

## Corporate Criminal Liability In Oil And Gas Sector Crimes In Indonesia

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**Abstract:** This research addresses the issue of corporate criminal liability in crimes occurring within Indonesia's oil and gas sector. In modern criminal law, corporations are increasingly recognized as legal entities capable of bearing criminal responsibility, particularly in cases related to economic offenses, environmental violations, and corruption. The oil and gas sector, being one of the most strategic and high-value industries, is highly susceptible to legal violations by corporate entities. Given the significant role this sector plays in the national economy, the accountability of corporations in this field is of utmost importance to ensure proper legal oversight and prevent harmful practices. The research employs a normative juridical approach, utilizing statutory, conceptual, and case study methods to examine how corporate criminal liability is applied in the oil and gas industry in Indonesia. The findings reveal that the regulation of corporate criminal liability in the oil and gas sector remains underdeveloped, as it is not explicitly addressed in the Oil and Gas Law. This lack of clear and specific regulation creates gaps in law enforcement, leaving corporations with opportunities to evade full accountability for crimes they commit. While existing legal frameworks such as the Anti-Corruption Law, Environmental Law, and PERMA No. 13/2016 provide a foundation for criminalizing corporations in cases of wrongdoing, the practical implementation of these regulations within the oil and gas sector has proven to be insufficient. Several factors contribute to the weak enforcement of corporate criminal liability. First, there are technical challenges in proving corporate involvement in criminal acts, as the actions of a corporation are often difficult to attribute to specific individuals. Second, the capacity of law enforcement agencies to effectively investigate and prosecute corporate crimes is limited, compounded by a lack of expertise and resources.

**Keywords:** Corporate Criminal Law, Corporations, Criminal Liability, Energy And Natural Resources, Oil And Gas Crimes,

### 1. BACKGROUND

The oil and gas sector is one of the strategic sectors in the Indonesian economy. Not only as the main source of state revenue, but also as an important pillar in supporting national development and energy security. The existence of abundant oil and gas reserves in Indonesia has attracted large amounts of investment, both domestic and foreign. However, behind its economic potential, the oil and gas sector also holds various legal issues, especially crimes involving corporate entities.

Corporate crime in the oil and gas sector often occurs in the form of manipulation of production reports, corruption in the licensing process, embezzlement of lifting results, environmental violations, and tax and royalty evasion. These crimes are not committed by individuals alone, but by legal entities or corporations through systematic managerial policies and decisions. Thus, corporations must be held criminally responsible for actions that harm the state, damage the environment, and threaten the safety of communities around oil and gas exploration.

Normatively, corporate criminal liability in Indonesia has been recognized in various laws and regulations, although not yet comprehensively. Article 20 of Law Number 31 Year 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption, as well as Article 116 of Law No. 32 of 2009 on Environmental Protection and Management have regulated the possibility of corporations being convicted if they meet certain elements. However, in practice, the application of criminal liability against corporations in the oil and gas sector is still very limited and has caused various debates.

One of the main challenges in enforcing corporate criminal liability is the difficulty of proving collective guilt in legal entities that do not have wills like humans. This is complicated by the complex and sometimes multinational organizational structure of corporations, making it difficult for law enforcement to trace individual responsibility behind unlawful corporate policies (Sliedregt & Vervaele, 2020). On the other hand, the legal framework of the oil and gas sector regulated in Law Number 22 of 2001 concerning Oil and Gas has not explicitly regulated the mechanism of corporate criminal liability as a whole. The absence of these technical arrangements causes the space for law enforcement against legal entities to be weak. As a result, many oil and gas crime cases are not resolved or only end up with lower-level individual actors (Saragih, 2023; Hidayat, 2022). The regulatory gap also makes it difficult to hold parent companies accountable when their subsidiaries commit crimes in host states (Zerk, 2021). Scholars have argued that Indonesia still lacks an integrated model for corporate criminal responsibility, particularly in high-risk sectors like energy and natural resources (Firmansyah, 2020). Without reform, impunity will continue to be a concern in corporate environmental and economic crimes (UNODC, 2021).

Crime in the oil and gas sector is not an ordinary criminal offense. It is complex, organized, and has a broad impact on the interests of the state. Therefore, the state needs a legal system that is able to bring substantive justice and deterrent effects to lawbreaking corporations. In this context, the application of criminal liability against corporations must be directed towards the establishment of a modern criminal law system capable of reaching crimes committed by large legal entities.

The urgency of this study lies in the importance of evaluating and reformulating the corporate criminal liability system in the oil and gas sector. This study does not only aim to understand the juridical aspects, but also as a contribution in strengthening national legal governance, preventing state losses, and realizing the sustainability of responsible exploration of natural resources.

In practice, the existence of positive laws that recognize corporations as subjects of criminal acts has not fully reflected effective implementation in the field. Many criminal cases involving large companies in the oil and gas sector end without adequate accountability, both for the company itself and for the decision-makers within it. This strengthens the assumption that Indonesian criminal law still favors perpetrators who have capital power and political access, so that substantive justice for the state and society is neglected.

In fact, the development of modern criminal law requires the principle of *strict liability* in corporate cases, including the oil and gas sector, where criminal responsibility is no longer based solely on individual guilt, but on the failure of the corporate system to prevent crime. This principle is widely adopted in the legal systems of developed countries that realize that corporate crime often cannot be reached by classical principles such as *actus reus* and *mens rea* alone.

Indonesia has actually begun to apply the concept of corporate criminal liability, as shown in Supreme Court Regulation No. 13/2016 on Procedures for Handling Criminal Cases by Corporations. The regulation states that corporations can be held criminally liable if they benefit from criminal acts or allow criminal acts to occur within their scope. However, the effectiveness of this Perma is still limited to certain cases and has not significantly touched the oil and gas sector.

In addition to normative problems, there are also structural problems, namely weak coordination between law enforcement agencies and potential conflicts of interest that can hinder the process of investigation and prosecution of large oil and gas companies. Institutions such as SKK Migas, the KPK, the Attorney General's Office, and the Police often experience overlapping authority and technical obstacles in proving the direct involvement of legal entities in criminal acts.

Environmental damage and social losses due to oil and gas crimes often do not receive fair compensation for the community. Corporations involved are only subject to administrative fines or light administrative sanctions, without balanced criminal charges. This is certainly contrary to the spirit of justice and legal certainty as mandated in the constitution.

These conditions emphasize the need for a paradigm shift in understanding and applying criminal liability to corporations in the oil and gas sector. It is not enough to wait for regulatory strengthening, but it must also be accompanied by an increase in the capacity of law enforcement officials, strong political commitment, and community participation in monitoring oil and gas companies operating in Indonesia.

Thus, it is important to conduct an in-depth study of the juridical, sociological, and criminological aspects of corporate criminal liability in the oil and gas sector. This is not only as part of the development of legal science, but also as a contribution in improving the law enforcement system and sustainable protection of natural resources in Indonesia.

## **2. THEORETICAL STUDY**

### **Corporate Criminal Liability**

Corporate criminal liability is a study that has become an important part in the development of modern criminal law. According to Andi Hamzah, in his book *Principles of Corporate Criminal Law*, the concept of criminalizing corporations was born from the need to reach crimes committed by legal entities, especially when criminal acts are committed in order to obtain significant economic benefits. Hamzah elaborated that criminal responsibility can be imposed on corporations if there is evidence that the criminal act was committed by an organ or management of the corporation within the scope of its duties for the benefit of the company. Barda Nawawi Arief in *Bunga Rampai Kebijakan Hukum Pidana* states that in the Indonesian legal system, corporate criminal responsibility still faces many challenges, especially in the aspects of proof and sanction arrangements. According to him, in the national legal system there is still a tendency to focus on individual perpetrators, so that legal entities often escape the criminalization process that should be applied. Muladi also highlighted the development of corporate criminal liability in the framework of contemporary criminal law. In his book *Corporate Liability in Modern Criminal Law*, he states that the functional structural approach in viewing corporations as perpetrators of crime can be used to overcome the limitations of the classical principles of criminal law that only recognize human subjects.

### **Corporate Crime in the Strategic Sector**

Edwin H. Sutherland is a central figure in understanding *white collar crime*, including corporate crime. In his book *White Collar Crime*, Sutherland states that crimes committed by people in high economic and social positions are often more dangerous because they are systemic and have a wide impact. Crime in the oil and gas sector is a clear manifestation of a form of corporate crime with high destructive power, because it is directly related to the management of natural resources and public interests. Research by M. Erdianto in the *Law & Development* journal entitled "*Corporate Criminal Responsibility in Oil and Gas Crimes*" states that the *oil* and gas sector is one of the most vulnerable sectors to crimes involving corporations, especially in the form of licensing collusion, production manipulation, and

AMDAL violations. He emphasized that the weak internal control system of the company, as well as the lack of criminal sanctions imposed, made this crime recur.

### **Legal Framework for Corporate Liability in Indonesia**

In terms of legislation, corporate criminal liability has been regulated in several regulations, such as:

- Article 20 of Law No. 31 Year 1999 jo. Law No. 20 of 2001 on the Eradication of Corruption, which states that corporations can be criminally charged if the criminal offense is committed by persons who have an employment relationship or other relationship, for and on behalf of the corporation.
- Article 116 of Law No. 32 of 2009 on Environmental Protection and Management, which emphasizes corporate criminal responsibility for environmental pollution and destruction.
- PERMA No. 13/2016 on Procedures for Handling Criminal Cases by Corporations, which clarifies examination procedures and types of sanctions against legal entities<sup>6</sup>.

A review of these regulations shows that the legal basis for imposing crimes against corporations in Indonesia is already available. However, the weakness lies in the implementation in the field, both in terms of proof, investigation, and punishment, especially in the oil and gas sector which is complex and sensitive to political-economic pressures.

### **3. RESEARCH METHOD**

This research is a normative legal research (juridical normative), which is research conducted to examine positive legal norms, legal principles, legal theories, and applicable doctrines related to corporate criminal liability in oil and gas sector crimes in Indonesia. The normative juridical approach is used because the focus of this research is on the study of legislation, legal concepts, and interpretation of jurisprudence, not on empirical data in the field.

This research also uses a conceptual approach and statutory approach, as well as a case approach to analyze the practice of law enforcement against corporate offenders in the oil and gas sector.

### **4. RESULT AND DISCUSSION**

## **The Position of Corporation as a Subject of Criminal Law**

The development of modern criminal law has recognized that corporations can be the subject of criminal law. Corporations are considered to have a legal will that is expressed through the actions of its management or employees. In the context of Indonesian law, recognition of corporate criminal liability can be found in several sectoral laws such as Law No. 31 of 1999 on the Eradication of Corruption, Law No. 32 of 2009 on Environmental Protection and Management, and PERMA No. 13 of 2016 on Procedures for Handling Criminal Acts by Corporations.

Corporations in the oil and gas sector have a dominant role in the exploration, production, transportation and distribution of natural resources. This strategic role opens up the potential for irregularities, both administrative and criminal in nature. Therefore, when a crime occurs on behalf of and for the benefit of a corporation, the legal entity can be held criminally responsible according to the principle of *corporate criminal liability*.

## **Corporate Crime in the Oil and Gas Sector**

Criminal law enforcement against corporations in the oil and gas sector is faced with complex evidentiary challenges. Crimes committed by corporations are often not committed by a single individual, but by a system within a corporate structure that has been designed in such a way as to avoid legal detection. In fact, in some cases, decisions that have criminal consequences are the result of collective corporate policies that consciously take legal risks for economic gain. In this framework, blame cannot be sought only in one individual perpetrator, but must be seen as part of a system of deviant corporate culture.

One of the fundamental weaknesses is the absence of explicit regulation in the Oil and Gas Law regarding corporate criminal liability. This causes the space for interpretation in the law enforcement process to be narrow and highly dependent on the interpretation of the law by law enforcement officials, who do not necessarily have a progressive perspective in dealing with corporate crime. In addition, the lack of technical regulations related to oil and gas company compliance standards with criminal law exacerbates the situation. For example, there are no provisions regarding internal reporting obligations that can be used as a measuring tool for corporate prudence in avoiding criminal acts.

On the other hand, the oligopolistic structure of the oil and gas industry involving multinational corporations creates problems of jurisdiction, transparency and accountability. In many cases, corporations can take refuge behind central-level corporate law policies or even the laws of their home countries. This is certainly a serious challenge in realizing the principle

of national legal sovereignty over natural resource management. Crimes such as underreporting of lifting results, avoidance of royalties, environmental pollution, or violations of local community rights are massive forms of economic crime but are difficult to prosecute if not supported by the courage and capacity of law enforcement agencies.

When oil and gas corporations commit violations of the law that have an impact on state losses or environmental pollution, it should not be enough to be subject to administrative sanctions or administrative fines. A more assertive approach is needed through criminal instruments, both in the form of heavy fines, business suspension, and confiscation of assets resulting from crime. Criminal sanctions against corporations are not only aimed at legal retaliation, but more importantly as a systemic prevention effort against corrupt practices and irregularities committed in a structured manner by business entities.

The construction of criminal liability against corporations must also pay attention to the dimensions of social justice. In practice, the impact of oil and gas crimes such as environmental pollution and illegal exploitation of resources is not only financially detrimental to the state, but also creates social inequality and ecological damage that is felt directly by the community around the operating area. Therefore, the principle of proportionality in punishment must also include restitution to affected communities and improvements to the risk management system within the company.

Corporate criminal law reform in the oil and gas sector needs to be directed at strengthening the company's internal criminal audit system, imposing a reversal burden of proof in cases of environmental crimes or corporate corruption, and strengthening independent oversight institutions that have special authority in investigating crimes committed by companies in the energy and natural resources sector. Indonesia has a great opportunity to develop a legal system that not only punishes, but also encourages compliance and healthy corporate governance through strict and fair criminal instruments.

Overall, corporate crime in the oil and gas sector is not just an ordinary violation of the law, but reflects the failure of legal, economic and political governance as a whole. Therefore, corporate criminal liability in this context must be seen as part of the state's efforts to maintain the integrity of national law, economic justice, and environmental sustainability. Without strong law enforcement against lawbreaking corporations in the oil and gas sector, the ideals of fair, equitable and sustainable national development will be difficult to achieve.

## **5. CLOSING**

## Conclusion

The recognition of corporations as subjects of criminal law in the Indonesian legal system has gained legitimacy through various sectoral laws and regulations, such as in the Anti-Corruption Law, Environmental Law, and PERMA No. 13/2016. However, in the context of the oil and gas sector, the regulation of corporate criminal liability is still not specifically and comprehensively regulated in Law No. 22/2001 on Oil and Gas. This causes a weak legal basis in ensnaring legal entities that commit oil and gas crimes. Corporate crime in the oil and gas sector has complex and systematic characteristics. Crimes in this sector often involve the entire corporate structure and are committed on the basis of corporate policy. Common forms of crime include lifting data manipulation, environmental pollution, tax and royalty evasion, and corruption in the licensing process. These crimes not only harm the state from an economic perspective, but also cause environmental damage and social impacts for communities around the exploration area. Law enforcement against corporations that commit oil and gas crimes in Indonesia still faces many obstacles. Among these are difficulties in proving corporate guilt, weak coordination between law enforcement agencies, and not optimal application of legal doctrines such as *corporate culture* and *strict liability*. In addition, the dominance of the economic and political power of oil and gas corporations is often an obstacle in the investigation and prosecution process. The paradigm of Indonesian criminal law which still tends to be individualistic and conservative has not been able to fully reach modern forms of corporate crime. Therefore, legal reforms and adjustments to the mindset of law enforcers are needed to be able to deal with the dynamics of corporate crime in a progressive and equitable manner.

## Advice

It is necessary to revise the Oil and Gas Law to explicitly regulate the provisions on corporate criminal liability. The regulation must include criteria for liability, types of sanctions, and mechanisms for proving corporate guilt. Law enforcement officers (investigators, prosecutors, and judges) need to be given special training and capacity building related to handling corporate criminal offenses, especially in the oil and gas sector. Adequate technical and legal knowledge is very important in dismantling the construction of crimes that are collective and hidden behind legal entities. It is necessary to strengthen cross-sector cooperation between law enforcement agencies, oil and gas sector supervisory agencies, and independent auditors in order to conduct a comprehensive search for potential criminal acts by corporations. In addition, synergy between criminal law and state administrative law is needed

in taking action. The application of doctrines such as *corporate culture*, *vicarious liability*, and *strict liability* needs to be strengthened in judicial practice to expand the basis of corporate criminal liability. This approach will allow corporations to be held liable without having to prove the guilt of certain individuals first. Criminal sanctions against corporations must be effective and have a deterrent effect, including through large fines, suspension of business activities, revocation of licenses, and confiscation of profits from crime. In addition, space must be opened for environmental restoration and compensation for affected communities. Public participation and civil society oversight of oil and gas company activities must be strengthened, especially in areas of exploitation of natural resources. Transparency and accountability are important keys in preventing and exposing corporate crime early on.

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