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## Legal Reform of Corporate Criminal Liability Model in the National Criminal Code

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**Abstract:** The National Criminal Code's Criminal Law Reform governs criminal offences perpetrated by, for, and on behalf of the Corporation. Concerning Article 48 of the National Criminal Code, the framework of corporate criminal liability has embraced three models: the Corporation as maker and responsible entity, management as maker and responsible party, and the Corporation as both maker and accountable entity. Simultaneously, imposing fines, supplementary punishments, and sanctions within the National Criminal Code exemplifies utilitarian philosophy, integrating distributive and commutative justice. The practical perspective assesses punishment based on its advantages or utility; in this instance, the punishment aims to deter corporations from engaging in similar actions in the future

**Keyword:** Law Reform, Model, and Corporate Criminal Liability.

### INTRODUCTION

In the contemporary age of globalisation, the trade of goods to satisfy human wants has been structured inside economic activity. These economic activities can be categorised into production, distribution, and consumption (D. Panjaitan, 2023: 106). Rapid economic progress and advancements in science and technology have resulted in deviations in economic operations that effectively lead to various forms of criminal law offences (Fadri, 2010: 4).

The Corporation is a legal body whose existence has significantly contributed to economic growth and national development. Nonetheless, companies occasionally perpetrate criminal offences (corporate crime) that exert a substantial influence (D. Panjaitan, 2023: 106).

Corporations are included as subjects in criminal law because the Criminal Code of 1946 does not govern artificial legal entities or corporations as punishable legal subjects (Alvi Syahril, et.al, 2024: 2). The Criminal Code of 1946 references the creation of legislation in Indonesia using the terms 'every person' or 'naturalised person,' and the article's wording employs the term 'whoever.' Similarly, the term 'citizen' is used in the Criminal Code of 1946, as articulated in Article (Alvi Syahrin, et.al, 2024: 2)

During its development, regulations outside the Criminal Code of 1946 acknowledged corporations as legal entities in establishing criminal provisions. However, management can solely invoke criminal culpability. Several legal formulations indicate that the prosecution of a Corporation is sought against individuals who issue orders to perpetrate the act, those who assume a leadership role in executing the criminal offence, or both. The existing legal framework explicitly grants managers the authority to issue directives to subordinates within the Corporation, who will bear criminal liability.

The legislation concerning the criminal prosecution of corporations was initially established in Law No. 7 of Drt Year 1955, which pertains to the Investigation, Prosecution, and Trial of Economic Crimes. Moreover, Article 15 of the Law on Economic Crime stipulates that 'penalties or actions may also be applied to legal entities, corporations, associations, and foundations.' This rule is essential in economic criminal law because of the prevalence of economic offences committed by these corporations. Contemporary criminal law acknowledges that punishment may be imposed on a legal entity. The Economic Offences Act was derived from the *Wet op de Economische Delicten* in the Netherlands in 1950, establishing corporations as entities subject to criminal law.

Corporations hold economic power independent of the state and profoundly influence social life; therefore, they must adhere to the fundamental ideals of society as delineated by criminal law. The Corporation's liability for criminal offences committed by an individual must conform to established standards, among others:

1. A criminal offence, whether via action or inaction, is perpetrated or mandated by a corporate entity governed inside the corporate framework and possesses the role of the directing mind of the Corporation.;
2. The criminal offence was perpetrated within the scope and intent of the Corporation;
3. The offender perpetrates the criminal offence under the directives of the order giver within the scope of his responsibilities in the Corporation;
4. The criminal offence is perpetrated to confer advantages to the Corporation;
5. The culprit or instigator possesses no reason or rationale for exemption from corporate criminal culpability;
6. In criminal offences necessitating an act (*actus reus*) and a fault (*mens rea*), these elements need not be attributed to a single individual (Alvi Syahrin, et.al, 2024: 2).

The National Criminal Code has amended the law by recognising corporations as entities capable of committing criminal offences, thereby allowing legal and non-legal entities to be held accountable under criminal law. Furthermore, criminal liability may be shared between the Corporation and its management, who occupy functional corporate roles, or solely attributed to the management.

This aligns with Article 46 of the National Criminal Code, which stipulates that a corporate criminal offence is committed by (i) a manager with a functional role within the Corporation's organisational structure or (ii) an individual acting on behalf of the Corporation, whether through an employment relationship or another association, within the Corporation's business scope, either individually or collectively. Additionally, Article 47 of the National Criminal Code states that a corporate criminal offence may also be perpetrated by an order giver, control holder, or beneficial owner who, although external to the organisational structure, possesses control over the Corporation.

Articles 46 and 47 of the National Criminal Code highlight that corporate crime is perpetrated by the Corporation or its representatives (managers, employees, or owners) against the public, the environment, creditors, or competitors. Victims of corporate crime are typically not individuals but rather groups. Such crimes frequently result in abstract victims due to the large, hard-to-identify numbers involved, complicating the issue further (Mahrus Ali, 2013: 16)

The regulation of corporate crime within the National Criminal Code is driven by advancements in finance, economics, and trade, particularly during the era of globalisation and the evolution of organised crime, both domestic and transnational. Consequently, the scope of criminal law must extend beyond natural persons to encompass corporations, defined as organised assemblies of individuals and/or assets, whether legal entities or not (Alvi Syahrin, et.al, 2024: 59).

The legal reform regarding recognising corporations as legal entities is interconnected with the amendments to corporate criminal liability provisions in Book I of the National Criminal Code. Previously, corporate criminal liability was limited to specific offences outside the National Criminal Code; however, it now encompasses general applicability to all criminal offences within and beyond the National Criminal Code (Alvi Syahrin, et.al, 2024: 59). The newly established concept of corporate criminal liability posits that the occurrence of losses resulting in victims will subsequently incur criminal liability (Susanto, 2022). This starkly contrasts the Dutch Criminal Code, which maintains the principle of *sociates delinquent non-potest*, asserting that legal entities or corporations cannot commit criminal offences.

Incorporating corporate criminal liability into the National Criminal Code serves a specific purpose and objective. Consequently, the author aims to elucidate the following: What is the legal reform of the liability model in the National Criminal Code, and what is the legal reform of the corporate punishment model in 2023.

## **METHOD**

This study constitutes normative legal research, specifically library research that analyses bibliographic materials. The research employs conceptual and statutory approaches, which investigate the perspectives and doctrines established in legal scholarship, aiming to uncover ideas that generate legal concepts, notions, and principles pertinent to legal matters. The methodology for sourcing legal materials involves document analysis or library research, entailing the collection of legal resources by examining various types of literature, documents, expert opinions, and articles that elucidate legal concepts (Faisal & Rustamaji, 2021).

## **RESULTS AND DISCUSSION**

### **Legal Reform of Corporate Criminal Liability Model in the Criminal Code 2023**

Legal products in Indonesia are remnants of Dutch colonialism that persist in contemporary state life. Consequently, the current legal framework must reflect social conditions in law enforcement (Asshidiqie, 1998). Legal politics serves as a guide for legislation and a mechanism to evaluate and critique whether enacted laws align with the legal policy framework aimed at achieving state objectives (MD, 2006). The trajectory of legal development should adhere to the principles and ideals outlined in the 1945 Constitution, ensuring that legal evolution corresponds with the anticipated societal progress. Lawrence M Friedman posits that three fundamental pillars underpin legal development: substance, structure, and culture

Legal reform is defined as examining various formulations of legal provisions and legislation in force and implementing several changes to achieve efficiency and justice according to applicable law (Prasetyo, 2017). Legal reform occurs when the bodies of law-forming power, i.e. the judiciary, and law-forming power, i.e. the government and the bodies of legislative power in power or authority in a country, take the necessary steps to enforce the laws and regulations in force in that country with the hope of determining, whether the legal rules and principles contained in the laws and regulations in the country have adequately fulfilled their respective objectives and as a system, whether there are still gaps, whether the system in the system has certain undesirable consequences and whether the system of laws and regulations in force is consistent with international standards that bind the country (Prasetyo, 2017).

Currently, corporations as the subject of criminal offences include legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises or their equivalents, as well as associations both incorporated and unincorporated, business entities in the form of firms, partnership partnerships or their equivalents as determined by law. The definition of corporation in KUHP 2023 is much broader than the definition of corporation in civil law as a legal entity. Subekti defines a legal entity as a body or association that has rights and performs actions like a human being and, has its wealth, can sue and be sued before a judge (Ali, 1999). In civil law, what is considered a legal entity is regulated separately, therefore, in civil law, the subjects are more limited. What corporation means in civil law includes Limited Liability Company (PT), Cooperative and Foundation. At the same time, the Criminal Code Law is not only limited to legal subjects of legal entities but also includes CV, Fa and other civil partnerships.

Article 46 of the National Criminal Code states that corporate criminal offences are criminal offences committed by administrators who have a functional position in the organisational structure of the cooperative or who are based on employment relationships or based on other relationships, either individually or jointly acting for and on behalf of the Corporation or acting in the interest of, within the scope of business and activities of the Corporation individually or jointly. Furthermore, referring to Article 3 of the Supreme Court Regulation on the Procedure for Handling Criminal Cases by Corporations, corporate criminal offences are committed by the commanders, controllers or beneficial owners of the Corporation outside the organisational structure that controls the Corporation. Article 68 of Supreme Court Regulation No. 1 Year 2023 on Guidelines for Adjudicating Environmental Cases states that a corporate offence is a corporate act committed by a person representing the Corporation as long as the act is committed on behalf of and in the interests of the Corporation, which act is unlawful and can be held accountable.

Corporate crime refers to criminal acts perpetrated by employees during their employment, which may benefit the Corporation. Suppose the Corporation permits such criminal acts or fails to implement necessary measures to prevent them. In that case, it may exacerbate the impact and compromise compliance with relevant legal standards to avert criminal offences. Furthermore, corporate criminal offences encompass additional dimensions.

Criminal law delineates that accountability for a criminal offence entails a persistent objective reproach for actions designated as criminal by the law, with the offender being a legal entity deemed to fulfil requisite criteria. Liability pertains to the foundation for imposing sanctions on transgressors. It must be enforced upon violators of criminal law by its stipulations (Erdiansyah, 2015). Criminal responsibility represents the fulfilment of both objective and subjective reproach, enabling the punishment of individuals who commit criminal offences. Moreover, criminal responsibility can only arise from the prior commission of a criminal offence, thus encapsulating the principles that 'there is no punishment without guilt' and 'there is no criminal responsibility without a criminal offence' (Chairul Huda, 2015).

The Criminal Code 2023 designates corporations as criminal entities, establishing a legal framework for holding them accountable for criminal offences. This facilitates the prosecution of corporations for criminal conduct. Furthermore, acknowledging corporations as perpetrators of criminal acts is imperative in the context of globalisation.

By acknowledging a corporation as a subject of criminal offences and its capacity to commit such crimes, the National Criminal Code has established regulations for corporate liability, which were previously absent in the Dutch Criminal Code. Under Article 48 of the National Criminal Code, corporate criminal liability may be invoked to;

- a. Encompassed within the business scope or operations delineated in the articles of organisation and other relevant provisions about the Corporation.
- b. Illegally benefiting the Corporation

- c. Accepted as corporate policy
- d. The corporation did not take the necessary steps to implement prevention measures, prevent greater impacts, and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts; and/or
- e. The corporation allows a criminal offence to occur

The clarification of Article 48 of the National Illegal Code indicates that, depending on the role of the offender in the illegal act, the corporate criminal liability model may have the potential for;

- a. If the 'scope of business or activity' is encompassed under general business operations, then the Corporation undertakes it.
- b. The Corporation is the offender of the criminal act, and the management bears responsibility. Or
- c. The Corporation is the offender and the accountable entity

Consequently, if a criminal offence is perpetrated by and for a corporation, prosecution may ensue, and penalties may be levied against the Corporation itself, its management, or solely its management. Additionally, Article 49 of the National Criminal Code establishes liability for the Corporation if the offence is committed by management in a functional role, the order giver, the controller, and the beneficial owner of the Corporation.

Article 48 of the National Criminal Code delineates three models of corporate criminal liability: the first model identifies the Corporation as both the perpetrator and the liable entity; the second model designates the Corporation as the perpetrator while holding the management accountable; the third model recognises the Corporation as the perpetrator and also as the liable party. Concerning the imposition of criminal liability on corporations, Reksodiputro (Sutan Remy Syahdeni, 2006) identifies three systems: the first system attributes liability to the management as the perpetrator, making them responsible; the second system similarly attributes liability to the management as the perpetrator, with management being responsible; the third system attributes liability to the Corporation as the perpetrator and also as responsible. Furthermore, the formulation of Article 49 of the Criminal Code 2023 employs the term 'persons who have a functional position.' Referring to the provisions in the Law on Environmental Protection and Management (UUPPLH), the explanation of Article 118 indicates that functional actors refer to legal entities or business entities. Consequently, the UUPPLH adopts the theory of functional actors or functional leaders in the context of corporate criminal liability; corporate entities are deemed perpetrators of criminal offences if the prohibited act, for which criminal liability is imposed, is executed by a legal entity in the pursuit of its duties and objectives (Aliansi Nasional Reformasi KUHP, 2015).

The 2023 Criminal Code specifies that 'functional position' pertains to individuals representing the Corporation, indicating that the actual perpetrator is the management in a specific role. Consequently, the Corporation itself is not deemed a functional perpetrator. Article 49 of the 2023 Criminal Code illustrates that the actions and errors attributed to the Corporation are derived from the management's missteps, which possess the authority to act on behalf of the Corporation or serve as its directing mind.

Initially, it is difficult to differentiate the problem in the identification theory from the fault in the functional perpetrator theory. While it is intricate to delineate precisely, a perspective exists about the Corporation's culpability. The identification theory posits that corporate error arises from mistakes made by management within a particular capacity, contributing to the overall corporate error. Consequently, the identification theory supersedes the idea of no punishment without guilt.

The notion of identification parallels the theory of vicarious liability, as both doctrines attribute criminal guilt by invoking the blame of another party. The distinction between the two lies in the identification theory, which primarily focuses on actions undertaken by senior executives.

The doctrine of vicarious liability pertains to actions executed by subordinate employees contingent upon the presence of an employment relationship. Consequently, corporate criminal responsibility under Article 49 of the Criminal Code 2023 employs the identification approach. The application of identification theory in corporate criminal liability is criticised, as this approach is regarded as a legal impediment to prospective corporate criminal accountability. This theory primarily targets corporate management, particularly individuals in senior roles such as directors or high-level managers, as their authority to act on behalf of the Corporation is confined to their positional level. This represents a deficiency in imposing criminal culpability for actions undertaken by corporate representatives, whether within or without the Corporation.

Unlike the functional actor theory employed in UUPPLH, this concept allows for a more expansive withdrawal of corporate criminal culpability, extending beyond individuals in specialised roles, such as senior executives. This differentiates between the identification and functional perpetrator theories, wherein the parameters for abrogating guilt are considerably more expansive. The guilt associated with the Corporation arises from its methodical actions. This systematic action may manifest as collaboration among individuals related to the Corporation, encompassing both conscious and unconscious knowledge, the presence of shared understanding among the majority of the board of directors, or minor errors made by individuals acting on behalf of the Corporation, which, when aggregated, can result in a significant error for the Corporation itself. Therefore, using the functional perpetrator paradigm should expand the parameters for associating actions with the Corporation as a foundation for enforcing corporate criminal culpability.

Justifications and excuses presented by administrators in functional roles, commanders, controllers, and/or beneficial owners of corporations can also be submitted by corporations by Article 50 of the Criminal Code 2023, provided that the rationale is directly connected to the criminal offence attributed to the Corporation. Moreover, the individual assumes a functional role within the Corporation's organisational framework, representing the Corporation or acting in its interests based on employment or other relationships pertinent to the Corporation's operations. In that instance, justification may be presented on behalf of the Corporation.

### **Legal Reform of Corporate Criminalisation Model in the National Criminal Code**

The legislator has determined that the philosophy of punishment, as articulated in the National Criminal Code, encompasses prevention, rehabilitation, conflict resolution, restoration of balance, enhancement of security, and the cultivation of remorse and repentance (Harkrisnowo, 2019). The National Criminal Code emphasises utilitarian rather than retributive philosophy, which is future-oriented and aims to maximise benefits for the majority. However, law enforcement has needed help to move beyond the paradigm of retributive or retaliatory punishment. The articulation of the goal of punishment in the National Criminal Code is directed at judges and law enforcement officers to alter their perspectives on the diverse objectives and functions of punishment, extending beyond mere retribution. Anticipated future expectations represent a shift in thinking that will influence case management in the field (Harkrisnowo, 2018)

The National Criminal Code has established regulations concerning corporations that were not previously addressed in the Criminal Code. Sixteen articles in Book II of the National Criminal Code address regulations about corporations. The provisions include: First, the definition and recognition of the Corporation as a subject of criminal offence (Articles 45, 165, and 182 of the National Criminal Code); Second, regulations concerning corporate criminal offences (Articles 46 and 47 of the National Criminal Code); Third, stipulations regarding corporate criminal liability (Articles 48 and 49 of the National Criminal Code); Fourth, justifications for corporations (Article 50 of the National Criminal Code); Fifth, guidelines for the imposition of

penalties on corporations (Article 56 of the National Criminal Code); Sixth, the sanction system provisions encompassing punishment and actions for corporations (Articles 118, 120, 121, 122, 123, and 124 of the National Criminal Code); Seventh, the rationale for the revocation of prosecutorial authority over corporations (Article 132 of the National Criminal Code).

Sudarto asserts that the law enforcement system operates as a functional activity system comprising several activities supported by state resources. Law enforcement instruments typically refer to entities with authoritative power, primarily the Police and the Prosecutor's Office. Nevertheless, if law enforcement is comprehensively defined as previously articulated, it encompasses the responsibilities of legislators, jurists, governmental bodies, and criminal justice institutions (Sudarto, 1981).

The emergence of corporations as offenders has transformed the punitive system, which previously focused solely on individuals. Corporations' participation in societal affairs has resulted in numerous repercussions for diverse populations. Corporations have markedly advanced economic progress as entities and contributed to national and global development (Aryaputra & Triwati, 2023).

Article 51 of the National Criminal Code delineates the purposes of punishment as follows:

1. Deterring criminal offences by enforcing legal standards aimed at safeguarding the law and society :
2. To rehabilitate the inmates through advice and mentorship to foster their development into constructive and benevolent individuals :
3. Address disputes stemming from criminal activities, reestablish equilibrium and foster a sense of safety and tranquillity within the community :
4. Instill a sense of remorse and alleviate the convict's guilt.

Sanctions prescribed by Article 52 of the National Criminal Code are not designed to degrade human dignity. Judges are required to maintain justice while adjudicating a matter. When legal certainty conflicts with justice in law enforcement, the Judge shall prioritise justice. Moreover, the elucidation of Article 53 of the National Criminal Code indicates that certainty and fairness are legal aims that frequently conflict and are challenging to reconcile in legal practice.

Acting penalties on corporations must adhere to the aims and directives outlined in the National Criminal Code. It must take into account the provisions outlined in Article 56 of the National Criminal Code, among others: a. the magnitude of damage or harm incurred, b. the extent of engagement of the management holding functional positions within the Corporation and/or the responsibilities of the commanders, controllers, and/or beneficial owners of the Corporation, c. the term of the committed criminal offences, d. Frequency of criminal offences by Corporations, e. Nature of guilt in the criminal offence, f. Official Involvement, g. The significance of law and justice that exists within society; h. The Corporation's history, namely the impact of conviction on the Corporation; and/or, g. Collaboration of the Corporation in addressing criminal offences. Collaboration among corporations in addressing criminal offences.

Based on Article 118 of the National Criminal Code, the types of corporate punishment consist of i. principal punishment. ii. additional punishment. According to Article 119 of the National Criminal Code, principal punishment is in the form of fines and additional punishment for corporations. Article 120 of the National Criminal Code consists of a. Payment of compensation, b. Correction of the consequences of the criminal offence, c. Performance of obligations that have been neglected; d. Fulfilment of customary obligations, e. Financing of vocational training, vi. Forfeiture of goods or profits obtained from a criminal offence, f. Announcement of a court judgment, g. Revocation of court judgement, h. Permanent prohibition to perform certain acts, i. Closure of all or part of the place of business and/or activities of the Corporation, j. Suspension of all or all business activities and Corporations, k. Dissolution of the Corporation.

Supplementary penalties, such as the revocation of particular licenses, the closure of the entire Corporation or segments of its business operations, and/or the freezing of all or part of the Corporation's commercial activities, may be enforced for two years similarly if the Corporation fails to impose further penalties such as compensation payments, rectification of criminal offences, execution of ignored tasks, fulfilment of customary duties, or funding of vocational training. In such instances, the Prosecutor may seize or auction the Corporation's assets or income to satisfy the unmet supplementary penalty.

Article 121, paragraph (1) of the National Criminal Code mandates that corporations shall incur a fine of no less than category IV, amounting to IDR 200,000,000.00 (two hundred million rupiahs), unless otherwise specified by law. This article also outlines the imprisoned conversion penalty when a Corporation is found to have committed a punishable criminal offence. Imprisonment not exceeding seven years; the maximum fine for the Corporation is categorised as VI, b. Imprisonment for a maximum of fifteen years; the maximum fine for the Corporation is classified as category VII; or c. The penalties include the death penalty, life imprisonment, or a maximum of twenty years of incarceration; the highest fine for the Corporation falls under category VII.

Assuming the fine remains unpaid within the timeframe established by the Judge by Article 122 of the National Criminal Code. Consequently, the Prosecutor may seize and auction the Corporation's assets to settle the outstanding penalties if the Corporation's assets or revenue are inadequate to settle the fine. In such an instance, the Corporation shall incur a substitution penalty involving either partial or total suspension of its corporate operations. This phrasing aims to preempt the Corporation's hesitance to remit the imposed fine, as is frequently observed in practice.

The imposition of a monetary penalty on the Corporation is deemed the most suitable sanction, as corporeal punishment such as incarceration does not apply to a corporate entity. Imposing fines just on companies is considered inadequate, as the profits gained from unlawful activities are disproportionate to the losses incurred. The criminalisation of corporations remains primarily aligned with the philosophies of retributivism and utilitarianism. Sylvia Rich posits that retributivism predominates the criminalisation of corporations, perceiving them as creatures capable of making moral judgments (Sylvia Rich, 2016)

Besides the imposition of fines and supplementary punishments, corporations may also be subjected to actions, either concurrently with the primary sentence or independently, as permitted by the dual-track system established by the National Criminal Code. According to Article 123 of the National Criminal Code, the sanctions that may be imposed on the Corporation are as follows. a. Acquisition of the Corporation, b. Placement under supervision and/or oversight. c. Location of the Corporation. Article 124 of the National Criminal Code stipulates that additional regulations for implementing penalties and measures for Corporations, as outlined in Articles 118 to 123 of the National Criminal Code, shall be governed by Government Regulation.

The punishment of corporations is no longer aligned with the traditional notion established by the Criminal Code. The legislator's approach to criminalising corporations diverges from the dualistic perspective explicitly embraced by the National Criminal Code. The criminalisation of corporations has focused on blame, corporate criminal liability, and punitive measures against corporations. The corporate penalty model in the National Criminal Code has incorporated the penalties applicable to individuals inside the same code. Consequently, the alignment and coordination of the punitive framework for individuals and corporations within the National Criminal Code have been established. If adhering to the principle of punishment by the Judge.

Imposing fines, supplementary penalties, and sanctions within the National Criminal Code exemplifies utilitarian philosophy, integrating distributive and commutative justice. From a



practical perspective, punishment is evaluated based on its benefits or utility; in this context, it aims to deter corporations from engaging in analogous misconduct in the future. This perspective is prospective and embodies economic liability through fines, restitution for state losses, and asset forfeiture intended for asset recovery (Lilik Mulyadi, 2021).

## CONCLUSION

Recognising a corporation liable for a criminal offence under the National Criminal Code impacts corporate criminal liability. The framework for corporate criminal liability in the National Criminal Code stipulates that: first, if the nature of the business or activity falls within the general business operations of the Corporation, it is deemed to be conducted by the Corporation; second, the Corporation is identified as the perpetrator of the criminal offence; or third, the Corporation is both the perpetrator of the criminal offence and accountable. Consequently, corporate criminal liability is imposed when actions are executed by its management, who hold functional positions, issue directives, exercise control, and are beneficial owners.

The criminalisation of corporations necessitates that judges consider various factors when determining the severity of punishment, including the extent of loss or impact incurred, the degree of individual involvement, the duration of the offence, the nature of guilt, the presence or absence of official complicity, prevailing legal standards, the Corporation's history, the repercussions of punishment on the Corporation, and the level of cooperation from both the Corporation and law enforcement in addressing corporate crime.

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