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Drawing the Line: Criminal Responsibility of In-House Legal Counsel

Febriyani Febriyani^{1*} & Boedi Prasetyo²

^{1,2} Faculty of Law, Universitas Tarumanagara Jakarta, Indonesia

Correspondence

Febriyani Febriyani, Universitas Tarumanagara Jakarta, Indonesia, Letjen S. Parman St No.1, RT.6/RW.16, Tomang, Grogol petamburan, West Jakarta City, Jakarta 11440, e-mail: febriyani.205220322@stu.untar.ac.id

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Original Article

Abstract

The criminal prosecution of in-house legal counsel in corporate cases has generated significant debate concerning the boundaries of criminal liability within the legal profession in Indonesia, particularly where legal opinions serve as the basis for corporate policy decisions. This study examines the legal limits of criminal liability for in-house legal counsel, evaluates the legal character of legal opinions in relation to the concept of *deelneming*, and critically analyzes the judicial reasoning in Decision Number 534/Pid.B/2024/PN Jakarta Selatan. Employing a normative legal research method with statutory, conceptual, and case-based approaches, this study finds that the criminal liability of in-house legal counsel is determined by causal contribution and substantive intent rather than by formal position alone. Legal opinions may give rise to criminal liability when they function as instruments of legitimacy for unlawful conduct. The study concludes that the decision adopts a functional approach to professional legal accountability and underscores the necessity of clear normative boundaries to prevent the excessive criminalization of in-house legal counsel.

Keywords: *In-House Legal Counsel, Legal Opinion, Corporate Criminal Liability, Deelneming*

Abstrak

Kriminalisasi *in-house legal counsel* dalam perkara korporasi menimbulkan perdebatan serius mengenai batas pertanggungjawaban pidana profesi hukum di Indonesia, khususnya ketika pendapat hukum (*legal opinion*) dijadikan dasar kebijakan korporasi. Penelitian ini bertujuan untuk menganalisis secara yuridis batas pertanggungjawaban pidana *in-house legal*, menilai karakter hukum *legal opinion* dalam kaitannya dengan konsep penyertaan (*deelneming*), serta mengkaji secara kritis pertimbangan hakim dalam Putusan Nomor 534/Pid.B/2024/PN Jakarta Selatan. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus. Hasil penelitian menunjukkan bahwa pertanggungjawaban pidana *in-house legal* ditentukan oleh kontribusi kausal dan kesengajaan substantif, bukan oleh jabatan formal. *Legal opinion* dapat dikualifikasikan sebagai bentuk penyertaan pidana apabila berfungsi sebagai instrumen legitimasi tindakan melawan hukum. Penelitian ini menyimpulkan bahwa putusan tersebut mencerminkan pendekatan fungsional terhadap akuntabilitas profesi hukum, sekaligus menegaskan perlunya batas normatif yang jelas guna mencegah kriminalisasi berlebihan terhadap *in-house legal counsel*.

Kata kunci: *Devan Penasibat Hukum Internal, Pendapat Hukum, Pertanggungjawaban Pidana Korporasi, Penyertaan dalam Tindak Pidana*

1. INTRODUCTION

Over the past two decades, the development of Indonesia's business sector has exhibited increasing complexity in organizational structures, business models, and interactions with national and international regulatory regimes. Corporations no longer operate in simple, centralized forms but through multifaceted decision-making processes involving diverse units and professional functions with interdependent roles. This condition necessitates the implementation of robust corporate governance as a fundamental prerequisite for business sustainability, legal certainty, and the protection of stakeholder interests. Within this framework, the internal legal function, or in-house legal counsel, has assumed an increasingly strategic role, not merely as a drafter of contractual instruments but as a provider of legal advice that substantially influences corporate policies and actions.

As corporate activities become more complex, the risk of corporate crime correspondingly increases. In response, the state has expanded the corporate criminal liability regime through various legal instruments, including Supreme Court Regulation Number 13 of 2016 and the reinforcement of individual criminal liability under Law Number 1 of 2023 on the Criminal Code. These developments reflect a paradigmatic shift from a classical approach focused exclusively on individual offenders toward the recognition that criminal conduct may arise within structured and systemic organizational settings. Consequently, the reach of criminal law within corporate entities has broadened and is no longer confined to directors or controlling shareholders.

Article 55 of the Criminal Code extends criminal accountability to any party who participates in, assists, or facilitates the commission of a criminal offense. When applied in a modern corporate context, this provision raises critical concerns regarding internal support professionals, particularly in-house legal counsel. As legal advisors and compliance officers, in-house legal counsel occupy a distinctive position: while they are expected to safeguard legal compliance and prevent violations, they may also be exposed to accomplice liability when their legal opinions are relied upon by management to implement corporate policies subsequently deemed unlawful.

The Kenny Wisla Sonda case illustrates this dilemma. The court's ruling marked a significant turning point in the enforcement of corporate criminal law in Indonesia, as it represented the first instance in which in-house legal counsel was expressly held criminally liable for legal opinions rendered in the course of professional duties. The panel of judges determined that the legal opinions at issue had transcended professional advice and functioned instead as instruments that facilitated and legitimized corporate actions in violation of statutory law and fiduciary obligations. This reasoning reflects a judicial tendency to conceptualize corporate crime as a structured phenomenon,

prioritizing functional contribution and substantive influence over formal organizational status.

The criminalization of in-house legal counsel raises substantial normative and practical concerns. From a conceptual standpoint, legal opinions are non-binding and do not supplant the decision-making authority vested in corporate directors. Accordingly, attributing criminal causation to in-house legal counsel risks obscuring the distinction between professional responsibility and criminal liability. Absent clear normative standards, the expansion of criminal liability may lead to overcriminalization and produce a chilling effect that undermines professional independence and weakens the quality of internal legal oversight.

Such consequences are ultimately counterproductive. In-house legal counsel operating under the persistent threat of criminal prosecution may adopt overly defensive postures and become reluctant to provide candid, critical, and constructive legal analysis. In contemporary corporate practice, the in-house legal function is expected not only to justify corporate actions legally but also to ensure that corporate policies comply with applicable laws, the principle of prudence, and standards of business ethics. The erosion of this function is likely to increase legal risk and diminish the overall effectiveness of corporate compliance mechanisms.

At the same time, the state's interest in strengthening law enforcement against corporate crime cannot be disregarded. The misuse of professional expertise to legitimize unlawful practices poses a serious threat to the integrity of the legal system and to public trust. Accordingly, the central challenge of contemporary corporate criminal law lies in delineating fair and proportional boundaries between safeguarding in-house legal professionals and imposing criminal liability on professional contributions that clearly, intentionally, and substantially facilitate criminal conduct.

The growing complexity of business activities has driven an expansion in both the subjects and patterns of criminal liability within the corporate sphere. Indonesian criminal law and corporate law scholarship increasingly conceptualizes corporate crime not as isolated individual misconduct but as the product of structured decision-making processes involving multiple actors within organizational hierarchies. Heffinur argues that corporate crime has developed alongside economic and technological advancement, while classical criminal law has yet to fully accommodate legal entities as criminal perpetrators. Much of the existing scholarship continues to concentrate on shareholders and directors as primary loci of accountability, leaving the role of corporate support professions largely underexplored.¹ A similar emphasis appears in studies by Pardamean and Raffles, which analyze directors' liability in limited liability companies and underscore the business judgment rule as a protective doctrine for

¹ Heffinur Heffinur, "Pertanggungjawaban Pidana Pemegang Saham Dan Direksi Terhadap Korporasi Yang Dipidanakan," *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 2 (2014): 133–52, <https://doi.org/10.24246/jrh.2014.v8.i2.p133-152>.

directors acting in good faith and with due care. While positioning directors as the principal decision-makers bearing individual and collective responsibility for corporate losses, these studies do not explicitly address the contribution of non-directorial actors—such as in-house legal counsel—whose influence on policy formulation and legal justification is often substantial.²

In the context of corporate criminal law enforcement, the application of the identification doctrine remains a critical issue. Nurdipa and Zulfiani demonstrate that this doctrine attributes corporate criminal culpability to the intent and actions of internal officials. Although it provides a theoretical basis for corporate criminalization, their findings reveal a problematic ambiguity between personal conduct and actions performed on behalf of the corporation. Such ambiguity risks generating legal uncertainty, particularly when extended to professions engaged in legal advisory and compliance functions.³ Similarly, Faturachman et al. observe that Indonesia's corporate criminal liability framework remains relatively underdeveloped and characterized by normative indeterminacy. Existing analyses predominantly focus on corporations and senior management as subjects of criminal law, without sufficiently examining the implications of criminal liability for internal professional roles tasked with control and prevention, including in-house legal counsel.⁴

Initial engagement with this issue appears in the work of Saba and Dunga, which highlights the strategic position of corporate legal professionals in providing legal advice and overseeing compliance. However, the study primarily emphasizes the vulnerability of the legal profession to criminalization arising from regulatory gaps and the deterrent effects of criminal precedents on professional judgment, without offering a systematic analysis of the causal nexus between legal opinions and corporate criminal acts.⁵

A more targeted inquiry is advanced by Permana and Rifai, who explicitly examine the position and criminal liability of legal officers in corporate crime. Their study concludes that legal officers may incur criminal liability where legal opinions or documents function as instruments in the commission of criminal offenses. Nevertheless, the analysis remains largely confined to the fulfillment of formal elements

² Michael Christoper Pardamean, "Pertanggungjawaban Direksi Atas Tindak Pidana Korporasi," *Unes Law Review* 6, no. 2 (2023): 7365–72, <https://doi.org/10.31933/unesrev.v6i2.1630>; Raffles, "Tanggung Jawab Dan Perlindungan Hukum Direksi Dalam Pengurusan Perseroan Terbatas," *Undang: Jurnal Hukum* 3, no. 1 (2020): 107–37, <https://doi.org/https://doi.org/10.22437/ujh.3.1.107-137>.

³ Ilhan Nurdipa and Anita Zulfiani, "Penerapan Doktrin Identifikasi Dalam Menentukan Pertanggungjawaban Pidana Korporasi Atas Tindak Pidana Korupsi," *Referendum: Jurnal Hukum Perdata Dan Pidana* 2, no. 2 (2025): 104–118, <https://doi.org/10.62383/referendum.v2i2.779>.

⁴ Fauzan Azima Faturachman, Tomi J.E Hutasoit, and Asmak Ul Hosnah, "Pertanggungjawaban Dan Penegakan Hukum Pidana Korporasi Dalam Tindak Pidana Korupsi Di Indonesia," *Akademik: Jurnal Mahasiswa Humanis* 4, no. 2 (2024): 197–212, <https://doi.org/10.37481/jmh.v4i2.731>.

⁵ Citra Sriwani Saba and Wenry A. Dunga, "Kriminalisasi Terhadap Profesi Legal Perusahaan Yang Memberikan Nasihat Hukum," *Iuris Studia: Jurnal Kajian Hukum* 6, no. 2 (2025): 328–36, <https://doi.org/10.55357/is.v6i2.933>.

of participation, and does not critically articulate the normative boundary separating the legitimate exercise of professional duties from criminal involvement.⁶

Conversely, research on inconsistencies in the application of the professional protection doctrine in corruption cases, as examined by Art and Lie, demonstrates that divergent judicial interpretations of the business judgment rule have direct implications for legal certainty and substantive justice. Although the study focuses on directors of state-owned enterprises, its findings are relevant in illustrating how the absence of clear judicial guidelines may lead to the disproportionate expansion of criminal liability for corporate actors who should otherwise receive appropriate professional protection.⁷

Existing scholarship has largely concentrated on corporate criminal liability involving directors and senior management, while the legal boundaries of criminal liability for in-house legal counsel remain insufficiently defined. This study addresses that gap by examining the legal character of legal opinions in relation to the concept of criminal participation (*deelneming*) and by formulating proportional normative standards through a critical analysis of Decision Number 534/Pid.B/2024/PN.JKT.SEL. Accordingly, this research aims to:

- 1) analyze the legal limits of criminal liability for in-house legal counsel within Indonesia's corporate governance structure;
- 2) assess the legal character of legal opinions and their relevance to the concept of criminal participation (*deelneming*); and
- 3) critically examine the judicial reasoning in Decision Number 534/Pid.B/2024/PN.JKT.SEL concerning the criminalization of in-house legal counsel.

2. RESEARCH METHODOLOGY

This study employs a normative (doctrinal) legal research method to examine and formulate the legal boundaries of criminal liability for in-house legal counsel within corporate structures in Indonesia. A normative approach is adopted because the analysis centers on legal norms, doctrines, and judicial reasoning in corporate criminal law, rather than on the empirical behavior of business actors. The research is prescriptive in nature and is directed toward developing a systematic and equitable legal framework.

⁶ Yoga Matofani Permana and Anis Rifai, "Tinjauan Yuridis Terhadap Kedudukan Dan Pertanggungjawaban Hukum Pidana Legal Officer Dalam Perseroan Terbatas: Studi Kasus Perkara Nomor: 1370 K/PID/2025," *Rivayat: Educational Journal of History and Humanities* 8, no. 4 (2025): 8251–64, <https://doi.org/10.24815/jr.v8i4.51034>.

⁷ Stanley Muljadi Art and Gunardi Lie, "The Legal Liability of Directors in State-Owned Enterprises: An Analysis of Judicial Inconsistencies in the Application of the Business Judgment Rule Doctrine," *Indonesian Journal of Law and Economics Review* 20, no. 4 (2025): 1–16, <https://doi.org/10.21070/ijler.v20i4.1386>.

The methodological approaches applied include statutory, conceptual, and case-based analyses. The statutory approach examines relevant positive law, including the Criminal Code, Law Number 1 of 2023 on the Criminal Code, the Limited Liability Company Law, and Supreme Court Regulation Number 13 of 2016. The conceptual approach explores the doctrine of criminal participation (*deelneming*), theories of corporate criminal liability, criminal causation, and the principle of professional independence. The case-based approach focuses on Decision Number 534/Pid.B/2024/PN.JKT.SEL of the South Jakarta District Court as a representative development in jurisprudence concerning the criminalization of in-house legal counsel.

The legal materials consist of primary, secondary, and tertiary sources collected through a comprehensive literature review.⁸ Data are analyzed qualitatively using grammatical, systematic, and teleological methods of legal interpretation, complemented by prescriptive analysis to formulate normative standards for proportional criminal responsibility and to promote legal certainty.

3. RESEARCH RESULT AND DISCUSSION

3.1. Limits of Criminal Liability for In-House Legal Officers within Indonesian Corporate Structures

This study examines the limits of criminal liability for in-house legal officers within Indonesian corporate structures, particularly where legal opinions are relied upon as sources of internal legitimacy for corporate policies subsequently proven to be unlawful. The analysis focuses on how Indonesian criminal law characterizes in-house legal officers as subjects of criminal liability and the extent to which their professional contributions may be classified as forms of criminal participation (*deelneming*) under Article 55(1) of the Criminal Code.

An examination of Decision Number 534/Pid.B/2024/PN Jakarta Selatan reveals that the Panel of Judges constructed the criminal liability of the in-house legal officer not on the basis of formal position alone, but on the existence of a concrete causal nexus between the legal opinions issued and the commission of embezzlement under Article 372 of the Criminal Code. The evidentiary record established that, between 2018 and 2023, PT Energy Equity Epic (Sengkang) Pty Ltd (EEES) exercised systematic control over all revenue derived from a 49 percent Participating Interest held by PT Energi Maju Abadi (PT EMA), without lawful distribution, reporting, or approval from the rights holder. This conduct resulted in verified losses of USD 31,468,649, as confirmed by an independent investigative audit.

⁸ Gracia Gracia, Dylan Aldianza Ramadhan, and Juan Matheus, "Implementasi Konsep Euthanasia: Supremasi Hak Asasi Manusia Dan Progresivitas Hukum Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 1 (February 2022): 1–24, <https://doi.org/10.15294/ipmhi.v2i1.53730>.

The findings indicate that the Panel did not contest the existence of the material act (*actus reus*) of embezzlement, as audit reports, financial statements, and cash-flow records consistently demonstrated the unlawful appropriation of revenue belonging to another party. The decisive legal issue concerned the assessment of *mens rea* and the defendant's role as an in-house legal officer. In this respect, the Panel determined that the legal opinion and accompanying legal memorandum were not merely administrative outputs, but normative instruments that functioned as primary references for the General Manager and Finance Controller in maintaining the revenue-withholding policy. Consequently, the legal opinion possessed substantive influence within the company's internal decision-making process.

This study identifies that the boundary of criminal liability for in-house legal officers hinges on the presence of a significant causal contribution to the commission of a criminal offense. Where a legal opinion is rendered solely as an abstract normative analysis without determinative impact on unlawful corporate policies, criminal liability cannot be automatically attributed to the in-house legal officer. Conversely, where a legal opinion operates as an instrument of internal legitimacy that enables or reinforces criminal conduct, the limits of professional immunity are exceeded and individual criminal liability may arise.

These findings diverge from several prior studies that have tended to portray in-house legal officers as relatively passive actors shielded by principles of legal professionalism. Previous scholarship has emphasized that criminal liability should be restricted due to the absence of executive or financial authority.⁹ However, this case demonstrates that formal authority is not the sole determinant of criminal responsibility. Instead, criminal law evaluates actual contributions to the causal chain of an offense, including intellectual and normative contributions embodied in legal opinions.

The Panel of Judges implicitly applied a combination of the identification doctrine and the doctrine of criminal participation (*deelneming*).¹⁰ Through the identification doctrine, as reflected in Supreme Court Regulation Number 13 of 2016, corporate intent is attributed to the actions of internal actors whose conduct generates economic benefit for the corporation. In the present case, the control of Participating Interest revenue produced direct benefits for EEES, while corresponding losses were borne by PT EMA.

⁹ Faturachman, Hutasoit, and Hosnah, "Pertanggungjawaban Dan Penegakan Hukum Pidana Korporasi Dalam Tindak Pidana Korupsi Di Indonesia"; Nurdipa and Zulfiani, "Penerapan Doktrin Identifikasi Dalam Menentukan Pertanggungjawaban Pidana Korporasi Atas Tindak Pidana Korupsi"; Pardamean, "Pertanggungjawaban Direksi Atas Tindak Pidana Korporasi."

¹⁰ Lalu Saipudin et al., "The Concept of Corporate Criminal Liability in the Indonesian Criminal Law System," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 2 (2025): 475–499, <https://doi.org/10.29303/ius.v13i2.1817>; Rezki Purnama Samad, Ardiansyah Ardiansyah, and Eva Albatun Nabilah, "A Critical Analysis of Corporate Criminal Liability InLaw Number 1 of 2023," *SIGn Jurnal Hukum* 7, no. 2 (2025): 664–81, <https://doi.org/10.37276/sjh.v7i2.515>; Budi Suhariyanto and Cecep Mustafa, "Contradiction Over the Application of Liability in Corruption Court Decisions in Indonesia," *Indonesian Law Review* 13, no. 1 (2023): 53–68, <https://doi.org/10.15742/ilrev.v11n2.3>.

In-house legal counsel was thus positioned as part of the corporate structure that enabled the realization of corporate intent through internal legal justification.

Moreover, the Panel's application of Article 55 of the Criminal Code demonstrates that the concept of criminal participation is not confined to direct or physical perpetrators. Legal opinions that serve as the normative basis for corporate policies were treated as contributions that enabled and sustained the commission of criminal offenses. This interpretation confirms a shift in Indonesian criminal law toward a substantive approach, under which professional roles are evaluated based on their actual impact on criminal conduct rather than on formal functional designations alone.

The findings of this study further establish that the Kenny Wissha Sonda case constitutes a significant precedent in the development of the doctrine of criminal liability for in-house legal counsel in Indonesia. The decision underscores that professional independence entails not only ethical obligations but also potential criminal consequences. In-house legal counsel are thus required not merely to align with corporate business interests, but also to bear legal responsibility for the foreseeable consequences of the legal opinions they produce.

This study concludes that the limits of criminal liability for in-house legal counsel are determined by three principal parameters: (1) the existence of a causal nexus between the legal opinion and the criminal act; (2) the use of the legal opinion as an instrument to legitimize unlawful corporate policies; and (3) the presence of economic benefit to the corporation accompanied by concrete harm to other parties. By articulating these parameters, this research offers a clearer and more proportionate normative framework for assessing the criminal responsibility of in-house legal counsel, while reinforcing the principles of accountability and professional integrity within contemporary corporate structures.

3.2. Legal Character of Legal Opinions Issued by In-House Legal Counsel and Their Relevance to Criminal Participation (Deelneming)

This section examines the legal character of legal opinions prepared by in-house legal counsel and analyzes their relevance to the concept of criminal participation (*deelneming*) under Indonesian criminal law. The central normative issue addressed is whether, and to what extent, a formally non-binding legal opinion may be classified as a form of criminal contribution within the meaning of Article 55(1) of the Criminal Code. Employing a normative juridical approach, supplemented by an analysis of Decision Number 534/Pid.B/2024/PN Jakarta Selatan, this study seeks to reconcile the professional advisory function of legal counsel with individual criminal responsibility in the context of corporate crime.

The analysis demonstrates that, in the *a quo* case, the legal opinion prepared by the defendant was not treated by corporate management as a purely consultative document.

Instead, it functioned as a source of internal legitimacy for strategic decision-making directly affecting control over the 49 percent Participating Interest held by PT Energi Maju Abadi (PT EMA). The evidentiary record shows that the defendant's legal memorandum and opinion were expressly relied upon by the General Manager and Finance Controller in maintaining the policy of withholding income distribution throughout the 2018–2023 period. Accordingly, the legal opinion in this case cannot be characterized as neutral or passive, but rather as a normative instrument that reinforced and facilitated unlawful conduct.

The study further finds that the Panel of Judges assessed the defendant's involvement not on the basis of formal position or operational authority, but through an evaluation of his causal contribution to the commission of the embezzlement offense. The absence of direct authority over financial management did not preclude criminal liability, as the defendant's role in providing legal justification was considered an integral component of the corporate chain of conduct. From a criminal law perspective, this satisfies the element of *medeplegen*, or participation in the offense, as contemplated in Article 55(1) of the Criminal Code, where participation may take the form of intellectual or normative support that materially influences the direction of criminal policy.

In contrast to prior scholarship, which generally regards legal opinions as professional outputs shielded by principles of professional independence and therefore resistant to criminalization, the findings of this study indicate a discernible shift in judicial reasoning. The focus has moved away from the formal status of legal opinions toward their actual function and substantive impact.¹¹ This approach is consistent with the evolution of modern corporate criminal liability doctrine, particularly through the application of the identification doctrine as reflected in Supreme Court Regulation Number 13 of 2016, which permits the attribution of corporate intent through the actions of internal actors occupying strategically significant roles.

The legal character of legal opinions is thus inherently contextual and functional. Where legal opinions are prepared and utilized as independent analytical tools aimed at preventing legal violations, they remain within the domain of ethical and professional responsibility.¹² However, when such opinions are knowingly produced or maintained to legitimize conduct contrary to contractual obligations and positive law, and are repeatedly invoked as the normative basis for policies that harm other parties, they

¹¹ Nurdipa and Zulfiani, "Penerapan Doktrin Identifikasi Dalam Menentukan Pertanggungjawaban Pidana Korporasi Atas Tindak Pidana Korupsi"; Pardamean, "Pertanggungjawaban Direksi Atas Tindak Pidana Korupsi"; Saba and Dunga, "Kriminalisasi Terhadap Profesi Legal Perusahaan Yang Memberikan Nasihat Hukum."

¹² Herliana Herliana, "Ensuring Certainty through Legal Reasoning: What Can Indonesia Learn from the United Kingdom and the United States?," *Jurnal Jurisprudence* 13, no. 2 (2023): 318–38, <https://doi.org/10.23917/jurisprudence.v13i2.3057>; Marat Shardingaliyev, "Implications in Judicial Opinions," *International Journal for the Semiotics of Law* 32 (2019): 391–415, <https://doi.org/10.1007/s11196-018-09601-4>.

forfeit their protective character and may constitute instruments of criminal participation.

Finally, this study confirms that the Panel of Judges consistently linked the defendant's legal opinion to the *mens rea* element of the embezzlement offense. The prolonged pattern of income withholding over a five-year period, the absence of corrective measures despite formal objections from PT EMA, and the economic benefits accruing to EEES were regarded as compelling indicators of intent. Within this context, the defendant's contribution as in-house legal counsel was deemed inseparable from the corporation's deliberate maintenance of an unlawful status quo.

Accordingly, the principal findings of this study confirm that a legal opinion may acquire criminal relevance where three cumulative conditions are satisfied: (1) it is relied upon as a basis for strategic corporate decision-making; (2) it bears a demonstrable causal nexus to the unlawful conduct; and (3) it generates direct or indirect economic benefits for the corporation engaged in the criminal activity. These conditions were factually established in the Kenny Wisha Sonda case, thereby providing a sound legal basis for classifying the defendant as an accomplice to the offense.

This study concludes that the South Jakarta District Court's decision extends beyond the resolution of an individual dispute and advances a novel normative framework defining the boundaries of criminal liability for in-house legal counsel. The ruling underscores that professional independence within the legal profession is not absolute and cannot operate as a shield where legal opinions function to legitimize criminal conduct. Accordingly, this research contributes to the evolution of corporate criminal law by conceptualizing legal opinions as subject to criminal evaluation based on their function, impact, and causal contribution within the doctrine of criminal participation (*deelneming*).

3.3. Judicial Reasoning in Decision Number 534/Pid.B/2024 of the South Jakarta District Court on the Criminal Liability of In-House Legal Counsel

This section critically examines the judicial reasoning adopted by the Panel of Judges in Decision Number 534/Pid.B/2024 of the South Jakarta District Court, with particular attention to the determination of criminal liability for in-house legal counsel. The analysis focuses on whether, and to what extent, a legal opinion prepared by in-house legal counsel may be classified as a form of criminal participation (*deelneming*) in the offense of embezzlement, as well as on the extent to which the judicial reasoning adheres to the precautionary principle aimed at preventing the undue criminalization of the legal profession.

The analysis demonstrates that the Panel of Judges constructed an evidentiary framework grounded in objective facts, namely the systematic control exercised by PT Energy Equity Epic (Sengkang) Pty Ltd (EEES) over 49 percent of the revenue derived

from the Participating Interest held by PT Energi Maju Abadi (PT EMA) during the 2018–2023 period. The absence of any revenue distribution to PT EMA, despite the express entitlements set forth in the Joint Operating Agreement and the Production Sharing Contract, was treated as an uncontested material fact. This conclusion was reinforced by an independent investigative audit establishing actual losses of USD 31,468,649, thereby substantiating the fulfillment of the *actus reus* element of embezzlement under Article 372 of the Indonesian Criminal Code through unlawful, systematic, and sustained control over funds.

In determining criminal liability, the Panel did not rely solely on formal authority or organizational position, but instead emphasized the defendant's causal contribution to the implementation and maintenance of the revenue-control policy. The evidentiary record indicates that the General Manager and Finance Controller consistently relied on the defendant's legal memorandum and legal opinions as sources of internal legitimacy for withholding revenue distribution. Accordingly, the legal opinion was not treated as a passive administrative product, but as a normative instrument that facilitated and reinforced a policy subsequently found to be unlawful.

The Panel thus adopted a functional approach to the role of in-house legal counsel, assessing criminal liability not on the formal, non-binding nature of the legal opinion, but on its factual function and substantive impact on corporate decision-making. On this basis, the defendant's intellectual contribution was deemed sufficient to satisfy the elements of criminal participation under Article 55(1) of the Criminal Code, notwithstanding the absence of direct physical control over the funds.

When contrasted with earlier scholarship, these findings reflect a notable paradigmatic shift. Much of the prior literature emphasized the protection of professional independence and cautioned against the criminalization of legal opinions rendered within a professional advisory framework and without executive authority.¹³ By contrast, the decision illustrates an increasingly progressive judicial orientation aligned with the evolution of modern corporate criminal liability doctrine, particularly through the application of the identification doctrine as recognized in Supreme Court Regulation Number 13 of 2016. Under this approach, professional status yields to an assessment of actual contributions to criminal conduct that generates economic benefits for the corporation.

The judicial reasoning exhibits both strengths and potential limitations. On the one hand, the decision reinforces the principle of accountability by affirming that no profession is exempt from criminal liability where its role is instrumental in legitimizing

¹³ Heffinur, "Pertanggungjawaban Pidana Pemegang Saham Dan Direksi Terhadap Korporasi Yang Dipidanakan"; Nurdipa and Zulfiani, "Penerapan Doktrin Identifikasi Dalam Menentukan Pertanggungjawaban Pidana Korporasi Atas Tindak Pidana Korupsi"; Raffles, "Tanggung Jawab Dan Perlindungan Hukum Direksi Dalam Pengurusan Perseroan Terbatas."

unlawful conduct.¹⁴ It also underscores the importance of good corporate governance in strategic sectors such as the oil and gas industry, where transparency and contractual compliance are essential. On the other hand, the functional approach adopted by the Panel may generate legal uncertainty regarding the boundaries of criminal liability for in-house legal counsel unless it is accompanied by clearly defined criteria concerning intent, actual knowledge, and the availability of reasonable alternative legal opinions.

This study confirms that, in the *a quo* case, the Panel of Judges did not simply criminalize the legal profession, but instead evaluated a pattern of active, repeated, and conscious contributions that were causally linked to the losses suffered by other parties. The finding of intent was not inferred from a single, isolated legal opinion, but from a sustained course of conduct over a five-year period, including the defendant's involvement in responding to PT EMA's formal objections without promoting corrective adjustments to internal corporate policies. This pattern supports the conclusion that the element of *mens rea* was inseparable from the corporation's deliberate decision to maintain control over the disputed funds.

The findings further demonstrate that Decision Number 534/Pid.B/2024 of the South Jakarta District Court constitutes a significant precedent in the development of Indonesian corporate criminal law. The decision affirms that in-house legal counsel may incur criminal liability where their legal opinions function as instruments for legitimizing criminal conduct and establish a causal nexus with the offense. Nevertheless, to prevent the overcriminalization of the legal profession, there is a pressing need for the articulation of clearer judicial standards delineating the boundary between professionally erroneous legal advice and legal opinions knowingly employed to facilitate unlawful acts. Such clarification is essential to preserving an appropriate balance between criminal accountability and the protection of professional independence within the legal profession.

4. CONCLUSION

This study examines the limits of criminal liability for in-house legal counsel within Indonesian corporate structures, evaluates the legal character of legal opinions in relation to the concept of criminal participation (*deelneming*), and critically analyzes the judicial reasoning in Decision Number 534/Pid.B/2024/PN Jakarta Selatan. The findings indicate that criminal liability for in-house legal counsel is not determined by formal position or operational authority, but by the existence of a clear causal and intentional contribution to the facilitation of unlawful corporate policies. Legal opinions

¹⁴ Amjed Mezher Ahmed, "The Administrative Judge's Authority to Control Administrative Abuse in Its Decisions," *International Journal of Criminal, Common and Statutory Law* 4, no. 2 (2024): 204–13, <https://doi.org/10.22271/27899497.2024.v4.i2c.107>; Jitro Gianfranco Behuku et al., "The Judge's Role in the Effectiveness of Anti-Corruption Enforcement in Indonesia: A Juridical Analysis," *Signn Jurnal Hukum* 7, no. 1 (2025): 351–67, <https://doi.org/10.37276/sjh.v7i1.464>.

that function in practice as instruments of legitimacy and as the normative basis for strategic decision-making may therefore be classified as forms of criminal participation under Article 55 of the Criminal Code.

The study further confirms that the judicial reasoning in the *a quo* case reflects a functional and substantive approach that prioritizes the actual impact and role of in-house legal counsel over formalistic notions of professional protection. These findings offer theoretical contributions by enriching the doctrine of corporate criminal law and practical value as a point of reference for in-house legal practitioners. The principal limitation of this study lies in its normative methodology, which does not incorporate empirical data. Accordingly, future research should focus on the formulation of clearer judicial guidelines delineating the limits of criminalization of legal opinions, as well as on empirical and comparative analyses to enhance legal certainty and safeguard the independence of the legal profession.

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