



Corporate Crime Under the New Criminal Code Regime: A Quick Reminder

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As January 2026 approaches, the three-year transition period following the enactment of the New Penal Code (Law No. 1 of 2023 on Indonesian Penal Code) in 2022 (the “**New Penal Code**”) is coming to an end. Many entities are therefore assessing how the new regime will be implemented, particularly with regard to corporate crime. The New Penal Code introduces corporate crime provisions at the level of a law rather than a mere Supreme Court regulation. It also brings broader changes, including the recognition of corporations as legal subjects. This advisory serves as a reminder of the corporate crime rules under the New Penal Code.

Corporation as legal subjects

Article 45(1) and Article 145 of the New Penal Code clearly state that corporations are subjects of criminal offenses. One may interpret this to mean that corporations are no longer limited to criminal liability under specific legislation, such as environmental or corruption laws. Other offenses under the New Penal Code may also be brought against corporations if the criteria for corporate crime are met. How this will be applied in practice remains to be seen.

Definition of corporate crime

Article 46 of the New Penal Code defines corporate crime as a criminal act committed by either a corporate officer holding a functional or structural position, or an individual acting under an employment or other type of relationship. The act must be carried out for and on behalf of the corporation, or in its interest, and within the scope of the corporation's business

or activities. It may be committed individually or collectively.

While the definition of corporate crime in the Penal Code is generally consistent with Supreme Court Regulation No. 13 of 2016 – which served as the judiciary's main guideline for prosecuting corporate crime under the *Wetboek van Strafrecht* (Old Penal Code) – it introduces several changes. It broadens the range of parties who may be treated as committing a corporate crime: not only individuals acting under an employment or other relationship, but also those holding certain functional positions within a corporation's organizational structure. This includes those with the authority to represent the corporation, make decisions, or exercise supervisory control, as well as those who order, participate in, incite, or assist the commission of a criminal offense.

The New Penal Code also expands the circumstances under which a crime can be committed by covering acts done in the corporation's interest, not only acts done for and on behalf of it. At the same time, the new definition adds a limiting element by requiring that the act fall within the corporation's business or activities

Parties that can be treated as committing a corporate crime

In addition to the persons who may be deemed to have committed a corporate crime under Article 46 of the New Penal Code (i.e., those holding a functional position within the corporation's organizational structure or those acting under an employment or other relationship), Article 47 of the New Penal Code extends liability to persons outside the corporation who still exercise control over it. This includes anyone with directive authority, controlling authority, or the status of corporate beneficial owner.

Criteria for corporate criminal liability

Article 48 of the New Penal Code sets out the criteria for a corporation to be held criminally liable:

1. The alleged crime falls within the scope of the corporation's businesses or activities specified in its articles of association or other applicable provisions;
2. The alleged crime unlawfully benefits the corporation;
3. The alleged crime is treated as the corporation's policy;
4. The corporation fails to take preventive measures, prevent further harm, or ensure compliance with the law; and/or
5. The corporation allows the alleged crime to occur.

The elucidation of Article 48 of the New Penal Code further states that when a criminal offense is conducted by a corporation, prosecution may be brought against the corporation, the corporation and its management, or its management alone.

Persons who may be subject to sanctions for corporate crime

Article 49 of the New Penal Code makes clear that sanctions may be imposed on the corporation, its management, the person exercising directive authority, the controlling authority, and or the corporate beneficial owner.

Given the above, it can be concluded that for a corporate crime under Articles 46 and 47 of the New Penal Code, for which a corporation may be held liable under Article 48 of the New Penal Code, responsibility may fall on the corporation, its management, the person exercising directive authority, the controlling person, and/or the corporate beneficial owner under Article 49 of the New Penal Code. Corporate crime therefore poses significant exposure not only to the corporation and its management, but also to controlling shareholders and the beneficial owner.

The implementation of this corporate crime clause remains to be seen, but corporations should reassess their readiness for the enforcement of the New Penal Code. This includes enhancing corporate compliance programs, such as codes of ethics and business conduct, anti-corruption policies, health, safety, and environmental policies, and third-party or vendor control policies. Companies should also consider conducting regular compliance training and perform periodic audits and legal risk assessments.

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