

Indonesia's New Criminal Code

Even after independence, Indonesia did not have its own penal law codification. Alternatively, Indonesia ratified the *Wetboek van strafrecht voor Nederlands-indie*, a Dutch colonial law for the Dutch East Indies, as the Indonesian Criminal Code/*Kitab Undang-Undang Hukum Pidana* in 1946 under Law Number 1 of 1946 on Criminal Law ("**KUHP**"). Even after 77 years of independence, however, there is no official Indonesian translation of the KUHP, which sometimes results in multiple interpretations of the KUHP's provisions.

On 2 January 2023, the Indonesian government officially enacted Law Number 1 of 2023 on the Indonesian Criminal Code ("**New Criminal Code**"), which contains approximately 600 articles divided into two books, general provisions and criminal provisions. The New Criminal Code will go into effect three years after it is enacted *i.e.*, 2 January 2026.

In comparison to KUHP, the New Criminal Code has made several significant changes to Indonesian penal codification that must be highlighted. In this case, we have highlighted numerous key points addressing these significant changes brought about by the New Criminal Code.

1. Development of the Legality Principle

Previously, the legality principle under KUHP was interpreted as a principle under which no act shall be punished unless by a prior statutory penal provision, implying that there would be no crime unless it is regulated by law, as stipulated in Article 1 paragraph (1) of KUHP. However, under the New Criminal Code, the meaning of this legality principle has been slightly broadened, as stipulated in Article 2 of the New Criminal Code, which reads as follows [*Unofficial English translation*]:

"Article 2

- (1) *The provisions referred to in Article 1 paragraph (1) **didn't reduce the validity of the law that lives in a society** that determines that a person should be punished even though the act is not regulated in this law.*
- (2) *The law that lives in society, as referred to in paragraph (1), **applies in the place where the law lives and as long as it is not regulated in the law and following with the values contained in Pancasila, the Constitution of the Republic of Indonesia of 1945, human rights, and general legal principles recognized by nations.***
- (3) *Provisions regarding the procedures and criteria for establishing laws that live in a society with government regulations."*

Although the implementing government regulation has yet to be enacted, according to the above excerpts the legality principle is no longer strictly applied under the New Criminal Code, given that an act could be penalized not only based on a prior statutory penal provision but also based on the law that lives in a society even if it is not regulated in statutory law *i.e.*, unwritten law or customary law, should the said law lives and must remain in accordance with the Indonesian law.

According to Articles 96 and 97 of the New Criminal Code, the fulfillment of customary obligations is prioritized as an additional penalization if the conditions stipulated in Article 2 paragraph (2) of the New Criminal Code are met. Nevertheless, such customary obligation can be substituted by fines category II, supervision sentences, or a social work sentence as additional charges.

2. Corporate Criminal Liability

Corporate criminal liability, formerly, was not regulated or recognized in KUHP but was regulated by the Supreme Court Regulations Number 13 of 2016 regarding Procedures for the Management of Criminal Cases Involving Corporations and recognized in several sectoral laws that stipulate corporate criminal liability. With the passage of the New Criminal Code, a corporate criminal liability was eventually recognized by the penal codification.

Under the New Criminal Code, a corporation is considered as a legal entity and could be penalized. Article 45(2) of the New Criminal Code stipulates that corporate includes legal entities in limited liability companies, foundations, cooperatives, state-owned enterprises, regional government-owned enterprises, associations, or dormant partnership associations.

According to the vicarious liability doctrine, if an agent or employee commits a crime within the scope of his work and with the intent of benefiting the corporation, the criminal responsibility can be borne by the company regardless of whether the company is making a profit or not, or whether the activity has been prohibited by the company or not. In this regard, Article 46-47 of the New Criminal Code provides that a corporate crime could be committed by:

- a. management who has a functional position in the corporate organizational structure and/or
- b. people based on work relationships or other relationships for and on behalf of the corporation or act on behalf of the corporation and/or
- c. commander, controller or beneficial owner of the corporation who is outside the organizational structure but has control over the corporation.

Further, Article 48 of the New Criminal Code regulates that a corporate crime could be penalized if:

- a. Included in the activity as specified in the articles of association or other provisions applicable to the corporation;
- b. Unlawfully benefiting the corporate;
- c. Accepted as corporate policy;
- d. Corporations do not take necessary action to prevent, prevent a greater impact and ensure compliance with applicable legal provisions to prevent criminal acts; and/or
- e. Corporations allow crime to occur.

3. Corporate Criminal Sanctions

Under the New Criminal Code, a corporation could be penalized with a primary criminal sanction in the form of fines (at least Category IV unless stipulated otherwise by the law), and additional criminal sanction as stipulated under Article 120 of the New Criminal Code, as follows [*Unofficial English translation*]:

“Article 120

- (1) additional criminal sanction for corporations as referred to in the Article 118 letter b consists of:*
- a. paying fines;*
 - b. remedy for crimes;*
 - c. implementation of obligations that have been neglected;*
 - d. the fulfillment of local customary obligations;*
 - e. training financing;*
 - f. confiscation of goods or profits derived from criminal acts;*
 - g. announcement of the court decision;*
 - h. revocation of certain licenses;*
 - i. permanent prohibition of certain acts;*
 - j. closure of all or part of the place of business and/or corporate activities;*
 - k. suspension for all or part of corporate business activities; and*
 - l. corporation dissolution.*
- (2) additional criminal sanction as referred to in paragraph (1) letter h, letter j, and letter k imposed for a maximum of 2 years.*
- (3) If the corporation does not carry out the additional criminal sanction as referred to in paragraph (1) letter a to letter e, the corporation's wealth or income can be confiscated and auctioned off by prosecutors to satisfy the unfulfilled additional criminal sanction.”*

Further, the New Criminal Code also stipulates that a corporation could also be imposed action in the form of a corporate takeover, placement under the supervision and/or placement of corporations under judicial management. However, Article 56 of the New Criminal Code stipulated several considerations that should be taken in imposing a criminal sanction against a corporation, as follows:

- a. the level of loss or impact incurred;
- b. the level of involvement of management who has the functional function of the corporation and/or the role of giving orders, controllers, and/or beneficial owners of the corporation.
- c. length of time the crime has been committed;
- d. frequency of criminal acts by corporations;
- e. form or criminal acts;
- f. official involvement;
- g. values of law and justice that live in society;
- h. corporate's track record in conducting business or activities;
- i. the effect of sanctions on corporations; and
- j. corporate cooperation in handling criminal acts.

Revocation of Certain License

It was widely assumed that license revocation is an administrative sanction in the enforcement of statutory regulation. However, the New Criminal Code recognizes license revocation as one of the forms of additional criminal sanctions and penalization. According to Article 95 of the New Criminal Code, the judge will consider the following when deciding on additional sanctions for license revocations:

- a. Circumstances accompanying the crime committed;
- b. Circumstances accompanying the perpetrators and accomplices of criminal acts; and
- c. The relationship between the license ownership and the business or activity.

Determination of Fines

The provision of fines under KUHP is varied and stipulated in each criminal provision. However, the New Criminal Code provides the general categorization of the number of fines as the primary criminal sanctions, as follows:

- a. For category I, the maximum fines are IDR1,000,000.00 (one million Rupiah);
- b. For category II, the maximum fines are IDR10,000,000.00 (ten million Rupiah);
- c. For category III, the maximum fines are IDR50,000,000.00 (fifty million Rupiah);
- d. For category IV, the maximum fines are IDR200,000,000.00 (two hundred million Rupiah);
- e. For category V, the maximum fines are IDR500,000,000.00 (five hundred million Rupiah);
- f. For category VI, the maximum fines are IDR2,000,000,000.00 (two billion Rupiah);
- g. For category VII, the maximum fines are IDR5,000,000,000.00 (five billion Rupiah); and
- h. For category VIII, the maximum fines are IDR50,000,000,000.00 (fifty billion Rupiah).

Based on the above new fines determination, it can be assumed that criminal sanctions in the form of fines formed in each criminal provision and its enforcement would not only be based on the maximum limit of the fines as previously implemented in KUHP but would also set the minimum and maximum category of fines.

4. The Completion of Prosecution Authority

Previously, under Article 78 of the KUHP, the authority to prosecute would become null and void after six years for a crime punishable by fines and imprisonment for a maximum of three years; twelve years for a crime punishable by imprisonment for more than three years; and eighteen years for a crime punishable by life imprisonment or the death penalty. However, such provision regarding the authority to prosecute slightly changed under the New Criminal Code, as stipulated in Article 136, as follows:

"Article 136

(1) The authority to prosecute is declared null and void due to expiration if:

- a. After exceeding 3 years for a crime punishable by a maximum imprisonment of 1 year and/or only a maximum fine of category III;*
- b. After exceeding 6 years for a crime punishable by imprisonment of more than 1 year and a maximum of 3 years;*

- c. After exceeding 12 years for a crime punishable by imprisonment of more than 3 years and a maximum of 7 years;
 - d. After exceeding 18 years for a crime punishable by imprisonment of more than 7 years and a maximum of 15 years;
 - e. After exceeding 20 years for a crime punishable by imprisonment of more than 20 years, life imprisonment, or the death penalty.
- (2) in the event that the crime is committed by a child, the grace period for the authority to prosecute due to expiration as referred to in paragraph (1) is reduced by 1/3.”

In light of the above, the extent of the expiration of the authority to prosecute beliefs would protect the rights of the victim.

Remarks

Based on the foregoing, we believe that the New Criminal Code has the potential to significantly alter the enforcement of criminal law in Indonesia, not only against individuals but also against corporations as the subject of criminal law. Although the New Criminal Code will become effective on 2 January 2026, the Indonesian government and all law enforcers, including but not limited to the Indonesian National Police, State Attorney General Offices, and the Supreme Court of the Republic of Indonesia might issue the implementing regulations for the New Criminal Code's implementation.

In the upcoming client update, we will strive to address these developments as well as the most recent developments from the New Criminal Code. If you would like to discuss this with us, please contact us by email at info@tnklaw.id or phone at (021) - 2528636.

Tamba and Kumara Law Offices is a full-service Indonesian corporate and commercial law firm with high-quality legal services with a broad range of domestic and international clients.



Narada Kumara
Managing Partner
narada.kumara@tnklaw.id



Yohanes Tamba
Partner
yohanes.tamba@tnklaw.id



Hafid Triadmaja Syahputra
Senior Associate
hafid.triadmaja@tnklaw.id