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Research Article

Problems And Reform in The Imposition of Criminal Fines on State-Owned Enterprises in Corruption Offenses

Deni Hendrawan[1*], Lies Sulistiani[1], Nella Sumika Putri[1], Nana Charles Nguindip[2], Bambang Nuruddin Imanullah[3]
[1]Faculty of Law, Universitas Padjadjaran, Indonesia
[2]Faculty of Law and Political Science, Department of English Law, University of Dschang, Cameroon
[3]Faculty of Law, Universitas Brawijaya, Indonesia
[*]denyhendra1972@gmail.com

ABSTRACT

State-Owned Enterprises often have legal problems when subject to corporate sanctions in the form of fines by the directors or their ranks who commit criminal acts so that it interferes with public services and has the potential to reduce company assets due to incurring fines. The purpose of this research is to find the concept of formulating a criminal model that is in line with Indonesian criminal law reform, especially regarding the application of corporate sanctions within the scope of State-Owned Enterprises (SOEs). The methods used normative law with a legislative, conceptual, comparative, and interview approach. The results of the research show that the criminal penalty of fines against corporations has a legal basis in Law Number 1 of 2026 concerning Criminal Adjustment. However, the punishment depends on the aspect of organizational error, the result obtained is a differential-integrative based criminal model by limiting the difference between personal and institutional responsibility combined with limited fines with asset recovery. Conclusion that can be drawn, the imposition of sanctions against SOE corporate entities must be imposed proportionately and only if corporate wrongdoing has been proven, while the directors or their staff remain personally responsible.

Keywords: Corporate Criminal Liability; Corruption; Criminal Fines; Criminal Law Reform; State-Owned Enterprise.

A. INTRODUCTION

The development of business activities makes criminal acts that occur in the corporate environment not always traceable through the actions of one person. Company decisions can be formed through several levels of authority and are carried out by people different from the party who gave consent. In certain circumstances, these actions are carried out for the benefit of the company or produce benefits that enter into the company's activities. This kind of situation poses difficulties if accountability is only directed to the person who performs the act physically. The structure of the company and the relationship between the management and the interests of the legal entity help determine whether an act is still individual or has become a corporate act. The development of criminal law then opens up space to place the corporation as the subject of criminal acts without eliminating the liability of people who work through the corporate structure (Pratama & Januarsyah, 2020).

The problem takes on a different character when the legal entity dealing with criminal law is a state-owned enterprise (BUMN). Assets that have been separated mean that SOEs are legal entities that carry out business activities in their own name and are responsible for them. However, the relationship between the company and the state remains through capital participation and share ownership. In some SOEs, the relationship is also seen from government assignments and the implementation of activities that are directly related to the needs of the community. This position makes the interests of SOEs not limited to the interests of business entities and capital holders. There are economic interests of the state and public functions that in certain circumstances go hand in hand with the commercial interests of the company. This position becomes important when the legal consequences imposed on the company affect the ability of SOEs to carry out their business activities.

There is a distinction in the legal definition of SOEs in Indonesia between separated state assets and state finances. Article 2(g) of Law No. 17 of 2003 on State Finances encompasses separated state assets invested in state-owned enterprises. In comparison, Article 4 of Law No. 19 of 2003 on State-Owned Enterprises indicates SOE capital is separated state assets. Investment of state funds in SOEs is not the same as the state's direct control and management of assets through the state budget. SOEs in Indonesia are, in the majority of cases, established as limited liability companies. Hence, under Article 3 of Law No. 40 of 2007 on Limited Liability Companies, they possess a separate legal personality and their assets, rights and obligations are also distinct from those of the state.

The treatment of separated state assets as part of the state's finances, as affirmed by Constitutional Court Decisions No. 48/PUU-XI/2013 and No. 62/PUU-XI/2013, has remained valid. Some SOEs have been appointed by the government to perform public services. Thus, the financial penalties that may be imposed on the SOEs would also affect the financial status of the company, and depending on the company's financial and operational status, it may also compromise the company's capacity to provide the public service (Anggriani et al., 2023). Therefore, for the purposes of this study, the state's interest in corporate criminal liability vis-a-vis SOEs, as opposed to that of a private shareholder, must be legally acknowledged.

A more compelling case in support of this view may be found when determining the sanction for a corporate offense. Not imposing liability on SOEs would, in effect, treat state-owned companies preferentially as compared to other companies. This option can also make it difficult for law enforcement when corruption is carried out in the interests of the company or made possible by an organizational system that does not work. Nevertheless, the imposition of criminal fines on SOEs does not necessarily make criminal

consequences accepted by the person who forms or controls the corrupt decision. The payment of fines from the company's finances can affect assets and business activities. As a result, it can move further to workers, creditors, company projects, and service users who have no connection to the crime. The issue of who actually receives the burden of criminalization becomes more relevant because losses due to corporate sanctions can reach those who do not participate in forming the act (Klimczak et al., 2022).

There is now more legal basis in Indonesia for identifying corporations as subjects of criminal acts. Article 20 of the Law on Eradication of Corruption provides for the prosecution and charging of corporations and their managers. The regulation was given a broader framework by Law No. 1 of 2023 on the Criminal Code, as amended by Law No. 1 of 2026. Procedurally, Regulation of the Supreme Court No. 13 of 2016, has regulated how criminal cases against corporations should be handled. This change makes the debate about SOEs no longer sufficiently placed on the question of whether a legal entity can be criminalized. The issue moves to the basis used to determine corporate wrongdoing and the type of punishment that is appropriate to apply after the mistake is proven. The National Criminal Code itself began to build corporate criminalization through the relationship between acts, mistakes, and penal guidelines (Aryaputra & Triwati, 2023).

The corporation carries out its will through individuals within the organisation. The Board of Directors manages the company and makes various decisions. Different organs perform the supervisory function, while the implementation of the company's activities can take place through employees or parties who have certain authority. When criminal acts arise from these relationships, not all actions carried out by people working in the company can be treated as corporate wrongdoings. The relationship with business activities must be considered alongside the perpetrator's authority and the benefits received by the company. The approval of the management, the permissiveness, the failure of supervision, and the organizational conditions that allow the violation to take place also have meaning in determining the attribution of fault. The framework of corporate criminal liability is used in this study to distinguish between acts that can be attached to SOEs and the actions of administrators that are carried out for personal interests and actually detrimental to the company (Sjahdeini, 2017).

Distinguishing corporate criminal liability from corporate wrongdoing and individual criminal responsibility is essential. While corporate wrongdoing refers to illegal acts committed within the scope of a corporation’s activities, corporate criminal liability means that the law attributes illegal acts to the corporation (Santosa et al., 2025). Organizational fault occurs when a corporation fails to implement adequate control

and supervisory systems to prevent unlawful acts from occurring. In the absence of such systems and controls, illegal acts are likely to occur. Articles 45-49 of Law No. 1 of 2023 on the Criminal Code establish that corporations may be criminally liable for acts of their functional officers or agents. Article 48 further identifies several criteria for establishing corporate criminal liability, including unlawful corporate benefit, acceptance of the conduct as corporate policy, failure to implement necessary preventive measures, and acquiescence in the commission of an offense. These grounds show that corporate criminal liability depends on the evaluation of the corporation's conduct and what it does, or does not do, in response to unlawful behavior, as opposed to identifying an individual perpetrator.

That said, corporate criminal liability and individual criminal liability of directors and managers of the corporation must be distinguished from one another. Attributing a crime to a corporation does not mean that the directors and managers of that corporation are also personally criminally liable. The responsibility of those individuals must be assessed separately. The conduct that bestows a benefit upon the corporation is different from the conduct that produces a personal benefit to a director or a manager of the corporation. Therefore, unlawful means that produce an advantage for a corporation could be grounds for attributing criminal liability to that corporation. Conversely, unlawful means that produce a personal benefit to an individual could be grounds for attributing criminal liability to that individual. The distinction between corporate and personal interests in evaluating corporate liability is essential to avoid assessing personal interests of corporate officers.

Identifying the responsible party does not resolve the problem when the sanction imposed fails to address the source of the identified error. Criminal fines have assumed a significant role in corporate criminal liability because legal entities cannot be punished with imprisonment in the same way as individuals. Their financial nature enables the state to impose direct consequences on a company's wealth. However, the size of a fine does not always correspond directly to its deterrent effect (Lim, 2021). Profits from criminal conduct may exceed the costs payable once the violation is detected. In other cases, substantial fines may extend the crime's consequences to interests unrelated to the offense. Accordingly, this study understands the purpose of punishment in terms of sanctions' capacity to impose censure, restrict the gains from criminal acts, deter recurrence, compensate for losses, and ensure that the resulting consequences remain proportionate (Auriol et al., 2023).

The normative framework faces problems when applied to SOEs that have business interests as well as are related to state functions. Positive law has provided a basis for the imposition of fines on corporations. There has not been a special formulation that brings together the character of SOEs by the way judges

determine the burden of sanctions in corruption cases. The benefits received by companies have not always been differentiated from the personal profits of the management. Likewise, organizational mistakes have not been systematically placed along with the ability to pay and the consequences of criminalization of public services. The practice of handling corporate cases shows that fines can go hand in hand with replacement money, confiscation of the proceeds of criminal acts, and asset management. The case of PT Nindya Karya (Persero) and PT Tuah Sejati gives an idea that corporate financial accountability in corruption cases does not in fact work through fines alone (KPK, 2026).

The difference between what the law has provided and the problems that arise at the criminal stage reveal a space that has not been fully answered by the applicable construction. Normatively, SOEs can be held accountable as a corporation if the criminal acts and their faults can be attributed to legal entities. Fines are also available as the main crime for corporations. In its application, the source of payment of fines and the party who ultimately bears the consequences of the sanctions are not always the same as the party who formed the fault. This problem becomes more real when the criminal act provides personal benefits to the management but places the SOE as the party that must pay the financial consequences. On the other hand, if the company benefits and its organizational system allows corruption to take place, transferring all the blame to the individual also does not reflect corporate responsibility. The distance between these two circumstances is the basis for reassessing the criminal function of fines against SOEs.

The study of corporate accountability in corruption crimes first provides a basis for understanding the relationship between legal entities and management. Pratama and Januarsyah examined the corporate criminal liability system based on the Law on the Eradication of Corruption Crimes. The study found that there is a mixed accountability pattern that allows charges to be directed at corporations and/or management. The discussion is important to explain that mistakes in corporate crimes do not have to stop at individual perpetrators. The scope of the study still places corporations as legal subjects in general and has not distinguished the consequences of criminalization based on the character of company ownership. The influence of fines on SOEs and the issue of parties who ultimately bear the burden of sanctions are not the center of the study. This part distinguishes the current research because attention is directed to the criminal stage after the basis of corporate accountability can be proven (Pratama & Januarsyah, 2020).

The relationship between the accountability of SOEs and their management was discussed in more detail in Kharisma, Putra and Hidayah's research. The problems they studied arose from the possibility of SOEs committing corruption

crimes, as well as from the difficulty of determining the accountability burden between legal entities and the individuals running the company. The research identified several issues with SOE accountability practices. These included the inconsistency of the concept of state finance and disparity in decision-making. The study also addressed the inaccuracy of the concept of fines levied on SOEs. However, the field of study has not progressed to the development of criminal parameters that link corporate benefits, organisational errors, the ability to pay and the consequences of sanctions on public functions. This study addresses this issue by separating the processes of identifying errors and determining criminal consequences (Kharisma et al., 2021).

Including corporate regulation in the National Criminal Code also opens up wider discussions about the future direction of criminal law. Previously, the pattern of accountability and types of sanctions developed through various special criminal laws. These differences pose problems because corporations can face criminal constructions that are not always uniform. Aryaputra and Triwati examined the changes and found that the National Criminal Code builds corporate criminalization more systematically through three elements in the form of acts, mistakes, and penal guidelines. The study provides an important foothold to see the reform of corporate criminal law after codification. However, corporations are still placed in the general category. The difference in character between private business entities and state-owned enterprises and the consequences of sanctions on state assignments has not been the object of special analysis. This problem makes the general criminal framework still needs to be tested when applied to state-owned companies (Aryaputra & Triwati, 2023).

The debate over sanctions against corporations does not only develop through the question of the types of crimes available. The way in which enforcement and the ability to sanction create predictable consequences also determine whether criminalization has deterrence. Auriol, Hjelmeng, and Søreide tested enforcement of 50 corporate liability cases from five European countries. The study compared antitrust violations with bribery and money laundering. The results showed that the predictability and transparency of sanctions tend to be better when there is an integrated legal regime and strong enforcement coordination. Their focus lies on the effectiveness of enforcement and optimal design of sanctions against corporate misconduct. The status of a company as a state-owned enterprise and the possible impact of sanctions on public functions are not a major part of the model. Research now places that aspect as one of the considerations when the proportionality of fines to SOEs is assessed (Auriol et al., 2023).

The effectiveness of fines in changing corporate behaviour is also related to how perpetrators assess the benefits and risks of their actions. Even if the financial threat is significant,

there may still be an incentive to commit a violation if the benefits obtained are greater than the expected costs. Klimczak, Sison, Prats and Torres examined this issue in relation to misconduct in the financial sector. They demonstrated the limitations of a deterrence approach that relies solely on utility and extrinsic motivations. The study also noted that corporate losses due to criminalisation can be passed on to workers and shareholders who were not involved in the offence. The findings help explain why fines are not always synonymous with those who should receive the reproach. The analysis has not been directed at state-owned companies that have ties to public assets and government assignments. The accountability structure between managerial errors and institutional errors is also beyond its main focus (Klimczak et al., 2022).

Before discussing deeply about the problems and how the solutions fit, state of art or previous research are needed to show the novelty of this research. The first previous research conducted by Fabian Teichmann, Chiara Wittmann, and Sonia Boticiu (2023), in their article entitled “Compliance as a Form of Defense against Corporate Criminal Liability,” examine the role of corporate compliance programmes as preventive mechanisms that may mitigate or exclude corporate criminal liability. Their study emphasizes that an effective compliance framework can help prevent corporate wrongdoing and protect corporations from liability arising from employee misconduct (Teichmann et al., 2023). While the present study shares their concern with the relationship between organizational conduct and corporate criminal liability. However, while Teichmann et al. focus primarily on compliance as a defense against corporate criminal liability, the present study develops a differential-integrative criminal model specifically for State-Owned Enterprises (SOEs). This model considers not only organizational accountability but also the recovery of unlawful economic benefits and the personal criminal responsibility of directors, commissioners, and other individuals involved in corporate wrongdoing, while taking into account the institutional characteristics and public functions of SOEs.

Second previous research by Liz Campbell (2018) in the article “Corporate Liability and the Criminalisation of Failure” looks at the development of corporate criminal liability through the ‘failure to prevent’ approach in the United Kingdom, particularly with regards to bribery and aiding the evasion of tax. Campbell explores why it would be advantageous to hold corporations liable for failing to stop certain acts of crime committed within their business. She looks at both the pros and cons of this kind of liability and its effect on due process and extension to other forms of economic crime. In contrast, this study incorporates the personal criminal responsibility of corporate management, and focuses on structural issues within SOEs as one of several dimensions

of institutional accountability. Based on this, the most important difference between the two studies is with regard to the structure and focus of corporate liability (Campbell, 2018). While Campbell explores the failure of corporations to prevent crime as the basis for corporate liability, this study focuses on the consequences of corporate misbehavior based on the nature of the fault, the benefits derived, and the type of SOE involved.

In their 2021 article, "Error in Personam: Confusion in Indonesia's Environmental Corporate Criminal Liability," Andri G. Wibisana, Michael G. Faure, and Raisya Majory chiefly investigate issues arising from the application of corporate criminal liability and the individual criminal liability of corporate officers under Indonesian environmental law. They find that liability is attributed inconsistently, particularly when officers face criminal responsibility solely because of their positions in a corporation, with inadequate attention to their individual culpability. The authors contend that corporate criminal liability must be separated from the criminal liability of corporate officers: the former applies to the corporation as a legal entity, while the latter concerns individuals' personal responsibility when their culpability has been established. By comparison, the present study explores the relationship between corporate and individual accountability in corruption cases involving SOEs through a differential-integrative criminal model (Wibisana et al., 2021). The two studies therefore differ in how they propose accountability should be structured. Whereas Wibisana, Faure, and Majory stress the importance of distinguishing corporate liability from individual liability to avoid wrongly attributing criminal responsibility, the present study combines both forms of accountability while distinguishing institutional responsibility, the recovery of unlawful economic benefits, and the personal responsibility of directors, commissioners, and other individuals involved in corporate wrongdoing.

Paul De Sousa Mendes (2022) explores in his article 'Responsive Regulation, Enforced Self-regulation and Corporate Liability' the potential of regulations that reward companies for taking preventative measures against violations to break the law. He examines responsive regulation and enforced self-regulation within the context of corporate preventive actions against unlawful conduct. He also examines how flexible regulations can be applied to various legal systems, including those which require mandatory prosecution. This study focuses on institutional correction in the context of corporate criminal liability for self-owned entities (SOEs), including implementation of enhanced corporate governance and improvements to the company's compliance function, internal controls, audits and supervisory activities (Mendes, 2022). Because of these activities, the difference between the two studies is mainly in the relation between regulation and criminal law. While in De Sousa Mendes's study the focus is on regulatory

strategies to reward and encourage corporate self-regulation and prevention of wrongdoing, in the present study the focus is on institutional correction, the recovery of unlawful benefits and the personal liability of corporate management.

Emmanuelle Auriol, Erling Hjelmeng, and Tina Søreide (2023) in 'Corporate Criminals in a Market Context: Enforcement and Optimal Sanctions', consider the economic theory and industrial organisation to study the impact of corporate misconduct, the strategies of law enforcement agencies and the determination of appropriate sanctions. The study analyses how corporate misconduct affects competition and the efficacy of corporate enforcement. It studies the implications of different geographical locations of corporate crimes and gives recommendations on how to adjust the strategies of different enforcement agencies. It shows that corporate leniency programmes should be supplemental to and not replace, independent investigations. The current study addresses the degree of proportionality of criminal sanctions against SOEs and the consequences thereof (Auriol et al., 2023). It analyses state owned enterprises, public services, financial means and other institutional aspects of each case. While Auriol, Hjelmeng, and Søreide focus on the optimisation of corporate sanctions in the context of market competition and economic enforcement, the present study develops a differential-integrative criminal model specifically for SOEs, combining personal accountability, economic recovery, and institutional correction to ensure that corporate criminal liability does not obscure the responsibility of individual perpetrators or undermine the continuity of public service obligations.

The series of studies shows that several parts of the problem of corporate criminalization have been explained from different angles. The accountability of legal entities and administrators has been examined through the corruption eradication regime. The special character of SOEs has also been questioned in relation to management errors. The reform of the Criminal Code provides the basis for establishing a more structured corporate criminal justice system. International studies have shown that the effectiveness and distribution of financial sanctions cannot be divorced from incentives or those who ultimately bear the losses. However, the five studies have not brought these elements together in a single criminal model specifically aimed at state-owned enterprises (SOEs). This point places this study in an effort to build a differential-integrative criminal model, by separating personal, economic, and institutional responsibilities. The determination of fines is placed through testing the attribution of criminal acts, corporate benefits, organizational errors, and proportionality that takes into account the impact on public functions (Zuhdi et al., 2026).

The focus of the research is not directed to provide criminal immunity to SOEs or transfer all corporate faults to the management. The problem

to be tested is in the legal way of determining the party who receives the reprimand and the form of legal consequences that are in accordance with the source of the error (Zuhdi et al., 2025a). SOEs can still be held accountable if criminal acts are committed in their interests or are born from organizational failure. At the same time, directors or managers who commit, order, approve, allow, or benefit from corruption should not take refuge behind the payment of fines by companies. This study aims to assess the implementation of criminal fines against SOEs in corruption crimes and formulate a criminal model that is in accordance with the direction of Indonesian criminal law reform. On the basis of this focus, the research problems are directed to: (1) how the implementation of fines against SOEs is assessed based on the purpose of criminal law enforcement; and (2) how to impose penal fines on SOEs within the framework of Indonesian criminal law reform.

B. RESEARCH METHODS

Using normative juridical method, this research has performed a statutory, conceptual and comparative analysis to evaluate the components of corporate criminal liability. This research employs a descriptive-analytical approach. Relevant statutes of different countries, legal doctrines and comparative legal studies have also been included in this analysis. Both primary and secondary data have been used in this research. Interviews with ad hoc judges specializing in corruption cases were the main source of primary data. Relevant statutes, court decisions and other publications were the main sources of secondary data. Researchers employ purposive sampling when interviewing persons. The interview data in this study does not become the main data; rather, it becomes supporting data. Therefore, this study is normative, examining the regulatory level in overcoming problems that occur. Data were collected through library research and structured interviews. These are subsequently analysed using a qualitative descriptive-analytical method involving organising, describing and examining relevant legal materials and interview findings. This is followed by their interpretation to identify legal issues and formulate analytical conclusions (Soekanto, 2007).

C. RESULTS AND DISCUSSION

1. Implementation of Criminal Fines against SOEs in Corruption Offenses and the Objectives of Criminal Law Enforcement

a. SOEs as Subjects of Criminal Law

State-Owned Enterprises (SOEs) occupy a unique position in Indonesia's legal and economic frameworks, as they are treated as separate legal entities from the government, and have the ability to engage in commercial activities. The State owns these enterprises. This legal setup enables SOEs to engage in commercial activities to achieve the State's policy objectives (Padil, 2016).

Legal separation between the State and SOEs is apparent in the regulation of State capital invested in SOEs. Prior to the enactment of Law No. 16 of 2025 which amended Law No. 19 of 2003 on SOEs, the laws recognize and prescribe several legal consequences of the State's separation of its assets and invest them in SOEs. Consequently, the corporate capital of SOEs is legally distinct from the State's assets. This legal framework continues to recognize the legal consequences arising from the separation of State assets from State capital and the legal and regulatory consequences that flow from such a separation.

This separation is important because the assets managed by an SOE as a legal entity cannot be assumed to be the same assets directly managed by the state in the performance of its functions (Horder, 2026). As such, the difference between state ownership and ownership of corporate assets determines the legal obligations of SOEs, particularly in circumstances where corporate assets are exposed to criminal proceedings (Arifin & Muntaqo, 2018).

The form of an SOE also determines the legal and economic obligations of the SOE. In Indonesia, there are two types of SOEs; Persero and Perum. A Persero SOE operates primarily through a corporation with the intent to generate profit. On the other hand, a Perum SOE operates to achieve similar public benefit as a government owned enterprise (Indrawati, 2020). This implies that the objectives of SOEs cannot be interpreted within the context of private commercial enterprises (Hadiati, 2024).

SOEs are required to perform a dual role: meeting public interest and performing commercial functions. This creates complexity in decision-making and allocation of resources within the organization. (Lopes et al., 2025) This creates an opportunity for corruption if business decisions, authority of management and public responsibilities are used for personal gain (Atmasasmita, 2004).

Although capital is legally separated when the state invests in an SOE, the state's interest in the SOE does not cease. The state's interest is present through the ownership of the SOE and the public policy functions assigned to the enterprise. Consequently, a state-owned enterprise manages its business solely for commercial interests and in accordance with the applicable laws (Dahoklory, 2020; Ayu et al., 2026). It is for this reason that the state cannot be treated as the SOE and the individual employees of the SOE in determining the state's criminal responsibility.

Recognizing corporations as subjects of criminal law represents a shift from the traditional view of societas delinquere non potest, and imputes criminal responsibility to natural persons only. In many countries, courts now acknowledge that companies may engage in criminal activity. Criminal acts may stem from the structures and processes of the organization. (Hartono et al.,

2021) Especially relevant to SOEs, decisions affecting operational activities of the entity may involve several layers of the organization, as well as approval processes (Handayani & Hardiyanti, 2025).

This brings into view the effects of criminal fines on SOEs. Fines may impact the SOE's ability to carry out its activities and may disrupt the provision of public services, depending on the SOE's financial situation and the services it provides (Coloay, 2023). More broadly, the question becomes whether it is appropriate to attribute the conduct in question to the corporation and whether the sanction is directed towards the appropriate party (Kamalludin et al., 2025). It may even impact the SOE's ability to meet its investment obligations. Thus, the main concern is not if an SOE can be held liable for a crime, but rather if the conduct in question should be attributed to the SOE and if the attribution is warranted.

Indonesian criminal law has recently recognized more situations where corporations can be found liable. Some statutes pertaining to corruption and money laundering have also imposed criminal liability on corporations. Incorporated entities may be held liable for crimes committed by any individual working on their behalf, within their jurisdiction, or for their benefit (Addinda et al., 2025). This means that it is necessary to evaluate the relationship between the individual's acts and the interests, policies and practices of the corporation (Kristianto et al., 2025).

Corporations owned by the state, or SOEs, are specifically named in Indonesia's new Criminal Code (2023) as entities which can be held criminally liable. Article 45(2) provides that "Corporations and enterprises may be liable to criminal penalties". "Corporation" and "enterprise" include SOEs. Therefore, in accordance with the general principles of statutory interpretation, the courts must give effect to Article 45(2) to the best of their ability to hold SOEs criminally liable, (Latifiani et al., 2022). During the drafting process of the new criminal code (2023) it was argued that criminal liability for SOEs should be expressly stated in order to clarify the limitations to which the state-owned enterprises are subject to (Ayatulloh GH et al., 2026).

Even with the establishment of corporate criminal liability, not every illegal act committed by an SOE employee or manager would be attributed to the corporation. An individual may engage in corrupt activities to enrich himself or herself, but corporate corruption occurs when company policies, decisions or practices bring unlawful benefit to the corporation (Iqbal, 2013; Mahfud et al., 2026). It is, therefore, important to determine if such conduct benefitted the corporation (Fachurrazi, 2025).

As noted above, it would also be necessary to evaluate the extent of the relationship between the individual's act and the organizational structure of the SOE. Relevant

considerations in this regard would be whether the individual acted within the scope of the SOE's business activities, whether the SOE acted with the individual's authority, whether the SOE accepted or tolerated the individual's actions and whether as a result of the individual's actions the SOE obtained unlawful benefit (Rahmat, 2020). Similar considerations are contained in Articles 46-48 of Law No. 1 of 2023 with respect to attribution of responsibility to corporation, and functional and management personnel (Nasution et al., 2025).

When evaluating attribution, the role of directors should also be considered. Directors are responsible for managing and representing the company in accordance with the applicable corporate governance framework, meaning that their decisions may provide evidence of corporate conduct when those decisions are made within their authority and in the interests or operational activities of the SOE. That a director also holds a management position does not, on its own, attribute criminal liability to him or her for acts committed within the company. Individual responsibility depends on the particular facts of each case including the person's participation, knowledge, and involvement (Natalis, 2026).

Similarly, commissioners are not directly managing the day to day business operations of a company. Their role is to oversee and give advice to the directors. As a result, a presumption of a commissioner's criminal liability for acts committed within a company is also unwarranted. Like directors, to attribute liability to commissioners for acts committed within a company, there must be proof that they have participated in, or knowingly aided or abetted, the commission of the act (Muksin, 2023; Natalis & Purwanti, 2025).

Establishing that particular organs of a company have committed a crime requires a detailed analysis to demonstrate each organ's personal contribution and participation in the crime. There are legitimate policy reasons for requiring such an analysis in order to attribute criminal liability to corporate organs.

The Indonesian Criminal Code provides that corporate criminal liability may extend beyond the corporation itself to include functional management, persons giving orders, persons exercising control and beneficial owners, provided that the statutory requirements governing the offence are met. This reflects the principle that corporate and individual responsibility can exist alongside each other, but their respective legal bases must be established independently (Sulistianingsih et al., 2025). Consequently, when imposing a criminal fine on a state-owned enterprise (SOE), it is important not to automatically replace the examination of individual responsibility, particularly when the evidence suggests that the offence was primarily committed for the personal benefit of certain managers or other individuals.

It is also relevant to distinguish corporate from individual responsibility in cases of

corruption and mismanagement of state resources. With regards to state-owned enterprises, reasons must be provided to demonstrate the connection between the defendant's actions, the relevant commercial activities, the state's financial loss, and the person's liability to be charged with the offence.

The nature of state-owned enterprises gives rise to a distinct set of complications in determining an entity's liability for misconduct. Decisions pertaining to corporate liability typically involve evaluation and understanding of the organization's structure, processes and behavior, which may obscure the responsibility of the entity for the misconduct. It may also require clarity and certainty in establishing the elements of a crime, particularly in an SOE environment, to prevent injustice to corporations and ensure accountability of corporations (Zainuddin & Nguindip, 2025).

In Indonesia it is similarly difficult to attribute liability to an entity for the misconduct of its employees, unless it can be demonstrated that the employees, in their individual capacity, committed the offense. The focus should be on establishing corporate liability, in accordance with the applicable standards and norms, rather than determining individual liability of employees within the corporation. This is particularly important in the context of SOEs, where there is a need to strike a balance between ensuring that corporations are held accountable for misconduct and to avoid unjustified corporate liability (Zainuddin & Nguindip, 2025).

When considering liability for the crimes committed by a corporate entity, reasons must be provided to demonstrate the connection between the individual's actions, the commercial activities of the entity, the loss sustained by the state and the liability of the individual to be charged with the offense (Zuhdi et al., 2025b).

Therefore, state ownership should not be seen to grant SOEs immunity from criminal liability. It also should not mean that all acts of employees should be attributed to the SOE. Criminal liability of a corporation should be ascertained in accordance with the attribution principles. The responsibility of directors, commissioners, employees and others in control should be assessed in accordance with their functions and participation (Handoko et al., 2026). The legal doctrines and rules relating to the allocation of criminal liability between the corporation and its employees demonstrate the reasoning for charging an SOE with a particular crime. In specific circumstances, charges may be brought against employees and managers of the SOE. Charges against SOEs are often brought to serve as a deterrent to similar acts by others.

b. Functions, Effectiveness, and Impact of Criminal Fines on SOEs

In contemporary criminal law, fines are considered the sanction most suited to corporations, given that corporations are fundamentally organized to pursue economic gain. Whereas imprisonment can be imposed only on individuals, a fine allows the state to penalize a

corporation directly when it has profited from an offense (Pratama & Januarsyah, 2020).

Fines are also pertinent to recovering public financial losses resulting from corruption. In many corporate corruption cases, the company's gains considerably exceed the penalty imposed on the individual offender. Accordingly, fining the corporation is viewed as a more effective means of ensuring economic accountability for the losses incurred by the state (Lukman et al., 2025). Moreover, this assessment must consider the importance of ensuring that corporate legal frameworks advance genuine economic justice rather than facilitate corporate exploitation. Crucially, achieving doctrinal precision requires a systematic distinction between the legal basis for imposing criminal fines and the legal considerations relevant to determining their exact amount, as these constitute two distinct legal questions that cannot be treated interchangeably. Specifically, the legal basis for the formal attribution of corporate wrongdoing and the establishment of whether an entity meets the threshold for corporate liability based on organisational fault and institutional benefit is anchored in Anti-Corruption Law Number 31 of 1999, Law Number 20 of 2001, Supreme Court Regulation Number 13 of 2016 and the National Criminal Code (Law Number 1 of 2023). Conversely, the determination of the fine amount is a separate normative and empirical assessment requiring dedicated judicial metrics, such as the corporation's net financial capacity, the proportionality of illicit profits acquired, the severity of internal governance failure, and the avoidance of collateral damage to non-commercial public interests. The character of the company, financial capabilities, and functions carried out also determine the consequences that arise after sanctions are imposed. Certain SOEs implement activities that address the needs of the community. These SOEs can also undertake government assignments. Financial resources of the company can be weakened by payment of fines and these can impact on interests that are unrelated to the offense. Consideration of these conditions is not intended to reduce corporate liability, but to ensure that the criminal burden remains proportional to the blame that can be attached to the company.

The choice of sanctions against corporations in the National Criminal Code does not stop at the criminal penalty. Article 120 opens up the possibility of using additional penalties that can touch the profits of the proceeds of criminal acts and the sustainability of the company's activities. This may include seizure of profits, revocation of licenses, stop-doing orders, and other measures affecting an entity's ability to operate as a corporation. The sanctions vary according to the crimes and the effects caused. To some extent, this also shows that the legal response to corporate crimes does not need to be standardized through one form of sanction (Aripkah et al., 2026). This also shows that responses to corporate crimes have shifted

towards recovery, restitution and prevention of repetition (Ramdani et al., 2025).

Raising the level of sanctions against SOEs may prove challenging as the crime which forms the basis of the sanctions has yet to be established. Payment of fines affects the company's financial capabilities. Consequently, it affects cash flow, investments and the company's ability to develop its business and pay dividends. This has tax justice and fiscal equity implications. Financial restrictions may also affect a company's ability to carry out its strategic assignments. This puts the state in an ambiguous position. While the state is the legislator and the court that levies and receives payment of fines, the state, as a capital owner of the SOE, is also subject to the consequences of criminal sanctions imposed on the SOE. As stated by Iqbal (2013), these consequences are not necessarily confined to the legal entities against which the sanctions are imposed.

SOEs are separate legal entities. Consequently, they have different assets, liabilities and rights from the state. This means that the state has to face the consequences of criminal sanctions imposed on SOEs (Flora, 2018). Therefore, it is important to analyze if sanctions on SOEs are truly sanctions on the state. It is clear that sanctioning SOEs may not necessarily achieve the purpose of sanctioning the state. Their will is still carried out through the people in the company structure. The assessment of corporate mistakes therefore needs to look at the functional relationship between the actors and business activities, the interests served by the action, and the benefits received by the company. The approval of the company's organs, neglect, weak supervision, or failure of the prevention system can strengthen the relationship between individual actions and organizational mistakes (Ayatulloh GH et al., 2026). This limit is important because the actions of a manager can be carried out for the benefit of the corporation, but they can also be done solely for personal gain. Imposing both on the corporation in the same way can actually place the company as the party that bears the consequences of the actions that actually harm it (Rozeli & Susila, 2024).

Indonesia's legal framework has actually provided space to distinguish between these liabilities. The Law on the Eradication of Corruption permits the prosecution of corporations and/or their administrators. The National Criminal Code extends liability to individuals in functional positions, those who give orders, those who control, and beneficial owners. Supreme Court Regulation Number 13 of 2016 also provides a basis for assessing corporate wrongdoing and handling the case process. The problem arises at the stage of determining criminal consequences. The available framework has not specifically distinguished the character of SOEs from private corporations when fines are imposed, although both have different ownership structures, sources of payment, service functions, and distribution of consequences.

The measure of the success of the criminal penalty is then not enough to be placed on the nominal amount paid by the company. Criminalization needs to be seen from whether the profits from the crime are successfully withdrawn, losses can be recovered, decision-makers are held accountable, and organizational weaknesses that allow corruption to occur can be corrected. Fines that are large but do not touch illegal profits or people who control the act can lose their preventive function. On the other hand, sanctions that are directed at the source of the error and accompanied by governance improvements are more likely to prevent recurrence. The effectiveness of corporate criminalisation is therefore related to the ability of sanctions to alter incentives and company behaviour, rather than the amount of money entering the state treasury (Schofield-Georgeson, 2020).

Table 1. Corporate Cases Relevant to the Sentencing of SOEs

Corporation	Case/Position	Legal Consequences	Analytical Relevance
PT Nusa Konstruksi Enjiniring Tbk	Udayana University Teaching Hospital Development	The private corporation was prosecuted directly as an offender in a corruption case.	Comparator for the imposition of fines on a private corporation.
PT Nindya Karya (Persero)	Sabang Port Development	Sentenced together with PT Tuah Sejati; the seized proceeds of corruption were credited toward the compensation payment.	Principal example of the problem of sentencing an SOE.
PT Tuah Sejati	Sabang Port Development	Criminal fine, compensation payment, and mechanisms for asset management and remittance of profits.	Demonstrates a combination of fines and asset recovery.
PT Kimia Farma Trading and Distribution	Medical equipment and hospital renovation project	The company's benefits from the offense were ordered to be confiscated and returned to the state.	Demonstrates an orientation toward disgorgement rather than fines alone.

Source: KPK RI corporate case-handling data (KPK, 2026).

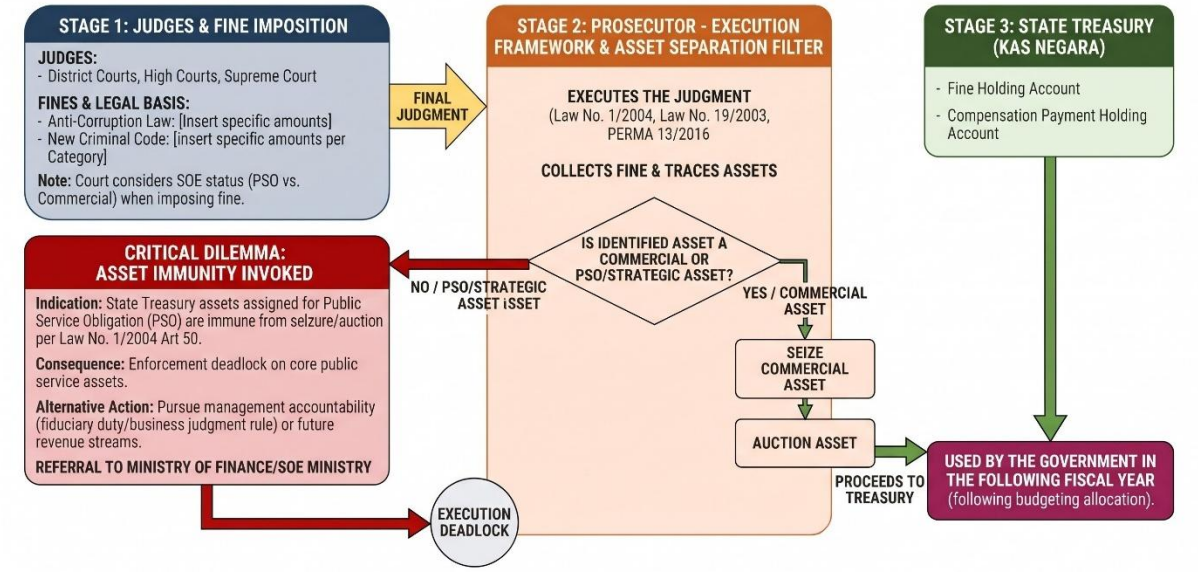
The cases of PT Nusa Konstruksi Enjiniring Tbk, PT Nindya Karya (Persero), PT Tuah Sejati and PT Kimia Farma Trading and Distribution were deliberately selected to illustrate the range of corporate liability and corruption in public procurement. They contrast private entities with state-owned enterprises to show how judicial consequences can differ depending on the institutional structure. As shown in the table, corporate financial accountability does not always end in the payment of fines. In the case of the construction of Sabang Port, for example, the

focus is also on recovering the benefits received by the corporation, confiscating assets, and managing proceeds related to payment obligations. A similar pattern can be seen in the case of PT Kimia Farma Trading and Distribution, where the focus is on depriving the company of the benefits obtained from criminal acts. This method brings criminalisation closer to efforts to eliminate profits born from corruption. Although fines are one of the instruments used, they do not replace the need to trace economic benefits and improve the conditions that allow criminal acts to occur. This approach is more consistent with the principle that criminal acts should not generate profits for perpetrators or corporations that benefit from them (Friedman, 2020).

A different problem arises when the determination of fines enters judicial practice. Based on interviews with ad hoc judges of corruption crimes, corporate fines have not always been the most decisive instrument in recovering state financial losses (Binaji, 2026; Kartika et al., 2024). Attention in judgments is more often directed to compensation and asset confiscation because both can be more directly linked to the results obtained from criminal acts. The determination of fines has not been supported by guidelines providing detailed measures, such as the criminalisation of individual perpetrators. Judges still have considerable discretion because the available minimum and maximum limits do not fully address issues such as corporate benefits, ability to pay, organisational errors and the consequences of sanctions on public services (Hadiputra, 2026).

Problems that are not always visible at the time the verdict is handed down then arise during the execution stage. Once the verdict has obtained permanent legal force, the prosecutor is responsible for paying the fines and can confiscate and auction assets if these obligations are not met (Harkat, 2026). Procedurally, this mechanism provides certainty regarding the implementation of the verdict. However, a profound statutory barrier emerges here: under Article 50 of Law Number 1 of 2004 on the State Treasury, assets belonging to state entities that constitute separate state wealth (kekayaan negara yang dipisahkan) are immune from arbitrary confiscation or public auction if this would disrupt essential public administrative functions or public service obligations. The problem lies with the source of payment and the party who ultimately bears the burden. In SOEs, assets used to pay fines may be related to business activities, government assignments or community services. Therefore, the success of execution cannot be measured simply by the entry of a certain amount of money into the state treasury. The assessment also needs to consider whether the payment reaches the source of the error, protects assets related to public functions and leaves open the possibility of holding management accountable if they are proven guilty.

Figure 1. Process for Executing Corporate Criminal Fines



Source: Author's construction.

The criminal impact of fines begins to be seen when the sanctions enter the company's operational activities. Based on the views of SOE legal practitioners, the payment of fines can affect cash flow, investment plans, project completion, company reputation, access to financing, and the ability to achieve contribution targets to the state. These influences become more sensitive to SOEs that receive government assignments or provide services to the community. The financial burden received by corporations can ultimately reach parties who are not involved in criminal acts, so the distribution due to criminalization needs to be considered in determining sanctions (Buell, 2018). Consideration of these risks cannot be used to exempt SOEs from liability. A fixed assessment must distinguish losses born from reasonable business decisions from losses formed through abuse of authority. Business judgment rules and fiduciary obligations are important to see if decisions are made in good faith, based on adequate information, without conflicts of interest, and in the best interests of the company. That limit prevents ordinary business risks from being treated as a criminal offense while also leaving no room for procurement manipulation, bribery, or personal gain to take refuge behind corporate decisions (Shaheer et al., 2019; Boubakri et al., 2025).

Another problem arises when companies are able to absorb fines as part of the cost of business activities. This kind of situation can reduce the deterrence of criminalization if the profits from corruption are still greater than the consequences that must be paid. The risk becomes greater when the fine is entirely charged to the corporation, while the management who makes the decision still retains the position, remuneration, or benefits obtained from the act. In such circumstances, criminalization does not change the incentives of the party who controls the decision. Fines can actually turn into

institutional costs borne by the company. Prevention requires a closer relationship between sanctions and profit sources. Deprivation of benefits, recovery of state losses, withdrawal of profits received by management, personal accountability, and improvement of the compliance system can be used together to prevent the criminal consequences of stopping the payment of a certain amount of money by corporations (Coffee Jr, 2022).

The findings reveal a more fundamental problem with the criminal application of fines against state-owned enterprises (SOEs). While the legal basis and enforcement mechanism are in place, the amount of fines has not always been determined by a clear relationship between corporate errors, profits received, ability to pay and the impact of sanctions on company operations. Benefits to SOEs, the involvement of corporate bodies, the neglect of violations or serious failures in the supervisory system can all be grounds for placing responsibility at the corporate level. However, the situation is different when criminal acts are committed for the personal benefit of management and the company bears the losses. In these circumstances, focusing the criminal burden on SOEs can distance sanctions from the source of the fault. Therefore, the determination of fines needs to consider who caused the offence, who benefited, and who ultimately bears the consequences of the penalty.

2. Differential-Integrative Criminal Model for SOEs in Indonesian Criminal Law Reform

Challenges exist when assigning criminal responsibility to individuals involved in criminal acts committed through corporations. Financial consequences of such acts are imposed on the corporations. Regarding State-Owned Enterprises (SOEs), special consideration is warranted as the consequences of such criminalization may affect the corporation's assets, negatively impact the business and hindrance the provision of public services. This extends beyond the scope of the question of whether SOEs can be criminally liable. Here, the question is how to allocate criminal responsibility between the corporation and its employees who have committed, authorised or aided the commission of the act.

Distinguishing between individual and corporate responsibility is essential to avoiding a situation in which the imposition of criminal liability on a legal person results in no one being held responsible for wrongdoing in that person. Management decisions and acts by personnel within an SOE may amount to a crime. Corporate policies, the failure of management to exercise proper supervision over personnel or criminal acts by management and/or employees may not represent the interests of the corporation. Therefore, to evaluate whether a particular act by management is criminal, one must consider the interests of the corporation, the policies of the organization and the environment within the organization that permits or encourages criminal behavior to occur.

As far as SOEs are concerned, the reform of corporate criminal liability should entail a specific construction that captures their particular institutional features and avoids carving out exemptions for them from the purview of the criminal law. Differences between SOEs and private companies should be taken into account. SOEs typically operate within ownership structures that include the state and may be required to manage state assets. Public service obligations should not however, warrant that entities or individuals responsible for such misconduct, should be exempt from criminal sanctions. The form and degree of the sanction should take into account the institutional character of the SOE and the nature of the wrongdoing. Thus the law should look first at the source of the wrongdoing and the persons responsible, and only then impose sanctions on the legal entity.

Given the previous analysis, this study has created an alternative model to reform the criminal liability of SOEs in Indonesia, the differential-integrative criminal model. The differential element focuses on the differences in the characteristics of SOEs and private businesses especially with regard to the nature of ownership, function and purpose of the business and the effects of criminal responsibility. The integrative element refers to the three dimensions of responsibility, that is, personal, economic and institutional (Remmelink, 2003). Personal responsibility refers to individuals who commit, authorize or assist in the commission of a crime for personal gain. Economic responsibility refers to the financial consequences that need to be borne by the interests involved in the illicit activity (Suhartati et al., 2018). Lastly, institutional responsibility refers to the correction of weak and defective elements in the organization.

The model does not intend to remove criminal liability of corporations or provide special treatment to SOEs. Rather it intends to allocate criminal responsibility in a particular manner, depending on the nature of the wrongdoing and the parties involved. Thus, it would provide the framework to examine criminal responsibility of SOEs, together with the management's personal responsibility and recovery of the proceeds of the crime. It also provides a starting point to define a systematic way to determine corporate criminal liability and sanctions within the Indonesian legal framework.

a. Differential Models That Integrate Institutional, Economic, and Personal Responsibilities

Private corporations generally bear criminal consequences through their wealth and the interests of their shareholders. The situation is different for SOEs because paying fines can affect state capital, strategic business activities and services provided by the company. While this does not mean that SOEs should receive preferential treatment, it does demonstrate that the type and burden of criminal sanctions must be determined according to the characteristics of the legal entity receiving them (Diamantis & Laufer, 2019). While fines can still be used as a criminal instrument, in SOEs their application cannot be

separated from the consequences that the state and society may experience when the company's financial capacity decreases (Homer & Higgins, 2020).

Fault within a corporate system is not necessarily identical to the economic benefits obtained from a criminal act, nor does corporate wrongdoing automatically replace the individual's fault for making the decision. On this basis, the differential-integrative model in this study is constructed through three interconnected dimensions: institutional, economic and personal responsibility. These dimensions are not mutually exclusive, but provide a framework for determining which consequences of criminal conduct should be attributed to the legal entity and which to the individuals involved. Attributing responsibility therefore requires examining the relationship between the criminal act, the corporation's interests, the benefits obtained, and the organisational conditions that enable wrongdoing.

Institutional responsibility concerns situations in which an SOE's organizational structure or policies encourage or facilitate criminal acts. Responsibility may be attributed to the organization if a crime is committed for the benefit of the organization, is initiated or encouraged by the organization's policies, and is committed with the organization's knowledge and consent or because of the failure of the organization to implement adequate supervisory and preventive measures. For criminal activity to be attributed to an organization it is not sufficient that an employee commits a crime within the organization's environment. It must also be determined if the company gained or expected any benefit from the activity, if the activity was related to the company's business, and if the activity was facilitated by the company. This would differentiate between situations in which a company has committed a crime and cases in which the company has been a victim of managerial misconduct.

Legal consequences for institutional responsibility should focus on correcting issues within the organization that fail to prevent criminal conduct. Improving governance, strengthening compliance functions, and implementing improved prevention mechanisms and other controls can be implemented to address the internal failures of the organization that result in criminal acts. Preventive and corrective measures can be instituted as part of institutional responsibility. Punitive financial sanctions, on the other hand, remain subject to legal proof of a company's criminal liability. Therefore, the prevention and remedial measures associated with institutional responsibility take on a greater importance than the imposition of sanctions.

The economic dimension has a different orientation, as it examines the financial consequences and benefits of crime. Corruption may bring benefits to the company or people related to it, and after the individual perpetrator is convicted these benefits may still remain in the company's or people's control. In this case, the

court must distinguish between these two aspects. Recovery of unlawful benefits and imposition of punitive fines. In this respect, the purpose of criminal sanctions should be to remove the benefits derived from the illegal activity. Compensation may be awarded to victims, and following the removal of economic benefits of crime, the criminal court may impose a monetary fine on the company. Thomas (2021) argues that these two aspects should not be treated as interchangeable.

When determining economic responsibility, illegal benefits attained, the extent to which those benefits remain within the company, the loss resulting from the crime and the financial capacity of the SOE should be taken into consideration. Crime related losses should not be recouped by setting fines on the value of the company's assets. In this regard, it should be taken into consideration that fines may affect the operational capacity of the company to function and compromise the company's ability to provide public services. The impact of such sanctions on the company should also be assessed in relation to the gravity of the offense and the extent of the company's wrongdoing. Financial sanctions should be in proportion to the crime committed, benefits obtained, and potential impact on the company (Transparency International Indonesia, 2022).

Those who engage in, authorize, assist or are willfully blind to crimes are personally responsible. Being employed by a legal entity does not shield individuals from this responsibility. Employees or agents at this level, including directors and commissioners, retain their personal liability. Their individual involvement must be assessed through their actions or orders, what they knew, the benefits they may have received, and their failure to exercise proper control and supervision (Arvante et al., 2025). The distinction between personal and institutional responsibility is important when an individual acts outside his or her corporate authority or uses the corporate entity to pursue personal interests. SOEs should not, in any way, release individuals from liability for crimes they commit or control (Kurniawan & Hapsari, 2022).

Considering all three elements together aids in the assessment of the appropriate criminal consequences. First, it must be ascertained whether the crime was committed by the corporation or the SOE and, if the latter is the case, whether the SOE was used by the individual to commit the crime. Second, the court must determine the financial impact of the criminal fine and the criminally derived proceeds. Third, independent assessments of the personal involvement of directors, commissioners and other employees must be carried out. Based on these assessments the court must determine the criminal sanctions, personal liability of the individuals, and the proper balance of penalties between the individual and the corporation (Abang'a et al., 2022). The need for consistent parameters in this process is also relevant to

preventing differences in assessment among law enforcement institutions (Latipulhayat, 2014; Panjaitan et al., 2024).

These three dimensions demonstrate that the choice between criminalizing SOEs or punishing their administrators represents an overly narrow approach to corporate criminal liability. A single case may involve organizational wrongdoing, economic benefits obtained by the company, and personal misconduct by decision-makers. The legal consequences must therefore correspond to the form and source of responsibility established through the judicial process. SOEs may be required to bear criminal fines when corporate wrongdoing has been proven, recover unlawful benefits, and implement institutional corrective measures, while the management remains subject to personal criminal liability when their individual involvement has been established. This construction maintains corporate accountability without making the legal entity a substitute for the liability of individuals who commit criminal acts (Alfakar et al., 2023).

Table 2. Operational Framework of the Differential-Integrative Criminal Model for SOEs

Dimension	Attribution criteria	Indicators	Proposed legal consequences
Institutional responsibility	Whether the criminal act is attributable to organizational wrongdoing.	Corporate policies, management approval, systematic supervisory failure, organizational benefit.	Corporate criminal sanctions, governance reform, compliance monitoring, independent audit.
Economic responsibility	Whether unlawful economic benefits are obtained or retained.	Illicit proceeds, corporate financial benefits, recoverable assets, resulting losses.	Asset recovery, compensation or payment of replacement money under applicable law, and proportionate criminal fines.
Personal	Whether individuals directly participate in or	Orders,	Individual

responsibility	facilitate criminal conduct.	authorization, direct participation, personal benefits, intentional supervisory failures.	criminal prosecution and personal financial liability according to applicable law.

Source: Author's construction.

b. Normative Lessons from China and Japan for Fine Determination and Criminal Law Reform

Table 3. Comparison of Approaches to Corporate Liability

Country	Corporation	Management/Personnel	Lessons for Indonesia
Indonesia	Corporations may be prosecuted and subjected to criminal fines and additional penalties or measures under the applicable criminal law framework.	Individuals who give orders, exercise control, or act as beneficial owners may be held criminally liable according to their involvement.	Requires specific criteria for attributing corporate wrongdoing and determining proportionate sanctions against SOEs.
China	Units may be held criminally liable for offenses specifically recognized as unit crimes under the Criminal Law, including qualifying state-owned entities.	Persons directly in charge and other directly responsible personnel remain subject to criminal punishment.	Corporate liability must be examined alongside the individual responsibility of decision-makers and directly responsible personnel.
Japan	Legal entities may be fined under specific dual-liability provisions when violations are committed by their representatives, agents, or employees in connection with business activities.	Individual offenders remain subject to criminal proceedings, depending on the applicable statutory provisions.	Parallel liability can preserve individual accountability while recognizing the independent liability of legal entities.

Source: Author's construction based on Alfakar et al. (2023). The comparative analysis of China and Japan also draws on Kong et al. (2022).

An example from China is relevant as it acknowledges unit crime in Article 30 of the Criminal Law of the People's Republic of China. This Article stipulates that organizations, institutions, enterprises and other units can be held criminally liable for offenses where the law

specifically stipulates unit crime. Article 31 provides that such units can be fined and that the person in charge of the unit as well as other personnel directly responsible can also be liable to punishment. This setup clearly establishes unit and individual liability in an offense without treating the legal entity as a proxy for the individual(s) involved (Kong et al., 2022).

An important aspect of this approach is that unit liability and individual responsibility for a given offense are concurrent. In this regard, imposing a fine on a unit does not relieve the responsibility of the persons who made the decision to commit the offense, authorized it or aided in its commission (Mayaka et al., 2024). This is pertinent to SOEs because it allows for the possibility that the unit, through its management, authorized and aided the commission of the offense. Again, the Chinese legal approach suggests that corporates can be held liable and individuals in charge of the units can also be held personally liable for the same offense. Thus, both outcomes should be considered and evaluated based on their legal grounds (Siahaan et al., 2023; Landoni, 2020).

Nonetheless, the Chinese model can't be applied to Indonesia for many reasons. Firstly, the recognition of unit crimes is linked to the legal classification of offenses and the structure of the institution governing corporate crime liability. What is important here is the fact that two different levels of accountability can be attached to the same criminal act, namely the liability of the legal person and the direct responsibility of the personnel. With regards to Indonesian SOEs, whether similar provisions can be crafted to attribute directorial or commissionerial liability to other personnel in a case where such liability is not attributable to the legal entity would deserve further study. Such approach will also address the concern of some scholars that imposing a corporate sanction for corruption committed by a company will be inadequate (Kong et al., 2022).

Japan has a similar approach through provisions in some criminal statutes. Here, a legal person may be held liable for an infraction committed by an employee or agent acting within the scope of employment, while the employee or agent is also personally liable. Like the Chinese unit crime principle, this approach also includes a statutory framework. The Japanese provisions allow courts to attribute liability to both the legal person and the individual person who committed the offense (Wibisana, 2016).

The relevance of the Japanese model to Indonesian SOEs lies in the possibility to continuously associate individual wrongdoing with corporate wrongdoing when crimes are committed through the activities of the corporation. When crimes are formed and committed by a corporation through the intention and act of the management and employees for their personal interests, the legal liability of the corporation should not be absolute. However, to apply the Japanese approach to attribute individual liability and corporate liability to employees of a company, there are legal and practical challenges that need to be addressed. Thus, the Japanese

approach should be used to improve the separation between individual and corporate liability rather than assuming that all employee acts should be considered as crimes of the company (Wibisana, 2016).

Japan and China have different ways of incorporating both corporate and individual liability. Japan has adopted provisions of dual liability in various statutes, while China has incorporated the same principles in their Criminal Law (articles 30 and 31). Regardless of these differences, the general idea in both countries is that the responsibility of individuals who commit crimes through the acts of a legal entity should not be dissolved by the punishment meted on the legal person. These approaches should provide a basis for Indonesia to devise means of separating the attribution of corporate liability from individual responsibility of employees of SOEs, where it is appropriate (Alfakar et al., 2023).

Determining the appropriate criminal consequences for SOEs also requires evaluating the relationship between the crime and the ensuing economic benefits. The economic benefits of a crime can go far beyond the net profits shown on the company's financial statements. The company may have won a contract or project, avoided a loss, or gained access to new business opportunities as a result of acts which later turned out to be criminal. Benefits of this nature may also be derived from a company's subsidiaries, contractors or other third parties (Ruggiero et al., 2022). Therefore, in evaluating benefits of a crime, it is necessary to examine the economic relationship between the crime and the benefits accrued, rather than to look for direct payments to the SOE (Ruggiero et al., 2022).

The amount of a criminal fine is decided by a court and determines, inter alia, the magnitude of the crime, the negative impact on society and the resources available to the entity or person found to be liable. Criminal fines represent a form of punishment, and in addition, act as a deterrent to potential future violations. On the other hand, the payment of replacement money serves to restore financial loss or to recover unlawful benefits suffered by the state. Replacement money does not automatically guarantee the restoration of the state's loss arising from corruption, if the benefits derived from the crime have not been recovered. Conversely, recovery of the unlawful benefits may not obviate the need to impose other penalties on the corporation and those individuals who were found to be liable (Rahmat, 2020; Rahman et al., 2024).

Determining appropriate fines requires consideration of proportionality without giving special treatment to SOEs. Fining a company too little may give little to no deterrent effect if the financial gain from the corrupt activity outweighs the financial consequences imposed on the company. Excessive fines can negatively impact employees and the users of public services. Proportionality therefore, calls for an evaluation of the nature of the wrongdoing as well as the potential impacts of the sanction on the sustainability of the institution (Wu et al., 2024).

Ultimately, this analysis shows that when determining fines for SOEs, it is not sufficient to increase or decrease the amount of financial sanctions. Rather, the definition of such fines requires a legal construction differentiating the wrongdoing of the company, the individual misconduct and the illegal gain. China has legislation to enforce concurrent responsibility of legal persons and individuals while Japan has dual responsibility provisions for crimes committed by a company. These standards can be incorporated within the differential-integrative criminal model to create standards for corporate responsibility, individual responsibility, recovery of the illegally gained gain and proportionality of the criminal fines.

D. CONCLUSION

The application of criminal fines against SOEs in corruption crimes has a basis in the corporate criminal liability system, but its effectiveness cannot be measured only by the amount of fines or the success of the implementation of the decision. The character of SOEs causes the consequences of criminalization to reach the company's wealth, business activities, state assignments, and services to the community. Fines can be used when criminal acts provide benefits to SOEs, are born from organizational errors, or occur due to neglect and failure of company supervision. The situation is different if corruption is carried out for the personal benefit of management and actually harms the company. In these circumstances, the imposition of fines on SOEs can transfer the consequences of individual mistakes to legal entities and public interests that do not constitute criminal acts. The effectiveness of criminal fines against SOEs is thus determined by the accuracy in linking criminal acts, corporate errors, benefits obtained, and parties who ultimately receive the burden of criminalization.

The form of criminalization of SOEs in criminal law reform needs to be built through a differential-integrative model that distinguishes institutional, economic, and personal responsibilities. Institutional responsibility is directed at organizational improvement when criminal acts are related to the policy, structure, or failure of supervision of SOEs. Economic responsibility is directed at the return of benefits from criminal acts through the confiscation of profits, substitute money, and asset recovery. Directors, commissioners, givers, controllers and other parties who commit, approve, permit or obtain personal benefits from criminal acts remain personally responsible. Criminal fines against SOEs are not placed as an automatic consequence, but are determined through the attribution of acts, corporate benefits, organizational errors, ability to pay, and the consequences for public functions. The construction maintains the accountability of SOEs as a corporation without making legal entities a place where management mistakes are transferred or imposing disproportionate criminal consequences on the state and society.

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