

CRIMINAL LIABILITY OF HOLDING COMPANIES FOR ENVIRONMENTAL CRIMES COMMITTED BY SUBSIDIARIES

Arman Candra^{1*}, Fitri Rafianti²

Magister Ilmu Hukum, Universitas Pembangunan Panca Budi, Medan, Indonesia

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Abstract

The structure of multinational corporations has created fundamental juridical challenges regarding criminal liability. The principle of separate legal personality has traditionally insulated holding companies from liability for environmental crimes committed by their subsidiaries, notwithstanding the parent company's dominant operational and economic control. This research examines how various legal systems address this accountability issue through doctrines such as piercing the corporate veil, vicarious liability, and systemic fault models. Furthermore, this study analyzes the effectiveness of the Indonesian legal framework, specifically the Law on Environmental Protection and Management (UUPPLH, Article 116) and Supreme Court Regulation No. 13 of 2016 (Articles 4(2) and 6), while identifying the causes of implementation gaps. Comparative analysis reveals a global evolution from the restrictive identification doctrine toward a pragmatic organizational fault model. It is found that Indonesia's legal framework is de jure adequate, having adopted functional liability (UUPPLH) and organizational liability (Perma). However, the key finding highlights the absence of de facto jurisprudence due to structural barriers, particularly evidentiary challenges and institutional capacity. In conclusion, this research recommends the adoption of a hybrid prosecution model combining the functional instruments of the UUPPLH and the organizational instruments of Perma 13/2016 as an effective solution to combat holding company impunity.

Keywords: *Corporate Criminal Liability, Holding Company, Environmental Crimes.*

INTRODUCTION

The activities of Multinational Corporations (MNCs), inherently structured through parent-subsidary relationships, have created a fundamental juridical issue. On one hand, corporate law traditionally adheres to the principle of separate legal personality, where each corporation, including a subsidiary, is considered an independent legal entity with rights and obligations distinct from its shareholders, including the holding company (Gireesh et al., 2024). This principle, known as the “corporate veil,” provides essential protection in the form of limited liability, which encourages investment and entrepreneurial risk-taking (Ratna & Banerjee, 2025). On the other hand, economic and operational realities demonstrate that holding companies often possess dominant control over the policies, finances, and operational practices of their subsidiaries. This control creates a “governance gap,” where the entity benefiting most financially and possessing supreme strategic control—namely the holding company—evades legal liability, particularly criminal liability, for large-scale environmental damage caused by its subsidiary's operations.

The tension between the juridical concept of separate personalities and the economic reality of centralized control becomes increasingly apparent in the context of environmental crimes. The impact of environmental damage caused by MNC activities is no longer local but often systemic, transboundary, and carries long-term consequences for ecosystems and future generations (Dube & Rahim, 2025). The scale and severity of this environmental harm necessitate a fundamental re-evaluation of traditional doctrines shielding holding companies from liability. This development prompts a shift in jurisprudential approach, from a limited “entity liability” model, where each company is viewed as an isolated legal unit, to an “enterprise liability” model that better reflects economic realities. The latter model recognizes that a group of companies operating under one centralized control must be treated as a single economic unit for liability purposes, especially regarding vital public interests such as environmental protection (Strik, 2025). The evolution toward corporate criminal liability itself is a lengthy process in legal history. Historically, criminal law based on the concept of individual fault and *mens rea* (guilty mind) did not accept the notion of imposing criminal sanctions on fictitious entities like corporations. However, with the increasing recognition that systemic damage often stems not from a single individual's decision, but from organizational culture, distributed negligence, or structured economic calculations, legal systems in various jurisdictions began developing

new doctrines to establish corporations as subjects of criminal law. The current challenge is how to apply and adapt these principles to complex corporate group structures often intentionally designed to obscure lines of responsibility. This paper aims to conduct a comparative juridical analysis regarding legal doctrines used in various legal systems to impose criminal liability on holding companies for environmental crimes committed by their subsidiaries. Drawing on international legal literature and jurisprudence from common law and civil law jurisdictions, this paper will elucidate the theoretical foundations, application mechanisms, and the strengths and weaknesses of each approach (Dube & Rahim, 2025). This analysis will then serve as a foundation to examine and evaluate the prevailing legal framework in Indonesia, specifically Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) and Supreme Court Regulation (*Perma*) No. 13 of 2016. The analysis will conclude with the identification of implementation challenges in Indonesia and the formulation of policy recommendations to strengthen corporate accountability in preserving environmental sustainability.

Therefore, the primary focus of this research is on the issue of implementation. The juridical issue no longer revolves solely around whether a holding company can theoretically be held liable, but why, *de facto*, this rarely occurs, particularly in the context of environmental crimes. Although various jurisdictions, including Indonesia, have developed relevant legal instruments as regulated in the UUPPLH and *Perma* No. 13 of 2016, the issue of holding company impunity for the actions of its subsidiaries remains a reality. This research thus highlights the need to shift from pure doctrinal analysis to a critical evaluation of hindering factors, whether procedural, institutional, or evidentiary, that cause the ineffectiveness of law enforcement. This research examines several juridical issues, commencing with an analysis of how various legal systems comparatively apply corporate criminal liability doctrines such as piercing the corporate veil, vicarious liability, and systemic fault models to impose liability on holding companies for environmental crimes committed by their subsidiaries. Furthermore, this research outlines how the legal framework in Indonesia, particularly through Law No. 32 of 2009 (UUPPLH) and Supreme Court Regulation No. 13 of 2016, regulates holding company liability mechanisms. Given the gap between legal formulation (*de jure*) and implementation (*de facto*), this research also identifies fundamental challenges—whether evidentiary, institutional, or structural—that hinder the effectiveness of criminal law enforcement against holding companies in Indonesia. Ultimately, this research aims to formulate policy recommendations and the most effective liability model to be applied in Indonesia to strengthen holding company accountability in environmental crimes.

METHOD

This study employs a normative legal research method (*normative-juridical*) by applying several approaches. The statutory approach is utilized to examine and interpret legal norms contained within primary legal materials, specifically Law No. 32 of 2009 (UUPPLH) and Supreme Court Regulation No. 13 of 2016. The comparative approach is employed to analyze various doctrines and holding company criminal liability systems in common law and civil law jurisdictions to gain an understanding of the strengths and weaknesses of each model. Furthermore, the conceptual approach is used to examine in depth the meaning and implications of fundamental doctrines such as *piercing the corporate veil* and *vicarious liability*. The analyzed legal materials encompass primary legal materials in the form of statutory regulations and relevant jurisprudence, as well as secondary legal materials consisting of literature, journal articles, and legal scholars' opinions. All such legal materials are analyzed in a descriptive-qualitative manner to identify legal voids, analyze the gap between *de jure* and *de facto* implementation, and formulate policy recommendations.

RESULTS AND DISCUSSION

The Doctrine of Piercing the Corporate Veil and a Comparative Study of Corporate Legal Liability Systems

The doctrine of piercing the corporate veil is an exceptional judicial remedy employed to disregard the principle of separate legal personality and impose the obligations of a subsidiary directly upon its shareholders, including the holding company (Calleja & Borg, 2016). This doctrine functions as a mechanism to prevent the abuse of the corporate form for unjust purposes or to evade legal liability (Ratna & Banerjee, 2025). In the context of environmental crimes, this doctrine becomes particularly relevant as it realigns economic values and rights imbalanced by the principle of limited liability, by motivating holding companies to instill environmental values into their group governance structures to mitigate their own potential exposure to liability (Calleja & Borg, 2016). The application of this doctrine is not exercised arbitrarily and requires the fulfillment of strict criteria, which are generally recognized across various jurisdictions.

- a. The first criterion is Fraud or Impropriety. This is the most classic ground, where the court will pierce the corporate veil if it is proven that the subsidiary was established or used merely as a “device” or “sham” to commit fraud, evade existing legal obligations, or for other improper purposes (Gireesh et al., 2024).
- b. The second criterion is Alter Ego or Instrumentality. This criterion is met when the holding company exercises such absolute domination and control over the subsidiary's finances, policies, and business practices that the subsidiary has no separate mind, will, or existence (Strik, 2025). Courts will examine various factors to determine the existence of an alter ego relationship, such as common directors and officers, undercapitalization of the subsidiary, failure to observe corporate formalities (such as separate board meetings or record-keeping), commingling of assets between the parent and subsidiary, and the treatment of the subsidiary as a mere department or division of the parent.
- c. The third criterion is Agency. Although difficult to prove without an explicit agency agreement, courts may infer an agency relationship if evidence shows that the holding company effectively exercises day-to-day control over the subsidiary's operations, and the subsidiary acts not for its own interest but as an agent for the parent's interest. The standard of proof for this criterion is generally very high (Gireesh et al., 2024).
- d. The fourth criterion is Public Interest & Justice. An increasing number of jurisdictions, particularly in cases involving mass torts such as environmental damage, are willing to pierce the corporate veil to achieve equitable results and prevent corporate structures from defeating fundamental public policy (Strik, 2025). In cases of environmental crimes harming the broader community, the public interest argument becomes compelling to ensure that the party possessing resources and control—the holding company—cannot abdicate its responsibility (Gireesh et al., 2024).

Furthermore, the doctrine of Vicarious Liability, rooted in the principle of *respondeat superior* (“let the master answer”), states that a principal (in this case, the holding company) can be held criminally liable for unlawful acts committed by its agent (the subsidiary) within the scope of their relationship (Lal, 2023). Although traditionally a doctrine in employment law and tort law, its application to corporate group relationships represents a significant legal development in the attribution of corporate criminal liability. The primary challenge in applying this doctrine to group structures is that a subsidiary is technically not an “employee” of the holding company. Therefore, it is essential to prove the existence of a sufficient control or agency relationship to apply this doctrine. The holding company's ability to control, direct, or significantly influence the subsidiary's policies and actions serves as the juridical basis for attributing criminal liability. This liability is grounded in public policy that the entity benefiting from an activity must also bear the risks and losses arising from such activity, including the risk of criminal law violations (Thompson, 1994).

This doctrine serves as the primary basis for the corporate criminal liability system in the United States, where liability can arise from the actions of employees at any level, provided such actions are performed within the scope of employment and intended to benefit the corporation. In Indonesia, a principle like this doctrine can be found in the UUPPLH, which allows liability to be imposed on parties who “give orders” or act as “leaders” of an activity, which functionally may encompass holding companies directing their subsidiaries' operations (Chairunnisa et al., 2013). In addition, the “Fault via Identity” model (Identification Doctrine) has historically been the dominant approach in common law countries outside the United States. This doctrine, also known as the *alter ego* theory or 'directing mind and will' theory, posits that criminal acts and mental states (*mens rea*) can only be attributed to a corporation if such acts are committed by individuals at the top of the corporate hierarchy—such as the board of directors or senior executive managers—who are considered the “ego,” “center,” or “brain” of the corporation itself (Diamanti, 2023).

However, this doctrine has proven inadequate in addressing the reality of modern multinational corporations. Widespread criticism highlights several of its weaknesses (Diamanti, 2023). First, the doctrine is deemed impractical for large corporations. In large companies with decentralized and fragmented decision-making structures, it is nearly impossible to pinpoint a single individual or small group as the sole 'directing mind and will.' This renders the prosecution of large corporations extremely difficult, as illustrated by the Serious Fraud Office's failure to prosecute Barclays PLC in the UK. Second, the doctrine is assessed as creating perverse incentives. It indirectly encourages top management to insulate themselves from knowledge of risky day-to-day operations so they can claim ignorance. This undermines, rather than strengthens, good corporate governance. Third, the doctrine is viewed as unfair. It creates inequality where it is easier to punish small companies with simple structures than large, complex corporations, even though violations by large corporations may have far more devastating impacts. The failure of the identification doctrine has driven a significant evolution toward the “Fault via System” (Systemic Fault) model, which focuses more on the organization's failure. This development includes several approaches. One is the “Failure

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to Prevent” model. Pioneered by the UK through the *UK Bribery Act 2010* and subsequent legislation, this model creates a new strict liability offense. The corporation is deemed guilty not because of its employee's actions, but because of its own failure to implement “adequate procedures” to prevent the commission of the crime. This approach effectively shifts the focus from seeking individual *mens rea* to an objective evaluation of compliance systems and corporate ethical culture. Additionally, there is the Corporate Culture Model. This approach, closely related to the “failure to prevent” model, states that a corporation can be held criminally liable if its unwritten internal policies, procedures, or practices encourage, tolerate, or implicitly authorize criminal behavior (Aripkah, 2020). Fault is found in the way the organization is managed, the mental climate within it, and its decision-making culture. The legal framework in Indonesia, as regulated in Supreme Court Regulation (Perma) No. 13 of 2016, explicitly adopts elements of this model by requiring judges to assess whether the corporation “allowed the crime to occur” or “failed to take necessary measures for prevention” (Aripkah, 2020).

The evolution from “Fault via Identity” to “Fault via System” marks a pivotal shift in legal thinking regarding corporate criminal liability. It is recognition that in complex organizations, fault is often systemic and organizational, not merely individual. To complete the analysis, the application of these theoretical doctrines to impose criminal liability on holding companies varies widely across jurisdictions, reflecting different legal traditions, public policies, and jurisprudential evolutions. Comparative analysis highlights the approaches taken by key countries in common law and civil law systems, offering a variety of solutions to the problem of corporate group accountability. The following table synthesizes the comparative analysis of key jurisdictions, providing a clear overview of the differences in approaches to holding company liability.

Table 1. Comparative Analysis of Jurisdictions

Jurisdiction	Primary Doctrine	Legal Basis	Key Criteria	Pros & Cons
United States	Vicarious Liability	Jurisprudence (<i>New York Central RR</i>)	Act committed within the scope of employment & for the benefit of the corporation.	Pros: Broad prosecutorial power, effective in entrapping corporations. Cons: Overly broad risks punishing corporations with good compliance programs.
United Kingdom	Identification Doctrine (Reformed) + Failure to Prevent	Jurisprudence (<i>Tesco</i>) & Statute (<i>UK Bribery Act 2010, Economic Crime Bill</i>)	Involvement of “senior managers” (functional); Failure to have “adequate procedures”.	Pros: Focuses on systemic failure, incentivizes compliance. Cons: Old identification doctrine is impractical; new offenses are limited to economic crimes.
India	Absolute Liability + Statutory Liability + Piercing the Veil	Jurisprudence (<i>M.C. Mehta</i>) & Statute (Environmental Laws)	Hazardous activity; Statutory violation; Existence of “effective control” by the parent.	Pros: Robust victim protection in hazardous industries. Cons: Absolute liability is limited to specific scopes; proving effective control can be difficult.
France	Representative & Accomplice Liability	Statute (<i>Code Pénal Art. 121-2, 121-7</i>)	Act committed by a “representative” of the parent; Parent knowingly aids/instructs.	Pros: Clear and structured statutory legal basis. Cons: Burden of proof for accomplice liability is extremely high.
Netherlands	Sphere of the Corporation	Statute (<i>Penal Code Art. 51</i>) & Jurisprudence (<i>Drijfmet</i>)	Act occurs within the corporation's “sphere”, including “acceptance” (failure to prevent).	Pros: Highly pragmatic, flexible, focuses on organizational negligence. Cons: Flexibility may lead to legal uncertainty.
Indonesia	Functional & Organizational Liability	Statute (<i>UUPPLH Art. 116</i>) & Regulation (<i>Perma 13/2016 Art. 4(2), 6</i>)	Role as “order giver”; Benefiting, allowing, or failing to prevent.	Pros: Modern and comprehensive legal framework on paper. Cons: Not yet extensively tested in complex corporate group jurisprudence; potential implementation gaps.

Countries with a common law tradition have been the locus for the development of corporate criminal liability doctrines, albeit with vastly differing results. In the United States, the legal system adopts the most expansive and pro-prosecution approach through the application of a broad vicarious liability doctrine, based on the principle

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of *respondeat superior*. Based on the precedent established in *New York Central & Hudson River Railroad Co. v. United States*, a corporation can be held criminally liable for illegal acts committed by its employees at any level, provided two conditions are met: (1) the act is performed within the scope of employment of the employee, and (2) the act is, at least in part, intended for the benefit of the corporation (Anindito, 2017). This model grants immense authority to prosecutors to charge corporations, including holding companies, if it can be proven that the subsidiary's actions functionally fell within the "employment" scope and were for the "benefit" of the corporate group. Its weakness lies in the frequent criticism that this model potentially punishes corporations that possess strong compliance programs but failed to prevent violations by a rogue employee.

Meanwhile, the United Kingdom and Canada have historically adhered to the more restrictive identification doctrine ('directing mind and will'). As affirmed in the case of *Tesco Supermarkets Ltd v Natrass* in the UK, the threshold for proving that an executive is the "brain" of the company is exceedingly high, effectively insulating large and complex corporations from criminal prosecution (Diamanti, 2023). Canada, in the case of *Canadian Dredge and Dock Co. v. The Queen* adopted a slightly more flexible version called the "delegation theory," which allows for a more pragmatic case-by-case inquiry to determine who constitutes the 'directing mind', yet remains limited to the top executive tier (Boisvert, 2002). Recognizing the failure of the identification doctrine, the UK has undertaken significant legislative reform. Through the *UK Bribery Act 2010* and the *Criminal Finances Act 2017*, the UK introduced the offense of "failure to prevent" bribery and the facilitation of tax evasion. Ongoing reforms, driven by criticism from the Law Commission, aim to expand this model to other economic crimes and reform the identification doctrine by redefining who can bind the corporation, from 'directing mind and will' to "senior manager," defined functionally based on roles and responsibilities rather than mere title (Diamanti, 2023). This shift marks the UK's move from a "Fault via Identity" model to a "Fault via System" model.

Countries with a civil law tradition have historically been slower to recognize corporate criminal liability but have developed clear statutory-based frameworks once recognized. In France, the law explicitly regulates corporate criminal liability in Article 121-2 of the *Code Pénal* (French Penal Code). A corporation can be held liable if the criminal act is committed "on their behalf" by "its organs or representatives" (Faqir, 2016). Although the principle of separate legal personality between parent and subsidiary is recognized, French law provides two main avenues for prosecuting holding companies. The first avenue is direct attribution, if it can be proven that the organ or representative of the subsidiary *de facto* acted as a representative of the holding company, for example, due to a direct delegation of authority from the parent. The second avenue is liability as an accomplice (accomplice liability), based on Article 121-7 of the *Code Pénal*, where a holding company can be deemed an accomplice if proven to have knowingly aided, facilitated, or instructed the commission of the crime by its subsidiary. This is a clear legal path but demands a high standard of proof regarding the parent's knowledge and intent (Lasry, 2025).

Furthermore, the Netherlands model is considered one of the most pragmatic and comprehensive. Based on Article 51 of the Dutch Penal Code (*Wetboek van Strafrecht*), criminal liability can be attributed to a corporation if the unlawful act can be "reasonably attributed" to it. The jurisprudence of the Dutch Supreme Court in the *Drijfmest* case (Slurry case) established key criteria that the act must occur within the "sphere of the corporation." This "sphere" condition is assessed based on a set of non-cumulative functional factors, including whether the act was committed by someone working for the corporation, whether the act fits within normal business operations, whether the corporation benefited from the act, and whether the corporation could control the act and "accepted" it. The concept of "acceptance" is interpreted broadly and includes the corporation's failure to take reasonable care to prevent the act (Gelder & Ryngeert, n.d.). This approach effectively creates a basis for liability based on organizational negligence, making it an influential "Fault via System" model.

In conclusion, the comparative elaboration from these various jurisdictions clearly demonstrates that efforts to impose criminal liability on holding companies are a globally evolving juridical response to the complexity of modern business structures. This analysis confirms that there is no single universal model, but rather a spectrum of evolving solutions, ranging from the exceptional piercing the corporate veil, the control-based vicarious liability in the United States, to systemic fault models (such as *failure to prevent* in the UK or 'sphere of the corporation' in the Netherlands). Understanding the strengths and weaknesses of each approach, whether focused on acts, control, or organizational negligence—is crucial. This theoretical and comparative foundation will subsequently be used to deeply analyze the effectiveness of the legal framework in Indonesia, particularly in attributing holding company criminal liability for environmental crimes committed by subsidiaries.

Criminal Liability System of Holding Companies in Indonesia

An analysis of the legal framework in Indonesia reveals a distinct condition. On one hand, statutory regulations, particularly through the initiative of the Supreme Court, have laid a theoretically advanced foundation for corporate group criminal liability. However, on the other hand, existing law enforcement practices and jurisprudence demonstrate a significant gap between legal potential (*de jure*) and the reality of its implementation (*de facto*). This development can be understood as a conceptual progression. While many common law countries still face debates regarding the limitations of the identification doctrine (Diamanti, 2023), Indonesia, through Supreme Court Regulation (Perma) No. 13 of 2016, has directly adopted a model oriented towards organizational or systemic fault. Article 4(2) of the Perma, which focuses on systemic failures such as “allowing” or “failing to take preventive measures,” is conceptually parallel to the “acceptance” criteria in the Dutch model or the “failure to prevent” model in the UK (Aripkah, 2020). Furthermore, Article 6 explicitly opens the door for corporate group liability, a provision often still debated or not clearly regulated in statutes of other jurisdictions. Nevertheless, this sophisticated legal framework has not been matched by strong judicial precedents in environmental criminal cases involving parent-subsidary structures, indicating substantial challenges at the implementation level.

Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) serves as the primary legal basis for environmental criminal law enforcement in Indonesia. This law unequivocally recognizes corporations as legal subjects capable of being held criminally liable (Pravifjayanto, 2025). Two articles within the UUPPLH are particularly relevant in the context of holding company liability. The relevant article is Functional Liability (Article 116). Article 116 paragraph (1) states that if an environmental crime is committed by, for, or on behalf of a business entity, criminal prosecution and sanctions shall be imposed on the business entity and/or the person who gave the order to commit the crime or the person acting as the leader of the activity in the crime. Paragraph (2) further asserts that if prosecution is brought against the order-giver or leader, the criminal penalty may be increased by one-third (Chairunnisa et al., 2013). This provision is crucial as it adopts the “functional liability” model. It is not fixated on formal titles, but rather on function, namely who “gives orders” or “leads activities.” In a group structure, if it can be proven that a director or manager in the holding company gave instructions or led policies causing the subsidiary to pollute, Article 116 paves the way to prosecute individuals at the parent level and, implicitly, the holding company itself as the entity responsible for its leader's actions. This approach bears functional similarities to the vicarious liability doctrine, where control and direction form the basis of liability attribution (Chairunnisa et al., 2013).

Additionally, there is the principle of Strict Liability (Article 88). Although Article 88 explicitly regulates civil liability, the principle it espouses has significant influence on the overall environmental law context. This article states that any person whose actions, business, and/or activities use hazardous and toxic materials (B3), produce and/or manage B3 waste, and/or pose a serious threat to the environment shall be strictly liable for losses incurred without the need to prove fault (Pravifjayanto, 2025). Supreme Court jurisprudence, such as in the *PT Kumai Sentosa* case, has affirmed that strict liability in the civil realm is separate from criminal liability which requires proof of fault (*mens rea*). This means that an acquittal in a criminal case does not automatically nullify civil liability based on strict liability (Jarmoko, 2025). Although not directly applicable to criminal law, the existence of this principle reinforces the norm that companies operating in high-risk sectors bear a heavier burden of responsibility, a sentiment that may influence judicial consideration even in criminal cases.

Supreme Court Regulation (Perma) No. 13 of 2016 regarding Procedures for Handling Criminal Cases by Corporations is a significant legal development. This Perma was enacted to fill a serious procedural legal void in handling corporate criminal cases, providing much-needed procedural and substantive guidance for law enforcement officials and judges (Kristina, 2018). For the issue of holding company liability, two articles in this Perma serve as main pillars. The first pillar is Article 4 paragraph (2) regarding Corporate Fault Criteria. This article is the core of Indonesia's approach to organizational fault. It establishes that in imposing sentences, judges may assess corporate fault based on three alternative criteria: (a) the corporation may gain profit or benefit from the crime or the crime was committed for the corporation's benefit; (b) the corporation allowed the crime to occur; or (c) the corporation failed to take necessary measures to prevent, mitigate greater impacts, and ensure compliance with applicable legal provisions to avoid the occurrence of the crime. This framework firmly adopts the “Fault via System” model (Aripkah, 2020). Criteria (b) and (c) directly point to organizational negligence, namely failure in oversight and compliance, as the basis for declaring corporate fault. This allows prosecutors to no longer struggle to prove the *mens rea* of a 'directing mind', but simply to prove that the corporate governance system (including at the parent level) has failed systematically. However, the weakness of this formulation is its general nature. Terms such as “allowing” or “necessary measures” are not further defined, leaving wide room for interpretation and potentially sparking legal debates (Aripkah, 2020).

The second pillar is Article 6 regarding Corporate Group Liability. This is a highly fundamental and relevant provision. Article 6 states: “*In the event that a criminal act is committed by a corporation involving the parent corporation and/or subsidiary Corporation and/or related Corporation, [they] can be held criminally liable according to their respective roles.*” This Perma even provides a definition of “Parent Company” in Article 1 number 2. This provision provides an explicit and robust procedural legal basis for law enforcers to investigate beyond the subsidiary entity and examine the involvement and role of the holding company. The key phrase “according to their respective roles” invites the court to conduct a functional analysis of the group structure, to determine the extent to which the holding company contributed, whether through active action or omission, to the commission of the crime by its subsidiary.

Despite the advanced legal framework, jurisprudence in Indonesia has not fully realized the potential of the UUPPLH and Perma 13/2016 in the context of holding company criminal liability. A database search through the Supreme Court decision directory yielded not a single landmark case where a holding company was criminally convicted for environmental crimes committed by its subsidiary. The absence of such precedent is a critical finding highlighting an implementation gap. However, several rulings provide indications of judicial thinking direction. One is the ruling regarding the separation of criminal and civil realms (Supreme Court Decision No. 297 PK/Pdt/2024). In the land fire case involving *PT Kumai Sentosa*, the Supreme Court affirmed that an acquittal in a criminal case does not preclude the court from declaring the corporation civilly liable based on the strict liability doctrine (Article 88 UUPPLH) (Jarmoko, 2025). This ruling is vital as it underscores that both liability regimes (criminal and civil) operate on different tracks with different standards of proof. While this strengthens civil law enforcement, it also indirectly highlights the high threshold for proving fault (*mens rea*) which remains a challenge in criminal cases.

Other clues come from the application of criminal liability to corporations in general. Various environmental criminal rulings against single corporations (non-groups) show that courts are beginning to routinely apply criminal sanctions, including additional penalties such as environmental restoration, to corporations as defendants (Harahap et al., 2024). Analysis of legal considerations in these rulings can provide insight into how judges interpret fault criteria in Perma 13/2016, such as how “corporate benefit” or “intent” is proven (Dekky Tiara Pra Setia et al., 2024). This knowledge can be used to predict how future courts will approach cases involving holding companies, where proving the parent's “role” will be central to the argument. Overall, the legal configuration in Indonesia is characterized by a progressive regulatory framework theoretically capable of entrapping holding companies yet faced with a lack of judicial precedent applying it in complex environmental criminal cases. This shifts the analytical focus from the question “is there a legal basis?” to “why has the existing legal basis not been used effectively?”.

Regardless of the theoretically adequate legal framework, the enforcement of criminal liability against holding companies in Indonesia faces a series of significant structural challenges. These challenges explain the gap between law on paper and practice on the ground and serve as a starting point for formulating comprehensive policy recommendations. These structural barriers encompass several aspects. First, evidentiary challenges. This is the most fundamental obstacle. To prove the “role” of the holding company as required by Article 6 of Perma 13/2016, law enforcers must be able to pierce often intricate and transnational corporate structures. This requires detailed proof regarding decision-making flows, financial controls, centralized operational policies, and directives (both formal and informal) flowing from parent to subsidiary. Proving the element of fault (*mens rea*), whether in the form of intent or negligence, at the holding company level is a significant evidentiary challenge, especially if key decisions are deliberately made ambiguous or delegated informally to avoid legal trials (Ismaidar et al., 2025).

Second, limitations in law enforcement capacity. Handling complex corporate crime cases requires cross-disciplinary expertise. Many law enforcement officials—investigators, prosecutors, and judges—lack adequate capacity and resources in forensic accounting, international corporate governance law, and environmental science (Ismaidar et al., 2025). Without this specialized expertise, the investigation and proof process becomes suboptimal, often resulting in cases stalling at the investigation stage or the imposition of lighter sanctions such as administrative sanctions rather than criminal ones (Ismaidar et al., 2025). Third, political and economic influence. Large multinational corporations often possess significant economic power and political influence. This influence can, directly or indirectly, hinder firm law enforcement processes. Concerns about economic impacts (e.g., factory closures and job losses) or political intervention may make law enforcers reluctant to prosecute large corporations criminally, preferring negotiation paths or administrative sanctions deemed less disruptive (Ismaidar et al., 2025). Fourth, legal void in holding company regulation. Although Perma 13/2016 regulates corporate group liability in criminal procedure, Indonesia's substantive corporate law (Limited Liability Company Law) lacks specific and comprehensive regulation regarding holding companies (Chairunnisa et al., 2013). This absence of regulation creates legal uncertainty regarding the boundaries of authority, obligations, and responsibilities of holding companies to

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their subsidiaries and third parties, which can be exploited as a loophole to evade liability (Zulkarnain, 2011). Based on the comparative analysis and identification of challenges above, several steps can be recommended to strengthen law enforcement and ensure holding company accountability in Indonesia. The first recommendation is legislative strengthening. This step includes amending the UUPPLH to explicitly adopt the organizational fault principles regulated in Perma 13/2016. Incorporating criteria such as “allowing crime to occur” and “failure to take preventive measures” into the body of the statute would provide a stronger substantive legal basis, not relying solely on Supreme Court regulations. Furthermore, Indonesia could consider adopting a specific criminal offense of “failure to prevent environmental crime,” inspired by the UK model. This offense would reverse the burden of proof, where a holding company whose subsidiary commits a violation is presumed guilty unless it can prove it implemented “adequate preventive procedures.” Additionally, there is an urgent need to establish regulations specifically governing corporate groups or holding companies, either as a special chapter in the revision of the Limited Liability Company Law (UUPT) or as a separate regulation. This regulation must clarify the fiduciary duties and duty of holding companies in overseeing the environmental compliance of their subsidiaries, especially those operating in high-risk sectors.

The second recommendation is institutional capacity building. This can be achieved through the establishment of specialized multi-disciplinary units within the Police, Prosecution Service, and other relevant agencies (such as the Ministry of Environment and Forestry). This unit should consist of legal experts, forensic accountants, financial analysts, and environmental scientists dedicated to handling complex environmental corporate crime cases. This step needs to be supported by intensive and continuous training programs for judges regarding the application of Perma 13/2016, analysis of multinational corporate structures, and comparative liability models discussed in this report. This will improve the consistency and quality of court rulings. The third recommendation is the adoption of a hybrid liability model in prosecution practice. Based on the comparative analysis, the most effective approach for Indonesia is not to choose one doctrine exclusively, but to strategically utilize the existing legal framework to apply a hybrid model. Prosecutors should be encouraged to build layered indictments combining functional liability based on Article 116 of the UUPPLH—targeting evidence of specific orders or directives from officers in the holding company—with organizational liability based on Article 4(2) of Perma 13/2016, focusing on proving the systemic failure of the holding company to exercise oversight, implement preventive policies, and build a culture of compliance throughout the group. Finally, Article 6 of Perma 13/2016 should be used as the primary procedural instrument to bring the holding company as a defendant in court. This hybrid approach grants flexibility to law enforcers to choose the evidentiary path most likely to succeed based on available evidence in each case. Thus, it can significantly increase the chances of prosecuting the holding company most responsible for environmental damage, and ultimately, close the impunity gap that has existed thus far.

Therefore, it can be concluded that the criminal liability system for holding companies in Indonesia faces fundamental issues at the implementation level. Although the UUPPLH and Perma No. 13 of 2016 have provided an adequate juridical foundation for functional and organizational liability, the absence of jurisprudence convicting holding companies for environmental crimes committed by their subsidiaries indicates that these legal instruments require further deepening and study. This gap between *de jure* potential and *de facto* reality, rooted in evidentiary challenges, institutional capacity, and substantive legal voids, directly creates conditions of impunity for holding companies that should be held accountable. To address this, the adoption of the recommended hybrid prosecution model—combining functional liability instruments (Article 116 UUPPLH) and organizational liability (Article 4(2) and 6 Perma 13/2016)—becomes essential to realize effective environmental law enforcement in Indonesia.

CONCLUSION

Comparative analysis indicates that various global jurisdictions have evolved from restrictive identification-based liability models toward more pragmatic approaches, such as organizational fault models or vicarious liability, to address corporate group accountability issues. In this context, Indonesia's legal framework, underpinned by the UUPPLH and Supreme Court Regulation (*Perma*) No. 13 of 2016, is theoretically classified as advanced. These regulations have laid an adequate legal foundation for functional liability based on Article 116 of the UUPPLH and organizational fault based on Article 4(2) of the Perma, as well as explicitly recognizing corporate group liability through Article 6 of the Perma. However, the primary finding reveals a significant implementation gap, wherein this existing *de jure* legal basis has not materialized into *de facto* jurisprudence convicting holding companies for environmental crimes committed by their subsidiaries. This implementation gap is attributed to fundamental structural barriers, including complex evidentiary challenges to demonstrate parental control, limited technical capacity of law enforcement officials, and a substantive legal void regarding holding company regulations. To

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address this, a strategic approach is required that does not rely on a single doctrine, but rather on the adoption of the recommended hybrid prosecution model. This model combines the functional liability of the UUPPLH with the organizational liability of Perma 13/2016. This hybrid approach, supported by legislative strengthening and institutional capacity building, constitutes a comprehensive solution to address the issue of impunity and ensure holding companies can be held criminally liable for the environmental impacts caused by their business groups.

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