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**Law no. 1 of 2023 and Law no. 40 of 2014  
Analysis of Corporate Punishment in Insurance Crime**

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**Abstract**

The Insurance Law and Criminal Code regulate criminal acts such as fraud during insurance agreements and claims. However, before Law no. 1 of 2023, criminal liability only applies to individuals, not corporations. The law specifically stipulates corporate criminal liability in insurance, allowing prosecution of corporations and their managers. Cumulative criminal threats are difficult to apply to corporations because they apply to the management, not the corporation itself. This research is normative law which explores legal regulations, principles and norms. The aim is to understand corporate criminal liability in the insurance sector in Indonesia accurately.

**Keywords:** *Criminal Liability, Corporate, Insurance Crime, Law Number 1 of 2023*

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**INTRODUCTION**

Criminalization of corporations in insurance crimes is an important issue in the Indonesian legal system. Along with the development of the insurance industry and the increasing number of companies operating in this sector, various legal problems related to insurance crimes have also emerged. Law Number 1 of 2023 concerning the Criminal Code (KUHP) and Law Number 40 of 2014 concerning Insurance are the two main legal instruments that regulate this matter. Both laws establish a legal framework for enforcing criminal liability against corporations involved in insurance crimes.

Prior to the enactment of Law Number 1 of 2023, criminal liability in the Criminal Code only applied to individuals, not to corporations (Prasetyo et al., 2017). This creates difficulties in prosecuting corporations involved in insurance crimes, because there is no clear legal basis for criminalizing legal entities. Law Number 1 of 2023 is here to fill this void by stipulating that corporations can be considered the subject of criminal acts and can be subject to criminal sanctions. (Siagian, 2023).

On the other hand, Law Number 40 of 2014 concerning Insurance provides a special legal basis for regulating healthy and competitive insurance practices in Indonesia (Nurjihad, 2022). This law not only regulates the operations of insurance companies but also establishes various criminal provisions to deal with cases of fraud, embezzlement and other crimes in the insurance sector. (Wungkana, 2018). With this provision, law enforcement has a stronger basis for taking action against corporations involved in insurance crimes.

With this background, this research aims to analyze corporate punishment for insurance crimes based on Law no. 1 of 2023 and Law no. 40 of 2014. This research is important to provide a comprehensive understanding of the mechanisms and effectiveness of law in enforcing criminal liability against corporations in the insurance sector, as well as to offer policy recommendations that can improve the legal system and prevent insurance crimes in the future.

**METHOD**

This research is included in the type of normative legal research which is carried out through analysis of statutory regulations, principles and legal norms. The aim of this research is to gain an accurate understanding of corporate criminal liability in the insurance sector in Indonesia. A statutory approach is needed in normative research because the focus and central theme of the research are the various legal rules that will be explored. A case approach is involved in research by analyzing various court decisions that have obtained permanent legal force.

**RESULTS AND DISCUSSION**

**Corporate Criminal Regulation and Accountability in Insurance Crimes in Indonesia**

Regulation of criminal acts in the insurance sector in Indonesia includes various criminal acts in the insurance context, such as insurance fraud, insurance embezzlement and fraudulent acts as regulated in Article 381 and Article 382 of the Criminal Code. Law Number 40 of 2014 concerning Insurance in Chapter confidential information illegally(Wungkana, 2018).

Corporate crimes in insurance crimes are organizational and occur in the context of the relationship between the board of directors, executives and managers(Kumesan, 2022). The financial motives are broad and are usually carried out by individuals with high social status who take advantage of certain positions and opportunities. These crimes are often committed collectively with a complex modus operandi and are difficult to identify compared to individual crimes. This complexity requires specific and detailed legal regulations to handle, given the sophisticated modus operandi and involvement of high-status actors in the corporate hierarchy.

Law Number 1 of 2023 is here to fill the legal gap in the previous Criminal Code by determining that corporations can be considered the subject of criminal acts and can be subject to criminal sanctions. Articles 45 to 50 in Law no. 1 of 2023 specifically regulates corporate criminal liability. These articles state that corporations, including PT, foundations, cooperatives, BUMN, BUMD, and legal entity associations as well as business entities such as firms, limited partnerships, and the like, can be considered the subject of criminal acts.(Zarzani & Situmorang, 2024).

Criminal sanctions for corporations consist of fines as the main penalty and additional penalties such as compensation, reparation for criminal acts, fulfillment of obligations, job training, confiscation of goods, announcement of decisions, revocation of permits, closure or suspension of corporate activities, and dissolution of the corporation.(Zarzani & Situmorang, 2024). This criminal liability applies not only to the corporation itself but also to the management who have a functional role in the criminal act.

With this arrangement, law enforcement has a stronger basis for taking action against corporations involved in insurance crimes. This is expected to provide better protection for policyholders and maintain the integrity of the insurance industry in Indonesia. This comprehensive regulation also reflects the importance of evaluating impacts and losses in criminalizing corporations, and shows how Law no. 1 of 2023 and Law no. 40 of 2014 work together to regulate an effective criminal liability system in the insurance sector.

Aspect	UU no. 40 of 2014	UU no. 1 of 2023
Legal Subjects	Individuals and corporations	Individuals and corporations
Custom Settings	Insurance crime in Chapter XVI	Corporate crime in various sectors including insurance
Types of Crime	Insurance fraud, insurance embezzlement, providing false information, premium evasion, document falsification, etc.	Various criminal acts, including those committed by corporations
Criminal sanctions	Imprisonment and fines	Imprisonment, fines, and additional penalties (compensation, repairs, license revocation, dissolution, etc.)
Corporate Accountability	Establishes that corporations can be criminally liable	Regulates in more detail the responsibilities of corporations and their management
Law enforcement	Specific criminal offenses in the insurance sector with a focus on violations of insurance regulations	Regulates law enforcement against corporate criminal acts in general, including the insurance sector
Focus	Protection of insurance consumers and integrity of the insurance industry	Enforcement of criminal law against corporations for various criminal acts

Comparison of Law Number 40 of 2014 concerning Insurance and Law Number 1 of 2023

With this comparison table, it can be seen that Law no. 40 of 2014 and Law no. 1 of 2023 complement each other in regulating and enforcing laws against corporate criminal acts, especially in the insurance sector. These two laws provide a strong legal basis for law enforcement to crack down on corporate crime and ensure better protection for society.

### **Penalty System for Corporations in Insurance Crimes**

The New Criminal Code faces a number of problems related to corporate regulation. First, Articles 45 and 48 have similar editorials but there are differences in the definition of "corporation". This can cause interpretation difficulties and needs to be revised. Second, Article 512 and Article 173 show contradictions in the definition of "entrepreneur" which can complicate legal interpretation. The phrase "trading business" is also confusing without a clear definition. Attaching the term "entrepreneur" to other contexts such as ships or balance sheet irregularities can give rise to similar interpretative problems. A clearer explanation and understanding is needed in the New Criminal Code to avoid ambiguity and contradictions in its application.

Law No.1 of 2023 regulates corporate responsibility in Articles 45-50. Article 45 states that corporations including PT, foundations, cooperatives, BUMN, BUMD, and legal entity associations as well as business entities such as firms, limited partnerships, and the like are considered the subject of criminal acts. (Hamidi & Gultom, 2023). Article 49 of the Criminal Code confirms that corporations are responsible for criminal acts as regulated in Article 48 which includes managers, givers of orders, control holders and/or beneficial owners. Article 56 of the Criminal Code requires consideration in criminalizing corporations, including the losses or impacts caused (Zarzani & Situmorang, 2024). Criminal sanctions for corporations consist of fines as the main penalty and additional penalties in accordance with Article 120 of the Criminal Code, some of which are restorative in nature. (Ady Thea, 2023).

Article 188 of the Criminal Code Law stipulates criminal penalties for corporations in two forms: basic criminal penalties (fines) and additional criminal penalties. Additional penalties include compensation, reparation for the consequences of criminal acts, fulfillment of obligations, job training, confiscation of goods, announcement of decisions, revocation of permits, closure or suspension of corporate activities, and dissolution of the corporation. Certain additional penalties apply for up to two years and if not complied with, corporate assets can be confiscated and auctioned to satisfy the penalty. Corporate fines are classified as a minimum in category IV unless otherwise determined by law. The amount of the fine depends on the threat of imprisonment which can reach categories VI, VII or VIII. If the corporation's assets are insufficient to cover the fine, the corporation's business may be frozen. The Criminal Code Law also mentions additional actions such as supervision, pardon or corporate takeover. Articles 125-131 of the Criminal Code Law regulate the equality of corporate criminal penalties. If an act violates more than one rule, it will be punished according to the heaviest rule.

VS Khanna argued that the corporation did nothing wrong but its agents represented the corporation in its actions and errors (Hijriani, 2023). In criminal liability, the agent is responsible through vicarious liability because the action provides benefits to the corporation (Nay & Zulfiani, nd). Apart from vicarious liability, there are two other doctrines: direct corporate criminal liability where the corporation is responsible for direct acts committed by its agents and strict liability where the corporation is responsible for the act without having to prove fault. These three are referred to as respondent superior doctrine (Hijriani, 2023).

Clapham mentioned the "complicity doctrine" theory which can be used in corporate criminal liability (Sofyan, 2015). This theory has two approaches: first, "helping to do" where corporate agents work together in various forms, both physical and non-physical. Second, "advocating" where there is an agent who advocates or proposes a crime even though he does not do it directly (Sofyan, 2015). In this theory, one agent may advocate and another agent carry out the offense.

Law Number 1 of 2023 regulates insurance crimes in detail in several chapters, especially Chapter XXVII which discusses Criminal Acts of Fraud and Chapter XXXII which discusses Aviation Crimes and Crimes Against Aviation Facilities and Infrastructure. The fourth part of Chapter XXXII specifically regulates aircraft insurance crimes, including false insurance claims, data manipulation, and insurance fraud conspiracy. This law stipulates strict sanctions in the form of prison sentences and/or significant fines to prevent and crack down on insurance crimes, as well as increase protection for insurance companies and public trust in the insurance system.

The articles in Law Number 1 of 2023 provide a strict legal framework for insurance crimes, especially those involving corporations as the subject of criminal acts. Article 45 confirms that corporations, including various forms of legal entities such as limited liability companies and BUMN, can be subject to criminal sanctions. Article 498 provides for a prison sentence of up to 1 year 6 months or a category III fine for individuals who use deception to mislead insurance underwriters. Article 499 provides for a prison sentence of up to 6 years or a category V fine for unlawful acts that harm the insurance underwriter, such as burning or destroying insured goods. Article 590, with the threat of imprisonment of up to 10 years, prohibits actions that benefit oneself or others by causing losses to the insurance underwriter through fire, explosion, or damage to the insured aircraft. The criminal threat can increase to 15 years if the criminal act occurs in the context of aviation and impacts aircraft passengers. This detailed law enforcement demonstrates a commitment to preventing and effectively prosecuting insurance crimes.

The articles listed provide a solid legal basis for dealing with corporate criminal acts in the insurance sector. They detail the steps that need to be taken in response to actions involving fraud or cheating that harm insurers. These articles expressly state that corporations, including various forms of legal entities, can be considered the subject of criminal acts, with criminal sanctions in the form of imprisonment or fines.

Law Number 1 of 2023 stipulates that corporations, whether legal entities or not, can be criminally liable. This responsibility can be imposed on the corporation, management with a functional role, or just the management. Corporate errors are identified from the actions of management who have the authority to represent, make decisions and supervise, and benefit the corporation. Sanctions against corporations can take the form of criminal penalties and other actions, including against controllers, givers of orders and beneficiaries.

Prior to the enactment of Law Number 1 of 2023, corporate responsibility was regulated in PERMA 13/2016 concerning Corporations, which explains that a corporation is an organized collection of people and/or assets, both legal and non-legal entities.(Dewi, 2020). Even though it has a big impact, this regulation can also hinder law enforcement. This PERMA regulates mergers, consolidations, separations and dissolution of corporations and emphasizes the careful application of corporate culture models.

Article 24 of the Insurance Law stipulates that criminal charges can be brought against a corporation, its management, or both at the same time in cases of insurance crimes(Sembiring, 2015). However, the limitations in the law narrow the definition of management to only those who give orders or act as leaders in criminal acts, so that it does not include the Management Board, Commissioners, Directors, or those who play a role in policy making. The criminal threat in Article 21 of the Insurance Law uses a cumulative system of threatening imprisonment and a fine simultaneously for each criminal act, which is difficult to apply to corporations because the judge must impose both types of criminal penalties simultaneously if the defendant is proven guilty.

The New Criminal Code faces a number of problems related to corporate regulation. Similar redactions between Articles 45 and 48, as well as differences in the definitions of 'corporation' and 'entrepreneur' in Article 512 and Article 173, can complicate legal interpretation. Therefore, a clearer explanation is needed to avoid ambiguity and contradictions in its application. Article 45-50 of Law No.1 of 2023 regulates corporate responsibility with criminal sanctions in the form of fines as the main penalty and additional penalties in accordance with the rules governing the equality of corporate criminal penalties. Apart from that, these articles also regulate additional actions such as compensation, reparation for criminal acts, fulfillment of obligations, job training, confiscation of goods, announcement of decisions, revocation of permits, closure or suspension of corporate activities, and dissolution of corporations.

Article 45-50 of Law No. 1 of 2023 in the insurance context stipulates that corporations are considered the subject of a criminal offense with criminal sanctions in the form of fines as the main penalty and additional penalties. Apart from that, these articles also recognize the importance of consideration in criminalizing corporations in the insurance sector by evaluating the losses or impacts arising from criminal acts.

Based on the Insurance Law and Article 32 (2) in conjunction with Article 75 of Law no. 40 of 2014 concerning Insurance, the alleged insurance agent is believed to be involved in criminal acts of forgery and other crimes. In the context of an insurance company as a corporation, criminal liability can be submitted based on Article 75 of Law no. 40/2014. Furthermore, referring to PERMA 13/2016, the legal or work relationship between an Insurance Agent and an Insurance Company is the basis for holding corporate criminal

responsibility. In developing investigations into insurance companies, the structure of the board of commissioners and directors must be taken into account. In corporate criminal liability, those who represent are the directors, especially the President Director or Director who is responsible for the company's operations and management. This emphasizes the importance of maintaining integrity and compliance in insurance business practices to prevent criminal acts and effectively engage companies in law enforcement efforts.

### CONCLUSION

Insurance crimes in Indonesia include fraud during insurance agreements and claims which are regulated in Articles 381 and 382 of the Criminal Code. UU no. 40 of 2014 concerning Insurance regulates ten articles related to crimes in insurance including insurance businesses without a license, falsification of documents, embezzlement of premiums, and misuse of confidential information. This law also regulates corporate crimes that are expected to exist in business. Article 45-50 Law no. 1 of 2023 determines corporations as the subject of criminal offenses in insurance. Criminal sanctions include additional fines and penalties that are adjusted to take into account the impact on the insurance industry. These articles emphasize the importance of evaluating impacts and losses in punishing corporations by regulating a special liability system in insurance crimes.

### BIBLIOGRAPHY

- Ady Thea, D. (2023). Unraveling Actus Reus and Mens Rea for Corporate Crimes in the National Criminal Code. *Hukumonline.Com*. <https://www.Hukumonline.com/berita/a/mengurai-actus-reus-dan-mens-rea-pidana-korporasi-dalam-kuhp-nasional-lt642ee304b78ff/?page=1>
- Dewi, SK (2020). Formulation of Corporate Criminal Liability in Various Laws. *Legal Arena*, 13(1), 135–156.
- Hamidi, D., & Gultom, E.R. (2023). CORPORATE CRIMINAL LIABILITY AT KJPP ACCORDING TO LAW NUMBER 1 OF 2023. *UNES Law Review*, 5(4), 2207–2221.
- Hijriani, H. (2023). RECONSTRUCTION OF CRIMINAL LIABILITY FOR CORPORATE FRAUD IN THE BANKING SYSTEM. Hasanuddin University.
- Kumesan, R. M. (2022). CRIMINAL SANCTIONS FOR CORPORATIONS THAT COMMIT CRIMINAL ACTS IN THE FIELD OF INSURANCE BUSINESS ACCORDING TO LAW NUMBER 40 OF 2014 CONCERNING INSURANCE. *LEX CRIMEN*, 11(3).
- Nay, TBUU, & Zulfiani, A. (nd). THE CONCEPT OF CORPORATE RESPONSIBILITY ACCORDING TO ECONOMIC CRIMINAL LAW: (VICARIOUS LIABILITY THEORY).
- Nurjihad, N. (2022). Consequences of Choosing the Form of Insurance Legal Entity in Indonesia. *IUS QUIA IUSTUM Law Journal*, 29(1), 118–141.
- Prasetyo, RT, Ma'ruf, U., & Mashdurohaturun, A. (2017). Corporate Crime in the Policy Perspective of Criminal Law Formulation. *Khaira Ummah Law Journal*, 12(4), 727–741.
- Sembiring, J. (2015). Liability for Corporate Crime in the Insurance Sector. *Lex et Societatis*, 3(7).
- Siagian, E. (2023). The Urgency of Regulating Criminal Liability of Limited Liability Companies in Their Business Activities. *Locus Journal of Academic Literature Review*, 585–597.
- Sofyan, A. (2015). Corporate Criminal Liability in Human Rights Offenses. *Business-Law.Binus.Ac.Id*. <https://business-law.binus.ac.id/2015/07/18/percepatan-pidana-korporasi-dalam-delik-ham/a>
- Wungkana, A. (2018). Implementation of Criminal Sanctions for Insurance Crimes According to Law Number 40 of 2014 concerning Insurance. *Lex Crimen*, 7(7).
- Zarzani, TR, & Situmorang, DEH (2024). THE POSITION OF CORPORATIONS AS LEGAL SUBJECTS AND LIABILITY FOR CORPORATE CRIMINAL ACTIONS IN INDONESIAN CRIMINAL LAW. *Critical Journal of Legal Studies*, 9(5).
- Tanjung, IU (2024). Imposing Criminal Sanctions for Spreading Fake News Which Result in Public Disorder in the Legal System in Indonesia. *Law Synergy Conference Proceedings*, 1(1), 12–19. Retrieved from <https://conference.sinergilp.com/index.php/lsc/article/view/6>
- Laila, H.K. (2024). THE ROLE OF CUSTOMARY CRIMINAL LAW IN THE FRAMEWORK OF NATIONAL CRIMINAL LAW AFTER THE RATIFICATION OF LAW NO. 1 OF 2023 CONCERNING THE Criminal Code. *Law Synergy Conference Proceedings*, 1(1), 85–93. Retrieved from <https://conference.sinergilp.com/index.php/lsc/article/view/12>