

# A Legal Analysis of the Challenges in Proving Mens Rea in Corporate Criminal Cases Involving Environmental Crimes

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## ABSTRACT

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Corporations have become dominant economic actors in the modern era, yet their activities often trigger systemic environmental degradation. Proving the subjective element of mens rea (guilty mind) in corporate entities remains a fundamental challenge in the Indonesian criminal justice system, which traditionally adhere to individual-based fault. Purpose of the Study: This research aims to analyze the juridical obstacles in proving corporate mens rea within environmental crimes and to evaluate the impact of regulatory shifts following the enactment of the Job Creation Law on evidentiary standards. (3) Methods: This study employs a normative juridical method with statutory, conceptual, and case approaches. (4) Results: The findings indicate that proving corporate mens rea is hindered by complex hierarchical structures, information asymmetry, and the "wilful blindness" of directors. Furthermore, redactional changes in Article 88 of the Environmental Protection and Management Law (UU PPLH) via the Job Creation Law have created ambiguity regarding the principle of strict liability. However, Supreme Court Regulation (Perma) No. 13 of 2016 provides a procedural solution through functional indicators such as corporate profit and systematic failure to prevent violations. (5) Conclusions: Effective environmental law enforcement requires a paradigm shift from psychological-human intent to organizational-corporate intent. The integration of environmental forensic audits and the adoption of aggregation theory are essential strategies to penetrate the corporate veil and achieve ecological justice.

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## 1. INTRODUCTION

The development of global industrialization has positioned corporations as dominant economic actors with a massive influence on environmental sustainability. As entities focused on profit accumulation, corporations often engage in production activities that exceed the carrying capacity of ecosystems, thereby triggering systemic environmental degradation (Putri & Sudiarawan, 2020). This

phenomenon carries serious consequences for ecological balance and public health, which are often not fairly compensated.

Doctrinally, classical criminal law adheres to the principle of *actus non facit reum nisi mens sit rea*, which emphasizes that an external act does not render a person guilty unless their mind is also guilty (Sjahdeini, 2017). This principle was originally designed for natural persons (*natuurlijk persoon*) who possess inner consciousness and free will. However, when the scope of legal subjects was expanded to include corporations (*rechtspersoon*), a problem arose regarding how to prove the “contents of the mind” of a fictional entity that possesses neither emotions nor a conscience (Muladi & Priyatno, 2020).

The history of Indonesian criminal law documents a gradual shift in the recognition of corporations as subjects of criminal law. From the 1955 Economic Crimes Act to Law No. 32 of 2009 on Environmental Protection and Management (Environmental Protection and Management Law), Indonesian legislation has opened the door to the criminal prosecution of business entities (Harefa & Nashir, 2025). Although formal legal provisions are in place, law enforcement on the ground often faces challenges due to the highly complex burden of proving the element of fault or *mens rea*.

The main challenge in establishing liability lies in the corporate organizational structure, which is anonymous, hierarchical, and often geographically decentralized (Pravifjayanto, 2025). The functional separation between strategic decision-makers at headquarters and technical implementers in the field creates an opportunity for the board of directors to evade accountability. Often, environmental crimes are viewed as the personal mistakes of low-level employees, while the corporation as the primary beneficiary of economic gains, escapes sanctions (Putri & Sudiarawan, 2020).

A report from the Ministry of Environment and Forestry (KLHK) indicates that the majority of environmental destruction cases, including massive forest fires, involve large corporations (Putri & Sudiarawan, 2020). This underscores that corporate environmental crimes are not merely routine workplace accidents, but are often the result of corporate policies that prioritize cost efficiency over safety standards. Therefore, a legal framework is needed that can accurately attribute the malicious intent of individuals to the collective fault of the organization.

The urgency of this research has increased with the enactment of Law No. 6 of 2023 on the Conversion of the Job Creation Government Regulation in Lieu of Law into Law. There are concerns among academics that the editorial changes to Article 88 of the Environmental Protection and Management Law (UU PPLH) will weaken the principle of strict liability (Manurung & Rusdiana, 2026). If this principle fades, the extremely heavy burden of proving *mens rea* will once again become the primary obstacle for public prosecutors in prosecuting corporations that damage the environment.

In addition to regulatory challenges, law enforcement agencies also face significant information asymmetry between the state and business entities. Corporations have full control over internal documents, operational logs, and other technical evidence that are difficult for investigators to access without competent forensic audit expertise (Agustinus & Arifin, 2025). This often causes legal proceedings to stall at the investigative stage due to a lack of evidence capable of linking the pollution to instructions or acquiescence from top management.

The law enforcement paradigm, which still tends to be anthropocentric, also poses a distinct challenge in the courtroom. Many judges and prosecutors feel more confident in imposing prison sentences on individuals than in imposing heavy fines or disciplinary measures on corporations (Ismaidar, Aldin, & Sihombing, 2025). This mindset hinders the creation of a systemic deterrent effect, as corporations can easily replace executives who have been caught up in legal trouble and continue their environmentally destructive business practices without significant hindrance.

The enactment of Supreme Court Regulation (Perma) No. 13 of 2016 on Procedures for Handling Criminal Cases Involving Corporations is expected to provide a procedural solution to fill gaps in procedural law. This Perma introduces functional indicators to assess corporate liability, such as the generation of profits and the failure of preventive measures (Prestianto, 2021). However, the implementation of this Perma in courtrooms still faces challenges due to varying interpretations among legal practitioners who are not yet familiar with the concept of corporate liability.

Against this backdrop, this study aims to provide a legal analysis of the primary obstacles in proving corporate mens rea in environmental cases. Additionally, this article will evaluate how changes in the national legal landscape following the Job Creation Law have influenced strategies for prosecuting environmental crimes. The findings of this study are expected to provide strategic recommendations for strengthening a more effective and ecologically just environmental criminal justice system in the future.

## 2. METHODS

This study employs a qualitative normative legal research method, specifically library research. The approaches utilized include the statutory approach, the conceptual approach, and the case approach. The statutory approach was conducted by examining the Environmental Protection and Management Law (UU PPLH), the Job Creation Law (UU Cipta Kerja), and the New Criminal Code of 2023, while the case approach focused on significant rulings related to corporate environmental crimes, such as the case of PT Kallista Alam (Isabella & Ravizki, 2024).

The data used consists of secondary data, which includes primary, secondary, and tertiary legal sources. Primary legal materials include legislation and court decisions, while secondary legal materials include legal textbooks, academic journals, and research reports from leading experts (Muladi & Priyatno, 2020) (Sjahdeini, 2017). Data collection was conducted through documentary studies and digital literature searches, the validity of which was then validated based on available primary sources.

Data analysis was conducted qualitatively using a deductive method, which involves drawing conclusions from general statements toward specific ones. The analytical framework employed is based on theories of corporate criminal liability, such as the identification theory, vicarious liability, and the corporate culture model (Lyness, 2023). All findings were then synthesized to address issues regarding the challenges of proving mens rea and the implications of recent regulations on the effectiveness of environmental law enforcement against corporate legal entities.

## 3. FINDINGS AND DISCUSSION

### 3.1. *The Evolution of the Doctrine and Theory of Corporate Liability*

In the realm of criminal law, establishing corporate liability requires a doctrinal framework capable of converting the acts or omissions of individuals into the liability of the entity. The theory of identification, or the “directing mind” doctrine, serves as the foundational principle, under which the actions of senior officials with decision-making authority are deemed to be the actions of the corporation itself (Pratama, 2020). However, this theory is considered too narrow because it often fails to hold the corporation liable when the perpetrator of an environmental violation is a mid-level or lower-level employee whose actions actually provide significant financial benefits to the company (Sjahdeini, 2017).

Alternatively, the doctrine of vicarious liability has increasingly been applied, particularly in cases involving public welfare offenses. This doctrine holds corporations liable for the acts of their employees as long as such acts are performed within the scope of employment or in the interest of the company, without the need to prove the intent of top management (Muladi & Priyatno, 2020). In Indonesia, the application of this doctrine often serves as the basis for prosecution when direct instructions from superiors are difficult to find in written documents.

The most progressive model currently is the Corporate Culture Model, in which criminal intent is found in the policies, procedures, and prevailing ethos within the company. If corporate culture implicitly encourages non-compliance with environmental standards to accelerate production, then the corporation is considered to possess organizational mens rea (Lyness, 2023). This theory is highly effective in exposing the practice of “wilful blindness” often employed by the boards of multinational corporations to avoid personal legal liability.

The Supreme Court, through Supreme Court Regulation No. 13 of 2016, has sought to incorporate these principles by establishing three key indicators of corporate liability (Aripkah, 2020). First, the corporation derives profit or benefit from the criminal act. Second, the corporation allows the criminal act to occur due to the failure of its internal oversight system. Third, the corporation fails to implement adequate preventive measures. These indicators effectively shift the focus of proof from the subjective inner state of individuals toward the observable objectivity of organizational behavior (Prestianto, 2021).

However, the challenge of attributing liability remains significant due to the doctrine of the corporate veil, which is often abused to shift liability to subsidiaries (Agustinus & Arifin, 2025). In complex conglomerate structures, it is often difficult to determine whether an act was committed “on behalf of” the parent company or “by” a local business unit with limited autonomy. This lack of clarity in attribution frequently leads to the prosecutor’s charges being deemed vague (obscur libel) by the court and resulting in an acquittal for the corporate entity.

### **3.2. Legal and Practical Challenges in Proving Malicious Intent**

Proving mens rea in environmental crimes heavily relies on the availability of scientific evidence and highly technical data. In cases of water or soil contamination, prosecutors must not only prove a causal link between corporate waste and ecosystem damage, but also demonstrate that management knowingly disregarded wastewater treatment standards (Isabella & Ravizki, 2024). Often, corporations argue that pollution occurred due to natural factors or the fault of a third party, which requires the presence of costly and scarce opposing experts to refute this in court.

Information asymmetry is the most significant practical obstacle in the investigative process, as corporations have full control over internal documentation such as EIA reports and self-conducted environmental audits. Investigators often lack access to internal correspondence or production log data that may contain implicit instructions to violate regulations in order to cut operational costs (Agustinus & Arifin, 2025). Without written evidence or testimony from a key internal witness (a whistleblower), proving the existence of organizational malice becomes a nearly impossible task for the average investigator.

A multi-layered organizational structure also allows for a breakdown in the flow of information between technical staff in the field and policymakers at headquarters (Pravifjayanto, 2025). Management often defends itself by arguing that it has issued formal compliance instructions, but that it is the field staff who are acting on their own to violate them. The problem is that law enforcement officials often struggle to prove that these compliance instructions are merely a formality (paper compliance) while the production targets imposed force employees to break the law.

Another obstacle stems from the still very limited institutional capacity of law enforcement agencies to address white-collar crimes in the ecological sector. Handling corporate cases requires integration between financial audit capabilities, environmental forensics, and a deep understanding of organizational management dynamics (Ismaidar et al., 2025). The scarcity of trained personnel and the lack of budget to bring in credible expert witnesses often weakens the prosecution’s position, particularly when facing a corporate legal team that is exceptionally strong.

Furthermore, economic pressures and the political influence of large corporations often cast a shadow over the transparency of environmental law enforcement processes. Corporations with massive financial power are able to hire the best legal teams, who are skilled at exploiting procedural loopholes and manipulating the legal system to minimize penalties (Ismaidar et al., 2025). This creates a deep-seated perception of injustice within society, where the law appears to be harsh on those on the ground but lenient toward the giant business entities that are destroying ecosystems.

### 3.3. *The Impact of the Job Creation Law and the 2023 Criminal Code on the Standard of Proof*

The regulatory landscape for corporate liability in Indonesia has undergone significant changes following the enactment of the Job Creation Law (Law No. 6 of 2023). A drafting change to Article 88 of the Environmental Protection and Management Law (PPLH), which removed the phrase “without the need to prove the element of fault,” has sparked debate regarding the continued application of the principle of strict liability (Manurung & Rusdiana, 2026). There are concerns that the removal of this phrase will create a loophole for corporate lawyers to demand that prosecutors prove *mens rea* in every pollution case, which philosophically undermines urgent environmental protection.

Although Article 88 still includes the phrase “strict liability,” the absence of an explicit statement regarding the absence of the burden of proving fault creates interpretive ambiguity for judges. In legal practice, such ambiguity often benefits the defendant based on the principle of *in dubio pro reo* (Pravifjayanto, 2025). If judges revert to the traditional paradigm requiring proof of a corporation’s subjective fault, then efforts to enforce environmental law in Indonesia will suffer a massive regression that threatens ecological sustainability.

On the other hand, the New Criminal Code (Law No. 1 of 2023) brings a breath of fresh air by explicitly recognizing corporations as independent subjects of criminal law (Silitonga, 2026). This national Criminal Code consolidates various concepts of liability that were previously scattered unevenly across various sectoral laws. However, there are harmonization challenges because the New Criminal Code has not yet detailed the technical mechanisms for proving a corporation’s collective intent, leaving it heavily reliant on derivative regulations (Tuju, Maramis, & Aling, 2025).

The regulatory dualism between the Environmental Protection and Management Law (UU PPLH) as *lex specialis* and the New Criminal Code (KUHP) as *lex generalis* has the potential to create legal uncertainty that undermines the evidentiary process. The Environmental Protection and Management Law tends to impose heavier criminal penalties and stricter standards of proof compared to the general provisions in the Criminal Code (Kurniawan & Sari, 2014). Without clear regulatory coordination, these differing standards can be exploited by corporations to weaken the prosecution’s case by seeking loopholes in laws that impose lighter penalties.

Finally, the shift toward treating criminal law as a last resort in the Job Creation Law also impacts strategies for proving criminal intent. Administrative sanctions are now prioritized as the first line of defense, with criminal penalties applied only if administrative sanctions are not complied with (Manurung & Rusdiana, 2026). Indirectly, a history of repeated failure to comply with administrative sanctions can serve as concrete evidence of persistent organizational *mens rea*, proving that the corporation indeed intended to disregard environmental law.

## 4. CONCLUSION

An in-depth analysis of the challenges in proving corporate *mens rea* reveals that the primary issue stems from the inability of classical criminal law doctrine to address the organizational realities of modern business entities. The hierarchical and anonymous structure of corporations effectively serves as a shield for top management to avoid attribution of guilt by claiming mere ignorance or negligence on the part of employees. This challenge is exacerbated by information asymmetry, which makes evidence of criminal intent in internal correspondence difficult to access for state investigators with limited resources.

In addition, the regulatory challenges arising from the Job Creation Law have created ambiguity regarding the principle of strict liability, which has long been the primary instrument in environmental law enforcement. The removal of key phrases in Article 88 of the Environmental Protection and Management Law risks forcing prosecutors to revert to a standard of proof based on subjective fault — a standard that is extremely difficult to meet in cases of widespread ecosystem damage. This threatens

the effectiveness of environmental protection, which should be given absolute priority over short-term economic investment interests.

The issuance of Supreme Court Regulation No. 13 of 2016 has, in fact, provided a new direction through more objective indicators of functional and organizational failures. The focus on economic gain and systemic failures in implementing preventive measures represents a step forward in piercing the corporate veil. However, the effectiveness of this instrument depends heavily on the courage of judges in court to engage in legal discovery and move beyond an anthropocentric paradigm that prioritizes the criminalization of individual directors alone.

The application of the Corporate Culture doctrine and Aggregation Theory must begin to be mainstreamed in criminal judicial practice in Indonesia. By viewing a corporation as a single economic entity, criminal intent no longer needs to be sought in the psychological state of mind of its executives, but rather in the operational policies and work ethic that underlie the company's actions. This step is crucial to ensure that corporations no longer view legal fines as merely "operational costs" that can be offset by illegal profits.

Strengthening the capacity of law enforcement officials in the areas of environmental forensic auditing and corporate management is an absolute prerequisite for successful prosecutions in the future. Prosecution efforts must no longer rely solely on physical evidence gathered in the field, but must be able to uncover the manipulation of internal documents and financial flows that reveal the profit motives behind environmental destruction. Synergy between technical ministries, the police, and the prosecutor's office must be strengthened to counter corporate resources that are often far more extensive than those of the state.

The government and the House of Representatives must immediately harmonize the legislation between the Environmental Protection and Management Law, the Job Creation Law, and the 2023 Criminal Code to eliminate the confusing dual standards of proof. A reaffirmation of the principle of strict liability in environmental criminal procedure law is essential to provide legal certainty for prosecutors in carrying out their duties. Without harmonized and synchronized regulations, environmental law enforcement will remain trapped in unproductive semantic debates that hinder efforts to achieve ecological justice.

Rulings in landmark cases such as PT Kallista Alam demonstrate that legal breakthroughs are entirely possible if judges are strongly committed to the precautionary principle. Failure to provide adequate fire prevention measures or wastewater treatment standards must automatically be interpreted as a form of organizational malice that is subject to criminal prosecution. Such jurisprudence needs to be continuously strengthened and disseminated so that it becomes the standard in every environmental case involving large business entities.

The development of more progressive sanctions, such as the forfeiture of all illegal profits and the requirement to publish court rulings in the national media, can also assist in demonstrating the social impact of crimes. Moral sanctions from society and market pressure are often feared more by corporations than mere nominal fines. Integrating criminal sanctions with regulatory measures will ensure that corporations are held fully and holistically accountable for the environmental damage they cause.

The application of restorative justice for corporations should also be considered as part of a recovery-oriented dispute resolution mechanism. Corporations that demonstrate good faith by voluntarily undertaking environmental restoration prior to a ruling may be granted certain sentencing reductions as an incentive for compliance. However, this mechanism must be implemented transparently and accountably to prevent collusion and ensure that ecosystem functions are fully restored to their original state.

Philosophically speaking, the national legal system must stop viewing corporations as soulless, inanimate objects, but rather as entities possessing an "economic soul" that must be subject to legal norms and public morality. Success in proving corporate mens rea through an organizational approach is the key to achieving ecological justice for future generations. Without strict law enforcement against

business entities, environmental protection in Indonesia will remain nothing more than empty rhetoric amidst the massive exploitation of natural resources.

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