



Client Alert March 2023 Corporation as Criminal Law Subject in Law No. 1 of 2023 on Indonesia Penal Code

On 2 January 2023, the Indonesian Government enacted Law No. 1 of 2023 on Indonesia Penal Code (“**Law No. 1 of 2023**”). The Law No. 1 of 2023 sets out that corporations include legal entities as well as non-legal entities are categorized as subjects who can be held responsible and punished for their criminal actions. Law No. 1 of 2023 imposes principal sanction, additional sanction, and actions on corporations and people involved in the corporation, namely a corporate executive who holds functional positions, have the authority to give orders, controllers, or beneficial owners.

Corporations play a vital role in the economic growth in Indonesia, and under certain circumstances corporations may be used for illicit purposes or committed wrongdoings. In this context, corporations may also be subject to criminal liability, thus considered as perpetrators of a crime. However, until now it is difficult for corporations to be held criminally responsible in its implementation. For instance, there are certain cases where the profits obtained by the corporations are substantial and/or the loss borne by society is so great, accordingly the imposition of imprisonment or fines for perpetrators and corporate executive are not comparable. In addition, the imposition of criminal penalties on perpetrators and corporate executive are not sufficient to guarantee that the corporation does not take a similar action near the future.

Background

Law No. 1 of 2023 replaces the previous penal code that origins from *Wetboek van Strafrecht voor Nederlandsch-Indie* since 1915. Due to the progress in the fields of finance, economy and trade, especially in the era of globalization and the development of organized crime, both domestic and transnational in nature, the subject of criminal law cannot be limited to

humans by nature, but also includes corporations. Prior to the enactment of Law No. 1 of 2023, corporate criminal responsibility is already acknowledged and regulated in numerous laws and regulations, which are as follows:

- a. Law No. 1 of 1951 on Declaration of Putting into Effect Nationwide of Employment Law of the Republic of Indonesia No. 12 Year 1948;
- b. Law No. 2 of 1952 on Declaration of Putting into Effect Nationwide of Accident Law of the Republic of Indonesia No. 33 Year 1947;
- c. Law No. 3 of 1951 on Declaration of Putting into Effect Nationwide of Labor Supervision Law of the Republic of Indonesia No. 23 Year 1948;
- d. Emergency Law No. 12 of 1951 on the Collection of Verponding Tax of 1951 to Become a Law;
- e. Law No. 3 of 1953 on the Establishment of Pharmacies;
- f. Law No. 22 of 1957 on the Settlement of Labor Disputes;
- g. Law No. 3 of 1958 on Placement of Foreign Workers;
- h. Law No. 83 of 1958 on Aviation;
- i. Law No. 5 of 1964 on Stipulation of Government Regulation in lieu of Law No. 6 of 1963 on Telecommunication to Become Law as revoked by Law No. 36 of 1999 on Telecommunication;
- j. Law No. 7 of 1981 on Mandatory Manpower Reports;
- k. Law No. 2 of 1981 on Legal Metrology;
- l. Law No. 3 of 1982 on Mandatory Company Registration;
- m. Law No. 7 of 1982 on Banking as amended by Law No. 10 of 1998 on Amendment of Law No. 7 of 1992 on Banking and Law No. 11 of 2020 on Omnibus Law;
- n. Law No. 41 of 1999 on Forestry, as amended by Government Regulation in Lieu of Law on Amendment of Law No. 41 of 1999 on Forestry and Law No. 11 of 2020 on Omnibus Law;
- o. Law No. 32 of 2009 on Environmental Protection and Management as amended by Law No. 11 of 2020 on Omnibus Law;
- p. Law No. 31 of 1999 on Eradication of Criminal Act of Corruption as partially amended by Law No. 1 of 2023;
- q. Law No. 8 of 2010 on Prevention and Eradication of Criminal Act of Money Laundering as partially amended by Law No. 1 of 2023; and
- r. Law No. 6 of 1983 on General Tax Provisions and Procedures as amended by Law No. 11 of 2020 on Omnibus Law.

It is important to note that the abovementioned list of laws and regulations interpreted corporate criminal responsibility differently. However, abovementioned laws and regulations only apply to the management and not the corporation. Consequently, there is no uniformity in the definition of a corporation in the context of criminal law. At the same time, the use of different terminology and interpretation in various laws and regulations has created confusion regarding the required criteria for an entity to be classified as a corporation and be prosecuted under the law.

One of the main obstacles in eradicating corporate crimes are the lack of technical regulations of the criminal procedural law. To resolve this, on 29 December 2016, the Supreme Court has issued Supreme Court Regulation No. 13 of 2016 concerning the Procedures of Handling the Criminal Case Conducted by Corporations (“**Supreme Court No. 13 of 2016**”) as a guideline for law enforcers (judges, investigators, and prosecutors) in handling corporate criminal cases. This law provides a definition and identification of corporation to unify the understanding for especially for judges. Further, this law also regulates the procedure for handling a case and decision and implementation of a judicial decision.

However, Supreme Court Regulation No. 13 of 2016 also faces limitation in dealing with corporate crimes as in certain cases, it is prohibited to regulate more than what has been stipulated by the law. Accordingly, there was an urgency to renew the Indonesian Penal Code to accommodate the substance of Supreme Court Regulation No. 13 of 2016 to be able to overcome the legal vacuum and encourage the effectiveness of eradicating corporate crimes. Hence, the enactment of Law No. 1 of 2023 plays an important role in affirming corporations as legal subjects.

Overview

Under Law No. 1 of 2023, corporations include a legal entity in the form of a company limited liability companies, foundations, cooperatives, state-owned enterprises, regionally owned enterprises, or equivalent with that, as well as associations including legal or non-legal entity, business entity in the form of a limited partnership, or equivalent to that in accordance with the prevailing legislation.

Further, criminal acts committed by a corporation shall be applicable to corporate executive or board member(s) who has a functional position in the organizational structure of the corporation, or a person based on a work relationship or on the basis of another relationship acting for and on behalf of the corporation or acting in the interest of the corporation, within the scope of the corporation's business or activities, both individually and together. Nevertheless, criminal acts committed by corporations could also be committed by an individual with authority to give orders, controllers, or beneficial owners of corporations outside the organizational structure who have the capacity to control the corporation.

Law No. 1 of 2023 provides that criminal acts by the corporation can be accounted for, if they fall within the scope of business or activities, as follows:

1. specified in the articles of association or other provisions applicable to the corporation;
2. unlawfully benefiting the corporation;
3. accepted as corporate policy;
4. corporations do not take the necessary steps of prevention, prevent a greater impact and ensure compliance with applicable legal provisions in order to prevent criminal acts from occurring; and/ or
5. the corporation allows criminal acts to occur.

Expansion of Types of Corporate Crime for Corporate Criminal Offenders

In essence, criminal acts committed by corporations are classified as the following:

1. Principal sanction (criminal fines);

The minimum fines for corporations are imposed in category IV which in the amount of IDR 200,000,000 (two hundred million rupiah) unless otherwise stipulated by law. In case of a change in the value of money, the provisions for the criminal fines shall be stipulated by a Government Regulation and in the event the criminal act committed is threatened with the following sanctions:

- a. imprisonment under 7 (seven) years, the maximum fine for the corporation is IDR2,000,000,000 (two billion Rupiah);
- b. imprisonment for a maximum of 7 (seven) to a maximum of 15 (fifteen) years, the maximum fine for the corporation is IDR5,000,000,000 (five billion Rupiah); or
- c. death penalty, life imprisonment, or imprisonment for a maximum of 20 (twenty) years, the maximum fine for corporations is IDR50,000,000,000 (fifty billion Rupiah).

Fines shall be paid within a certain period of time as stated in the court verdict. Further, the verdict could also determine that the payment of criminal fines could be paid in installments. However, if the criminal fines are not paid within the stipulated time, corporate property or income may be confiscated and auctioned by the prosecutor to settle the unpaid fines. If the assets or income of the corporation is insufficient to settle the fines, the corporation is subject to a substitute sanction in the form of freeze of some or all of the corporation's business activities.

2. Additional sanction:

- a. compensation payment;
- b. reparation for the consequences of a crime;
- c. implementation of obligations that have been neglected;
- d. fulfillment of customary obligations;
- e. job training financing;
- f. confiscation of goods or profits derived from criminal acts;
- g. announcement of a court verdict;
- h. revocation of certain permits;
- i. permanent prohibition from carrying out certain actions;
- j. closing all or part of the corporation's business premises and/or activities;

- k. freeze of all or part of the corporation's business activities; and
- l. dissolution of the corporation.

Additional sanctions as in the form of revocation of certain permits, closing all or part of the corporation's business premises and/or activities and freeze all or part of the corporation's business activities could be imposed for a maximum of 2 (two) years. Moreover, the corporation's assets or income may be confiscated and auctioned off by the prosecutor should the corporation does not carry out the additional sanction imposed in the form of compensation payment, reparation for the consequences of a crime, implementation of obligations that have been neglected, fulfillment of customary obligations, and/or job training financing.

In addition, the corporation can be faced with the following action sanctions:

1. corporate takeover;
2. placement under supervision; and/or
3. placing the corporation under guardianship.

Law No. 1 of 2023 also regulates joint action in committing corporate crime where it is stated that an act that fulfills more than 1 (one) criminal provisions which is punishable by the same criminal threat is only subject to 1 (one) sentence, whereas if the sanction is different, then the heaviest principal sentence shall be imposed.

However, it is noteworthy that criminal act regulated both in general criminal law and special criminal law shall only be subjected to special criminal law provisions. The exclusions may apply if the law determines otherwise. Moreover, in the event that there are several criminal acts happened that are interconnected so they are seen as continuous criminal act and subject to the same criminal sanction, the corporation will only be tried and sentenced with 1 (one) criminal act. However, when concurrent criminal acts are subject to different sanctions, only the heaviest principal sentence shall be imposed.

Full Indonesian language text of Law No. 1 of 2023 can be found through this link:

<https://peraturan.bpk.go.id/Home/Details/234935/uu-no-1-tahun-2023>

Key Takeaways

In view of the foregoing, some of the key takeaways which may be taken for consideration include:

- a. With the enactment of the new penal code, corporations are not only bound by criminal provisions which are regulated separately and specifically in various laws and regulations but are also bound and subject to general criminal provisions in Law No. 1 of 2023. Nevertheless, Law No. 1 of 2023 shall be effectively enacted in 3 (three) years on 2 January 2026.
- b. Undoubtedly, Law No. 1 of 2023 introduces several new provisions aimed at corporate crime criminal offenders especially in this case it shall be applicable to corporate executives or board member(s) who has a functional position in the organizational structure of the corporation or a person based on a work relationship or on the basis of another relationship acting for and on behalf of the Corporation or acting in the interest of the corporation, within the scope of the corporation's business or activities, both individually and together.
- c. Furthermore, Law No. 1 of 2023 introduces several new provisions on expansion of types of corporate crime for criminal offenders, whereby it is provided that the sanction for the corporation consists of the principal sanctions and additional sanctions. Whereupon the principal sanctions referred to criminal fines and the additional sanctions towards the corporation consists of compensation payment; reparation for the consequences of a crime; implementation of obligations that have been neglected; fulfillment of customary obligations; job training financing; confiscation of goods or profits derived from criminal acts; announcement of a court verdict; revocation of certain permits; permanent prohibition from carrying out certain actions; closing all or part of the corporation's business premises and/or activities; freeze of all or part of the corporation's business activities; and dissolution of the corporation. Kindly note that most of these additional sanctions have been regulated separately and specifically in various laws and regulations. Therefore,

currently the sanction mentioned can only be imposed to specific criminal act regulated in specific laws or regulations. Nonetheless, within 3 (three) years the principal and additional sanctions may be imposed to any criminal acts stipulated in Law No. 1 of 2023.



For further information and/or queries related to this alert, please contact:

Cornel B. Juniarto

Senior Partner

Hermawan Juniarto & Partners

Email: cbjuniarto@hjplaw-deloitte.com

Tammy A. Wenas Kumontoy

Managing Associate

Hermawan Juniarto & Partners

Email: tkumontoy@hjplaw-deloitte.com

Ananda Rayhana Putri

Senior Associate

Hermawan Juniarto & Partners

Email: anaputri@hjplaw-deloitte.com

Putri Arsita Fitriyani Kamarga

Associate

Hermawan Juniarto & Partners

Email: pkamarga@hjplaw-deloitte.com

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Legal

Deloitte Legal means the legal practices of DTTL member firms, their affiliates or their related entities that provide legal services. The exact nature of these relationships and provision of legal services differs by jurisdiction, to allow compliance with local laws and professional regulations. Each Deloitte Legal practice is legally separate and independent, and cannot obligate any other Deloitte Legal practice. Each Deloitte Legal practice is liable only for its own acts and omissions, and not those of other Deloitte Legal practices. For legal, regulatory and other reasons, not all member firms, their affiliates or their related entities provide legal services or are associated with Deloitte Legal practices.

About Hermawan Juniarto & Partners

Hermawan Juniarto & Partners is a member of Deloitte Legal network. Hermawan Juniarto & Partners provides only legal services, and it is legally separate and independent from other Deloitte entities.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.