

REGULATION SUMMARY

# **CORPORATE CRIMINAL LIABILITY UNDER INDONESIA'S NEW CRIMINAL CODE: OVERVIEW AND KEY PROVISIONS**

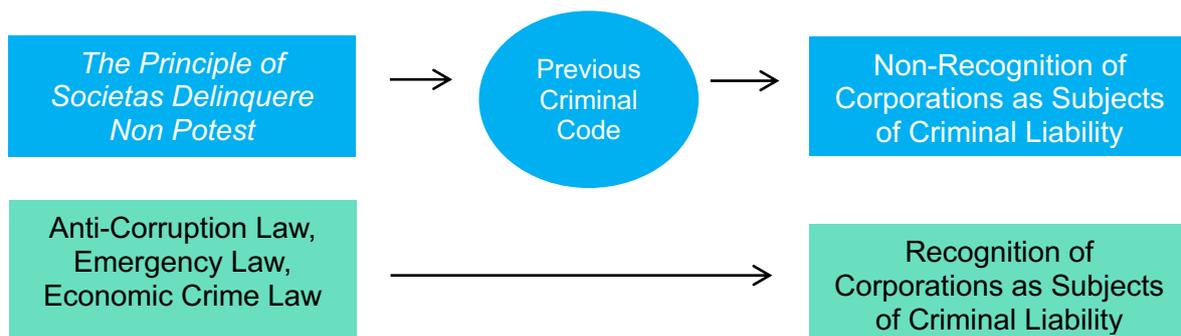


In line with the development of modern legal theory recognizing corporations as legal subjects, Law No. 1 of 2023 on the Indonesian Criminal Code (the “New Criminal Code”) expressly establishes corporations as subjects of criminal offences, as stipulated under Article 45 paragraph (1) of the New Criminal Code. The enactment of the New Criminal Code is also intended to address the evolution of modern criminal activities, particularly White-Collar Crime, Economic Crime, and Organized Crime, which have become increasingly complex and frequently involve corporate entities.

### Key Definitions:

- **Corporation:** Includes legal entities in the form of limited liability companies, foundations, cooperatives, State-Owned Enterprises (Badan Usaha Milik Negara or “BUMN”), Regional-Owned Enterprises (Badan Usaha Milik Daerah or “BUMD”), or their equivalents, as well as associations, whether incorporated or unincorporated, and business entities in the form of Partnerships (“Firma”), limited partnerships (*Commanditaire Vennootschap* or “CV”), or their equivalents, in accordance with the prevailing laws and regulations.
- **Beneficial Owner (“BO”):** The ultimate beneficial owner of a Corporation who, although not formally part of the organizational structure, is able to exercise control over the Corporation.
- **Criminal Fine:** A monetary penalty imposed on a convicted person pursuant to a court judgment.
- **Functional Position:** Any person who has the authority to represent, make decisions for, or exercise supervision over a Corporation, including any person who orders (“Indirect Perpetrator”), participates in (“Co-Perpetrator”), incites (“Instigator”), or assists in the commission of a criminal offence (“Accessory”).
- **Other Relationship:** Includes, for example, contractual arrangements of a temporary nature, such as employment or service contracts.
- **Controlling Person:** Any person who has the power or authority to determine or implement the policies of a Corporation.
- **Business Scope or Activities:** Includes activities that are generally carried out in the ordinary course of business of a Corporation.

### Legal Paradigm Shift in Relation to Subjects of Criminal Liability :



Under the Previous Criminal Code, corporations were not recognized as subjects of criminal liability. However, certain sector-specific statutes, such as Law No. 20 of 2001 on the Eradication of Corruption Crimes (the “Anti-Corruption Law”), expressly recognized corporations as subjects of criminal liability, as reflected in Article 20 thereof. Accordingly, the New Criminal Code establishes a more comprehensive and integrated legal framework governing corporate criminal liability in Indonesia.

### Corporate Entities Subject to Criminal Liability

<b>Incorporated Business Entities</b>	Limited liability companies ( <b>Perseroan Terbatas</b> or “ <b>PT</b> ”), <b>BUMD</b> , <b>BUMN</b> , and other incorporated business entities recognized under applicable laws and regulations.
<b>Unincorporated Business Entities</b>	<b>CV</b> , <b>Firma</b> and other equivalent unincorporated business forms.
<b>Non-Profit Legal Entities</b>	<b>Foundations (Yayasan)</b> and other equivalent non-profit legal entities recognized under applicable laws and regulations.
<b>Associations</b>	<b>Associations</b> , whether incorporated or unincorporated.

Pursuant to Articles 46 and 47 of the New Criminal Code, a corporate criminal offence refers to a criminal offence committed by:

Subject	Criteria	Role
<b>Corporate Management</b>	Any individual who holds a functional position within the organizational structure of the Corporation.	<ol style="list-style-type: none"> <li>1. Direct Perpetrator (<i>Pleger</i>);</li> <li>2. Indirect Perpetrator (<i>Doenpleger</i>);</li> <li>3. Co-Perpetrator (<i>Medepleger</i>);</li> <li>4. Instigator (<i>Uitloker</i>);</li> <li>5. Accessory (<i>Medeplichtige</i>).</li> </ol>
<b>Instructing Person</b>	A person who is not formally part of the Corporation's management structure, but is able to give instructions, exercise control over, and derive benefits from the Corporation.	
<b>Controlling Person</b>		
<b>BO</b>		
<b>Individual</b>		

jointly or severally

Acting for and on behalf of the Corporation or in the interests of the Corporation.

### Corporate Criminal Liability

Pursuant to Article 48 of the New Criminal Code, the parties referred to in Articles 46 and 47 above may be held criminally liable where the criminal offence:

1. Falls within the scope of business or activities as stipulated in the Corporation's articles of association, or within other activities ordinarily undertaken by the Corporation, or as otherwise provided under applicable laws and regulations;
2. unlawfully benefits the Corporation;
3. is accepted or adopted as a policy of the Corporation;
4. Occurs as a result of the Corporation's failure to take necessary measures to prevent the commission of the criminal offence, mitigate its impact, or ensure compliance with applicable laws and regulations in order to prevent such criminal offence; and/or
5. is knowingly tolerated or permitted by the Corporation.

Article 48 of the New Criminal Code highlights the central importance of a corporation's governance architecture in determining corporate criminal liability. Corporations are expected to implement robust oversight, compliance, and risk mitigation frameworks to ensure that their policies and operations do not give rise to criminal exposure. In this context, corporations cannot rely solely on formal legal structures (form over substance), as the New Criminal Code adopts a substance over form approach.

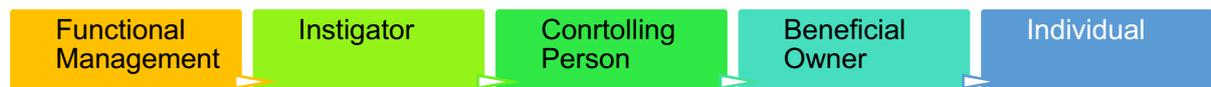
This means that liability is assessed not only by reference to nominee arrangements or formal corporate structures, but also by reference to the Corporation's de facto business activities. Accordingly, the actual operational conduct and factual realities of the Corporation are decisive in attributing criminal liability. The parties who may be held liable for a corporate criminal offence include the Corporation itself, members of Corporate Management holding functional positions, instructing persons, controlling persons, and/or the BO.

With respect to the designation of the perpetrator and the responsible party for a corporate criminal offence, the Elucidation of Article 48 of the New Criminal Code provides that such designation may be determined as follows:

Perpetrator	Responsible Party
Corporation	Members of Corporate Management
Corporation	Corporation

### Grounds for Justification and Excuse

Parties entitled to invoke grounds for justification and excuse:



Individuals holding functional positions within the organizational structure of a corporation, and acting for and on behalf of, or for the benefit of, the Corporation, whether by virtue of an employment relationship or any other legal relationship, may invoke grounds for justification on behalf of the Corporation. For example, an employee who damages a government-owned waste disposal pipeline to protect the safety of the Corporation's employees may rely on such justification.

## Criminal Sanctions Applicable to Corporations

Article 118 of the New Criminal Code stipulates two categories of criminal sanctions that may be imposed on corporations, namely principal penalties and additional penalties. The principal penalty applicable to corporations is a criminal fine. Additional penalties are further provided under Article 120 paragraph (1), which include:

- 1 Payment of compensation;
- 2 Restoration of the consequences of the criminal offence;
- 3 Performance of obligations that have been neglected;
- 4 Compliance with customary law obligations;
- 5 Financing of workforce training program;
- 6 Confiscation of assets or profits obtained from the criminal offence;
- 7 Publication of the court decision;
- 8 Revocation of specific licenses;
- 9 Permanent prohibition from engaging in certain activities;
- 10 Closure of all or part of the Corporation's business premises or operations;
- 11 Suspension of all or part of the Corporation's business activities; and
- 12 Dissolution of the Corporation.

If the criminal sanctions referred to in items (1) to (5) are not fulfilled

The Public Prosecutor may seize and auction the assets or revenues of the Corporation.

The period of the criminal sanctions set out in items 8, 10, and 11

The sanction may be imposed for a maximum period of two (2) years.

## Criminal Fines Applicable to Corporations

Article 121 paragraph (1)

Article 79 paragraph (1) letter (b)

*Bare Minimum*

Category IV

IDR 200,000,000

In cases where a criminal offence is subject to other forms of punishment, the applicable criminal fine for the Corporation shall be determined in accordance with the following provisions:

**Term of Imprisonment  
1–6 years**

- Category VI
- Max. IDR 2,000,000,000

**Term of Imprisonment  
7–15 years**

- Category VII
- Max. IDR 5,000,000,000

**Death Penalty, Life  
Imprisonment, or Term of  
Imprisonment up to max.  
20 years**

- Category VIII
- Max. IDR 50,000,000,000

Any adjustment to the amount of the criminal fine resulting from changes in monetary value shall be prescribed by Government Regulation.

**General Mechanism for the Payment of Criminal Fines :**

Payment Period	Method of Payment	Seizure and Auction	Substitute Sanction
<ul style="list-style-type: none"> <li>The criminal fine shall be paid within the period prescribed in the court judgment.</li> </ul>	<ul style="list-style-type: none"> <li>The court may permit payment of the criminal fine in instalments.</li> </ul>	<ul style="list-style-type: none"> <li>The Public Prosecutor is authorised to seize and auction the Corporation's assets or revenues in order to enforce payment of the criminal fine.</li> </ul>	<ul style="list-style-type: none"> <li>In the event that the Corporation's assets or revenues are insufficient to satisfy the criminal fine; and</li> <li>The court may impose the suspension of all or part of the Corporation's business activities.</li> </ul>

**Enforcement Measures Against Corporations**

The New Criminal Code provides for three (3) types of enforcement measures that may be imposed on a Corporation, namely:

1. Takeover of the Corporation;
2. Placement of the Corporation under supervision; and/or
3. Placement of the Corporation under custodial administration.

**Delegation of Regulatory Authority**

Further provisions governing the procedures for the implementation of criminal penalties and enforcement measures applicable to Corporations, as referred to in Articles 118 to 123 of the New Criminal Code (as discussed in this publication, from corporate criminal liability subjects through to enforcement measures), shall be prescribed by Government Regulation.



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