LEGAL PROTECTION FOR SUBSIDIARY DIRECTORS IN CORPORATE ENVIRONMENTAL CRIMES

Pamungkas Ridaningjati, Faculty of Law, Airlangga University,
e-mail: pamungkas.ridaningjati-2024@fh.unair.ac.id
Bhisma Dewanata, Faculty of Law, Airlangga University,
e-mail: bhisma.dewanata-2024@fh.unair.ac.id
Daniel Giovanni Pandapotan L. Tobing, Faculty of Law, Airlangga University,
e-mail: daniel.giovanni.pandapotan-2024@fh.unair.ac.id
Gusti Muhammad Reyhan Farisi, Faculty of Law, Airlangga University,
e-mail: gusti.muhammad.reyhan-2025 @fh.unair.ac.id
Nizar Naren Danu, Faculty of Law, Airlangga University,
e-mail: nizar.naren.danu-2025@fh.unair.ac.id

doi: https://doi.org/10.24843/KS.2026.v14.i02.p06

ABSTRAK

Perseroan Terbatas dalam menjalankan kepengurusannya dilakukan organ. Organ yang memiliki tugas utama sebagai pengendali Perseroan Terbatas yaitu direksi. Direksi yang juga merupakan orang kemudian memiliki 2 beban tanggung jawab yaitu karena dia merupakan natuurlijkperson dan perwakilan dari rechtpersoon atau PT sesuai pada pasal 98 UUPT. Menurut UU PPLH tindak pidana lingkungan hidup dilakukan oleh, untuk, atau atas nama badan usaha, tuntutan pidana dan sanksi pidana dijatuhkan kepada badan usaha dan/atau orang yang memberi perintah untuk melakukan tindak pidana tersebut atau orang yang bertindak sebagai pemimpin kegiatan dalam tindak pidana tersebut. Isu mengenai tanggung jawab kerugian dalam konteks tersebut menjadi lebih rumit ketika terdapat unsur pengendalian oleh induk perusahaan kepada anak perusahaan yang memengaruhi direksinya pada skema holding company. Isu hukum penelitian ini yaitu Kekuatan hukum kebijakan induk perusahaan terhadap anak perusahaan & Batasan pertanggungjawaban direksi anak perusahaan atas tindak pidana korporasi lingkungan akibat pengaruh kebijakan induk perusahaan. Hasil dari penelitian kami adalah Kekuatan kebijakan induk perusahaan akan selalu menjadi pengaruh kuat hingga mutlak dalam proses bisnis dan kegiatan usaha anak perusahaan. Hal tersebut dimungkinkan akibat faktor ikatan ekonomis berdasarkan realitas sehingga daya ikat terjadi antara grup perusahaan. Direksi anak perusahaan yang telah melaksanakan kewenangannya berdasarkan AD perusahaan dan pengaruh kebijakan induk perusahaan dalam terjadinya kerugian pihak ketiga dapat dilindungi dengan prinsip BJR sehingga terlepas dari tanggung jawab atas kerugian tersebut. Namun pada kasus tertentu apabila direksi anak perusahaan terbukti melakukan pembiaran terhadap hal-hal yang secara nyata bertentangan dengan hukum dan moral, maka ia dapat dimintai sebagian pertanggungjawaban atas keterlibatannya tersebut.

Kata Kunci: *Tindak Pidana Korporasi Lingkungan; holding company; Tanggung Jawab.*

ABSTRACT

A Limited Liability Company manages its affairs through corporate organs, with the board of directors serving as the central controlling body. As both individuals (natuurlijk persoon) and representatives of the legal entity (rechtspersoon), directors carry a dual layer of responsibility under Article 98 of the Indonesian Company Law. In environmental law, the Environmental Protection and Management Act establishes that environmental crimes may be committed by, for, or on behalf of a corporation, thus extending criminal liability to both the corporate entity and individuals who order or direct such crimes. Liability becomes more complex within a holding company structure, where the parent company's influence can significantly undermine the independence of subsidiary directors. This research explores the binding effect of parent company policies on subsidiaries and the limits of directors' liability in environmental corporate crimes. The findings demonstrate that parent company policies frequently

dominate subsidiary operations due to economic interdependence in corporate groups. Subsidiary directors acting in line with the Articles of Association and parent company policies may be shielded from personal liability under the Business Judgment Rule (BJR). Nonetheless, liability may still arise when directors knowingly tolerate or permit conduct that is manifestly unlawful or contrary to moral principles.

Key Words: *Environmental Corporate Crime; Holding Company; Liability.*

1. INTRODUCTION

1.1 background of the problem

A Limited Liability Company, as a legal person (*rechtpersoon*), is a legal subject distinct from a natural person (*natuurlijkpersoon*). Fundamentally, rechtpersoon or legal entity as a legal subject has an independent legal status.[1] A legal subject can be endowed with rights and obligations. Based on the organ theory, a Limited Liability Company (PT) is operated through a set of corporate organs. The organ responsible for controlling and managing the company is the Board of Directors. This aligns with the separation of ownership theory. The Board of Directors, which is also a person, bear a dual responsibility, as natural persons and as representatives of the legal person (the company), in accordance with Article 98 of the Company Law (*Undang-undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas jo. Undang-undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang*). Consequently, all actions taken by the directors for the benefit of the company become their responsibility. These actions are governed by the company's Articles of Association.

The concept of corporation as a legal subject emerged from societal progression towards modernization and globalization. A key characteristic of a legal entity is the ability to impose corporate criminal penalties, tailored to the corporation's nature, to compel compliance with regulations. An example of legislation that establishes corporations as subjects of criminal law and holds them directly accountable is the Protection and Management of the Environment Law (*Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup jo. Undang-undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang*). Article 116 of the Protection and Management of the Environment Law specifies that both natural persons and corporations are recognized as legal subjects in environmental crimes.

Liability can be assigned to the corporation and/or the individual who ordered or led the activity that resulted in the offense. Thus, when a corporation commits an environmental crime, sanctions are imposed on the corporation as well as its leaders. The corporation is considered both the perpetrator and the party to be held criminally responsible. This approach is justified because, in environmental crimes, the profits gained by the corporation or the harm suffered by the community can be so substantial that imposing penalties solely on corporate officers would be disproportionate. This raises a fundamental issue for criminal liability, the prerequisite of fault. It is necessary

[1] Mochammad Isnaeni, *Perkembangan Hukum Perdata Di Indonesia* (Laksbang Grafika 2013).[35].

to construct a concept of corporate faults and determine how to attribute the unlawful acts committed by individuals to the corporation itself.[2]

The Bhopal disaster serves as a critical case study. The chemical leak was caused by a combination of inherently unsafe design and poorly managed operations. Water entered a Methyl Isocyanate (MIC) storage tank due to multiple operational failures, including the failure to install a slip blind plate, a clogged valve, and heavily corroded pipes that impeded water flow. This triggered an exothermic reaction that catastrophically increased tank pressure, releasing toxic gas into the atmosphere.[3] The company operating the plant was Union Carbide India Limited (UCIL), a subsidiary of the U.S.-based Union Carbide Corporation (UCC). The disaster, which began on the night of December 2-3, 1984, led to thousands of immediate deaths and ultimately affected hundreds of thousands of people. The root causes included severe cost-cutting measures, which compromised production and safety standards, and a failure to adhere to standard operating procedures.[4] This situation raised a pivotal question: if the directors of UCIL acted in accordance with the company's Articles of Association and complied with the parent company's policies, who should be held responsible for the resulting crime?

The legal aftermath was complex. In 1985, the Indian government filed a lawsuit against UCC on behalf of the victims. This led to a 1989 Supreme Court of India settlement of $470 million from UCC, an amount widely criticized as inadequate. Criminal charges were pursued in India, and in 2010, seven former UCIL executives were convicted of causing death by negligence and sentenced to two years in prison, a verdict also deemed too lenient.[5] Warren Anderson, the CEO of UCC, was charged with culpable homicide but was never extradited from the U.S. to face trial in India. Concurrently, lawsuits in the United States were largely unsuccessful for the victims. U.S. courts dismissed initial claims on the grounds of forum non conveniens, deferring to India's jurisdiction. Subsequent lawsuits against UCC for environmental contamination were also dismissed, with courts upholding the legal separation between UCC and UCIL and refusing to "pierce the corporate veil" to hold the parent company liable.

The controversy over liability in the Bhopal case highlights the broader legal challenge concerning the authority and responsibility of directors in subsidiary companies. A company with subsidiaries operates as a corporate group, where legal relationships exist between legally independent entities, often linked by ownership. These relationships have legal consequences, and the scale of responsibility can be

---

[2] Fanny Tanuwijaya and Mujiono, 'Formulasi Korporasi Sebagai Subjek Hukum Pidana Dalam Regulasi Lingkungan Hidup Di Indonesia' (2019) 6 Lentera Hukum.[59-61].

[3] Edward Broughton, 'The Bhopal Disaster and Its Aftermath: A Review' (2005) 4 Environmental Health: A Global Access Science Source.[2].

[4] Alan Taylor, 'Bhopal: The World's Worst Industrial Disaster, 30 Years Later - The Atlantic' <https://www.theatlantic.com/photo/2014/12/bhopal-the-worlds-worst-industrial-disaster-30-years-later/100864/> accessed 13 December 2024.

[5] John Curtis and Julie Gill, 'Potential UK Support for Investigations into the Bhopal Gas Explosion' (*UK Parliment*, 2022) <https://commonslibrary.parliament.uk/research-briefings/cdp-2022-0202/> accessed 6 December 2024.

influenced by the structure of the group.[6] Subsidiary directors are often in a precarious position, as their independence can be compromised by the dominant influence of the parent company.[7] Therefore, it is crucial to examine the extent of a parent company's influence over the actions of its subsidiary's directors and to define the limits of liability for directors compelled to follow a parent company's instructions.

1.2 Research Problem

The legal issues in this study are the legal force of parent company policies on subsidiaries and the limits of subsidiary directors' liability for corporate environmental crimes resulting from the influence of parent company policies.

1.3 Purpose of writing

The purpose of this writing is to explore the binding effect of parent company policies on subsidiaries and the limits of directors' liability in environmental corporate crimes. Additionally, it aims to examine the extent of a parent company's influence over the actions of its subsidiary's directors. Ultimately, the research seeks to define the precise limits of liability for subsidiary directors when they are compelled to follow a parent company's instructions.

2. RESEARCH METHOD

The type of research used is legal research, which is the process of finding legal rules, legal principles, and legal doctrines to answer existing legal issues.[8] This study employs statute approach, conceptual approach, and case approach. Statutory approach involves a thorough analysis and review of all legislation and regulations relevant to the legal issue. The primary legal rules examined in this study are including: The Indonesian Civil Code (*Burgerlijke Wetboek*); Company Law; Environment Law. Conceptual approach consists of a review of established scholarly views and legal doctrines.[9] The purpose is to understand core legal substance and to provide deeper interpretation of statutory rules. Key concepts under review include environmental corporate crime concept and liability concept. Case approach focuses on analyzing the ratio decidendi (the legal rationale) of judicial decisions. Determining the ratio decidendi requires careful consideration of the material facts and the court's resulting judgment.[10]

3. RESULT AND DISCUSSION

3.1. The Legal Force of a Parent Company's Policies on Its Subsidiary of the Discussion

As mentioned in the background section, a Limited Liability Company is an independent legal subject, separate from the natural persons who comprise it. **Rudhi Prasetya** further refers to this as *persona standi judicio*, meaning that a Company is

[6] Putu Harini, Desak Putu Dewi Kasih, and Marwanto, 'Tanggung Jawab Induk Perusahaan Dalam Perusahaan Kelompok' E-Journal Universitas Udayana.[2].

[7] Delvis Patrik, Nulistiowati Suryanti and Aam Suryamah, 'Kedudukan Kreditor Minoritas Dibandingkan Dengan Kreditor Sekaligus Pemegang Saham Dalam Penundaan Kewajiban Pembayaran Utang' (2021) 4 Media Iuris 397, 223.

[8] Peter Mahmud Marzuki, *Penelitian Hukum* (Kencana 2005). [35].

[9] *Ibid*. [134].

[10] *Ibid*. [159].

considered to be an autonomous entity in law and distinct from the individuals within it.[11] This statement clearly distinguishes between individuals within the company and the company itself as separate and independent entities. This means that a PT as an independent legal entity can establish legal relationships with individuals or other legal entities.

Legal relationships according to **Peter Mahmud Marzuki**, legal relationships are relationships governed by law, by applying an a contrario interpretation, relationships that are not governed by law cannot be considered legal relationships.[12] Clarifying the meaning of this statement, **Sudikno Mertokusumo** posits that legal relationships are reflected in the rights and obligations granted by law.[13] Rights and obligations are inherently attached to any legal subject, whether a person or a legal entity. A legal relationship is understood to involve at least two legal subjects interacting with one another, where the rights and obligations of each party meet. Every legal relationship created by law always has two aspects: rights on one side and obligations on the other. There are no rights without obligations, and conversely, there are no obligations without rights.[14]

Parent companies and subsidiaries are essentially bound by a scheme called a holding company. **Munir Fuady** argues that a holding company is a company that aims to own shares in one or more other companies and/or manage those other companies.[15] In **Winardi** view, a holding company is a company that controls other companies , often summarized by the phrase, "holding company is a company that holds other companies."[16] **Komaruddin** offers another perspective, defines a holding company is a business entity established with the primary purpose of acquiring a majority of shares in other companies in order to exercise control or significant influence over them.[17] The opinions of these experts essentially provide an overview of the relationship between companies that have influence over other companies. The aspects of formation and similarity in business activities then become the factors leading to the existence of a parent company (mother company) and subsidiary companies.

The conditions for the existence of a relationship between a parent company and a subsidiary in a corporate group are outlined in the explanatory memorandum to Article 29 of Company Law, which states that a subsidiary company is a corporation that has a special relationship with another corporation due to:

a. More than 50% (fifty percent) of its shares are owned by its parent company;
b. More than 50% (fifty percent) of the votes in the General Meeting of Shareholders are controlled by its parent company; and/or
c. Control over the operation of the company, the appointment and dismissal of directors and commissioners is significantly influenced by the parent company.

Those requirements signify majority share ownership by the parent company in the subsidiary, establishing a relationship between the holding (parent) company and

[11] Rudhi Prasetya, *Kedudukan Mandiri Perseroan Terbatas* (Citra Aditya Bakti 1995). [55].
[12] Peter Mahmud Marzuki, *Pengantar Ilmu Hukum* (Revisi, Kencana Prenada Media Group 2008). [216]
[13] Sudikno Mertokusumo, *Mengenal Suatu Pengantar* (Maha Karya Pustaka 2019). [59].
[14] *Ibid*.
[15] Munir Fuady, *Hukum Perusahaan Dalam Paradigma Hukum Bisnis* (Citra Aditya Bakti 1999). [84].
[16] Winardi, *Istilah Ekonomi Dalam 3 Bahasa Inggris-Belanda-Indonesia* (Mandar Maju 1996). [188].
[17] Komaruddin, *Ekonomi Perusahaan Dan Manajemen* (Mandar Maju 1982). [161].

the subsidiary company that involves the principles of separate entity and limited liability. The principle of limited liability is enshrined in Article 3 paragraph (1) of Company Law, which states: "*Shareholders of a company shall not be personally liable for any contractual obligations made in the name of the company, nor shall they be responsible for company losses exceeding the value of their shares*." However, paragraph (2) of the same article outlines several exceptions to this rule, such as when the shareholders act in bad faith, or when the company fails to meet the legal requirements of a corporate entity.

As a general principle, legal relationship between limited liability companies does not make them legally related to each other however, the relationship is primarily viewed not from a juridical standpoint but from an economic perspective that makes them a single entity.[18] The term "holding company" is commonly associated with the existence of a central body in the form of a separate legal entity, but one that only exercises policy control over the companies within its environment without the central body itself conducting its own business activities. The term "concern" is often associated with capital relationships.[19]

Such relationships aim to divide responsibilities and expand the company's operational reach, as well as for other reasons such as to establish economic control, eliminate competition, or ensure the continuous supply of materials.[20] Consequently, any legal relationships entered into by limited liability companies with other legal entities or individuals, the focus is always on corporate profit, so that any actions or activities that result in a legal relationship will give rise to certain responsibilities. In the context of parent-subsidiary relationships, the parent company typically exercises control through financial policies, as the entities are economically interconnected under the same management.[21]

3.1.1. Alter Ego in Parent Company Shareholding

Legal entities are responsible for themselves because they are independent legal subjects. Independent means that they can perform legal actions on their own (competent) and are responsible for those actions. Under certain conditions, this liability may also be imposed on other legal entities. This situation arises when a company's activities, which should be determined by its organs, are instead dictated by a single party, such as a director who is also the majority shareholder. Such determinations may occur because, during a shareholders' meeting, decisions are made by the majority of voting rights, where one share equals one vote. Decisions made in such a manner may be detrimental to the company.

It is important to first understand the status of the shareholders, whether they are legal entities or individuals. If the shareholders are legal entities, such as a parent company that holds shares in a subsidiary company, the intent and purpose behind the shareholding must be considered. The parent company may establish a subsidiary with full control over its business activities and dissolve the subsidiary to achieve the parent

[18] Rudhi Prasetya (n 11). [64].

[19] ibid.

[20] Wayan Laksemini, Erikson Sihotang and Ni Ketut Wiratny, 'Application Of The Business Judgment Rule Doctrine To Business Decisions Of The Directors Of The State-Owned Enterprise Persero As A Legal Entity Whose Capital Comes From Separated State Assets' (2024) 5 International Journal of Educational Research & Social Sciences 528. [532].

[21] Rizal Choirul Romadhan, 'Kedudukan Hukum Badan Usaha Milik Negara Sebagai Anak Perusahaan Dalam Perusahaan Holding Induk' (2021) 4 Media Iuris 73. [86].

company's primary objectives. The concept of the subsidiary as an independent legal entity is lost because of such actions.

Alter ego is a form of unity of interest and ownership between the company and its shareholders.[22] Shareholders of a company may include the parent company, the board of directors, or individual shareholders who dominate share ownership. Majority shareholding in a corporation is generally permitted as long as it is not abused. The abuse of majority shareholding causes the corporation to be regarded as a tool (alter ego) for achieving personal gain, which can be detrimental.[23]

The elements of the alter ego doctrine consist of the merging of purposes and ownership, as well as the blurring of separation between two companies that, as legal entities, should remain distinct.[24] The distinction from the doctrine of piercing the corporate veil lies in the allocation of liability, under piercing the corporate veil, the shareholder is held solely responsible for legal actions that cause harm to the company. By contrast, in the alter ego doctrine, both the shareholder and the company whose shares are held are deemed to act in concert thus liability is attributed to both parties. The veil of a company's legal entity can be lifted if a subsidiary is established solely as a vehicle. The transfer of liability from the parent company to the subsidiary within the group does not necessarily indicate that the establishment of the company was unlawful or merely a front. The company was established solely to release the parent company from liability, which is known as the quasi-agency principle.[25]

Table 1. Differences Between Alter Ego and Piercing the Corporate Veil

	Alter Ego	**Piercing the Corporate Veil**
Purpose	Unity of interest between shareholders and the company.	Shareholders misuse the company for personal gain.
Case Focus	Both shareholders and the company benefit from the action.	Shareholders harm the company and third parties.
Liability	Imposed on the company and majority shareholders.	Imposed solely on the shareholders or primary controllers.
Main Impact	Harms external parties (creditors or minority shareholders).	Harms the company and third parties.

[22] Syailendra Wisnu Wardhana, 'Upaya Perlindungan Pemegang Saham Minoritas Dalam Perusahaan Holding' (2022) 1 'Dharmasisya' Jurnal Program Magister Hukum FHUI. [2163].

[23] Nindyo Pramono, *Hukum Perseroan Terbatas Mengacu Kepada Undang-Undang Cipta Kerja UU No. 6 Tahun 2023* (Sinar Grafika 2024). [610].

[24] Made Gede Niky Sari Sumantri, 'Tanggung Jawab Atas Kebijakan Yang Diterapkan Oleh Perusahaan Induk Kepada Perusahaan Anak Yang Berakibat Pada Timbulnya Suatu Kerugian' (2020) 05 ACTA COMITAS Jurnal Hukum Kenotariatan. [180].

[25] Y. Sogar Simamora, Sujayadi, and Yuniarti, 'BINDING EFFECT OF ARBITRATION CLAUSE TO THIRD PARTIES: PRIVITY OF CONTRACT DOCTRINE V. PIERCING THE CORPORATE VEIL' (2018) 33 Yuridika. [180].

Entity Separation	No separation of entities between the company and shareholders.	Entity separation is recognized, but its misuse allows for personal liability.

Source: Pramono, Nindyo. *Hukum Perseroan Terbatas Mengacu Kepada Undang-Undang Cipta Kerja UU No. 6 Tahun 2023*. Jakarta: Sinar Grafika, 2024. (Pages. 610-615)

In the Bhopal gas leak case, the alter ego doctrine is more applicable, as UCIL, as a subsidiary, was fully controlled by UCC, its parent company. The piercing the corporate veil doctrine is not suitable, as UCC was not directly responsible for the actions causing the gas leak at UCIL. The intent or actions of UCIL were dependent on the policy directives of the parent company. UCC effectively acted as the driving force behind UCIL's business policies, resulting in no separation of legal personality between the two entities.

3.1.2. Binding Force of Parent Company Policies on Subsidiaries

According to **Emmy Pangaribuan**, a group company is a combination or structure of companies that are legally independent, but are so closely linked that they form an economic unit that is subject to the leadership of the parent company as the central leadership.[26] The aspect of economic unity in a holding company necessitates the joint pursuit of profit, as partial losses will inevitably affect each member company within it. The parent company's control over its subsidiaries in the form of policies or instructions influences the degree of independence of the subsidiaries in not implementing the policies or instructions of the parent company.[27]

A parent company that holds a majority stake in a subsidiary has a significant role in determining important matters through the authority of the General Meeting of Shareholders, such as the appointment of directors and commissioners of the subsidiary. The parent company's control over the subsidiary can be distinguished as follows:[28]

1. Control as the parent company's influence in setting the subsidiary's strategic policies. The parent company only influences the subsidiary's strategic policies. The subsidiary has the autonomy to manage the company's day-to-day operations.
2. Control as the parent company's dominance in managing the subsidiary through instructions to the subsidiaries to achieve the group's objectives. The subsidiary becomes less independent or even loses its independence when the parent company dominates the management of the subsidiary, as it merely becomes an instrument or shadow of the parent company.

Control by the parent company in the form of instructions and policies essentially lacks a concrete legal basis, as subsidiaries are fundamentally independent. The application of the parent company's policies is solely tied to the interests of the company itself and the holding company as a whole. In this case, the capabilities of the

[26] Sulistiowati, *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia* (Erlangga 2010). [20].

[27] Herlina Manullang, 'Meminta Pertanggungjawaban Pidana Perusahaan Induk Atas Perbuatan Tindak Pidana Lingkungan Hidup Yang Dilakukan Oleh Anak Perusahaan' (2020) 15 Jurnal Hukum Samudra Keadilan. [119].

[28] Sulistiowati (n 26). [12].

subsidiary company also seem to depend on the management of the parent company due to its economic dominance. Thus, the subsidiary company often has no choice but to comply with the policies or instructions given by the parent company.

3.2. Limitations on the Liability of Subsidiary Management for Environmental Corporate Crimes Influenced by Parent Company Policies

3.2.1. Characteristics of Environmental Corporate Crimes: The Environment as a Victim and Society as a Co-Victim

Corporate crimes in the field of environmental law essentially arise when a legal entity or organization fails to fulfill its obligations to preserve the environment, violates statutory prohibitions, or abuses the rights it possesses. The environment is regarded as an integrated ecosystem consisting of space, objects, energy, conditions, and living beings, including humans and their behavior. This corresponds with Article 1 paragraph 1 of the Protection and Management of the Environment Law, which comprehensively defines the environment. When this balance is disrupted by corporate activities, the victims are not only nature itself but also the society that depends on environmental sustainability.

Legally, environmental management must follow a number of stages, including environmental inventory, the determination of eco-regional areas, and the formulation of environmental protection and management plans at the national, provincial, and district/municipal levels, in accordance with Articles 5–9 of the Protection and Management of the Environment Law. Within this framework, three key instruments are established: rights, obligations, and prohibitions. The rights of the community include access to a good and healthy environment as stipulated in Article 65. On the other hand, both individuals and corporations are obligated to preserve sustainability and prevent pollution, pursuant to Articles 67 and 68, while Article 69 strictly prohibits any actions that may damage ecosystems, such as the improper disposal of hazardous and toxic substances (B3).

When these principles are violated, environmental disputes inevitably arise. Article 1 paragraph 25 of the Protection and Management of the Environment Law defines such disputes as conflicts resulting from activities that potentially or actually impact the environment. In terms of criminal liability, the law identifies three categories of actors who may be held accountable: individuals, corporate managers, and the corporation itself.

Corporations may be held liable both as legal entities and as non-legal organizations. This liability applies to both private and public entities. Where an offense is organizational in nature, not only the corporation but also the individuals within it—ranging from managers to employees—may be subject to punishment. This principle is affirmed in Articles 116 and 118 of the Protection and Management of the Environment Law, which provide for the possibility of dual punishment (bi-punishment) of both the corporation and its management.

The consequences of environmental corporate crimes are often more complex than those of individual offenses. The harm is not only ecological but also extends to social, economic, and health aspects. This contravenes Article 65 paragraph (1) of the Protection and Management of the Environment Law, which guarantees the right to a good and healthy environment. Society suffers as both direct and indirect victims, ranging from respiratory illnesses caused by pollution, material losses due to contaminated land and water, to long-term insecurity caused by ecosystem degradation.

From the perspective of victim protection, several characteristics are significant. First, victims are entitled to legal protection from the state as provided in Article 66 of the Protection and Management of the Environment Law. Second, in addition to imprisonment of perpetrators, alternative sanctions such as compensation and environmental restoration must be made available, in line with the restorative objectives mandated by Article 70. Third, because environmental crimes produce wide-ranging impacts, liability mechanisms must be comprehensive.

The Bhopal disaster in India provides a concrete example of environmental corporate crime. Union Carbide India Limited (UCIL) was found to have disregarded safety standards, reduced occupational health and safety budgets, neglected the maintenance of hazardous facilities, and failed to warn the public when a gas leak occurred. As a result, thousands of people were victimized. The characteristics of victimization in this case demonstrate that not only workers accustomed to hazardous conditions but also the broader community were severely affected, with initial symptoms such as coughing, eye irritation, and shortness of breath, followed by serious illnesses including cancer and poisoning with intergenerational effects.

This analysis reveals the distinctive characteristics of environmental corporate crimes:

a. perpetrators may be corporate entities rather than merely individuals;
b. victims encompass both the environment as an ecosystem and the communities within it;
c. the resulting harms are highly complex, widespread, and often long-term; and
d. resolution requires legal mechanisms that integrate criminal sanctions, compensation, and environmental restoration.

This aligns with the spirit of Articles 65, 67, and 69 of the Protection and Management of the Environment Law, which emphasize the balance between rights, obligations, and prohibitions in order to ensure ecosystem sustainability and protect society.

3.2.2. The Fiduciary Duties of Directors in Business Operations under Parent Company Influence

According to Article 1, Paragraph 5 of the Company Law, the Board of Directors is defined as "*the organ of the company authorized and fully responsible for the management of the company in the interest of the company, in accordance with its purposes and objectives, and representing the company both inside and outside the court in accordance with the provisions of the articles of association*." The Board of Directors is vested with authority encompassing the management and representation of the limited liability company (PT). The scope of these management duties is determined by the company's articles of association, which outline the purposes and objectives of the company's business activities. Additionally, management provisions are governed by regulations, customs, reasonableness, and propriety that support the company's operations.[29]

The concept of fiduciary duty, as defined by Black's Law Dictionary, refers to "*the duty to act with the highest degree of honesty and loyalty toward another person and in the best interest of the other person (such as the duty that one partner owes to another)*."[30] In performing their duties, directors are entrusted to carry out the company's obligations with honesty and in alignment with its purposes and objectives. The interests of the

[29] Nindyo Pramono (n 23). [83].
[30] Bryan A. Garner, *Black's Law Dictionary* (Twelfth, Thomson Reuters 2024). [638].

company, as stipulated in the articles of association, serve as the foundation for the directors' execution of operational activities.

A subsidiary, as an independent legal entity and legal subject, possesses its own articles of association from its inception. If the articles of association explicitly mandate compliance with the policies of the parent company, the directors of the subsidiary are obligated to align their actions accordingly as a manifestation of their duty of loyalty.[31] However, if no such mandate exists, the directors of the subsidiary must adhere to the vision and mission of their own company. It is critical to uphold the legal independence of the company as a form of duty of care, ensuring that directors' decisions are made cautiously and with sufficient consideration.

The majority shareholding of a parent company in a subsidiary can significantly influence the decisions made by the subsidiary's Board of Directors. The directors' policies may be swayed through pressure exerted by the majority shareholder during decision-making at the General Meeting of Shareholders (RUPS). The resulting decisions effectively serve as a mechanism for the parent company to control the policies implemented by the directors. Fundamentally, this undermines the subsidiary's independence as a legal entity.

The parent company's majority ownership in a subsidiary may create a conflict between the directors' fiduciary duty and the directives of the majority shareholder. For instance, the parent company's policies may prioritize actions that violate regulations, customs, reasonableness, or propriety in pursuit of business strategies. Directors should not execute such actions, as this would contravene their duty of good faith, which requires that all actions be grounded in good faith.

This situation is exemplified in the Bhopal gas leak case, where UCC, as the parent company and majority shareholder of UCIL, implemented financial policies with significant impact. The directors of the subsidiary, responsible for managing the company, were held accountable for the gas leak incident. The cause of the leak was linked to UCC's policies; however, liability could not be imposed on UCC under the piercing the corporate veil doctrine, as it was not directly responsible for the incident. Instead, liability can be associated with the alter ego doctrine, as the policies enacted by UCIL's directors were not entirely independent, thereby failing to fully comply with their fiduciary duty.

3.2.3. Direct Control by the Parent Company over the Liability of Subsidiary Directors for Environmental Corporate Crimes

Company organs are responsible for managing the company, as a limited liability company cannot act on its own.[32] Article 1 paragraph (2) of the Company Law states that the organs of a limited liability company are the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. The Board of Directors, as one of the corporate bodies, plays a crucial role in a PT. In accordance with its title as the Board of Directors, its primary function is to 'direct' or determine the course of action for the company, which is based on the Articles of Association of the PT. This authority is further defined in Article 1 paragraph (5) of the Company Law, "*The Board of Directors is the corporate body authorised and fully responsible for*

[31] Dian Fitriani, 'Penerapan Prinsip Fiduciary Duty Oleh Direksi Dalam Mengurus Suatu Perseroan Terbatas Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (Analisis Kasus: PT Sarinah)' (Universitas Indonesia 2009). [30].

[32] Rudhi Prasetya (n 11). [16].

managing the company in the company's best interests, in accordance with the company's objectives and purposes, and representing the company both in and out of court in accordance with the provisions of the Articles of Association." According to **Van Der Heiden**, the Articles of Association (AD) serve as the company's statutes, meaning that the AD constitutes the fundamental provisions governing and determining matters related to the organisation, rights, and obligations associated with the PT.[33]

In addition to the UUPT, the AD also regulates the authority of the board of directors in more detail. This indicates that in addition to granting authority to the board of directors, the AD also contains restrictions on the actions of the board of directors for the benefit of the PT. The significant control authority of the board of directors certainly carries a risk, namely losses to the PT that will impact shareholders. Interested third parties are also highly likely to be affected if the PT suffers losses. This is why it is necessary to have Articles of Association with concrete substance and no ambiguity. **Endang Purwaningsih** argues that the PT needs to detail its vision and mission in the Articles of Association as a guideline for the board of directors in running the company to avoid errors or misinterpretations that could result in significant risks for both the company's progress and the board of directors.[34]

Kranenburg and **Vegtig** put forward two theories regarding legal liability:[35]

1. *Fautes de Personalles Theory*
   This theory emphasizes that losses suffered by third parties are imposed directly on the official or director whose actions have caused the damage. In other words, liability is attached to the individual in their personal capacity, as the wrongdoer.
2. *Fautes de Services Theory*
   This theory argues that liability should be imposed not on the individual but on the office or position itself. Accordingly, responsibility is borne by the corporate organ as an institution. In practice, however, the extent of liability is adjusted to the degree of fault, ranging from negligence to intentional wrongdoing, thereby shaping the scope of accountability.

In relation to the Articles of Association (AoA), directors' conduct can be classified into two categories: ultra vires and intra vires acts. **Emerson** defines ultra vires as: "*A corporate action beyond the charter power of the corporation or of the person purporting to act for the corporation is ultra vires, 'beyond the powers'. If the action is appropriate and lawful, it is intra vires.*"[36] In simplified terms, ultra vires refers to actions of directors that exceed the authority mandated by the Articles of Association, whereas intra vires means that the directors' actions are aligned with the authority granted under the Articles of Association.

This illustrates the central importance of the Articles of Association in the establishment and management of a corporation. The AoA serves not merely as a formal requirement but as the principal legal foundation for directors' fiduciary duties and decision-making powers. In this respect, the AoA functions as a principle function

[33] Van der Heiden-van der Grinten, *Handboek Voor de Naamloze Vennoostchap* (Tjeenk Willink Zwolle 1968). [182].

[34] Endang Purwaningsih, in *Dinamika Perkembangan Hukum Bisnis, Hukum Perbankan, Hukum Perseroan, Dan Hukum Investasi Di Indonesia Persembahan Kepada Prof. Dr. Rudhi Prasetya, S. H.* (Setara Press 2023). [224].

[35] *Ibid.* [220].

[36] Robert W. Emerson, *Business Law* (4th edn, Barron's 2004). [335].

in determining the limits of lawful corporate actions and the standard by which directors' liability is assessed, whether in personal or institutional capacity.[37]

The liability of directors in relation to actions inconsistent with the Articles of Association (AoA) will not, in principle, give rise to personal liability so long as such actions do not cause losses to the company. This is in line with Article 97 Paragraph (3) of the Indonesian Company Law, which stipulates that "*Each member of the Board of Directors shall be fully personally liable for the losses of the company if he or she is at fault or negligent in carrying out his or her duties in accordance with paragraph (2)*." This provision emphasizes that the occurrence of losses constitutes a more concrete basis for imposing personal liability than the mere fact of an ultra vires act by directors. Furthermore, limitations to the doctrine of ultra vires also incorporate the element of good faith in the conduct of directors.[38] In connection with Article 102 Paragraph (4) *jo.* Article 117 Paragraph (2) of the Company Law, when directors act beyond their authority, the legal acts performed by the directors with third parties remain binding on the company, provided that such third parties act in good faith.

Additionally, Article 97 Paragraph (5) of the Company Law provides that "*Directors cannot be held liable for losses as referred in Paragraph (3) if they can prove that:*

a. *the losses were not due to their fault or negligence;*
b. *they managed the company in good faith and with prudence for the interests of the company and in accordance with its purposes and objectives;*
c. *they had no conflict of interest, whether direct or indirect, in the management action resulting in the losses; and*
d. *they took actions to prevent the occurrence or continuation of such losses."*

This provision reflects the doctrine of the Business Judgment Rule (BJR). The principle of the BJR holds that where directors have made decisions after duly exercising reasonable and careful business judgment, they are shielded from personal liability.[39]

In the context of subsidiary directors, these doctrines remain applicable in principle. However, the distinguishing factor lies in the involvement of the parent company, whether through influence or domination, which undermines the independence of the subsidiary's directors. Subsidiary directors are not only bound by the AoA of their own company but are also compelled to comply with the policies or instructions of the parent company. This phenomenon, known as direct control by the parent company, results in a duality for the subsidiary: on the one hand, it is an independent legal entity, yet on the other hand, it functions as a business unit subordinated to the parent's control.[40]

Sulistiowati conceptualizes parent company control and domination over subsidiaries as a contractual relationship. Such a relationship gives rise to the parent company's legal responsibility for third-party losses incurred by subsidiaries acting in accordance with parent company policies or instructions.[41] Accordingly, subsidiary directors executing parent company policies should not be held personally liable for

[37] M. Yahya Harahap, *Hukum Perseroan Terbatas* (Sinar Grafika 2009). [61]
[38] Hasbulla F. Sjawie, *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi* (Kencana 2017). [246].
[39] *Ibid*. [229].
[40] Sulistiowati, *Tanggung Jawab Hukum Pada Perusahaan Grup Di Indonesia* (Erlangga 2013). [40].
[41] *Ibid*. [45-46]

third-party losses, even where such actions amount to ultra vires, provided that they acted in the interest of the company and the corporate group as a whole.

In this regard, the liability should fall more heavily upon the directors of the parent company, who occupy the highest position of control. This aligns with **Weidemann's** maxim: "no liability without dominance," meaning that liability arises only where there is dominance.[42] In determining whether liability should rest with the parent or subsidiary, the decisive factor is the extent to which each exercised dominant influence over the harmful act.

Where the harmful conduct of a subsidiary results directly from the domination of the parent company, the parent should bear the loss. Conversely, where the conduct was the result of the subsidiary's own independent decision-making, the general doctrines of director liability apply in determining whether liability attaches to the individual directors or the corporation. **De Maglie** highlights three key criteria in attributing liability to corporations in criminal law: (a) the type of organization involved; (b) the nature of the offense; and (c) the criteria for categorizing the act as a corporate crime so as to trigger corporate criminal liability.[43]

In cases of environmental corporate crime, such as the Bhopal disaster, subsidiary directors may be shielded from liability where their actions were in compliance with parent company policies and did not contravene the subsidiary's AoA. Although third parties suffered losses, such actions were taken in the collective interest of the corporate group and, under the BJR, may not attract personal liability. However, subsidiary directors may still incur liability for participation through omission, where they fail to prevent actions clearly contrary to moral and legal standards.

This dynamic was evident in the 2010 judgment of the Bhopal District Court, which convicted seven former executives of Union Carbide India Limited (UCIL), including company directors, for negligence causing death. They were sentenced to two years' imprisonment and fined 100,000 rupees (approximately €1,774 at the time), although they were released on bail shortly thereafter.[44] The negligence attributed to UCIL directors related more to social and moral lapses in implementing parent company policies without considering human rights implications.

4. CONCLUSION

Juridically, subsidiaries remain independent legal entities governed by their own Articles of Association. However, within the structure of a holding company, the parent company's policies and directives exert a dominant influence over subsidiaries, reducing the scope of independence of subsidiary directors. This economic and organizational interdependence results in a centralized management system that binds group members to the decisions of the parent company. Consequently, directors of subsidiaries who act within the framework of their Articles of Association, but under

[42] Herbert Wiedemann, *Gesellschaftsrecht* (CH Beck 1988). [546].

[43] Andreas N. Marbun, 'Pertanggungjawaban Tindak Pidana Korporasi' (Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia 2016) <https://mappifhui.org/wp-content/uploads/2020/03/Pertanggungjawaban-Tindak-Pidana-Korporasi.pdf>.

[44] Benjamin Yadav Lecumberri Beatriz, 'Bhopal: turismo oscuro en el escenario de la peor catástrofe industrial de la historia' (*El País*, 4 December 2024) <https://elpais.com/planeta-futuro/2024-12-04/bophal-turismo-oscuro-en-el-escenario-de-la-peor-catastrofe-industrial-de-la-historia.html> accessed 24 June 2025.

the influence of parent company instructions, should not be held fully liable for third-party losses, as their decisions are taken in the interest of the corporate group as a whole. The Business Judgment Rule, as recognized under Article 97 Paragraph (5) of the Company Law, provides legal protection to directors from personal liability so long as they exercise due care and act in good faith.

Nevertheless, liability may still arise in situations where directors of subsidiaries knowingly tolerate or permit conduct that is manifestly unlawful or contrary to public morality. In such cases, responsibility may extend not only to the directors themselves but also, and more appropriately, to the parent company whose control has shaped the subsidiary's conduct. This finding underscores the need for clearer regulatory frameworks to delineate liability between parent and subsidiary companies in cases of corporate environmental crimes. It also highlights the importance of strengthening corporate governance standards so that group enterprises can operate effectively while ensuring accountability and preventing misuse of corporate structures to evade responsibility.

DAFTAR PUSTAKA

Broughton, Edward. "The Bhopal Disaster and Its Aftermath: A Review." *Environmental Health: A Global Access Science Source* 4 (2005).

Curtis, John, and Julie Gill. "Potential UK Support for Investigations into the Bhopal Gas Explosion." *UK Parliament*, 2022. https://commonslibrary.parliament.uk/research-briefings/cdp-2022-0202/.

Emerson, Robert W. *Business Law*. 4th ed. New York: Barron's, 2004.

Fitriani, Dian. "Penerapan Prinsip Fiduciary Duty Oleh Direksi Dalam Mengurus Suatu Perseroan Terbatas Berdasarkan Undang-Undang Nomor 40 Tahun 2007 Tentang Perseroan Terbatas (Analisis Kasus: PT Sarinah)." Skripsi, Universitas Indonesia, 2009.

Fuady, Munir. *Hukum Perusahaan Dalam Paradigma Hukum Bisnis*. Bandung: Citra Aditya Bakti, 1999.

Garner, Bryan A. *Black's Law Dictionary*. 12th ed. United States: Thomson Reuters, 2024.

Harahap, M. Yahya. *Hukum Perseroan Terbatas*. Jakarta: Sinar Grafika, 2009.

Harini, Putu, Desak Putu Dewi Kasih, and Marwanto. "Tanggung Jawab Induk Perusahaan Dalam Perusahaan Kelompok." *E-Journal Universitas Udayana*.

Isnaeni, Mochammad. *Perkembangan Hukum Perdata Di Indonesia*. Surabaya: Laksbang Grafika, 2013.

Komaruddin. *Ekonomi Perusahaan Dan Manajemen*. Jakarta: Mandar Maju, 1982.

Laksemini, Wayan, Erikson Sihotang, and Ni Ketut Wiratny. "Application Of The Business Judgment Rule Doctrine To Business Decisions Of The Directors Of The State-Owned Enterprise Persero As A Legal Entity Whose Capital Comes From Separated State Assets." *International Journal of Educational Research & Social Sciences* 5 (2024): 528.

Lecumberri Beatriz, Benjamin Yadav. "Bhopal: turismo oscuro en el escenario de la peor catástrofe industrial de la historia." *El País*, 4 Desember 2024. https://elpais.com/planeta-futuro/2024-12-04/bophal-turismo-oscuro-en-el-escenario-de-la-peor-catastrofe-industrial-de-la-historia.html.

Manullang, Herlina. "Meminta Pertanggungjawaban Pidana Perusahaan Induk Atas Perbuatan Tindak Pidana Lingkungan Hidup Yang Dilakukan Oleh Anak Perusahaan." *Jurnal Hukum Samudra Keadilan* 15 (2020).

Marbun, Andreas N. "Pertanggungjawaban Tindak Pidana Korporasi." Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia, 2016. https://mappifhui.org/wp-content/uploads/2020/03/Pertanggungjawaban-Tindak-Pidana-Korporasi.pdf.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2005.

Marzuki, Peter Mahmud. *Pengantar Ilmu Hukum*. Edisi Revisi. Jakarta: Kencana Prenada Media Group, 2008.

Mertokusumo, Sudikno. *Mengenal Suatu Pengantar*. Yogyakarta: Maha Karya Pustaka, 2019.

Patrik, Delvis, Nulistiowati Suryanti, and Aam Suryamah. "Kedudukan Kreditor Minoritas Dibandingkan Dengan Kreditor Sekaligus Pemegang Saham Dalam Penundaan Kewajiban Pembayaran Utang." *Media Iuris* 4 (2021): 223.

Pramono, Nindyo. *Hukum Perseroan Terbatas Mengacu Kepada Undang-Undang Cipta Kerja UU No. 6 Tahun 2023*. Jakarta: Sinar Grafika, 2024.

Prasetya, Rudhi. *Kedudukan Mandiri Perseroan Terbatas*. Bandung: Citra Aditya Bakti, 1995.

Purwaningsih, Endang. Dalam *Dinamika Perkembangan Hukum Bisnis, Hukum Perbankan, Hukum Perseroan, Dan Hukum Investasi Di Indonesia Persembahan Kepada Prof. Dr. Rudhi Prasetya, S. H.* Malang: Setara Press, 2023.

Romadhan, Rizal Choirul. "Kedudukan Hukum Badan Usaha Milik Negara Sebagai Anak Perusahaan Dalam Perusahaan Holding Induk." *Media Iuris* 4 (2021): 73.

Simamora, Y. Sogar, Sujayadi, and Yuniarti. "Binding Effect Of Arbitration Clause To Third Parties: Privity Of Contract Doctrine V. Piercing The Corporate Veil." *Yuridika* 33 (2018).

Sjawie, Hasbulla F. *Direksi Perseroan Terbatas Serta Pertanggungjawaban Pidana Korporasi*. Jakarta: Kencana, 2017.

Sulistiowati. *Aspek Hukum Dan Realitas Bisnis Perusahaan Grup Di Indonesia*. Jakarta: Erlangga, 2010.

Sulistiowati. *Tanggung Jawab Hukum Pada Perusahaan Grup Di Indonesia*. Jakarta: Erlangga, 2013.

Sumantri, Made Gede Niky Sari. "Tanggung Jawab Atas Kebijakan Yang Diterapkan Oleh Perusahaan Induk Kepada Perusahaan Anak Yang Berakibat Pada Timbulnya Suatu Kerugian." *ACTA COMITAS Jurnal Hukum Kenotariatan* 5 (2020).

Tanuwijaya, Fanny, and Mujiono. "Formulasi Korporasi Sebagai Subjek Hukum Pidana Dalam Regulasi Lingkungan Hidup Di Indonesia." *Lentera Hukum* 6 (2019).

Taylor, Alan. "Bhopal: The World's Worst Industrial Disaster, 30 Years Later." *The Atlantic*. Diakses 13 Desember 2024. https://www.theatlantic.com/photo/2014/12/bhopal-the-worlds-worst-industrial-disaster-30-years-later/100864/.

Van der Heiden-van der Grinten. *Handboek Voor de Naamloze Vennoostchap*. Zwolle: Tjeenk Willink, 1968.

Wardhana, Syailendra Wisnu. "Upaya Perlindungan Pemegang Saham Minoritas Dalam Perusahaan Holding." *Dharmasisya: Jurnal Program Magister Hukum FHUI* 1 (2022).

Wiedemann, Herbert. *Gesellschaftsrecht*. Munchen: C.H. Beck, 1988.

Winardi. *Istilah Ekonomi Dalam 3 Bahasa Inggris-Belanda-Indonesia*. Bandung: Mandar Maju, 1996.