

Indonesia New Criminal Code: Overview of Criminal Liability for Corporations

Authors: Audria Putri (Counsel), Muhammad Irfan Yusuf (Associate), and Abdurrahman (Trainee Associate)

Indonesia's new Criminal Code ("**New Criminal Code**") that was passed as law on 2 January 2023, will be effective starting 2 January 2026. The New Criminal Code will revoke the existing criminal code, Law No. 1 of 1946 on the Indonesia Criminal Code. The New Criminal Code is also accompanied by the new criminal procedure code through the Draft Bill on the Criminal Procedure Code ("**New Criminal Procedure Code**"), which will govern the new procedural steps and rules on criminal investigation, prosecution, rights of the related parties, and other criminal procedural matters. Like the New Criminal Code, the New Criminal Procedure Code will be effective starting 2 January 2026.

The key takeaway of the New Criminal Code is the recognition of criminal liability of corporations, not regulated under the existing criminal code. Corporate crime provisions were regulated under various sectoral laws such as, the anti-corruption, anti-money laundering, data protection, environmental, consumer protection, and manpower laws.

In light of the recognition of the corporate liability under the new criminal law regime, we provide, in this article, an overview of the legal standing and position of corporation, particularly on (i) Corporate Criminal Liability; (ii) Criminal Sanctions for Corporations; (iii) Criminal Procedures for Corporations; and (iv) Transitional Period.

1. Corporate Criminal Liability

Under the New Criminal Code, a corporate crime is defined as criminal action committed by:

- a. any member of the corporation's management that has a functional role within the structure;
- b. any person that has a working relationship or any other relationship that allows him/her to act on behalf of the corporation;
- c. anyone acting in the corporation's interest;
- d. any individual, within the corporation, who is eligible to order/instruct the crime; or
- e. controllers or beneficial owners of the corporation.

(the "**Corporate Responsible Parties**")

Furthermore, a corporation may be held liable if the act:

- a. falls within the corporation activities as determined in the articles of association or other applicable provisions;
- b. unlawfully benefits the corporation;
- c. is accepted as corporation's policy;
- d. is considered as the corporation's failure to prevent or mitigate violations or ensure legal compliance; and/or
- e. is allowed to occur by the corporation.

If any of the above conditions are met, the criminal liability shall be imposed on the corporation, with such liability attributed to and borne by the responsible Corporate Parties. (*Articles 46 – 49 of the New Criminal Code jo. Article 326 of the New Criminal Procedure Code*)

2. Criminal Sanction for Corporations

The New Criminal Code introduces sanctions applicable to corporations. Similar to the imposition of criminal sanctions on individuals, the New Criminal Code applies a mechanism of main and additional criminal sanctions against corporations (*Article 118 of the New Criminal Code*).

- a. **Main Criminal Sanction:** Generally, the main criminal sanctions in the form of fines are classified into 8 categories, each with the corresponding maximum imposable fine (*Article 79 of New Criminal Code*). When a criminal act is punishable by imprisonment and is attributed to a corporation, the sanctions shall be converted into a fine, subject to the length of the imprisonment term (*Article 121 of New Criminal Code*).

For ease of reference, kindly refer to the table below on the applicable sanctions categories for the corporation fines threshold:

Category	Sanctions
I	IDR 200 Million
II	
III	
IV	
V	IDR 500 Million
VI	IDR 2 Billion (applicable for imprisonment below 7 years)
VII	IDR 5 Billion (applicable for imprisonment of 7 to 15 years)
VIII	IDR 50 Billion (applicable for imprisonment of up to 20 years)

For instance, Article 486 of New Criminal Code stipulates the crime of embezzlement punishable by up to 4 years imprisonment or a category IV fine. In this case, the corporation may become subject to the minimum criminal fine of category IV or the maximum fine of category VI, whichever the court judges deem acceptable.

- b. **Additional Criminal Sanctions:** A court may decide that the corporation be imposed with additional sanctions, particularly if the main criminal sanction is considered insufficient. This sanction is not mandatory and may only be imposed at the discretion of the judges. The additional criminal sanctions for corporations are as follows:
- payment of compensation;
 - remedy for the consequences of crimes;
 - implementation of obligations which have been neglected;
 - fulfilment of customary obligations;
 - financing of job training;
 - confiscation of goods or profits obtained from the crimes;
 - announcement of court decision;
 - revocation of certain licenses;
 - permanent ban on certain actions;
 - the closure of all or part of the corporation business and/or activities;
 - suspension of all or part of the corporation's business activities; and
 - dissolution of corporations.

(*Article 120 (1) of New Criminal Code*)

The maximum time limit to meet the demands of additional criminal sanctions of license revocation, closure, or suspension is 2 years. If the corporation fails to comply with the

penalties under the additional sanctions (letters (a) – (e)), the corporation's assets and revenue may be seized by the prosecutor (*Article 120 (2) and (3) of New Criminal Code*).

In addition to the criminal penalties, the corporations may also be subjected to measures or non-punitive sanctions for rehabilitating the corporation. These measures can be in the form of:

- a. takeover;
- b. supervisionary; and/or
- c. guardianship on the corporation.

Further provisions on these measures will be governed under separate government regulations. Therefore, we expect additional corporation-related provisions under the New Criminal Code will be issued. The New Criminal Code does not specify or elaborate on the three measures, including which party would have the authority to do the takeover, supervision, or guardianship (*Articles 123 and 124 of New Criminal Code*)

3. Procedures for Criminal Indictment towards Corporations

The New Criminal Procedures Code provides a dedicated and comprehensive provisions on the procedure of handling a criminal act made by corporation under Chapter 18 of New Criminal Procedure Code. Below is a table outlining the relevant sequence related to corporate criminal procedures, for your reference:

Stages	Remarks
Preliminary Investigation and Investigation	<ol style="list-style-type: none"> a. The corporation, proxied by the representative (i.e., BoD, BoC, etc.), shall be summoned in writing by the investigator to appear for preliminary investigation (<i>Article 327 (1) – (3) of New Criminal Procedures Code</i>). b. Restorative Justice may apply if the criminal act is performed by the corporation provided that the corporation (i) is a first-time offender of the criminal act, (ii) has compensated the victim, and/or (iii) has undertaken corrective measures (<i>Article 327 (6) of New Criminal Procedures Code</i>).
Indictment	<ol style="list-style-type: none"> a. The indictment process shall be initiated with the prosecutor summoning the corporation's management based on its Article of Association (<i>Article 193 jo. Article 329 (1) of New Criminal Procedures Code</i>). b. The indictment by the prosecutor for the corporation shall contain the details of the corporation (e.g., name, incorporation details, domicile, business activity, etc.) (<i>Article 329 (2) of New Criminal Procedures Code</i>). c. Corporation may still be indicted despite undergoing corporate action, such as merger, consolidation, spin-off, dissolution (<i>Article 330 of New Criminal Procedures Code</i>).
Decision Enforcement and Sanctions	<ol style="list-style-type: none"> a. Corporation subject to fines, forced confiscation, and compensation shall be required to fulfill its obligation within 1 month after the final and binding court decision, and the time may be extended for an additional 1 month, based on reasonable grounds (<i>Articles 337 (1) – (2), 339 (1) – (2), and 340 (2) – (3) of New Criminal Procedures Code</i>). b. Failure to fulfill the fines and restitution may result in the corporation's assets being confiscated (<i>Articles 337 (3) and 340 (4) of New Criminal Procedures Code</i>).

Stages	Remarks
	c. Proceeds or profits rendered by the corporation from the criminal act shall be seized (<i>Article 339 (3) of New Criminal Code</i>).

The New Criminal Procedure Code introduces a Postponement of Prosecution Agreement (“PPA”), allowing prosecutors to postpone prosecution of crimes involving a corporation by way of an agreement between the victim and the corporation as a defendant. PPA applies before the case is assigned to the court for court examination, and may only be submitted by the corporation and its lawyer to the prosecutor (*Article 328 (3) of New Criminal Procedures Code*).

The PPA terms may include those on:

- a. payment of compensation or restitution to victims;
- b. implementation of compliance programs or governance improvements aimed at preventing corruption;
- c. obligation of reporting and cooperation with law-enforcement authorities during the PPA period; or
- d. other corrective measures deemed necessary by the prosecutor.

(*Article 328 (12) of New Criminal Procedures Code*)

The PPA is subject to the prosecutor’s approval. If approved, the prosecutor must notify the court and submit the agreed PPA within 7 days. Subsequently, the judge will review the PPA in a hearing, and if approved, the judge will issue a court order. However, if the judge rejects the PPA, the case will proceed to trial, regardless the PPA has already been agreed by the corporation and the prosecutor (*Article 328 paragraphs (4) – (7), and (10) of New Criminal Procedures Code*).

Please note that the PPA will only “suspend” the proceedings. The corporation must first fulfill all obligations set forth in the PPA to dismiss the case (*Article 382 (13) of New Criminal Procedures Code*).

4. Transitional Period

New Criminal Code:

Any criminal offense committed before the enactment of New Criminal Code or 2 January 2026, but not yet decided by the court, will be regulated by the existing criminal code, since the New Criminal Code implements the non-retroactive principle (*Article 1 of New Criminal Code*).

However, if a criminal act is no longer criminalized under the New Criminal Code, all legal proceedings in respect of that act shall be dismissed. This rule also applies to individuals who are under arrest, in detention, or convicted by a final court decision (*Article 3 (2) – (4) of New Criminal Code*). In such cases, the offender must be released immediately, and the conviction must be removed due to the issuance of New Criminal Code.

Generally, the New Criminal Code does not apply retroactively, but there are exceptions. Practically, all ongoing investigations, prosecutions, or even finalized conviction must be discontinued or annulled if the relevant offenses are no longer recognized under the New Criminal Code.

New Criminal Procedures Code:

The implementation of the New Criminal Procedures Code depends on the procedural stage of the criminal case at the time the New Criminal Procedures Code comes into force.

Unlike the New Criminal Code, the New Criminal Procedure Code applies to criminal cases where the offense occurred before its enactment, but no procedural action has yet commenced (*Article 361 (b) and (d) of New Criminal Procedure Code*). In this regard, investigative and prosecutorial actions initiated after the enactment of New Criminal Procedure Code must follow the new procedures, even if the alleged criminal acts occurred before the enactment of the code.

In a criminal act under investigation, prosecution, and examination by the court, the previous criminal procedure code shall apply (*Article 361 (a) and (c) of New Criminal Code*).

We note that this transitional approach is made to prevent disruption to the ongoing criminal proceedings, despite the provisions of New Criminal Procedures Code will apply to any criminal act before 2026.

Disclaimer: The information herein is of general nature and should not be treated as legal advice, nor shall it be relied upon by any party for any circumstance. Specific legal advice should be sought by interested parties to address their particular circumstances.