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Page 1

The New Indonesian Penal Code (KUHP *Baru*) (Vol. 2): Redefinition of sanctions for business offences

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I. Introduction

The New Indonesian Penal Code (*Kitab Undang-Undang Hukum Pidana Baru* or *KUHP Baru*), enacted through Law No. 1 of 2023 and effective from 2 January 2026, marks a significant shift in the country's criminal justice framework. A key area of reform is the treatment of corporate criminal liability, reflecting the Government's increased focus on holding corporations accountable for unlawful conduct.

KUHP Baru moves away from the colonial-era *Wetboek van Strafrecht (WvS)*, embedding Indonesian values and introducing a modernised, multifaceted sanction regime. It notably expands the scope and severity of sanctions applicable to corporations, signalling a stronger regulatory environment and greater risks for businesses operating in Indonesia.

With the introduction of *KUHP Baru* as an authentic legal product of Indonesia, several legal principles within it are rooted in the nation's traditional values. One such principle is the adoption of restorative justice as a core objective of sentencing. Restorative justice is presented as a response to the challenges posed by the retributive justice model long embedded in *WvS*. A major issue arising from this retributive approach is prison overcrowding. To address this, *KUHP Baru* introduces several new forms of sanctions. These alternatives aim to reduce reliance on imprisonment and encourage the use of other sentencing options.

II. Types of sanctions in KUHP *Baru*

Under WvS (the former Indonesian Criminal Code), offences were divided into two categories: crimes (*misdirjven*) and violations (*overtredingen*). That taxonomy carried concrete legal consequences, for example on whether attempt and aiding/abetting were punishable. KUHP *Baru*, however, eliminates this distinction. Instead, all unlawful acts are now uniformly classified as “offences,” with the severity of each act assessed based on the specific statutory penalties assigned, rather than through separate crime and violation labels.

There is also a shift in the types of sanctions available. WvS distinguished between principal and additional sanctions. Principal sanctions included the death penalty, imprisonment, confinement, fines and “*tutupan*” (a form of custodial detention). Additional sanctions include the revocation of certain rights, forfeiture of specific property and publication of court judgment.

KUHP *Baru* retains the structure of principal and additional sanctions but revises their content and use. A notable reform is the treatment of the death penalty. It is designated as a special, exceptional sanction and must always be prescribed in the statute only as an alternative to life imprisonment or a fixed term of 20 years. KUHP *Baru* also introduces a ten-year probationary period for the death penalty: if the convicted person demonstrates commendable conduct during that period, the sentence may be converted to life imprisonment by presidential decision, following consideration by the Supreme Court.

The detailed changes in the types of sanctions under KUHP *Baru* can be elaborated further in the subsequent section, where the hierarchy of penalties determines their severity.

1. Principal sanctions

These are the core forms of sanctions intended to fulfill the objectives of criminal sentencing. The following are the principal types of sanctions outlined in KUHP *Baru*:

a. Imprisonment

Imprisonment may be imposed either for life or for a fixed term. Fixed-term imprisonment can range from a minimum of one day to a maximum of 15 years. If aggravating circumstances apply to a crime punishable by 15 years of imprisonment, the sentence may be extended up to a maximum of 20 years.¹

In line with its goal of reducing reliance on retributive justice, KUHP *Baru* introduces provisions identifying circumstances in which imprisonment should, as far as possible, not be imposed. Examples include cases where the perpetrator is a first-time offender, has compensated the victim or committed the offense due to negligence. However, these alternatives do not apply to all crimes, particularly those punishable by five years or more, or offences that cause financial harm to the state or its economy.²

1. Article 68 of KUHP *Baru*.
2. Article 70 of KUHP *Baru*.

b. Confinement (*Pidana tutupan*)

KUHP *Baru* stipulates that confinement sentences remain governed by Law No. 20 of 1946 concerning confinement penalties, along with its implementing regulation, Government Regulation No. 8 of 1948 on Confinement Facilities.³ Confinement is typically imposed on perpetrators who committed a crime driven by motives deemed worthy of respect.⁴

Throughout the history of legal practice in Indonesia, there has been only one recorded case in which a judge imposed a confinement sentence. That case was the 3 July 1946 Incident, tried by the Supreme Military Court of the Republic of Indonesia on 27 May 1948.

In that case, at least seven people were sentenced to confinement. The perpetrators were tried under Article 107 of the Criminal Code on crimes against state security. However, the judge found that their actions were motivated by honourable intentions, making a confinement sentence more appropriate.

After that case, there were virtually no further court decisions imposing confinement. This shows that this type of punishment is indeed very rare and not commonly applied within Indonesia's criminal justice system.

c. Surveillance

Surveillance is a form of rehabilitation carried out outside of prison or institutional settings. When issuing a supervision sentence, the judge must include a general condition that the convicted person will not commit another crime.⁵ Additionally, specific conditions may apply, such as requiring the individual to compensate all or part of the damage caused by the offense within a shorter period than the supervision term, and/or requiring them to perform or refrain from certain actions. A supervision sentence (probation) may be imposed on a perpetrator who commits an offense punishable by imprisonment of up to five years. The term of supervision may not exceed the maximum imprisonment prescribed for the offense and, in any event, shall not be more than three years.⁶

d. Fines

A fine is an amount of money the convicted person is required to pay pursuant to a court judgment. The regulation of fines under KUHP *Baru* differs significantly from the previous system under WvS. In KUHP *Baru*, fines are divided into eight categories, each with a designated maximum amount:⁷

3. Article 619 of KUHP *Baru*.

4. Article 74 of KUHP *Baru*.

5. Article 76 paragraph (2) of KUHP *Baru*.

6. Article 75 of KUHP *Baru*.

7. Article 79 of KUHP *Baru*.

Category	Maximum fine value
Category I	IDR1,000,000.00 (one million rupiah)
Category II	IDR10,000,000.00 (ten million rupiah)
Category III	IDR50,000,000.00 (fifty million rupiah)
Category IV	IDR200,000,000.00 (two hundred million rupiah)
Category V	IDR500,000,000.00 (five hundred million rupiah)
Category VI	IDR2,000,000,000.00 (two billion rupiahs)
Category VII	IDR5,000,000,000.00 (five billion rupiahs)
Category VIII	IDR50,000,000,000.00 (fifty billion rupiah)

When imposing a fine, judges are required to consider the convicted person's actual income and expenses.⁸ Furthermore, the court may allow the fine to be paid in instalments.⁹ If the convicted person is unable to pay the fine, their assets or income may be seized and auctioned to cover the amount owed.¹⁰ If the auction proceeds still do not cover the full fine, the remaining balance may be substituted with imprisonment, supervision or community service—provided the fine does not exceed Category III.¹¹

e. Community service

Community service may be imposed on individuals convicted of crimes punishable by less than five years of imprisonment, where the judge issues a sentence of no more than six months in prison or a fine not exceeding Category II.¹² Community service can be carried out in hospitals, orphanages, elder care facilities, schools or other social institutions, and should be aligned as closely as possible with the convict's profession.¹³ The duration of community service ranges from a minimum of eight hours to a maximum of 240 hours.¹⁴ It may also be completed in instalments over a period of up to six months, taking into account the convict's employment or other personal obligations.¹⁵

8. Article 80 of KUHP Baru.
 9. Article 81 paragraph (2) of KUHP Baru.
 10. Article 81 paragraph (3) of KUHP Baru.
 11. Article 82 paragraph (1) of KUHP Baru.
 12. Article 85 paragraph (1) of KUHP Baru.
 13. Explanation of Article 85 paragraph (1) of KUHP Baru.
 14. Article 85 paragraph (4) of KUHP Baru.
 15. Article 85 paragraph (5) of KUHP Baru.

2. Additional sanctions

Additional sanctions apply in cases where imposing the principal sanction is not sufficient to achieve the purpose of the sanction.¹⁶ KUHP *Baru* regulates six additional criminal forms as follows:

a. Revocation of certain rights

This sanction involves the removal of specific rights from the convicted individual. Examples include:¹⁷

- i. the right to hold public office in general or certain positions
- ii. the right to vote or be elected in official elections as regulated by law
- iii. the right to exercise a certain profession
- iv. the right to obtain parole.

Revocation of rights is primarily applied in cases involving crimes related to official positions, professional roles or offenses committed through abuse of authority, opportunity or resources granted by one's position or profession.¹⁸ The duration of this sanction depends on the length of the principal sentence—such as imprisonment, confinement, or supervision—or the amount of the fine imposed.¹⁹

b. Confiscation of specific property and/or claims

Property and/or financial claims may be confiscated if they meet any of the following criteria:²⁰

- i. Used to commit or prepare for a criminal offence.
- ii. Specifically created or intended for committing a criminal offence.
- iii. Directly connected to the commission of a criminal offence.
- iv. Owned by the convicted person or another party and obtained through the criminal offence.
- v. Represent economic gains derived directly or indirectly from criminal offence.
- vi. Used to obstruct investigation, prosecution or court proceedings.

c. Public announcement of court decision

KUHP *Baru* allows the court to order the convicted person to publicly announce the verdict, with all associated costs borne by the convict.²¹

d. Compensation payment

KUHP *Baru* permits the court to require the convicted person to pay compensation to the victim or the victim's heirs.²²

16. Article 66 paragraph (2) of KUHP *Baru*.

17. Article 86 of KUHP *Baru*.

18. Article 87 of KUHP *Baru*.

19. Article 90 of KUHP *Baru*.

20. Article 91 of KUHP *Baru*.

21. Article 93 of KUHP *Baru*.

22. Article 94 of KUHP *Baru*.

e. Revocation of specific permits

The additional sanction may include the revocation of licences held by the perpetrator or accomplice if the offence is directly related to the licence in question. This revocation takes effect once the court’s decision becomes legally binding. The duration of the licence revocation depends on the length of the principal sentence, as outlined below:²³

Principal sanction	Permit revocation period
Imprisonment, confinement, or surveillance	Minimum: Two years Maximum: Five years longer than the principal sanction imposed

f. Fulfillment of local customary obligations

This form of sanction is prioritised when the offence committed falls under customary law—referred to in KUHP *Baru* as “living law” within society. Such obligations must align with national values, including Pancasila and human rights, and are not regulated by statutory law.²⁴

In addition to principal and supplementary sanctions, KUHP *Baru* also recognises special sanctions for specific criminal offences as defined by law.²⁵ One such sanction is the death penalty, which will not be discussed further in this document.

3. Measures that may be imposed

In addition to the types of sanctions mentioned above, certain measures may be ordered alongside the principal sentence, including:²⁶

- a. counselling
- b. rehabilitation
- c. vocational training
- d. treatment in an institution
- e. reparation or remedial measures for the harm caused by the offence.

III. Forms of criminal sanctions against corporations

Under KUHP *Baru*, corporations, whether legally incorporated or not, are recognised as entities capable of committing criminal offences and bearing legal responsibility.²⁷ In addition to the corporation itself, criminal liability may also extend to its executives or management.²⁸

KUHP *Baru* outlines three categories of sanctions applicable to corporations:

23. Article 95 of KUHP *Baru*.
 24. Article 96 of KUHP *Baru*.
 25. Article 67 of KUHP *Baru*.
 26. Article 103 of KUHP *Baru*.
 27. Explanation of First Book of KUHP *Baru*.
 28. Explanation of First Book of KUHP *Baru*.

1. Principal Sanction

Although KUHP *Baru* recognises five types of principal sanctions, only fines may be imposed on corporations. The minimum applicable fine falls under Category IV.²⁹ KUHP *Baru* also provides equivalent guidelines between imprisonment terms and fine categories:³⁰

Imprisonment term	Maximum fine category
Less than seven years	Category VI
7 – 15 years	Category VII
Up to 20 years, life imprisonment or death penalty	Category VIII

2. Additional sanctions

KUHP *Baru* regulates 12 additional sanctions that apply to corporations, as follows:³¹

- a. Payment of compensation.
- b. Remediation of harm caused by the criminal acts.
- c. Fulfillment of neglected obligations.
- d. Compliance with customary obligations.
- e. Funding of job training.
- f. Confiscation of goods or profits obtained from criminal acts.
- g. Announcement of court decision.
- h. Revocation of certain permits (maximum two years).
- i. Permanent prohibition of certain acts.
- j. The closure of all or part of the corporation's business premises and/or activities (a maximum of two years).
- k. Freezing all or part of the corporation's business activities (maximum two years).
- l. Dissolution of the corporation.

If a corporation fails to fulfill its obligations to pay fines or any of the additional penalties listed in items (a) through (e), its assets or income may be seized and auctioned by the prosecutor to satisfy the outstanding penalties.³²

3. Measures

In addition to principal and additional sanctions, corporations can also be subject to measures. The forms of measures that can be imposed include:³³

- a. corporate takeover
- b. placement under supervision
- c. placement of corporations under supervision.

29. Article 121 paragraph (1) of KUHP *Baru*.

30. Article 121 paragraph (2) of KUHP *Baru*.

31. Article 120 paragraph (1) and (2) of KUHP *Baru*.

32. Article 120 paragraph (3) of KUHP *Baru*.

33. Article 123 of KUHP *Baru*.

IV. Conclusion

KUHP *Baru*, set to take effect on 2 January 2026, introduces a range of sentencing provisions that significantly depart from the colonial-era WvS. One of the most notable shifts is the expansion of sanction types—such as supervision and community service—as principal sanctions, along with a structured categorisation of fines. KUHP *Baru* also establishes clearer and more assertive rules for corporate criminal liability, including a minimum fine threshold, explicitly defined supplementary sanctions and corrective measures that may be imposed on corporations. This marks a pivotal moment for businesses. Companies must now take proactive steps to ensure both the organisation and its leadership operate within the bounds of the law. The threat of firm sanctions, including corporate dissolution, underscores the seriousness of these reforms and signals that criminal accountability now extends decisively to the corporate sphere.

PwC Indonesia contacts

Please feel free to contact our Legal Specialists.

Indra Allen

Partner
PwC Legal Indonesia
indra.allen@pwc.com

Danar Sunartoputra

Partner
PwC Legal Indonesia
danar.sunartoputra@pwc.com

Puji Atma

Junior Partner
PwC Legal Indonesia
puji.atma@pwc.com

Dimas Bimo

Junior Partner
PwC Legal Indonesia
dimas.bimo@pwc.com

Narindra Krisnamurti

Senior Manager
PwC Legal Indonesia
narindra.krisnamurti@pwc.com

Adi Pratikto

Partner
PwC Legal Indonesia
adi.pratikto@pwc.com

Fifiek Mulyana

Junior Partner
PwC Legal Indonesia
fifiek.mulyana@pwc.com

Indra Natakusuma

Junior Partner
PwC Legal Indonesia
indra.natakusuma@pwc.com

Agnes Wardhana

Junior Partner
PwC Legal Indonesia
agnes.wardhana@pwc.com

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