



DOI: <https://doi.org/10.38035/sijal.v4i2>
<https://creativecommons.org/licenses/by/4.0/>

Received: 09-09-2026 | Revised: 29-09-2026 | Accepted: 04-10-2026

Legal Analysis of Criminal Liability of Directors and Proof of the Element of Fault (Mens Rea) in Criminal Acts of Fraud and Embezzlement on the Sharia Financing Platform (Case Study of PT Dana Syariah Indonesia)

Liliana¹, Diding Rahmat², Rizky Pratama Putra K³

¹Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia, lilianalily168@gmail.com

²Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia didingrahmat@uniku.ac.id

³Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia: rizkykarokaro@unsurya.ac.id

Corresponding Author: lilianalily168@gmail.com¹

Abstract: The growth of Sharia financing platforms has expanded public access to investment opportunities but has also introduced risks of fund misappropriation, as evidenced by allegations of fraud and embezzlement at PT Dana Syariah Indonesia. This research addresses two issues: (1) the nature of the Board of Directors' criminal liability regarding fraud and fund embezzlement on Sharia financing platforms; and (2) the evidentiary framework for establishing the element of fault (mens rea) in the case of fund management based on fictitious projects at PT Dana Syariah Indonesia. The study employs a normative legal research method, utilizing statutory, conceptual, and case study approaches to analyze legislation, legal doctrine, court rulings, and legal literature. The findings indicate that the criminal liability of the Board of Directors is determined by their roles, authority, involvement, and culpability, and may intersect with corporate liability under Article 48 of Law No. 1 of 2023. Proving (mens rea) involves assessing knowledge, intent, control, the flow of funds, corporate policies, and electronic evidence regarding the fictitious projects used to solicit public funds.

Keywords: Criminal Liability, Proof, Mens Rea, Corporate and Crimes, Fraud and Embezzlement.

INTRODUCTION

The development of information technology and digitalization in the financial sector has brought significant changes to the financial transaction and service system in Indonesia. This digital transformation has given birth to various technology-based innovations known as financial technology (fintech) or Financial Sector Technology Innovation (ITSK). One form of fintech that is growing very rapidly is peer-to-peer lending (P2P lending) or Information Technology-Based Joint Funding Services (LPBBTI). Based on Financial Services Authority Regulation Number 10/POJK.05/2022, LPBBTI is an implementation of financial services to bring together lenders and borrowers directly through an internet-based electronic system

(POJK No. 10/POJK.05/2022). The presence of this financing platform provides a fast, flexible, and inclusive financing alternative for the public.

In its development, digital financing does not only carry the conventional system, but also develops in the form of sharia fintech. Sharia fintech uses a mechanism for collecting and distributing funds based on sharia contracts such as *mudharabah*, *musyarakah*, *murabahah*, and *ijarah* that prioritize the principles of justice, transparency, and moral responsibility. However, the rapid growth of digital financing also carries high legal risks. The digital collection of public funds is vulnerable to various economic crimes, one of which is irregularities or fraud. Fraud is an irregularity and unlawful act that is carried out deliberately to deceive or mislead for the benefit of certain parties (Setiadi & Asyiah, 2017). In fintech practice, fraud is often manifested through fictitious project schemes, manipulation of borrower data, false financial statements, and the transfer of lender fund allocation.

The condition of *das sein* (empirical facts) on sharia financing platforms such as PT Dana Syariah Indonesia shows complex dynamics in the management of investment funds. The Board of Directors has full control over risk mitigation policies and cash flow management to ensure that transactions run according to the contract. However, practices in the field often show that there are inconsistencies in capital allocation and delays in refunds that trigger alleged fraud and embezzlement. This phenomenon is clearly seen in the case of PT Dana Syariah Indonesia, where the Criminal Investigation Branch of the National Police designated the board of directors and commissioners as suspects for alleged embezzlement, fraud of public funds based on fictitious projects, and money laundering with estimated losses of trillions of rupiah involving thousands of lenders.

Based on Article 1 number 5 of Law Number 40 of 2007 concerning Limited Liability Companies, the board of directors is an organ of the company that is authorized and fully responsible for the management of the company (Law No. 40 of 2007). This position imposes fiduciary duty and duty of care obligations on the board of directors. Along with the shift in the concept of modern corporate criminal liability, company management can no longer take refuge behind a legal entity if it is proven to have involvement, knowledge, or neglect of corporate crime (Sjahdeeni, 2014). However, proving the element of error (*mens rea*) of directors in digital corporate crimes is relatively complex. Engineering and manipulation are often disguised in the form of business decisions, financial statements, or formal policies that appear to be administratively legal. Given that not all investment losses are criminal offenses, proof of *mens rea* is very crucial to distinguish between ordinary business risks and intentional criminal acts according to the principle of *geen straf zonder schuld* (no crime without error) (Moeljatno, 2008).

This research dissects legal problems using Criminal Liability Theory as the Grand Theory, as a Middle Theory using Fault Theory and Applied Theory using Functional Perpetrator Theory.

The development of information technology and digitalization of the financial sector has given birth to various forms of technology-based financial services (financial technology/fintech), including sharia based financing platforms (sharia fintech). The presence of sharia fintech basically aims to increase public financial inclusion through the use of electronic systems in the collection and distribution of funds based on sharia principles. However, on the other hand, these developments also pose a risk of misuse of public funds through fraudulent practices, embezzlement, project manipulation, and the use of fictitious projects in digital investment management. In practice, criminal acts on sharia financing platforms are not always carried out directly by certain individuals, but through company mechanisms, corporate policies, administrative systems, and electronic transactions involving various parties in the company structure. This condition has caused legal problems regarding who should be held criminally responsible, especially against the board of directors as a company organ that has the authority to control and make company policies.

Based on Article 1 number 5 of Law Number 40 of 2007 concerning Limited Liability Companies, the board of directors is an authorized organ of the company and is fully responsible for the management of the company for the benefit of the company in accordance with the company's intentions and objectives. (Undang-Undang nomor 40 Tahun 2007 tentang Perseroan Terbatas) In corporate criminal acts, the board of directors can be held criminally liable if it is proven that they have involvement, control, knowledge, or neglect of criminal acts that occur in the company.

The problem becomes even more complex when criminal acts are carried out through fictitious project schemes on digital-based sharia financing platforms. In these conditions, proof is not only focused on the existence of criminal acts (*actus reus*), but also must prove elements of error (*mens rea*) in the form of malicious intentions, intentionality, knowledge, or negligence of the directors of the criminal acts that occurred. Proving these subjective elements becomes difficult because actions are carried out through corporate mechanisms and electronic systems involving many parties.

The case of PT Dana Syariah Indonesia shows the alleged use of fictitious projects, manipulation of public fund management, embezzlement, and fraud involving the company's directors as the main policy makers. Therefore, this study is focused on analyzing the form of criminal liability of directors and the construction of proof of elements of error (*mens rea*) in fraud and embezzlement on sharia financing platforms. Based on this background, the main problems studied in this study are how the form of criminal liability of directors in fraud and embezzlement of funds on sharia financing platforms and how to construct proof of elements of error (*mens rea*) in the case of fictitious project-based fund management at PT Dana Syariah Indonesia.

METHODS

This research is normative *legal research* is legal research in the area of law itself in a broad sense. It is said in a broad sense, because legal science is indeed so, it enters all aspects of science with the intention of the functioning of law in achieving its goals. Normative legal research remains the main method in the study of law because it focuses on the analysis of positive legal norms with a legislative, conceptual, and case approach to answer legal problems that develop in the digital society (Rizky Karo Karo, 2025) Normative legal research is used to examine legal norms, legal principles, legal theory, and provisions of laws and regulations related to the criminal responsibility of directors and the proof of elements of error (*mens rea*) in fraud and embezzlement on sharia financing platforms.

RESULTS AND DISCUSSION

Form of Criminal Liability of the Board of Directors in the Crime of Fraud and Emversion of Funds on Sharia Financing Platforms

1. The Position of the Board of Directors as a Subject of Criminal Liability and Directing Mind and Will

The Board of Directors is an organ of the company that is authorized by law to carry out the management of the company and represent the company, both inside and outside the court. This strategic position causes every strategic policy—including policies on fundraising, investment management, risk mitigation, and the implementation of digital-based business activities—to be within the scope of the duties and responsibilities of the board of directors. Based on Article 92 paragraph (1) of Law No. 40 of 2007 concerning Limited Liability Companies (Law No. 40 of 2007), the board of directors carries out the management of the company for the benefit of the company and in accordance with the company's purposes and objectives. The legal norm emphasizes that the authority of the board of directors is not an unlimited authority, but must be carried out based on the principles of *duty of care*, *good faith*, and full loyalty to the interests of the company (*fiduciary duty*) (Khairandy, 2014). If the

authority is abused or used unlawfully so as to cause financial losses to the community, the board of directors is not only responsible civilly, but can be held *personally liable* as long as the elements of the criminal act are met.

In modern criminal law doctrine, corporations as legal *fiction* do not have the physical will (*mens*) or physical body to act like humans (*naturalijk persoon*). Therefore, the will and actions of the corporation are realized through the company's organs that have the authority to make strategic decisions. *Identification Theory* or *Directing Mind and Will Theory* places directors as the main representation of the will of the corporation itself (Sjahdeeni, 2014). Based on this theory, the actions and decisions taken by the directors in their capacity as directors can be directly identified as the actions and will of the corporation. Consequently, if the board of directors deliberately formulates policies, directs, or approves transaction schemes that are contrary to the law, the fault can be attributed both to the directors personally and to the corporation as a subject of criminal law (Muladi & Priyatno, 2010; Setiadi & Asyiah, 2017). This doctrine has become an important foundation in Indonesian criminal law and is explicitly accommodated in the Supreme Court Regulation No. 13 of 2016 concerning Procedures for the Handling of Criminal Cases by Corporations (PERMA No. 13 of 2016).

This concept of accountability is further strengthened in Law Number 1 of 2023 concerning the Criminal Code (Law No. 1 of 2023 / New Criminal Code) which expressly recognizes corporations as the subject of criminal acts while systematically regulating the form of accountability of their management. With the recognition of corporations and administrators as subjects of criminal law, the board of directors can no longer take refuge behind a legal entity entity (*corporate veil*) if it is proven to use corporations as *instruments* to commit crimes. In the context of proving it at trial, the judicial mechanism and testing of evidence remain subject to the provisions of Law Number 20 of 2025 concerning the Criminal Procedure Code (Law No. 20 of 2025 / New Criminal Procedure Code) which regulates the evidentiary system, the validity of evidence, and the judge's beliefs.

When associated with the case of PT Dana Syariah Indonesia, the position of the board of directors is a central element considering that all operational activities of the sharia financing platform—from project selection, *borrower* verification, investment offers to *lenders*, to fund traffic governance—are under the authority and direct supervision of the board of directors. Based on the facts of the investigation published by the National Police of the Republic of Indonesia (Bareskrim Polri), investigators found strong allegations of the use of *fictitious projects* and manipulation of *borrower* data that did not reflect the real conditions in the process of collecting public funds. These irregularities became the basis for the designation of the company's management as suspects. However, from the perspective of criminal law, these allegations must be objectively proven in court by referring to the evidentiary mechanism of Law No. 20 of 2025 and still uphold the principle of the *presumption of innocence* until there is a judge's decision with permanent legal force.

2. Criminal Liability of Directors in the Perspective of the Dual Liability System

The criminal liability of the directors cannot be separated from the company's legal norms and complementary criminal law regulations. Based on Article 92 paragraph (1) and paragraph (2) of Law No. 40 of 2007, the board of directors has the authority to take operational policies in the interest of the company as long as it does not exceed the limits determined by the law and the company's articles of association. Furthermore, Article 97 paragraph (2) of Law No. 40 of 2007 reaffirms the obligation of each member of the board of directors to carry out the management of the company in good faith and full of responsibility. In fact, Article 97 paragraph (3) provides a strict civil sanction that each member of the board of directors is personally responsible for the company's losses if the person concerned is guilty or negligent in carrying out his duties. This normative provision proves that positive Indonesian law has never granted legal immunity to directors who commit unlawful acts.

Although the Limited Liability Company Law provides the basis for management obligations, the criminal liability of the directors must be built on the basis of *fundamental criminal law principles* regulated in Law No. 1 of 2023. A person can only be sentenced if he meets two main conditions: the existence of an unlawful act (*actus reus*) and the existence of an element of guilt (*mens rea*), both in the form of intentionality (*dolus*) and forgetfulness (*culpa*), which is in line with the principle of *geen straf zonder schuld* (no crime without fault) (Moeljatno, 2008; Huda, 2011).

In the reform of Indonesian criminal law, Article 47 of Law No. 1 of 2023 explicitly stipulates that criminal liability for corporate crimes can be charged to:

1. The corporation itself;
2. Administrators who have functional positions (directors);
3. Commander;
4. Controlling Holder; and/or
5. *Beneficial owners*, both individually and collectively according to their respective roles and levels of error (Muladi & Priyatno, 2010; Law No. 1 of 2023).

This provision confirms that Indonesia adheres to a *dual liability system*, where the criminalization of corporations does not eliminate the personal criminal responsibility of its managers, and vice versa. Furthermore, Article 48 of Law No. 1 of 2023 provides guidelines for judges in imposing criminal liability by considering:

- a. Functional relationship between the actor and the corporation;
- b. The scope of authority possessed by the perpetrator in the company structure;
- c. Economic benefits obtained by the corporation; and
- d. Degree of *fault* and control of each party.

In addition, Articles 49 to 56 of Law No. 1 of 2023 contain detailed rules regarding the requirements for corporate criminalization, the types of principal and additional crimes, and the procedures for criminal imposition. This series of norms requires the Public Prosecutor in the case of PT Dana Syariah Indonesia to not only prove the occurrence of financial losses to the *lenders*, but also to prove that the directors have an active *role* in designing, ordering, approving, or deliberately allowing the use of fictitious projects to take place in the financing system.

PERMA No. 13 of 2016 also provides three main parameters to measure criminal liability within the corporate scope:

1. The corporation obtains profits or benefits from the criminal act;
2. The corporation allows the occurrence of a criminal act (*omission*); or
3. Corporations do not take convincing preventive measures to prevent criminal acts from occurring.

This parameter is very relevant to assessing the responsibility of the board of directors, considering that the board of directors is the party that formulates and controls all operational policies and risk mitigation of the company.

Based on the juridical analysis, the criminal liability of the directors of PT Dana Syariah Indonesia cannot be charged automatically (*automatic liability*) only based on the formal position attached to Article 92 and Article 97 of Law No. 40 of 2007. Criminal liability must be based on proof of actual *involvement* and *mens rea* of the directors towards the criminal acts that occurred. The findings of the investigation that showed the existence of fictitious project schemes, falsification of *borrower* data, and allegations of *money laundering* confirmed that these incidents had gone out of the realm of the doctrine of business *judgment rule* and ordinary civil disputes (defaults). The act of engineering projects and illegally diverting investment funds has met the qualifications of *corporate fraud* designed through company policy. Therefore, the proof of the criminal liability of the board of directors must be carried out scientifically and comprehensively through tracking the flow of funds (*follow the money*),

analysis of banking documents, and digital forensic results based on Law No. 20 of 2025 concerning the Criminal Code.

3. Comparative Analysis of Fraud Norms: Article 378 of the Old Criminal Code vs. Article 492 of Law No. 1 of 2023

To qualify the actions of the directors in the case of sharia financing, it is important to analyze the shift in the norms of fraud crimes from the old Criminal Code to the National Criminal Code (Law No. 1 of 2023).

In the old Criminal Code, the criminal act of fraud was regulated in Article 378 which the elements of which include:

Whoever;

With the intention of unlawfully benefiting oneself or others;

Using false names, false dignity, deception, or a series of lies;

Moving others to hand over goods, give debts, or write off receivables.

Meanwhile, in the New Criminal Code (Law No. 1 of 2023), the crime of fraud is regulated in Article 492 which states:

"Any person who with the intention of unlawfully benefiting himself or others by using a false name or position, using trickery or a series of lies, inducing people to hand over an item, giving a debt, making a debt confession, or writing off receivables, shall be convicted of fraud with imprisonment for a maximum of 4 (four) years or a maximum fine of category V."

Despite the adjustment of the formulation and the addition of the criminal option of category V fines in the New Criminal Code, the core of fraud is still maintained, namely the existence of active acts in the form of fraud to trick others into handing over their assets.

In the context of the case of PT Dana Syariah Indonesia, the existence of losses to *the lender* does not automatically prove the occurrence of fraudulent crimes. Law enforcement officials are required to carefully prove that the directors are actively using *false positions, tricks, or a series of lies*, such as displaying a project description that seems to be real, prospective, and in accordance with the sharia contract even though the project has never existed (*fictitious*) with the main purpose of moving *lenders* to transfer their investment funds. If the inconsistency in the allocation of funds is solely caused by objective business failure or business risk without the intention to deceive from the beginning, the construction of Article 492 of Law No. 1 of 2023 cannot be applied. However, if false information is created deliberately from the beginning of the offer scheme, the elements of *actus reus* and *mens rea* delik fraud have been perfectly fulfilled.

4. Comparative Analysis of Embezzlement Norms: Article 372 of the Old Criminal Code vs. Articles 486 & 488 of Law No. 1 of 2023

In addition to fraud, the actions of the directors in the management of public funds on sharia fintech platforms must also be tested based on the norms of embezzlement.

In the old Criminal Code, embezzlement was regulated in Article 372 which contains the following elements:

Whoever;

Intentionally and unlawfully;

Possessing something that wholly or partially belongs to another person;

The goods are in his power not because of a crime.

In Law No. 1 of 2023, embezzlement of principal forms is regulated in Article 486, which reads:

"Any person who unlawfully possesses an item that partially or wholly belongs to another person, who is in his power not because of a criminal act, shall be convicted of embezzlement with a maximum prison sentence of 4 (four) years or a maximum fine of category IV."

The fundamental change in the New Criminal Code lies in the replacement of the phrase "not because of a crime" to "not because of a criminal act" in order to adjust to the reconceptualization of the type of offense, as well as the application of category IV fines. Last but not least, Law No. 1 of 2023 specifically accommodates embezzlement offenses with aggravation through **Article 488**, namely embezzlement committed by a person whose control over goods is due to a work relationship, profession, or because of receiving wages.

Article 488 of Law No. 1 of 2023 is very relevant applied to the company's directors. In the structure of sharia P2P lending fintech, the control of the directors over *lender* funds is obtained legally through a platform mechanism based on the contract and official position of the directors in the company (not the proceeds of crime). Embezzlement occurs when the legally controlled funds are then illegally transferred, used, or owned for personal interests, corporations, or third parties that deviate from the purpose of the agreed contract.

The fundamental distinction between Fraud and Embezzlement in sharia financing matters lies in the **point of time (*tempus*) and the manner of possession of goods/funds**:

- 1) **Fraud (Article 492 of Law No. 1/2023)**: Malicious intent and unlawful acts occur *before* or *at the time* the funds are handed over. The perpetrator uses the means of deception (fictitious projects) to make the victim hand over the funds.
- 2) **Embezzlement (Articles 486 & 488 of Law No. 1/2023)**: Funds *initially* enter and be legally controlled by the company. Malicious intent arises *after* the funds are in possession, where the directors illegally treat the funds as if they belong to a person/company by allocating them outside the contract.

In the case of PT Dana Syariah Indonesia, investigators and public prosecutors must carefully distinguish the point of when the directors' errors occurred. If from the beginning the investment offer the platform has published a fictitious project to suck up public funds, the proper construction is fraud. However, if the investor funds were initially legally collected for a real project, but in the middle of the course the directors transfer the funds to another account to cover operational losses or personal interests, the act meets the element of embezzlement in office (Article 488 of Law No. 1 of 2023). In fact, if the two phases are proven to be carried out continuously, the directors can be charged with combination or cumulative charges along with the crime of money laundering.

5. Implementation of the Dual Liability Criminal Liability System:

The provisions of Articles 45 to 56 of Law No. 1 of 2023 concerning the Criminal Code (Law No. 1 of 2023) affirm that the Indonesian criminal law system adheres to a *dual liability* model. Article 47 of Law No. 1 of 2023 stipulates that criminal liability for corporate crimes can be imposed on corporations and/or their managers (including directors, givers, control holders, and *beneficial owners*) in accordance with their roles and levels of error (Muladi & Priyatno, 2010). Criminalization of directors does not eliminate the possibility of criminalization of corporations, and vice versa (Law No. 1 of 2023).

Separation of Deliquese Qualifications (Fraud vs. Embezzlement):

Fraud (Article 492 of Law No. 1 of 2023 / ex Article 378 of the Old Criminal Code): It is proven that from the beginning of the fund-raising process, the directors used tricks or a *series of lies*—such as engineering *fictitious projects* or falsifying *borrower data*—with the intention of moving the *lender* to hand over the funds (Law No. 1 of 2023).

Crime of Embezzlement (Article 486 and Article 488 of Law No. 1 of 2023 / ex Article 372 of the Old Criminal Code): It is proven that *the lender* funds that were originally in the legal control of the company (due to an employment, profession, or position), then are illegally transferred, transferred, or controlled by the board of directors for personal/corporate interests that are contrary to the contract (Law No. 1 of 2023).

Qualification as *Corporate Fraud*: The fact that there is the use of fictitious projects, manipulation of *borrower* data, and the transfer of investor funds at PT Dana Syariah Indonesia

shows that this case is no longer in the realm of civil default or ordinary business failure (*business judgment rule*), but has led to *corporate fraud* carried out through corporate policies (Khairandy, 2014; Setiadi & Asyiah, 2017).

Construction of Proof of Elements of Error (*Mens Rea*) in the Case of Fictitious Project-Based Fund Management at PT Dana Syariah Indonesia

1. Construction of Proof of Elements of Error (*Mens Rea*) in Indonesian Criminal Law

The element of fault (*mens rea*) is the core of criminal liability that determines whether or not a person can be convicted for the unlawful act he committed. In modern criminal law doctrine, punishment is not enough just to prove the existence of a prohibited physical act (*actus reus*), but it must also be proven that there is an inner attitude of the perpetrator that shows intent, *knowledge*, or at least negligence towards the consequences caused by his actions. Therefore, proof of *mens rea* is a fundamental requirement in every criminal justice process, including in handling corporate *crime* involving the directors as the company's decision-making organ. This concept is firmly rooted in the principle of *geen straf zonder schuld* (no crime without fault) which is still maintained as the basis for national criminal liability in Law No. 1 of 2023 concerning the Criminal Code (Law No. 1 of 2023 / New Criminal Code), especially through regulations regarding intentionality (*dolus*) and forgetfulness (*culpa*) (Huda, 2011).

In the realm of criminal procedural law, proving the element of guilt is subject to the mechanism stipulated in Law No. 20 of 2025 concerning the Criminal Procedure Code (Law No. 20 of 2025 / New Criminal Procedure Code). Based on Article 183 of Law No. 20 of 2025, a judge may not impose a criminal sentence on a person unless with at least two valid pieces of evidence he or she is convinced that a criminal act has actually occurred and the defendant is guilty of committing it. This normative provision emphasizes that the element of *mens rea* must not only assume or conjecture due to the occurrence of financial losses or civil defaults alone. The perpetrator's inner state must be objectively proven in front of the trial through legitimate evidence that shows a causal connection between the perpetrator's will and the criminal act that occurred. In corporate crime cases, the evidence is generally obtained through a combination of witness statements, company documents, investigative audit reports, financial transaction analysis, electronic communications, and forensic digital examinations.

The transformation of information technology in the world of business and digital financial transactions has significantly changed the character of proving economic crimes. On technology-based financing (*fintech*) platforms, the inner attitudes and malicious intentions of the perpetrators are rarely revealed through direct verbal confessions. The intentions of the perpetrators are now recorded in a digital *footprint* that describes the flow and decision-making process within the corporation (*corporate decision-making process*). Accommodating the development of this technology-based crime, Law No. 20 of 2025 provides a very strong legal basis for the application of *scientific evidence*. Article 55 of Law No. 20 of 2025 emphasizes that investigators in conducting investigations are supported by investigative technical assistance for scientific proof. Furthermore, Article 56 of Law No. 20 of 2025 stipulates that these forms of technical assistance include forensic laboratories, identification, forensic psychology, forensic medicine, digital forensics, and other forms of technical assistance. This arrangement strengthens *mens rea proof* through scientific instruments, where the inner attitude of the directors is reconstructed based on communication patterns, electronic transactions, *document metadata*, and digital activity history stored in the company's electronic system.

In the context of corporate criminal liability, *mens rea* proof is no longer focused only on physical *perpetrators* in the field but is directed to company organs that have the authority and control to make decisions. Articles 45 to 49 of Law No. 1 of 2023 place corporations as the subject of criminal acts, as well as pave the way for criminal imposition on administrators who have functional positions, givers of orders, control holders, and *beneficial owners* (Muladi &

Priyatno, 2010). Therefore, proving wrongdoing in corporate cases focuses more on proving the *corporate decision-making process* (Ali, 2015). Law enforcement is obliged to prove that corporate policies that harm the community are the fruit of the will and approval of the authorized organs. This is in line with the *Identification Theory* which identifies the will of the directors as the will of the corporation itself (*directing mind and will*) (Sjahdeeni, 2014). As emphasized by Hiariej (2016), the element of guilt in economic crimes is not always proven through confession but is inferred from the overall facts and conduct of the perpetrator before, during, and after the criminal act is committed.

When associated with the case of PT Dana Syariah Indonesia, the construction of *mens rea proof* must be specifically directed to prove that the distribution of investor funds in the allegedly fictitious project is not the result of pure administrative error or the risk of ordinary business failure but is a company policy that was consciously designed and approved by the board of directors from the beginning. Proof must not stop at the fact that there is a *loss of the lender* but must trace how the process of the decision to bid the project was born, who gave the order and approval, who received the economic benefit, and whether the directors knew from the beginning that the project offered did not have a real object (*underlying asset*). If the series of facts can be proven through legal and scientific evidence, the element of *mens rea* of directors as the basis for criminal liability can be declared fulfilled perfectly.

2. Analysis of Forensic Electronic and Digital Evidence in Mens Rea Proof

The characteristics of the sharia *P2P lending fintech industry* that operate digitally cause the majority of business activities—ranging from investor registration, financing project offerings, internal approval of the board of directors, communication with financing applicants, to fund transaction traffic—are carried out through electronic platforms and systems. This condition has direct implications for the law of proof, where proof of the elements of error (*mens rea*) of the board of directors is no longer adequate if it only relies on conventional evidence such as witness statements or *paper-based documents*. Proof must rely on the analysis of electronic evidence and the results of digital forensic examinations to reconstruct the *criminal intent* of the decision-maker.

The legal position of electronic evidence in Indonesia has gained a solid normative basis through Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law). Article 5 paragraph (1) of the ITE Law emphasizes that Electronic Information, Electronic Documents, and/or their printed results are valid legal evidence. Article 5 paragraph (2) of the ITE Law states that electronic evidence is an extension of the valid evidence regulated in the Indonesian criminal procedure law. Furthermore, Article 5 paragraph (3) of the ITE Law provides validity criteria, where information or electronic documents must come from an electronic system that is organized reliably, safely, and responsibly. Thus, data such as *e-mail* messages, internal group chats, platform dashboards, transaction administration systems, *server logs*, *project file* metadata, and user activity logs have *binding proof power as long as they meet the aspects of authenticity, integrity, and availability*.

The provisions of the ITE Law are harmoniously interrelated with the New Criminal Procedure Code (Law No. 20 of 2025). The support for digital forensic technical assistance as stipulated in Article 55 and Article 56 of Law No. 20 of 2025 provides legality for investigators to apply *scientific digital forensics* methods in extracting and analyzing the company's electronic devices and the directors' personal chats.

Digital forensics has a dual role in proving *corporate fraud cases*:

- 1) **Ensuring Data Authenticity:** Proving that project documents or electronic transaction data have not been subjected to unauthorized manipulation.

- 2) **Reconstructing the Decision-Making Process:** Trace in detail the chronology of document creation, when the data was changed, who gave *approval*, and how the instructions were forwarded.

Through *metadata analysis*, *timestamps*, *version history*, and *access logs*, investigators can prove whether the financing project was engineered as a fictitious project from the beginning or failed in the middle of the road. This reconstruction of digital facts is crucial because *metadata* and traces of electronic system activity cannot be lied to, so it becomes the most objective clue in revealing the inner attitude (*mens rea*) of company policymakers.

In the case of PT Dana Syariah Indonesia, the findings of the Criminal Investigation Branch of the National Police indicate the use of fictitious projects and the use of existing *borrower* data to make new financing applications that actually never existed. To prove that these actions are instructions and policies of the board of directors, forensic digital testing must be directed to:

- a. *E-mail tracking* and instant communication between members of the board of directors and the operational team related to instructions for drafting projects;
- b. Authentication of digital approval (*digital signature/approval*) from the board of directors in the internal system when launching fictitious projects on public platforms;
- c. Tracking the flow of electronic financial transactions (*money trail*) to prove where investor funds flow after they have been successfully collected.

If the results of the digital forensic analysis prove that the board of directors has received an internal report regarding the absence of a real project but still approves the project offer to the public, then the digital fact becomes irrefutable evidence of the existence of elements of intentionality (*dolus*) and malicious intent (*mens rea*).

3) Juridical Indicators of *Mens Rea* Proof of the Board of Directors of PT Dana Syariah Indonesia

Based on the synthesis of positive law, the doctrine of corporate criminal liability, and the characteristics of *fintech* crimes, there are **4 (four) Juridical Indicators** that can be used by investigators and public prosecutors to construct the existence of *mens rea* of PT Dana Syariah Indonesia's board of directors in managing fictitious project-based funds:

1. Knowledge of Project Untruthfulness

The first *element of mens rea* is shown through the knowledge of the directors that the financing project offered to the public does not have a factual basis or *legal underlying asset*. This knowledge is proven through:

- a. Internal electronic correspondence files;
- b. Report on the results of internal audit or risk evaluation;
- c. Minutes of the meeting of the board of directors;
- d. Warnings from the *compliance team* that are ignored.

If it is proven that the directors know that the project is fictitious or the *borrower* data used is fake data but still allows the project to be published on the platform, then the element of intentionality (*dolus*) has been formed, because the directors know the unlawful nature of their actions but still do it.

2. Intention to Collect Funds Illegally

The second indicator is the intention manifested in active actions to continue to collect funds from *lenders* by conveying misleading information. This can be seen from the pattern of financing schemes that are carried out systematically and repeatedly (*continuing act*). The sustainability of the act of marketing fictitious projects widely proves that the collection of public funds is not an accident or administrative error, but part of the company's policy design that is realized to get an injection of public funds.

3. Control over the Act

Based on Article 92 of Law No. 40 of 2007, the board of directors holds the highest authority in the management and supervision of the company. In the doctrine of *Functional*

Perpetrator Theory and *Identification Theory*, the board of directors can be held accountable if they have control over the occurrence of criminal acts. If the act of raising funds through a fictitious project is carried out on the basis of approval, instruction, or omission by the board of directors who has the authority to stop it, then the company's operational act is identified as a manifestation of the will of the directors (*directing mind and will*) (Sjahdeeni, 2014; PERMA No. 13 of 2016).

4. Policy Relationship with Benefit Receipt (*Benefit / Follow the Money*)

The fourth indicator is tested through following *the money*. *Proof of mens rea* becomes very strong if a causal relationship is found between the policy of releasing fictitious projects and the economic benefits obtained. Through the analysis of transactions of the company's banking accounts, the personal accounts of the directors, the accounts of the affiliates, and *beneficial owners*, law enforcement can prove whether the *funds collected by the lender* were really channeled to the financing project or were diverted to cover the *cash flow* of the deficit company, pay the returns of old investors (ponzi scheme), or be used for the personal interests of the directors. The transfer of funds outside the sharia contract is substantive evidence of malicious intent to illegally possess or control funds.

The four juridical indicators above do not stand alone but must be proven in an integrated manner referring to the proof system of Law No. 20 of 2025 (New Criminal Procedure). The use of electronic evidence, investigative audits, financial transaction analysis, and forensic digital technical assistance has changed *mens rea* evidence from an abstract to a scientific-based *criminal proof*.

5. The Shift Towards *Scientific Criminal Proof* in Corporate Policy Proof

The construction of *mens rea proof* in the case of PT Dana Syariah Indonesia marks a shift in the paradigm of Indonesian criminal proof law from the conventional model to *scientific criminal proof*. In the conventional model, law enforcement relies heavily on primary evidence in the form of witness statements and defendants' confessions. However, in digital technology-based corporate crimes, the conventional model has great limitations because the perpetrators tend to hide malicious intent behind business decision formalities, polished financial statements (*window dressing*), and administrative contracts that appear legitimate on the outside.

The shift towards *scientific criminal proof* is reflected in the integration between:

- 1) **Forensic Digital Analysis:** Uncovering confidential communications, authenticity of digital instructions, and engineering history of project documents in electronic systems (ITE Law jo. Article 56 of Law No. 20 of 2025);
- 2) **Financial Investigative Audit:** Reconstructing the flow of funds in and out (*money trail*) to prove the inconsistency between bookkeeping and field realization;
- 3) **Corporate Law Analysis:** Examining whether the decisions taken by the board of directors are purely business risks (*business judgment rule*) or whether they have violated *fiduciary duties* that lead to corporate *fraud* (Khairandy, 2014; Setiadi & Asyiah, 2017).

Through the *scientific criminal proof approach*, proving the element of error is no longer trapped in legal formalities alone. If all the results of digital forensic examinations, investigative audits, and analysis of financial transactions show that the directors of PT Dana Syariah Indonesia know that the project offered does not have a real object, still approves the collection of public funds, and diverts the funds for interests that deviate from the contract, then the element of intentionality (*dolus*) as the main condition for criminal liability has been legally and convincingly proven. This construction of scientific proof provides legal *certainty*, a sense of justice, and *utility* in the enforcement of digital economy criminal law in Indonesia, while emphasizing that the position of the board of directors cannot be used as a shield to escape from the snare of personal criminal responsibility.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. The criminal liability of the Board of Directors of PT Dana Syariah Indonesia has a strong juridical basis based on the *dual liability scheme* (Articles 45–56 of Law No. 1 of 2023) and *Identification Theory*, if it is proven that the directors act as *directing mind and will* that approves or controls the criminal acts of fraud (Article 492) and/or embezzlement (Article 486 & Article 488) (Sjahdeeni, 2014; Law No. 1 of 2023).
2. The proof of the *mens rea* element of the directors is scientifically constructed (*scientific criminal proof*) referring to Article 183 jo. Articles 55–56 of Law No. 20 of 2025 and Article 5 of the ITE Law, by connecting 4 juridical indicators (*knowledge, intention, control, benefit*) using forensic digital evidence and analysis of the flow of funds (*follow the money*) (Ali, 2015; Hiariej, 2016; Law No. 20 of 2025).

Recommendations

1. It is necessary to strengthen the criminal liability mechanism of the Board of Directors and corporations in the activities of the sharia financing platform by applying clearer standards in distinguishing the individual criminal liability of the Board of Directors from the criminal liability of corporations.
2. A more measurable construction of *mens rea* proof is needed in handling the criminal act of fictitious project-based fund management on sharia financing platforms by integrating conventional proof and digital proof.

REFERENCES

- Ali, M. (2015). *Principles of Corporate Criminal Law*. Jakarta: RajaGrafindo Persada.
- Hiariej, E. O. S. (2016). *Principles of Criminal Law*. Yogyakarta: Cahaya Atma Pustaka.
- Huda, C. (2011). *From No Crime Without Fault to No Criminal Liability Without Fault*. Jakarta: Kencana.
- Huda, C. (2011). *From No Crime Without Fault to No Criminal Liability Without Fault*. Jakarta: Kencana.
- Khairandy, R. (2014). *Limited Liability Company Law*. Yogyakarta: FH UII Press.
- Khairandy, R. (2014). *Limited Liability Company Law*. Yogyakarta: FH UII Press.
- Law Number 1 of 2023 concerning the Criminal Code.
- Law Number 20 of 2025 concerning the Criminal Procedure Code.
- Law Number 40 of 2007 concerning Limited Liability Companies.
- Moeljatno. (2008). *Principles of Criminal Law*. Jakarta: Rineka Cipta.
- Moeljatno. (2008). *Principles of Criminal Law*. Jakarta: Rineka Cipta.
- Muladi, & Priyatno, D. (2010). *Corporate Criminal Liability*. Jakarta: Kencana.
- Muladi, & Priyatno, D. (2010). *Corporate Criminal Liability*. Jakarta: Kencana.
- Setiadi, E., & Asyiah, Y. (2017). *Economic Criminal Law*. Jakarta: Kencana.
- Sjahdeeni, S. R. (2014). *Corporate Criminal Responsibility*. Jakarta: Graffiti Press.
- Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations.