

Reconstruction of Corporate Criminal Liability for Corruption Crimes in the Banking Sector Based on Justice and Legal Certainty

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Abstract:

Corruption in the banking sector constitutes one form of corporate crime that has broad implications for the stability of the financial system, public trust, and the national economy. Such conditions create legal uncertainty and potentially hinder the realization of substantive justice in the eradication of banking corruption. This study aims to analyze the legal framework governing corporate criminal liability for banking corruption in Indonesia, identify normative and practical weaknesses that have caused corporate punishment to remain suboptimal, and formulate a reconstructed model of corporate criminal liability based on justice and legal certainty. This research employs a normative legal research method using statutory, conceptual, and case approaches. Primary legal materials consist of legislation, court decisions, and related legal documents, which are analyzed qualitatively by applying theories of corporate criminal liability, justice, and legal certainty. The findings reveal that the regulation of corporate criminal liability in banking corruption cases remains sectoral and has not yet provided clear parameters regarding the attribution of corporate fault, identification of controlling actors, and the relationship between individual fault and corporate fault. There are inconsistencies in judicial practice that often allow corporations to evade criminal sanctions despite having benefited from corruption committed by their directors or employees. Therefore, a reconstruction of the corporate criminal liability system is required through the affirmation of a corporate fault model integrating the doctrines of identification theory, aggregation theory, and the corporate culture model, accompanied by clearer regulations concerning the criteria of corporate fault, evidentiary mechanisms, and proportional and effective sanctions. This study concludes that the reconstruction of corporate criminal liability for banking corruption must be directed toward establishing a legal system capable of balancing the values of justice, legal certainty, and utility through the explicit recognition of corporations as independent criminal offenders, thereby enabling the eradication of corruption in the banking sector to be carried out more effectively, consistently, and fairly.

Keywords: Corporate Criminal Liability, Banking Corruption, Legal Reconstruction, Justice, Legal Certainty.

I. Introduction

Banking constitutes one of the main pillars of the national economic system, functioning to collect and distribute public funds in support of economic development. The existence of a healthy, stable, and trustworthy banking sector is an essential prerequisite for sustainable economic growth. Any form of deviation occurring within banking activities, particularly corruption offenses, not only causes financial losses to the state or corporate losses but also has the potential to disrupt the stability of the financial system and reduce public trust in banking institutions.

Corruption in the banking sector has characteristics distinct from conventional corruption crimes. Banking corruption is generally committed through complex mechanisms involving

corporate organizational structures, abuse of authority, misuse of credit facilities, manipulation of financial statements, violations of the prudential banking principle, and engineered transactions designed to benefit certain parties. Such conditions indicate that banking corruption can no longer be viewed merely as an individual act, but rather as corporate crime involving policies, organizational culture, or failures in internal corporate supervision.

The development of modern criminal law has recognized corporations as subjects of criminal law that may be held liable for offenses committed within the scope of their business activities. This recognition is reflected in various Indonesian laws, including Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001, which explicitly opens the possibility of prosecuting corporations as perpetrators of corruption offenses. This regulation demonstrates a paradigm shift from the classical doctrine of *societas delinquere non potest* toward the recognition that corporations are capable of committing crimes and, therefore, may bear criminal liability.

However, the implementation of corporate criminal liability in banking corruption cases still faces numerous challenges. Various cases indicate that law enforcement officers tend to focus prosecution on managers, directors, commissioners, or bank officials as individual perpetrators, while corporations that directly benefit from such criminal acts are often not prosecuted. As a result, there is an imbalance in the application of the law, as the benefits gained by corporations are not always accompanied by criminal liability imposed upon them as legal entities.

This problem is further complicated by the lack of uniformity regarding the theoretical basis and legal parameters used to determine corporate culpability in banking corruption. In judicial practice, there are differing approaches to determining corporate criminal liability between the identification theory, vicarious liability, strict liability, and the corporate culture model. These differences create legal uncertainty because the criteria for determining when a corporation can be considered to have committed a criminal act of corruption have not been clearly and consistently formulated.

A number of court decisions demonstrate inconsistencies in the application of corporate criminal liability in corruption cases related to bank credit. In some cases, state losses arising from the abuse of authority in granting credit are solely attributed to the individual perpetrator, while the corporate beneficiary is not always held criminally liable. In other cases, corporations are positioned as co-responsible for the corruption. This inconsistency reflects the lack of clear legal standards regarding the attribution of corporate culpability in banking corruption.

This situation demonstrates the lack of a balance between the values of justice and legal certainty. Justice demands that every party benefiting from or contributing to the crime be held accountable proportionately. Legal certainty requires clear, measurable, and consistent parameters regarding the basis for corporate criminal liability. When corporations profiting from corruption are not held accountable, the objectives of criminal punishment, namely deterrence, social restitution, and recovery of state losses, become difficult to achieve.

The increasingly complex development of business practices and corporate crime demands a paradigm shift in corporate criminal law. An approach solely focused on individual culpability is no longer adequate to address modern forms of corporate crime committed collectively through organizational mechanisms. A reconstruction of corporate criminal liability is needed that integrates various corporate liability doctrines into a more comprehensive, equitable model

that provides legal certainty for all parties involved. Based on this description, the researcher is interested in examining "Reconstruction of Corporate Criminal Liability for Banking Corruption Based on Justice and Legal Certainty."

1.1 Statement of Problems

Based on the foregoing background, this study formulates the following legal issues:

1. How is the legal regulation of corporate criminal liability for corruption offenses in the banking sector under the current Indonesian legal system?
2. Why has the implementation of corporate criminal liability for banking corruption not yet been able to realize justice and legal certainty in law enforcement practices?
3. What is the ideal reconstruction of corporate criminal liability for banking corruption based on justice and legal certainty in Indonesia?

II. Research Methods

This research constitutes normative legal research, namely research that positions law as norms, principles, doctrines, and legal rules that exist within the positive legal system. The focus of this research is not only directed at identifying the applicable legal norms (*ius constitutum*), but also at reconstructing ideal legal norms (*ius constituendum*) in order to realize a more just corporate criminal liability system that ensures legal certainty.

The approaches employed in this research include the statutory approach, conceptual approach, case approach, and analytical approach.

The statutory approach is carried out by examining various regulations governing corporations as subjects of criminal law, particularly Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001, Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998, Law Number 1 of 2023 concerning the Indonesian Criminal Code, Law Number 4 of 2023 concerning Financial Sector Development and Strengthening, and Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.

The conceptual approach is used to examine various theories and doctrines developed in corporate criminal law, including identification theory, vicarious liability theory, aggregation theory, strict liability, corporate culture model, and corporate fault doctrine. This approach is necessary to understand the theoretical construction of how criminal fault can be attributed to corporations as legal entities that do not possess physical intent or will like human beings. This research also employs the theory of justice and the theory of legal certainty as conceptual foundations in formulating an ideal reconstruction model of corporate criminal liability.

The case approach is conducted through an analysis of various court decisions related to corruption offenses in the banking sector. This analysis aims to identify patterns in the application of corporate criminal liability, the consistency of judicial reasoning, and the various obstacles arising in law enforcement practices. The study of court decisions is essential because law is not only understood as written norms, but also as law applied and developed through judicial decisions in legal practice.

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include legislation, court decisions,

and other binding legal instruments. Secondary legal materials consist of scholarly books, journal articles, research findings, and expert opinions relevant to the research object. Tertiary legal materials include legal dictionaries, legal encyclopedias, and various reference sources that provide guidance to primary and secondary legal materials.

The collection of legal materials is conducted through library research, namely by tracing, inventorying, identifying, and examining various legal materials relevant to the research problems. All legal materials obtained are then classified according to their subject matter and relevance to the formulated legal issues.

The analysis of legal materials is carried out qualitatively using descriptive, evaluative, and prescriptive methods. Descriptive analysis is used to describe the current legal regulation of corporate criminal liability for banking corruption. Evaluative analysis is employed to assess weaknesses, inconsistencies, and legal gaps found in both regulation and law enforcement practices. Subsequently, prescriptive analysis is used to formulate legal reconstruction capable of providing solutions to the problems identified in this study. This research not only explains the applicable law but also offers a more effective model of corporate criminal liability in realizing justice and legal certainty in the banking sector.

III. Result and Discussion

3.1 Legal Regulation of Corporate Criminal Liability for Corruption in the Banking Sector under the Indonesian Legal System

The regulation of corporate criminal liability in Indonesia has undergone significant development alongside the increasing recognition of corporations as legal subjects capable of committing criminal offenses. In classical criminal law doctrine, the principle *societas delinquere non potest* dominated, which held that only natural persons could be held criminally liable. However, the evolution of economic crimes, financial crimes, and organized corporate misconduct has shifted this paradigm, leading to the recognition of corporations as criminal law subjects in various statutory frameworks.

Within the Indonesian legal system, the legal basis for corporate criminal liability in corruption offenses is primarily found in Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, as amended by Law Number 20 of 2001. Article 20 explicitly provides that when a corruption offense is committed by or on behalf of a corporation, criminal prosecution and sanctions may be imposed upon both the corporation and its management. This provision establishes the normative foundation for recognizing corporations as perpetrators of corruption offenses.

In the banking sector, such provisions are further connected to Law Number 10 of 1998 concerning Banking, which emphasizes prudential principles, sound governance, and accountability mechanisms within banking institutions. Although the Banking Law does not expressly regulate corporate criminal liability in corruption matters, various provisions regarding abuse of authority, unlawful credit disbursement, and violations of prudential principles may serve as indicators of institutional fault when linked to corruption offenses. Furthermore, the enactment of Law Number 1 of 2023 concerning the Indonesian Criminal Code (KUHP) strengthens the position of corporations as criminal subjects by explicitly recognizing corporate criminal liability under the general criminal law framework. This represents a substantial legal advancement because the new Criminal Code provides a more systematic and comprehensive

regulation concerning corporate liability, including the basis of fault, attribution mechanisms, and sanctions.

At the procedural level, Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations provides technical guidance for law enforcement officers and judges in prosecuting corporations. Article 4 of this regulation establishes several indicators for determining corporate fault, including whether the corporation gained benefits from the crime, allowed the offense to occur, or failed to take necessary preventive measures.

Despite these regulations, the legal framework remains fragmented and sectoral. The absence of a unified and integrated standard for attributing corporate fault often creates inconsistencies in practice. This fragmentation can be illustrated in the following table:

Table 1: Existing Legal Framework of Corporate Criminal Liability for Banking Corruption in Indonesia

Legal Instrument	Regulatory Scope	Corporate Liability Aspect	Existing Weaknesses
Law No. 31 of 1999 jo. Law No. 20 of 2001	Eradication of Corruption Crimes	Recognizes corporations as criminal subjects	No clear standard of corporate fault attribution
Law No. 10 of 1998 on Banking	Banking governance and prudential principles	Implicit basis for institutional liability	Does not expressly regulate corporate criminal corruption liability
Law No. 1 of 2023 (Criminal Code)	General criminal law	Comprehensive corporate criminal liability	Requires harmonization with sectoral laws
Supreme Court Regulation No. 13 of 2016	Criminal procedure for corporate crimes	Technical indicators of corporate fault	Limited to procedural aspects

Based on the table above, it can be observed that Indonesia has provided a normative legal basis for imposing criminal liability upon corporations in banking corruption cases. However, these regulations have not yet been fully harmonized and still leave substantial interpretative gaps concerning the construction of corporate fault, evidentiary standards, and the relationship between individual and corporate liability.

This condition demonstrates that although the legal framework formally recognizes corporations as criminal actors, the practical application of such norms still requires reconstruction to ensure justice and legal certainty in the eradication of corruption in the banking sector.

3.2 Implementation of Corporate Criminal Liability for Banking Corruption Has Not Yet Realized Justice and Legal Certainty

The implementation of corporate criminal liability in banking corruption cases within Indonesia has not yet fully realized the principles of justice and legal certainty. Although the normative legal framework has recognized corporations as criminal law subjects, practical enforcement still encounters significant conceptual and technical obstacles. These obstacles not only weaken the effectiveness of anti-corruption law enforcement but also create disparities in judicial decisions and uncertainty in determining corporate fault.

One of the main problems lies in the ambiguity of the legal construction of corporate fault. Current legislation does not provide comprehensive and clear parameters concerning how corporate fault should be established. In many cases, law enforcement still relies heavily on the fault of individual directors or managers as the sole basis for attributing liability to corporations. This approach creates difficulties because corporate crimes are often collective and structural in nature, making it difficult to identify a single controlling actor responsible for the entire criminal conduct.

Another problem concerns the inconsistency of judicial decisions. In practice, similar factual circumstances may lead to different legal outcomes. In some corruption cases, corporations are prosecuted as principal offenders, while in other similar cases only directors or employees are held liable. This inconsistency creates legal uncertainty, both for law enforcement institutions and for the business sector. The absence of uniform standards in judicial reasoning further weakens the predictability of law enforcement.

From the perspective of justice, the current condition also raises serious concerns. If only individuals are punished while corporations continue to enjoy the benefits derived from corruption, the objectives of punishment—particularly deterrence, restoration of social balance, and confiscation of illicit gains—are not optimally achieved. Conversely, if corporations are punished without clear institutional fault parameters, there is a risk of overcriminalization that may harm shareholders, employees, and third parties who are not involved in the criminal conduct.

Another significant issue is the difficulty of proving the causal relationship between individual actions and corporate policies. Banking corruption often involves complex financial transactions, layered decision-making processes, and sophisticated concealment mechanisms. This complexity makes it difficult for investigators and prosecutors to establish whether the criminal act was genuinely a result of corporate policy, negligence in supervision, or merely individual misconduct.

Furthermore, the concept of corporate compliance has not yet been optimally integrated into the assessment of corporate fault. In modern legal systems, the existence of compliance programs, internal control systems, and risk management mechanisms serves as an important benchmark for determining whether a corporation has taken adequate preventive measures. However, Indonesian legal practice has not consistently used these indicators as primary parameters in determining criminal liability.

These problems can be illustrated in the following table:

Table 2: Problematics in the Implementation of Corporate Criminal Liability for Banking Corruption

No.	Main Problem	Description	Legal Impact
1	Ambiguity of Corporate Fault	No clear and comprehensive legal construction of corporate fault	Creates uncertainty in liability attribution
2	Inconsistent Judicial Decisions	Similar cases produce different outcomes regarding corporate liability	Weakens legal certainty and consistency
3	Difficulty in Proof	Complex financial structures and decision-making chains	Weakens prosecutorial effectiveness
4	Dominance of	Prosecution focuses mainly on	Corporations often

	Individual Liability	directors and employees	escape liability
5	Limited Sanctions	Corporate punishment remains dominated by fines	Fails to create maximum deterrence
6	Weak Corporate Governance	Poor internal supervision and conflict of interest practices	Increases the risk of banking corruption
7	Absence of a Uniform Liability Model	No integrated use of identification, aggregation, or corporate culture theories	Creates disparity in legal application
8	Weak Compliance-Based Evaluation	Compliance systems are not primary indicators of fault	Reduces preventive legal function

Based on the analysis above, it can be concluded that the failure to fully realize justice and legal certainty in the implementation of corporate criminal liability for banking corruption is primarily caused by: (1) unclear legal construction of corporate fault; (2) inconsistent application of corporate criminal doctrines; (3) difficulties in proving institutional fault; (4) absence of uniform indicators concerning corporate benefit and supervisory failure; and (5) underdeveloped compliance-based assessment models.

These weaknesses indicate the urgent necessity for reconstructing the corporate criminal liability system into a more integrated, consistent, and justice-oriented model that is capable of addressing the complexity of modern banking corruption.

3.3 Reconstruction of Corporate Criminal Liability for Banking Corruption Based on Justice and Legal Certainty

The various weaknesses in the regulation and implementation of corporate criminal liability for banking corruption, as discussed in the previous sections, demonstrate that the current legal system has not yet been fully capable of addressing the complexity of modern corporate crimes. Although corporations have been recognized as subjects of criminal law, existing regulations still leave fundamental issues unresolved, particularly concerning fault attribution, evidentiary standards, identification of controlling actors, and the relationship between individual fault and corporate fault. As a result, the enforcement of corporate criminal liability in banking corruption cases often creates legal uncertainty and fails to fully reflect substantive justice.

From the perspective of modern criminal law, corporate criminal liability can no longer be constructed solely based on individual fault, but must be oriented toward organizational fault. Banking corruption is generally not an isolated act but arises from corporate decision-making processes involving organizational structures, supervisory systems, corporate culture, and internal control mechanisms that fail to function properly. Therefore, legal reconstruction must be directed toward developing a liability model capable of positioning the corporation as an independent criminal actor without eliminating the liability of individuals involved in the offense. The first reconstruction that must be carried out is the affirmation of the concept of corporate fault as the primary basis of corporate criminal liability. Under the current legal framework, proof of corporate fault still largely depends on proving the fault of specific directors or officers. Such an approach creates significant difficulties in practice because not all corporate crimes can be traced back to a single identifiable actor. The concept of corporate fault must therefore be expanded to include organizational system failures, weaknesses in internal supervision, tolerance of legal violations, and corporate policies that facilitate criminal conduct.

This study proposes the Corporate Fault and Compliance-Based Liability Model, a corporate criminal liability model based on the combination of organizational fault and the effectiveness of corporate compliance systems. Under this model, a corporation may be criminally liable when it is proven to have:

1. Obtained benefits from the criminal act;
2. Allowed the criminal act to occur;
3. Failed to establish adequate internal supervision systems;
4. Failed to implement preventive compliance mechanisms capable of avoiding corruption offenses.

The second reconstruction concerns the integration of various corporate criminal liability doctrines into a single comprehensive legal framework. So far, the application of identification theory, aggregation theory, and the corporate culture model has been partial and inconsistent, resulting in legal uncertainty. Therefore, an integrative approach is necessary:

1. Identification theory remains relevant to assess acts of controlling officers (*directing mind*) that represent the will of the corporation.
2. Aggregation theory is used to combine the actions and knowledge of multiple individuals within the corporate structure that collectively produce criminal conduct.
3. Corporate culture model is used to evaluate whether organizational culture and governance systems contributed to or tolerated the occurrence of corruption.

The third reconstruction concerns establishing clear parameters for corporate fault attribution. To realize legal certainty, objective indicators must be formulated for law enforcement officers and judges in determining corporate fault. These indicators include:

- a) the existence of benefits obtained by the corporation from the offense;
- b) involvement of directors or strategic officers;
- c) failure of internal supervision systems;
- d) failure of risk management and compliance functions;
- e) tolerance of unlawful conduct; and
- f) absence of corrective action after discovering violations.

These indicators are highly relevant because banking institutions are fundamentally obligated to implement prudential principles, sound corporate governance, and risk management systems. Failure to adequately perform these obligations, thereby enabling corruption such as unlawful credit disbursement, financing manipulation, or abuse of authority, should be regarded as a form of corporate fault capable of generating criminal liability.

The fourth reconstruction concerns the reform of corporate sanctions. Currently, fines remain the dominant sanction against corporations. However, in banking corruption cases, fines alone are often insufficient to create deterrence or improve corporate governance. Therefore, sanctions should be diversified to include: Restitution and compensation payments ; disgorgement of profits derived from criminal acts ; restrictions on business activities ; mandatory corporate governance reforms ; obligations to implement compliance systems; and revocation of business licenses in severe cases.

Table 3 : Reconstruction of Corporate Criminal Liability for Banking Corruption Based on Justice and Legal Certainty

Dimension	Existing Condition	Current Weaknesses	Required Reconstruction	Justice and Legal Certainty Orientation
Legal Substance	Fragmented regulations	Lack of integrated standards	Harmonization of liability norms	Uniformity and predictability
Liability Subject	Focus on individuals	Corporations often escape liability	Dual liability model	Distributive justice
Fault Model	Reliance on personal mens rea	Difficult to prove corporate intent	Corporate fault indicators	Evidentiary certainty
Evidentiary System	Focus on physical actors	Difficulty tracing institutional decisions	Forensic accounting and beneficial ownership tracing	More effective proof
Criminal Sanctions	Dominated by fines	Weak deterrence effect	Diversified sanctions	Proportional punishment
State Asset Recovery	Focus on punishing individuals	Asset recovery remains weak	Asset recovery as primary priority	Legal utility
Enforcement Structure	Sectoral coordination	Weak institutional synergy	Integration of KPK, OJK, Bank Indonesia, Police, and Prosecutors	Enforcement effectiveness
Corporate Governance	Weak internal supervision	High moral hazard	Strengthened compliance and risk management	Preventive justice
Corporate Legal Culture	Profit-oriented culture	Tolerance for legal deviations	Anti-corruption corporate culture	Law compliance as core value

The table above demonstrates that the reconstruction of corporate criminal liability for banking corruption must be carried out holistically through reform of legal substance, law enforcement structures, and corporate legal culture. Such reconstruction aims to establish a legal system that does not merely place individuals as the main perpetrators, but also recognizes corporations as beneficiaries and decision-makers in banking corruption.

Thus, the ideal model of corporate criminal liability for banking corruption based on justice and legal certainty is the Corporate Fault and Compliance-Based Liability Model, integrating identification theory, aggregation theory, and the corporate culture model while positioning failures in governance, supervision, and compliance systems as the primary basis for attributing corporate fault. This model can provide stronger legal certainty, improve law enforcement effectiveness, and realize substantive justice in combating corruption within the banking sector.

IV. Conclusion

Based on the foregoing discussion, the following conclusions can be drawn:

1. the legal regulation of corporate criminal liability for corruption offenses in the banking sector under the Indonesian legal system has essentially provided an adequate normative foundation through Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, Law Number 10 of 1998 concerning Banking, Law Number 1 of 2023 concerning the Criminal Code, and Supreme Court Regulation Number 13 of 2016. Nevertheless, these regulations have not yet established firm and comprehensive parameters regarding the attribution of corporate fault, the relationship between individual fault and corporate fault, and the evidentiary standards for corporate criminal liability in banking corruption cases.
2. the implementation of corporate criminal liability for banking corruption has not yet fully realized justice and legal certainty because inconsistencies remain in law enforcement practices and judicial decisions. Criminal prosecution is still predominantly directed at directors or bank officers as individual perpetrators, while corporations that benefit from corruption offenses are not always held criminally accountable. This condition is aggravated by the lack of uniformity in the application of corporate criminal liability doctrines, the difficulties in proving corporate fault, and the suboptimal use of corporate governance and compliance indicators as the basis for determining corporate fault.
3. the ideal reconstruction of corporate criminal liability for banking corruption must be developed through the Corporate Fault and Compliance-Based Liability Model, integrating identification theory, aggregation theory, and the corporate culture model as the basis for attributing corporate fault. This model positions failures in corporate governance, weaknesses in internal supervision systems, failures in risk management, and ineffective compliance systems as forms of corporate fault capable of generating criminal liability. Such reconstruction is capable of providing legal certainty through clear parameters of corporate fault while simultaneously realizing substantive justice by proportionally allocating liability between corporations and individual offenders involved in corruption offenses in the banking sector.

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