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# *Shadow Management* and Corporate Criminal Liability in the Palm Oil Export Controversy in Indonesia

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**Abstract:** The development of corporate criminal law in Indonesia demonstrates the need to reconstruct the criminal liability model, which has tended to be oriented towards the formal structure of the company. In law enforcement practice, the determination of those responsible for corporate crimes is generally still based on the formal position of directors, even though in reality, strategic corporate decision-making does not always rest with those administratively listed as managers. This issue becomes increasingly relevant in the case of palm oil exports, particularly those related to Crude Palm Oil (CPO). Palm Oil (CPO), High AC ID Palm Oil Residue (HAPOR), and Palm Oil Mill Effluent (POME), which involves not only product classification and fiscal obligations, but also the identification of the parties who actually control corporate activities. This study aims to analyze the provisions on corporate criminal liability in Indonesian positive law, examining the relevance of the concept of *effective control* in determining the subject of corporate criminal liability, as well as formulating a reconstruction model of corporate criminal liability that is more in line with the development of modern corporate governance. This research is a normative legal research using a statutory approach, a conceptual approach, and a case approach. The legal materials used consist of primary, secondary, and tertiary legal materials analyzed qualitatively using descriptive-analytical and prescriptive methods. The results of the study indicate that the formalistic approach in attribution of corporate criminal liability has limitations because it is not always able to identify parties who have real control over corporate decision-making. The phenomenon of *shadow management* indicates the possibility that the party that actually controls the corporation is outside the formal structure of the company. Therefore, the concept of *effective Control* becomes a more relevant instrument for determining criminal liability by emphasizing a person's actual ability to control a company's policies, operations, and economic benefits. This study concludes that the ideal model for corporate criminal liability is a hybrid model that integrates the company's formal structure with testing of factual control (*effective control). control*), so as to be able to realize legal certainty, benefit, and justice in enforcing corporate criminal law, especially in cases of CPO, HAPOR, and POME exports.

**Keywords:** Corporate Criminal Liability, Effective Control, Shadow Management.

## INTRODUCTION

The palm oil industry is a strategic sector that significantly contributes to Indonesia's national economy. In addition to providing foreign exchange through exports, the industry also plays a role in employment, rural development, and strengthening the supply chain of natural resource-based downstream industries. Indonesia is currently the world's largest producer and exporter of palm oil, dominating the global market share of international vegetable oil trade. This position makes the palm oil sector encompass not only economic dimensions but also complex legal and governance dimensions, as it relates to the country's fiscal interests, international trade, environmental protection, and legal certainty for business actors (BPS, 2024).

The palm oil industry's contribution to state revenue has become increasingly important with the implementation of various fiscal instruments regulating the export of palm oil products and their derivatives. The Indonesian government has gradually developed export duties and export levies as both trade control instruments and funding mechanisms for the national palm oil industry downstreaming program. Through these policies, the government seeks to encourage increased added value for domestic products while maintaining a stable domestic supply of raw materials. In practice, fiscal policy on palm oil products applies not only to *crude palm oil (CPO) but also to other palm oil products. Palm Oil* (CPO), but also various derivative products that have different technical characteristics and economic value (Law 17/2006).

The complexity of these regulations has given rise to various legal issues, particularly regarding the classification of palm oil export products. In recent years, debate has arisen regarding the status and classification of several palm oil derivatives, such as *High AC ID Palm Oil Residue* (HAPOR) and *Palm Oil Mill Effluent* (POME). This debate is not merely administrative but has direct implications for the amount of export levies and the fiscal obligations that exporters must fulfill. On the one hand, the government has an interest in ensuring that all commodities that substantially meet the characteristics of palm oil products are subject to fiscal obligations in accordance with applicable regulations. However, on the other hand, business actors argue that product classification should be based on technical characteristics and international trade standards applicable at the time of export (WCO, 2022).

The problem becomes even more complicated when allegations of product classification errors or manipulation develop into corporate criminal cases. In various cases that arise, law enforcement officials tend to direct the investigation and inquiry process to the company's board of directors, as the formal body administratively listed in the company's documents. This approach is essentially based on the legal construction of companies that places the board of directors as the party responsible for the management and administration of the company. However, this approach often ignores the fact that the formal structure of a company does not always reflect the reality of actual decision-making in modern business practices ( Sjahdeini , 2006).

In contemporary corporate development, particularly in companies that evolved from family businesses or traditional trading companies, operational control of the company often does not rest entirely with the directors formally registered in the company's deed. It is not uncommon to find situations where individuals serving as directors only perform administrative functions, while strategic and operational decisions are made by other parties who do not hold formal positions within the corporate organizational structure. This phenomenon is known in corporate law literature as *shadow directors* . *management* or *shadow director*, namely a party who in fact has the ability to control the direction of company policy even though he is not registered as an official administrator (Davies , 2016).

The existence of *shadow Management issues* pose serious challenges to the corporate criminal liability system. If law enforcement focuses solely on the formal structure of a company, there is a risk that individuals who actually control corporate activities may escape legal accountability. Conversely, those who administratively hold directorships can become subject to criminal prosecution even though they lack actual authority to determine the policies in question. This situation has the potential to create a mismatch between those with legal responsibility *and those* with factual control. *responsibility*). From a modern criminal law perspective, this condition not only disrupts the effectiveness of law enforcement, but also has the potential to harm the principle of substantive justice (Gobert , 2003).

The development of corporate criminal law in various countries shows a shift from a formalistic approach to an effective control-based approach. *control*). This approach emphasizes that determining the subject of responsibility is not sufficient based on the formal position listed in company documents, but must also consider who actually has the ability to control, order, or determine corporate policy. In this context, the concept of *effective Control* is an important instrument for identifying parties who actually obtain economic benefits, control strategic decisions, and have the capacity to prevent or direct the occurrence of unlawful acts (Arlen, 2012).

In the context of the controversy over CPO, HAPOR, and POME exports, the application of an *effective approach Control* becomes increasingly relevant given the characteristics of the palm oil industry, which often involves layered ownership structures, affiliated companies, family relationships, and business control that are not always reflected in formal corporate documents. This approach allows law enforcement officials to more accurately identify the parties who actually play a role in the company's decision-making process, allowing for a more proportional and equitable attribution of criminal liability. Therefore, the reconstruction of the concept of corporate criminal liability based on *effective Control* is an urgent need in order to achieve a balance between legal certainty, legal benefits, and justice in law enforcement against corporations in Indonesia (PERMA 13/2016).

## METHOD

This research is normative legal research that aims to analyze the construction of corporate criminal liability in the context of the discrepancy between the formal corporate structure and actual operational control in palm oil export activities. Normative legal research was chosen because the focus of the study lies in the legal norms governing corporate criminal liability, both contained in legislation, legal doctrine, and legal principles developed in national and international law enforcement practices. This approach allows researchers to identify gaps between applicable law ( *das sollen* ) and the reality of corporate management practices (*das sein* ), particularly in cases involving alleged deviations in the classification of CPO, HAPOR, and POME export products (Marzuki, 2021).

Methodologically, this research uses a statutory approach ( statute) . approach ) as the main instrument in examining various regulations related to corporate management, corporate criminal liability, and the regulation of palm oil commodity exports. This approach is carried out by inventorying and analyzing various relevant legal provisions, including Law Number 40 of 2007 concerning Limited Liability Companies, Law Number 17 of 2006 concerning Customs, Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, and Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations. Analysis of these regulations is important to understand the extent to which the Indonesian legal system has provided a normative basis in determining which parties can be held criminally responsible when a crime is committed by or on behalf of a corporation (Ibrahim, 2019).

In addition to the legislative approach, this research also uses a conceptual approach. This approach is used to examine various concepts and theories developing in corporate criminal law, particularly those related to *corporate crime. criminal liability , identification doctrine , vicarious liability , corporate culture model, shadow management* , and *effective Control* . The use of a conceptual approach is important considering that the problems studied cannot be fully answered solely through a textual reading of laws and regulations. In many cases, corporate control practices develop faster than the development of the regulations that govern them. Therefore, a conceptual approach is necessary to construct legal arguments capable of explaining the relationship between the actual control of a company and the attribution of criminal responsibility to certain individuals within and outside the formal corporate structure ( Dworkin , 1977).

This study also uses a case study approach to understand how the concept of corporate criminal liability is applied in law enforcement practice. The case study approach is conducted through a review of various cases related to alleged violations of the law in palm oil export activities, particularly those involving differences in product classification between CPO, HAPOR, and POME. The case analysis is not directed at assessing the correctness or incorrectness of law enforcement decisions or actions in a particular case, but rather to identify evolving law enforcement patterns in determining the subject of corporate criminal liability. Through this approach, it can be analyzed whether law enforcement officials place more emphasis on the formal structure of the company or have considered parties who have effective control over the business activities in question (Ibrahim, 2019).

The legal materials used in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include all laws and regulations related to corporate governance, corporate criminal law, customs, and regulations on palm oil product exports. Secondary legal materials consist of books, scientific journal articles, research results, and various academic publications discussing corporate criminal liability, corporate governance, *beneficial ownership, and the rights of individuals and businesses. ownership* , and the concept of *effectiveness Meanwhile* , tertiary legal materials in the form of legal dictionaries, legal encyclopedias, and various other supporting reference sources were used to clarify the terminology and concepts used in this study. The use of these three types of legal materials was carried out in an integrated manner to obtain a comprehensive understanding of the research object ( Soekanto and Sri, 2018).

The legal materials were collected through a literature review, identifying, reviewing, and classifying various legal sources relevant to the research problem. This technique was chosen because the research focuses on a normative analysis of the concepts and regulations governing corporate criminal liability. All legal materials obtained were then systematically organized based on discussion themes related to corporate structure, corporate control, palm oil export policy, and the attribution of criminal liability. This classification process aims to ensure that the analysis contains a logical link between legal norms, legal theory, and the facts developing in modern business practices (Amiruddin and Zainal, 2020).

The analysis of legal materials was conducted qualitatively using descriptive-analytical and prescriptive methods. Descriptive analysis was used to describe the positive legal conditions governing corporate criminal liability and the phenomenon of shadow corruption. management in corporate governance practices. Furthermore, an analytical analysis is conducted to test the adequacy of existing legal norms in addressing issues arising from the discrepancy between the company's formal structure and actual factual control. Meanwhile, a prescriptive analysis is used to formulate a legal reconstruction model considered ideal in determining the subject of corporate criminal liability based on an *effective approach. Through* this method, research not only identifies weaknesses in existing law but also offers normative solutions that can serve as a basis for developing corporate criminal law in Indonesia ( Hadjon and Tatiek, 2020).

To sharpen the analysis, this study utilizes the theory of legal objectives, encompassing legal certainty, legal utility, and justice, as its primary analytical tool. These three aspects are used to examine whether law enforcement practices, which have traditionally focused on the formal position of directors, have been able to reflect the objectives of the law in a balanced manner. From a legal certainty perspective, this study examines whether existing regulations provide clear parameters regarding who can be held criminally liable. From a legal utility perspective, this study analyzes the impact of a formalistic approach on the effectiveness of corporate law enforcement. From a justice perspective, this study assesses whether criminal liability has been directed to those who truly played a role in decision-making that gave rise to legal consequences. Through this analytical framework, this study is expected to produce a legal construction that is more responsive to the complexity of modern corporate structures, particularly in the palm oil industry, which is characterized by business controls that are often not fully reflected in formal company documents (Ali, 2015).

## RESULTS AND DISCUSSION

### Regulation of Corporate Criminal Liability in Indonesian Law

The development of modern economic activity has driven a paradigm shift in criminal law, from recognizing only humans as perpetrators of crimes to recognizing corporations as subjects of criminal law. This change is based on the fact that various business activities conducted through corporations have the capacity to cause significant harm to the state, society, and the environment. In this context, limiting criminal liability to individuals is no longer considered adequate to address the complexity of modern economic crimes committed through corporate instruments ( Muladi and Dwidja , 2012).

Corporate criminal liability represents a significant development in modern criminal law. Traditionally, criminal law recognized only individuals as legal entities liable for criminal acts. However, the development of economic activity and the complexity of business organizations have led to the need to recognize corporations as legal entities liable for criminal liability (Hart, 2012).

In the context of Indonesian law, recognition of corporate criminal liability has developed through various laws and regulations, including laws governing corruption, money laundering, and various regulations in the economic and environmental fields ( Muladi and Dwidja , 2012 ). In practice, a corporation can be held criminally liable if a crime is committed by a manager, employee, or other party acting on behalf of or in the interests of the corporation ( Sjahdeini , 2006 ).

Historically, the classical doctrine of criminal law adhered to the principle of societas delinquere non potest , which means a legal entity cannot commit a crime because it does not have the will (mens rea ) like humans. This doctrine developed from the understanding that the element of guilt can only be attached to individuals who have the awareness and ability to be morally responsible. However, developments in global business practices show that various violations of the law are actually committed through well-organized corporate structures, so that criminalizing individuals alone often cannot touch the entities that derive the main benefit from the crime ( Sjahdeini , 2006).

This paradigm shift then gave birth to various theories of corporate criminal liability that have developed in the modern legal system. One of the most influential theories is identification . A doctrine that considers the will and actions of certain individuals within a corporation as the will and actions of the corporation itself. Through this theory, the actions of directors or senior officials with strategic authority can be attributed as corporate actions, thus making the corporation criminally liable. This theory developed primarily in the English legal system and has subsequently influenced various corporate criminal law regimes in various countries, including Indonesia ( Wells , 2011).

The recognition of corporations as subjects of criminal law in Indonesia has developed gradually through various laws outside the Criminal Code (KUHP). Prior to the enactment of the new National Criminal Code, regulations regarding corporate criminal liability were scattered across various sectoral laws, such as the Corruption Law , the Environmental Law , the Trade Law , the Money Laundering Law , and various other economic regulations. This situation indicates that lawmakers have recognized that corporations can be both the means and the primary perpetrators in the commission of certain crimes (Ali, 2017).

The strengthening of the recognition of corporations as subjects of criminal law gained a more comprehensive foundation through Law Number 1 of 2023 concerning the Criminal Code . This provision affirms that corporations are subjects of criminal acts and can be held accountable for acts committed for and on behalf of the corporation. This regulation represents a significant development in Indonesian criminal law, as it is the first time the concept of corporate criminal liability has been systematically recognized in the national criminal code (Articles 45-50 of Law 1/2023).

However, recognizing corporations as subjects of criminal law does not automatically resolve the issue of who should be held accountable when a crime is committed through a corporation. The primary issue lies in determining which individuals can be considered to represent the corporation's will in the decision-making process. In Indonesian law enforcement practice, the determination of responsible parties is still often based on formal positions listed in company documents. This approach is based on the assumption that the board of directors is a corporate organ with full authority to carry out the company's business activities ( Amrani and Mahrus, 2019).

formalistic approach essentially has a strong normative basis because the Limited Liability Company Law places the board of directors as the body responsible for company management. However, in modern business practices, the formal corporate structure does not always reflect the actual decision-making structure. Many companies, particularly family-owned businesses or those that evolved from sole proprietorships, demonstrate a separation between formal management and actual control. In such circumstances, individuals who serve administratively as directors do not necessarily have the ability to determine the company's strategic policies ( Khairandy , 2020).

This issue becomes increasingly relevant in the context of the palm oil industry, which often has a complex ownership structure and involves strong affiliation between capital owners, company directors, and operational controllers. In some cases, business decisions related to production, product classification, marketing, and even export activities are not always made by the directors listed in the company's deed, but rather by other parties who wield dominant influence over the company's operations. If law enforcement focuses solely on formal positions, there is a risk of misattribution of criminal responsibility, which can reduce the effectiveness of law enforcement and lead to injustice (OECD, 2001).

From the perspective of modern corporate criminal law, criminal liability is not solely determined by a person's formal position within an organizational structure, but must also consider the level of influence, authority, and control they have over corporate activities. Therefore, the current development of corporate criminal liability theory is increasingly moving towards the use of an *effective approach. Control* , an approach that emphasizes identifying parties who actually have the ability to control corporate decisions. This approach is important because it can bridge the gap between formal legal structures and the operational realities of companies, which are often more complex than the normative constructs contained in laws and regulations (Arlen, 2014).

Overall, the recognition of corporations as subjects of criminal law must be accompanied by the development of accountability attribution mechanisms that are more adaptive to the dynamics of modern corporate governance. Without an approach capable of identifying the actual controllers of a corporation, the criminal accountability system has the potential to only touch the formal layers of the organization without reaching those who actually direct and benefit from activities that give rise to legal consequences. It is in this context that the concept of *effective control* and *shadow management* becomes relevant for further study as an analytical instrument in determining the subject of corporate criminal liability in Indonesia.

**Problems in Determining Responsibility in CPO, HAPOR, and POME Export Cases**

**a. Dynamics of Palm Oil Export Regulations and the Complexity of Commodity Classification**

The palm oil industry is one of the most dynamic sectors in Indonesia's international trade system. This dynamic is influenced not only by changes in global commodity prices and international trade policies, but also by changes in domestic regulations governing trade systems, export duties, and export levies on palm oil products and their derivatives. In recent years, the Indonesian government has actively adjusted its fiscal policy on palm oil exports as an instrument to maintain domestic price stability, increase added value through downstreaming programs , and optimize state revenue from the plantation sector (Rahardjo, 2020).

These relatively rapid regulatory changes demonstrate the government's responsiveness to global market dynamics, but also pose challenges for businesses in understanding and implementing applicable regulations. One of the most frequently encountered issues concerns the classification of export products. In the international trade system, the classification of goods has significant legal consequences, determining tariff rates, fiscal obligations, administrative requirements, and customs treatment for a commodity. Misclassification not only carries administrative sanctions but, under certain circumstances, can lead to allegations of criminal offenses if deemed deliberate for the purpose of gaining economic advantage (WCO, 2022).

Classification issues become increasingly complex in the palm oil industry due to the highly diverse characteristics of its derivative products, which continue to evolve in line with innovations in processing technology. Unlike primary commodities, which have relatively simple characteristics, palm oil derivatives often fall across a spectrum of technical characteristics that are not always easily distinguished. This situation means that the boundaries between one product and another cannot always be determined solely based on trade nomenclature but require in-depth technical, chemical, and industrial analysis (OECD, 2021).

It is in this context that debates have arisen regarding the status of several palm oil derivative products such as *High AC ID Palm Oil Residue* (HAPOR) and *Palm Oil Mill Effluent* (POME). Normatively, the government has an interest in ensuring that all products substantially equivalent in economic characteristics to crude palm oil are not used as a means to evade applicable fiscal obligations. However, from a business perspective, product classification must be based on objective physical and chemical characteristics in accordance with industry standards and the international trade classification system in effect at the time of export (WCO, 2022).

These differing perspectives demonstrate that the issue of palm oil product classification is not solely a legal issue, but also involves highly complex technical and economic aspects. Therefore, a law enforcement approach that focuses solely on export documents without considering the production process, product characteristics, and regulatory developments has the potential to produce conclusions that do not fully reflect the industry's true reality (Rahardjo, 2006).

**b. The Controversy of CPO, HAPOR, and POME Classification from a Legal and Industrial Perspective**

The controversy surrounding the classification of CPO, HAPOR, and POME is fundamentally rooted in differing interpretations of the nature and economic function of each product. CPO is generally recognized as the primary product extracted from oil palm fruit, possessing high economic value and a key target of various government fiscal policies. Conversely, HAPOR and POME are often positioned as by-products or residues of the processing process, possessing technical characteristics distinct from those of CPO (Pahan, 2019).

In industrial practice, HAPOR generally contains free fatty acids ( free fatty acids). fatty acid ) is higher than CPO, so its use is often limited to specific industrial needs. Meanwhile, POME is essentially liquid waste produced from the processing of fresh oil palm fruit bunches. However, advances in industrial technology have enabled some components in this waste to be reused as raw materials for energy, fertilizer, and other derivative products with economic value (FAO, 2022).

Legal issues arise when there are differing interpretations regarding whether a product is truly HAPOR or POME as claimed by the exporter, or whether it actually possesses substantially equivalent characteristics to CPO. In such situations, determining classification is no longer a purely administrative matter but develops into a matter of proof requiring multidisciplinary analysis. Misunderstanding a product's technical characteristics can potentially result in inaccurate legal attributions , particularly if these classification differences are then used to accuse the state of evading fiscal obligations (World Bank, 2021).

**Table 1. Comparison of Characteristics and Regulations of Palm Oil Products**

| **Aspect** | **CPO (*Crude Palm Oil*)** | **HAPOR (*High Acid Palm Oil*)** | **POME (*Palm Oil Mill Effluent*)** |
|---|---|---|---|
| Product Properties | Crude palm oil is extracted from palm fruit | Palm oil with high levels of free fatty acids | Liquid waste from palm oil processing |
| Functions in Industry | The main raw material for the cooking oil industry and palm oil derivative products | Raw materials for certain industries, usually of lower quality than CPO | Industrial waste that can be processed into energy or derivative products |
| Position in Trading | Indonesia's main export commodities | Derivative products with limited market | Generally not traded as a primary commodity |
| Fiscal Arrangements | Subject to export duties and export levies | May have different tariff treatment depending on classification | Generally not the main object of export levies |
| Potential Legal Issues | Allegations of classification manipulation to lower export duties | Used as an alternative classification in exports | Can be mistaken for certain export products |

From a criminal law perspective, the existence of differing interpretations of a norm or technical definition should be a key consideration in determining whether or not there is an element of fault ( *mens rea* ). If a regulation still leaves room for reasonable interpretation or does not provide clear parameters regarding the classification of a product, then proving the existence of intent to commit a violation of the law becomes more complex. In this situation, the principle of legal certainty requires that the ambiguity of the norm not be immediately imposed on business actors through criminal mechanisms (Hart, 2008).

Furthermore, periodic regulatory changes also need to be considered when assessing an action. It cannot be ignored that the development of technical definitions for palm oil derivatives often follows changes in trade policies and a country's fiscal needs. Therefore, analysis of the legality of an action must be based on the regulatory framework in effect at the time of the action (tempus delicti ), not on subsequent interpretations or provisions ( Radbruch , 1950).

**Table 2. Analysis of Regulatory Gaps in Palm Oil Product Classification**

| Regulatory Aspects | Regulatory Conditions | *Loophole* Potential |
|---|---|---|
| Product Definition | The technical definition of palm oil products is evolving according to industry standards. | Differences in interpretation of product characteristics |
| Export Classification | Export classification system using HS codes | Products with similar characteristics can be placed in different categories. |
| Fiscal Regulation | Export levy rates differ for each type of product. | Economic incentives to classify products in lower tariff categories |
| Policy Developments | Fiscal policy often undergoes adjustments | Uncertainty for business actors in interpreting regulations |
| Law enforcement | Law enforcement often places emphasis on export documents. | Lack of analysis of the production process and technical characteristics of the product |

**c. Problems Attribution of Criminal Responsibility in Corporate Structures**

One of the most fundamental issues in the CPO, HAPOR, and POME export cases is not simply whether product misclassification occurred, but rather who should be held responsible if such violations are proven to have occurred. In Indonesian law enforcement practices, the attribution of criminal liability still tends to be oriented towards the formal corporate structure. Directors are often the first parties held accountable because they are considered to represent the corporation in conducting business activities ( Muladi and Dwidja , 2012).

This approach does have a strong legal basis within the corporate law regime. However, if applied mechanically without considering the actual control structure, it has the potential to create injustice. In many companies, particularly family-owned businesses or those that evolved from traditional trading ventures, certain individuals virtually control all strategic decisions without holding formal positions as directors. Conversely, directors listed in company documents often perform only administrative functions and lack substantive authority in determining business policy ( Khairandy , 2020).

This condition shows that there is a difference between legal control and effective control . Legal control refers to the authority formally granted by law to a company organ, while effective control refers to the authority Control refers to a person's actual ability to influence or determine the direction of corporate policy. In the context of corporate criminal liability, this distinction is crucial because the primary goal of criminal law is not simply to determine who holds a formal position, but rather who actually contributed to the conduct in question (FTAF, 2023).

If investigators, prosecutors, and judges focus solely on corporate documents without examining the actual decision-making patterns, there is a risk that those who actually control the company's activities will be left untouched by the legal process. Conversely, individuals lacking substantive authority could be the ones who bear the full criminal consequences. This situation contradicts the principle of personal criminal responsibility, which requires a link between the act, the wrongdoing, and the responsible perpetrator (Ali, 2017).

From a modern corporate criminal law perspective, identifying responsible parties should not stop at the company's formal structure. Law enforcement needs to trace the flow of instructions, decision-making mechanisms, financial controls, ownership relationships, and the ultimate beneficiaries. owner ), as well as parties who gain economic benefits from the activities in question. Through this approach, criminal responsibility can be directed at the parties who truly have a central role in the occurrence of acts deemed unlawful (OECD, 2001).

Based on the above context, cases related to the export of CPO, HAPOR, and POME actually demonstrate the limitations of the formalistic approach in Indonesian corporate criminal law. The complexity of modern business structures demands a paradigm shift from a position-based approach to an effective control-based approach. control ). This approach will be discussed further as the basis for reconstructing corporate criminal liability that is more in line with the principles of justice, legal certainty, and effective law enforcement.

## *Effective Analysis Control* in Corporate Criminal Liability

### a. Draft *Effective Control* in Modern Corporate Law

The development of corporate law and corporate criminal law at the global level indicates a paradigm shift from a formalistic approach to a substantive approach in determining who is responsible for a corporate action. This shift is driven by the fact that the organizational structures of modern companies are increasingly complex and often do not reflect the actual decision-making center. In many cases, individuals who have dominant influence over company policy are not always listed as directors, commissioners, or controlling shareholders in official company documents. Based on this, the use of formal positions as the sole basis for attributing legal responsibility is seen as increasingly inadequate to address the dynamics of contemporary corporate governance ( Wells , 2011).

In this context, the concept of *effective developed control* , which is an approach that emphasizes a person's actual ability to control, influence, or determine the direction of company policies and activities. In contrast to the concept of formal control which is based on legal status in the organizational structure, *effective Control* assesses power relationships based on the operational realities that exist within a company. Thus, the focus of analysis is no longer on who administratively holds a position, but rather on who actually has the capacity to direct corporate actions (Arlen, 2014).

Conceptually, *effective Control* arose from the need to bridge the gap between a company's legal structure and prevailing business practices. In numerous cases of corporate crime, it has been found that those who derive the greatest economic benefits or provide strategic instructions are actually outside the company's formal structure. If the law only recognizes formal management as the subject of accountability, then those who actually control the corporation have the potential to avoid legal consequences. This situation not only reduces the effectiveness of law enforcement but also opens up room for the abuse of legal entities as instruments of protection against the actual perpetrators (Coffee Jr. , 1981).

*Effective* concept *Control* is also closely related to *the substance over form theory* , which has developed in corporate law and tax law. This theory emphasizes that legal assessments must be based on the actual substance of legal relationships, not solely on the formal form they appear on paper. In the context of corporate criminal liability, this approach requires law enforcement officials to examine not only the company's organizational structure but also how business decisions are made, who gives instructions, who controls financial resources, and who derives the primary benefits from corporate activities (Hart, 2012).

From the perspective of criminal responsibility theory, the *effective approach control* has a strong relevance to the principle of *culpability principle* ). Criminal law essentially requires a connection between the perpetrator, the act, and the wrongdoing. Therefore, a person should only be held accountable if they have actual involvement in the act in question. When an individual without substantive authority is held responsible simply because they hold a formal position, the principle of fault is potentially neglected. In contrast, an *effective approach Control* allows law enforcement to be directed at parties who truly have the ability to prevent, control, or direct the occurrence of an act (Ali, 2017).

In international practice, the concept of *effective Control* has been used in various legal regimes to identify the parties ultimately responsible for the activities of a legal entity. *Financial Action Task Force* (FATF), for example, uses a *beneficial approach Ownership* is used to identify individuals who have actual control over a company even though they are not listed as formal shareholders. A similar approach is also used in various anti-money laundering, anti-corruption, and good corporate governance instruments . *corporate* This demonstrates that modern law increasingly recognizes the importance of distinguishing between formal ownership or management and actual control (FATF, 2023) .

**b. *Shadow* Phenomenon *Management* in Corporate Structure**

The relevance of the concept of *effective control* becomes more visible when associated with the *shadow phenomenon management* . In corporate law literature, *shadow Management* refers to a situation where someone who does not hold an official position in a company is actually able to influence or determine decisions made by the company's formal organs. This individual can be a company founder, a capital owner, a family member of the business owner, a specific consultant, or another party who has a dominant influence on the company's activities ( Keay , 2010).

This phenomenon is very common in family businesses that have evolved into modern corporations. Formally, directors and commissioners may have been appointed in accordance with company law. However, in daily practice, strategic decisions are still determined by the company's founders or certain parties with dominant economic influence. Directors often simply implement predetermined decisions without sufficient freedom to make independent decisions. In such situations, formal positions do not always equate to actual decision-making centers ( Davies , 2016).

In the context of the palm oil industry, this phenomenon is highly relevant. Many palm oil companies evolved from family businesses or business groups with multi-layered ownership structures. It is not uncommon to find situations where decisions regarding production, marketing, exports, and business strategy are made by capital owners or controlling groups who are not listed as directors. In some cases, directors serve only as administrative representatives to fulfill company legal requirements (OECD, 2001).

The existence of *shadow Management* raises serious issues in the attribution of criminal responsibility. If the law focuses solely on formal structures, the individuals who actually control the corporation can hide behind corporate bodies administratively listed as managers. Conversely, formal directors with no real authority can become the ones bearing the entire legal risk. This situation has the potential to create injustice and reduce the deterrent power of criminal law against the true principal perpetrators ( Sjahdeini , 2006).

Furthermore, the *shadow phenomenon Management* shows that modern corporations do not always operate according to the organizational model assumed by classical corporate law. Today's corporate structures are often formed through a complex web of economic interests, involving family relationships, affiliated companies, *nominees arrangements ,* and other indirect control patterns. Therefore, a legal approach that focuses solely on formal documents risks failing to understand the actual operational realities of a company (UNODC, 2021).

**c. *Effective* Relevance *Control* in the Case of CPO, HAPOR, and POME Exports**

In cases related to the export of CPO, HAPOR, and POME, the use of an *effective approach Control* is crucial because the issues that arise involve not only the technical aspects of product classification but also the decision-making process within corporations. The fundamental question that must be answered is not only whether misclassification has occurred, but also who determines the classification policy and who benefits economically from those decisions (WCO, 2022).

In business practice, decisions regarding export product classification are generally not made individually by a single director. These decisions are often the result of coordination between various company units, including production, laboratories, marketing, legal compliance, and top management. In certain companies, strategic decisions can even be directly influenced by capital owners or business controllers who do not hold formal positions within the company. Therefore, attributing all criminal liability to directors solely based on their administrative positions has the potential to oversimplify a much more complex issue ( Khairandy , 2020).

*Effective* approach *Control* offers a more comprehensive analysis mechanism. In this approach, law enforcement officials need to examine several key indicators, including those issuing instructions, those approving export policies, those controlling the company's financial flows, those receiving the greatest economic benefits, and those with the capacity to change or stop the actions in question. This analysis can identify the key actors truly involved in the corporate decision-making process (FATF, 2023).

From the perspective of legal objectives, the use of an *effective approach Control* is also more in line with the principles of legal certainty, benefit, and justice. Legal certainty is achieved because accountability is based on objectively demonstrable control facts. Legal benefit is realized because law enforcement is directed at parties who truly have the ability to control corporate behavior. Meanwhile, justice can be achieved because sanctions are not imposed on individuals who function solely as administrative administrators without a substantive role in decision-making (Ali, 2015).

*Effective* concept *Control* is not intended to remove the responsibility of directors as a company organ, but rather to ensure that the attribution of criminal liability is carried out proportionally based on the level of involvement and actual influence held by each party. In the context of the CPO, HAPOR, and POME export cases, this approach is an important instrument for identifying the actors who actually control company policies so that law enforcement does not stop at the formal organizational level, but is able to reach the actual decision-making center.

**Reconstruction of Corporate Criminal Liability Based on *Effective Control***

**a. Weakness Approach Formalistic in Accountability Criminal Corporation**

One of the fundamental problems in the corporate criminal liability system in Indonesia is the continued dominance of a formalistic approach in determining who should be held responsible for criminal acts committed by corporations. This approach is based on the assumption that those officially listed in the company's organizational structure, particularly the board of directors, are automatically responsible for all corporate activities. Normatively, this approach derives legitimacy from the provisions of the Limited Liability Company Law, which positions the board of directors as the organ tasked with managing and representing the company both inside and outside the courts (Articles 92 and 98 of Law 40/2007). However, in modern business practice, this assumption does not always reflect the reality of actual decision-making.

The development of business models and corporate governance demonstrates that the relationship between formal authority and actual control is often not linear. Many companies are administratively managed by a specific board of directors, but substantively controlled by others who wield economic, political, or family influence over the company's operations. This situation reflects the potential for using formal positions as the sole basis for attributing criminal responsibility to inaccurate conclusions about the true perpetrators of a corporate crime ( Khairandy , 2020).

the formalistic approach are increasingly apparent in cases involving highly complex business activities, including the export of palm oil products. Decisions regarding product classification, trade strategies, pricing, reporting mechanisms, and export document processing generally do not arise from the individual decisions of a single director. These decisions are the result of interactions between various parties with varying degrees of influence within the company. Therefore, simplifying responsibility solely to directors can obscure the identification of the actors who actually control the policies in question ( Sjahdeini , 2006).

From the perspective of criminal law theory, this condition also raises issues related to the principle of fault ( *geen straf zonder schuld* ). Criminal law requires a connection between the act, the error, and the responsible perpetrator. When someone is held accountable solely because of their position in the formal corporate structure without proving the level of control and involvement in decision-making, the principle of individualization of criminal law is potentially neglected. As a result, punishment is no longer directed at the party with substantive error, but rather at the party most easily identified administratively by law enforcement officials (Ali, 2017).

Furthermore, a formalistic approach can create moral *hazard* in corporate governance. Individuals with actual control over a company may deliberately appoint others as formal directors to avoid legal risks in the event of violations. In this situation, the corporation no longer functions as an instrument of sound business activity but instead becomes a means to obscure the identities of true decision-makers. If the law cannot penetrate this formal layer, the effectiveness of law enforcement against corporate crime will continue to face structural obstacles ( Wells , 2011).

**b. Reconstruction Draft Accountability Criminal Based *Effective Control***

To overcome these limitations, it is necessary to reconstruct the corporate criminal liability model which has so far been oriented towards formal positions towards an approach which emphasizes actual ( *effective) control. This reconstruction* is not intended to eliminate the responsibility of the board of directors as a company organ, but rather to expand the space for identifying parties who actually have the capacity to determine the direction of corporate policy.

From a modern criminal law perspective, accountability must be directed at the party with the actual ability to influence the occurrence of an act. This requires a shift in the analytical focus from the question "who served as director?" to "who controlled the decisions that gave rise to the act?" This shift is crucial because the essence of criminal accountability is not a person's administrative status, but rather their relationship to the process of the crime ( Amrani and Mahrus, 2019).

*Effective* concept *Control* allows law enforcement officials to trace the true center of decision-making within a corporation. This approach is based on the assumption that power within a company is not always reflected in formal documents, but rather can be found through patterns of economic relationships, instructional mechanisms, control of financial resources, and the ability to influence company policy. Consequently, those who actually control corporate actions can be held accountable even if they do not hold official positions within the organizational structure (Arlen, 2014).

In the context of Indonesian law, this approach is not entirely unfamiliar. Several legal instruments have begun to adopt a concept that emphasizes substantive control over formal status. *Beneficial regime ownership,* for example, placing the controlling benefit ( *ultimate beneficial owner* ) as a party that must be identified even if their name is not listed as a shareholder or company manager. The same logic can be applied in corporate criminal law to identify parties who have dominant influence over company actions that give rise to legal consequences (FATF, 2023).

**c. Indicator Determination *Effective Control* in Corporation**

In order to implement the *effective concept To ensure that control* does not create legal uncertainty, clear parameters are needed to determine whether an individual can be categorized as the actual controller of a company. Based on developments in international practice and corporate legal doctrine, there are at least several indicators that can be used as analytical tools.

*First* , the authority to provide strategic instructions to the company's board of directors or management. A party that consistently provides direction regarding business policies, trading strategies, or operational activities demonstrates significant control capacity ( Davies , 2016).

*Second* , control over the company's financial resources. In this case, individuals who have the authority to determine the use of funds, approve major transactions, or control access to financing sources generally hold dominant positions in the corporate decision-making process (OECD, 2001).

*Third* , the company's ability to determine export and trade policies. In the case of CPO, HAPOR, and POME, this indicator is particularly relevant because legal issues center on the classification process and export activities. The party that substantively decides on export strategy should be the primary focus in the responsibility attribution process (WCO, 2022).

*Fourth* , receiving economic benefits ( *economic benefits) benefit* ). In many cases of corporate crime, the party who benefits most from an act is also the party with the strongest incentive to encourage it. Therefore, analyzing the flow of economic benefits is a crucial tool in identifying the actual controller (FATF, 2023).

*Fifth* , the ability to prevent or stop the action in question. If someone has sufficient authority to stop a policy but chooses to allow it to proceed, this indicates a level of control relevant to criminal liability (UNODC, 2021).

**d. The Ideal Model of Corporate Criminal Liability Reconstruction**

The ideal model for corporate criminal liability is neither one that focuses solely on formal positions nor one that completely ignores the legal structure of the company. A more appropriate model is a hybrid model . *liability model* ) which integrates a formal approach with an *effective approach control* .

In this model, directors are still viewed as legally responsible based on their position as a corporate body. However, this responsibility is not automatic. Law enforcement officials must conduct further investigation into the level of directors' involvement in the decision-making process in question. At the same time, investigators must also trace the existence of other parties who have actual control over the company, even if they do not hold formal positions ( Muladi and Dwidja , 2012).

This model better aligns with the characteristics of modern corporations because it can address various forms of indirect control that have previously been difficult to address with formalistic approaches . Furthermore, this model is also more aligned with the goal of criminal law, which is to ensure that sanctions are imposed on those who truly contributed to the crime. Through this premise, the law not only achieves normative certainty but also realizes substantive justice (Ali, 2015).

In the context of the CPO, HAPOR, and POME export cases, reconstruction based on *effective control* This allows law enforcement to distinguish between formal administrators who merely perform administrative functions and those who actually determine the company's export policies. Through this approach, criminal liability no longer stops at the administrative level of the corporation but can reach the actual decision-making center. Therefore, the application of the *effective concept Control* can be an important step in building a corporate criminal liability system that is fairer, more effective, and more adaptive to developments in modern business practices.

## CONCLUSION

This research shows that the development of corporate criminal law in Indonesia has recognized corporations as subjects of criminal law that can be held accountable for crimes committed in the course of their business activities. This regulation is reflected in various laws and regulations, including the new Criminal Code, the Limited Liability Company Law , and various sectoral regulations governing corporate accountability. However, the construction of accountability that has developed in law enforcement practices still tends to emphasize the formal structure of the company, particularly the board of directors as the organ legally responsible for managing the company. This approach has a strong normative basis, but it is not yet fully able to address the complexities of modern corporate governance, which often shows a difference between formal management and actual company controllers.

In the context of palm oil export activities, particularly those related to CPO, HAPOR, and POME, this study found that legal issues lie not only in differences in product classification and the accompanying fiscal implications, but also in determining which parties should be held accountable in the event of alleged legal violations. Regulatory dynamics, developments in palm oil processing technology, and the scope for interpretation in product classifications have created the potential for differences in interpretation between business actors and law enforcement officials. This situation becomes even more complex when strategic company decisions are not entirely made by the formally registered board of directors, but are instead influenced or even determined by other parties who have actual control over the company's operations.

The research findings indicate that the formalistic approach to attribution of criminal responsibility has several fundamental weaknesses. This approach has the potential to create a mismatch between those who administratively hold certain positions and those who actually control the corporate decision-making process. Consequently, there is a risk that individuals who play a central role in an action that gives rise to legal consequences may escape accountability, while those who merely perform administrative functions become the primary subjects of the law enforcement process. This situation not only reduces the effectiveness of criminal law as an instrument of social control but also has the potential to undermine the achievement of the principles of justice and legal certainty.

Based on the analysis of the *effective concept control* and *shadow phenomena In* this study, the determination of corporate criminal liability should not be based solely on the formal position listed in the company's organizational structure. Law enforcement needs to consider parties who have the actual ability to control company policy, provide strategic instructions, control economic resources, determine the direction of business activities, and obtain primary benefits from corporate activities. An *effective approach Control* provides a more appropriate analytical framework for identifying the actors who actually contributed to the occurrence of the act in question, so that criminal responsibility can be directed at the parties who truly have a causal and normative relationship with the act.

This study also concludes that the reconstruction of corporate criminal liability in Indonesia needs to be carried out through the development of a model that integrates the formal corporate structure with the examination of the factual control held by specific individuals. This model is not intended to eliminate the responsibility of directors as a corporate organ, but rather to ensure that the process of attribution of responsibility is carried out more proportionally and based on the reality of corporate management. Through *the role With this system* , the corporate criminal responsibility system is not only able to reach formal perpetrators, but can also identify parties who have been operating behind the corporate structure through *shadow mechanisms. management*.

Ultimately, the implementation of an *effective approach Control* in law enforcement against corporations, particularly in cases of CPO, HAPOR, and POME exports, can be an important instrument for achieving a balance between legal certainty, legal benefits, and justice. This approach allows law enforcement to trace the true center of decision-making, so that criminal accountability no longer stops at the company's administrative level, but can reach parties who substantively control and benefit from corporate activities. As a result, the concept of *effective Control* is worthy of being used as a basis for developing corporate criminal law policies in Indonesia in order to create a law enforcement system that is more responsive to the complexities of the modern business world.

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