Restorative Justice and Out-of-Court Settlement of Corporate Criminal Offenses in Indonesia: Philosophical Foundations and Regulatory Reform

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Abstract

The regulation of corporate criminal liability in Indonesia has predominantly adopted a repressive and retributive paradigm, positioning criminal prosecution as the primary enforcement mechanism. This approach is reflected in Supreme Court Regulation Number 13 of 2016, which emphasizes formal adjudication despite corporate sanctions being largely financial in nature. Such a model often disregards the broader socio-economic impact of corporate punishment, including consequences for employees, shareholders, consumers, and public interests. This article aims to analyze the philosophical and normative foundations of resolving corporate criminal cases outside the court system, shifting from retributive justice toward corrective, rehabilitative, and restorative justice models in accordance with contemporary criminal law developments. This study employs normative legal research using statute, conceptual, case. Legal materials are analyzed qualitatively to assess coherence between positive law, legal principles, and emerging paradigms of corporate criminal responsibility. The research finds that the enactment of Law Number 1 of 2023 on the Indonesian Criminal Code signifies a paradigmatic shift toward restorative and rehabilitative justice in corporate sentencing, particularly under Article 56. This study proposes an out-of-court corporate crime settlement model grounded in proportionality, efficiency, and social justice, offering a novel framework that balances law enforcement objectives with corporate sustainability and public welfare.

I. Introduction

Corporations are known as corporatie (Dutch), corporation (English), corporation (German), derived from the Latin word "corporatio".[1] Regarding the term "corporatio", according to Muladi and Dwidja Priyatno:

> As with other words that end in "tio", "corporatio" is considered a noun (substantivum) derived from the verb "corporare" which was widely used in medieval times or later. "corporare" itself comes from the word "corpus" which in Indonesian means "body" or it can be concluded that corporatio can be interpreted as the process of giving body or the process of equalizing. Thus, finally the "corporatio" means the results of work equally, in other words, the corporation is a body that is made into a person, a body obtained by human actions as opposed to the human body, which occurs according to nature.[2]

According to Garner and Bryan A, it is stated that the meaning of corporation is taken from the English term "Corporation" which means a legal entity or a group of persons who are allowed by law to act as an individual as a subject of law different from its shareholders.[3]

Another opinion from Loebby Loqman regarding developing corporations 2 (two) opinions about what is meant by a corporation, First, it is explained that what is meant by a corporation is a collection of trades that are legally incorporated, in this case it is only limited that the corporation that can be held criminally liable is a corporation that has been a legal entity. The reason given is that by being a legal entity, it is clear the composition of the management and the extent of the rights and obligations in the corporation. The second is that it defines a corporation broadly, where it is said that a corporation that can be held criminally liable does not need to be a legal entity, in this case every group of people, whether in the relationship of a trading business or other businesses, can be criminally liable.[4]

The discussion of corporate criminalization cannot be separated from criminal responsibility whose main principle is the existence of guilt on the perpetrator. Which is known by the principle of "*geen straf zonder schuld*". According to Vos, it is interpreted as follows:

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[1] Muladi and Dwidja Priyatno, *Corporate Criminal Responsibility*, Kencana Prenada Media Group 2013, p. 13.
[2] *Ibid* p. 12
[3] Bryan A. Garner, *Black's Law Dictionary* (Second Poc, West Publishing Company 2024). h. 147.
[4] Loebby Loqman, *Kapita Selekta Crime in the Economic Sector* (Datacom 2002). p. 32.

1. The responsible ability of the person who committed the act (*toerekeningvatbaarheid van de dader*)
2. A certain mental relationship of the person who does his deeds can be intentional or forgetfulness
3. There is no basis for reason that removes responsibility for the maker or his actions.[5]

Corporate criminal liability in criminal cases was initially not accepted by many people, because corporations do not have feelings like natural human beings (*natuurlijk persons*) so it is considered impossible to do evil, besides that prison sentences are also impossible to apply to corporations.[6]

The regulation of corporate crimes in Indonesia can be seen in the Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. Hereinafter referred to as PERMA. As formulated in Article 4 paragraphs 1 and 2 is as formulated as follows:

1. The Corporation may be held criminally liable in accordance with the Corporation's criminal provisions in the law governing the Corporation
2. In imposing a criminal offence against the Corporation, the Judge may assess the Corporation's fault as paragraph (1) includes:
   a. The Corporation may obtain profits or benefits from such criminal acts or such criminal acts are committed for the benefit of the Corporation;
   b. The corporation allows criminal acts to occur; or
   c. The corporation does not take the necessary steps to prevent, prevent greater impacts and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts.

The juridical basis for the formation of PERMA is three fundamental considerations: First, that corporations as a legal entity whose existence makes a great contribution to increasing economic growth and national development, but in reality corporations sometimes commit various criminal acts that have a negative impact on the state and society. Second corporations can be a place to hide wealth from criminal acts that are not touched by the legal process in criminal liability. Third, that many laws in Indonesia place corporations as the subject of criminal acts that can be held accountable. However, cases with the subject of corporate law submitted in the criminal procedure are still very limited, one of the reasons is that the process and procedures for examining corporations as

[5] Abdul Muni, Dissertation, '*Dissolution of Corporations as an Alternative to Criminalization in Corruption Crimes*' (Universitas Airlangga 2015). p. 15.
[6] *Ibid*.

perpetrators of criminal acts are still unclear, so it is considered necessary to have guidelines for law enforcement officials in handling criminal acts by corporations.[7]

The emphasis on criminal sanctions against corporations should be the *ultimate remedium*, in line with the concept *of Pyramida enforcement* put forward by Brent Fisse, as well as Ayres and Braithwaiten. *Pyramida enforcement* according to Brent Fisse as quoted by Dwidja Priyatno.[8] Furthermore, *third,* that the imposition of sanctions for corporations must start from actions of *persuasion, advice, warning, civil monetary penalties, accountability agreements, voluntary disciplinary of remedial investigation, accountability order, court ordered disciplinary of remedial investigation, corporate criminal sanction* and *corporate capita punishment* (persuasion, advice, reprimand, civil monetary criminal sanctions, accountability agreements, voluntary remedial investigations, accountability orders, remedial investigation disciplinary orders, corporate criminal sanctions, and corporate capita penalties).

Clinard and Yeagar's view is that prosecuting corporate crimes must pay attention to several things, namely: (1) The level of losses to the public; (2) The level of involvement by the corporate managers; (3) The duration of the violation; (4) the frequency of violations by corporations; (5) Evidence intended to commit an offense; (6) Extortion evidence, as in bribery cases; (7) The degree of public knowledge about negative things caused by media reporting; (8) Jurisprudence; (9) History of serious violations by corporations; (10) The possibility of prevention and (11) The degree of cooperation shown by the corporation.[9]

The need for caution in using criminal sanctions against corporations with the impact they cause. John Braithwaite stated that imposing criminal sanctions on corporations must be applied carefully because it will have an impact on innocent people such as corporate employees, shareholders, and consumers.[10] On that basis, Hartley, as an expert in criminal law and criminology from the University of Texas San Antonio, is more inclined to strengthen the discourse on the prevention of criminal acts by corporations. Because the consequences of criminalization against corporations are not only felt by the corporation itself but also by other people related to the corporation's business, and employees. Another problem in the prosecution of

[7] See the considerations of PERMA RI Number 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations.
[8] Dwidja Priyatno, *Legislation Policy on the Corporate Criminal Liability System in Indonesia* (Utomo 2004). p. 139.
[9] Marshall B. Clinard & Peter C. Yeager, Corporate Crime, New York: The Free Press, 1980, h. 9
[10] Muladi and Diah Sulistyani, Corporate Criminal Responsibility, Alumni 2015, p. 72

corporations through formal prosecution is destructive of corporations. If possible, the punishment of the corporation should not cause the corporation to experience bankruptcy and bankruptcy.[11]

From the above reasons, it is seen that the model for handling the settlement of corporate crimes in the Indonesian criminal justice system that is regulated in general and rules that are specifically regulated more use *repressive* and *retributive* responses, relying on criminal law as the main means. In such a case, what is to be achieved is a *deterrence effect* of just *retribution*.[12] Although the imposition of criminal penalties against corporations is *multi-purpose*, the spirit of repression and retribution is more dominant. Therefore, it is necessary to handle corporate crimes that prioritize settlement outside the court as the opinion expressed by Muladi is:[13] "Considering that the impact of criminalization on corporate crime is very broad both in relation to it as a source of state tax revenue, the fate of employees, the fate of consumers and shareholders and so on, there is an opinion that criminal law should be enforced as the *ultimate remedium* among others, by utilizing "*Restorative Justice*" instead of as *a Primum remedium*".

Recent developments in corporate criminal law have demonstrated a gradual shift from purely punitive approaches toward more restorative and rehabilitative mechanisms. In contemporary legal discourse, restorative justice is understood as a framework that involves all stakeholders affected by corporate wrongdoing, including victims, offenders, communities, and regulatory authorities, in addressing the consequences of unlawful conduct. Unlike conventional criminal sanctions that primarily emphasize punishment, restorative justice seeks to restore social relationships, repair harm, and encourage corporate rehabilitation through participatory and consensus-based mechanisms.[14]

The relevance of restorative justice is particularly evident in cases of corporate crime and corporate fraud, where the adverse impacts extend beyond direct victims and affect shareholders, employees, consumers, communities, and the broader public. Restorative approaches provide opportunities for dialogue, compensation, institutional reform, and collective problem-solving, thereby enabling corporations to acknowledge

[11]Ardi Ferdian, '*The Concept of Deferred Prosecution Agreement (DPA) in Corporate Criminal Liability as an Alternative Form of Dispute Resolution*', 14 Legal Arenas. 2021, p. 528.
[12] Muladi and Diah Sulistyani, *Criminal Liability. Ibid* p. 5.
[13] *Ibid*
[14] Osvaldo Artaza, 'A "Restorative Strategy" in the Area of Criminal Liability of Corporations: A Theoretical Approach', *Derecho PUCP*, 88, 2022, 125–53 <https://doi.org/10.18800/derechopucp.202201.005>; Mark Lokanan, 'Restorative Justice: Application to Corporate Fraud', in *Accounting, Finance, Sustainability, Governance and Fraud* (Data Scientist, Machine Learning, Royal Roads University, Colwood, Canada: Springer Nature, 2023), pp. 137–62 <https://doi.org/10.1007/978-981-16-9499-8_8>.

wrongdoing and undertake measures to prevent future misconduct.[15]

Furthermore, contemporary corporate crime enforcement increasingly recognizes that criminal sanctions alone may not adequately address stakeholder interests. Traditional punitive measures often overlook victim recovery and the restoration of social trust. Restorative justice, by contrast, prioritizes victim compensation, stakeholder participation, and corporate accountability. Such mechanisms may contribute to reducing recidivism by encouraging compliance reforms and fostering a culture of corporate responsibility.[16]

This tendency is reflected in several jurisdictions that have adopted alternative enforcement mechanisms, including Deferred Prosecution Agreements (DPAs), particularly in addressing corporate fraud and banking-related offenses. Through such arrangements, corporations may resolve criminal allegations outside formal court proceedings by fulfilling specific obligations, including victim compensation, compliance enhancement, and institutional reforms. These developments indicate a growing international preference for corrective and restorative responses alongside traditional punitive measures.[17]

At the same time, the implementation of restorative justice in the context of corporate criminal liability remains dependent upon adequate legal and institutional support. Studies have shown that weak regulatory frameworks may hinder effective victim compensation and corporate accountability. Consequently, the success of restorative mechanisms requires clear procedural rules, institutional oversight, and effective settlement institutions capable of facilitating dialogue, remediation, and compliance monitoring.[18]

These developments demonstrate that corporate criminal law is increasingly moving toward a more balanced model that combines accountability, victim restoration, corporate remediation, and regulatory compliance. Such international trends provide an important theoretical foundation for examining the philosophical

[15] Mark Lokanan, 'Restorative Justice: Application to Corporate Fraud', in *Accounting, Finance, Sustainability, Governance and Fraud* (Data Scientist, Machine Learning, Royal Roads University, Colwood, Canada: Springer Nature, 2023), pp. 137–62 <https://doi.org/10.1007/978-981-16-9499-8_8>.
[16] Marco Colacurci, 'From a Voluntary to a "Coerced" Dimension: The Remedial Function of Compliance from a Criminal Law Perspective', in *Corporate Compliance on a Global Scale* (Cham: Springer International Publishing, 2022), pp. 341–62 <https://doi.org/10.1007/978-3-030-81655-1_15>.
[17] Hijriani Hijriani and others, 'Restorative Justice Approach to The Settlement of Banking Crime Cases', *Substantive Justice International Journal of Law*, 6.1 (2023), 1 <https://doi.org/10.56087/substantivejustice.v6i1.206>.
[18] M Saguier, 'Peoples' Tribunals in Latin America', in *Business Regulation and Non-State Actors* (Argentina's National Science and Technology Research Council (CONICET), Latin American School of Social Sciences (FLACSO), National Foreign Service Institute (ISEN), Argentina: Routledge, 2013), pp. 255–68 <https://doi.org/10.4324/9780203126929-26>.

basis and the ideal model of out-of-court settlement of corporate criminal offenses within the Indonesian legal system.

2. Research Method

This research is legal *research* that seeks the truth of coherence, namely whether there is coherence between the rule of law and legal norms and whether the norm in the form of orders or prohibitions is coherent with legal principles, and whether an action is in accordance with legal principles.[19] This study uses the approaches used in this study are the statute *approach*, the conceptual approach, and *case approach* the focus in this study is Analyze and solve existing legal problems or problems with the correct conclusions and suggestions. Legal research is now focused on the regulations of Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code jo Law Number 1 of 2026 concerning Criminal Adjustment, and Law Number 20 of 2025 concerning the Code of Criminal Procedure, Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations; or related regulations that aim to find new legal arguments and theories, related to the Philosophical Foundations of Off-Court Corporate Crime Settlement and the Ideal Model for Off-Court Corporate Crime Settlement that are coherent with legal principles, because legal issues or problems.

3. Results and Discussion

A. The Paradigm of the Criminal System Against Corporations

The term *corporate crime* was first used in 1973 by Clinard and Quinney.[20] The use of the term by them is differentiated between *white collar crime* Clinard and Yeager 1980.[21] Emphasizing that "*corporate crime*" includes crimes committed by corporate officials with the aim of obtaining corporate benefits.[22]

White collar crime, which is usually described as a white-collar crime, refers to non-violent crime that aims to obtain money committed by professionals involved in the world of business and government. The term *white collar crime* was first coined by

[19] Peter Mahmud Marzuki, *Legal Research*, Kencana 2005, p. 47
[20] Sutan Remy Sjahdeini, *Criminal Teachings: Corporate Crime and Its Intricaches*, Kencana Prenada Media Gorup, Jakarta, Second Edition, 2017, p. 62
[21] Clinard, M. dan R. Quinney, *Corporate crime,* New York, Press 1980, h. 16
[22] *Ibid,* Sutan Remy Sjahdeini, *Teachings of Criminality: Corporate Crime & Its Intricaches*, p. 62

Edwin Shuterland in 1939 in a speech before the *American Sociological Society*. By Shuterland "*white collar crime*" is defined:

> *A crime committed by a person of respectability and high social status in the course of his occupation*

Julian Hermida stated the following:[23]

> *Hundred of companies rountinely commit crimes that injure the public much more than street crimes in many ways : economically, socially, physically, and enviromentally.*

The term "*Corporate Crime*" in some literature, often referred to as "Corporate Crime", basically does not appear by itself but appears along with the times and the development of society. According to J.E. Sahetapy, corporate crime is not a new thing, but only a new form and manifestation. Corporate crime dates back more than three thousand years or as early as the 14th century BC in Egypt. In the past in Greece corporate crime also occurred, for example when the Alcamaenoids who were entrusted to build houses of worship with marble stones were replaced with cement coated with marble.[24]

Corporate crime is a crime that is organizational in nature. The wide spread of responsibility and the hierarchical structure of large corporations can help develop conditions conducive to corporate crime. The very complex anatomy of corporate crime and the very wide spread of responsibility boil down to eco-friendly motives, which are reflected in the corporate goals (organizational goals) and the contradiction between the goals of the corporation and the interests of various parties, such as competitors, workers, consumers, society, and the state. Based on these motives, the victims of corporate crime are on a very wide spectrum.[25]

Sutan Remy Sjahdeini said that there is an opinion to equate "corporate crime" as the equivalent of "white collar crime", but there is also a distinction between "corporate crime" and "white collar crime". The argument is that "corporate crime" and "white collar crime" are two different types of criminal acts because they have different characteristics where criminal acts are committed not by humans but by corporations,

[23] Julian Hermida, "*Corporate Crime*" https://www.julianhermida.com/contcorporate.htm on access pad on March 13, 2025
[24] J. E Sahetapy, *Corporate Crime*, PT Refika Aditama, Bandung, 2002, p. 4
[25] H. Setiono, *Corporate Crime: Victimological Analysis and Corporate Accountability in Indonesian Criminal Law*, Banyumedia Publishing, Malang, Fourth Edition, 2009, p. 19-20

while "white collar crime" is criminal acts committed by humans. There are also those who argue that "corporate crime" is not a "white collar crime", but a type of "white collar crime".[26]

Meanwhile, Elliot and Quinn put forward several reasons regarding the need to impose criminal liability on corporations. These reasons are:[27]

1. Without corporate criminal accountability, it is not impossible for companies to avoid criminal regulations, so that only their employees are prosecuted for committing criminal acts that are actually the fault of business activities carried out by the company.
2. In some cases, for procedural reasons, it is easier to sue a company than its employees
3. In the event of a serious crime, a company has more ability to pay the fines imposed than the company's employees
4. The threat of criminal charges against companies can encourage shareholders to exercise supervision over the activities of companies in which they have invested
5. If a company has made profits from illegal business activities, the company should also bear the sanctions for the criminal acts that have been committed, according to the company's employees.
6. Corporate accountability can prevent companies from pressuring their employees either directly or indirectly. So that these employees try to make a profit not from carrying out illegal business activities.
7. Harmful publicity and the imposition of criminal fines against companies can serve as a deterrent for companies to carry out illegal activities. This is impossible to happen if the employees are the ones who are being sued.

Countries that adhere to the *common law system* such as the United Kingdom, Australia, Canada, and the United States have now recognized that corporations can be criminally liable, even if the basis of justification varies from one country to another.

In the UK the only form of criminal sanction that can be imposed on a corporation is a fine, according to British law a corporation cannot be held criminally liable for committing criminal acts of a "*very personal nature*" or "very personal" nature so there is no reason why the corporation cannot be held liable for other criminal acts.[28]

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[26] Sutan Remy Sjaahdeini, *Criminal Teachings: Corporate Crime and Its Twists*, Kencana Prenada Media Gorup, Jakarta, Second Edition, 2017, p. 60, *Op., Cit*

[27] Elliot, Catherine dan Frances Quinn, *Criminal Law, Fourth Edition,* Longman, 2002, h. 251- 252

[28] C.M.V Clarkson dan H. M Keating, "*Criminal Law : Tex and Materials, Fifth Edition.* London : Sweet dan Maxwell, 20003, h. 254

Corporate criminalization can be seen from a normative and theoretical perspective, which as the Law has regulated the criteria for corporations to commit criminal acts, so that criminality can be imposed. For example, in Article 20 paragraph (2) of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes[29] Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes,[30] which is formulated as follows:

> "A corporate crime is committed by a corporation if the criminal act is committed by people either based on employment relationships or based on other relationships, acting within the corporate environment, either alone or together"

The phrase or sentence "*committed by people either based on employment relationships or based on other relationships"* is a criterion for a corporation to have committed a criminal act so that it can be criminalized.

Furthermore, it is also stated in the provisions of Article 6 of Law Number 8 of 2010 concerning the Prevention and Eradication and Crime of Money Laundering[31] it is explained that the criteria for the crime of money laundering can be punished if the crime of money laundering is committed or ordered by the controlling personnel of the controlling corporation, carried out in the context of fulfilling the purpose and objectives of the corporation, carried out in accordance with the duties and functions of the perpetrator or or the giver of the order and It is carried out with the intention of providing benefits for the corporation.[32]

Furthermore, according to Sutan Remy Sjahdeini in his book "The Doctrine of Criminal Acts of Corporations & Its Intricacies of Crime", even though the corporation cannot carry *out the actus reus* of the alleged criminal act, but through its management, the corporation should be able to be burdened with criminal liability for the criminal acts committed by the management. There are several reasons according to Sutan Remy Sjahdeini as follows:[33]

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[29] Statute Book of the Republic of Indonesia No. 140 of 1999 Supplement to Statute Book of the Republic of Indonesia No. 3874

[30] Statute Book of the Republic of Indonesia Number 134 of 2001 Supplement to Statute Book of the Republic of Indonesia Number 4150

[31] Statute Book of the Republic of Indonesia Number 122 of 2010 Supplement to Statute Book of the Republic of Indonesia Number 5164

[32] Lilik Mulyadi, *Building an Ideal Model for Criminal Prosecution of Justice-based Corruption Offenders*, Kencana, Jakarta, 2021, p. 135

[33] Sutan Remy Sjahdeini, Teachings of Criminality: *Corporate Crime & Its Intricaches*, *Op., cit*, p. 73

First, even though the corporation in carrying out its activities does not carry out itself but through the people who are the management and its employees because it is not only done for and on behalf of the corporation but also to provide benefits, and provide financial benefits or the actions of the management that are detrimental to the community are financed by the corporation so that criminal liability for criminal acts committed by the management is also charged to the corporation. corporations.[34] *Second*, it is not enough for criminal acts to be charged only to the management for the criminal acts committed, the responsibility must also be imposed on the corporation because the corporation is much more able to pay criminal fines than it is charged to the administrator.[35] *Third*, corporate criminal acts are not only observed by the management but also enjoyed by the corporation. The fourth reason is that the existence of criminal liability against the corporation will make shareholders more closely supervise the actions of the management so as not to commit corporate crimes, which poses risks and impacts shareholders because it is possible for corporate assets to be confiscated by the state, revoked their licenses, and even dissolved by the court.[36]

B. The Case of Handling and Applying Corporate Criminal Rules in Indonesia

Several court decisions did not find a single court decision that held corporations criminally accountable. Some of the decisions found are only related to corporations, namely that a criminal act is committed within the corporation or by the corporation, but criminal liability is only aimed at individual management. None of the several decisions contain the corporation as a defendant, all the defendants are the personal of its management.

Thus, it can be said that actually our law enforcers, both investigators, public prosecutors, and judges, do not have the experience to apply corporate accountability in practice in the world of justice. Some of the criminal conviction decisions related to corporations are as follows:

a. Central Jakarta District Court Decision Number 234/PID. B.2011/PN. JKT. PST jo Jakarta High Court Decision Number: 241/PID.2021/PT. DKI jo Supreme Court Decision Number: 2239 K/PID. SUS/2012, on behalf of the defendant Suwir Laut alias Liu Che sui as Tax Manager of Asian agri Group (AAG) as well as as the Attorney of Employees representing the taxpayer has deliberately advocated, assisted in committing criminal acts in the field of taxation for and on behalf of 14 (fourteen) companies (corporations) that are members of the Asian agri Group

[34] Sutan Remy Sjahdeini, *The Teachings of Punishment*, *Ibid.*, p. 74
[35] *Ibid*
[36] Sutan Remy Sjahdeini, *Corporate Criminal Responsibility*, Graffiti Press, 2006, p. 57-58

(AAG) which resulted in a reduction in state revenue from the income tax and corporate tax sectors with a total loss of Rp. 1,259,977,695. 752.,- (one trillion two hundred and fifty-nine billion nine hundred and seventy-seven million six hundred ninety-five thousand seven hundred and fifty-two rupiah).

b. Decision of the Meulaboh District Court Number: 13l/Pid.B/2013/PN. MBO on behalf of the defendant PT Kallista Alam as a corporation committed environmental crimes that were committed continuously. PT Kallista Alam as a legal entity is represented by Subianto Rusid as Director of PT Kallista Alam.
   The public prosecutor charged the defendant PT Kallista Alam as a corporation with having committed land burning as referred to in Article 69 paragraph (l) letter (h) which was carried out continuously as regulated and threatened with criminal charges in Article 116 paragraph (l) letter (a), Article 118, Article 119 of Law Number 32 of 2009 concerning Environmental Protection and Management and jo. Article 64 paragraph (I) of the Criminal Code.
   In this case, the Meulaboh District Court stated that PT Kallista Alam as a corporation had been legally and convincingly proven guilty of committing environmental crimes that were committed continuously. Furthermore, the judge also sentenced the defendant PT Kalista Alam to a fine of Rp. 3,000,000,000.00 (Three Billion Rupiah)
c. Banjarmasin District Court Decision Number: 812/Pid.Sus/2010/PN.Bjm jo. Banjarmasin High Court Decision No. 04/PID. SUS/201 1/PT. BJM, on behalf of the defendant PT Giri Jaladhi Wana (PT GJW), a legal entity that runs businesses in the fields of trade, industry, agribusiness, development and interior design, was charged with committing corruption as an executor appointed to carry out cooperation in the development and management of the Antasari Main Market in Banjarmasin City.
   The public prosecutor charged the defendant with Article 2 paragraph (1) jo. Article 18 jo. Article 20 of Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 31 of 1999 concerning the Eradication of Corruption jo. Article 64 paragraph (I) of the Criminal Code. The Banjarmasin District Court in its decision sentenced the defendant PT GJW,
d. Decision of the Corruption Court at the Central Jakarta District Court Number: 01/Pid/Sus/201 3/PN. JKT. PST jo. Decision of the Corruption Court at the Jakarta High Court Number 33/PID/TPK/2013/PT. DKI. jo Supreme Court Decision Number 787 K/Pid.Sus/20l4 on behalf of the defendant INDAR ATMANTO as the

Director of Indosat Mega Media (IM2) who is suspected of committing corruption crimes.

The public prosecutor charged the defendant with the indictment of Primair Article 2 paragraph (1) jo. Article 18 paragraph (1), (3) of Law Number 31 of 1999 concerning the Eradication of Corruption as amended and supplemented by Law Number: 20 of 200l concerning Amendments to Law Number 3l of 1999 concerning the Eradication of Corruption jo. Article 55 paragraph (l) 1 of the Criminal Code, and Subsidiary Article 3 jo. Article 18-paragraph (1), (3) of Law Number 3l of 1999 concerning the Eradication of Corruption as amended and supplemented by Law Number: 20 of 200l concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption jo. Article 55 paragraph (1) 1 of the Criminal Code.

A careful examination of the court decisions in the four cases found errors in understanding the concept of corporate criminal liability resulting in inappropriate application. Some of the weaknesses found concern aspects of criminal procedural law and material criminal law in identifying defendants, qualifications for corporate acts, qualifications for corporate wrongdoing, and sanctions for corporations. It will be explained as follows:

1) Analysis of the Defendant

Several rulings explicitly stated that the defendant was an individual corporate administrator (the Suwir Lawut case and the Indar Atmanto case). However, the public prosecutor in the indictment and the letter of demand and the judge in his consideration relate to corporate criminal liability. It seems that the association with corporate accountability is motivated by the desire to impose criminal sanctions on the corporation because then it turns out that it is followed by an amar that imposes criminal penalties on the corporation.

The imposition of criminal penalties on corporations that are not charged in the indictment clearly violates the basic principle in the criminal procedure law, no legal subject can be sentenced to a crime without going through the judicial process. A corporation is a legal subject that is separate from the management so that it has standing and rights like humans. In the criminal procedure process, if you want to impose criminal sanctions on the corporation, the corporation must be charged and given the opportunity to defend as a human defendant. Confusing the criminal liability of corporations and administrators occurs due to a lack of understanding of the concept that criminally accounting for corporations is different from personally accounting for administrators. The treatment of corporations as subjects of criminal law must begin from the investigation stage. The theory of functional responsibility cannot be a

justification for prosecuting corporations that are not suspects in the investigation and let alone to impose criminal penalties on corporations that are not charged. Likewise, considerations of justice for the defendant because the corporation benefits from criminal acts so that the corporation must also be sentenced to a criminal offense to justify the violation of the principles of criminal procedural law.

2) Qualification of Criminal Acts and Corporate Mistakes

In the case of PT Kalista Alam, corporate acts are qualified from the actions of development managers who do not have the authority to set corporate policies, and even qualified from the actions of contractors who are parties outside the corporate organs, but act for the corporation in relationships other than employment relationships. This is actually in line with legislative policies that generally formulate when an act can be qualified as a corporate act by using broad criteria, with a formula that basically states that "a criminal act is committed by a corporation if the criminal act is committed by a person who is either based on an employment relationship or other relationships, acting within the corporate environment".

Meanwhile, in the case of PT Giri Jaladi Wana (GJW), the qualification of this corporate act can be done derivatively with a simple argument because there is a description of the facts that show that St. Widagdo is the president director who acts for and on behalf of the corporation and its actions in order to achieve the aims and objectives of the corporation and bring benefits to the corporation.

In the case of PT Kalista Alam, the judge's consideration was very good and interesting which qualified the corporation's actions precisely from acts not carried out by the corporation (omission). This is theoretically justifiable (vide: expanded identification theory) because corporations must essentially be held accountable, both for active and passive acts, that cause criminal acts.

All of the above decisions seem to firmly hold the principle of no crime without error. It's just that the process of identifying management mistakes as corporate mistakes is not supported by adequate arguments. In general, it is only stated that the mistakes of the management are considered corporate mistakes because the acts are done for the benefit of the corporation. Understanding the theoretical concept of error identification is important so as not to confuse the principles that are actually contradictory. In the Suwir Laut case, the Supreme Court in its consideration affirmed the applicability of the principle of no criminal without fault, but confused it with the principle of vicarious liability which is essentially a form of liability without fault.

Proving corporate wrongdoing can be done derivatively, meaning that the material wrongdoer's fault is directly identified as corporate fault if the perpetrator is a high-ranking corporate official who can be considered as a personification of the corporation. However, if the perpetrator is not a high-ranking official of the corporation, the fault of a low-level employee or even a third party cannot be directly identified as corporate error. If so, the identification of errors must be carried out in a detective manner, which is sufficient if there are clues that lead to mistakes in the corporation, such as neglect or receipt of benefits from criminal acts

The form of material wrongdoing that can be identified as corporate fault, both intentional and culpa. In the case of PT Klista Alam, it turns out that there are facts that the corporation has taken preventive measures, but it is not considered as a justification or excuse for forgiveness. According to the judge, the preventive measure must be materially a concrete effort so that it is not enough if it is only a policy.

3) Application of Criminal Sanctions

The fundamental conceptual justification in criminally accounting corporations is the application of sanctions. In the Suwir Laut case and the Indar Atmanto case as mentioned above, corporations that are not defendants have been sentenced to criminal sanctions. In the case of Suwir Laut, a fine sanction for corporations of more than two and a half trillion rupiah is a special condition for the imposition of a probation sentence against Suwir Laut. Meanwhile, in the case of Indar Atmanto, criminal sanctions to corporations in the form of the obligation to pay compensation of more than one trillion three hundred billion rupiah became a stand-alone amar

In the case of Asian Agri Group's tax evasion, some parties see optimistically that the ruling has become a legal breakthrough to withdraw corporate criminal responsibility for behavior that results in state losses. Meanwhile, some others expressed constructive criticism of the verdict which was considered technically operational because the prosecutor had never filed charges and charges against the Asian Agri Group.

C. The Philosophical Foundations of Corporate Criminalization Out of Court

In the philosophy of crime and punishment it is called, "older philosophy of crime control",[37] or even as, "a relic of barbarism".[38] M. Sholehuddin said that the "philosophy of criminality" has 2 (two) functions, namely:

[37] Gene Kassebaum, *Delinquency and Social Policy,* Prentice Hall lnc., London, 1974, h. 93
[38] Smith dan Hogan, *Criminal Law,* Butterworths, London, 1978, h. 6

First, the fundamental function is as a normative foundation and principle or rule that provides guidelines, criteria or paradigms for criminal and criminal problems. This function is formally and intrinsically primary and contained in every teaching of the philosophical system. That is, every principle that is established as a principle or rule is recognized as a truth or norm that must be enforced, developed, and applied. Second, the function of theory, in this case as a meta-theory. That is, the philosophy of criminality serves as the underlying theory and background of every criminal theory.[39]

From the context mentioned above, it is clear that the "philosophy of criminality" is oriented towards "criminal", "criminal system" and "theory of punishment". Now the main problem is how the "philosophy of criminality" will be built for corporations within the framework of legislative policy or applicable policy in Indonesia. Harkristuti Harkrisnowo said that in legislative policy there is an ambiguity about the philosophy of punishment. This aspect is affirmed editorially as follows:

> "However, the role of the legislative institution is no less important, because it is an institution that (should) represent the conscience and sense of justice of the people. Establishing criminal law is one of their duties. It is therefore very important for these institutions to work based on a philosophy of punishment that departs from the basic values that live in Indonesian society today. In my opinion, the current lack of clarity in the philosophy of criminalization is a serious obstacle to law enforcement efforts in Indonesia, which is moving towards a more democratic state. This philosophy must also underlie criminal policy that has not been formulated until now. It is the dream of criminal justicians, so that decision-makers in the field of law, especially the Supreme Court, the Attorney General's Office, the Ministry of Justice and Human Rights, the Police and the House of Representatives to sit together, discuss to produce criminal policies, based on the right criminal philosophy for Indonesia."[40]

Philosophically, the prohibition of corporate crimes On December 29, 2026, the Supreme Court enacted Perma 13/2016 in the substance of the law Perma 13/2016 regulates the definition and identification of corporate criminal acts related to criminal liability and examination techniques both at the level of investigation and prosecution.

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[39] M. Sholehuddin, *Sanctions System in Criminal Law: The Basic Idea of the Double Track System & Its Implementation*. PT Raja Grafindo Persada, Jakarta, 2003, p. 81-82

[40] Harkristuti Harkrisnowo, *Reconstruction of the Concept of Criminality: A Lawsuit Against the Legislative and Criminal Process in Indonesia*, Oration of the Inauguration of Professor in Criminal Law, Faculty of Law, University of Indonesia at the Conference Hall of the University of Indonesia Depok, March 8, 2003, p. 8-9

Perma 13/2016 is a solution to overcome the obstacles faced by law enforcement in dealing with corporate crime.

Perma 13/2016 regulates the scope of unlawful acts, which can be held criminally responsible, and even criminal sanctions that can be imposed, which in this case can be in the form of criminal or actions.[41] The birth of Perma Number 13/2016 was to overcome the legal vacuum as a response to corporate criminalization so that law enforcement has guidelines in conducting investigations and prosecutions as a solution to the regulation of formal criminal procedural law. Perma 13/2016 as a formal procedural law uses *a repressive* and *retributive* response, relying on criminal law as the main means. In such a case, what is to be achieved is a *deterrence effect* in the form of just *retribution* based on the consideration of the formation of Perma 13/2016 in consideration letter c as follows:

The law in Indonesia places corporations as the subject of criminal acts that can be held accountable, but cases with corporate law subjects that are filed in criminal proceedings are still very limited, one of the reasons is that the procedures and procedures for examining corporations as perpetrators of criminal acts are still unclear, therefore it is considered necessary to have guidelines for law enforcement apparatus in handling criminal cases carried out by corporations.

Furthermore, based on Article 1 number 8 of Perma Number 13 of 2016 as formulated as follows:

Criminal Acts by corporations are criminal acts that can be held criminally responsible to corporations in accordance with the laws governing corporations.

Furthermore, Article 23 of Perma Number 13 of 2016 emphasizes that:

1. The judge may impose a criminal sentence against the corporation or the Management, or the Corporation and the Management
2. The judge imposes the penalty as intended in paragraph (1) based on each law that regulates criminal threats against corporations and/or administrators.
3. The imposition of criminal penalties on corporations and/or Management as intended in paragraph (1) does not preclude the possibility of criminal imposition against other perpetrators based on the provisions of the law proven to be involved in the criminal act.

Perma 13/2016 as a formal procedural law in determining corporate criminal liability does not consider rehabilitative or restorative approaches in providing criminal sanctions against corporations, Perma 13/2016 is very procedural in determining

[41] Kristian, *Corporate Criminal Law: Integral Policy of Corporate Criminal Liability Formulation*, Nuansa Aulia, Bandung, 2014, p. 233

corporate wrongdoing, forms of liability and in determining corporations in a criminal act.[42]

On the other hand, the birth of the Criminal Code Number 1 of 2023 reflects a retributive shift towards more rehabilitative and restorative punishment, providing a new perspective and paradigm in punishment that offers proportionate justice and functions as an effort to prevent criminal acts from occurring.[43]

The construction of criminal law in Indonesia has begun to abandon the term known as "*eye for an eye*", a criminal concept that emphasizes retaliation, if someone hurts another person, he must also be injured or given a commensurate retribution for his actions.[44] The concept of punishment with the aim of retaliation began to shift to a goal that emphasized more on the "benefit" of the criminal purpose oriented towards the aspect of punishment began to be applied in Indonesia. One of them is the establishment of Law Number 1 of 2023 concerning the Criminal Code in conjunction with Law Number 1 of 2026 concerning Criminal Adjustment, according to Eddy Hieariej, the old criminal law paradigm places the means of revenge and Law Number 1 of 2023 is based on the modern legal paradigm which includes corrective justice, restorative justice, and rehabilitative justice.[45] As stated in Article 56 of the Criminal Code Number 1 of 2023, it is formulated as follows:

In criminalizing corporations, it is mandatory to consider:

a. The extent of the loss or impact incurred.
b. The level of involvement of the management who has a functional position of the Corporation and/or the role of the giver, control holder, and/or owner of the corporation's benefits.
c. The length of the criminal act that has been committed.
d. Frequency of Criminal Acts by Corporations
e. Forms of Criminal Offences
f. Involvement of officials

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[42] Anugerah Rizki Akbar and Aulia Ali Reza, " *Asymmetric Interpretation of Corporate Criminal Accountability in Indonesia: Study of Decision Number 862 K/Pid.Sus/2010*" March 2017 Edition, p. 43

[43] Andi Hamzah,. *Principles of Criminal Law (Revised Edition),* PT. Rineka Cipta, Jakarta, 2020, p. 8 see Muhammad Idris Nasution, Reform of the Criminal System in Indonesia: A Literature Review of the New Criminal Code, Legal Journal Vol. 5 No. 1 2024

[44] Riskiansyah, et al., A Study of Legal Philosophy on Changing the Paradigm of Criminal Law in Indonesia: from Retribution to Recovery, Indonesian *Journal of Law Justice*, Vol. 1 Number 4, 2024, p.2

[45] Public Relations Bureau, H. and K, CRIMINAL CODE BILL Abandon the criminal law paradigm as a tool of revenge. Ministry of Law and Human Rights of the Republic of Indonesia.https://www.kemenkumham.go.id/beritautama/ruu-kuhp-tinggalkan-paradigma-hukum-pidana-sebagai-alat-balas-dendam, 2022

g. The value of law and justice that lives in society.
h. Track record of the corporation in conducting business or activities
i. Effect of criminalization on corporations and/or
j. Corporate cooperation in handling criminal acts

Looking at the construction of Article 56 of the Criminal Code Number 1 of 2023, there are several reasons *: First*, prioritizing a very proportionate punishment as explained by Magna Carta, known as the term:

> *"Free man shall not amerce (penalized) for a small fault, but after the manner of the fault; and for a great crime according to the heinousness of it"*

The opinion of the Magna Carta mentioned above is a reflection of the principle of proportionality. The principle of proportionality is a principle of criminal law which means that every sentence imposed must be in accordance or commensurate with the crime committed.[46] The losses that arise due to an action or policy need to be proportional to the benefits obtained. Thus, the principle of proportionality aims to ensure that the actions or policies taken have the right balance and are not excessive to the goals to be achieved and their impacts.[47] *Both* values in restorative justice are reflected in the concepts of human dignity, respect, and order. In the philosophy of law, human dignity means protecting the life of others, not for revenge, but to safeguard the human rights given by God. Crime is basically an act of damaging the relationship between individuals, both between the perpetrator and the victim and with the community. Therefore, recovery for victims and affected communities is important. And this is also an answer for the law to maintain human dignity.[48]

The purpose of the punishment is not to suffer or netapa, but the criminal verdict must at least reflect the futuristic nature of it, this is what is expected from the punishment. Therefore, the judge must be aware of the meaning of his decision, Sanford H. Kadish, in this case stated:[49]

[46] Setiawan H, et al., The application of the principle of proportionality in the imposition of criminal penalties against narcotics trafficking perpetrators (Analysis of Decision Number: 669/Pid.Sus/2018/PN.Btm. Iuris studia: Journal of Legal Studies, 2021, 2(2), 264-275
[47] Hafita Mutiara Zaharani, Juridical Review of the Principal Criminal Regulations and Criminal Objectives in the 2023 Indonesian Criminal Code and *Stragesetzbuch* Germany, Journal of Legal Studies, Volume 3 Number 2 June 2025, p.50
[48] M. Maulidar, Philosophical Correlation between *Restorative Justice* and Diyat in the Islamic Criminal Law System. Scientific Journal of Profi Muamalah, 12 (2), 2021, p.6
[49] Sandford H Kadish,, *The Prcesses of the Criminal Law*, Boston : Little Brown, 1969, h. 375

> "Criminal decisions are a very big consequence. Criminalization is the pinnacle level of complex settlement of a real criminal procedure legal system, the goal of shaping the person who has committed the crime to be useful and trustworthy. Criminal decisions must be complete in what will be done to the convict, criminal decisions as a social impact on individuals who risk their lives and freedoms."

Furthermore, in the criminal justice system, the principles of simple, fast, and low cost are listed in Law Number 48 of 2009 concerning Judicial Power. Article 4 paragraph (2) of the Law as formulated as follows:

> "The court assists justice seekers and tries to overcome all obstacles and obstacles to achieve a simple, fast, and low-cost justice".

The principles of simple, fast, and low cost are a series of interrelated and interdependent case settlement processes, namely the cost of the case becomes light if the examination process in the trial is simple. M. Hatta Ali emphasized that this principle is a basic principle in the administration of justice and a guideline for judges in carrying out the judicial process to answer the sense of justice of the community.[50]

Furthermore, the regulatory system in the criminal law listed in the Criminal Code Number 1 of 2023 which explains the regulation of criminal sanctions on corporations is regulated in Article 118 as formulated as follows:

a. Principal crime; and
b. Additional penalties

Further in Article 119 as formulated as follows:

The principal crime as referred to in Article 118 letter a is a fine.

Seeing that the regulation of criminal sanctions related to corporations is the principal crime of a fine, it is necessary to regulate the corporate criminal justice system that is regulated outside the court as a response to fast justice and light costs.

Sudikno Mertokusumo said, what is meant by simplicity is a clear, easy-to-understand, and non-convoluted event. The fewer formalities required or required in appearing before the court, the more difficult the formalities or the double meaning of the rules (*dubius*) that allow the emergence of various interpretations, do not guarantee legal certainty and cause reluctance or fear to appear in court. The word quick refers to the course of justice, too many formalities are obstacles to the course of justice. The low

[50] M. Hatta Ali, *Fast, Simple, and Low Cost Justice Towards Restorative Justice,* Bandung: PT. Alumni, 2012, p. 23.

cost to be borne by the people, the high-cost causes interested parties to be reluctant to file a lawsuit with the court. The principle of speedy justice adopted by the Criminal Procedure Code is an elaboration of the Law on the Principal Provisions of Judicial Power. This principle in the Criminal Code is quite much embodied in the term "immediately". The provisions in the Criminal Procedure Code which are the elaboration of the principle of speedy trial (*contante justitie; speedy trial*).[51]

4. Conclusion

This study demonstrates that the philosophical foundation for out-of-court settlement of corporate criminal offenses is rooted in restorative justice, corrective justice, and rehabilitative justice. Unlike conventional criminal law approaches that primarily emphasize retribution and punishment, these philosophical perspectives seek to restore the harm caused by corporate misconduct, ensure victim compensation, encourage corporate accountability, and promote sustainable compliance. Considering the broad social and economic impacts of corporate criminal sanctions on employees, shareholders, consumers, and the public, the use of criminal law against corporations should be positioned as an ultimum remedium rather than the primary enforcement mechanism.

Furthermore, this study finds that the existing framework of corporate criminal liability in Indonesia remains predominantly punitive and litigation-oriented. Although various laws have recognized corporations as subjects of criminal liability, the legal system has not yet provided a comprehensive mechanism for resolving corporate criminal cases outside formal court proceedings. As a result, the current framework often fails to balance law enforcement objectives with victim recovery, corporate remediation, and economic sustainability.

Based on these findings, this study proposes an ideal model of out-of-court settlement of corporate criminal offenses that integrates restorative principles into corporate criminal enforcement. The proposed model consists of several stages, including eligibility assessment, negotiation among relevant stakeholders, settlement agreements, judicial oversight, and compliance monitoring. Through this mechanism, corporations may be required to provide compensation, undertake remediation measures, implement compliance reforms, and ensure non-repetition of unlawful conduct. Such an approach seeks to achieve accountability while avoiding the adverse consequences that may arise from excessive reliance on punitive sanctions.

The contribution of this study lies in developing a normative framework for out-of-

[51] Andi Hamzah, Indonesian Criminal Procedure Law, Jakarta: Sinar Garafika, 2009, p. 13

court settlement of corporate criminal offenses within the Indonesian legal system. The proposed model may serve as a theoretical foundation for future legal reform, particularly in the development of regulations governing alternative mechanisms for corporate criminal enforcement. Therefore, it is recommended that Indonesian lawmakers and law enforcement institutions formulate a specific legal framework that accommodates restorative and compliance-based approaches in resolving corporate criminal cases.

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