

Client Alert

Brigitta I. Rahayoe & Partners

CORPORATE CRIMINAL LIABILITY

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CORPORATE CRIMINAL LIABILITY

Under the Law No. 1 of 2023 regarding the Criminal Code, as amended by the Law No. 1 of 2026 regarding Criminal Adjustment ("**Criminal Code**"), corporations are recognised as criminally liable entities and may be subject to criminal liability for offences committed within the scope of their business or activities. Corporations include legal entities, such as limited liability companies, foundations, cooperatives, and state-owned enterprises, and also associations and business entities that are not legal entities, such as firms and limited partnerships.

The Criminal Code also defines what constitutes a corporate criminal offence. A corporate criminal offence refers to an offence committed by a person acting within the scope of the corporation's business or activities, including members of management holding functional positions and other persons acting for or on behalf of, or in the interests of, the corporation.

On 29 October 2026, the Constitutional Court of the Republic of Indonesia ("**Constitutional Court**") issued Decision No. 371/PUU-XXIV/2026 ("**Decision 371/2026**") regarding the judicial review of Article 326 paragraph (1) of the Law No. 20 of 2025 regarding the Criminal Procedure Code ("**Criminal Procedure Code**"). Prior to the Constitutional Court's decision, Article 326 paragraph (1) required criminal liability for corporate offences to be imposed cumulatively on both the corporation and the person responsible for the corporation.

In its reasoning, the Constitutional Court found that this wording created an inconsistency with Article 49 of the Criminal Code, which provides for criminal liability to be imposed on the corporation, the responsible individual(s), or both, depending on the circumstances of the case.

CONTINUE TO THE NEXT PAGE ▶



The key changes arising from this interpretation are outlined below:

1. **Amendment to the Interpretation of Article 326 paragraph (1) of the Criminal Procedure Code**

   Prior to the Decision 371/2026, Article 326 paragraph (1) of the Criminal Procedure Code stipulates that criminal liability for criminal offenses committed by a corporation may be imposed on both the corporation and the person responsible for the corporation. The use of the word "and" in this provision required the imposition of criminal liability on both parties cumulatively.

   Through the Decision 371/2026, the Constitutional Court changed the interpretation of the word "and" in Article 326 paragraph (1) of the Criminal Procedure Code to mean "and/or". As a result, criminal liability for a corporate offence may now be imposed solely on the corporation, solely on the responsible individual(s) alone, or on both concurrently, depending on the circumstances of the case.

2. **Responsible Parties of the Corporation**

   The Criminal Procedure Code stipulates that the responsible parties of a corporation include:

   a. functional management personnel;
   b. instructing parties;
   c. controlling persons; or
   d. beneficial owners of the corporation.

3. **Alignment with the Provisions of the Criminal Code**

   In its considerations, the Constitutional Court considered that the previous wording of Article 326 paragraph (1) of the Criminal Procedure Code was inconsistent with Article 49 of the Criminal Code.

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Article 49 of the Criminal Code stipulates that criminal liability for criminal offenses committed by a corporation is imposed on the corporation. The Criminal Code further provides that liability may also be imposed on functional management personnel, instructing parties, controlling persons and/or beneficial owners, depending on their involvement in the offence. The use of the word "may" indicates that criminal liability for such parties does not necessarily have to be imposed simultaneously with the corporation. Accordingly, criminal liability may be imposed on the corporation, such parties, or both.

Conclusion

Through the Decision 371/2026, the Constitutional Court clarified that criminal liability for offences committed by a corporation may be imposed on the corporation, the relevant responsible person(s), or both, depending on the facts and legal basis for liability in each case. The decision aligns Article 326 paragraph (1) of the Criminal Procedure Code with Article 49 of the Criminal Code and removes the requirement to impose criminal liability automatically and cumulatively on both the corporation and the person responsible for the corporation.

This Client Alert is provided for general information purposes only and does not constitute legal advice. Please contact us should you require further information or assistance regarding the Decision 371/2026 or related matters.

For further information regarding the above Client Alert and future updates, please contact our counselors at:

Ahmad Fadli:	ahmad.fadli@brigitta.co.id
Chantika Putri:	chantika.putri@brigitta.co.id
Michael Wibowo J.:	michael.joestiawan@brigitta.co.id

BRIGITTA I. RAHAYOE & PARTNERS
Suite 9B, 9th Floor, Sahid Sudirman Centre
The Sahid City Complex
Jl. Jend. Sudirman No. 86
Jakarta Pusat 10220
Indonesia
P : +6221 2788 9027
W : https://www.brigitta.co.id