

# Reformulation of Corporate Criminal Liability for Environmental Pollution and Degradation in the Mining Sector in Indonesia

Rihat Hutabarat\*

Universitas Padjadjaran, Indonesia, hutabaratrihat@gmail.com

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\*Correspondence: Rihat Hutabarat

Email: hutabaratrihat@gmail.com

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**Abstract:** *This study aims to analyze the Indonesian positive law governing corporate criminal liability for environmental crimes arising from mining activities, assess the effectiveness of its enforcement, and formulate a more progressive and relevant reconstruction model. The research problem stems from the gap between legal norms, which have formally recognized corporations as subjects of criminal law, and law enforcement practices, which remain predominantly reliant on administrative and civil instruments. This research employs a normative-empirical legal method using statutory, conceptual, case, and comparative approaches. The data were analyzed qualitatively through descriptive-analytical, evaluative, comparative, and prescriptive stages. The findings indicate that the Law on Environmental Protection and Management has provided a legal basis for imposing criminal liability on corporations; however, its implementation remains weak due to the difficulties in proving corporate fault, the limited technical capacity of law enforcement officials, weak inter-agency coordination, and the strong influence of economic and political interests. A comparative analysis of the legal frameworks of the United States, the United Kingdom, and Australia demonstrates that the approaches of corporate culture, strict liability, and corrective additional criminal sanctions are more effective in holding corporations accountable. Accordingly, this study proposes a reconstruction of corporate criminal liability that positions the corporation as the principal offender through fault attribution based on corporate culture, the strengthening of strict liability for certain environmental offences, and the imposition of ecological restoration, concession disqualification, publication of judgments, and compliance monitorship. This model is expected to strengthen ecological justice, protect affected communities, and ensure environmental sustainability.*

**Keywords:** *Corporate Criminal Liability; Environmental Pollution; Environmental Degradation; Mining; Corporate Culture; Strict Liability.*

## Introduction

Mining occupies a strategic position in Indonesia's development policy because it contributes substantially to non-tax state revenue, royalties, taxes, and export earnings. In 2023, the mineral and coal sector generated very high state revenue, confirming the sector's economic significance (Ministry of Energy and Mineral Resources of the Republic of Indonesia, 2023) Yet the same sector has also produced severe environmental and social consequences, including water contamination, forest destruction, ecological degradation, agrarian conflict, and the marginalization of local and indigenous communities (WALHI, 2022). This dual reality reveals a structural paradox in Indonesian natural resource

governance: economic gains continue to rise, while environmental quality and community welfare in mining areas often deteriorate.

Normatively, Indonesian law has long recognized environmental crime and the possibility of corporate liability. Law Number 32 of 2009 on Environmental Protection and Management provides criminal sanctions for environmental pollution and destruction and expressly permits prosecution of corporate actors. Likewise, the mining sector is regulated through Law Number 4 of 2009 as amended by Law Number 3 of 2020, which criminalizes unlawful mining-related conduct. More recently, Law Number 1 of 2023 on the Criminal Code has provided a broader general framework for corporate criminal liability in Indonesia. Despite these legal developments, criminal law is rarely used effectively against mining corporations. In practice, environmental wrongdoing by corporate actors is more often addressed through administrative sanctions, civil liability, permit disputes, or individual prosecutions rather than direct corporate criminal accountability (Nurhidayati, 2021).

This gap between law in the books and law in action has become increasingly visible in several mining cases. In Sorowako, concerns were raised over the environmental impact of PT Vale Indonesia's operations on water quality and local livelihoods (WALHI South Sulawesi, 2023). In Wawonii, the Supreme Court annulled the forest area use permit of PT Gema Kreasi Perdana, yet public reports indicated that mining-related controversy continued after the ruling (Mongabay Indonesia, 2024). In Blok Mandiodo, environmental damage linked to illegal nickel mining was publicly documented, but the strongest legal responses focused on governance failure and corruption rather than corporate environmental crime (Ombudsman Republic of Indonesia, 2024). In the case involving PT Bhima Amarta Mining and PT James & Armando Pundimas, the government succeeded in civil environmental litigation, but not through a robust model of corporate criminal liability (Liputan6 June, 2025).

From a theoretical perspective, this issue cannot be treated merely as a technical question of criminal law doctrine. It must also be examined through theories of justice, environmental governance, and legal effectiveness. Rawls's theory of justice is relevant because mining redistributes both benefits and burdens across society, often to the disadvantage of vulnerable communities and future generations (Rawls, 1999). Theories of corporate criminal liability are equally important because traditional vicarious liability approaches often fail to capture structural wrongdoing within corporations (Aryaputra et al., 2023). In addition, principles of good environmental governance require transparency, accountability, participation, and effective enforcement (Santosa and Quina, 2021).

Based on those considerations, this article is structured around three principal research questions, each of which reflects a distinct but interconnected dimension of the broader problem of corporate criminal liability in the mining sector. The first question concerns the normative dimension: how does Indonesian positive law regulate corporate criminal liability for environmental harm arising from mining activities? This question is essential because any meaningful legal analysis must begin with an examination of the existing statutory framework, including the extent to which environmental law, mining law, and general criminal law have recognized corporations as subjects of criminal responsibility and provided mechanisms for attributing fault and imposing sanctions. In other words, the first

inquiry seeks to determine whether the current legal system already provides an adequate doctrinal basis for holding mining corporations criminally liable, or whether significant legal gaps remain at the level of positive law itself.

The second question addresses the practical and institutional dimension of the problem: how effective is the current enforcement of such liability in practice? This question moves beyond the formal legal framework and focuses on the operation of law in concrete cases. It is not sufficient to establish that corporations may, in principle, be held criminally responsible if, in reality, enforcement institutions rarely or inconsistently pursue them through criminal mechanisms. Accordingly, this question examines whether the existing legal framework has been effectively implemented, whether law enforcement authorities possess the institutional capacity and doctrinal clarity necessary to prosecute corporate offenders, and whether the sanctions imposed in practice are capable of generating meaningful deterrence, accountability, and ecological restoration. The inquiry is therefore directed not only at legal texts, but also at enforcement patterns, evidentiary difficulties, institutional reluctance, and the broader structural conditions that shape how environmental criminal law actually functions in the mining context.

The third question is reconstructive and prescriptive in nature: what reconstruction model is most suitable for Indonesia in order to build a more effective and just corporate criminal liability framework in the mining sector? This question is particularly important because the study does not stop at identifying deficiencies in the existing system. Rather, it proceeds on the premise that the current model must be reconsidered and restructured in order to address the specific character of corporate wrongdoing in mining-related environmental harm. Such wrongdoing is often organizational, systemic, and profit-driven, making it difficult to address adequately through conventional models that focus primarily on individual fault. For that reason, this question seeks to formulate a legal model that is not only doctrinally coherent, but also institutionally workable, normatively just, and responsive to the ecological and social consequences of mining activities.

The novelty of this article lies precisely in that reconstructive ambition. Unlike many previous studies, which tend to concentrate on describing legal weaknesses, institutional shortcomings, or inconsistencies in enforcement, this article seeks to move beyond diagnosis and toward normative reconstruction. Its originality rests in the attempt to formulate a model of corporate criminal liability that does not treat doctrine, enforcement, comparison, and justice as separate analytical fields, but instead integrates them into a single framework. More specifically, the article combines normative doctrine, by examining the formal legal basis of corporate criminal liability; enforcement realities, by assessing how the law operates in actual mining-related cases; comparative lessons, by drawing on more developed approaches in other jurisdictions; and ecological justice, by emphasizing that environmental criminal law must ultimately serve not only legal certainty and punishment, but also environmental protection, community interests, and intergenerational fairness.

In that sense, the contribution of this article is not merely descriptive but also conceptual and prescriptive. It aims to offer a more comprehensive foundation for rethinking corporate criminal liability in Indonesia, particularly in relation to the mining sector, where environmental harm is often produced through complex organizational processes and sustained structural practices. By doing so, the article seeks to contribute to

the broader development of Indonesian criminal law and environmental law, while also proposing a model that is better suited to the realities of corporate power, ecological vulnerability, and the demands of justice in contemporary natural resource governance.

### **Literature Review**

The literature on corporate criminal liability in Indonesia shows that the legal system has formally moved beyond the classical view that only natural persons can be criminally liable. Contemporary scholarship recognizes that corporations can be held accountable when their organizational structures, policies, or activities produce public harm, including environmental harm (Aryaputra et al., 2023). However, much of the Indonesian debate still reveals inconsistencies in how corporate liability is conceptualized, especially when sectoral laws use different formulations and different standards of attribution (Sanjaya et al., 2020).

In environmental law scholarship, the problem is not the total absence of norms but rather the weakness of implementation. Nurhidayati (2021) argues that the prosecution of corporations in environmental cases is hindered by difficulties in proving *mens rea*, limited institutional capacity, and political interference. Santosa and Quina (2021) further emphasize that environmental governance requires stronger legal reform and better institutional accountability in order to ensure meaningful environmental protection. This means that the failure of corporate criminal enforcement cannot be explained solely by doctrinal shortcomings; it also reflects governance and institutional weaknesses.

The theoretical foundation of this study is built on three clusters of thought. First, justice theory, especially Rawls's justice as fairness, provides a normative basis for assessing how the benefits and burdens of mining are distributed (Rawls, 1999). This perspective is enriched by Aristotle's distinction between distributive and corrective justice (8) and Mill's utilitarian approach, which helps explain why extractive policies are often justified in the name of aggregate public benefit (Mill, 1979). Second, corporate criminal liability theory explains the doctrinal mechanisms through which corporate fault may be attributed, whether through vicarious liability, strict liability, or corporate *mens rea* models (Aryaputra et al., 2023). Third, good environmental governance highlights the need for transparency, public participation, accountability, and rule of law in environmental decision-making (Santosa and Quina, 2021).

Existing scholarship has made an important contribution by identifying the weaknesses of environmental law enforcement and highlighting the fragmented nature of corporate criminal liability within the Indonesian legal system. A number of studies have shown that environmental violations committed by corporate actors are often addressed through administrative sanctions, civil remedies, or prosecution of individual managers rather than through a coherent model of criminal accountability directed at the corporation itself. Other studies have emphasized that the regulation of corporate criminal liability remains dispersed across different statutory regimes, resulting in inconsistencies in formulation, interpretation, and enforcement. These works are valuable because they reveal that the problem is not merely one of implementation, but also one of legal structure and doctrinal coherence.

However, despite these important contributions, the existing literature still tends to remain largely descriptive or diagnostic in character. Most studies focus on identifying legal gaps, institutional weaknesses, evidentiary difficulties, or policy inconsistencies, but only a

limited number go beyond criticism to formulate a systematic reconstruction of the legal model itself. This limitation is particularly evident in the context of mining-related environmental harm, where corporate wrongdoing is often complex, structural, and embedded in organizational decision-making processes rather than reducible to isolated acts of individual misconduct. As a result, the literature has not yet sufficiently developed a comprehensive framework capable of rethinking how corporate criminal responsibility should be designed in order to respond effectively to the realities of the mining sector.

It is within this scholarly and doctrinal gap that the present article situates itself. Rather than merely restating the weaknesses of the current system, this article seeks to move the discussion toward reconstruction. It proceeds from the view that the conventional approach, which places primary emphasis on individual offenders such as directors, managers, or field operators, is no longer adequate to address the institutional and structural nature of environmental harm caused by mining corporations. In many cases, environmental destruction does not arise solely from the unlawful conduct of one person, but from corporate policies, managerial failures, weak compliance systems, tolerated violations, and production-oriented organizational cultures that systematically place profit above environmental protection.

Accordingly, this article argues that Indonesia must move beyond an overly individual-centered model of liability and toward an organizational model capable of capturing structural wrongdoing within mining corporations. Such a shift is necessary in order to ensure that criminal law can respond not only to personal acts of misconduct, but also to institutional forms of fault that arise from corporate culture, corporate governance failure, and systemic neglect of environmental obligations. In this sense, the reconstruction proposed in this article is intended to provide a more coherent, realistic, and effective foundation for corporate criminal liability in cases of mining-related environmental harm.

## Methodology

This study employs a normative-empirical juridical method with a socio-legal orientation. The normative dimension focuses on statutory regulations governing corporate criminal liability in environmental and mining law, especially Law Number 32 of 2009 on Environmental Protection and Management, Law Number 3 of 2020 amending the Mining Law, and Law Number 1 of 2023 on the Criminal Code. The empirical dimension examines how these norms operate in practice through selected mining-related environmental cases.

The research uses four approaches. First, the statutory approach is used to analyze the legal norms governing corporate liability and environmental crime. Second, the conceptual approach is used to examine theories of justice, corporate criminal liability, environmental governance, legal effectiveness, and deterrence (Rawls, 1999). Third, the case approach is used to analyze selected cases involving PT Vale Indonesia, PT Gema Kreasi Perdana, Blok Mandiodo, and PT Bhima Amarta Mining/PT James & Armando Pundimas (WALHI South Sulawesi, 2023). Fourth, the comparative approach is used to examine best practices from the United States, the United Kingdom, and Australia in order to identify models that may inform Indonesian reform (U.S. Department of Justice: Evaluation of Corporate Compliance Programs, 2024).

The legal materials employed in this study are divided into primary and secondary sources. The primary legal materials consist of statutory regulations and judicial decisions relevant to corporate criminal liability and environmental harm in the mining sector. The secondary legal materials include scholarly books, academic journal articles, official institutional reports, and credible environmental advocacy publications that support doctrinal, theoretical, and contextual analysis. Data collection was carried out through library research and document study, enabling the researcher to examine both normative legal frameworks and their implementation in concrete cases. The data were then analyzed qualitatively through four interrelated stages, namely descriptive, evaluative, comparative, and prescriptive analysis. Accordingly, the purpose of this study is not limited to describing the existing legal framework, but extends to critically assessing its weaknesses and formulating a more effective reconstruction of corporate criminal liability within the context of environmental damage caused by mining activities.

## **Result**

### **Existing Legal Framework**

At the level of positive law, Indonesia has already established a normative basis for imposing criminal liability on corporations for environmental harm arising from mining activities. The clearest doctrinal foundation is found in Law Number 32 of 2009 on Environmental Protection and Management, which not only criminalizes environmental pollution and destruction but also expressly recognizes corporations as subjects of criminal responsibility. Under this statute, where an environmental offense is committed by, for, or on behalf of a business entity, criminal sanctions may be imposed upon the corporation and/or those who give orders or act as leaders in the criminal conduct. Moreover, the law provides supplementary sanctions, including confiscation of unlawful profits, closure of business premises, remediation of the consequences of the offense, and corporate supervision, thereby demonstrating that Indonesian environmental law has already adopted a broader sanctioning model than ordinary criminal punishment alone.

However, the legal framework becomes less coherent when viewed through the lens of sectoral mining legislation. Although Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 on Mineral and Coal Mining contains penal provisions for unlawful mining conduct, its construction of corporate criminal responsibility is less explicit than that found in environmental legislation. The Mining Law frequently employs the phrase “every person” without sufficiently clarifying when and how a corporation, as a legal entity, may be prosecuted and punished for mining-related environmental harm. Consequently, environmental wrongdoing in the mining sector is often redirected in practice toward individual offenders, licensing violations, or administrative non-compliance rather than being framed as a matter of corporate criminality.

The enactment of Law Number 1 of 2023 on the Criminal Code constitutes a major development in Indonesian criminal law because it introduces a more systematic and comprehensive general framework for corporate criminal liability. Unlike the previous legal landscape, in which corporate criminal responsibility was largely regulated in a fragmented manner across sector-specific statutes, the new Criminal Code provides a broader doctrinal

foundation that formally recognizes the corporation as a subject of criminal law. It identifies the categories of persons who may act for or on behalf of the corporation, clarifies the circumstances under which criminal conduct may be attributed to the corporate entity, and expands the range of sanctions and corrective measures that may be imposed, including fines, compensation, restoration, permit revocation, suspension of business activities, and even corporate dissolution. In this respect, the new Criminal Code represents an important shift toward the systematization of corporate criminal responsibility within the Indonesian legal order.

From a normative standpoint, this development is significant because it demonstrates that Indonesian criminal law has moved beyond the traditional assumption that criminal liability is exclusively personal and applicable only to natural persons. By providing a general framework for corporate liability, the new Criminal Code strengthens the legal basis for treating corporations not merely as economic actors subject to regulation, but also as entities capable of bearing criminal responsibility when their organizational conduct causes harm. This is especially important in areas such as environmental protection and mining governance, where unlawful conduct frequently arises not from isolated individual actions, but from decisions, omissions, or structural failures embedded within the corporation itself.

Nonetheless, the existence of such a normative framework does not automatically guarantee effective criminal enforcement in the mining sector. The recognition of corporate criminal liability in legislation is only the first step; the more difficult question is whether such liability can be consistently operationalized in actual cases involving environmental destruction, complex organizational structures, and powerful corporate actors. In practice, the presence of a formal legal framework often coexists with institutional hesitation, fragmented enforcement strategies, and a continued tendency to rely on administrative sanctions, civil liability, or prosecution of individuals rather than direct criminal prosecution of the corporation itself (Nurhidayati, 2021).

For that reason, the central problem is not the complete absence of legal norms. Indonesian law already contains important statutory foundations for corporate criminal liability, both in sectoral laws and now in the general criminal code. Rather, the deeper problem lies in the incomplete harmonization of those norms across different legal regimes, the operational ambiguity in how corporate fault should be attributed and proven, and the weak implementation of the law in actual practice (Nurhidayati, 2021). The statutory framework may formally permit a corporate-centered approach, but if enforcement institutions lack doctrinal clarity, evidentiary capacity, or institutional willingness, then the practical effect of that framework remains limited.

Accordingly, the enactment of Law Number 1 of 2023 should be understood as an important normative milestone, but not as a complete solution. It provides a stronger legal architecture for corporate criminal liability, yet the effectiveness of that architecture still depends on harmonization with environmental and mining legislation, institutional readiness among law enforcement authorities, and the development of practical mechanisms capable of translating legal recognition into meaningful accountability. In this

sense, the challenge facing Indonesia is no longer whether corporate criminal liability can be recognized in law, but how that recognition can be transformed into a coherent and enforceable system capable of addressing the realities of corporate wrongdoing in the mining sector.

In this regard, Indonesian law may properly be understood as experiencing a structural disjunction between normative recognition and practical enforcement. At the normative level, the legal system has undeniably progressed beyond the classical conception that only natural persons may be regarded as criminal offenders. Contemporary legislation has opened the possibility of attributing criminal responsibility to corporations, including in the field of environmental protection and natural resource governance. Nevertheless, as prior scholarship has consistently demonstrated, this formal recognition has not been matched by equally robust enforcement practice, particularly in relation to mining corporations whose activities give rise to serious environmental harm (Aryaputra et al., 2023).

In practical terms, the criminal law route remains significantly underutilized against corporate actors in the mining sector. Even where the environmental consequences are grave and affect water resources, forests, land, ecosystems, and surrounding communities, the dominant legal response continues to be shaped by administrative sanctions, civil compensation mechanisms, and regulatory controls rather than direct criminal prosecution of the corporation as a legal entity. This pattern suggests that, although the law is capable in principle of treating corporations as criminal subjects, enforcement institutions have not yet fully operationalized that capacity in a consistent and effective manner.

Accordingly, the problem cannot be reduced to a purely legislative deficiency. It is not simply that the written law is incomplete, although certain statutory ambiguities and fragmentations do persist. More fundamentally, the difficulty is also doctrinal, because the standards for attributing fault to corporations remain insufficiently settled; institutional, because law enforcement bodies may lack the capacity, coordination, or willingness to prosecute corporate entities directly; and evidentiary, because proving corporate wrongdoing often requires complex technical, organizational, and causational evidence that is more difficult to assemble than in ordinary criminal cases. For these reasons, the weakness of corporate criminal liability in the mining sector reflects a broader systemic problem in which legal recognition has advanced more quickly than the mechanisms needed to implement it effectively in practice.

### **Enforcement Patterns in Selected Mining Cases**

The selected mining cases reveal a recurrent pattern in Indonesian practice: although environmental harm in the mining sector frequently has a criminal dimension, the legal response seldom culminates in the direct criminal prosecution of the corporation as the principal offender. Instead, the dominant modes of accountability are administrative intervention, state administrative litigation, civil environmental claims, and, in some cases, criminal liability imposed only upon individuals. This pattern confirms the gap between the formal recognition of corporate criminal liability and its weak operationalization in practice (Nurhidayati, 2021).

The PT Vale Indonesia case in Sorowako illustrates the first pattern, namely the predominance of an administrative response despite serious allegations of environmental harm. Reports documented community complaints regarding declining water quality, seasonal water shortages, and findings of environmental contamination affecting local residents (WALHI South Sulawesi, 2023). Yet, despite the seriousness of those allegations, the legal response remained limited to monitoring, clarification, and environmental compliance discourse rather than criminal prosecution of the corporate entity. This case shows that even when the factual basis for environmental harm appears substantial, Indonesian enforcement institutions often continue to treat the issue primarily as one of environmental management rather than corporate criminal wrongdoing.

The PT Gema Kreasi Perdana case on Wawonii Island exemplifies a second pattern: successful legal control through the sphere of administrative legality, but without corresponding criminal accountability for the corporation. The Supreme Court annulled the company's permit to use forest areas, thereby affirming the unlawfulness of mining activity on a small island (Mongabay Indonesia, 2024). Nevertheless, that judicial victory occurred within the domain of permit legality, not corporate criminal responsibility. As the case demonstrates, a successful challenge to a permit does not automatically lead to criminal sanctions against the corporate actor. The state proved capable of invalidating the company's legal entitlement, yet not of converting that illegality into corporate criminal liability.

The Blok Mandiodo case reveals an even more complex pattern. There, illegal nickel mining was associated with forest destruction, environmental degradation, and governance failure, yet the most visible institutional responses focused on maladministration, corruption, and individual accountability rather than environmental criminal prosecution of the corporate entities involved. In legal terms, this indicates that the system has been more comfortable pursuing governance failures and corruption-related offenses than constructing corporate environmental crime cases. Even where ecological consequences are severe, environmental criminal law does not necessarily become the primary instrument of accountability.

The case involving PT Bhima Amarta Mining and PT James & Armando Pundimas further illustrates the paradox that continues to characterize environmental law enforcement in Indonesia. In that case, the existence of environmental damage was legally acknowledged, and the court was prepared to impose substantial financial compensation for the ecological losses caused by the unlawful mining activities. However, the most decisive and effective legal outcome emerged through civil litigation, rather than through the criminal prosecution of the corporations as legal entities. This is significant because it shows that, although the legal system is capable of recognizing environmental harm and translating that harm into monetary liability, it remains comparatively less prepared to construct and sustain a model of corporate criminal responsibility directed at the corporation itself.

From an institutional perspective, this situation suggests that the state has developed a stronger capacity for measuring ecological loss, calculating compensation, and pursuing

civil recovery than for proving corporate criminal fault in a manner that results in the direct punishment of the corporate entity. Put differently, the Indonesian legal system appears more advanced in its compensatory logic than in its penal logic when confronted with mining-related environmental harm. Civil law mechanisms seem to provide a more accessible pathway for state intervention, whereas criminal law still encounters substantial doctrinal, evidentiary, and institutional obstacles when applied to corporations.

Taken together, these cases demonstrate that the dominant patterns of accountability in Indonesia still follow three principal routes. The first is a non-penal administrative response, in which environmental violations are addressed through supervision, permit control, warnings, or other regulatory measures rather than criminal prosecution. The second is state administrative or licensing litigation, where disputes are resolved through challenges to permits, concessions, or other forms of governmental authorization. The third is a pattern in which criminal liability is directed primarily at individuals, while corporations are pursued, if at all, through civil claims for compensation or environmental restoration. Across these patterns, the corporation as a legal entity is only rarely positioned as the principal criminal defendant.

This recurring enforcement structure confirms the broader argument that Indonesian practice remains excessively dependent upon an individual-centered model of liability, despite the existence of statutory provisions that formally allow for a more corporate-centered approach (Nurhidayati, 2021). In other words, while positive law has already opened doctrinal space for treating corporations as criminal subjects, enforcement practice has not yet fully embraced that possibility. As a consequence, environmental accountability in the mining sector continues to focus more on individual actors, permit irregularities, and financial compensation than on establishing the criminal responsibility of the corporation as an organization. This not only weakens deterrence, but also limits the law's capacity to respond adequately to structural and systemic forms of corporate wrongdoing.

### **Comparative Lessons and Reconstructive Implications**

The comparative perspective is not merely descriptive; it serves as the normative basis for the reconstruction proposed in this study. The principal lesson from comparative legal practice is that effective corporate criminal liability requires more than the formal recognition that a corporation may be punished. It requires workable attribution doctrines, realistic evidentiary standards, and sanctioning mechanisms capable of altering organizational behaviour.

The United States offers one important lesson through the doctrine of respondeat superior, under which corporate liability may be established when an agent acts within the scope of employment and at least partly for the benefit of the corporation (U.S. Department of Justice: Evaluation of Corporate Compliance Programs, 2024). The doctrinal strength of this model lies in its functional simplicity. Prosecutors are not required to prove an abstract institutional mens rea at the highest executive level; rather, the acts of corporate agents may be attributed to the corporation when they sufficiently relate to corporate business. For Indonesia, the principal lesson is that the law should not make the proof of corporate fault

so conceptually burdensome that large and complex corporations effectively become insulated from criminal accountability.

The United Kingdom provides a second important lesson through the Corporate Manslaughter and Corporate Homicide Act 2007, which shifted the focus away from the classical “directing mind” doctrine toward organizational management failure. This model is particularly relevant because it recognizes that serious harm often results not from one rogue employee, but from the manner in which an organization is managed, supervised, and structured. Equally important, the British model supplements fines with remedial and publicity measures, thereby linking punishment to institutional reform and reputational sanction. In the Indonesian mining context, this is highly significant because many ecological harms arise from systemic managerial neglect, repeated omissions, or production-driven disregard of environmental obligations.

The Australian approach is perhaps the most relevant to the present reconstruction because it explicitly develops the concept of corporate culture as a basis for fault attribution. Under the Criminal Code Act 1995 (Cth), fault may be attributed to a corporation where its corporate culture encouraged, tolerated, or failed to prevent non-compliance (Australia: Criminal Code Act 1995). The Australian Law Reform Commission has also emphasized the need to strengthen and simplify the regime of corporate criminal responsibility in order to improve its practical effectiveness (Australian Law Reform Commission, 2020). This model is particularly valuable for Indonesia because mining-related environmental harm often does not arise from one isolated act, but rather from organizational priorities, inadequate compliance systems, repeated tolerance of violations, and the subordination of environmental protection to production targets. In this respect, the Australian model directly supports the argument that Indonesia must move beyond a narrow vicarious liability approach and toward an organizational conception of fault.

The reconstructive implications are therefore clear. First, Indonesian law should strengthen corporate culture-based attribution of fault, so that criminal liability may be grounded in policies, institutional omissions, tolerated violations, and structural non-compliance rather than depending exclusively on the guilt of one identifiable individual (Aryaputra et al., 2023). Second, for certain high-risk environmental offenses, the law should make more robust use of strict liability, particularly where environmental damage is severe, technically complex, and difficult to reduce to a singular subjective state of mind. Third, sanctions must be expanded beyond fines to include ecological restoration, permit disqualification, publication of judgments, and post-judgment compliance oversight, thereby ensuring that punishment is corrective, preventive, and reputational at once.

Finally, the reconstruction of corporate criminal liability in Indonesia must be integrated with the principles of Good Environmental Governance. A corporate criminal law regime, no matter how well formulated in statutory terms, cannot function effectively if it operates in isolation from the broader governance structures that shape environmental decision-making, monitoring, and accountability. In practice, criminal liability for environmental harm is often difficult to establish not only because of doctrinal or evidentiary complexity, but also because the institutional environment in which

environmental violations occur is frequently marked by limited transparency, weak public oversight, and inadequate access to relevant information. For that reason, the reconstruction of corporate criminal liability must not be conceived solely as a penal reform project, but also as part of a broader effort to strengthen environmental governance.

Without transparency, it becomes difficult to identify when violations began, how corporate decisions were made, what environmental data were concealed or ignored, and whether the corporation had prior knowledge of the harm caused by its activities. Without accountability, even well-documented violations may fail to produce meaningful legal consequences, because institutions responsible for supervision and enforcement may lack the will, capacity, or independence to act effectively. Without participation, affected communities, civil society organizations, and other stakeholders are deprived of the opportunity to contribute to environmental monitoring, report violations, and press for legal responsibility. In such conditions, criminal liability becomes not only difficult to prove, but even more difficult to enforce in a way that is consistent, credible, and socially legitimate.

As environmental governance scholarship has demonstrated, good governance in the environmental field requires at least several interrelated principles, namely transparency, public participation, accountability, rule of law, and sustainability (Santosa and Quina, 2021). These principles are not merely procedural ideals; they are essential preconditions for meaningful environmental protection. In the context of mining, where ecological harm is often complex, cumulative, and highly technical, the availability of information and the participation of affected communities can be decisive in uncovering misconduct that might otherwise remain obscured within corporate or bureaucratic structures. Likewise, accountability and adherence to the rule of law are indispensable if criminal sanctions are to move beyond symbolic declarations and produce real changes in corporate behaviour.

This orientation is further reinforced by international environmental instruments, which emphasize access to information, public participation in decision-making, and access to justice as foundational pillars of environmental protection (United Nations Economic Commission for Europe, 1998). These principles make clear that environmental accountability cannot depend exclusively on state agencies acting from above; it must also involve mechanisms through which communities and the public are able to scrutinize environmentally harmful conduct and participate in the processes that determine both prevention and redress. In this sense, the reconstruction of corporate criminal liability must be situated within a governance framework that recognizes the role of society, not merely the authority of the state.

Accordingly, the reconstruction proposed in this study must be both penal and governance-oriented. It must be penal because corporations that cause serious environmental harm must be subject to meaningful criminal sanctions capable of expressing condemnation, producing deterrence, and compelling institutional reform. At the same time, it must be governance-oriented because such sanctions cannot function effectively in the absence of open information, public oversight, administrative transparency, and institutional accountability. Criminal law, in other words, should not stand alone at the end

of the enforcement chain; it must be supported by a governance system that makes violations visible, provable, and enforceable.

In sum, the comparative analysis confirms the central thesis of this study: Indonesia does not merely require additional legal rules, but rather a more coherent and operational model of corporate criminal liability. What is needed is a framework that places the corporation itself, rather than only individual actors, at the centre of environmental accountability; that recognizes organizational fault as a legally relevant basis for responsibility; and that combines punishment with restoration, supervision, and ecological justice (Rawls, 1999). Such a model would be better suited to the realities of mining-related environmental harm, which is often produced through institutional policies, corporate culture, and systemic managerial failure rather than isolated misconduct by a single individual. For that reason, the reconstruction of corporate criminal liability must be understood not simply as a technical reform of criminal doctrine, but as part of a broader legal project to align punishment, governance, and environmental justice within Indonesia's mining sector.

### **Conclusion**

This article demonstrates that Indonesian positive law has already established an important normative basis for corporate criminal liability in environmental matters, especially through the Environmental Protection and Management Law and the 2023 Criminal Code. However, in the mining sector, criminal enforcement against corporations remains weak, fragmented, and overshadowed by administrative responses, civil litigation, and prosecution of individuals. The selected cases reveal a persistent gap between normative recognition and practical enforcement.

The article further concludes that the conventional approach to mining-related environmental crime in Indonesia remains too individual-centered. Such an approach is insufficient for addressing structural corporate wrongdoing that arises from organizational culture, management failure, and systemic non-compliance. Comparative experience from the United States, the United Kingdom, and Australia shows that more effective models are available and adaptable.

Therefore, the reconstruction of corporate criminal liability in Indonesia should move toward a model that: (1) adopts corporate culture as a principal basis for fault attribution; (2) strengthens the use of strict liability for high-risk environmental offenses; (3) expands sanctions to include ecological restoration, reputational sanctions, and business disqualification; and (4) integrates criminal accountability with good environmental governance through transparency, participation, and post-judgment compliance monitoring. Such a reconstruction is necessary not only to improve enforcement efficiency, but also to protect affected communities, strengthen deterrence, and realize ecological and intergenerational justice in Indonesia's mining sector.

Such a reconstruction is necessary not only to improve the efficiency and coherence of law enforcement, but also to respond more adequately to the social and ecological realities of mining-related environmental harm in Indonesia. A more advanced model of corporate criminal liability would strengthen the capacity of the legal system to hold

corporations accountable as organizations, rather than merely punishing individual actors at the margins. At the same time, it would provide stronger protection for affected communities whose rights, livelihoods, health, and living environments are often directly threatened by environmentally harmful mining practices. It would also enhance the deterrent function of criminal law by ensuring that corporations face sanctions serious enough to alter internal behaviour, compliance culture, and decision-making structures.

Ultimately, the significance of this reconstruction extends beyond institutional efficiency. It is also a matter of justice. Environmental harm caused by mining corporations frequently imposes unequal burdens on local communities while the economic benefits are concentrated elsewhere. It also threatens the rights and welfare of future generations by degrading natural resources and ecological systems in ways that may be difficult or impossible to reverse. Accordingly, a reconstructed model of corporate criminal liability is necessary not only to improve enforcement outcomes, but also to advance ecological justice and intergenerational justice within Indonesia's mining sector. In this sense, the proposed reconstruction seeks to align criminal law with the broader constitutional and moral imperative to protect the environment, uphold social fairness, and ensure that development does not come at the expense of present and future generations.

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