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(Vol. 1): Corporate
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Corporate criminal liability has increasingly become a critical consideration for businesses in Indonesia. The enactment of the New Indonesian Penal Code (*Kitab Undang-Undang Hukum Pidana Baru* or KUHP Baru), which came into effect recently and will become effective in January 2026, formalizes the concept that corporations—beyond their individual employees or officers—can be subject to criminal liability for unlawful acts committed within the sphere of their business activities.

This reform reflects Indonesia's commitment to tightening enforcement against corporate wrongdoing, expanding accountability not only to natural persons but also to legal entities, including state-owned enterprises, limited liability companies, cooperatives, and other corporate forms.

For corporations operating in Indonesia, understanding these changes and the legal implications is essential to manage risks, enhance compliance, and ensure governance mechanisms align with the evolving legal landscape.

I. Recent revision of the Indonesian Penal Code: Key developments on corporate criminal liability

The KUHP Baru incorporates explicit provisions regulating corporate criminal responsibility under Articles 45 to 50 and related sections. These provisions are critical for clarifying the application of criminal sanctions to corporations alongside individuals.

1. Corporations as legal subjects of crime

Under Article 45(1) KUHP Baru, corporations are officially recognised as criminal subjects, meaning they may face criminal charges independently of the natural persons involved. This recognition extends to a wide variety of corporate types:

- State-owned enterprises (SOEs)
- Limited liability companies (*Perseroan terbatas*/PT)
- Cooperatives
- Foundations (*Yayasan*)
- Partnerships (*Firma*, CV)
- Regional-owned enterprises (BUMDs)

This broad scope underscores the Government's intent to enforce corporate responsibility comprehensively. Corporate liability is a crucial aspect of modern business regulation, ensuring that corporations and their representatives are held accountable for unlawful acts committed in the course of business.

2. Defining corporate liability

Article 46 delineates corporate liability by identifying the categories of individuals whose actions can implicate the corporation in criminal offenses. These include:

- **corporate officers holding functional positions:** This group encompasses directors, commissioners, and other senior executives who make strategic decisions and supervise corporate activities
- **employees and others in business relationships:** Individuals who act under employment or contractual relationships with the corporation, performing functions on its behalf
- **external controlling parties and beneficial owners:** Persons or entities that, while not formally employed by the corporation, exert significant influence or control over corporate decisions.

Article 46 serves as the foundational legal framework defining when and how corporations may be held liable for criminal conduct carried out by individuals associated with them. This article outlines the key elements of corporate liability, conditions under which liability arises and the sanctions imposed, providing valuable insight for corporations, legal professionals and regulators alike.

In this case, the fault of the corporation is identified from the error of the management who has functional positions (has the authority to represent a corporation, make decisions on behalf of a corporation and has the authority to implement supervision toward a corporation) who committed the crime by benefiting the corporation, either as an offender or accomplice within the scope of business or work of the corporation, including the controller of the corporation, the giver of the order and the ultimate beneficiary.

Crucially, corporate liability arises when any of these actors commit crimes for the benefit of the corporation or on its behalf, particularly within the scope of business operations.

3. Conditions for imposing corporate liability

The imposition of liability on a corporation is contingent upon several important conditions, which collectively emphasise the corporation's responsibility to prevent criminal acts internally:

- **Lack of adequate preventive measures:** The corporation must have failed to implement sufficient internal controls, oversight mechanisms or compliance programmes designed to prevent the commission of crimes.
- **Connection to corporate business activities:** The criminal act must occur within the operational ambit of the corporation's business, underscoring the link between unlawful conduct and corporate purposes.
- **Illicit benefits to the corporation:** The offense should result in illegal gains or advantages accruing to the corporation.

These criteria highlight that corporate liability is not merely about the wrongdoing of individuals, but about the corporation's overarching duty to uphold lawful conduct and diligence in its operations.

But how is "adequate prevention" measured? The KUHP Baru requires corporations to take "necessary steps" to prevent crimes, but it lacks detailed guidelines on what constitutes adequate preventive measures. This creates legal ambiguity, challenging companies to determine what internal policies, controls, audits or compliance programmes are sufficient to fulfill their statutory duty of crime prevention.

From a legal risk management standpoint, companies must proactively interpret this obligation through the prism of already accepted anti-corruption and compliance frameworks, such as those embodied in the prevailing laws and internationally recognised standards on anti-bribery (such as ISO 37001).

This uncertainty stresses the necessity for corporations to maintain comprehensive, well-documented compliance programmes, continuous monitoring, and forensic auditing mechanisms to demonstrate due diligence and mitigate liability risks.

4. Sanctions and legal consequences

Penalties for corporate crimes are structured to enforce compliance and deter future violations. Sanctions include:

finances: Monetary penalties proportional to the severity of the offense

suspension or revocation of business Licences: Regulatory actions that can restrict or halt corporate operations

operational restrictions: Limitations placed on corporate activities, potentially affecting business continuity.

It is important to note that natural persons involved in corporate crimes remain personally accountable under criminal law, facing imprisonment, fines or other penalties irrespective of corporate sanctions.

II. Broadened scope of liability to include controlling persons and beneficial owners

The expansion of liability beyond formal corporate officers to include third parties who control, or influence corporations raises questions about how this will be enforced in practice. Discussions focus on the potential difficulty in proving control and attributing criminal acts to these external parties.

The extension of liability to include controlling persons and beneficial owners — even those outside formal organisational structures — represents a significant expansion of prosecutorial reach. Legally, this raises complex challenges regarding the establishment of control or influence sufficient to attribute criminal acts to such parties.

Proving that a non-officer exerted decisive influence over corporate decisions implicating unlawful conduct requires gathering substantial evidence, including contractual authority, decision-making records and communication trails.

This expanded scope signals a readiness of Indonesian law to align with global movements against corporate abuse, particularly beneficial ownership transparency and the fight against illicit financial flows, yet ongoing questions remain around enforcement mechanics and adequacy of legal protections for accused parties.

III. Conclusion: Navigating corporate criminal liability in Indonesia

The implementation of corporate criminal liability in the KUHP Baru marks a significant milestone in Indonesia's legal landscape. It underscores the importance for corporations to adopt robust compliance frameworks, internal controls and governance structures that anticipate criminal risk.

While Article 46 offers much-needed clarity on corporate liability, it also raises a number of practical and legal questions. Corporations must reassess their internal governance, compliance frameworks and risk management strategies to mitigate liability exposure. Legal practitioners are tasked with advising clients on how to navigate these requirements effectively, while regulators must balance enforcement with the promotion of fair business practices.

Companies should consider:

- conducting rigorous forensic audits and fraud prevention programmes,
- strengthening corporate policies aligned with Indonesian criminal law and best international practices,
- proactively training management and staff on legal risk and corporate responsibility,
- establishing early investigative and reporting procedures for suspected misconduct,
- collaborating closely with legal advisors and authorities to ensure compliance and minimize exposure.

PwC Legal Indonesia stands ready to support corporations through advisory services, forensic investigation, compliance programme development, and bespoke training to help your organisation adapt and thrive within this evolving regulatory environment.

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