

Corporate Vicarious Liability In The Crime Of Participating In Bribery In Indonesia

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Abstract. The complexity of the corporate world has led companies to become major players in corruption-related activities, including bribery. While the National Criminal Code acknowledges businesses as entities subject to criminal law, implementing vicarious liability in instances of memeplexes bribery needs additional clarification. This study investigates the implementation of the idea of vicarious liability for corporations regarding their involvement in corruption in Indonesia, particularly following the passage of the National Criminal Code (Law No 1/2023). The study employs a juridical-normative methodology utilising a statutory and conceptual framework, examining primary and secondary legal documents through a qualitative-descriptive lens. The findings indicate that the National Criminal Code incorporates the notion of identification and vicarious culpability in corporate accountability, broadening its applicability to those who effectively run the organisation. Vicarious liability in mediating bribery necessitates evidence of a causal link between the bribery act and the corporation's interests. The research's originality lies in its comprehensive analysis of how vicarious liability corresponds with established principles of criminal law, especially in the context of corporate bribery after the introduction of the National Criminal Code.

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

INTRODUCTION

The development of an increasingly complex business world has encouraged corporations to become essential actors in economic and business activities. However, this also creates avenues for corporations to engage in criminal activities, such as corruption and bribery. Corporate crime has emerged as a significant issue within the criminal justice system in various nations, including Indonesia [1].

With the enactment of several criminal acts, most notably Emergency Law No 7 of 1955, Indonesia began to recognise corporations as subjects of criminal law; this differs from the Dutch Criminal Code (*wetboek van strafrecht*), which still adheres to the "Societas Delinquent Non-Potest" doctrine, where corporations cannot be convict-

ed. Along with the times, The idea of criminal culpability for corporations is constantly evolving, from initially only imposing responsibility on the management until now, when businesses are subject to direct criminal liability [2].

In Indonesia, the governance of corporations under criminal law is addressed in several specific statutes beyond the Criminal Code, including the Corruption Eradication Law and the Prevention and Eradication of Money Laundering Law, among others. However, handling corporate criminal offences still faces various obstacles, primarily related to the mechanism of proof and determination of criminal liability; this led the Supreme Court to enact Supreme Court Regulation No 13/2016 about Procedures for Addressing Criminal Cases Involving Corporations to ad-

dress the legal void and direct law enforcement personnel [3].

A significant concern in corporate criminal responsibility is implementing the idea of vicarious culpability. According to this theory, the company may be held criminally liable for illegal actions by its employees or agents. When corporate bribery occurs, vicarious liability is pertinent due to corrupt criminal activities frequently perpetrated by workers or agents for the corporation's advantage [4].

Generally, bribery crimes involving corporations occur when bribes are given to government officials to obtain business benefits or facilitate corporate affairs. In instances of grand corruption, corporations frequently engage in attempts to sway governmental decision-making via bribes [5]. This practice not only harms state finances but also creates unfair business competition and damages the integrity of the government system [6].

According to Indonesian criminal law, the criminal act of bribery involving corporations can be categorised as a form of participation (*deelneming*), especially in terms of "participating in committing" (*Medeplegen*). *Medeplegen* is when two or more people jointly perpetrate a criminal act. Corporate bribery can occur when a corporation, through its agents and a government official, commits the crime of corruption [3].

Law No 1 of 2023, which established the National Criminal Code, is the most recent development in Indonesia's criminal justice system. Article 45, § 1 of the amended Criminal Code expressly recognises businesses as criminal law subjects. This recognition is a step forward to eradicate corporate crime, including bribery. However, the effective implementation of this provision still requires further elaboration, especially regarding the mechanism of prosecution and punishment of corporations.

Regarding bribery offences involving corporations, the National Criminal Code opens up opportunities to apply the concept of vicarious liability more broadly. However, applying vicarious liability in *Medeplegen* bribery by corporations still requires caution to avoid over-criminalisation and maintain a balance between effective law enforcement and protecting the investment climate [7].

The main challenge in applying vicarious liability to corporations in *medeplegen* bribery cases is to

prove the existence of a causal relationship between the act of bribery committed by employees or agents and the corporation's interests. In many cases, bribery may be committed by mid-level employees without the knowledge of top management. In this context, it is essential to evaluate the degree to which the organisation may be held accountable for the conduct of its workers [7].

In addition, the application of vicarious liability must also consider the corporation's efforts to prevent bribery. Corporations that have implemented an effective compliance program and conducted regular due diligence should receive different treatment from corporations that do not have a corruption prevention mechanism [8].

Applying the concept of vicarious liability in the criminal offence of *Medeplegen* bribery by corporations raises a crucial question. "How is the vicarious liability of corporations in the Indonesian national Criminal Code in the criminal offence of "participating in" (*medeplegen*) bribery?"

Several corporate criminal liability theories have been developed to answer this question, including identification and segregation theories. Identification theory posits that the activities of individuals serving as the "directing mind" of a corporation can be seen as the actions of the corporation itself. Aggregation theory allows the merging of actions and knowledge of various individuals within the corporation to form a *mens rea* [9].

Previous research on corporate vicarious liability in the crime of bribery in Indonesia has been conducted by several academics and legal practitioners. Authors [10] paper, which examines the development of corporate criminal liability in Indonesia, is relevant. Their study investigated the adoption of vicarious liability within the Indonesian legal system, particularly in specific statutes beyond the Criminal Code. The acknowledgement of companies as entities under criminal law in Indonesia commenced with the implementation of specific criminal statutes, notably Emergency Law No 7 of 1955 [10].

Another study by the author [11] analysed the principles of corporate criminal law. Ali examined the distinctive features of corporate criminal offences, including bribery, where individuals for the corporation's benefit often commit such acts. He emphasised that corporate crime is essentially a functional action (*functioneel daderschap*),

which opens up opportunities for applying the doctrine of vicarious liability.

Meanwhile, author [12], In his research, recommended reconfiguring corporate criminal liability frameworks in Indonesia. He argues that corporations should be held criminally liable even though they cannot commit their acts. Still, they should be held accountable by the people who carry out their management or activities.

Regarding the concept of "participation" (*medeplegen*) in corporate criminal offences, the author's research [13] provides a critical perspective, stated that criminal offences committed by corporations are always criminalising participation, where the corporation can be a maker (dagger) but not a perpetrator (pledge) of a criminal offence.

These studies provide a solid foundation to further examine the form of corporate vicarious liability, especially in the crime of "participating in committing" (*medeplegen*) bribery. Nevertheless, there is still room for further research, particularly in light of implementing the new National Criminal Code under Law No 1 of 2023, officially acknowledging companies as entities subject to criminal law. Further research is needed to analyse the implications of this new regulation on applying the doctrine of vicarious liability in bribery cases involving corporations in Indonesia [14].

Based on previous research, according to the author, several things still need to be further researched regarding the application of corporate vicarious liability in the context of the crime of "participating in" (*medeplegen*) bribery in Indonesia.

The notion of vicarious liability has been acknowledged within the Indonesian legal framework, but its application in corporate bribery cases remains unclear. Previous research has focused chiefly on corporate liability in general but has yet to explicitly analyse how vicarious liability is applied in the context of *Medeplegen* bribery.

With the new National Criminal Code (Law No 1 of 2023), how businesses are governed by criminal law has undergone substantial modifications. Previous research has yet to analyse the implications of this new arrangement on the application of vicarious liability, particularly in corporate bribery cases.

Although several studies discuss the identification and aggregation theories in corporate liability, they rarely explore the practical application of these theories in cases of *Medeplegen* bribery involving corporations in Indonesia. Scholars have not explicitly examined how to harmonise the concept of vicarious liability with existing criminal law principles, such as the principle of guilt (*geen straf zonder schuld*), in corporate bribery cases.

Consequently, it is imperative to undertake this research. This research aims to significantly enhance the existing literature and offer practical direction for law enforcement officials and business practitioners in comprehending and implementing the notion of vicarious responsibility for corporate bribery in Indonesia.

METHOD

This study will employ the juridical-normative method, utilising both a statutory and conceptual approach. The juridical-normative method is selected as this research examines legal norms of corporate vicarious liability within the Indonesian National Criminal Code, especially in the criminal offence of "participating in committing" (*medeplegen*) bribery [15].

The method for gathering legal materials is library research. The primary legal resources to gather include pertinent laws and regulations, including the National Criminal Code (Law No 1 of 2023), the Corruption Law, and further relevant rules. Secondary legal materials will encompass legal textbooks, scholarly legal publications, research findings, and articles addressing corporate criminal liability, vicarious liability, and bribery offences. Additionally, tertiary legal materials will encompass legal dictionaries and legal encyclopedias pertinent to the research subject.

The data analysis will be performed qualitatively, employing the descriptive-analytical approach. The analytical process will identify and inventory legal provisions pertinent to corporate vicarious liability under the National Criminal Code and the bribery offence. Moreover, these provisions will be construed to ascertain their significance and intent. The researcher will compare the National Criminal Code's provisions and other relevant statutes, juxtaposing them with theoretical frameworks on vicarious culpability and corporate criminal liability [16].

The researcher will employ both deductive and inductive reasoning during the analytical process. The study will use deductive reasoning to derive the overarching concepts of vicarious culpability and corporate criminal liability within the specific framework of the offence of 'participating in committing' (*Medeplegen*) bribery. Inductive reasoning will discern patterns and general principles from specific instances of corporate vicarious responsibility in bribery offences [17].

The results of the analysis will be presented systematically and logically to answer the research problems. The researcher will formulate strong legal arguments by considering the philosophical, juridical, and sociological sociocultural dimensions of corporate vicarious liability in bribery offences. The researcher will ultimately offer results and recommendations to advance corporate criminal law in Indonesia, particularly regarding vicarious liability for bribery offences.

RESULTS AND DISCUSSIONS

Vicarious liability is a concept of criminal liability derived from the standard legal law system [18]. This concept deviates from the principle of no punishment without fault (*geen straf zonder schuld*) adopted in conventional criminal law. In vicarious responsibility, a person could be held responsible for a crime committed by another, although lacking the *mens rea* or personally engaging in the *actus reus* of the offence [19].

Vicarious liability is defined as an individual's legal accountability for the illegal actions of another. Vicarious liability is the attribution of criminal responsibility from one individual to another for a criminal act committed by the former. People typically utilise this idea in the dynamics between employers, employees, or organisations and their management. The applicability of vicarious liability encompasses the employer's responsibility for criminal activities perpetrated by employees, the corporation's accountability for criminal acts executed by its management, and the superior's liability for criminal acts carried out by subordinates [20].

Vicarious liability is fundamentally different from conventional criminal liability. In traditional criminal liability, individuals can only be held criminally accountable for their acts through fault. There must be a fault component on the offender's part in the form of negligence (*culpa*)

or intent (*dolus*). Meanwhile, in vicarious liability, criminal responsibility can be imposed on a person for the actions of others, even though he does not have *mens rea* or does not directly commit the criminal offence. In other words, vicarious liability overrides the fault requirement on the person held accountable [21].

The implementation of vicarious liability varies between common law and civil law legal systems. Countries with established legal systems, such as the United Kingdom and the United States, have long recognised and applied the doctrine of vicarious liability, especially in cases involving corporations. In England, for example, vicarious liability is applied based on the identification and delegation doctrines. According to the identification doctrine, the actions and mental state (*mens rea*) of a corporation's senior officials are regarded as the actions and mental state of the corporation itself. In the delegation doctrine, the corporation is responsible for criminal offences committed by employees delegated duties and authority by the corporation [22].

Meanwhile, countries with civil law systems initially did not recognise vicarious liability because it contradicted the fault principle. However, along with the development, some civil law countries began to adopt this concept, especially related to corporate liability. In Indonesia, the Criminal Code has not explicitly regulated vicarious liability. However, this concept has been accommodated in several special laws and the Draft Criminal Code [21].

Over time, the Indonesian criminal law framework's corporate responsibility control has significantly changed. Initially, Indonesia's Dutch Criminal Code (KUHP) did not acknowledge businesses as entities subject to criminal law. The Criminal Code exclusively acknowledges natural beings as entities capable of committing criminal offences and bearing criminal liability; this is evident in the phrasing of provisions of the Criminal Code that employ the term "whoever," denoting natural individuals [23].

The perspective that only natural persons can be the subject of criminal law is grounded in the principle of "*Societas Delinquere Non-Potest*," which was embraced in the Netherlands during the formulation of the Criminal Code in 1886. This theory asserts that legal entities or associations cannot perpetrate criminal actions [24]. Corporations are, therefore, immune from criminal prosecution for their deeds. The Criminal

Code's definition of criminal liability continues to uphold personal responsibility, which is only appropriate for naturally occurring people.

The need to hold corporations criminally liable is increasingly urgent, especially about economic crimes. The impetus for this paradigm shift transpired in 1951 with the implementation of Emergency Law No 17 of 1951 regarding the Hoarding of Goods. This law recognised corporations as subjects of criminal acts for the first time, although it was still limited to economic crimes [24].

Adopting Emergency Law No 7 of 1955 for the Investigation, Prosecution, and Trial of Economic Crimes further strengthened the recognition of corporations as legal entities under criminal law. The law's Article 15, § 1 makes it abundantly evident that a business, foundation, group of people, or legal organisation may commit a crime on its behalf; this signifies the commencement of a new epoch in Indonesian criminal law, acknowledging companies as entities capable of committing criminal offences but restricted to particular infractions beyond the Criminal Code [24].

Other specific statutes within the Criminal Code also commenced regulating companies as entities involved in criminal offences. Examples include the Corruption Eradication Law, Money Laundering Law, Consumer Protection Law, and Environmental Law, among others. Nonetheless, the regulation of companies as subjects of criminal offences in these diverse statutes remains inconsistent and non-uniform. Variations exist in the definitions of corporations, types of liability, and sanctions that may be enforced [23].

In light of these conditions, the lawmakers worked to create the Draft Criminal Code (RKUHP), a new codification of national criminal law. The RKUHP was implemented as Law No 1 of 2023 on the Criminal Code to regulate enterprises as entities liable to criminal charges fully. This statute can be found in Part Four, Corporations, Book One, General Provisions, Chapter II, Criminal Offenses and Criminal Liability [25].

Article 45 of the National Criminal Code expressly lists a company as a subject of criminal liability. Limited liability companies, foundations, cooperatives, state-owned companies, regionally-owned companies, or their counterparts, as well as incorporated and unincorporated associations, are all considered corporations. Furthermore, it encompasses business entities such as

firms, partnerships, or their legal equivalents as defined by statutes and regulations [26].

Article 46 of the National Criminal Code delineates corporate criminal offences as those perpetrated by administrators occupying a functional role within the corporation's organisational hierarchy or individuals acting on behalf of the corporation due to employment or other affiliations in pursuit of the corporation's interests within the parameters of its business operations, whether individually or collectively [26]. This definition indicates that the National Criminal Code conforms to the principles of identification and vicarious liability in corporate accountability.

According to Article 47 of the National Criminal Code, criminal acts committed by corporations can also be carried out by the beneficial owners, commanders, or controllers of the corporation, even though they are not part of the organisational structure and possess the ability to exert control over the corporation [26]. This provision expands the scope of corporate liability to include parties who de facto control the corporation despite not having a formal position in the organisational structure.

The requirements for corporate culpability in criminal offences are outlined in Article 48 of the National Criminal Code. If a corporation commits a crime, it may be held accountable if:

- a) the crime is within the purview of the business or activities specified in the articles of association or other pertinent provisions;
- b) the crime benefits the corporation illegally;
- c) it was accepted as corporate policy;
- d) the company did not take the required steps to prevent, mitigate the impact, and ensure compliance with applicable legal provisions to avert criminal acts; and
- e) the company allowed the commission of criminal acts [26].

The governance of corporate responsibility under the National Criminal Code presents numerous benefits. The incorporation of according to the Criminal Code, corporation regulation is a crime that establishes a more robust and consistent legal foundation than the disparate provisions found in numerous specialised statutes. Second, the broad definition of corporation covers multiple forms of business entities and associations, whether incorporated or not, to accommodate the development of modern forms of

business organisations. Third, regulating criminal acts by corporations, including the actions of the management, employees, and parties who control the corporation from outside the formal organisational structure, provides a more comprehensive scope of responsibility [27].

The concept of "participating in committing" (*medeplegen*) in Indonesian criminal law is one form of participation (*deelneming*) that is regulated in Article 55, § 1 to 1 of the KUHP. *Medeplegen* means "participating in committing" or "jointly committing" a criminal offence. This concept refers to a situation where two or more people jointly commit an act that fulfils all the elements of a criminal offence [27].

According to criminal law doctrine, *medeplegen* has several essential elements that must be fulfilled.

First, the perpetrators must cooperate consciously (*bewuste samenwerking*); this means that each perpetrator knew and wanted the criminal offence to be committed jointly.

Second, there must be joint physical execution (*gezamenlijke uitvoering*) of the criminal offence. The perpetrators must jointly commit the act of execution, not just the act of preparation.

Third, every offender must meet every requirement of the crime they have committed. Fourth, there must be intent to cooperate between the perpetrators in committing the criminal offence [28].

The jurisprudence of the Supreme Court of Indonesia has also provided a further explanation of the concept of *medeplegen*. In Supreme Court Decision No 1/1955/M. Pid, dated 22 December 1955, the court explains that to be categorised as *medeplegen*, a person must directly participate in the commission of the act prohibited by law. It is not enough if they only perform preparatory actions or provide assistance. This decision confirms that *medeplegen* requires each perpetrator's active and direct role in committing a criminal offence [21].

Aiding and abetting (*medeplichtigheid*), governed by Article 56 of the previous Criminal Code, refers to assisting in committing a criminal offence, both before and during the commission of the criminal offence. The main difference with *medeplegen* is that in helping, the role of the perpetrator is secondary and not essential to the commission of the crime. The perpetrator does

not engage in the fundamental components of the criminal offence but merely assists or accelerates its execution. Meanwhile, in *medeplegen*, all perpetrators commit the core elements of the criminal offence together [29].

Encouragement (*uitlokking*), which is regulated in Article 55 § (1) 2 of the old Criminal Code, refers to the act of encouraging others to commit a criminal offence by using specific methods mentioned in the law, such as giving or promising something, abusing power, using violence or threats, and so on. The main difference with *medeplegen* is that in persuasion, the initiative to commit a criminal offence comes from the persuader. At the same time, the material perpetrator (*pledge*) is another person who is moving. In *medeplegen*, the perpetrators jointly initiate and execute the criminal offence [29].

In the crime of bribery, the application of the concept of *medeplegen* has unique characteristics. Bribery, regulated in various articles of the Corruption Eradication Law (Anti-Corruption Law), involves the bribe giver and the bribe receiver. In many cases, these two parties can be categorised as perpetrators who participate in committing the crime of bribery (*medepleger*) [30].

The application of *medeplegen* in bribery cases can be seen when a public official and a business person jointly plan and execute a bribery transaction related to a government project. In this case, both the public official and the business person can be considered *medepleger* because both consciously and actively participate in implementing the criminal act of bribery. Both fulfil the elements of conscious cooperation and physical joint execution of the bribery crime [31].

However, applying *medeplegen* in bribery cases can also pose complexities. For example, when the bribery initiative comes from one party (e.g., a businessman), the other party (a public official) merely accepts the offer. In such cases, it may be more appropriate to categorise the business person as the main perpetrator (*pledge*) and the public official as the bribe recipient rather than the *medepleger*. The determination of this status will depend on the specific facts of each case, including the level of initiative, planning, and execution of each party [31].

Furthermore, in judicial practice, applying the *medeplegen* concept in bribery cases is often closely related to proving the existence of an

agreement or "meeting of minds" between the bribe giver and receiver. If it can be proven that both parties have agreed and both play an active role in the bribery transaction, then both can be categorised as medeplegers. However, suppose one of the parties is merely passive or accepts the offer of a bribe without any initiative or active role in its planning. In that case, it may be more appropriate to categorise them as ordinary bribe taker rather than a medepleger [14].

The Criminal Code and the Anti-Corruption Law have different penal frameworks. The Anti-Corruption Law states that the principal offender and the accomplice face identical penalties; this contrasts with the stipulations in the Criminal Code, wherein the accomplice faces the same penalty as the principal offender. In contrast, the accomplice is threatened with a lighter sentence. This difference reflects the seriousness of legislators in eradicating corruption and efforts to prevent legal loopholes that perpetrators of corruption may utilise [32].

Traditionally, the concept of *medeplegen* requires direct involvement in the commission of a criminal offence. However, when applied to corporations, the line between direct and indirect participation becomes blurred. A director or head of a corporation may not be physically involved in the bribery transaction. Still, their decisions and approvals may be the key factors that make the bribery possible. In such a situation, can we say that the chairman "participated" in the criminal act of corruption? [32]

Some jurists argue that the concept of *medeplegen* in corporate bribery cases should include both those directly involved in the bribery transaction and those who play a significant role in decision-making and approval. This argument is based on the understanding that in complex corporate structures, bribery often results from a series of decisions and approvals involving various levels of management." [33].

This methodology aligns with the evolution of the corporate criminal liability concept, which seeks to broaden the scope of accountability to encompass leaders and decision-makers. An individual may be deemed a perpetrator of a criminal offence not just due to the physical execution of the act but because he has the power to determine whether the act will be committed.

However, an overly broad approach in applying the concept of *medeplegen* also presents its risks.

Individual guilt is a fundamental principle of criminal law, requiring a clear link between a person's actions and the consequences. Suppose the concept of *medeplegen* is applied too loosely. In that case, there is a risk that individuals who do not have malicious intent or do not realise the full implications of their decisions could be trapped as perpetrators of criminal acts [34].

On the other hand, an approach that is too narrow to apply the concept of *medeplegen* also has the potential to create legal loopholes that corporations can utilise to avoid criminal liability. Suppose only individuals directly involved in bribery can be categorised as medepleger. In that case, there is a risk that the head of the corporation, the brain behind the bribery scheme, can escape the law.

Applying this expanded *medeplegen* concept also presents challenges in terms of proof. How can we prove that a corporate leader not directly involved in a bribery transaction actually "participates in" the criminal offence? This requires a more complicated approach to evidence collection and analysis, including tracing the flow of funds, analysing internal corporate communications, and comprehending the corporate decision-making process.

Implementing the notion of *medeplegen* in corporate bribery cases must also consider the aspect of deterrence. If this concept is applied too narrowly, there is a risk that corporations will design organisational structures and decision-making processes in such a way as to isolate leaders from direct involvement in bribery transactions so that they can avoid criminal liability. Conversely, an overly broad application could lead to legal uncertainty and inhibit legitimate business decision-making.

Therefore, a balanced approach is needed to apply the concept of *medeplegen* in corporate bribery cases. This approach must accommodate the complexity of structures and decision-making processes in modern corporations while maintaining fundamental principles of criminal law, including personal guilt and legal certainty.

The doctrine of vicarious liability allows criminal liability to be transferred from the individual perpetrator to the corporation as a legal entity based on a particular relationship between the perpetrator and the entity. Applying this doctrine in corporate bribery raises various philosophical

questions related to guilt, responsibility, and the purpose of corporate punishment [35].

Identification and aggregation theories are the two main approaches often used to construct corporate criminal liability. Identification theory holds that the actions and mental attitudes of specific individuals with senior positions in the corporation can be identified as the actions and mental attitudes of the corporation itself. These individuals are considered as the "directing mind" or "alter ego" of the corporation [19]. Meanwhile, the aggregation theory views that corporate guilt can be constructed by accumulating or aggregating the guilt of various individuals acting in the corporation's interests.

In the criminal offence of *medeplegen* bribery involving corporations, applying vicarious liability through identification and aggregation theories has its challenges. Bribery is essentially a criminal offence that requires intent (*opzet*). Constructing corporate intent in bribery cases requires careful analysis of the decision-making process and organisational culture that allows bribery practices to occur [28].

Identification theory is used to attribute the intent of key individuals, such as directors or senior managers, as corporate intent. For example, investigators can attribute intent to the corporation if they prove that the managing director knowingly approved or instructed the giving of bribes. However, this approach has limitations because it is often difficult to establish the direct involvement of top management in bribery practices [36].

Aggregation theory, on the other hand, allows for a broader construction of corporate intent by accumulating the knowledge and actions of various individuals within the corporation. For example, although no individual completely understands the bribery scheme, the combined knowledge of multiple parties (e.g., finance, legal, operations) can form a collective corporate intent. This approach better reflects the reality of decision-making in corporations, which is often fragmented [36].

Identification theory views that the actions and mental attitude (*mens rea*) of specific individuals in the corporation can be attributed to the actions and mental attitude of the corporation itself [37]. These individuals are generally senior officials or key policymakers seen as the corporation's "directing mind and will." Thus, the mis-

takes of these key individuals are considered corporate mistakes. This approach makes it possible to retain the element of fault in corporate criminal liability, albeit in a modified form.

Meanwhile, the aggregation theory makes it possible to accumulate the actions and knowledge of various individuals in the corporation to form a unified corporate *mens rea* [38]. This approach recognises that in a complex corporate structure, decision-making and action execution often involve various levels and divisions. By aggregating fault elements from multiple individuals, this theory seeks to reconstruct the corporation's "collective fault."

Both theories, if carefully integrated into the concept of vicarious liability, can help bridge the gap between corporate liability and the principle of fault. Vicarious liability permits the assignment of blame to a company for actions undertaken by its agents or employees during their employment [37]. Although this concept seems to contradict the principle of fault because it ignores the element of *mens rea*, when combined with the theory of identification and aggregation, it can be argued that corporations still have a particular form of "fault."

The application of vicarious liability harmonised with the theory of identification and aggregation works as follows: If an agent or employee of a corporation commits bribery, the company may be held accountable if evidence shows that the act was carried out to advance the corporation's interests or provide benefits to the company. To establish the element of guilt, the public prosecutor must demonstrate that:

First, bribery manifests corporate policy or culture shaped by senior officials (identification theory).

Second, although there is no explicit instruction to bribe, patterns of decision-making and business practices, when aggregated, indicate the existence of "collective guilt" that allows or even encourages bribery (aggregation theory).

This approach addresses but reformulates the fault element in the corporate entity's context. Courts can consider a corporation "guilty" if they prove that its organisational structure, policies, and culture create an environment conducive to the criminal act of bribery.

However, this concept must be applied carefully to avoid overly broad liability. Authorities must

establish clear boundaries concerning how businesses can be liable for individual behaviour. For instance, assume that evidence demonstrates the firm has undertaken appropriate measures to avert bribery, such as establishing an effective compliance program; this may serve as a mitigating element or exonerate the corporation from criminal liability.

Reformulating the concept of "fault" in the corporate context can help lawmakers harmonise vicarious liability with the fault principle. Instead of looking for fault in traditional forms, such as individual intent or negligence, the focus can be "organisational fault." This concept sees corporate fault as a systemic failure to manage risk, supervise employees, or create a culture of legal compliance [37].

A corporation can be considered "at fault" if it fails to take the necessary steps to prevent criminal offences from occurring within its scope of operations. This approach aligns with the principle of due diligence, which international standards related to corporate responsibility increasingly emphasise. Thus, although vicarious liability allows the corporation to bear responsibility for the actions of individuals, it still maintains the element of fault through the corporation's failure to carry out adequate supervision and prevention [35].

Applying sanctions that are more oriented towards reform and prevention rather than solely retribution can strengthen the harmonisation of vicarious liability with the principle of fault in the crime of corporate bribery. For example, in addition to financial penalties, corporations found guilty can be required to implement stricter compliance programs, undergo external supervision, or even undertake internal restructuring to prevent the recurrence of similar criminal acts in the future. This approach not only fulfils the purpose of punishment but also actively encourages corporations to develop a more robust culture of legal compliance [14].

Improving the existing legal framework can realise the harmonisation of vicarious liability with the principle of fault in the crime of corporate bribery. Although the Anti-Corruption Law accommodates corporate liability, lawmakers must elaborate further on the mechanism for determining corporate guilt [14]. Adopting identification and aggregation theories in the Indonesian legal system can provide more precise guidance

for law enforcement and courts in assessing corporate liability in bribery cases.

Identification theory holds that the actions and mental attitudes (*mens rea*) of specific individuals in senior positions within the corporate structure must be considered the actions and mental attitudes of the corporation itself. Suppose evidence proves that the managing director or other senior officers actively planned and executed the bribe. In that case, the corporation can be held accountable for the act based on the identification theory. The advantage of this approach is clarity regarding who should be responsible on behalf of the corporation. In addition, the identification theory also aligns with the doctrine of ultra vires in corporate law, which limits corporate actions only to matters expressly regulated in the articles of association [39].

However, the identification theory also has several weaknesses when applied in corporate bribery cases in Indonesia. First, the structure of modern corporations is often very complex, making it challenging to identify who the "directing mind" of the corporation is. Second, this theory tends to benefit large corporations with a layered management structure, where top-level management can take cover behind the complexity of the organisational structure. Third, this approach lacks consideration of the overall corporate culture that may encourage or allow bribery practices to occur even though there are no direct instructions from senior officials [40].

On the other hand, aggregation theory views corporate wrongdoing as being built from the aggregation or accumulation of wrongdoing from several individuals within the corporation, not limited to senior officials. Based on this theory, corporate mens rea can be proven through the combination of knowledge and actions of various individuals in the corporation. In the context of corporate bribery cases in Indonesia, the application of aggregation theory allows law enforcers to build corporate guilt from a series of actions of various parties in the corporation involved in the bribery scheme, ranging from the middle manager level to field employees [41].

The main advantage of the aggregation theory is its ability to reach cases where bribery has become an entrenched culture in the corporation. Still, it is challenging to identify one particular individual as the main mastermind. This theory is also more in line with the operational reality of modern corporations, where decision-making

often involves various levels of management. In addition, the aggregation approach can encourage corporations to be more proactive in preventing bribery at all levels of the organisation, not just at the top leadership level [42].

However, the application of aggregation theory in corporate bribery cases in Indonesia also faces challenges.

First, proving the corporation's mens rea through aggregation of individual wrongdoing can be very complex and requires substantial investigation and prosecution resources.

Second, this approach could obscure individual responsibility and create injustice if individuals with minor roles in the bribery scheme are held just as accountable as the corporation. Third, in the Indonesian legal system, which is still strongly influenced by the civil law tradition, the concept of mens rea aggregation may need to be revised because it is considered too broad and has no explicit legal basis.

In practice, the application of identification theory and aggregation theory in corporate bribery cases in Indonesia needs to consider the characteristics of Indonesia's legal system and business culture. One crucial factor is the concept of "*medeplegen*", or participation in a criminal offence known in the Indonesian Criminal Code. In corporate bribery, *medeplegen* can be employed to implicate organisations as participants in the illegal corruption perpetrated by their management.

Applying the *medeplegen* concept in corporate bribery cases allows for greater flexibility than relying solely on the identification or aggregation theory. For example, suppose it is proven that a mid-level manager committed a bribe (who may not fall into the "directing mind" category according to the identification theory). In that case, the action provides significant benefits to the corporation. If it is carried out with the knowledge or omission of top management, the corporation may be held liable as a participant in the criminal offence of bribery [43].

This approach allows the court to consider factors such as corporate culture, internal control systems, and existing (or non-existent) anti-corruption regulations in establishing the extent of a company's liability for bribery carried out on its behalf; this is in line with global developments in corporate criminal law that increasingly emphasise the importance of compliance programs

as a mitigating factor in determining corporate criminal liability.

Nonetheless, caution is required to prevent violating core criminal law concepts, such as the legality and guilt principles, while implementing the idea of *medeplegen* for corporate criminal liability. Consistent jurisprudential interpretation is needed to clarify the boundaries of when a corporation can be considered "participating" in the criminal act of bribery committed by its management or employees.

The combination of identification theory, aggregation theory, and the concept of *medeplegen* can provide a more comprehensive framework for dealing with the complexity of corporate bribery cases. This approach allows law enforcement and courts to consider various aspects of the corporation's role in bribery schemes, ranging from the direct involvement of senior officials (identification theory), systemic patterns involving multiple levels of employees (aggregation theory) to the corporation's indirect role in facilitating or benefiting from bribery (*medeplegen* concept) [40].

The doctrine of vicarious liability is a concept derived from civil law, especially in the relationship between employers and employees (*respondet superior*). In the criminal context, applying vicarious liability to corporations requires a different approach from individual liability, considering the unique attributes of companies as legal entities [44].

In corporate bribery involving participation cases, the implementation of vicarious liability necessitates the consideration of multiple factors. First, a clear relationship must exist between the individual perpetrator's actions and the corporation's interests. The corporation must conduct bribery in the context of its operations and for its benefit, not solely for the perpetrator's interests [45].

Correctly applying the vicarious liability doctrine in corporate bribery requires several criteria.

First, a person with a working relationship with the corporation must commit the act within the scope of their work [46].

Second, the prosecution must prove that the action provides benefits or advantages to the corporation [45].

In Indonesia, the principle of vicarious culpability is incorporated in other statutes beyond the Criminal Code, notably the Corruption Law [46].

However, its application needs to pay attention to the principle of "adequate procedures" as applied in the UK Bribery Act 2010, where corporations can use the defence that they have implemented adequate procedures to prevent bribery [45].

Lawmakers cannot equate corporate liability in bribery with participation in the liability of ordinary individuals. The law must hold corporations directly liable when evidence proves that bribery was committed for the corporation's benefit [47]. In this case, courts can apply the doctrine of vicarious liability effectively by considering the complexity of the corporate structure and its decision-making mechanism [27].

The application of vicarious liability must also consider preventive aspects. Corporations must be encouraged to develop effective corruption prevention systems, including compliance programs and adequate internal procedures; this aligns with corporate punishment's objective, which is repressive and preventive [45].

Thus, applying the doctrine of vicarious liability in the context of corporate bribery must be carefully done, considering the various aspects mentioned above. A comprehensive approach is essential to guarantee law enforcement's efficacy and promote establishing a robust anti-corruption culture within organisations [45].

CONCLUSIONS

The development of an increasingly complex business world has encouraged corporations to become essential actors in economic activity but also opens opportunities for involvement in criminal acts such as corruption and bribery. The

primary issue addressed is the correlation between the application of corporate vicarious liability in the Indonesian National Criminal Code and the concept of "participating in committing" (*medeplegen*) bribery. According to research using the juridical-normative method and a statutory and conceptual approach, the idea of vicarious liability has significantly changed within the Indonesian legal system. Because of the "Societas Delinquere Non-Potest" principle, companies were initially not recognised as criminal subjects under the Dutch Criminal Code. However, subsequent developments led to recognising corporations as liable for criminal acts through various special laws, culminating in enacting the National Criminal Code (Law No 1 of 2023). The National Criminal Code delineates corporate liability and embraces the theories of identification and vicarious liability, whereby illegal acts perpetrated by management or individuals acting for the organisation's advantage may render the corporation liable. In *medeplegen* bribery, vicarious liability raises its complexities, especially in determining the limits of direct and indirect involvement in complex corporate structures. The results show that the approach tends to expand the scope of responsibility to the level of leaders and decision-makers. However, this must be balanced with caution to avoid violating the principle of individual guilt. The regulation in the National Criminal Code provides a stronger and more uniform legal basis for handling corporate criminal offences. However, its implementation still requires further elaboration, especially regarding the mechanism of prosecution and punishment of corporations.

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