability by transferring an individual agent's fault to the corporate entity. (Sarch, 2024) Together, these doctrines help bridge the gap between criminal law's conceptual structure and the unctional realities of corporate behavior. This study examines how strict liability and vicarious liability operate as doctrinal tools for determining corporate mens rea, with particular emphasis on their theoretical coherence, practical application, and relevance in the Indonesian legal system. Indonesia represents a compelling jurisdiction for such analysis due to its evolving regulatory landscape, the growing enforcement of corporate criminal liability in sectors such as environmental protection, corruption, and consumer affairs, and the enactment of the 2023 Criminal Code (KUHP 2023), which codifies corporate liability more comprehensively than any prior Indonesian legal instrument. While strict liability is well-established in environmental and consumer protection statutes, the application of vicarious liability has gained prominence through instruments such as Supreme Court Regulation (PERMA) No. 13 of 2016 on corporate criminal liability. Despite these developments, substantial gaps and inconsistencies persist. Indonesia's legal framework does not present a unified approach to corporate mens rea. Different statutes adopt divergent standards: some rely on strict liability, others on vicarious liability, and still others require proof of corporate intent or negligence. This doctrinal fragmentation generates uncertainty for law enforcement, courts, and corporate actors. Scholarly engagement with the issue remains.

Limited, and existing literature typically treats strict liability and vicarious liability in isolation or confines the discussion to specific regulatory sectors without connecting them to broader theoretical debates on corporate culpability. This study addresses these gaps by offering a clear, systematic, and comparative analysis of how strict

liability and vicarious liability construct corporate mens rea, both conceptually and within Indonesian practice. The importance of this inquiry lies in its potential to reduce doctrinal ambiguity and to provide a more coherent foundation for the enforcement of corporate criminal liability in Indonesia. By analyzing strict liability and vicarious liability as mechanisms for determining corporate mens rea, this study contributes to the development of a more consistent, transparent, and predictable legal framework. Such clarity is essential to ensuring that corporations are held accountable in a manner that is both effective in deterring harmful conduct and consistent with the fundamental principles of criminal law.

Ultimately, this study argues that strict liability and vicarious liability should not be treated as competing or mutually exclusive doctrines. Rather, they function as complementary tools that may be strategically employed depending on the nature of the offense, the organizational characteristics of the corporation, and the regulatory objectives at stake. A properly calibrated combination of the two doctrines supported by clear statutory guidance and robust judicial interpretation offers the most effective means of constructing corporate mens rea in modern

legal systems. Such an approach aligns doctrinal principles with the practical realities of corporate behavior and enhances the capacity of criminal law to safeguard society from harmful corporate practices.

RESEARCH PROBLEM

The central research question is: How can corporate mens rea be determined within the framework of strict liability and vicarious liability doctrines?

RESEARCH METHODS

Methodologically, this study employs a normative juridical approach. The research is conducted through statutory analysis, examination of legal doctrines, and review of relevant judicial cases. A conceptual approach is used to explore fundamental principles underlying corporate criminal liability, while a statutory approach is applied to analyse the provisions of Indonesian laws that regulate corporate offenses.

RESULTS AND DISCUSSION

Conceptual Foundations of Corporate Mens Rea

The foundational challenge in corporate criminal law is reconciling the traditional requirement of mens rea with the reality that corporations, as artificial legal persons, lack consciousness, intention, and moral agency. Classic criminal law is designed for human actors who can form intentions, make decisions, and experience guilt; corporations cannot do any of these things. Nonetheless, modern society entrusts corporations with vast power economic, technological, and operational enabling them to cause harm on an unprecedented scale. Determining corporate mens rea therefore becomes a doctrinal necessity: without it, the criminal law cannot meaningfully respond to corporate misconduct, nor can it ensure accountability for institutional or systemic wrongdoing.(Fiveable, n.d.)

Several theoretical models have been developed globally to conceptualize corporate mens rea. The earliest is the identification doctrine, which treats the mental state of senior management as the mental state of the corporation. While coherent with hierarchical organizations of the past, this doctrine is increasingly obsolete today. Corporate operations and decision-making structures are distributed across departments, subsidiaries, contractors, and automated systems. Wrongdoing often emerges not from the intent of executives but from everyday operational processes, negligent supervision, flawed incentive structures, or corporate cultures that tolerate risk-taking or unethical behavior.

Modern scholarship therefore favors broader models of attribution, such as organizational culture, collective knowledge, or structural negligence. These theories view the corporation as a complex social organism whose “conscience” is distributed across its policies, internal routines, compliance systems, and operational norms. However, while conceptually rich, these models remain difficult to convert into clear legal standards for criminal enforcement.(Sarch, 2024)

As a result, two practical doctrines strict liability and vicarious liability have emerged as the most operationally effective frameworks for determining corporate mens rea. These doctrines do not require courts to speculate about the consciousness of a fictional entity. Instead, they offer concrete rules for attributing responsibility either by

(1) presuming fault (strict liability) or (2) transferring fault from individuals to the corporation (vicarious liability). Each provides a legally manageable method for imputing culpability, thus filling the doctrinal gap left by traditional theories.(Anugrah & Santoso, 2022)

These frameworks are particularly relevant in jurisdictions like Indonesia, where statutory law increasingly acknowledges corporate criminality but continues to grapple with the conceptual foundations of corporate fault. Examining strict liability and vicarious liability therefore provides a clearer pathway for defining how corporate mens rea should be constructed in practice.

Strict Liability as a Mechanism for Determining Corporate Mens Rea

Strict liability represents the most straightforward, but also the most radical, departure from traditional mens rea doctrine. Under strict liability, the prosecution need not prove intention, knowledge, or negligence. The corporate defendant is held liable solely because it committed a prohibited act or created a prohibited risk, regardless of its internal mental state or the intentions of its agents. In effect, strict liability treats the existence of harm or the violation of a regulatory rule as conclusive evidence of corporate wrongdoing.(Sam Eastwood et al., n.d.)

This doctrine is grounded in the idea of public welfare offenses, which prioritize the protection of societal interests over subjective moral blameworthiness. Industries such as manufacturing, mining, energy extraction, transportation, and chemical processing generate inherent risks to the environment and human health. Requiring proof of subjective fault in such contexts would render criminal law ineffective, as corporations could evade liability through complex organizational structures, delegation of responsibilities, or claims of ignorance. Strict liability therefore acts as a regulatory mechanism that shifts the burden of risk from victims to the corporations best positioned to prevent harm. In the context of corporate mens rea, strict liability effectively constructs fault through presumption. It eliminates the need for subjective inquiry by imposing responsibility on the corporation for failure to control its operations adequately. The doctrine thus reframes mens rea as a duty of control, not a state of mind. The underlying assumption is that any harm occurring within a corporation's sphere of activity is attributable to the corporation's failure to implement appropriate policies, oversight mechanisms, or safety protocols.(Northrup, n.d.)

Strict liability also aligns with economic theories of deterrence. By internalizing the costs of harm, it incentivizes corporations to adopt preventive measures, invest in compliance systems, and reassess operational risks. Corporations, unlike individuals, respond to financial incentives and regulatory constraints; strict liability leverages this reality by creating a legal environment where the costs of non-compliance are predictably punitive.

Nevertheless, strict liability raises fairness concerns. Punishing corporations for harm despite diligent efforts prevent wrongdoing may be seen as incompatible with the principle of culpability. Some argue that strict liability should be limited to administrative sanctions rather than criminal penalties. Others propose introducing defenses such as “due diligence” or “reasonable compliance,” allowing corporations to avoid liability if they can demonstrate robust preventive systems. These debates highlight the tension between regulatory efficiency and moral legitimacy in corporate criminal law.

Yet in practice, strict liability remains one of the most influential tools for determining corporate mens rea, especially in areas where societal harm is severe and proving subjective fault is impractical.(Sari, 2023)

Vicarious Liability as a Mechanism for Determining Corporate Mens Rea

Vicarious liability provides a more traditional route for attributing mens rea to corporations. Under this doctrine, the corporation is held responsible for the acts and mental states of its employees, managers, or directors when they act within the scope of their employment and for the corporation’s benefit. This approach treats the corporation as an extension of its human agents, operationalizing the principle that an entity acting through others must bear legal consequences for their wrongdoing. Unlike strict liability, vicarious liability retains a connection to subjective fault. The corporation is deemed culpable not because harm occurred, but because its agent possessed the requisite mens rea. Thus, vicarious liability frames corporate fault as derivative, relying on the conduct of identifiable individuals.

This doctrine is particularly suited to offenses involving intentional wrongdoing fraud, bribery, embezzlement, corruption, or falsification of documents where corporate agents act to advance the corporation’s interests. In such cases, imputing the agents’ intentions to the corporation reflects a realistic understanding of corporate behaviour: employees act as instruments of corporate strategy, and corporations benefit from their misconduct.(A, n.d.)

However, vicarious liability faces limitations. Many corporate crimes do not result from the intentional acts of identifiable individuals but from collective failures or institutional cultures. In highly complex organizations, identifying a single culpable agent may be impossible. Moreover, corporations may deliberately fragment responsibilities across departments to obscure accountability. These structural features undermine the effectiveness of vicarious liability in capturing systemic wrongdoing.

Despite its drawbacks, vicarious liability remains essential for constructing corporate mens rea in contexts where individual intent is central to the offense and where strict liability would be insufficiently responsive to the moral dimensions of wrongdoing.

Indonesian Legal Application: Statutory and Judicial Practice

Indonesia’s approach to corporate criminal liability reflects a hybrid of strict and vicarious liability principles. Environmental statutes, disaster management laws, and consumer protection regimes adopt strict liability, recognizing the high-risk nature of industrial activity and the difficulty of proving subjective fault. Contrast,

corruption law, money laundering statutes, and the 2023 Criminal Code (KUHP 2023) employ vicarious liability frameworks, attributing the actions and mental states of corporate agents to the corporation. PERMA No. 13/2016 represents a crucial development in Indonesian judicial practice. It provides concrete indicators for determining corporate fault, including: failure to prevent crime, benefit to the corporation, and the involvement of corporate agents. These criteria blend strict and vicarious liability principles, allowing courts to attribute mens rea either through individual agents or through institutional failures. KUHP 2023 further strengthens corporate criminal liability by codifying corporate status as a subject of criminal law and introducing provisions for managerial responsibility, corporate culture, and compliance obligations. This framework reflects global trends toward recognizing corporate fault as both derivative (through agents) and structural (through organizational systems).(Nababan, n.d.)

However, Indonesia still faces doctrinal fragmentation. Sectoral statutes apply different standards for liability, leading to inconsistent enforcement. Courts vary in their application of PERMA 13/2016, and the absence of clear sentencing guidelines for corporations creates unpredictability. The legal system also lacks a recognized compliance defense, limiting fairness for corporations that implement robust preventive measures.

Comparative Approach to Vicarious Liability in Australia, the United States, the Netherlands, and Indonesia

The principles of vicarious liability vary across Australia, the United States, the Netherlands, and Indonesia, primarily due to the differences in their legal systems namely the common law tradition in Australia and the United States, and the civil law tradition in the Netherlands and Indonesia.

Tabel 1. Nama Tabel

Aspect	Australia & United States (Common Law)	Netherlands & Indonesia (Civil Law)
Primary Sources of Law	Developed mainly through judicial decisions (case law) supplemented by statutes.	Based on codified legislation such as the Brgerlijk Wetboek (Netherlands) and the Indonesian Civil Code (KUH Perdata).
Basic Concept	A well-established jurisprudential doctrine; often applied without requiring proof of employer fault, reflecting strict liability within employment contexts.	Derived from civil-law principles of unlawful acts requiring fault, though exceptions exist for superior responsibility.
Civil Law Foundation	Applied flexibly in criminal law and expanded to support corporate criminal liability by attributing agents' acts to corporations.	Traditionally adheres to personal fault; vicarious liability in corporate criminal cases is relatively recent and governed by special statutes or revised criminal code provisions (e.g., Dutch Criminal Code Article 51).

Criminal Law Foundation	Applied flexibly in criminal law and expanded to support corporate criminal liability by attributing agents' acts to corporations.	Traditionally adheres to personal fault; vicarious liability in corporate criminal cases is relatively recent and governed by special statutes or revised criminal code provisions (e.g., Dutch Criminal Code Article 51).
Doctrinal Development	Significant expansion, including recognition of relationships "akin to employment" to extend liability.	Application in Indonesia is increasingly progressive but remains influenced by the civil-law framework inherited from Dutch colonial legal tradition.

Source: Author, 2025

In Common Law systems, the primary sources of law are judicial decisions, allowing vicarious liability to evolve extensively through case law. The doctrine is well established and often applied without requiring proof of employer fault, functioning in practice as a form of strict liability within employment relationships. Its development in tort law relies on the “close connection” test, which assesses the degree of linkage between the wrongful act and the employee’s assigned duties. In criminal law, the doctrine is applied more flexibly, supporting the expansion of corporate criminal liability by attributing the acts and mental states of agents to the corporation.

By contrast, Civil Law systems such as the Netherlands and Indonesia rely primarily on codified legislation, including the Burgerlijk Wetboek and the Indonesian Civil Code (KUH Perdata). Vicarious liability is not primarily jurisprudential but is explicitly regulated by statutory provisions, most notably Article 1367 KUHPerdata, which mirrors its Dutch counterpart and imposes responsibility on superiors for the acts of their subordinates. Civil Law frameworks emphasize fault-based liability in unlawful acts, though exceptions exist for superior responsibility. In criminal law, vicarious liability has traditionally been limited due to the emphasis on personal culpability, its application to corporations is relatively recent and governed by special statutory regimes, such as Article 51 of the Dutch Criminal Code.

The Position of Strict Liability and Vicarious Liability in the Indonesian Legal System

The position of strict liability and vicarious liability in the Indonesian legal system has evolved through a combination of classical civil law doctrine, modern regulatory demands, and the development of corporate criminal responsibility. Although both concepts originate in the common law tradition, they have been gradually internalized into Indonesian law through statutory provisions, judicial reasoning, and administrative regulations. Neither strict liability nor vicarious liability appears explicitly in the old Criminal Code or the basic provisions of the Civil Code; however, a variety of modern statutes—such as the Consumer Protection Act, the Environmental Protection and Management Act, and Supreme Court Regulation (PERMA) No. 13 of 2016—have made these concepts essential components of contemporary liability regimes in both civil and criminal contexts. Strict liability in Indonesia finds

its clearest expression in the field of environmental law. Article 88 of the Environmental Protection and Management Act imposes absolute responsibility on operators of hazardous and high-risk activities when environmental damage or pollution occurs. In such cases, victims are not required to prove fault. (Lalu Saipudin, Salim HS., Rodliyah, 2025) This legislative choice is rooted in the need to provide effective remedies in situations where proving negligence or intentional wrongdoing is practically impossible. The rapid expansion of industrial activities and the significant power imbalance between corporations and local communities have prompted lawmakers to prioritize victim protection by shifting the burden of risk to operators of inherently dangerous activities. Similar tendencies are visible in consumer protection, where producers may be held liable for defective or harmful products without requiring consumers to establish fault, and in construction law, which holds contractors strictly liable for structural failures. In these sectors, Indonesia clearly favors strict liability because it facilitates accessibility to remedies and aligns with public welfare objectives.

Despite the growth of strict liability, vicarious liability remains a central doctrine within Indonesian civil law. Its primary foundation lies in Article 1367 of the Civil Code, which establishes the liability of employers for harm caused by their employees in the course of their duties. This provision has long structured Indonesian tort law and continues to guide courts in allocating responsibility within hierarchical work relationships. Employers who benefit from an employee's labor are deemed to bear the corresponding legal risks when that employee causes harm. Courts consistently apply this doctrine, confirming its deep entrenchment in Indonesian law. A major development occurred when the doctrine of vicarious liability was extended to criminal law through the recognition of corporate criminal liability. Supreme Court Regulation (PERMA) No. 13 of 2016 constitutes a turning point in this regard. It provides judges with concrete guidance on determining when a corporation may be held criminally liable and outlines indicators of corporate fault. (Anugrah & Santoso, 2022) Under this framework, corporations may be held responsible for criminal acts committed by directors, managers, or employees when these acts occur within the scope of their functions and confer a benefit upon the corporation. Judicial practice demonstrates that courts examine whether the perpetrator acted within the ambit of their authority, whether the corporation gained from the act, and whether adequate compliance mechanisms were in place.

The relational structure between the individual actor and the corporation becomes a central basis for attributing criminal responsibility. This reflects a clear adoption of vicarious liability within the context of Indonesian corporate criminal enforcement. Notably, PERMA No. 13 of 2016 also incorporates elements resembling strict liability. The regulation allows corporate liability to arise when companies fail to implement sufficient preventive measures or when they allow violations to occur, even in the absence of direct intent or negligence by senior management. Many court decisions applying the regulation impose liability on corporations primarily due to institutional failures in compliance systems rather than the mental state of individual perpetrators. Consequently, the model of corporate liability emerging from PERMA No. 13 of 2016 represents a hybrid that blends vicarious and strict liability principles: liability may be attributed through agency relationships, but the corporation's failure to prevent wrongdoing also forms a basis for criminal responsibility independent of individual fault. (Ainun, Nasrullah Arsyad, 2019) The enactment of the 2023 Criminal Code (KUHP 2023) strengthens both concepts and embeds

them more firmly within Indonesia's legal architecture. The Code formally recognizes corporations as subjects of criminal law, provides a detailed structure for corporate and managerial responsibility, and sets explicit standards for determining corporate culpability. In doing so, KUHP 2023 codifies vicarious liability in a more systematic manner, confirming that corporations may be punished when offenses are committed by individuals acting within the scope of their authority or for the benefit of the corporation. Directors, managers, or other responsible individuals thus serve as conduits through which responsibility flows to the organization.(Ishwara, 2024)

This codification provides a more stable foundation for doctrines previously dependent on judicial interpretation and sector-specific statutes. At the same time, KUHP 2023 implicitly expands the use of strict liability within criminal law. Although the Code maintains the principle of culpability as its normative foundation, it introduces regulatory and administrative offenses that do not require proof of mens rea, particularly in corporate and compliance-related contexts. These offense structures mirror forms of strict liability already familiar in environmental and consumer protection law. KUHP 2023 thus aligns Indonesia's codified criminal law with modern regulatory trends that emphasize risk prevention, compliance obligations, and institutional responsibility over individual intention. Taken together, the Indonesian legal system displays a differentiated orientation. In environmental protection, consumer safety, and other high-risk or public-interest sectors, strict liability occupies a dominant position because it ensures prompt remedies and shifts risk to the party best able to control it. In the domain of general civil liability and corporate criminal responsibility, vicarious liability remains the central principle, as hierarchical organizational structures make it necessary to attribute wrongdoing by individuals to the entity that benefits from their actions. Judicial application of PERMA No. 13 of 2016 further demonstrates that Indonesian courts often synthesize the two doctrines: corporations may be held liable even where individual wrongdoing cannot be precisely attributed, provided that institutional negligence or compliance failures are evident. In conceptual terms, Indonesian law is moving toward a hybrid model that strategically deploys both strict liability and vicarious liability depending on regulatory needs.(Dewi et al., 2025) High-risk societal harms rely on strict liability to ensure compensatory justice, while the governance of corporate conduct relies on vicarious liability to enforce accountability within complex organizational structures.

KUHP 2023 reinforces this hybridization by codifying vicarious liability while simultaneously creating space for strict-like regulatory offenses. Indonesia now possesses a more coherent framework for addressing civil and criminal wrongdoing in an era marked by industrial expansion, sophisticated business entities, and the growing prevalence of corporate crimes.(Hadziq & Sugiharto, 2024)

Strict Liability vs. Vicarious Liability in Corporate Criminal Responsibility

The development of corporate criminal responsibility in modern legal systems requires doctrinal mechanisms capable of bridging the conceptual gap between traditional principles of culpability and the realities of corporate conduct. Corporations, as artificial legal entities, do not possess psychological states, intentions, or moral consciousness in the same manner as natural persons. Consequently, the classical mens rea framework central to criminal law for centuries cannot be applied directly to corporate actors.

In response to this conceptual challenge, two major doctrines have emerged as alternative pathways for attributing culpability to corporations: strict liability and vicarious liability. Each doctrine rests on distinct jurisprudential foundations and reflects a different conceptualization of what it means for a corporation to be “at fault.” A comparative conceptual analysis of these doctrines is essential for understanding how corporate mens rea is constructed and operationalized within contemporary legal systems, including Indonesia’s. Strict liability dispenses entirely with the need to prove subjective fault intention, knowledge, recklessness, or negligence. Under a strict liability regime, the mere commission of the prohibited act, combined with the occurrence of the harmful result, suffices to attribute criminal responsibility to the corporate defendant.(Wibisana & Marbun, 2018) The guiding rationale is grounded in public welfare theory, which maintains that certain regulatory fields such as environmental protection, food safety, industrial operations, and consumer protection require heightened vigilance because of the inherent risks involved.

In these domains, proving the subjective mental state of any individual within the corporation is not only unnecessary but counterproductive to achieving effective regulatory enforcement. Strict liability thus shifts the focus from subjective blameworthiness to objective wrongdoing. It characterizes corporate “fault” as the failure to prevent harm, irrespective of the internal psychological states of corporate agents.

In contrast, vicarious liability derives corporate culpability from the culpability of individuals acting within the scope of their employment. The doctrine imputes both the actus reus and the mens rea of employees, managers, or directors to the corporation whenever the wrongful act is committed in furtherance of corporate interests. This doctrinal structure reflects a substitutional theory of responsibility: the corporation, as the beneficiary of its agents’ conduct, must also bear the corresponding legal burdens. Whereas strict liability views corporate wrongdoing as independent of individual mental states, vicarious liability treats the corporation as an extension of its human agents, allowing their subjective fault to stand in for the corporation’s nonexistent psychological capacity.(Wibisana & Marbun, 2018)

The conceptual divergence between the two doctrines reveals two fundamentally different understandings of corporate culpability. Strict liability conceptualizes corporate fault as a functional failure of risk prevention. Under this model, the corporation is culpable because it operates a dangerous activity or an enterprise capable of generating high-risk externalities. The standard is an objective one: whether the corporation took adequate precautions to prevent harm. Subjective intent is irrelevant. In contrast, vicarious liability conceptualizes corporate fault as derivative intent. It presupposes that individuals within the corporation are capable of forming mens rea, and that their mental states can be legally attributed to the entity.(Cako & Listyowati, 2024) From an epistemological standpoint, strict liability is easier to enforce because it eliminates the need for prosecutors to penetrate the complex internal decision-making structures of large corporations. Many corporate offenses, such as environmental violations or industrial accidents, occur because of systemic failures rather than intentional wrongdoing by a single individual. In such cases, strict liability captures the corporate contribution to harm more accurately than vicarious liability. However, strict liability raises concerns of substantive fairness because it may impose punishment even when the corporation exercised due diligence or adhered to established safety protocols.

Vicarious liability, while more aligned with the classical moral foundations of criminal law, is often ill-suited to the structural realities of corporate operations. Modern corporations function through diffuse and decentralized decision-making processes, with no single individual possessing full knowledge or control over corporate activities. Crimes may emerge from a series of interactions among various departments rather than from deliberate choices by identifiable actors. In such situations, vicarious liability may fail to assign responsibility appropriately, as it depends on proving fault by an individual agent who can be linked to the corporate hierarchy.

In contemporary legal development, many jurisdictions have adopted hybrid liability models that incorporate elements of both strict and vicarious liability. Such hybrid mechanisms recognize that corporate wrongdoing often results from a combination of individual misconduct and structural deficiencies. Indonesia reflects this hybrid orientation. Strict liability dominates public welfare statutes most notably the Environmental Protection and Management Act, which recognizes corporate liability without the need to prove *mens rea*. Meanwhile, vicarious liability is prevalent in statutory regimes addressing corruption, money laundering, and other corporate crimes requiring intent or knowledge. PERMA No. 13/2016, in particular, combines both doctrines by attributing liability to corporations when individuals commit crimes in the scope of their authority, but also when institutional failure or inadequate compliance systems facilitate the commission of the offense. KUHP 2023 continues this hybrid conceptualization by codifying corporate liability based on both individual attribution and structural fault. Articles relating to corporate crime allow prosecutors to establish corporate *mens rea* through managerial actions, corporate policies, or internal cultures that enable criminal conduct. This shift recognizes that corporate consciousness can be artificially constructed through the aggregation of individual intent or through patterns of institutional behavior. (Muhammad Rizaldi Hendriawan, 2022)

Thus, conceptual analysis reveals that strict liability and vicarious liability are not competing doctrines but complementary frameworks that address different dimensions of corporate fault. Strict liability excels in contexts involving public risk management and systemic harms, whereas vicarious liability is better suited for cases involving intentional misconduct by identifiable individuals. A robust corporate criminal liability framework must incorporate both doctrines while maintaining principled distinctions to ensure fairness, predictability, and effectiveness.

Integrated Critical Assessment

Despite significant progress in recognizing corporations as subjects of criminal law, Indonesia's corporate criminal liability regime continues to suffer from structural, doctrinal, and institutional deficiencies that impede its effectiveness. The integration of strict liability and vicarious liability into Indonesian law is conceptually promising because both doctrines provide workable mechanisms for attributing corporate *mens rea*. However, their practical implementation remains uneven. Strict liability offers efficiency and strong deterrence in high-risk regulatory sectors, yet its fairness is often questioned in the absence of due-diligence defenses. Vicarious liability provides moral coherence by linking corporate culpability to the wrongdoing of identifiable agents, yet this approach struggles to address systemic harms that arise from organizational structures, corporate culture, and distributed

decision-making. These limitations indicate that Indonesia has not yet developed a unified or coherent theory of corporate *mens rea* capable of integrating strict and vicarious liability into a consistent enforcement framework.(Sari, 2023)

The principal challenge lies in normative disharmony across Indonesia's statutory landscape. Multiple sectoral laws prescribe divergent standards of corporate liability, creating doctrinal confusion and inconsistent enforcement. Environmental and consumer protection statutes unequivocally adopt strict liability, shifting the burden of risk to corporate actors engaged in hazardous activities. By contrast, anti-corruption, taxation, and money laundering statutes employ fault-based or intent-based approaches that require proving the mental state of corporate agents. This fragmentation persists despite the introduction of KUHP 2023, which codifies corporate criminal liability but does not harmonize the disparate approaches found in sectoral legislation. Consequently, prosecutors and judges remain constrained by incompatible statutory frameworks, leading to inconsistent outcomes and doctrinal ambiguity.

A second problem concerns the legal status and operational role of PERMA No. 13/2016, which has become the judiciary's primary procedural tool for attributing corporate fault. While PERMA 13/2016 is widely recognized as a progressive instrument that fills procedural gaps, its normative authority is limited because it is a judicial regulation rather than a statute. Under the principle of legality (*nullum crimen sine lege*), PERMA cannot create independent criminal norms. Its extensive use in determining corporate liability— sometimes beyond the explicit mandates of statutory provisions—creates tension between judicial innovation and the constitutional requirement that criminal norms be grounded in formal legislation. This reliance on PERMA undermines the stability and legitimacy of corporate criminal adjudication.

A third and deeply rooted weakness involves the epistemological difficulty of proving corporate *mens rea* in complex organizational settings. Prosecutors often rely heavily on vicarious liability by attempting to identify specific individuals whose intent can be attributed to the corporation. However, many corporate crimes arise from collective decision-making, systemic negligence, inadequate internal controls, weak compliance systems, or cultural incentives that reward risky or unlawful behavior. In such cases, no single individual possesses the requisite *mens rea*, rendering vicarious liability ineffective. Although KUHP 2023 acknowledges concepts such as corporate culture and organizational fault, these provisions remain underdeveloped due to the absence of implementing regulations and sparse judicial interpretation. As a result, evidentiary standards for proving institutional or structural *mens rea* remain unclear.

Fourth, Indonesia lacks a compliance-based defense mechanism, which is widely recognized in modern corporate criminal regimes. Jurisdictions such as the United Kingdom (e.g., the Bribery Act 2010) allow corporations to avoid liability if they can demonstrate that adequate compliance procedures were in place. This model incentivizes corporations to maintain robust internal controls while ensuring fairness in cases where misconduct occurs despite preventive measures. Indonesia's strict liability framework frequently imposes liability without considering good-faith compliance efforts, creating risks of over-deterrence and reducing incentives for

corporations to invest in internal governance systems. Without a due-diligence defense, corporate liability may become punitive rather than preventive.

A fifth structural weakness lies in the limited institutional capacity of law-enforcement agencies. Corporate crimes often involve complex evidence financial records, digital communications, industrial engineering assessments, and environmental analyses that require specialized technical expertise. Investigators and prosecutors frequently lack multidisciplinary support, leading to inadequate evidence gathering, incomplete case files, and weakened prosecution strategies. The absence of dedicated forensic units or permanent technical advisors makes Indonesia ill-equipped to confront increasingly sophisticated corporate crimes.

A sixth concern is Indonesia's enforcement culture, which remains heavily oriented toward individual rather than corporate accountability. Prosecutors frequently focus on operational-level employee's operators, supervisors, field staff while corporations and their senior management remain unchanged. This practice reflects a traditional fixation on individual *actus reus* rather than institutional responsibility and undermines the deterrent function of corporate criminal liability. Systemic misconduct embedded in corporate policy or culture often escapes legal scrutiny, leaving corporations effectively insulated from the consequences of organizational wrongdoing.

A seventh and final weakness relates to judicial inconsistency, which hampers the development of reliable corporate criminal jurisprudence. Courts diverge significantly in how they apply PERMA 13/2016, interpret corporate *mens rea*, evaluate compliance efforts, and impose sanctions. Some decisions impose severe penalties, while others absolve corporate defendants under nearly identical factual circumstances. The lack of standardized sentencing guidelines for corporate offenders exacerbates this inconsistency. Although KUHP 2023 provides a more structured framework, its effectiveness will depend on the emergence of consistent jurisprudence and interpretive guidance.

In summary, Indonesia's corporate criminal liability regime while progressively evolving remains constrained by doctrinal fragmentation, procedural uncertainty, institutional limitations, and inconsistent enforcement. To advance toward a more coherent and effective system, Indonesia must harmonize its sectoral laws, clarify the legal force of PERMA 13/2016, articulate clear standards for proving corporate intent, introduce compliance-based defenses, strengthen investigative capacity, and cultivate judicial consistency. Only through such comprehensive reforms can Indonesia transform strict and vicarious liability into a complementary and coherent framework for determining corporate *mens rea*—one that is not merely punitive, but capable of systematically preventing corporate wrongdoing and protecting public welfare.

CONCLUSION

The evolution of corporate criminal liability reflects a significant transformation in how legal systems conceptualize fault and accountability in the modern corporate environment. As corporations expand in scale, technological capacity, and organizational complexity, traditional individual-centered conceptions of *mens rea* become inadequate for addressing harms that arise not from isolated human decisions but from systemic failures,

structural incentives, and collective organizational behavior. Within this context, strict liability and vicarious liability have emerged as the two most pragmatic and doctrinally significant mechanisms for attributing mens rea to corporations' entities that lack consciousness yet possess the ability to inflict substantial social, economic, and environmental harm. Strict liability constructs corporate mens rea by presuming fault from the occurrence of harm or regulatory violation, emphasizing the corporation's fundamental duty to control risks inherent in its operations. This doctrine functions effectively in high-risk regulatory sectors such as environmental protection, consumer safety, and industrial activities where proving subjective fault is often impractical. It operates as a preventive and deterrent mechanism, compelling corporations to internalize the costs of their operations and adopt robust compliance measures. In contrast, vicarious liability attributes mens rea to the corporation through the wrongdoing of individuals acting within the scope of their employment and for the benefit of the corporation. This model aligns more closely with moral theories of blameworthiness and is especially suited for intentional misconduct such as corruption, fraud, bribery, and financial crimes. Together, these doctrines provide complementary pathways for imputing culpability to corporate entities. In Indonesia, strict liability and vicarious liability operate in a hybrid but inconsistent fashion. Environmental and consumer protection laws rely heavily on strict liability, while corruption, taxation, and money laundering statutes incorporate vicarious liability models. Recent reforms most notably PERMA No. 13/2016 and KUHP 2023 represent important institutional steps toward systematizing corporate liability by recognizing both derivative and structural forms of culpability. However, significant doctrinal and institutional weaknesses persist. Sectoral fragmentation leads to inconsistent enforcement across legal regimes, PERMA 13/2016, despite its practical utility, lacks the normative authority of statute; and evidentiary challenges continue to impede efforts to prove corporate mens rea in cases involving diffuse decision-making or organizational culture. The absence of a compliance-defense mechanism and limited investigative capacity further constrain Indonesia's ability to enforce corporate criminal liability effectively. Overall, Indonesia is undergoing a transitional phase: it has adopted the conceptual foundations of strict and vicarious liability but has not yet integrated them into a coherent, harmonized, and predictable framework. Developing such a framework requires harmonization of sectoral statutes, clearer evidentiary standards for institutional fault, greater investment in technical and forensic expertise, and the incorporation of defenses that reward robust compliance systems. Only through these reforms can Indonesia construct a principled and functional foundation for corporate mens rea that aligns with emerging global standards and addresses contemporary forms of corporate harm. Ultimately, strict liability and vicarious liability should be viewed not as competing paradigms but as complementary doctrinal tools. When integrated effectively, they enable the law to address both systemic and agent-driven corporate misconduct, ensuring that corporate accountability is fair, effective, and consistent with the fundamental aims of criminal law.

This study thus contributes to legal scholarship and policy development by offering a structured analysis capable of informing legislative reform, guiding law enforcement, and supporting judicial decision-making in Indonesia's evolving corporate criminal landscape.

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