

Show me the money (laundering)!

SEA View, Article III: June 2019

Hold the press! Trending anti-bribery, corruption, and money laundering enforcement in Indonesia as described by Chalid Heyder, Teguh Darmawan (both Jakarta), and Khushaal Ved (Singapore).

Our third *SEA View* article highlights the Corruption Eradication Commission's (KPK) step-up in enforcement against corporate malfeasance and forecasts the longevity of this stance with upcoming leadership changes at Indonesia's anti-corruption body.

Wednesday, 29 May 2019 was a historic day in the fight against corporate misconduct in Indonesia. The KPK has indicted its first corporate for alleged money laundering.

Considering that the KPK only started to prosecute corporate liability in 2018, this was a legitimate leap in the fight against corruption amidst upcoming leadership changes at the Indonesian corruption organization. The current leadership's term concludes in December 2019. How these changes play out will inform the future domestic anti-corruption stance and if recent trends are merely one-hit fads.

Corporate criminal liability

Corporate criminal liability is not a new concept in Indonesia. More in theory than in practice, it has been a concept in the Indonesian legal system since the 1950s. More than 80 laws domestically are designed to impact corporate malfeasance. Nevertheless, enforcement against corporates has historically been low, with what few successes and pursuits only centered on environmental cases.

Why has this been the case? Those same amorphous 80 laws. Unclear procedural law has been identified as the main factor hampering law enforcement agencies' efforts to prosecute corporate crime. Specifically for anti-bribery and corruption enforcement, there is only one successful conviction against a corporation since the enactment of the current anti-corruption legislation in 1999. The investigation/prosecution of the said case was not managed by the KPK but rather by the Attorney General's Office (AGO).

A paradigm shift then occurred

The KPK, working together with the Supreme Court, police, and the AGO (these latter two entities also investigate corruption with/separately to, the KPK) moved to draft regulations on handling corporate crime prosecutions. In late 2016, the Indonesian Supreme Court finally issued regulations that detailed procedures for prosecuting corporate crime (Regulation 13/2016).

The distinction between regulations and laws in Indonesia is worth exploring. Strategic considerations were made when contemplating how corporate crime prosecutions should be published. Ideally, a law would be the perfect form for the regulation, however, for such guidance to become a law, the Indonesian parliament must buy into passing a bill. As such, the KPK and these other bodies worked with the Supreme Court to issue 13/2016 as a regulation, as this was quicker and easier to pass as opposed to a law. However, regulations have limitations as they are only binding for the judiciary.

Since the issuance of Regulation 13/2016, enforcement has increased, but at a crawl. The KPK named its first corporation suspect in 2018. And to date, the KPK has only named four corporations as suspects for bribery/corruption offenses and one for money laundering (the most recent indictment on 29 May 2019). Out of these four corporations, one is a state-owned company. However, the number of investigations is expected to grow. The KPK has indicated there are several corporations currently under investigation. Other than the KPK, the police have now also named at least one corporation as a suspect for bribery/corruption offenses.



In January 2019 the Corruption Court finally rendered its judgment against one of those corporations. PT Nusa Konstruksi Enjiniring (NKE), a publicly traded construction company, was sentenced to pay a monetary penalty of approximately Rp85 billion (approximately US\$6 million) calculated by reference to the profits gained on the projects, a fine of Rp700 million, and suspension from participating in government tender projects for six months. NKE's conduct emphasizes manipulating bidding processes in NKE's favor. NKE's former President Director Dudung Purwadi was also found guilty of corruption and sentenced to almost five years in prison and a paltry fine of approximately US\$17,500.

January was a significant step for the fight against corporate corruption in Indonesia. Whilst the penalties do not appear as extreme as those proffered across the Atlantic, a bar from government tenders has led to corporates with an Indonesian presence sitting up and taking notice. The KPK has acknowledged this, too. And this has prompted discussions to put a bill converting Regulation 13/2016 into law, thus affording it greater force.

The May 2019 charges broadens the corporate enforcement space with the pursuit of money laundering offenses committed by PT Putra Ramadhan (Putra). Putra mixed money from several government funds designed to assist specific regions, particularly the funds designated for the beachy region of Kebumen, southern Java. This charge is inexorably linked to the progress made

by the KPK and Regulation 13/2016 in bringing corporate misconduct to the enforcement spotlight.



Peering into the future for corporate criminal liability?

It can be expected that the KPK and other law enforcement agencies will continue or step up their enforcement against corporations. Moreover, with the reelection of Jokowi as president of the Republic of Indonesia this year, the political support for robust enforcement will continue.

The KPK has stated that it will change its modus operandi, and move to focus on prosecuting corporates. However, we think this is unlikely, as individuals will still remain the focus, but such bold statements are unlike the past because corporate liability is being recognized.

Considering the trend of prosecuting corporations, Indonesia is following other Association of Southeast Asian Nations that have also started to shift their enforcement against corporates (such as Vietnam and Thailand). Corporates must be equipped with tools to mitigate the risk of prosecution, now not merely from the enforcement epicenters in London and the United States, but also from their domestic and regional centers. Adequate procedures to prevent bribery/corruption must be implemented. In Indonesia, such procedures can be relied on as a defense for a prosecution. Under Article 4 of Regulation 13/2016, judges will consider a defendant entity's adequate procedures in rendering a sentence.

Multinationals must be attune to local challenges and in Indonesia it is not uncommon that pressure and influence is exerted in the form of bribery to achieve or even maintain commercial goals. Specific programs must be developed to address the high and real risk of public bribery.

Leadership change looms

Across the world, within the last 12 months, much attention has been given to changes at the United Kingdom's Serious Fraud Office, with the appointment of Lisa Osofsky, and the U.S. Department of Justice's (DOJ) own revolving door policy, with the Foreign Corrupt Practices Act

(FCPA) assistant chief only a few weeks ago crossing Washington D.C.'s mall to take up another departmental position with Veteran Affairs. Lesser interest has been placed on the leadership shifts away from global enforcement headquarters.



The KPK is steered by five personnel: a chairman with four concurrent vice-chairman. The five leaders are state officials who hold office for five years and can only be reelected for one term. The next cycle runs from 2019-2023, and with the current cohort's term concluding on 21 December 2019, the mooted names include investigators and professors. Their direction at the independent KPK could dictate the emphasis placed on corporate liability, though they will also be influenced by the direction of enforcement abroad. The United Kingdom, United States, and Singapore are frequently cited by the KPK elite as markers of the anti-corruption standard of enforcement.

Leading the KPK is not without risk. In January 2019 a bomb was left at the residence of the KPK chairman and Molotov cocktails thrown at the deputy chairman's residence. In April 2017 acid was thrown at a senior investigator.

When the KPK named the latest corporate as a suspect of bribery/corruption offenses in March 2019, the chairman of the KPK stated that (unofficial translation): *"The legal process against the said corporation is expected to provide valuable lessons for other corporations to run their business in healthy ways and comply with the good corporate governance principles such as developing internal policy for not providing bribery or gratification against government officials."*

This statement could be taken from the footsteps of the Royal Courts of Justice in London after a Deferred Prosecution Agreement (DPA), from the podium at the DOJ, or on the webpages of the U.S. Securities and Exchange Commission. Corporate liability is no longer dormant in Indonesia – are you alive to it? And will this stay alive past December 2019?

Contacts



Chalid Heyder
Office Managing Partner, Jakarta
T +62 21 2788 7911
chalid.heyder@dnfp.com



Teguh Darmawan
Senior Associate, Jakarta
T +62 21 2788 7900
teguh.darmawan@dnfp.com



Khushaal Ved
Associate, Singapore
T +65 6302 7137
khushaal.ved@hoganlovells.com

SEA View

Since April 2019 our monthly periodical has featured investigation, compliance, and regulatory developments in Southeast Asia (SEA). For a 12-month period, one monthly article will showcase our insights on particular developments in the region, liaising with our extensive global network. We draw on the firm's market-leading practices, including our assembled Global Regulatory team, to lead clients' businesses through challenges encountered in and out of SEA. *SEA View* is horizon spotting in practice. This month's analysis arrives from Indonesia, having showcased our know-how on navigating sanctions for financial institutions and the key regulatory developments for the mining industry in Australia and the region. Next month we will have an update on developments in Hong Kong.

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2019. All rights reserved.