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CORPORATE CRIMINAL LIABILITY IN JORDAN, AUSTRALIA, AND INDONESIA: A COMPARATIVE ANALYSIS OF DOCTRINES AND RECENT DEVELOPMENTS

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Abstract

This study analyzes the development of corporate criminal liability in Jordan, Australia, and Indonesia through a comparative doctrinal approach, focusing on the shift from the traditional identification doctrine toward models that attribute criminal fault to corporate culture. The research applies a normative legal method combined with comparative legal analysis, examining the Jordanian Penal Code, the Australian Criminal Code Act 1995 (Cth) and the Australian Law Reform Commission Report No. 136 (2020), Law No. 1 of 2023 on the New Indonesian Criminal Code (KUHP), and Supreme Court Regulation No. 1 of 2023, alongside scholarly literature on identification doctrine, vicarious liability, strict liability, and corporate culture theory. The findings show that Jordan retains a classical identification-based model, holding corporations liable only when fault can be linked to individuals acting as the "directing mind and will." Australia has adopted the most advanced framework through Section 12.3 of the Criminal Code, which attributes fault based on corporate culture and is strengthened by proposals for system-of-conduct offences. Indonesia occupies a transitional position: although the Law No. 1 of 2023 formally recognizes corporations as criminal subjects, its fault-attribution structure remains hybrid, and organizational fault is only expressly acknowledged sectorally through Supreme Court Regulation No. 1 of 2023. The study concludes that effective corporate criminal liability depends on a legal system's capacity to conceptualize fault as systemic failure rather than individual wrongdoing.

Keywords: *corporate criminal liability, Jordan, Australia, Indonesia, corporate culture*

A. Background

The rise of corporations as primary actors in the global economy has produced ambivalent consequences. On the one hand, corporations make significant contributions to economic growth, job creation, and technological innovation. On the other hand, numerous corporate crime scandals, ranging from environmental offenses, market manipulation, and human rights violations to transnational corruption, demonstrate that corporations may also function as sources of systemic and widespread harm that is difficult to attribute to criminal responsibility.[2] Such offenses are rarely the product of a single individual's conduct; rather, they typically emerge from structural decision-making processes, internal policies, and corporate cultures that encourage or tolerate unlawful behavior.[3]

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[2] Rob White, *Green Criminology: An Introduction to the Study of Environmental Harm* (London: Routledge, 2020), 15–18, https://doi.org/10.4324/9780429464015.

[3] Brent Fisse and John Braithwaite, *Corporations, Crime and Accountability* (Cambridge: Cambridge University Press, 1993), 45–47, https://doi.org/10.1017/CBO9780511522183.

Within classical criminal law theory, criminal liability is traditionally premised on the assumption that the offender is an individual endowed with will and culpability (mens rea). This anthropocentric conception initially relegated corporations to the status of "legal fictions," incapable of bearing criminal responsibility due to the absence of a mind or will.[4] As modern economic activity grew increasingly complex and organizationally diffuse, however, this paradigm proved inadequate for addressing crimes that are collective, institutional, and systemic in nature.[5] Consequently, scholarly and doctrinal debates have shifted from questioning *whether* corporations can be held criminally liable to examining *how corporate fault can be conceptually constructed and evidentially established*.

In response, various models of corporate criminal liability have emerged, including the identification doctrine, vicarious liability, strict liability, aggregation theory, and, more recently, the corporate culture or organizational fault approach.[6] Under the identification doctrine, corporate fault is attributed to the fault of an individual who is regarded as the "directing mind and will" of the corporation, such as a board member or senior management.[7] While influential, this model encounters significant limitations when criminal conduct arises from collective practices or systemic failures that cannot be reduced to the actions of a single decision-maker. Other theories attempt to overcome these limitations by broadening the basis of attribution, culminating in the corporate culture approach, which locates fault in organizational values, policies, and practices that structurally facilitate or tolerate illegality.

Vicarious liability expands attribution by holding corporations responsible for employees' actions committed within the scope of employment, while strict liability dispenses with the requirement to prove *mens rea.*[8] Aggregation theory allows corporate intent to be constructed cumulatively from the knowledge and conduct of multiple individuals.[9] By contrast, the corporate culture approach locates corporate fault in organizational values, policy patterns, and internal practices that systematically encourage or tolerate unlawful behavior.

Against this theoretical background, this study employs a comparative doctrinal approach based on a clearly defined tertium comparationis, namely the legal method used to attribute criminal fault to corporations, particularly the extent to which liability is grounded in individual wrongdoing or conceptualized as a form of systemic organizational failure. The selection of Jordan, Australia, and Indonesia is therefore not based merely on the formal recognition of corporations as subjects of criminal law, but on their representation of distinct doctrinal models and stages in the evolution of corporate criminal liability.

In principle, all three jurisdictions examined in this study formally recognize corporations as subjects of criminal law. Jordan, through its Jordanian Penal Code and

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4 John C. Coffee Jr., "No Soul to Damn, No Body to Kick: An Unscandalized Inquiry into the Problem of Corporate Punishment," Michigan Law Review 79, no. 3 (1981): 386–459.

5 Celia Wells, *Corporations and Criminal Responsibility*, 2nd ed. (Oxford: Oxford University Press, 2001), 23–24.

6 Fisse and Braithwaite, *Corporations, Crime and Accountability*,14–18.

7 Coffee, "No Soul to Damn, No Body to Kick,"386–459.

8 Fisse and Braithwaite, *Corporations, Crime and Accountability*.

9 Mihailis Diamantis, "Corporate Criminal Minds," *Duke Law Journal* 69 (2020): 583–651, https://scholarship.law.duke.edu/dlj/vol69/iss3/2/.

several sectoral statutes, provides a legal basis for corporate criminal sanctions, although its doctrinal framework remains heavily influenced by the identification approach.[10] Australia, as a common law country, has adopted a more progressive model of corporate criminal liability under the Criminal Code Act 1995 (Cth), particularly Section 12.3, which explicitly incorporates the concept of corporate culture as a basis for attributing fault.[11] In Indonesia, the recognition of corporations as subjects of criminal liability previously scattered across various sectoral laws has now been consolidated under Law No. 1 of 2023 which contains specific provisions on corporate criminal liability.

Despite these formal developments, the practical enforcement of corporate criminal liability across the three jurisdictions reveals persistent challenges. In Jordan, empirical studies indicate that criminal sanctions against corporations remain limited, with courts frequently directing punishment toward individual managers rather than corporate entities.[12] In Australia, prior to recent reform initiatives, the corporate criminal liability regime was criticized for the limited prosecutorial use of corporate culture provisions and continued reliance on traditional attribution mechanisms.[13] In Indonesia, although statutory provisions permit the prosecution of corporations, law enforcement authorities often encounter difficulties in proving corporate fault, leading to a continued preference for prosecuting individuals while corporate entities frequently escape liability proportionate to the harm caused.

This gap reflects the presence of both structural and conceptual problems. First, the existing normative design has not fully internalized the notion of corporate fault as a systemic form of wrongdoing embedded within the organization, rather than merely a derivative of individual misconduct. Second, the prevailing framework for attributing fault particularly in systems that continue to rely on the identification doctrine remains inadequate to capture the dynamics of modern corporate criminality. Third, enforcement mechanisms and the institutional culture of law enforcement agencies are not yet fully equipped to implement approaches grounded in corporate culture and internal organizational structures.

In the literature, Moayyad Mohamed Al Qudat's 2009 study, "Corporate Criminal Liability under the Criminal Laws of Jordan and Australia: A Comparative Analysis," constitutes one of the most significant works that specifically compares the regulation of corporate criminal liability in Jordan and Australia.[14] Al Qudat demonstrates that the Jordanian system remains largely grounded in the identification model, whereas Australia has begun to shift its focus toward organizational liability that takes managerial failure and corporate culture into account.

In addition to Al Qudat, several other relevant studies exist, although they do not fill the comparative gap that this article seeks to address. First, Jennifer G. Hill's article, "Corporate Criminal Liability in Australia: An Evolving Corporate Governance

[10] Moayyad Mohamed Al Qudat, "Corporate Criminal Liability under the Criminal Laws of Jordan and Australia: A Comparative Analysis," Journal of Sharia and Law 37 (2009): 205–274, https://scholarworks.uaeu.ac.ae/sharia_and_law/vol2009/iss37/8.

[11] *Criminal Code Act 1995* (Cth), s 12.3.

[12] Al Qudat, "Corporate Criminal Liability under the Criminal Laws of Jordan and Australia," 260–268.

[13] Jennifer G. Hill, "Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique," *Company and Securities Law Journal* 25, no. 7 (2007): 427–452, https://papers.ssrn.com/sol3/papers.cfm?abstract_id.

[14] Al Qudat, "Corporate Criminal Liability under the Criminal Laws of Jordan and Australia."

Technique," analyzes the evolution of corporate criminal liability in Australia through a comparative lens, but its primary concern is the relationship between criminal law and corporate governance within Australia, rather than a systemic comparison with developing jurisdictions such as Jordan and Indonesia.[15] Second, Chiara De Maglie's work, "Models of Corporate Criminal Liability in Comparative Law," provides a comprehensive theoretical mapping of various corporate criminal liability models across multiple jurisdictions, including the United States, the United Kingdom, Australia, Canada, and several continental European systems-yet it does not specifically examine Jordan or Indonesia as case studies.[16]

Third, in the Indonesian context, Lili Saipudin's article, "The Concept of Corporate Criminal Liability in the Indonesian Criminal Law System," conceptually examines the doctrine of corporate criminal liability within the national legal system using a normative approach and limited comparative perspectives. However, it does not situate Indonesia within a three-country comparative framework involving Jordan and Australia, nor does it connect the analysis to the notion of corporate culture as a basis for fault attribution.[17] Fourth, the study by J. Sriwidodo, "Regulation of Corporate Criminal Liability According to Law Number 1 Year 2023 on the Criminal Code," focuses primarily on a dogmatic analysis of corporate liability provisions in the 2023 Criminal Code, especially in relation to legal certainty and normative implications, without linking them to the experiences of other jurisdictions or to the development of corporate culture doctrine within common law systems.[18]

Nevertheless, these studies have yet to integrate the most recent legal developments, such as the reform of the corporate criminal liability regime in Australia following the recommendations of the Australian Law Reform Commission, and Law No. 1 of 2023 in Indonesia. Moreover, they do not employ corporate culture and internal organizational structures as the primary theoretical lenses for assessing the adequacy of liability models in each jurisdiction.

Based on this analysis, the present study offers several key scholarly contributions. First, in terms of its object of inquiry, this research constitutes a comparative study that explicitly examines Jordan, Australia, and Indonesia within a single analytical framework, thereby enabling a richer understanding of the interaction between civil law systems (Jordan and Indonesia) and the common law tradition (Australia) in constructing regimes of corporate criminal liability. Second, at the doctrinal level, this article not only discusses classical theories such as the identification doctrine and vicarious liability, but also evaluates the extent to which corporate culture and organizational fault have been internalized within the legal frameworks of the three jurisdictions. Third, from a normative standpoint, this research incorporates the most recent legal developments, including the Australian Law Reform Commission and Law No. 1 of 2023.

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[15] Hill, "Corporate Criminal Liability in Australia."

[16] Chiara de Maglie. "Models of Corporate Criminal Liability in Comparative Law." *Washington University Global Studies Law Review* 4, no. 3 (2005): 547-66, https://openscholarship.wustl.edu/law_globalstudies/vol4/iss3/4

[17] Saipudin, Lalu, Salim HS., Rodliyah Rodliyah, and Laely Wulandari. 2025. "The Concept of Corporate Criminal Liability in the Indonesian Criminal Law System". *Jurnal IUS Kajian Hukum Dan Keadilan* 13 (2):475-99, https://doi.org/10.29303/ius.v13i2.1817.

[18] J. Sriwidodo, "Regulation of Corporate Criminal Liability According to Law Number 1 Year 2023 on the Criminal Code," *Krtha Bhayangkara* 18, no. 1 (2024): 197–214, https://doi.org/10.31599/krtha.v18i1.1650.

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B. Identified Problems

Based on the foregoing background, at least three fundamental issues require analysis: (1) the doctrinal position of corporate criminal liability within the legal systems of Jordan, Australia, and Indonesia; (2) recent developments in the regulation and enforcement of corporate criminal liability across these three jurisdictions; and (3) the extent to which a comparative examination of these doctrinal systems and practices demonstrates an evolutionary transition from an individualistic approach to one grounded in corporate culture.

C. Research Methods

This study employs a normative legal research method using a comparative legal approach to examine the evolution of corporate criminal liability doctrines across three jurisdictions with distinct legal traditions: Jordan, Australia, and Indonesia.[1] The analysis draws upon primary legal sources, namely the Jordanian Penal Code No. 16 of 1960, the Criminal Code Act 1995 (Cth), Law No. 1 of 2023 on the Indonesian Criminal Code, and Supreme Court Regulation No. 1 of 2023, which constitute the principal legal foundations for corporate fault attribution in each system. Secondary legal materials, including scholarly articles, official reports, and academic literature, are employed to identify the theoretical construction of corporate criminal liability, including the identification doctrine, vicarious liability, strict liability, and corporate culture theory. Through this approach, the study does not merely describe the prevailing positive law but also evaluates the extent to which the normative frameworks of each jurisdiction adequately respond to modern corporate crime, which is systemic in nature and embedded within organizational structures.

D. Research Findings and Discussions

Corporate Criminal Liability Model in Jordan

Jordan is a modern civil law jurisdiction grounded in the Arab legal tradition, whose criminal justice system is heavily influenced by the French Penal Code. With regard to corporate criminal liability, Jordan has normatively recognized legal persons as subjects of criminal law; however, the construction of liability remains strongly shaped by the classical individual-based approach (identification doctrine).[19]

The principal regulation of corporate criminal liability is contained in the Jordanian Penal Code No. 16 of 1960, which has been amended several times, most notably through Law No. 6 of 2010. Articles 74 and 75 expressly allow the criminal prosecution of legal persons, yet corporate fault continues to be derived from the fault of individuals who "act on behalf of the legal person.".[20] The structure of corporate fault under the Penal Code is thus rooted in a classical paradigm: a corporation is deemed guilty insofar as a specific director, manager, or authorized representative acting as the directing mind and will of the company can be identified. Accordingly, Jordan adopts an individualistic attribution model, in which a corporation may only be convicted if it can be proven that the crime

[19] Al Qudat, "Corporate Criminal Liability under the Criminal Laws of Jordan and Australia."
[20] *Jordanian Penal Code* No. 16 of 1960, as amended by Law No. 6 of 2010, https://www.moj.gov.jo

was committed by an officer or an authorized agent of the company, and that the act was carried out for the benefit of the corporation.[21]

This model is consistent with the identification doctrine that dominated continental European systems prior to the emergence of organizational liability reforms.[22] The doctrinal consequence is clear: when an offense results from systemic failures or a defective "corporate culture" without direct involvement of senior officers, the corporation cannot be held criminally liable.

Although the foundational framework under the Penal Code remains conservative, recent sectoral legislative developments indicate a growing regulatory recognition of corporations as criminal actors, particularly in the fields of environmental protection, corporate governance, and anti-money laundering. First, the Environmental Protection Law No. 6 of 2017. This law contains criminal provisions that explicitly distinguish between natural persons and legal persons as offenders. Several articles impose: (1) substantial fines on juridical persons convicted of serious pollution affecting water sources, marine areas, or protected zones; (2) an obligation to undertake environmental remediation at the corporation's own expense; and (3) the possibility of temporary or permanent closure of business facilities.[23]

A study by (Alkseilat, Abu Issa, & Al-Refou, 2020) shows that the 2017 Environmental Protection Law marks a significant policy shift: the legislator increasingly recognizes that the principal perpetrators of environmental harm are business entities, not merely individuals. Accordingly, fines amounting to hundreds of thousands-even millions of Jordanian dinars are intended to create a genuine deterrent effect on corporations.[24]

However, this strengthening remains sectoral rather than incorporated into a systematic chapter on corporate liability within the Penal Code. As a result, the regulatory framework appears fragmented: strong in certain areas (such as environmental law), yet lacking a unified concept of corporate fault applicable across sectors.

Second, the Companies Law and Beneficial Ownership Transparency. Another significant development concerns amendments to Companies Law No. 22 of 1997, which reinforce disclosure obligations, including the identification of beneficial ownership. The 2021 amendment requires corporations to declare their ultimate beneficial owners and submit this information to the competent authority. Failure to comply is subject to substantial criminal fines and, in some cases, may trigger criminal liability for corporate officers.[25]

Although primarily aimed at improving governance and preventing the misuse of legal entities for illicit purposes, this reform intersects with corporate criminal liability: corporate entities that conceal beneficial ownership may constitute vehicles for money

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21 Al Qudat, "Corporate Criminal Liability," 216–218.

22 Wells, *Corporations and Criminal Responsibility*, 23.

23 *Environmental Protection Law* No. 6 of 2017, English version, FAOLEX database, https://faolex.fao.org/docs/pdf/jor173241E.pdf

24 Abdullah Alkseilat, Hamzeh Abu Issa, and Ayman Al-Refou, "Criminal Protection of the Environment in Jordanian Legislation," *Journal of Advanced Research in Law and Economics* 11, no. 1 (2020): 6–12, https://journals.aserspublishing.eu/jarle/article/view/4742, DOI: https://doi.org/10.14505/jarle.v11.1(47).01.

25 Recent Amendments to Jordan's Companies Law," Eversheds Sutherland (legal update, 6 October 2021), available at: https://www.eversheds-sutherland.com; Companies Law No. 22 of 1997 (consolidated text): https://sdc.com.jo/sites/default/files/2024-01/companies_law_0.pdf

laundering or legal evasion, thereby opening the door for criminal sanctions against both the corporation and its officers.

Third, the AML/CFT regime and entity-based risk assessment. Jordan has also strengthened its anti-money laundering and counter-terrorism financing framework. The MENAFATF Mutual Evaluation Report (2019) notes that Jordan has adopted an AML/CFT legal structure that permits the criminal prosecution of legal persons involved in money laundering or terrorism financing, in accordance with FATF recommendations. Moreover, the Money Laundering and Terrorist Financing Risk Assessment of Legal Persons and Legal Arrangements in Jordan (2023) specifically evaluates risks associated with corporate forms and trust arrangements. The report highlights that: (1) certain corporate types (e.g., limited liability companies and public shareholding companies) carry higher money laundering risks; (2) transparency of beneficial ownership and enforcement of sanctions against corporations remain inadequate; and (3) enhanced oversight and sanctions are needed to deter the misuse of corporate vehicles.[26] Normatively, this demonstrates Jordan's gradual shift toward a risk-based approach to legal persons, expanding the space for corporate criminal liability in financial crimes.

These developments indicate a gradual strengthening of corporate criminal liability in Jordan. However, a recent study by (Maher Ali Ahmed Al Khalidi, 2024), "Jordanian Legal Regulation of Corporate Crimes," concludes that the regulatory framework remains partial and fragmented because: a) no general doctrine of corporate criminal liability is codified systematically in the Penal Code; b) the conceptual framework remains rooted in individual fault rather than organizational fault or corporate culture; and c) enforcement practices still overwhelmingly target individuals rather than corporate entities.

In other words, Jordan demonstrates a pattern of "sectoral tightening without doctrinal revolution": the state reinforces sanctions and corporate accountability within sensitive sectors, environment, finance, and corporate transparency, without altering the fundamental premise that corporate crime is merely a reflection of individual wrongdoing. From the standpoint of corporate criminal liability theory, this indicates that Jordan has not yet entered the modern phase of corporate culture theory or aggregation theory.

Corporate Criminal Liability Model in Australia

Australia is one of the most progressive jurisdictions in the field of corporate criminal liability. The core regulatory framework is contained in Part 2.5 of the Criminal Code Act 1995 (Cth), which applies to Commonwealth offences. Within this framework, Division 12 specifically regulates how physical elements and fault elements may be attributed to corporations.[27] In essence, Part 2.5 addresses three key aspects: 1) Attribution of physical elements the physical conduct of an employee, agent, or other person acting on behalf of the corporation may be treated as the conduct of the corporation itself (s 12.1); 2) Strict and absolute liability-establishing the applicability of strict liability and absolute liability to corporations, including possible defences (ss 12.2–

[26] Jordanian Authorities, *Money Laundering and Terrorist Financing Risk Assessment of Legal Persons and Legal Arrangements in Jordan* (Amman: AMLU, 2023), https://www.amlu.gov.jo/EBV4.0/Root_Storage/EN/EB_HomePage/Money_Laundering_and_Terrorist_Financing_Risk_Assessment_of_Legal_Persons_and_Legal_Arrangements_in_Jordan.pdf

[27] *Criminal Code Act* 1995 (Cth), Part 2.5; "Chapter 2 of the Criminal Code Act 1995 (Cth) General Principles of Criminal Responsibility," https://www.austlii.edu.au

12.5); dan 3) Corporate culture as the basis of mens rea section 12.3 provides detailed rules for attributing intention, knowledge, or recklessness to corporations through corporate culture and high managerial agents.[28]

Section 12.3 explicitly defines corporate culture as: *"an attitude, policy, rule, course of conduct or practice existing within the body corporate generally or in the part of the body corporate in which the relevant activities take place."*[29] Through this statutory formulation, Australia moves beyond the traditional identification doctrine, which limits corporate fault to the directing mind and will of the company (typically directors or senior managers). Under this model, corporate mens rea may be established by demonstrating: the existence of internal policies that encourage or tolerate violations; the absence of an adequate compliance system; senior management's failure to promote a culture of compliance; or repeated unlawful practices within daily business operations.[30] As a consequence, prosecutors are no longer confined to asking "who committed the act?", but rather "how does the corporation's system and culture operate?" This represents the essence of organizational fault in the Australian system.

Beyond the Criminal Code Act 1995 (Cth), a range of sectoral statutes, such as the Corporations Act 2001 (Cth), environmental legislation, and work health and safety regulations, contain criminal or quasi-criminal provisions governing corporate conduct.[31] Historically, Australia also relied on the identification model inherited from English common law cases, such as Tesco v. Nattrass and applied in several federal court decisions. However, as modern corporate structures grew increasingly complex, this approach came to be seen as insufficient.

In her seminal article "Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique?", Jennifer G. Hill argues that the development of corporate criminal law in Australia is inseparable from the evolution of corporate governance discourse. Corporate punishment is therefore understood not merely as retribution, but as an instrument for promoting governance reform and transforming internal corporate culture. This perspective parallels the work of Fisse and Braithwaite, who contend that criminal sanctions against corporations should be directed at changing the corporate culture that enables wrongdoing, rather than simply increasing monetary penalties.[32] Their concept of responsive regulation, with a graduated "pyramid of sanctions," has profoundly influenced the design of Australia's corporate criminal liability framework.

With the incorporation of corporate culture into s 12.3, Australia became one of the first jurisdictions in the world to explicitly codify a culture-based liability model, while many other jurisdictions (including Indonesia and Jordan) retain the concept largely at the academic or policy level. Nevertheless, despite its sophistication, Australia's corporate criminal liability regime has been described as "complex,

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[28] Australian Government Attorney-General's Department, *Commonwealth Criminal Code: A Guide for Practitioners – Division 12*, https://www.ag.gov.au

[29] *Criminal Code Act 1995* (Cth), s 12.3; see also Australian Taxation Office legislative database: "Section 12.3 – Fault elements other than negligence," https://www.ato.gov.au/law/view/.

[30] "Corporate culture and criminal liability," HNLaw (2019), https://www.hnlaw.com.au.

[31] Hill, "Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique?," *Journal of Business Law* (2003): 1–44; summary at Monash Research Repository, https://research.monash.edu/en/publications/corporate-criminal-liability-in-australia-an-evolving-corporate-g/.

[32] Fisse and Braithwaite, *Corporations, Crime and Accountability*, https://doi.org/10.1017/CBO9780511522067

inconsistent, and difficult to apply in practice." This prompted the Australian Law Reform Commission (ALRC) to conduct a comprehensive review, resulting in ALRC Report No. 136: Corporate Criminal Responsibility (2020).[33]

The ALRC proposed a highly relevant reform: the introduction of "system of conduct or pattern of behaviour offences" (Recommendation 8).[34] This model expressly links criminalisation to corporate systems, culture, and habitual practices, rather than to the actions of one or two individuals. Major law firms such as Corrs Chambers Westgarth and Allens have noted that the proposal is designed to target systematic corporate misconduct that remains difficult to prosecute under traditional liability theories.[35]

From this comparison, it is evident that Australia has advanced further doctrinally than Jordan by codifying corporate culture under s 12.3 of the Criminal Code Act and expanding the attribution of mens rea through organizational structures and systemic practices. In addition, from a policy perspective, the ALRC 2020 framework introduces both a principled approach to criminalisation and a system of conduct offence model, explicitly aimed at addressing systemic corporate wrongdoing.

Model Pertanggungjawaban Pidana Korporasi di Indonesia

Criminal regulation of legal persons was not recognized under the colonial Criminal Code (Wetboek van Strafrecht, inherited from 1918), which led to the dominant doctrine that legal persons could not commit crimes (societas delinquere non potest).[36] As a result, the attribution of corporate liability depended entirely on lex specialis provisions. This produced doctrinal fragmentation: each sectoral statute employed different models, principles, and criteria for determining corporate liability.[37]

The development of corporate criminal liability in Indonesia evolved gradually and in a fragmented manner. This evolution can be divided into three major phases. Pada fase awal, yaitu fase pengakuan awal badan hukum sebagai pelaku tindak pidana pada dekade 1950-1960-an. First, the phase of initial recognition (1950s–1960s), during which legal persons were first acknowledged as potential criminal actors through Law No. 1 of 1951 on Hoarding of Goods and Emergency Law No. 7 of 1955 on the Investigation, Prosecution, and Adjudication of Economic Crimes. These statutes marked the emergence of vicarious liability and strict liability in Indonesia, since fault was projected from the natural perpetrator to the corporation based on structural relationships and economic purpose.

Second, the phase of doctrinal fragmentation through sectoral legislation (1980s–early 2000s). During this period, corporate criminal liability appeared in various statutes, including the Environmental Protection Law 1982 (later 2009), Banking Law 1992, Consumer Protection Law 1999, Anti-Corruption Law 1999, and Anti–Money Laundering Law 2002. Each statute applied a different liability model, causing doctrinal

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[33] Australian Law Reform Commission, *Corporate Criminal Responsibility, Final Report No. 136* (April 2020), https://www.alrc.gov.au/publication/corporate-criminal-responsibility/.

[34] Australian Law Reform Commission, "Recommendations – Corporate Criminal Responsibility," Recommendation 2 (August 31, 2020), https://www.alrc.gov.au/inquiry/corporate-crime/recommendations/

[35] "Australian Corporate Criminal Responsibility Regime to Be Overhauled," Corrs Chambers Westgarth Insight, September 4, 2020, https://www.corrs.com.au/insights/australian-corporate-criminal-responsibility-regime-to-be-overhauled

[36] Barda Nawawi Arief, "Perkembangan Pertanggungjawaban Pidana Korporasi dalam Sistem Hukum Indonesia," *Jurnal Masalah-Masalah Hukum* 45, no. 1 (2016): 15–28.

[37] Romli Atmasasmita, *Reformasi Hukum Pidana* (Jakarta: Kencana, 2019), 112–118.

inconsistency.[38] For example, strict liability based on risk is found in Environmental Law; the 1999 Anti-Corruption Law adheres to the identification doctrine, while money laundering and consumer protection statutes adopt failure to prevent liability. In the absence of a general doctrine, judges and prosecutors interpret corporate liability casuistically rather than systematically.[39]

Third, the phase of institutional consolidation through judicial and prosecutorial instruments such as Supreme Court Regulation (Perma) No. 13 of 2016 on Handling Corporate Criminal Cases, Attorney General Regulation PER-028/A/JA/10/2014 on Corporate Criminal Case Handling Guidelines, and Supreme Court Regulation No. 1 of 2023 on Environmental Crime Adjudication, followed by the recognition of corporate criminal liability in Law No. 1 of 2023.

Perma No. 13 of 2016 is a landmark development, as it represents the first formal judicial articulation of corporate criminal liability elements and procedural rules for trying corporations as defendants. Article 4 states that a corporation may be held liable where an offence is committed by a person "who has an employment relationship or other relationship, acting alone or jointly." This formulation indicates that Indonesia has departed from a purely anthropomorphic notion of fault and adopted a functional perpetrator doctrine, whereby fault is constructed within an organizational context rather than based solely on individual intent.[40]

In the prosecutorial realm, Attorney General Regulation PER-028/A/JA/10/2014 (PERJA) was the first normative instrument establishing operational guidelines for identifying and attributing fault to corporations. It provides four principal indicators of corporate fault: (a) corporate benefit from the crime; (b) managerial acquiescence; (c) absence of internal control systems; and (d) failure to prevent criminal conduct.[41] PERJA 2014 thus represents the earliest incorporation of failure to prevent liability in Indonesia's criminal framework.

A fundamental change occurred with the adoption of Law No. 1 of 2023. For the first time, the Criminal Code codifies corporate criminal liability generally, placing corporations on equal footing with natural persons as subjects of crime. Article 45 states: "Every corporation may be held criminally liable for any offense committed for and/or on behalf of the corporation." This provision abolishes the classical paradigm that viewed crime exclusively as a natural human act. However, the core doctrinal problem emerges in Article 46, which stipulates that corporate liability still derives from the fault of managers, directors, or persons acting on behalf of the corporation. In other words, the default model remains identification doctrine, not organizational fault.

Accordingly, Law No. 1 of 2023 recognizes corporations as criminal subjects but does not establish a clear doctrinal basis for fault attribution. The resulting framework is hybrid, combining identification doctrine, vicarious liability, and strict liability depending on the applicable statute.[7] The most significant recent development is Supreme Court Regulation No. 1 of 2023 on Environmental Crimes, which, for the first time, recognizes that corporate fault may also be proven through failure to prevent,

[38] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, revised ed. (Jakarta: Kencana, 2020), 145.
[39] Muladi and Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi*, (Bandung: Refika Aditama, 2010), 57–60.
[40] Supreme Court Regulation No. 13 of 2016 on the Handling of Criminal Cases by Corporations, art. 4.
[41] Chairul Huda, *Dari "Tiada Pidana Tanpa Kesalahan" Menuju kepada "Tiada Pertanggungjawaban Pidana Tanpa Kesalahan"* (Jakarta: Kencana, 2021), 257.

absence of compliance policies, and a corporate culture that tolerates or encourages violations.

Chapters 68–70 of Supreme Court Regulation No. 1 of 2023 explicitly define corporate fault, stating that corporations may be held liable not only for the acts of their managers, but also for: 1) failure to prevent offences, 2) absence of internal compliance frameworks, 3) a corporate culture that encourages misconduct, and 4) deliberate tolerance of criminal activity within the organization. This structure mirrors Section 12.3 of the Australian Criminal Code Act 1995 (Cth), which defines corporate culture as a basis for mens rea attribution.

Accordingly, Supreme Court Regulation No. 1 of 2023 is the first regulation in Indonesia to explicitly adopt corporate culture as a source of criminal fault. Theoretically, this marks the entry of corporate culture theory into Indonesia's legal system and signals a paradigmatic shift from anthropomorphic liability toward a structural-organizational model. Indonesia is therefore in a transitional phase, where legislative doctrine remains classical, but judicial developments increasingly adopt organizational fault.

Analisis Komparatif

Based on the foregoing discussion, the fundamental divergence among the three jurisdictions lies in the doctrinal mechanism used to attribute criminal fault (mens rea) to corporations. This study adopts a two-tier comparative framework. At the first level, the comparison focuses on general criminal law regimes, namely the principal criminal codes that formally establish corporate criminal liability in each jurisdiction. At the second level, where relevant, the analysis is supplemented by procedural and institutional regulations that operationalize corporate liability in practice. This second layer is particularly important in jurisdictions where the general criminal code provides only a skeletal framework.

Jordan, as a predominantly classical civil law system, continues to rely on the identification doctrine as the primary basis for attributing corporate criminal liability. Under the Jordanian Penal Code, corporations may be sanctioned only where the offence can be traced to a natural person who functions as the directing mind and will of the corporation, such as directors or senior managerial officers. Corporate fault is therefore entirely derivative, as organizational structures, compliance systems, or corporate culture are not recognized as autonomous sources of culpability.

Australia represents a clear doctrinal departure from this individual-centered model. Under Section 12.3 of the Criminal Code Act 1995 (Cth), Australia explicitly adopts an organizational or corporate culture–based model of fault attribution. Corporate liability may be established without identifying a specific individual offender, as culpability is grounded in corporate policies, internal rules, management practices, and systemic attitudes that encourage or tolerate non-compliance. This statutory framework is further reinforced by the Australian Law Reform Commission Report No. 136 (2020), which proposes the introduction of system-of-conduct or pattern-of-behaviour offences to more effectively capture structural and systemic corporate wrongdoing.[42]

Indonesia occupies an intermediate or transitional position between the two models. At the level of general criminal law, Law No. 1 of 2023 formally recognizes corporations as subjects of criminal liability and provides a general framework for

[42] Australian Law Reform Commission, *Corporate Criminal Responsibility*, Report No. 136 (Sydney: ALRC, 2020).

corporate prosecution.[43] However, the doctrinal structure of fault attribution within the Criminal Code remains hybrid and underdeveloped. Elements of the identification doctrine persist through provisions emphasizing managerial responsibility; vicarious liability appears through references to acts committed by employees or agents within the scope of corporate activities; and strict liability is recognized only in limited sectoral contexts, most notably environmental law.

Because the Indonesian Criminal Code does not yet codify an explicit corporate culture doctrine, the analysis necessarily extends to supporting regulatory instruments that operationalize corporate criminal liability. Supreme Court Regulation No. 1 of 2023 plays a particularly significant role, as it expressly recognizes organizational failures, such as the absence of compliance systems, failure to prevent offences, and corporate cultures that tolerate violations, as indicators of corporate fault.[44] When read together with Supreme Court Regulation No. 13 of 2016 and Attorney General Regulation PER-028/A/JA/10/2014, Indonesia's enforcement architecture reveals a hybrid configuration in which classical attribution models coexist with emerging organizational and preventive approaches.[45]

Accordingly, the comparative analysis demonstrates that while all three jurisdictions formally recognize corporations as subjects of criminal law, they differ markedly in how mens rea is constructed. Jordan remains anchored in an individualistic attribution model; Australia has institutionalized a systemic and organizational conception of corporate fault; and Indonesia is in a transitional phase, where organizational fault is acknowledged primarily at the judicial and enforcement level rather than fully embedded within the general criminal code.

Table 1. Comparative Models of Corporate Criminal Liability in Jordan, Australia, and Indonesia (Based on Doctrine and Formal Regulation)

Analytical Aspect	Jordan	Australia	Australia
Primary Doctrinal Basis	Identification doctrine: corporate fault derived from individuals acting as the directing mind and will.	Organizational/corporate culture theory: fault based on systemic internal failures.	Hybrid model: identification doctrine, vicarious liability, and limited strict liabil.
Principal Legal Basis (General Criminal Law)	Jordanian Penal Code No. 16 of 1960	Criminal Code Act 1995 (Cth), s 12.3	Law No. 1 of 2023 (Arts. 45–50)
Supporting/ Enforcement Regulations	Limited reliance on sectoral statutes.	ALRC Report No. 136 (2020) (reform proposals).	Supreme Court Regulation No. 13 of 2016; Supreme Court Regulation No. 1 of 2023; Attorney General Regulation PER-028/A/JA/10/2014.

[43] *Indonesian Criminal Code* (KUHP) 2023, arts. 45–50.
[44] *Supreme Court Regulation* No. 1 of 2023 on Environmental Case Adjudication, arts. 68–70.
[45] *Supreme Court Regulation* No. 13 of 2016 on Procedures for Handling Corporate Criminal Cases; *Attorney General Regulation* No. PER-028/A/JA/10/2014 on Guidelines for Handling Criminal Cases Involving Corporate Legal Subjects..

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Atribusi Mens Rea	Only through identifiable corporate officers.	Through corporate policies, culture, and systemic practices.	Mixed approach: managerial fault, agency-based liability, and failure to prevent.
Recognition of Corporate Culture	Not recognized.	Explicitly codified in statutory law.	Not codified in the Criminal Code; recognized through judicial regulation.
Evolutionary Trend	Traditional, individual-based model.	Advanced systemic and organizational model.	Transitional trajectory toward organizational fault.

From a comparative perspective, Jordan may be characterized as representing a traditional model of corporate criminal liability grounded in individual attribution; Australia exemplifies a modern model based on corporate culture and systemic fault; while Indonesia occupies a transitional stage toward an organizationally based framework. These positional differences are not merely doctrinal but also reflect variations in the complexity of legal architecture, regulatory capacity, and corporate governance structures across the three jurisdictions. As corporate crime increasingly involves collective decision-making, fragmented chains of command, and the strategic use of legal persons as vehicles for wrongdoing, individualistic attribution models become progressively less capable of capturing offences carried out through corporate operational systems.

The persistence of these models carries distinct legal implications for criminal law enforcement in each jurisdiction. If Jordan continues to rely predominantly on the identification doctrine, enforcement is likely to remain focused on prosecuting individual managers rather than corporate entities. While this approach may preserve doctrinal clarity, it risks producing under-enforcement against corporations, particularly in cases involving diffuse responsibility, compliance failures, or institutionalized misconduct. As a result, corporate criminal liability may function largely symbolically, with limited deterrent effect against systemic corporate crime.

In Australia, the continued application of a corporate culture–based model enables law enforcement authorities to address structural and organizational sources of criminality. By permitting liability to be established through evidence of deficient compliance systems, risk-tolerant management practices, or cultures of non-compliance, this model enhances prosecutorial flexibility and aligns criminal law enforcement with the realities of modern corporate governance. However, its effectiveness depends heavily on institutional capacity, evidentiary sophistication, and prosecutorial willingness to utilize systemic attribution mechanisms. Without consistent application, even an advanced doctrinal framework risks underutilization.

Indonesia's transitional model presents both opportunities and challenges for enforcement. If the current hybrid framework persists without doctrinal consolidation, law enforcement may continue to experience uncertainty in attributing corporate fault, resulting in selective or inconsistent prosecution. The reliance on judicial and prosecutorial regulations, rather than explicit codification in the Criminal Code, may also generate fragmentation and uneven application across cases. Nevertheless, the incorporation of organizational fault indicators in Supreme Court Regulation No. 1 of 2023 signals a potential shift toward preventive and compliance-oriented enforcement. If

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further integrated into substantive criminal law, this approach could strengthen accountability for corporate entities and reduce the persistent tendency to externalize blame onto individual actors alone.

From a theoretical standpoint, these enforcement implications underscore an ongoing shift in criminal law from asking whether corporations can be held criminally liable to determining how corporate fault should be constructed in a manner that is both doctrinally coherent and practically enforceable. Jordan remains at an early stage, emphasizing sanction enhancement without doctrinal transformation; Australia has institutionalized organizational fault as a central element of enforcement; and Indonesia stands at a critical juncture, where continued reliance on hybrid attribution risks enforcement inconsistency unless accompanied by clearer legislative consolidation of corporate culture–based liability.

E. Conclusions

This comparative study demonstrates that the corporate criminal liability regimes of Jordan, Australia, and Indonesia are situated at different stages of doctrinal evolution. Jordan continues to rely on the identification doctrine, which attributes corporate fault to individuals who act as the directing mind and will of the corporation, thereby treating corporate culpability as a derivative of individual wrongdoing. Australia has adopted the most advanced model by incorporating corporate culture as a basis for mens rea under Section 12.3 of the Criminal Code Act 1995 (Cth), allowing fault to be established through organizational systems, internal policies, and managerial failures without the need to prove the involvement of a specific individual. Indonesia occupies a transitional position: while Law No.1 of 2023 formally recognizes corporations as subjects of criminal law, its fault attribution framework remains hybrid, combining elements of identification doctrine, vicarious liability, and sectoral strict liability. Explicit recognition of organizational fault emerges only through Supreme Court Regulation No. 1 of 2023.

These findings indicate that the more complex and systemic corporate crime becomes, the less adequate individual-based attribution models are. An effective regime of corporate criminal liability must be grounded in a legal framework capable of conceptualizing corporate wrongdoing as a systemic failure, whether reflected in internal culture, supervisory structures, or the absence of adequate compliance programs. Jordan and Indonesia may draw lessons from Australia: normative reform must be accompanied by doctrinal consistency and institutional design, ensuring that corporate criminal liability operates not merely at a declaratory level, but is truly capable of addressing modern corporate crime committed through organizational structures and decision-making processes rather than isolated individual acts.

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