

QnA on Criminal Liability of an Indonesian Company

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1. Q1: Are there any criminal liabilities applicable to Indonesian Companies?

1.1 **Responses:** Based on Law No. 40 of 2007 on Limited Liability Companies as amended by Job Creation Law (“**Company Law**”), a limited liability company is defined as a legal entity limited by shares and established under an agreement. A Company duly established under Indonesian laws must have, at least, 2 (two) shareholders (*Article 7 (1) of Company Law*). Further, Company Law requires companies in Indonesia to be governed by three bodies, which are Shareholders, Board of Directors (“**BoD**”), and Board of Commissioners (“**BoC**”). An Indonesian company is required to have, at least, 1 (one) director and 1 (one) commissioner (*Articles 93(3) and 108(3) of Company Law*).

1.2 The Company Law and Law No. 1 of 1946 on the Indonesia Criminal Code (“**Existing Criminal Code**”) do not specifically regulate criminal liabilities towards crimes conducted by a company as a legal subject. However, criminal liability of a company is recognized in several laws and regulations in Indonesia, such as the anti-corruption law, the manpower law, the money laundering law, the personal data protection law, and the consumer protection law (*see point 2.2. below*). Although it has been conceptually recognized, the procedures for investigating a company on alleged criminal offenses remain unclear.

The Supreme Court of Indonesia (*Mahkamah Agung* or “**MA**”) has previously issued Supreme Court MA Regulation No. 13 of 2016 on Procedure of Handling Corporate Crime Cases (“**MA Reg. 13/2016**”) as guidance for law enforcement authorities on handling criminal offenses committed by companies. Under Article 3 of MA Reg. 13/2016, a corporate criminal offense is defined as a crime conducted by **any person** based on an individual or joint employment or other relationships with a corporation, for and on behalf of the corporation. In other words, any person who commits a criminal offense on behalf of a company is regarded liable for the corporate criminal offense. The company, together with the relevant individual (such as the director who gives the order for performing the alleged criminal action), shall be liable for the relevant criminal offense.

Further to the above, in deciding whether a company has committed a criminal offense, the court will consider several factors:

- (a) The company made a profit or was benefitted from such criminal act, or the activity was committed for the corporation’s interest;
- (b) The company allowed such acts to happen; or
- (c) The company failed to take the necessary measures to prevent and/or minimize the impact of such criminal acts, and also ensure the company’s compliance with the prevailing laws and regulations to avoid such criminal acts from being committed.

1.3 **Criminal Liability of a Company under Law No. 1 of 2023 on Indonesia Criminal Code (“New Criminal Code”):** Indonesia has recently enacted a New Criminal Code

that was passed as law on 2 January 2023, and it will be effective starting 2 January 2026. The new code will revoke the Existing Criminal Code.

According to Article 46, of the New Criminal Code defines a corporate crime as any criminal action committed by:

- (a) a member of a corporation's management that has a functional position within the structure of the corporation;
- (b) any person who has a working relationship or any other relationship with the corporation that allows him/her to act for and on behalf of the corporation;
- (c) any person acting in the interest of the corporation;
- (d) any individual that ordered the crime; and
- (e) the controller and/or beneficial owner of the corporation.

Furthermore, Article 48 of the New Criminal Code states that a company may be held accountable for a criminal act if one or more of the following conditions is satisfied:

- (a) the criminal act falls under the scope of the business or activities of the corporation, as set out in the relevant articles of association or other applicable provisions;
- (b) the act unlawfully benefits the corporation;
- (c) the act was accepted as corporation policy;
- (d) the corporation failed to take measures aimed at preventing or minimizing the criminal act, or ensuring the company's compliance with the relevant regulations to prevent the occurrence of the relevant crime; and/or
- (e) the corporation deliberately allowed the criminal act to occur.

If one or more of the above conditions is satisfied, the liability for the criminal act will fall on the company, the individuals holding functional positions in the company, and the parties giving the orders, and the controllers and/or beneficial owners of the company (*Article 49 of the New Criminal Code*). In this regard, the individual who gives the order for the criminal act on behalf of the company will potentially become subject to criminal sanctions, the liable persons may include members of the BoD or BoC, shareholders, and/or employees of the company.

With regards to the above, the general requirement of criminal liability for the company under the New Criminal Code is generally in line and explicitly provides further details regarding criminal offenses as currently regulated by MA Reg. 13/2016 (*see point 1.2. above*).

Provisions under the New Criminal Code cannot be imposed on companies until the effective date of the New Criminal Code (*i.e.*, 2 January 2026). Before such date, the criminal liability of an Indonesian Company shall be governed by the Company Law, the Existing Criminal Code, and MA Reg. 13/2016.

2. **Q2: What are the criminal actions that may trigger the imposition of the criminal penalties towards Indonesian companies?**

2.1 Criminal penalties imposed on Indonesian companies are regulated in separate laws and regulations from the Existing Criminal Code. Generally, the criminal penalties

against a company could be both in the form of main and additional punishments. The main punishment is in the form of a fine, as the company cannot be sentenced to imprisonment. On the other hand, the additional punishment could be the seizure of the company's assets, compensation, or restitution, which are subject to specific regulations (*Article 25 of MA Reg. 13/2016*). The fine must be paid by the company no later than 1 (one) month after the judgment has become legally binding (*i.e.*, there are no further legal efforts are taken by the company), and it could be delayed until the next month. If the company fails to pay the fine, the prosecutor may confiscate and auction the company's assets to pay for the fine (*Article 28 of MA Reg. 13/2016*).

2.2 Having regard to the above position, we have highlighted below, the types of corporate crimes, and the sanctions that could be imposed on an Indonesian company.

Crimes	Criminal Sanctions for Company's Organ	Criminal Sanctions for the Company
Corruption		
Violating the law by benefiting oneself or others, possibly harming the state finance or the economy (<i>Article 2 of Anti-Corruption Law</i>)	4 (four) to 20 (twenty) years' imprisonment	IDR200 million to 1 billion fine
Providing or promising something to a public official to breach his/her official duties or giving something to him/her as compensation for such a breach of duty (<i>Article 5 of Anti-Corruption Law</i>)	1 (one) to 5 (five) years' imprisonment	IDR50 to 250 million fine
Money Laundering		
Placing, transferring, spending, paying, granting, depositing, carrying overseas, changing, or exchanging assets, knowing that such assets are linked to a criminal act (<i>Article 3 of AML Law</i>)	If the corporate entity is unable to pay the fine of up to IDR 100 billion, the punishment will be replaced by the company personnel, equivalent to the amount of penalty (<i>Article 9 of AML Law</i>)	Up to IDR100 billion fine with additional criminal sanctions: a. announcement of the judicial decision; b. freezing of the business activities; c. license revocation; d. company dissolution and/or prohibition; e. confiscation of company's assets for the state; and/or f. company take-over by the state. (<i>Article 7 of AML Law</i>)
Concealing the origin, sources, or location of assets, knowing that such assets are linked to a criminal act (<i>Article 4 of AML Law</i>)		
Receiving, transferring, paying, granting, donating, depositing, exchanging, or using assets, knowing that such assets are linked to a criminal act (<i>Article 5 of AML Law</i>).		

Personal Data Protection		
Unlawfully obtaining or collecting personal data leading to potential harm to the data subject (<i>Article 67 of PDP Law</i>)	A prison term of up to 6 (six) years is imposed on the relevant company personnel (<i>Article 67 to 68 of PDP Law</i>)	A fine of up to <u>10 times</u> the maximum criminal fine, ranging from IDR4 billion to IDR6 billion, may be imposed on the controller of personal data. In addition to the criminal fine, the controller can be charged with the following criminal sanctions: a. confiscation of assets obtained from the criminal act; b. freezing of the entire or part of the company's business; c. permanent prohibition from engaging in certain activities; d. closure of the entire or part of the company's business premises and/or activities; e. fulfilment of neglected obligations; f. payment of compensation for damages; g. license revocation; and/or h. company dissolution. (<i>Article 70 of PDP Law</i>)
Unlawfully disclosing Personal Data (<i>Article 67 of PDP Law</i>)		
Unlawfully utilizing Personal Data (<i>Article 67 of PDP Law</i>)		
Unlawfully creating false Personal Data or falsifying Personal Data, potentially causing harm to other persons (<i>Article 68 of PDP Law</i>)		
Environment		
Conducting business and activities without obtaining the environmental license (<i>Article 109 of Law 32/2009</i>)	1 (one) to 3 (three) years' imprisonment	IDR1 billion to IDR3 billion fine
Unlawfully importing waste, hazardous, and/or toxic materials into the territory of Indonesia (<i>Article 105 and 106 of Law 32/2009</i>)	4 (four) to 15 (fifteen) years' imprisonment	IDR4 billion to IDR15 billion fine
Unlawfully clearing land by starting a fire (<i>Article 108 of Law 32/2009</i>)	3 (three) to 10 (ten) years' imprisonment	IDR3 billion to IDR10 billion fine
Producing hazardous, and toxic materials without obtaining the permit or failing to manage them (<i>Article 102 and 103 of Law 32/2009</i>)	1 (one) to 3 (three) years' imprisonment	IDR1 billion to IDR3 billion fine
		In addition to the above, the company may be subject to an additional punishment, such as:

		<ul style="list-style-type: none"> a. confiscation of profits obtained from the crime; b. closing of the entire or part of the business and/or activities and/or premises; c. recovery of the results of the crime; d. mandatory performance of the neglected duties; and/or e. the company shall be placed under guardianship for a maximum period of 3 (three) years
Employment		
Unlawfully employing and involving children in any work, violating the prevailing regulations	1 (one) to 5 (five) years' imprisonment	IDR100 million to IDR500 million fine <i>(Article 183 and 185 of Manpower Law)</i>
Prohibiting female employees to take the maternity leave		
Prohibiting company employees from taking the religious leave		
The company does not pay the minimum wages to workers and other		
The company does not provide severance pay, long-service pay, and compensation of benefits due to the termination of employees		
The company does not comply with the requirement for employing foreign employees	1 (one) to 12 (twelve) months' imprisonment	IDR 10 million to IDR 100 million fine <i>(Article 187 of Manpower Law)</i>
The company does not comply with the requirement on minimum working hours		
The company does not comply with the requirement on minimum leave and off-working days		
The company does not have a Company Regulation	N/A	IDR 5 million to IDR 50 million fine <i>(Article 188 of Manpower Law)</i>

		Please note that the criminal sanctions imposed above do not release the companies from their obligations to pay the entitlements and/or compensations to the employees
Consumer Protection		
Producing or trading goods and/or services, which are not complying with the required standards, or without providing the necessary information as regulated under the laws and regulations (Article 8 of Consumer Law)	Up to 5 (five) years' imprisonment (Article 62 of Consumer Law)	IDR500 million to IDR2 billion fine (Article 62 of Consumer Law) Please note that in the event these violations cause serious injuries or, serious illness, or permanent disabilities, or death, the additional sanction may be punished such as: a. confiscation of certain goods; b. announcement of the judgment; c. payment of compensation; d. order for the cessation of certain activities causing the losses to consumers; e. obligation to withdraw the goods from circulation; or f. license revocation. (Article 63 of Consumer Law)
Misleadingly offering, promoting, and/or advertising goods and/or services. (Article 9 of Consumer Law)		
Offering, promoting, advertising, or making misleading statements on the produced or traded goods and/or services (Article 10 of Consumer Law)		
Using methods that may cause physical or psychological disturbance to consumers. (Article 15 of Consumer Law)		
producing advertisements that mislead consumers regarding the information of the goods. (Article 17 of Consumer Law)		

2.3 New Form of Criminal Sanctions under the New Indonesian Criminal Code: Since the Existing Criminal Code does not recognize a company as a subject of criminal actions, the New Criminal Code has introduced new criminal punishments specifically applicable to a company. The sanctions can be divided into two main categories (i) main punishment in the form of fine, and (ii) additional punishment (Article 118 of New Criminal Code).

Under the New Criminal Code, fines as punishments for companies are stipulated under 8 (eight) categories with each criminal offense is subject to a fine of a particular category. Each category has a different maximum fine, as set out in the table below:

Category	Maximum Fine for Company
I	Categories I – IV are subject to a IDR200 million fine
II	Categories I – IV are subject to a IDR200 million fine
III	Categories I – IV are subject to a IDR200 million fine
IV	Categories I – IV are subject to a IDR200 million fine
V	-
VI	Fine for a prison term of up to 7 years (IDR 2 billion)
VII	Fine for a prison term of between 7 and 15 years (IDR 5 billion)
VIII	Fine for a prison term of up to 20 years (IDR 50 billion)

In the event that a company has committed an offense punishable by a prison term (as specified in categories VI to VIII), the maximum fine will be subject to the length of the prison term (Article 121 of New Criminal Code).

For instance, in a crime of embezzlement whereby the maximum prison term is 4 (four) years and the maximum fine is stipulated in Category IV (*Article 486 of New Criminal Code*), the company will be punished with the minimum fine of Category IV and the maximum fine of Category VI.

Additional Criminal Penalties: On the other hand, the company will also face an additional punishment, which could be in the form of:

- (a) Compensation payments;
- (b) Remediation of the consequences of the criminal acts;
- (c) Fulfilment of neglected obligations;
- (d) Fulfilment of customary obligations;
- (e) Financing of job trainings;
- (f) Confiscation of assets generated from the criminal acts;
- (g) Announcement of the court decisions;
- (h) License revocation;
- (i) Permanent prohibition of certain business activities;
- (j) Closure of all or part of business premises and/or corporate activities;
- (k) Freezing of all or part of corporate activities; and
- (l) Dissolution.

Please take note, that if no additional penalties are imposed on the company, its assets or income may be seized and auctioned by the prosecutor (*Article 120 of New Criminal Code*). However, the government will issue further regulations on sanctions against corporate crimes. These regulations are expected to provide clarity on how the above sanctions shall be imposed. Up to the writing of this Memorandum, the Indonesian government has yet to issue such government regulations.

3. **Q3: Who will be subject to criminal sanction in respect of corporate crimes? Will it be only limited to the organ of the company or can the criminal sanction imposed toward the shareholders of the company?**

- 3.1 As we have mentioned in point 1.1 above, any company in Indonesia shall be governed by individual bodies which are the Shareholders, BoD, and BoC. It is important to note that each body serves specific functions and has specific responsibilities from one

another. In this regard, we have provided below, a summary of the responsibilities of each body.

3.2 **Liability of the BoD:** Any Indonesian company is managed by the BoD that has the authority to perform the interests and objectives of the company. The BoD is also authorized to represent the company on behalf of the company, including appear before the panel of judges in court proceedings (together as “**General Authority**”).

3.3 Since the General Authority of the Company lies in the hands of the BoD, the relevant actions conducted by the BoD during the commencement of its duties and authorities would be the liability of the BoD. Because of any misconduct or negligence when commencing his/her authority and duty, as a member of the BoD, he/she would be held personally liable for any losses suffered by the company (*Article 97 (3) of Company Law*). However, there are several exemptions to prevent the imposition of personal liability towards the BoD if the relevant member of the BoD can prove that such actions are:

- (a) not causing losses to the company, or such losses are not due to his/her fault or negligence;
- (b) the BoD member has performed his/her duties and responsibilities in the company’s management based on good faith;
- (c) the person has no personal conflict of interest with company’s management that result in the losses to the company; and
- (d) he/she has taken the necessary measures to prevent the losses.

(together as the “**General Exceptions**”) (*Article 97 (5) of Company Law*)

In this regard, any losses suffered by the company due to a criminal action shall be personally borne by a member of the BoD, if the relevant member of the BoD has misconducted or is negligent in performing his/her duties/authorities; and he/she fails to prove the General Exceptions. On the other hand, if the director could prove the General Exceptions when the crime was committed by the company, the criminal sanction would be imposed on the company in the form of a fine.

Besides being liable for the criminal actions conducted by the company, the director should be the party who represents the company in the investigation and criminal proceedings (*Articles 11 and 13 of MA Reg. 13/2016*).

3.4 **Liability to the Shareholders of the Company:** It is important to note that the shareholders may not be personally liable for any legal actions committed by the company, including criminal offenses. The liability of the shareholders is limited only to the amount of shares in a company (*Article 3 (1) of Company Law*). However, the shareholders may be personally liable in the event of:

- (a) unfulfillment of the company’s requirements (i.e., absence of capital injection);
- (b) the shareholders acting in bad faith, exploiting the company for personal interests;
- (c) the shareholders involving in unlawful or criminal acts conducted by the company; and
- (d) unlawful use of the company’s assets, resulting in the company being unable to settle the company’s debt.

(Article 3 (2) of Company Law) (together the “**Shareholder’s Limitation**”)

- 3.5 A shareholder could possibly become personally liable for a criminal action committed by the company if such action is proven to be conducted within the scope of the Shareholder’s Limitation. For instance, if a shareholder is involved in corruption committed by the company, he/she may be subject to imprisonment in conjunction with the fine imposed on the company.
- 3.6 **Liability of the BoC:** Any member of the BoC is also liable for his/her actions during the commencement of his/her role in supervising the BoD. Based on Article 114 (2) of Company Law, a member of the BoC is personally liable for carrying out his/her duties that lead to the loss of a company.

Similarly, the liability shall be exempted if the member of the BoC can prove the following points:

- (a) he/she has performed his/her duty in good faith and with responsibility;
- (b) he/she has no personal interest in the management actions of the BoD; and
- (c) he/she has advised the BoD to prevent the losses.

(Article 114 paragraph (5) of Company Law)

Otherwise, if a member of the BoC fails to prove the above exemptions, and is proven to have been involved in a corporate criminal action, he/she would become subject to criminal sanctions.

4. **Q4: What are the procedures and measures to be taken by the legal entity in respect of corporate crimes under the prevailing laws and regulations to mitigate the criminal liabilities or to report in the event of a crime is identified (whistle blowing)?**

- 4.1 Having and implementing a compliance program is important for the company operating in Indonesia. The New Criminal Code has introduced adequate defenses or excuses for companies claiming to have taken the necessary measures to prevent the criminal actions from occurring, which are not yet regulated under the Existing Criminal Code. The legal justification can be delivered by the authorized representative of the company (i.e., Director). *(Article 50 of New Criminal Code)*.

- 4.2 **Whistleblowing:** Regarding the whistleblower, the legal basis for the public to participate in the prevention and eradication of criminal offenses, particularly in corruption, is regulated in Article 41 (2) of Law No. 31 of 1999 on Eradication of Corruption as amended by Law No. 20 of 2001 on Eradication of Corruption (“**Anti-Corruption Law**”), emphasizing on the rights of the person (member of the public) performing the whistleblower efforts, which are:

- (a) the right to seek, obtain, and provide information on suspected corruption activities;
- (b) the right to receive the services for obtaining and providing information on suspected corruption crimes;
- (c) the right to express opinions and suggestions to the relevant law enforcement officials;

- (d) the right to receive answers to his/her questions about the report given to law enforcement within a maximum of 30 (thirty) days;
- (e) the right to receive the legal protection when exercising the rights, and being asked to appear in the investigation, prosecution, and court proceedings as a reporting witness, witness, or expert witness, in accordance with the applicable legal regulations.

In providing a sense of security to the informant, the officer must maintain the confidentiality of the informant's identity or his/her information, suggestions, or opinions provided by the informant. If necessary or on the informant's request, the officer can provide the physical protection for the informant and his/her family.

4.3 **Award for the Whistleblower:** The officer will grant an award to the person or member of the public who has contributed to the prevention and eradication of corruption. The award can be in the form of (i) a charter, and (ii) money. The award shall be granted to the informant after the court judgment of the corruption case (*Articles 13 and 15 of Government Regulation No. 43 of 2018 on the Procedures on the Implementation of Roles of Community Participation and the Award Provision on the Prevention and Eradication of Criminal Corruption ("GR 43/2018")*). If the informant will be granted an award in the form of money, the authorized official is required to provide the informant with 2% of the total value of the state financial losses or a maximum of IDR200 million (*Article 17 of GR 43/2018*).

4.4 **Procedure for Whistleblowing Efforts:** With regard to the procedure of whistleblowing efforts, the relevant person or member of the public can provide information regarding suspected corruption crimes to the authorized officials, such as those of the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi or "KPK"*) or the Police, by making an oral or a written report submission through the electronic and non-electronic media. The report must, at least, contain:

- (a) the identity of the reporter; and
- (b) a description of the facts regarding the suspected corruption crimes

(*Article 4 of GR 43/2018*)

Please note that the officers (i.e., KPK, the Police) will assess such report within 30 (thirty) working days from the date of receipt of the report. The reporter also has the right to ask questions about the report, and the law enforcement officers must answer the questions within a maximum of 30 (thirty) days from the date of the request. (*Article 10 of GR 43/2018*).

4.5 **Reporting a Suspicious Transaction:** Please note that Law No. 8 of 2010 on Prevention and Eradication of Criminal Act of Money Laundering ("**AML Law**") requires any company to notify the minimum amount of its transactions, or suspicious transactions by its user to the Center of Financial Transaction Reports and Analysis (*Pusat Pelaporan dan Analisis Transaksi Keuangan or "PPATK"*). PPATK is an Indonesian government agency responsible for monitoring and combating money laundering and terrorism financing activities. PPATK may collect, analyze, and process financial transaction information to identify and report suspicious transactions to the relevant law enforcement officers.

Under Article 27 of AML Law, a company is required to submit a report on every transactions conducted by its users in both Rupiah and foreign currencies, with a minimum value of IDR500 million to PPATK. This transaction report must be submitted no later than 14 (fourteen) working days from the date of the transaction. Please note that failure to submit the report to PPATK will result in the imposition of administrative sanctions on the relevant company. The company and its employees are immune from prosecution in both civil and criminal sanctions related to this mandatory reporting process (*Article 29 of AML Law*). However, please bear in mind that once the suspicious transaction has been reported to PPATK, the company's personnel are prohibited from disclosing the report to any third parties. Any disclosure of such report to PPATK will make them subject to criminal sanctions in the form of imprisonment of up to 5 (five) years, and fine of up to IDR1 billion (*Article 12 of AML Law*).

5. **Q5: If the Board of Directors of the legal entity or company does not reside in Indonesia, will they still be affected by the criminal liability of the legal entity or the company?**

5.1 The short answer is **“Yes”**. If a director is unable to prove the General Exception, he/she will be personally liable for any criminal offense committed by the company. Although the director resides outside Indonesia's jurisdiction if such criminal actions occurred by the company is due to the director's misconduct, negligence, and/or involvement in the crime, he/she is still liable for such criminal action. Indonesia Criminal Code does not provide any waiver for a suspect of criminal action residing overseas, as long as the crime is conducted within Indonesia's jurisdiction, the director's liability of the criminal actions is still applicable.

5.2 Moreover, as we mentioned in point 3.3 that during the investigation and criminal proceedings, the relevant member of the BoD is required to physically appear before the law enforcement officials or investigators albeit residing overseas. Under the Police Regulation No. 6 of 2019 on Investigation of Criminal Acts (**“Police Reg. 6/2019”**), during the investigation process and the director resides overseas, the investigator will summon the director residing overseas through the Indonesian embassy in the relevant country, or the director's country embassy in Indonesia. If the director remains absent and ignores the police's summon, he/she will be registered on a Wanted List. (*Article 17(3) and (6) of Police Reg. 6/2019*).

Should you have you any queries on how the Indonesian New Criminal Code will affect you and/or any of your Indonesian subsidiaries, please feel free to reach out to us, the authors of this article, and we will be happy to assist you.

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