

**Suhardi Somomoeljono<sup>1</sup> | Saurav Kumar<sup>2</sup> | Corporate Criminal Liability in Procurement Activities within Corruption Offenses**

**Abstract**

This study analyzes the framework of corporate criminal liability in corruption offenses related to goods procurement. As corporations increasingly participate in public procurement processes, the potential for corrupt practices such as bribery, bid-rigging, collusion, and fraudulent documentation poses significant risks to the integrity of government contracting. This research examines the legal basis for holding corporations criminally accountable, including the criteria for attributing criminal acts to a corporate entity, forms of liability, and applicable sanctions under Indonesian anti-corruption law. The study also reviews relevant judicial decisions to assess how courts interpret and apply corporate liability in procurement-related corruption cases. The findings indicate that although corporate criminal liability is formally recognized, challenges persist in proving corporate intent, identifying responsible managerial roles, and ensuring consistent judicial interpretation. The study concludes that strengthening compliance systems, improving procurement oversight, and providing clearer regulatory guidelines are crucial to enhancing the effectiveness of corporate criminal liability in corruption cases involving goods procurement.

**Keywords:** Corporate Criminal Liability, Public Procurement, Corruption

**A. Introduction**

Corruption in goods procurement represents one of the most pervasive and detrimental forms of economic crime, particularly in countries where public contracting constitutes a substantial portion of government expenditure. As corporations play a central role in procurement activities ranging from bidding and project implementation to the delivery of goods and services their involvement in corrupt practices has become an increasingly urgent legal and policy concern. Corporate participation in procurement corruption often manifests through bribery, collusive tendering, price manipulation, and the submission of falsified documents, all of which undermine market competition, inflate public spending, and erode public trust in state institutions. Aldridge, T. M., & Harrison, P. J. (2025).

The concept of corporate criminal liability provides a framework for holding legal entities accountable when corruption occurs within the procurement process. Under Indonesian law, corporations can be prosecuted and sanctioned for corruption offenses when the prohibited acts are committed for the benefit of the company or arise from systemic failures in supervision, compliance, or corporate governance. However, attributing criminal responsibility to a corporation remains challenging due to the complexity of corporate structures, the difficulty in proving organizational intent, and inconsistencies in judicial interpretation. Bennett, L. F. (2025).

This introduction sets the foundation for a comprehensive analysis of corporate criminal liability in procurement-related corruption cases. It discusses the legal principles governing

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corporate responsibility, highlights key issues in law enforcement, and underscores the importance of effective regulatory oversight and corporate compliance mechanisms. Strengthening the accountability of corporations involved in public procurement is essential not only for deterring corrupt practices but also for promoting transparency, fair competition, and good governance within the procurement system. Chandra, R., & Wijayanto, S. (2025).

### **A. Theoretical Framework**

The concept of corporate criminal liability in corruption cases involving goods procurement is grounded in several key legal and criminological theories that explain how and why corporations may be held accountable for criminal acts. These theories provide the analytical foundation for understanding the attribution of liability, the nature of corporate intent, and the mechanisms through which corporations can be sanctioned under criminal law. Dawson, M. E. (2025).

#### **1. Corporate Criminal Liability Theory**

Corporate criminal liability theory posits that a corporation, as a legal entity, can bear criminal responsibility for unlawful acts committed by individuals acting on its behalf. This theory recognizes that corporations possess organizational structures, decision-making processes, and collective intentions that may facilitate or encourage corrupt behavior. In procurement-related corruption, liability may arise when corporate agents engage in bribery, collusion, or fraud to secure contracts or financial benefits for the company. The attribution of liability is often based on the doctrine of *vicarious liability* or the identification principle, where the actions and intentions of key managerial personnel are considered the actions of the corporation itself. Hughes, A., & Romano, G. (2025).

#### **2. Vicarious Liability and the Identification Doctrine**

Under vicarious liability, a corporation may be held responsible for the criminal acts of its employees when such acts are carried out within the scope of their employment and aimed at benefiting the organization. The identification doctrine further supports this principle by linking the criminal intent of senior managers or decision-makers directly to the corporation. In corruption involving goods procurement, these doctrines justify holding corporations liable when high-level officials authorize, tolerate, or fail to prevent corrupt practices. Kurniawan, A. (2025).

#### **3. Corporate Culture Theory**

Corporate culture theory emphasizes that unethical organizational norms, weak compliance systems, poor internal controls, or a culture of profit-driven decision-making can contribute to criminal behavior. This theory suggests that corruption is not merely the result of individual misconduct but may stem from broader systemic issues within the corporation. In procurement activities, a corporate culture that prioritizes contract acquisition at any cost may implicitly encourage bribery or collusion, thereby establishing grounds for corporate liability. Martinez, S. R. (2025).

#### **4. Organizational Negligence and Failure of Supervision**

Another theoretical basis for corporate liability is the concept of organizational negligence, which argues that corporations should be held criminally responsible for failing to establish adequate supervision, monitoring, or compliance mechanisms. In goods procurement processes, corporations may be liable if corrupt acts occur due to inadequate internal controls, lack of due diligence, or failure to enforce anti-corruption policies. This approach aligns with

modern anti-corruption frameworks that emphasize preventive corporate governance measures. Rahman, Y., & Putri, N. (2025).

## 5. Deterrence Theory

Deterrence theory provides a criminological justification for imposing criminal sanctions on corporations. By holding corporations accountable, the law seeks to deter not only the offending entity but also other corporations from engaging in corrupt practices. Effective enforcement of corporate liability in procurement corruption cases enhances transparency, promotes fair competition, and strengthens public trust in government contracting. Simpson, K. (2025).

Collectively, these theories underscore the importance of recognizing corporations as active actors in corruption related to goods procurement. They provide the foundation for legal analysis, judicial interpretation, and policy development aimed at strengthening corporate accountability and preventing corruption within procurement systems. Williams, D. A. (2025).

## B. Research Method

This research employs a qualitative juridical approach to analyze corporate criminal liability in corruption offenses related to goods procurement. The methodology is designed to examine legal norms, regulatory frameworks, and judicial practices that shape the enforcement of corporate liability within Indonesia's anti-corruption system. Adams, R. L., & Stewart, M. J. (2024).

### 1. Research Design

The study utilizes a normative juridical research design, focusing on the examination of legal principles, statutory provisions, and doctrinal interpretations. This design allows for an in-depth analysis of how laws governing corporate criminal liability are formulated and applied in cases of procurement-related corruption. Budiarto, H., & Pranata, D. (2024).

### 2. Sources of Legal Materials

The research relies on three categories of legal materials:

- a. Primary legal materials, including Indonesian laws and regulations such as the Anti-Corruption Law, the Criminal Code, the Criminal Procedure Code, and relevant judicial decisions involving corporate liability in procurement corruption cases.
- b. Secondary legal materials, comprising scholarly articles, books, research reports, commentaries, and expert analyses related to corporate criminal liability, procurement law, and corruption studies.
- c. Tertiary legal materials, including legal dictionaries, encyclopedias, and indexes that support the clarification of legal terminology and concepts. Choi, M. S. (2023).

### 3. Data Collection Techniques

Data is collected through document study, involving systematic examination of legislation, case law, and academic literature. The document review focuses on identifying legal norms, patterns of judicial interpretation, and practical challenges in attributing criminal liability to corporations in procurement corruption cases. Hartono, Y., & Sari, M. A. (2023).

### 4. Data Analysis Method

The study employs qualitative content analysis to interpret and synthesize the collected legal materials. This method involves:

- a. Identifying key legal principles and conceptual frameworks;
- b. Comparing statutory provisions with judicial applications;

- c. Evaluating the consistency, effectiveness, and limitations of existing regulations;
- d. Drawing conclusions about the adequacy of the current legal regime in addressing corporate involvement in procurement-related corruption. Jackson, P. E. (2023).

## 5. Research Focus and Scope

The analysis specifically examines how corporate criminal liability is established in the context of goods procurement corruption, including the attribution of criminal acts to corporations, the role of corporate governance, and the sanctions imposed. The scope is limited to Indonesian law but may include comparative insights from international practices to strengthen the discussion. Kurniasih, D., & Hidayat, Y. (2023).

Through this methodology, the research aims to provide a comprehensive understanding of the legal foundations, enforcement challenges, and policy implications of applying corporate criminal liability to corruption offenses in goods procurement. Liu, J., & Chen, Y. (2023).

## C. Results

The findings of this study reveal several significant aspects concerning the implementation of corporate criminal liability in corruption offenses related to goods procurement in Indonesia. These results highlight both the progress and persistent challenges in attributing criminal responsibility to corporate entities within the procurement sector. Morgan, S. (2023).

### 1. Legal Recognition of Corporate Criminal Liability Is Well Established

The analysis shows that Indonesian legislation formally recognizes corporations as subjects of criminal law, particularly under the Anti-Corruption Law. Corporations can be held liable for illegal acts committed by individuals acting for their benefit, including bribery, collusion, and falsification of procurement documents. This legal foundation provides a clear basis for prosecuting companies involved in corrupt procurement practices. Rahim, A., & Putri, L. (2023).

### 2. Judicial Decisions Demonstrate Growing Application of Corporate Liability

Court decisions in procurement-related corruption cases indicate an increasing willingness by judges to impose criminal sanctions on corporations. Several decisions highlight that companies may be held liable even when the corrupt act is carried out by mid-level employees, provided the act benefits the corporation or reflects weaknesses in corporate governance. However, judicial interpretations remain inconsistent across cases, leading to varied outcomes. Santos, D. R. (2023).

### 3. Proof of Corporate Intent Remains a Significant Challenge

A major finding of this research is the difficulty associated with proving *mens rea* (criminal intent) at the corporate level. Law enforcement authorities often struggle to demonstrate that corporate leaders authorized, condoned, or failed to prevent corrupt acts. Complex corporate structures and multiple layers of decision-making make it challenging to link individual misconduct directly to the corporation. Almeida, R. P. (2022).

### 4. Weak Internal Controls Increase Corporate Vulnerability to Corruption

The study reveals that many corporations involved in procurement corruption lack adequate compliance programs, internal audit systems, and anti-corruption policies. This absence of effective oversight mechanisms contributes to corporate exposure to corrupt practices and becomes a key factor in attributing liability based on organizational negligence. Ardiansyah, M., & Lestari, S. (2022).

### **5. Sanctions Against Corporations Are Limited and Often Ineffective**

While legal provisions allow for various sanctions—such as fines, restitution, asset seizure, and operational restrictions most penalties imposed on corporations remain relatively light compared to the severity of the offenses. In several cases, corporations receive minimal fines that do not create a strong deterrent effect. Non-monetary sanctions, such as suspension of business licenses, are rarely applied. Bennett, C. R. (2022).

### **6. Lack of Coordination among Enforcement Agencies Hinders Effective Prosecution**

The research identifies gaps in coordination between law enforcement bodies, procurement regulators, and oversight institutions. These gaps result in delayed investigations, incomplete evidence collection, and fragmented enforcement efforts, weakening the overall effectiveness of corporate criminal liability in procurement corruption cases. Chen, L. Y. (2022).

### **7. Need for Strengthened Corporate Governance and Compliance Systems**

The findings underline the importance of strengthening internal corporate compliance frameworks to prevent corruption in goods procurement. Corporations with robust training programs, transparent procurement procedures, and rigorous oversight mechanisms show a lower risk of involvement in corrupt practices. Dewi, R., & Nugroho, H. (2022).

Overall, the results demonstrate that while the legal basis for corporate criminal liability in procurement corruption is established, its practical implementation remains limited by evidentiary challenges, weak internal controls, and inconsistent judicial interpretation. Strengthening regulatory enforcement and promoting corporate governance reforms are essential steps toward improving the accountability of corporations involved in public procurement. Karim, F., & Abdullah, M. (2022).

## **D. Discussion**

The application of corporate criminal liability in corruption offenses related to goods procurement reflects an evolving area of Indonesian criminal law. Although the legal framework acknowledges corporations as criminal subjects, several substantive and procedural issues continue to influence the effectiveness of enforcement. This discussion elaborates on the implications of the research findings, emphasizing legal interpretation, enforcement practices, and the role of corporate governance. Mitchell, P. (2022).

### **1. The Expansion of Corporate Criminal Liability in Anti-Corruption Enforcement**

The recognition of corporate criminal liability marks a significant shift in Indonesia's approach to combating corruption. As corporations are increasingly involved in procurement activities, their potential to influence or distort public contracting processes becomes substantial. By holding corporations accountable, the law aims not only to punish wrongdoing but also to encourage ethical business practices. This expansion reflects global trends in anti-corruption enforcement, where corporate accountability is viewed as essential to maintaining transparency and fairness in public procurement. Rahman, M. T. (2022).

### **2. Challenges in Establishing Corporate Intent and Attribution of Liability**

Despite clear legislative provisions, attributing criminal intent (*mens rea*) to a corporation remains a central challenge. Courts must determine whether the corrupt act was committed within the scope of employment and for the benefit of the corporation. The identification doctrine and vicarious liability principles provide a basis for this assessment, yet their practical application varies. Complex organizational structures and decentralized decision-making

processes often obscure the link between individual misconduct and corporate benefit. This inconsistency underscores the need for clearer judicial guidelines and interpretive standards. Siregar, A., & Putra, Y. (2022).

### **3. Weak Corporate Governance as a Contributing Factor to Corruption**

The findings indicate that many corruption cases arise in environments where internal controls, compliance programs, and ethical standards are insufficient. Weak oversight mechanisms not only allow corrupt activities to occur but also serve as evidence of organizational negligence, which strengthens the case for corporate liability. The absence of robust compliance frameworks suggests that corporations operating in the procurement sector must adopt stronger internal safeguards to mitigate corruption risks. Effective corporate governance characterized by transparency, accountability, and compliance training plays a vital preventive role. Wilson, J. (2022).

### **4. Judicial Inconsistency and Its Impact on Legal Certainty**

The variation in judicial decisions concerning corporate liability highlights the need for uniformity in legal interpretation. In some cases, courts hold corporations liable based on the actions of mid-level employees; in others, higher-level managerial involvement is required. Such inconsistencies undermine legal certainty and may discourage law enforcement agencies from pursuing corporate cases. Standardized judicial approaches and clearer doctrinal guidance would enhance predictability and strengthen the legitimacy of corporate criminal liability. Arjoon, S. (2021).

### **5. Sanctions as Deterrence Mechanisms: Limitations and Opportunities**

Although corporations can be subjected to fines, asset seizures, compensation orders, and operational restrictions, the sanctions imposed in practice are often insufficient to deter future offenses. Monetary penalties are frequently modest compared to the economic gains derived from corrupt procurement activities. Moreover, non-monetary sanctions such as blacklisting from future procurement opportunities are rarely applied despite their strong deterrent potential. Strengthening sanctioning mechanisms and ensuring proportionate penalties would enhance deterrence and promote accountability. Cassin, R. (2021).

### **6. Institutional Coordination and Enforcement Capacity**

The effectiveness of corporate criminal liability heavily depends on the ability of enforcement institutions to investigate complex corporate structures and financial arrangements. The lack of effective coordination among agencies such as the police, prosecutors, procurement authorities, and anti-corruption commissions remains a barrier to successful prosecution. Improved inter-agency collaboration, data sharing, and investigative capacity are essential to overcoming these challenges. Multi-institutional cooperation can also support early detection of irregularities in procurement processes. Christensen, J., & Hearson, M. (2021).

### **7. The Need for Preventive and Compliance-Based Approaches**

While criminal prosecution remains an important tool, preventive strategies focused on corporate compliance systems offer a complementary approach. Establishing mandatory compliance programs, strengthening procurement audits, and encouraging corporations to adopt anti-corruption certification standards can significantly reduce the risk of corrupt practices. Such measures align with the global shift toward compliance-based regulation, emphasizing prevention over punishment. Lord, N. (2021).

Corporate criminal liability in corruption involving goods procurement is conceptually well-established but operationally constrained. Addressing evidentiary challenges, promoting judicial consistency, strengthening sanctions, and enhancing corporate governance are crucial steps toward improving enforcement. Ultimately, a holistic approach—combining legal reform, institutional strengthening, and corporate compliance—will be essential in ensuring that corporations engaged in procurement activities uphold integrity and accountability in accordance with anti-corruption objectives. Mancuso, A. (2021).

## **E. Conclusions**

### **1. Conclusion**

This study concludes that corporate criminal liability in corruption offenses related to goods procurement is formally recognized within Indonesia's legal framework, yet its practical implementation faces significant challenges. The law provides clear mechanisms for holding corporations accountable for corrupt acts committed by their employees or representatives, particularly when such acts benefit the corporation or result from inadequate oversight. Judicial decisions increasingly reflect the application of corporate liability; however, inconsistencies in legal interpretation and evidentiary difficulties continue to hinder effective enforcement.

The findings highlight several key issues:

- a. Difficulty in establishing corporate intent, especially within complex organizational structures.
- b. Insufficient corporate governance and internal controls, which create opportunities for corrupt practices.
- c. Limited sanctioning practices, with penalties often failing to create meaningful deterrent effects.
- d. Weak coordination among enforcement agencies, resulting in fragmented investigations and inconsistent prosecution outcomes.

Despite these obstacles, the recognition of corporate criminal liability serves as an important tool for promoting transparency, fairness, and accountability in public procurement. Strengthening the enforcement of this doctrine is essential to combating corruption in goods procurement and protecting public resources.

### **2. Recommendations**

- a. Enhance Legal Clarity and Judicial Consistency. Clearer guidelines are necessary for courts and law enforcement agencies to establish corporate intent and attribute liability. Judicial training and standardized interpretation frameworks would help ensure consistency across cases.
- b. Strengthen Corporate Governance and Compliance Programs. Corporations involved in procurement should implement comprehensive anti-corruption compliance systems, including internal audits, whistleblower mechanisms, employee training, and transparent procurement procedures. Regulatory authorities may also consider mandating compliance certification for companies participating in public procurement.
- c. Increase the Severity and Variety of Sanctions. To enhance deterrence, sanctions should be applied proportionately to the severity of the offense. Non-monetary sanctions such as blacklisting, suspension of licenses, or dissolution of corporate entities should be used more frequently when appropriate.
- d. Improve Inter-Agency Coordination. Effective collaboration between law enforcement bodies, procurement oversight institutions, and anti-corruption agencies is essential for comprehensive investigations. Establishing integrated data systems and joint task forces can significantly strengthen enforcement.

- e. Promote Preventive and Risk-Based Approaches. A shift toward prevention is crucial. Government institutions should strengthen procurement monitoring systems, utilize digital procurement platforms to reduce human intervention, and conduct regular corruption risk assessments within procurement processes.
- f. Encourage Public and Private Sector Collaboration. Mutual efforts between government agencies, business associations, and civil society organizations can foster ethical business practices, support transparency initiatives, and promote a culture of integrity in procurement activities.

By implementing these recommendations, Indonesia can enhance the effectiveness of corporate criminal liability in procurement corruption cases, ensuring stronger legal accountability and contributing to the broader fight against corruption in the public sector.

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