

The New Criminal Code/Kitab Undang-undang Hukum Pidana (“KUHP”) Passed

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1. Introduction

On December 6, 2022, the Indonesian House of Representatives/Dewan Perwakilan Rakyat (“DPR”) finally passed the Draft Law on the Criminal Code/KUHP, which will replace the current KUHP. The new KUHP is stipulated in Law No. 1 of 2023 on the Criminal Code (“**New KUHP**”). **This New KUHP was promulgated on January 2, 2023, and entered into force after 3 (three) years from the date of promulgation, January 2, 2026.**



The New KUHP consists of 2 (two) books. The First Book contains general rules as guidelines for the application of the Second Book as well as Laws outside the new KUHP, such as Provincial Regulations, and Regency/City Regional Regulations unless otherwise specified. The New KUHP attempts to update the criminal law in Indonesia and revolutionize the current Indonesian criminal law regime.

2. Highlights of the matter:

- A. The New KUHP will revise and repeal several criminal offenses in certain laws, such as:
- Law No. 31 of 1999 on the Eradication of Corruption as amended by Law No. 20 of 2001 (“**Law 31/1999**”)

Corruption Act	Sanctions	
	New KUHP	Law 31/1999
Unlawful acts to enrich oneself, others, or corporations result in financial or economic losses to the country.	<u>Imprisonment:</u> for life or between two and twenty years <u>Fine:</u> between a Category II fine (max. of Rp 10 million) and a Category VI fine (max. of Rp 2 billion) (Article 603 and 604)	<u>Imprisonment:</u> for life or between two and twenty years <u>Fine:</u> between Rp. 200 million to Rp. 1 billion. (Article 2 paragraph (1))
Obtaining benefits for oneself or others or corporations by abusing authority, opportunities, or facilities and obtaining benefits through positions that result in financial losses or the state economy.		<u>Imprisonment:</u> for life or between one and twenty years <u>Fine:</u> between Rp. 50 million and Rp. 1 billion (Article 3)
One of the following activities: 1. Giving or promising something to a civil servant or state administrator with the intention that the civil servant or state administrator performs or does not perform certain	The party who committed the act (Article 605 paragraph (1)) <u>Imprisonment:</u> between one and five years <u>Fine:</u> between Category III (max. of Rp 50 million) and	<u>Imprisonment:</u> between one and five years <u>Fine:</u> max. of Rp. 50 million to Rp. 250 million (Article 5)

<p>activities in his/her position that are contrary to his/her obligations; or</p> <p>2. Giving something to a civil servant or state organizer because of or in connection with something contrary to obligations, which is done or not done in his/her office.</p>	<p>Category V (max. of Rp 500 million)</p> <p>The state organizer who received the thing/promise (Article 605 paragraph (2)) <u>Imprisonment:</u> between one and six years <u>Fine:</u> between a Category III fine (max. of Rp 50 million) and a Category V fine (max. of Rp 500 million)</p>	
<p>Giving gifts or promises to civil servants or state administrators because of the power or authority attached to their position or position.</p>	<p>The party who committed the act (Art. 606 paragraph (1)) <u>Imprisonment:</u> up to three years <u>Fine:</u> Category IV (max. of Rp 200 million)</p> <p>The state organizer who received the thing/promise (Art. 606 paragraph (2)) <u>Imprisonment:</u> up to four years <u>Fine:</u> Category IV (max. of Rp 200 million)</p>	<p><u>Imprisonment:</u> max. of three years <u>Fine:</u> max. of Rp. 150 million (Article 13)</p> <p><u>Imprisonment:</u> between one and five years <u>Fine:</u> max. of Rp. 50 million to Rp. 250 million (Article 11)</p>

** After the New Criminal Code becomes effective, references to existing articles in Law 31/1999 will be replaced with articles related to corruption crimes in the New KUHP.*

- Law No. 8 of 2010 on the Prevention and Eradication of the Crime of Money Laundering (“**Law 8/2010**”)

Money Laundering Crimes	Asset Sources	Sanctions	
		New KUHP	Law 8/2010
<p>Committing one of the following acts concerning assets suspected or reasonably suspected of originating from a criminal offense to conceal or keep secret the source of such assets: 1) Placing; 2) Transferring; 3) Transferring; 4) Spending; 5) Paying; 6) Gifting; 7) entrust; 8) bring abroad; 9) change the form; and 10) redeem with currency or securities. (Art. 607 paragraph (1) letter (a).</p>	<p>26 specific criminal offenses regulated in the Act as a source of assets classified as derived from criminal acts, as stipulated in Art. 607 paragraph (2) including Corruption; Bribery; Labor smuggling; Migrant smuggling; Criminal acts in capital markets; Gambling; and so on.</p>	<p><u>Imprisonment:</u> max. of fifteen years <u>Fine:</u> Category VII (max. of Rp 5 billion)</p>	<p><u>Imprisonment:</u> max. of twenty years <u>Fine:</u> max. of Rp. 10 billion (Article 3)</p>
<p>Conceal or disguise the origin, source, location, allocation, transfer of rights, or actual ownership of an asset suspected or reasonably suspected of originating from a criminal offence. (Art. 607 paragraph (1) letter (b).</p>		<p><u>Imprisonment:</u> Max. of fifteen years <u>Fine:</u> Category VI (max. of Rp 2 billion)</p>	<p><u>Imprisonment:</u> max. of twenty years <u>Fine:</u> max. of Rp. 5 billion (Article 4)</p>

Take a receipt or control over an asset as referred to at the top of this table. (Art. 607 paragraph (1) letter (c)).		<u>Imprisonment:</u> max. of five years <u>Fine:</u> Category VI (max. of Rp2 billion)	<u>Imprisonment:</u> max. of five years <u>Fine:</u> max. of Rp. 1 billion (Article 5 paragraph (1))
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** After the New Criminal Code becomes effective, references to existing articles in Law 8/2010 will be replaced with articles related to corruption crimes in the New KUHP.*

Refer to Article 79 (1) of the New KUHP, a maximum criminal fine shall be determined based on Category:

I	Rp.1,000,000.00 (one million rupiah)	V	Rp.500,000,000.00 (five hundred million rupiah)
II	Rp.10,000,000.00 (ten million rupiah)	VI	Rp.2,000,000,000.00 (two billion rupiah)
III	Rp.50,000,000.00 (fifty million rupiah)	VII	Rp.5,000,000,000.00 (five billion rupiah)
IV	Rp.200,000,000.00 (two hundred million rupiah)	VIII	Rp.50,000,000,000.00 (fifty billion rupiah)

- Law No. 11 of 2008 on Electronic Information and Transactions as amended by Law No. 19 of 2016 (“**Law 11/2008**”)

Concerning Law 11/2008, one of the key changes in the New KUHP is to introduce criminal sanctions for anyone who "disseminates criminal content through information technology" or "broadcasts", which includes transmitting, distributing, and making accessible digital information and documents on digital platforms. This provision does not make it clear whether this will affect the extent to which the owner/operator of the platform on which the information or document is disseminated can be held liable.

B. Corporate Criminal Liability

Who are the parties included in the corporation?

A corporation is the subject of a criminal offense. The parties included in the corporation are 1) Legal Entities, such as Limited Liability Companies, Cooperatives, and State/Regional Owned Enterprises, and 2) Partnerships, both incorporated and unincorporated, such as the Commanditaire Venootschap ("**CV**"). In addition, corporate crime can also be committed by the commanders, controllers, or beneficial owners of the Corporation who are outside the organizational structure but can control the Corporation.

What actions can a corporation be held accountable for?

1) Included in the scope of business or activities of the corporation, as stipulated in the Articles of Association ("**AoA**") or other applicable provisions; 2) Unlawfully benefiting the corporation; 3) Accepted as corporate policy; 4) The corporation does not take the necessary steps to take precautions, prevent more significant impact, and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts; and/or 5) A corporation intentionally allows a criminal act to occur.

What are the sanctions for such actions?

It is divided into two types of sentences, Principal and Additional.

- Principal Sentences, such as criminal fines (Article 119 of the New KUHP)

In the form of a fine with the following amounts: 1) Subject to a max. of Rp. 200 million if there is no other determining law; 2) For criminal acts with a max. imprisonment under seven years, max. of Rp 2 billion; 3) For criminal acts with a max. imprisonment of 7 to 15 years: a max. of Rp. 5 billion; and 4) For crimes with the death penalty or life, as well as a max. imprisonment of 20 years: a max. of Rp 50 billion.

- Additional sentences, such as payment of compensation; remedy for the consequences of Crimes; implementation of obligations that have been neglected; fulfillment of customary obligations; financing of job training; confiscation of Goods or profits obtained from Crimes; announcement of the court decision; revocation of specific licenses; a permanent ban on certain actions; the closure of all or part of the places of business and/or activities of Corporations; suspension of all or part of the business activities of Corporations; and dissolution of Corporations (Article 120 of the New KUHP).

C. Controversial Articles

Some articles that are considered controversial and still being debated among the public include: Articles on insulting the president; insulting state institutions; living together without marriage; Morality; Death Penalty; Contempt of Court Process; Religious Crimes; Articles on Communism, Leninism, and Marxism; Public Opinion; Articles related to contraceptive education are considered to have the potential to criminalize those who educate on reproductive health; and Witchcraft Crime. These articles are considered to violate freedom of speech, democracy, and human rights.

3. Conclusion

Most of the provisions set out in the New KUHP are essentially the same as those in the current KUHP. However, the new KUHP will be effective three years later, in 2026, so the companies can still keep an eye out for any changes to the articles in the New KUHP. If there are changes to the New KUHP, it is likely related to several articles still being debated or controversial among the public.

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Koji Umami spent more than 7 years working at a law firm in Japan where he was involved in various corporate affairs. He also had previous experiences handling international matters in civil affairs, real-estate, insolvency, and criminal cases.

In 2018, he continued his study at the Singapore Management University, where he obtained his Master's Degree in Law (LL.M) with specialization in Cross-Border Business and Finance Law in Asia. After finishing the study, he spent sometime at a major law firm in Singapore and finally join One Asia Lawyers.

He is currently involved in advising a company expansion strategy based on the latest revisions of regulations and laws, legal follow-up, contracting, labor, legal affairs, various compliances and responding to conflicts after entry into South East Asian jurisdictions especially Indonesian market.



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Yusuke has extensive and long-time experience in overseas matters, especially in Southeast Asia, Indonesia, and Malaysia. He handles a wide range of international construction agreements, sales and purchase agreements, dispute resolution, and pullout of business. Working in a major Japanese plant and engineering company, he has experience in numerous overseas plant construction matters, mainly involving negotiating a plant construction agreement (EPC Agreement) in South-East Asia and in concluding various types of contracts for major general trading companies. He graduated from University of Pennsylvania Law School, LLM, USA and joined OAL in January 2023.

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Prisilia spent over 6 year's experience working as an in-house counsel in the legal department in particular areas energy and natural resources in Indonesia and involved in various legal works related to energy and natural resources. She took her master's at the University of Aberdeen, the United Kingdom majoring in Oil and Gas Law.

After joined One Asia Lawyers Tokyo, as a lawyer of the law of Indonesia, Prisilia conducts legal research related to the laws of Indonesia and offers a variety of support such as reviewing contracts for Japanese corporations expanding into Indonesia. Prisilia also gives support to Indonesian corporations investing in Japan.

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