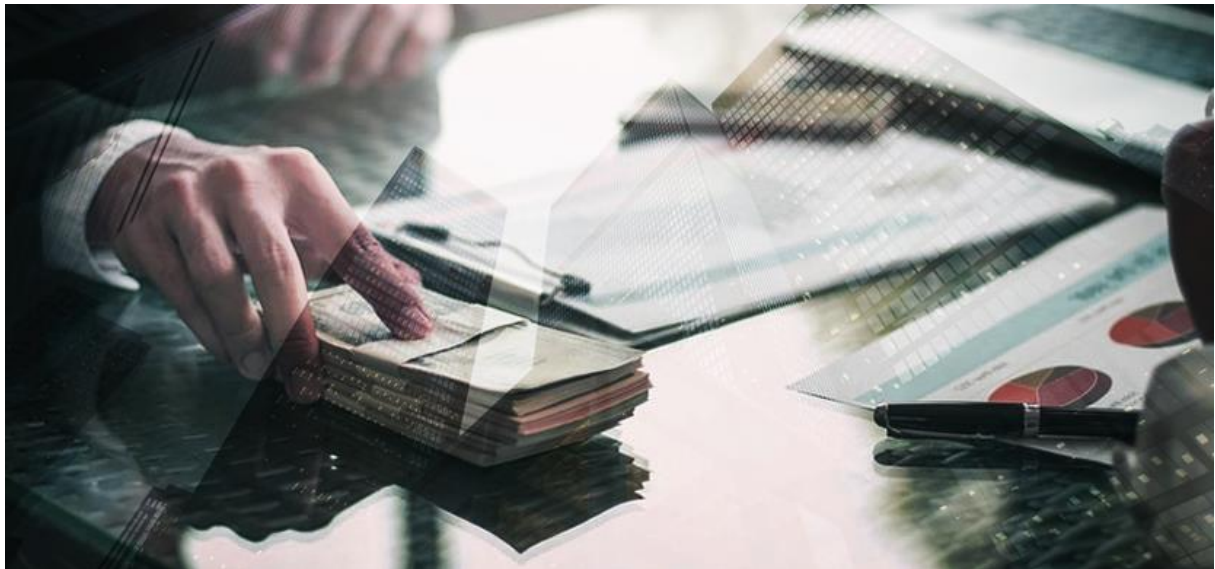


Indonesia's New Criminal Code Introduces Corporate Crime



On the heel of a lengthy debate and despite the controversy surrounding it, Law No. 1 of 2023 on Indonesian Criminal Code (“**Law 1/2023**”) has been promulgated on 2 January 2023. Law 1/2023 replaces the previous Criminal Code, which dates to the Dutch colonial era.

One notable change brought about by Law 1/2023 is the recognition of the concept of corporate crime in Indonesia. As many know, the old Criminal Code does not recognise corporations as legal subjects that can be liable for crimes. Indeed, the definition of criminal perpetrators was limited and confined to individuals, which means that typically, the management of a corporation will bear the criminal responsibility.

The discussion below will examine the concept of corporate crime in Indonesia under Law 1/2023.

Corporations as Legal Subjects under Law 1/2023

As mentioned earlier, corporations may now be subject to criminal liability under Law 1/2023. This contrasts with the old Criminal Code, which only recognised crimes committed by a corporation’s management or the individuals directly involved in the crime.

Besides limited liability companies, the term “corporation” in Law 1/2023 encompasses foundations, cooperatives, state-owned and regional government-owned enterprises, civil partnerships, firms, and other equivalent entities.

Concept of Corporate Crime

Article 46 of Law 1/2023 defines a corporate crime as any criminal act committed by:

1. a member of a corporation's management that has a functional position within the structure of such corporation;
2. any person that has a working relationship or any other relationship that allows him/her to act for and on behalf of the corporation;
3. any person acting in the interest of the corporation;
4. any individual that ordered the crime; and
5. the controller and/or beneficial owner of the corporation.

In addition, Article 145 of Law 1/2023 broadens the scope of liability under the Code by specifying that the term "any person" includes a corporation.

Application of Criminal Sanction

With regards to the application of criminal sanctions on corporations, Law 1/2023 sets out the requirements on when a corporation may be criminally liable, namely when:

1. the alleged crime falls within the scope of the corporation's business or activity as specified in its articles of association or any other provisions applicable to the corporation;
2. the alleged crime unlawfully benefits the corporation;
3. the alleged crime is accepted as the corporation's policy;
4. the corporation does not take preventive measures to prevent the damages from occurring and ensure compliance with the law; and/or
5. the corporation allows the alleged crime to occur.

The above requirements are not cumulative. As a result, the sanctions will apply even if a corporation only satisfies one of the above requirements.

A corporation may be subject to both primary sanction in the form of a fine of at least IDR200 million (except if determined otherwise by law), as well as secondary or additional sanctions, which may be in the form of:

1. an order to pay compensation;
2. an order to carry out a measure to remedy the effect of the alleged crime;
3. the carrying out of the neglected obligation;
4. the implementation of the local customary obligation;

5. an order to pay for work training;
6. confiscation of goods or profits derived from the alleged crime;
7. an announcement of the relevant court decision;
8. revocation of any specific permits;
9. a permanent prohibition to conduct certain actions;
10. full or partial closure of a business place and/or corporate activities;
11. full or partial suspension of business activity; and/or
12. dissolution of the corporation.

Aside from the above, the government may also take over or place the corporation under supervision or guardianship.

We expect that the application of the foregoing sanctions will be further regulated in the government regulations.

Key Takeaways

Under Law 1/2023, the risk of a corporation being held criminally liable is exceptionally high as the Code specifically recognises corporations as legal subjects. Moreover, the sanctions under Law 1/2023 also support this notion by introducing sanctions that are more suited for corporations, e.g. suspension of business, closure of office, and revocation of licence.

While Law 1/2023 will enter into force three years after its promulgation (three years after 2 January 2023) and more clarity can be expected after the implementing regulations are enacted, business entities should be extra vigilant in carrying out their business activities going forward. This can be done by, among others, implementing an internal system that ensures compliance with the law and good corporate governance principles.

Contacts



Eri Hertiawan
Partner

D +62 21 2555 7883
F +62 21 2555 7899
eri.hertiawan@ahp.id



Yogi Sudrajat Marsono
Partner

D +62 21 2555 7812
F +62 21 2555 7899
yogi.marsono@ahp.id



Kharis Sucipto
Senior Associate

D +62 21 2555 7813
F +62 21 2555 7899
kharis.sucipto@ahp.id

[Kukuh Dwi Herlangga](#) and [Keisya Naomi Nababan](#) also contributed to this alert.

Our Regional Contacts

RAJAH & TANN | *Singapore*
Rajah & Tann Singapore LLP
T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*
Assegaf Hamzah & Partners

Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*
Rajah & Tann (Laos) Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*
Rajah & Tann Myanmar Company Limited
T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*
Rajah & Tann LCT Lawyers

Ho Chi Minh City Office
T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

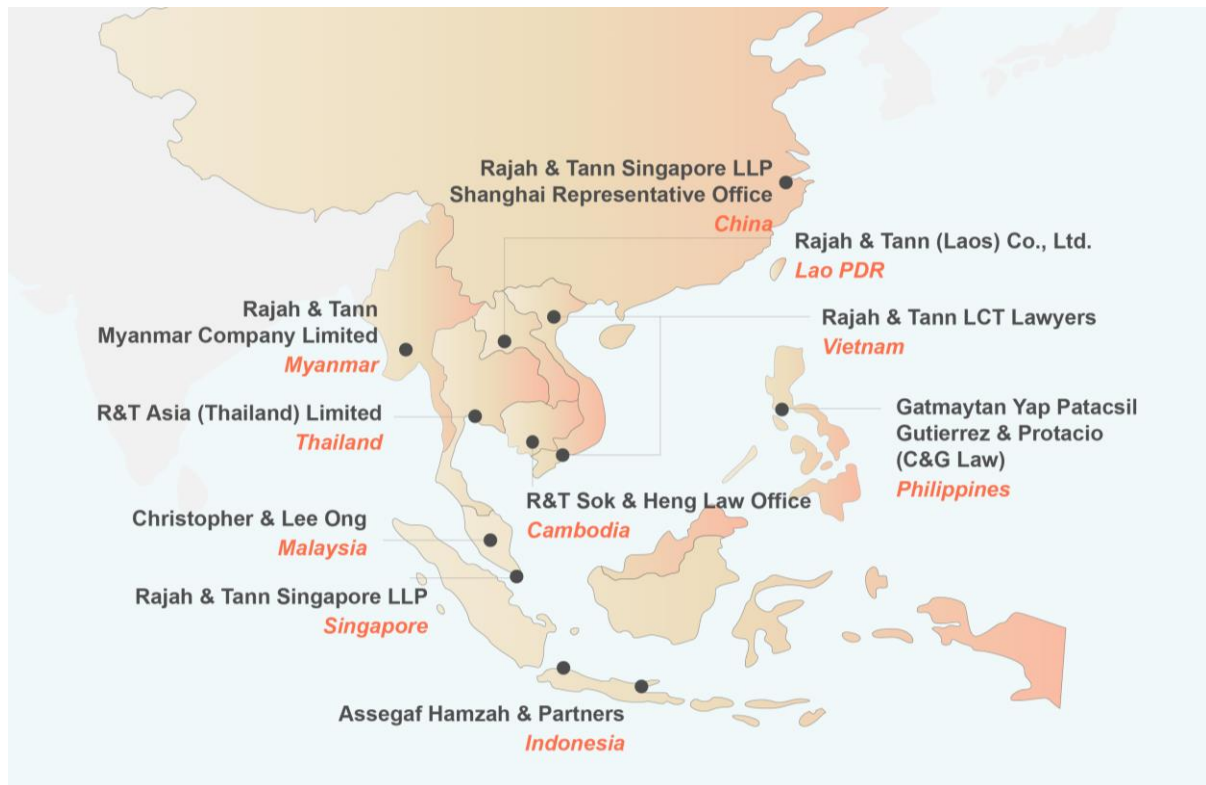
Hanoi Office
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

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