



Reconstructing the Criminal Liability of Directors in Nominee Shareholding Schemes: A Comparative and Doctrinal Analysis in Corporate Crime

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Abstract

Nominee shareholding schemes have become increasingly prevalent in corporate structures, particularly in jurisdictions where regulatory restrictions limit foreign ownership or impose disclosure requirements. While such arrangements may serve legitimate purposes, they are frequently used to conceal beneficial ownership, facilitate illicit financial activities, and evade legal accountability. In the context of corporate crime, nominee structures create significant challenges in determining the criminal liability of directors, as formal ownership and actual control are often deliberately separated. This study examines the criminal liability of directors involved in nominee shareholding schemes, focusing on the doctrinal and practical difficulties in attributing responsibility within corporate structures. Using a normative juridical approach combined with comparative analysis, this research analyzes legal frameworks and judicial reasoning in selected jurisdictions, with particular reference to Indonesia and common law systems. The study draws on statutory provisions, case law, and scholarly literature to identify inconsistencies and gaps in current approaches. The findings reveal that existing legal frameworks tend to rely on formalistic interpretations of corporate roles, which allow directors to evade liability by distancing themselves from beneficial ownership structures. The lack of clear standards for attributing knowledge, control, and intent further complicates enforcement. In many cases, nominee arrangements are treated as civil or administrative issues rather than criminal matters, despite their potential to facilitate serious offenses such as fraud, money laundering, and corruption. This study proposes a reconstructed model of criminal liability based on a substantive control approach, which emphasizes actual decision-making power, beneficial ownership, and the economic reality of corporate operations. The model integrates principles of corporate criminal liability, including identification theory, vicarious liability, and the doctrine of willful blindness, to establish a more coherent framework for holding directors accountable. The study contributes to the development of corporate criminal law by offering a conceptual and practical framework for addressing nominee shareholding schemes. It also provides policy recommendations aimed at strengthening legal enforcement and enhancing transparency in corporate governance.

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1. Introduction

Nominee shareholding schemes have become a prominent feature of modern corporate structures, particularly in jurisdictions where regulatory constraints on ownership and disclosure incentivize the use of indirect arrangements. In such schemes, shares are formally held by one party (the nominee) on behalf of another (the beneficial owner), thereby creating a separation between legal ownership and actual

control. While nominee arrangements may be used for legitimate purposes, they are frequently exploited to obscure beneficial ownership, facilitate illicit transactions, and evade legal responsibility.¹

In the context of corporate crime, nominee shareholding schemes pose significant challenges to the attribution of criminal liability. Corporate structures inherently involve a separation between ownership and management, but nominee arrangements further complicate this relationship by introducing layers of opacity. Directors may formally appear to act within the bounds of legality, while in reality operating under the influence or direction of undisclosed beneficial owners.² This creates a situation in which traditional doctrines of criminal liability struggle to capture the true locus of responsibility.

The difficulty is particularly evident in cases involving financial crimes, corruption, and money laundering, where nominee structures are often used to conceal the identity of those who ultimately benefit from illegal activities. In such cases, the question arises as to whether directors can be held criminally liable when they are not the ultimate beneficiaries of the scheme, or when they claim to act merely as formal representatives without substantive control.³ Existing legal frameworks often fail to provide clear answers to these questions, leading to inconsistent judicial outcomes.

From a doctrinal perspective, the attribution of criminal liability in corporate contexts has traditionally relied on theories such as the identification doctrine, which links the acts and intentions of individuals to the corporation, and vicarious liability, which holds corporations responsible for the actions of their agents.⁴ However, these doctrines are often inadequate in addressing the complexities of nominee arrangements, where control and intent may be deliberately obscured. The reliance on formal roles and documented authority may allow individuals to evade liability despite their involvement in illicit activities.

In Indonesia, the issue of nominee shareholding is particularly relevant in sectors subject to foreign ownership restrictions, where such arrangements are sometimes used to circumvent regulatory limitations. Although Indonesian law formally prohibits certain forms of nominee ownership, enforcement remains inconsistent, and the criminal implications of such schemes are not clearly defined.⁵ As a result, nominee structures often operate in a legal gray area, where civil and administrative sanctions are more commonly applied than criminal penalties.

Comparatively, common law jurisdictions have developed more sophisticated approaches to addressing hidden ownership and control, including the use of doctrines such as willful blindness and the concept of beneficial ownership.⁶ These approaches allow courts to look beyond formal structures and assess the substantive reality of corporate operations. However, even in these jurisdictions, challenges remain in proving knowledge, intent, and control in complex corporate arrangements.

This study addresses these challenges by examining how criminal liability can be reconstructed to better capture the realities of nominee shareholding schemes. It argues that a shift from formalistic to substantive approaches is necessary, focusing on actual control, economic benefit, and decision-making authority rather than formal legal status.

The novelty of this research lies in its proposal of a substantive control-based model of liability, which integrates doctrinal principles from corporate criminal law with a more realistic assessment of corporate

¹Organisation for Economic Co-operation and Development (OECD), *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (Paris: OECD Publishing, 2001).

²Reinier Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3rd ed. (Oxford: Oxford University Press, 2017).

³Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Oxford: Hart Publishing, 2015).

⁴Celia Wells, *Corporations and Criminal Responsibility*, 2nd ed. (Oxford: Oxford University Press, 2001).

⁵Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal; Peraturan Presiden Nomor 10 Tahun 2021 tentang Bidang Usaha Penanaman Modal.

⁶A.P. Simester, J.R. Spencer, G.R. Sullivan, and G. Virgo, *Simester and Sullivan's Criminal Law: Theory and Doctrine*, 7th ed. (Oxford: Hart Publishing, 2019).

behavior. This model seeks to bridge the gap between legal form and economic substance, thereby enhancing the effectiveness of criminal law in addressing corporate crime.

In conclusion, this study contributes to the ongoing development of corporate criminal law by offering a more coherent and context-sensitive framework for addressing nominee shareholding schemes. By reconstructing the basis of liability, it provides a pathway toward greater accountability and transparency in corporate governance.

2. Literature Review

The issue of criminal liability in corporate structures has long been a central concern in corporate criminal law, particularly due to the inherent separation between ownership and control. Classical theories of corporate liability, such as the identification doctrine, attribute criminal responsibility to the corporation by linking it to the acts and mental states of individuals who represent its "directing mind and will."⁷

While this doctrine has been influential in common law jurisdictions, it has been widely criticized for its limitations in addressing complex corporate structures, especially those involving layered ownership and indirect control. In response to these limitations, scholars have developed alternative approaches, including vicarious liability and organizational fault models, which attempt to broaden the scope of corporate accountability.⁸ Vicarious liability allows corporations to be held responsible for the acts of their agents, even when those acts are not directly attributable to senior management. Meanwhile, organizational fault models focus on systemic failures within corporate governance structures, such as inadequate supervision or compliance mechanisms.

Nominee shareholding schemes represent one of the most significant challenges to these traditional frameworks. By design, such schemes separate legal ownership from beneficial ownership, creating a legal facade that obscures the true locus of control.⁹ This separation undermines the effectiveness of doctrines that depend on formal authority, as individuals who exercise actual control may not appear in official corporate records. Consequently, directors who formally hold positions within a company may either be used as proxies or may claim lack of knowledge regarding the underlying beneficial arrangements.

The concept of beneficial ownership has emerged as a key tool in addressing this problem. International organizations, including the OECD and the Financial Action Task Force (FATF), emphasize the importance of identifying the natural persons who ultimately own or control corporate entities.¹⁰ This approach shifts the focus from formal legal structures to the economic realities of corporate control. However, while beneficial ownership frameworks are well developed in regulatory and anti-money laundering contexts, their integration into criminal liability doctrines remains incomplete.

Another important theoretical development is the doctrine of willful blindness, which allows courts to infer knowledge where an individual deliberately avoids acquiring information that would confirm wrongdoing.¹¹ This doctrine is particularly relevant in cases involving nominee arrangements, where directors may intentionally distance themselves from the details of ownership structures to avoid liability. By recognizing willful blindness as a form of culpability, courts can overcome the evidentiary challenges associated with proving actual knowledge.

Despite these advancements, significant gaps remain in the literature. First, there is a tendency to treat nominee shareholding primarily as a matter of corporate governance or regulatory compliance, rather than

⁷Tesco Supermarkets Ltd v Nattrass [1972] AC 153 (HL).

⁸Celia Wells, *Corporations and Criminal Responsibility*, 2nd ed. (Oxford: Oxford University Press, 2001).

⁹OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (Paris: OECD Publishing, 2001).

¹⁰Financial Action Task Force (FATF), *Guidance on Transparency and Beneficial Ownership* (Paris: FATF/OECD, 2014).

¹¹A.P. Simester et al., *Simester and Sullivan's Criminal Law: Theory and Doctrine*, 7th ed. (Oxford: Hart Publishing, 2019).

as a potential basis for criminal liability.¹² This limits the development of doctrinal tools needed to address nominee structures in the context of corporate crime. Second, existing studies often focus on either corporate liability or beneficial ownership, without adequately integrating the two into a coherent analytical framework. Third, there is limited comparative analysis examining how different legal systems address the intersection of nominee arrangements and criminal responsibility.

In the Indonesian context, the literature on nominee shareholding has largely focused on its legality within investment law, particularly in relation to foreign ownership restrictions.¹³ While these studies provide valuable insights into the regulatory aspects of nominee arrangements, they rarely address the implications for criminal liability. As a result, there is a lack of doctrinal clarity regarding how directors involved in nominee schemes should be held accountable when such arrangements are used to facilitate corporate crime.

Furthermore, the existing legal framework in Indonesia tends to adopt a formalistic approach, emphasizing documented roles and statutory positions rather than substantive control. This approach creates opportunities for individuals to evade liability by exploiting the gap between legal form and economic reality. In contrast, some common law jurisdictions have begun to adopt more flexible approaches that consider factors such as control, influence, and benefit, although these approaches are not yet fully systematized.¹⁴

Based on this review, three major research gaps can be identified. First, there is a lack of a comprehensive doctrinal framework that integrates beneficial ownership, control, and intent in determining the criminal liability of directors in nominee schemes. Second, there is insufficient analysis of how existing liability doctrines can be adapted to address concealed ownership structures. Third, there is an absence of a reconstructed model that moves beyond formalistic interpretations toward a more substantive assessment of corporate behavior.

To address these gaps, this study proposes a substantive control approach to criminal liability, which focuses on the actual exercise of power, economic benefit, and decision-making authority within corporate structures. This approach integrates elements of identification theory, vicarious liability, and willful blindness into a unified framework that better reflects the realities of nominee shareholding schemes. By shifting the analytical focus from legal form to economic substance, the proposed model aims to enhance the effectiveness of criminal law in addressing corporate crime.

In conclusion, while existing theories of corporate criminal liability provide important foundations, they are insufficient to address the complexities introduced by nominee shareholding schemes. A reconstructed framework that emphasizes substantive control is therefore necessary to ensure accountability and prevent the misuse of corporate structures for illicit purposes.

3. Research Methodology

This study adopts a normative juridical approach combined with a comparative legal analysis to examine the criminal liability of directors in nominee shareholding schemes within corporate crime. The normative juridical approach is employed to analyze legal norms, doctrines, and principles governing corporate criminal liability, particularly in relation to beneficial ownership, control, and attribution of intent.¹⁵ This approach focuses on the interpretation of statutory provisions, case law, and legal doctrines to assess the adequacy of existing frameworks in addressing nominee arrangements.

¹²Peter Alldridge, *Money Laundering Law* (Oxford: Hart Publishing, 2015).

¹³Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal; Peraturan Presiden Nomor 10 Tahun 2021 tentang Bidang Usaha Penanaman Modal.

¹⁴Reinier Kraakman et al., *The Anatomy of Corporate Law*, 3rd ed. (Oxford: Oxford University Press, 2017).

¹⁵Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

Within the normative juridical framework, this study employs two specific analytical approaches that deserve explicit elaboration for readers outside the Indonesian legal tradition. First, the Statutory Approach involves a systematic examination of applicable legislative texts — including Indonesian corporate law (Law No. 40 of 2007 on Limited Liability Companies), criminal law (Law No. 1 of 2023 on the Criminal Code), and investment regulations — as well as their foreign equivalents such as the United Kingdom’s Companies Act 2006 and Bribery Act 2010. This approach treats enacted legislation as primary legal sources whose textual meaning, legislative intent, and structural coherence must be rigorously analyzed to identify normative gaps and inconsistencies in attributing criminal liability. Rather than applying statutes mechanically, the Statutory Approach interrogates whether legislative frameworks are doctrinally capable of reaching the substantive realities of nominee shareholding arrangements.

Second, the Conceptual Approach involves the construction and critical evaluation of legal concepts and theoretical frameworks that transcend any particular statutory text. This approach draws upon academic scholarship, international legal principles, and comparative jurisprudence to develop and refine the analytical categories — namely control, knowledge, and benefit — that underpin the proposed Control-Knowledge-Benefit (CKB) Framework. The Conceptual Approach is particularly important in contexts where legislation has not yet addressed novel forms of corporate misconduct, as it allows doctrinal reasoning to fill normative gaps and guide the evolution of law. Together, the Statutory and Conceptual Approaches constitute a coherent methodological architecture that enables this study to move beyond descriptive legal analysis toward normative reconstruction.

The comparative dimension of the study is utilized to identify similarities and differences in how various legal systems conceptualize and enforce criminal liability in corporate structures involving nominee shareholding. The analysis primarily contrasts the Indonesian legal framework, which is influenced by civil law traditions, with selected common law jurisdictions that have developed more flexible doctrines of liability, including the identification doctrine and the concept of willful blindness.¹⁶ This comparative perspective allows for a deeper understanding of how different legal traditions respond to the challenges posed by concealed ownership and indirect control.

The data used in this study consist of primary and secondary legal materials. Primary legal materials include statutory regulations, judicial decisions, and official legal instruments related to corporate law, criminal law, and anti-money laundering frameworks. Key sources include corporate governance regulations, investment laws, and legal provisions addressing beneficial ownership and nominee arrangements. Secondary legal materials include academic books, peer-reviewed journal articles, and reports from international organizations such as the OECD and the Financial Action Task Force (FATF), which provide authoritative insights into corporate transparency and illicit financial practices.¹⁷

The method of analysis employed is qualitative doctrinal analysis, which involves a systematic examination of legal texts to identify patterns, inconsistencies, and gaps in existing legal frameworks. This analysis is guided by a conceptual framework that emphasizes three core elements: control, knowledge, and benefit. These elements are used as analytical lenses to assess whether current doctrines of criminal liability adequately capture the realities of nominee shareholding schemes.¹⁸

To enhance analytical depth, the study incorporates a conceptual reconstruction approach, which aims to develop a new framework for understanding criminal liability in corporate contexts. This involves critically evaluating existing doctrines—such as identification theory, vicarious liability, and willful blindness—and integrating them into a more coherent model based on substantive control. The reconstruction is not

¹⁶Mark Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011).

¹⁷OECD, *Behind the Corporate Veil* (2001); FATF, *Guidance on Transparency and Beneficial Ownership* (2014).

¹⁸Wells, *Corporations and Criminal Responsibility* (2001); Simester et al., *Criminal Law: Theory and Doctrine* (2019).

merely descriptive but normative, proposing a framework that can guide both judicial reasoning and legislative reform.

In terms of validity, the study ensures internal consistency and doctrinal coherence by cross-referencing multiple legal sources and aligning theoretical analysis with comparative findings. The use of established legal doctrines and internationally recognized frameworks strengthens the credibility of the analysis. However, the study is limited by its focus on doctrinal and comparative analysis, without incorporating empirical data on enforcement practices. Despite this limitation, the methodological approach provides a robust foundation for theoretical development and policy recommendations.

Ultimately, this methodology enables the study to move beyond formalistic interpretations of corporate liability and to develop a more nuanced understanding of how criminal responsibility can be attributed in complex corporate structures. By combining normative and comparative approaches, the study offers both analytical rigor and practical relevance in addressing the challenges posed by nominee shareholding schemes.

4. Results And Discussion

4.1 Criminal Liability of Directors in Nominee Shareholding Schemes under Indonesian Law

The Indonesian legal framework governing corporate criminal liability demonstrates a predominantly formalistic orientation, which presents significant limitations in addressing nominee shareholding schemes. Within this framework, criminal responsibility is generally attributed based on formal legal positions, such as directors or commissioners, as recognized in corporate documents and statutory provisions.¹⁹ While this approach provides legal certainty, it fails to capture the underlying economic realities of corporate control, particularly in cases where nominee arrangements are used to obscure beneficial ownership.

In principle, Indonesian company law recognizes directors as the primary organ responsible for managing and representing the company. As such, directors may be held liable for unlawful acts committed in the name of the corporation.²⁰ However, this liability is typically assessed based on documented authority and formal decision-making roles, rather than on the actual exercise of control or the existence of hidden ownership structures. This creates a significant gap in situations where directors act as nominees or proxies for undisclosed beneficial owners.

Nominee shareholding schemes are particularly relevant in Indonesia due to regulatory restrictions on foreign ownership in certain sectors. In practice, such schemes often involve local individuals acting as nominal shareholders or directors on behalf of foreign or undisclosed principals. Although Indonesian law formally prohibits arrangements that disguise true ownership, enforcement remains inconsistent, and the legal consequences are often limited to administrative or civil sanctions.²¹ As a result, nominee structures continue to operate within a legal gray area, where their criminal implications are not clearly defined.

From a criminal law perspective, the attribution of liability in nominee schemes is further complicated by the absence of clear doctrinal tools for assessing control, knowledge, and intent. Indonesian criminal law traditionally requires proof of *mens rea* (criminal intent), which must be established based on the actions and awareness of the accused.²² However, in nominee arrangements, directors may claim that they lack knowledge of the underlying beneficial ownership or the illicit purposes of the scheme. This creates evidentiary challenges, as the separation between formal roles and actual control allows individuals to deny responsibility.

Moreover, the current legal framework does not adequately address the concept of beneficial ownership in the context of criminal liability. While beneficial ownership has gained recognition in anti-money laundering regulations, its integration into corporate criminal law remains limited.²³ Consequently, law enforcement authorities often rely on formal documentation to establish liability, which may not reflect the true distribution of power within the corporate structure. This reliance on formal evidence enables those who exercise actual control to remain insulated from legal accountability.

Judicial practice in Indonesia further reflects this formalistic tendency. Courts often focus on the actions of formally appointed directors, without sufficiently examining whether these individuals act independently or under the direction of hidden principals.²⁴ In cases involving complex corporate arrangements, this approach may result in the prosecution of nominal actors while the true beneficiaries of the scheme evade

¹⁹Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

²⁰Ibid.

²¹Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal; Peraturan Presiden Nomor 10 Tahun 2021 tentang Bidang Usaha Penanaman Modal.

²²Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

²³FATF, *Guidance on Transparency and Beneficial Ownership* (2014).

²⁴Wells, *Corporations and Criminal Responsibility* (2001); Jennifer Gobert and Maurice Punch, *Rethinking Corporate Crime* (London: LexisNexis Butterworths, 2003).

liability. Such outcomes undermine the effectiveness of criminal law and weaken deterrence against corporate misconduct.

Another limitation is the lack of recognition of doctrines such as willful blindness or constructive knowledge, which are more developed in common law systems. Indonesian courts generally require direct proof of knowledge and intent, making it difficult to hold directors accountable when they deliberately avoid awareness of illicit activities.²⁵ This strict evidentiary standard creates opportunities for strategic ignorance, where individuals intentionally distance themselves from incriminating information to avoid liability.

The operationalization of the knowledge standard in Indonesian criminal law requires careful doctrinal consideration. Indonesian criminal law is governed by the principle of *nullum crimen sine culpa* — that is, no criminal liability may arise without fault (*kesalahan*). This principle traditionally encompasses two forms of culpability: intentional wrongdoing (*kesengajaan/dolus*) and negligence (*kealpaan/culpa*). Willful blindness, as understood in common law, does not map neatly onto either category in its historically rigid form. However, Law No. 1 of 2023 on the Criminal Code (KUHP Baru) opens doctrinal space by articulating corporate criminal liability in broader terms, and by permitting courts to consider conditional or indirect intent (*dolus eventualis*) — that is, the conscious acceptance of the substantial risk that a criminal result will occur. This provides the most plausible doctrinal vehicle through which willful blindness can be operationalized within the Indonesian legal system. Under this standard, a director who is aware of a high probability that nominee arrangements are being used for illicit purposes, yet proceeds without inquiry, may be deemed to have constructively accepted that risk, thereby satisfying the fault requirement consistent with *nullum crimen sine culpa*.

From an evidentiary standpoint, the adoption of a willful blindness standard in Indonesian prosecutorial practice would require courts to consider indirect evidence of awareness, including patterns of deliberate non-inquiry, selective record-keeping, and the structuring of corporate arrangements in ways that systematically exclude the director from formal decision-making. Prosecutors would need to demonstrate not merely that the director was ignorant, but that the ignorance was engineered — that the director took affirmative steps to remain uninformed. This evidentiary approach is consistent with the broader interpretive possibilities opened by Law No. 1 of 2023 and aligns with the substantive direction advocated in this study's proposed CKB Framework.

The issue is further exacerbated by the fragmentation between corporate law and criminal law. Corporate law primarily regulates governance and fiduciary duties, while criminal law focuses on offenses and sanctions. The lack of integration between these domains results in gaps in accountability, particularly in cases involving complex ownership structures.²⁶ Without a unified framework, it becomes difficult to address the interplay between corporate control and criminal responsibility.

Despite these challenges, there have been emerging efforts to enhance transparency and accountability in corporate structures, particularly through regulations on beneficial ownership disclosure. These developments indicate a growing recognition of the need to move beyond formalistic approaches. However, without corresponding changes in criminal liability doctrines, such measures remain insufficient to address the underlying problem of nominee shareholding schemes.

A significant legislative development in this regard is the enactment of Law No. 1 of 2023 on the Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP Baru), which came into force on January 2, 2026. Unlike the colonial-era *Wetboek van Strafrecht* which it replaces, the new Criminal Code explicitly addresses corporate criminal liability in a more expansive manner. Articles 45 through 50 of the KUHP Baru introduce provisions recognizing corporations as subjects of criminal responsibility and expand the grounds upon which criminal liability may be attributed to those who direct or control corporate activities. Crucially, the new Code's formulation allows for liability to extend beyond formally designated directors to

²⁵A.P. Simester et al., *Criminal Law: Theory and Doctrine* (2019).

²⁶Wells, *Corporations and Criminal Responsibility* (2001).

encompass those who exercise actual managerial authority — a departure from the strictly formalistic approach that has historically characterized Indonesian criminal law. While the KUHP Baru does not yet explicitly codify the concept of beneficial ownership or adopt willful blindness as a named standard, its expanded conceptualization of corporate control creates interpretive space for courts and prosecutors to apply more substantive approaches to liability attribution in nominee shareholding cases.

A further development of considerable relevance is the ongoing deliberation over the Asset Forfeiture Bill (Rancangan Undang-Undang Perampasan Aset or RUU Perampasan Aset) in Indonesia. If enacted, this legislation would introduce a civil-based asset forfeiture mechanism allowing the state to confiscate assets derived from criminal conduct without requiring a prior criminal conviction — an approach sometimes termed non-conviction-based forfeiture. In the context of nominee shareholding, this mechanism holds particular promise: even where criminal prosecution of directors is complicated by evidentiary barriers, asset forfeiture proceedings could target the economic proceeds of nominee arrangements more directly. The proposed legislation thus represents a complementary tool to criminal liability, addressing the “benefit” dimension of the CKB Framework through a distinct legal pathway. The interplay between the KUHP Baru, the proposed Asset Forfeiture Law, and existing anti-money laundering regulations under Law No. 8 of 2010 suggests that Indonesia is gradually moving toward a more integrated and substantive approach to corporate misconduct, even if doctrinal coherence remains to be fully achieved.

In conclusion, the Indonesian legal framework for corporate criminal liability is characterized by a strong reliance on formal legal structures, which limits its ability to address the complexities of nominee shareholding schemes. The absence of clear standards for assessing control, knowledge, and beneficial ownership creates significant challenges in attributing liability to directors. These limitations highlight the need for a reconstructed approach that emphasizes substantive control over formal status, which will be further explored in subsequent sections.

4.2 The Common Law Approach to Director Liability in Nominee Shareholding Schemes (United Kingdom)

In contrast to the formalistic orientation observed in Indonesian law, the common law system—particularly in the United Kingdom—demonstrates a more substantive and flexible approach in attributing criminal liability within corporate structures. This approach is grounded in the recognition that corporate wrongdoing often involves complex arrangements that obscure the identity of those who exercise real control. As such, the law has evolved to address not only formal roles but also the functional reality of decision-making and influence.²⁷

One of the foundational doctrines in UK corporate criminal law is the identification doctrine, which attributes the acts and mental state of certain individuals—typically senior officers such as directors—to the corporation itself.²⁸ Under this doctrine, a director who is considered the “directing mind and will” of the company can be held personally liable, and their actions may also be imputed to the corporation. However, while the identification doctrine provides a basis for liability, it has been criticized for its limitations in cases involving diffuse or concealed control structures, such as nominee arrangements.²⁹

To address these limitations, UK jurisprudence has increasingly recognized broader concepts of liability, including willful blindness and constructive knowledge. These doctrines allow courts to infer culpability where an individual deliberately avoids acquiring knowledge of wrongdoing, despite clear indications of illegality.³⁰ In the context of nominee shareholding, this is particularly relevant, as directors may claim ignorance of the true ownership or purpose of corporate activities. The doctrine of willful blindness

²⁷Wells, *Corporations and Criminal Responsibility* (2001).

²⁸*Tesco Supermarkets Ltd v Natrass* [1972] AC 153 (HL).

²⁹Jennifer Gobert, “Corporate Criminality: Four Models of Fault,” *Legal Studies* 14, no. 3 (1994): 393–414.

³⁰A.P. Simester et al., *Criminal Law: Theory and Doctrine*, 7th ed. (Oxford: Hart Publishing, 2019).

prevents such claims from becoming a shield against liability, thereby enhancing the effectiveness of enforcement.

Another significant development in the UK legal framework is the growing emphasis on beneficial ownership and transparency. The introduction of the People with Significant Control (PSC) Register under the Companies Act 2006 (as amended) represents a major step toward identifying individuals who exercise ultimate control over a company.³¹ This regulatory mechanism requires companies to disclose individuals who hold significant influence or control, even if they are not formally listed as shareholders or directors. By doing so, the law acknowledges the distinction between legal ownership and actual control, which is central to understanding nominee schemes.

In addition to transparency measures, the UK has adopted a more expansive approach to corporate criminal liability through statutory reforms, such as the Corporate Manslaughter and Corporate Homicide Act 2007 and the failure to prevent offenses under the Bribery Act 2010.³² These frameworks shift the focus from individual fault to organizational responsibility, allowing liability to arise from systemic failures rather than solely from the actions of identified individuals. While these statutes do not directly target nominee shareholding, they reflect a broader trend toward functional accountability, which is highly relevant to the issue at hand.

Furthermore, UK courts have shown a willingness to consider the economic substance of transactions when assessing liability. In cases involving complex corporate arrangements, courts may look beyond formal documentation to determine who actually benefits from and controls the enterprise.³³ This substance-over-form approach is particularly important in addressing nominee schemes, where formal structures are deliberately designed to conceal the true actors.

The concept of shadow directors also plays a crucial role in the UK framework. A shadow director is a person in accordance with whose directions or instructions the directors of a company are accustomed to act.³⁴ This concept allows the law to capture individuals who exercise *de facto* control over corporate decisions, even if they do not hold formal positions. In nominee arrangements, beneficial owners often function as shadow directors, directing the actions of nominal directors while remaining behind the scenes. By recognizing this role, the law expands the scope of liability to include those who would otherwise evade accountability.

Despite these advancements, challenges remain in applying common law doctrines to increasingly sophisticated corporate structures. The identification doctrine, in particular, has been criticized for being ill-suited to large corporations where decision-making is decentralized.³⁵ Nevertheless, the combination of doctrines such as willful blindness, shadow directorship, and beneficial ownership disclosure provides a more comprehensive framework than that found in many civil law jurisdictions.

From a comparative perspective, the UK approach demonstrates a clear shift toward substantive justice, where liability is determined based on actual control, influence, and benefit, rather than merely formal status. This contrasts sharply with the Indonesian model, which remains heavily reliant on formal legal structures. The UK framework thus offers valuable insights for reconstructing corporate criminal liability in contexts where nominee shareholding schemes are prevalent.

In conclusion, the common law approach, as exemplified by the United Kingdom, provides a more adaptable and realistic model for addressing nominee shareholding schemes. By incorporating doctrines that capture indirect control and intentional ignorance, as well as regulatory mechanisms that enhance transparency, the UK legal system is better equipped to attribute criminal liability in complex corporate environments.

³¹Companies Act 2006 (UK), Part 21A (PSC Register).

³²Bribery Act 2010 (UK); Corporate Manslaughter and Corporate Homicide Act 2007 (UK).

³³Reinier Kraakman et al., *The Anatomy of Corporate Law*, 3rd ed. (Oxford: Oxford University Press, 2017).

³⁴Companies Act 2006 (UK), s. 251 (shadow director).

³⁵Jennifer Gobert, "Corporate Criminality: Four Models of Fault," *Legal Studies* 14, no. 3 (1994): 393–414.

These features form an essential foundation for the reconstruction of liability frameworks, which will be further developed in the subsequent section.

4.3 Comparative Analysis: Formalistic Liability versus Substantive Control

The comparative analysis between Indonesia and the United Kingdom reveals a fundamental divergence in how criminal liability is conceptualized within corporate structures, particularly in the context of nominee shareholding schemes. This divergence can be understood as a tension between a formalistic model of liability, which prioritizes legal status and documented roles, and a substantive control model, which emphasizes actual influence, decision-making power, and economic benefit.³⁶

In the Indonesian legal system, liability is largely anchored in the formal position of directors as recognized in corporate documents. This approach reflects the civil law tradition, where legal certainty and codified norms are prioritized.³⁷ However, such an approach tends to overlook the realities of corporate practice, where control may be exercised by individuals who are not formally recognized within the corporate structure. In nominee shareholding schemes, this limitation becomes particularly evident, as nominal directors may bear legal responsibility while the true controllers remain concealed.

By contrast, the UK legal framework demonstrates a more flexible and functional approach, allowing courts to attribute liability based on actual control and influence. The recognition of concepts such as shadow directorship and beneficial ownership reflects an understanding that corporate power is not always aligned with formal legal status.³⁸ This allows the law to penetrate the corporate veil and identify individuals who exercise *de facto* control, even in the absence of formal designation.

A key point of distinction lies in the treatment of knowledge and intent. Indonesian criminal law generally requires proof of actual knowledge, which must be established through direct evidence.³⁹ This high evidentiary threshold creates opportunities for individuals to evade liability by claiming ignorance, particularly in complex corporate arrangements. In contrast, UK law recognizes doctrines such as willful blindness and constructive knowledge, which allow courts to infer intent where an individual deliberately avoids awareness of wrongdoing.⁴⁰ This significantly enhances the capacity of the legal system to address strategic ignorance in nominee schemes.

Another important difference concerns the role of beneficial ownership in determining liability. While Indonesia has begun to adopt beneficial ownership concepts within its regulatory framework, particularly in the context of anti-money laundering, these concepts have not been fully integrated into criminal law.⁴¹ As a result, the attribution of liability remains largely disconnected from the realities of ownership and control. In the UK, however, the institutionalization of beneficial ownership through mechanisms such as the PSC Register provides a more robust basis for identifying those who exercise ultimate control.⁴²

The comparative analysis also highlights differences in judicial reasoning. Indonesian courts tend to adopt a formalistic interpretative approach, focusing on compliance with statutory provisions and documented authority.⁴³ This often results in a narrow assessment of liability, which may fail to capture the broader context of corporate wrongdoing. In contrast, UK courts are more inclined to adopt a substance-over-form approach, examining the economic and functional realities underlying corporate arrangements.⁴⁴ This

³⁶Wells, *Corporations and Criminal Responsibility* (2001).

³⁷Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

³⁸Companies Act 2006 (UK), s. 251.

³⁹Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.

⁴⁰A.P. Simester et al., *Criminal Law: Theory and Doctrine* (2019).

⁴¹FATF, *Guidance on Transparency and Beneficial Ownership* (2014).

⁴²Companies Act 2006 (UK), Part 21A.

⁴³Jennifer Gobert and Maurice Punch, *Rethinking Corporate Crime* (London: LexisNexis Butterworths, 2003).

⁴⁴Reinier Kraakman et al., *The Anatomy of Corporate Law*, 3rd ed. (Oxford: Oxford University Press, 2017).

enables a more nuanced assessment of responsibility, particularly in cases involving complex or concealed structures.

From a theoretical perspective, these differences reflect broader distinctions between civil law and common law traditions. Civil law systems emphasize codification and legal certainty, while common law systems prioritize judicial interpretation and adaptability.⁴⁵ While each approach has its strengths, the challenges posed by nominee shareholding schemes suggest that a purely formalistic model is insufficient to address contemporary forms of corporate crime.

Importantly, the comparative findings indicate that the Indonesian legal framework does not lack regulatory provisions, but rather suffers from a conceptual limitation in attributing liability. The absence of doctrines that capture indirect control and intentional ignorance results in a gap between legal norms and practical enforcement. This gap allows nominee structures to function as mechanisms of evasion, undermining the effectiveness of corporate criminal law.

At the same time, the UK model is not without its limitations. The identification doctrine, for example, has been criticized for its inadequacy in large corporations with decentralized decision-making.⁴⁶ However, the broader set of doctrines and regulatory mechanisms available in the UK provides a more comprehensive toolkit for addressing complex corporate arrangements.

The comparative analysis thus underscores the need for a hybrid approach, which combines the clarity of formal legal structures with the flexibility of substantive control-based reasoning. Such an approach would enable the legal system to move beyond rigid formalism and to better capture the realities of corporate power and influence.

In conclusion, the divergence between Indonesian and UK approaches highlights the importance of rethinking the foundations of corporate criminal liability. The Indonesian system's reliance on formal status must be complemented by a more substantive understanding of control and responsibility, drawing on insights from common law doctrines. This sets the stage for the reconstruction of a new framework of liability, which will be elaborated in the following section.

4.4 Reconstructing Criminal Liability: Toward a Control–Knowledge–Benefit Framework

The limitations identified in both Indonesian and comparative legal frameworks highlight the urgent need for a reconstructed model of criminal liability that is capable of addressing the complexities of nominee shareholding schemes. The traditional reliance on formal legal status is no longer adequate in an era where corporate structures are increasingly used to obscure control, distribute risk, and evade accountability. Accordingly, this study proposes a Control–Knowledge–Benefit (CKB) Framework as a conceptual model for attributing criminal liability in corporate crime involving nominee arrangements.

⁴⁵Mark Van Hoecke, *Methodologies of Legal Research* (Oxford: Hart Publishing, 2011).

⁴⁶Jennifer Gobert, "Corporate Criminality: Four Models of Fault," *Legal Studies* 14, no. 3 (1994): 393–414.

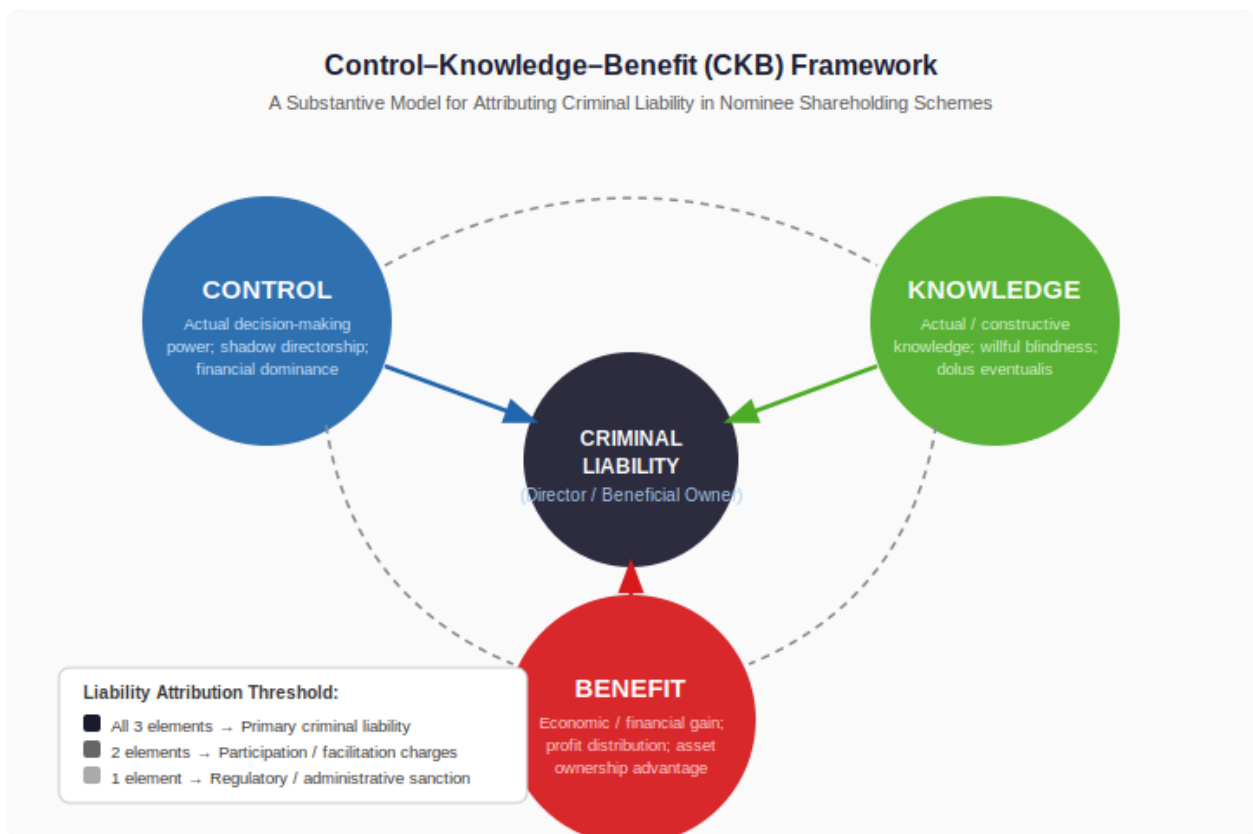


Figure 1. The Control–Knowledge–Benefit (CKB) Framework for Attributing Criminal Liability in Nominee Shareholding Schemes (Author, 2025)

At the core of this framework is the recognition that criminal liability should be based not on formal designation, but on the substantive realities of corporate power and participation. The first element, control, refers to the actual ability of an individual to influence or direct corporate decisions. This includes both direct and indirect forms of control, such as issuing instructions, shaping strategic decisions, or exercising financial dominance. In nominee shareholding schemes, beneficial owners often exert such control through informal mechanisms, including contractual arrangements, personal relationships, or financial leverage.⁴⁷ By focusing on control, the framework seeks to identify the true actors behind corporate conduct.

The second element, knowledge, addresses the mental dimension of liability. Rather than requiring proof of actual knowledge in a strict sense, the framework incorporates broader notions such as constructive knowledge and willful blindness. This allows liability to be attributed where an individual is aware of a high probability of wrongdoing but deliberately avoids confirming it.⁴⁸ In the context of nominee arrangements, this is particularly important, as directors may attempt to shield themselves by claiming ignorance of the underlying structure or purpose of the scheme. By expanding the concept of knowledge, the framework reduces the effectiveness of strategic ignorance as a defense.

The third element, benefit, focuses on the economic dimension of corporate crime. It examines whether an individual derives financial or strategic advantage from the corporate arrangement, regardless of their formal position.⁴⁹ In nominee schemes, the beneficial owner is typically the primary recipient of profits, while the nominal director may receive only limited compensation. By incorporating benefit as a criterion,

⁴⁷Wells, *Corporations and Criminal Responsibility* (2001).

⁴⁸A.P. Simester et al., *Criminal Law: Theory and Doctrine* (2019).

⁴⁹OECD, *Behind the Corporate Veil* (2001).

the framework ensures that liability is aligned with the distribution of gains, thereby enhancing fairness and deterrence.

These three elements—control, knowledge, and benefit—are not intended to operate in isolation, but rather as interconnected indicators of responsibility. The presence of all three elements provides a strong basis for attributing criminal liability, while the presence of two elements may be sufficient depending on the circumstances. This flexible approach allows the framework to adapt to different factual scenarios, while maintaining a coherent conceptual structure.

In practical terms, the CKB Framework requires a shift in judicial reasoning from a formalistic to a functional approach. Courts should move beyond reliance on corporate documents and instead examine the underlying dynamics of decision-making and influence. This may involve analyzing communication patterns, financial flows, and contractual relationships to determine who exercises real control.⁵⁰ Such an approach aligns with the substance-over-form principle observed in common law systems, while remaining compatible with civil law traditions through doctrinal development.

The framework also has important implications for legislative reform. Existing laws should be amended to explicitly recognize beneficial ownership and indirect control as bases for criminal liability. This could include the introduction of statutory provisions that define control in functional terms, as well as the incorporation of willful blindness as a recognized form of *mens rea*.⁵¹ Additionally, disclosure requirements related to beneficial ownership should be strengthened and integrated into criminal enforcement mechanisms, ensuring that transparency is not merely administrative but also enforceable.

From an enforcement perspective, the CKB Framework supports a more integrated approach to corporate crime, bridging the gap between corporate law, criminal law, and anti-money laundering regulations. By aligning these domains, the framework enhances the ability of law enforcement agencies to identify and prosecute complex corporate arrangements. It also encourages greater coordination between regulatory bodies, financial intelligence units, and prosecutorial authorities.

Of particular practical importance is the manner in which the CKB Framework can guide prosecutors in formulating charges against nominee or “puppet” directors. In practice, prosecutorial authorities often face difficulty in building cases against individuals who hold formal directorial positions but exercise little independent judgment, as well as against beneficial owners who exercise real control but appear nowhere in official corporate records. The CKB Framework addresses this challenge by providing a structured evidentiary checklist organized around its three core elements. First, with respect to Control, prosecutors should gather evidence demonstrating the actual locus of decision-making: internal communications (emails, messaging application records, board minutes), contractual arrangements giving one party veto rights or instruction powers over the director, financial signature authorities, and testimony from employees or third parties regarding whose instructions were in practice followed. The existence of shadow directorship — even informally constituted — is a primary indicator under this element.

Second, with respect to Knowledge, prosecutors should focus on circumstantial evidence of awareness rather than direct admissions. Relevant evidence includes: the complexity and opacity of the corporate structure (which may itself signal deliberate concealment), whether the director received professional or legal advice flagging the risks of the arrangement, the degree to which corporate documentation was structured to exclude the director from formal decision-making trails, and any prior dealings with the beneficial owner suggesting familiarity with the scheme’s true purpose. Where a director cannot plausibly claim ignorance given the volume and character of surrounding red flags, the *dolus eventualis* standard — or its functional equivalent — may be satisfied. Third, with respect to Benefit, prosecutors should trace financial flows to identify who ultimately received economic advantage from the corporate arrangement. This includes analysis of dividend payments, management fees, profit-sharing agreements, and asset transfers. Where the beneficial owner is the predominant economic beneficiary while the nominal director

⁵⁰Mark Van Hoecke, *Methodologies of Legal Research* (Oxford: Hart Publishing, 2011).

⁵¹FATF, *Guidance on Transparency and Beneficial Ownership* (2014).

receives only a fixed fee or token compensation, this disparity is strong circumstantial evidence that the formal role was a legal fiction rather than a genuine exercise of directorial authority.

In terms of charge formulation, the CKB Framework supports a layered charging strategy. Where the nominee director satisfies all three elements — exercising some degree of control, possessing constructive knowledge of the scheme's illicit purpose, and receiving material benefit — primary liability charges (for instance, under provisions on corruption, money laundering, or corporate fraud) may be pursued directly. Where a nominee director satisfies only the knowledge and benefit elements but not control, charges may be more appropriately framed around participation, facilitation, or failure to prevent offenses, depending on the applicable statutory framework. Conversely, where the beneficial owner satisfies the control and benefit elements, charges may be framed around instigation, directing, or shadow directorship-based liability. This graduated approach ensures that prosecutorial resources are deployed proportionately and that the formulation of charges accurately reflects the actual distribution of responsibility within the nominee arrangement.

The proposed framework also contributes to the broader discourse on corporate criminal liability by addressing a key conceptual gap: the disconnect between legal form and economic reality. By prioritizing substantive control and benefit, the framework reflects the evolving nature of corporate governance and financial crime. It moves beyond traditional doctrines that are often ill-suited to modern corporate structures, offering a more realistic and effective model of accountability.

Nevertheless, the implementation of the CKB Framework is not without challenges. It requires a shift in legal culture, particularly in jurisdictions that prioritize formal legal certainty. There may also be concerns regarding evidentiary standards and the potential for overreach. However, these challenges can be addressed through careful doctrinal development and clear judicial guidelines, ensuring that the framework is applied in a balanced and consistent manner.

In conclusion, the reconstruction of criminal liability through the Control–Knowledge–Benefit Framework provides a comprehensive and adaptable model for addressing nominee shareholding schemes in corporate crime. By integrating elements of control, knowledge, and benefit, the framework offers a more accurate reflection of corporate reality and a more effective basis for legal accountability. This reconstruction not only enhances doctrinal coherence but also strengthens the capacity of the legal system to respond to increasingly sophisticated forms of corporate misconduct.

5. Conclusion

This study has demonstrated that the existing framework of criminal liability for directors in nominee shareholding schemes remains conceptually inadequate, particularly within the Indonesian legal system. The prevailing reliance on formal legal status as the primary basis for attributing liability fails to capture the realities of corporate control, where decision-making power and economic benefit are often exercised by individuals who are not formally recognized within the corporate structure. As a result, nominee arrangements create a structural gap that allows beneficial owners to evade accountability while nominal directors bear disproportionate legal risk.

Through a comparative analysis with the United Kingdom, this study highlights the advantages of a more substantive and flexible approach to corporate criminal liability. The UK framework, with its recognition of doctrines such as willful blindness, shadow directorship, and beneficial ownership, demonstrates a greater capacity to address concealed ownership and indirect control. While not without limitations, this approach provides valuable insights into how legal systems can adapt to the complexities of modern corporate structures.

Building on these findings, this study proposes the Control–Knowledge–Benefit (CKB) Framework as a reconstructed model of criminal liability. This framework shifts the focus from formal designation to substantive participation, emphasizing three interconnected elements: control, knowledge, and benefit. By

doing so, it offers a more accurate and equitable basis for attributing responsibility in nominee shareholding schemes, ensuring that liability aligns with actual influence and economic gain rather than mere formal position.

From a theoretical perspective, the CKB Framework contributes to the development of corporate criminal law by bridging the gap between legal form and economic reality. It integrates insights from both civil law and common law traditions, creating a hybrid model that combines doctrinal clarity with functional adaptability. This contribution is particularly relevant in the context of globalization, where corporate structures increasingly transcend traditional legal boundaries.

In terms of policy implications, several recommendations can be advanced. First, legislators should reform existing legal provisions to explicitly recognize beneficial ownership and indirect control as bases for criminal liability. This includes incorporating broader concepts of knowledge, such as willful blindness, into the definition of *mens rea*. Second, regulatory frameworks on corporate transparency should be strengthened and integrated with criminal enforcement mechanisms, ensuring that disclosure obligations have meaningful legal consequences. Third, judicial practice should evolve toward a substance-over-form approach, enabling courts to assess the actual dynamics of corporate decision-making rather than relying solely on formal documentation.

Additionally, law enforcement agencies should adopt a more interdisciplinary and coordinated approach, combining expertise in corporate law, financial regulation, and criminal investigation. This would enhance their capacity to detect and prosecute complex nominee arrangements, which often involve cross-border transactions and sophisticated financial structures. Training and capacity-building programs for judges, prosecutors, and investigators are also essential to support this transition.

Despite its contributions, this study acknowledges certain limitations. The analysis is primarily doctrinal and comparative, without incorporating empirical data on enforcement practices. Future research could explore the practical application of the CKB Framework through case studies or empirical investigations, particularly in jurisdictions where nominee shareholding is prevalent. Such research would provide valuable insights into the effectiveness and feasibility of the proposed model.

In conclusion, the reconstruction of criminal liability through the Control–Knowledge–Benefit Framework offers a necessary and timely response to the challenges posed by nominee shareholding schemes in corporate crime. By aligning legal responsibility with substantive control and economic benefit, the framework enhances both the fairness and effectiveness of corporate criminal law. It is hoped that this study will contribute to ongoing legal reform and provide a foundation for more robust and accountable corporate governance in the future.

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