

Corporate Vicarious Liability in the Crime of Participating in Bribery in Indonesia

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Abstract

The complexity of the corporate landscape has positioned enterprises as key actors in criminal offenses, including bribery. Although the National Criminal Code (Law No. 1/2023) recognizes corporations as subjects of criminal law, the application of vicarious liability in corporate bribery cases remains underexplored. This study examines the implementation of vicarious liability for corporations in the context of bribery in Indonesia, particularly after the enactment of the National Criminal Code. Utilizing a juridical-normative methodology and statutory and conceptual approaches, this research analyzes primary and secondary legal materials qualitatively and descriptively. The findings reveal that the National Criminal Code incorporates the concepts of identification and vicarious liability into corporate accountability, extending the scope to include those in de facto control of the organization. Applying vicarious liability in bribery cases requires proof of a causal link between the bribery act and the corporation's interests. This study contributes to the alignment of vicarious liability with established principles of criminal law and provides insights into corporate accountability under the new Criminal Code framework.

Keywords: Bribery, Corporation, National Criminal Code, Medeplegen, Vicarious Liability.

Introduction

The rapid advancement of the business sector has positioned corporations as pivotal actors in economic and commercial activities. However, this development has also increased the risk of corporate involvement in criminal acts, particularly corruption and bribery. Bribery, as a form of corruption, often involves corporations seeking to gain unlawful advantages through unethical practices. This phenomenon has become a critical issue within global criminal justice systems, including in Indonesia.

The recognition of corporations as subjects of criminal law in Indonesia has evolved significantly. Initially, under the influence of the Dutch Criminal Code (*Wetboek van Strafrecht*), the principle of *societas delinquere non potest*—stating that legal entities cannot commit criminal offenses—was the prevailing doctrine. However, the enactment of specific laws, beginning with Emergency Law No. 7 of 1955, marked a shift toward acknowledging corporate criminal liability. Over time, this framework expanded to include broader provisions under specialized



statutes such as the Corruption Eradication Law and the Prevention and Eradication of Money Laundering Law.

Despite these advancements, challenges persist in prosecuting corporations for criminal offenses, particularly in cases of bribery. Key obstacles include the difficulty of proving corporate intent and determining the extent of liability within complex organizational structures. To address these challenges, the Indonesian Supreme Court issued Regulation No. 13/2016, providing guidance on corporate criminal liability. However, the introduction of the National Criminal Code (Law No. 1/2023) represents a significant step forward, explicitly recognizing corporations as subjects of criminal law and incorporating principles such as vicarious liability.

Vicarious liability, a doctrine rooted in common law traditions, holds corporations accountable for the criminal acts of their agents or employees committed within the scope of their duties. This concept is particularly relevant in cases of corporate bribery, where corrupt practices often occur for the corporation's benefit. In Indonesia, corporate bribery frequently involves the concept of *medeplegen*, or participation in committing a crime, as regulated under Article 55 of the Criminal Code.

The recent enactment of Law No. 1/2023 opens new possibilities for addressing corporate bribery through the application of vicarious liability. However, its implementation raises critical questions regarding the balance between effective law enforcement and the protection of legitimate business operations. This study seeks to explore the application of vicarious liability in corporate bribery cases, particularly in the context of *medeplegen*, and provide recommendations for aligning this concept with Indonesia's evolving legal framework.

Method

This study employs a juridical-normative approach to examine the application of vicarious liability in corporate bribery cases within Indonesia's legal framework, particularly in the context of the National Criminal Code (Law No. 1/2023). The juridical-normative method is appropriate as it focuses on analyzing legal norms and their interpretation, specifically in relation to corporate liability for *medeplegen* (participation in committing crimes).

The study integrates two main approaches:

1. **Statutory Approach:** This approach examines the relevant legal provisions, including the National Criminal Code, the Corruption Eradication Law, and other statutes that address corporate criminal liability.
2. **Conceptual Approach:** This approach explores theoretical frameworks related to vicarious liability, corporate accountability, and bribery to provide a comprehensive understanding of the legal and philosophical underpinnings of these concepts.

Sources of Legal Materials

Legal materials used in this study include:

1. **Primary Legal Materials:** These consist of statutes and regulations, including:
 - a) Law No. 1/2023 (National Criminal Code)



- b) The Corruption Eradication Law
 - c) Supreme Court Regulation No. 13/2016
2. Secondary Legal Materials: These include scholarly books, journal articles, and research papers that discuss vicarious liability, corporate criminal liability, and bribery offenses.
 3. Tertiary Legal Materials: These involve legal dictionaries and encyclopedias to clarify terminology and concepts relevant to the study.

Data Collection

The data collection process relies on library research, wherein legal texts, journal articles, and case law are analyzed to extract insights and interpretations. This process involves:

1. Identifying and cataloging provisions in statutes and regulations relevant to corporate liability and bribery offenses.
2. Reviewing scholarly literature to contextualize the theoretical foundations of vicarious liability and *medeplegen*.
3. Analyzing judicial interpretations, particularly from landmark cases and Supreme Court decisions, to understand practical applications of these concepts.

Data Analysis

Data analysis is conducted qualitatively through a descriptive-analytical framework. The process includes:

1. Identification: Recognizing and inventorying relevant legal provisions on corporate liability and *medeplegen*.
2. Interpretation: Analyzing the intent and significance of legal norms within the National Criminal Code and other statutes.
3. Comparison: Juxtaposing legal norms with theoretical frameworks on corporate liability to identify gaps, overlaps, and practical implications.

The analysis applies both deductive and inductive reasoning:

1. Deductive Reasoning: To derive general principles of vicarious liability and corporate criminal liability and apply them to specific contexts, such as bribery.
2. Inductive Reasoning: To infer patterns and principles from specific cases of corporate bribery in Indonesia.

Presentation of Results

The findings are systematically presented to address the research question: "How is vicarious liability applied to corporations in *medeplegen* bribery under the Indonesian National Criminal Code?" The results are analyzed and discussed within philosophical, juridical, and sociocultural dimensions to ensure a holistic understanding. Recommendations are provided to advance corporate criminal law enforcement and align it with international standards of corporate accountability.



Recognition of Corporate Criminal Liability

The National Criminal Code (Law No. 1/2023) explicitly recognizes corporations as subjects of criminal law, a significant shift from the earlier reliance on specific statutes. Article 45 defines corporations broadly, including legal entities, unincorporated associations, and business entities such as firms and partnerships. This broad definition ensures the law's applicability to diverse organizational forms, reflecting the evolving nature of modern businesses.

Article 46 further outlines the conditions under which a corporation may commit a criminal offense, emphasizing that criminal acts must be conducted:

1. By individuals within the corporation's hierarchy or by those acting on its behalf.
2. Within the scope of corporate activities.
3. For the benefit of the corporation.

These provisions align with international principles of corporate accountability, particularly the doctrines of identification and vicarious liability.

Application of *Medeplegen* in Corporate Bribery Cases

Medeplegen, or participation in committing crimes, is a form of collaboration involving multiple parties who jointly commit a criminal offense. Under Article 55 of the National Criminal Code, *medeplegen* requires:

1. Conscious cooperation (*bewuste samenwerking*), where all parties intentionally collaborate.
2. Joint execution (*gezamenlijke uitvoering*), ensuring active involvement in the offense.

In bribery cases, corporations often collaborate with public officials to gain undue advantages, such as securing contracts or influencing regulatory decisions. These collaborations qualify as *medeplegen*, provided the corporation's representatives and public officials share intent and actively participate in the bribery scheme.

The Role of Vicarious Liability in Corporate Bribery

The National Criminal Code incorporates vicarious liability, holding corporations accountable for the criminal acts of their agents or employees. This doctrine allows liability to be attributed to a corporation if:

1. The act benefits the corporation.
2. There is evidence of organizational failure to prevent the offense.

Vicarious liability bridges the gap between corporate intent and individual actions, particularly in complex organizational structures where bribery often results from collective decision-making rather than individual misconduct.

Theoretical Basis for Corporate Accountability

The application of vicarious liability in corporate bribery is grounded in two main theories:



1. Identification Theory: Attributing the actions and intent of senior officials as those of the corporation. For instance, if a director authorizes a bribe, their intent is treated as corporate intent.
2. Aggregation Theory: Constructing corporate liability by combining the knowledge and actions of multiple individuals within the organization. For example, the combined actions of finance and procurement teams may reveal a coordinated bribery scheme.

These theories highlight the need to consider both direct and indirect involvement in corporate offenses, ensuring accountability while reflecting the realities of modern corporate structures.

Challenges in Applying Vicarious Liability to *Medeplegen* Bribery

Several challenges arise in applying vicarious liability to bribery cases involving *medeplegen*:

1. Proving Corporate Intent: Establishing that bribery was conducted for the corporation's benefit and aligned with its policies or culture.
2. Determining Individual and Corporate Liability: Differentiating between acts committed independently by employees and those representing corporate intent.
3. Balancing Liability and Legal Certainty: Avoiding over-criminalization while ensuring corporations cannot escape accountability through complex organizational structures.

In Indonesia, these challenges are exacerbated by the lack of detailed judicial precedents and inconsistencies in the application of corporate criminal liability across different statutes.

Practical Implications and Recommendations

To address these challenges, the following measures are recommended:

1. Enhanced Compliance Programs: Corporations should implement robust anti-corruption mechanisms, including whistleblowing systems, regular audits, and employee training. Compliance programs should serve as a mitigating factor in determining liability.
2. Improved Evidentiary Standards: Law enforcement agencies should adopt advanced investigative techniques, such as tracing financial transactions and analyzing internal communications, to establish corporate intent.
3. Judicial Guidelines for Vicarious Liability: The Supreme Court should issue detailed guidelines on the application of vicarious liability and *medeplegen* in bribery cases, ensuring consistent interpretation and enforcement.

Implications of the National Criminal Code

The National Criminal Code provides a comprehensive legal framework for corporate liability, particularly through Articles 45–48. However, its effective implementation requires:

1. Clear prosecutorial standards to prove corporate intent and benefit.
2. Collaboration with international anti-corruption frameworks, such as the UK Bribery Act 2010, which emphasizes adequate preventive measures as a defense.



The integration of vicarious liability into Indonesia's legal framework under the National Criminal Code marks a progressive step in addressing corporate bribery. However, its application in *medeplegen* bribery requires careful consideration to balance effective enforcement with safeguarding legitimate corporate operations. By aligning with international best practices and strengthening compliance mechanisms, Indonesia can foster a robust legal environment to combat corporate corruption effectively.

Closing

The recognition and application of vicarious liability within Indonesia's legal framework signify an important evolution in addressing corporate involvement in criminal offenses, particularly bribery. By integrating this doctrine into the National Criminal Code (Law No. 1/2023), Indonesia has established a stronger foundation for corporate accountability, aligning its legal system with global standards. However, the complexity of corporate structures and the unique challenges posed by *medeplegen* bribery require a nuanced approach.

Effective implementation of vicarious liability demands clear legal interpretations, robust investigative methods, and the active involvement of both corporations and law enforcement agencies. Corporations must take proactive steps to establish comprehensive compliance programs that prevent bribery and promote ethical practices. Law enforcement must develop advanced mechanisms to trace corporate intent, ensuring that accountability extends to both individual perpetrators and the organizations benefiting from corrupt acts.

Furthermore, judicial guidelines on the application of *medeplegen* and vicarious liability will be critical in providing consistency and clarity in legal enforcement. These measures will help balance the objectives of law enforcement with the need to maintain a healthy investment climate.

In conclusion, the application of vicarious liability in cases of corporate bribery represents a pivotal opportunity for Indonesia to strengthen its anti-corruption efforts. By fostering collaboration between stakeholders and adopting international best practices, Indonesia can enhance the effectiveness of its legal framework, deter corporate corruption, and promote a culture of integrity and accountability in its business environment. This study underscores the importance of continual refinement in the interpretation and enforcement of corporate criminal liability, ensuring that it evolves alongside the complexities of modern corporate conduct.

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