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LEGAL INDUSTRY

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ENN Energy Holdings joins **D&A LLC, South Korea**, and **Foster Legal, Indonesia**, to discuss cybersecurity and data protection challenges for energy companies in the region



Ayik C. Gunadi
Editorial Director

Indonesia's New Criminal Code and Procedure Law Overview

Effective January 2, 2026, Indonesia put into effect a new Criminal Code ("**New KUHP**") under Law No. 1 of 2023 and replaced the 1981 criminal procedure law with Law No. 20 of 2025 (l as "**New KUHP**"), marking a major change in the country's criminal justice system. These updates replace colonial-era framework criminal code with modernized legal standards that better represent Indonesia's current social values, constitutional rights, and international commitments.

New KUHP

The New KUHP modernizes Indonesia's substantive criminal law by clarifying offense elements and introducing new provisions that reflect contemporary values. It also adds new crimes like extramarital sex and cohabitation, prompting privacy debates, and adopts sentencing principles focused on proportionality and rehabilitation. Judges may impose alternatives to imprisonment, such as community service (*pidana kerja sosial*), probation (*pidana pengawasan*), or fines.

A key innovation is the explicit recognition of corporate criminal liability. Corporations are treated as subjects of criminal law, and liability can attach not only to the entity but also to individuals who direct or benefit

from corporate misconduct, such as managers, controllers, and beneficial owners, when offenses occur within the scope of corporate activities or unlawfully benefit the corporation. Sanctions include substantial fines and additional penalties such as restitution, remediation of harm, fulfilment of neglected obligations, license revocation, confiscation of assets or profits, publication of judgments, temporary closure or freezing of operations, and even corporate dissolution.

New KUHAP

The New KUHAP modernizes the process of investigation, prosecution, and adjudication of criminal cases. It strengthens procedural safeguards and enhances the protection of suspects and defendants through clearer rules on arrest, detention, and access to legal counsel, including an explicit provision granting witnesses the right to be accompanied by legal counsel during examinations before investigators. The law also introduces stricter evidentiary standards and robust mechanisms to prevent wrongful convictions and curb abuse of authority.

Importantly, the New KUHAP promotes restorative justice and introduces mechanisms such as plea bargaining and deferred prosecution agreements. Plea bargaining is available for first-time offenders facing charges punishable by up to five years' imprisonment or fines within specified limits, subject to judicial oversight and, where appropriate, restitution to victims. Deferred prosecution agreements, on the other hand, are designed for corporate defendants, allowing prosecutors to postpone prosecution under negotiated terms that require remediation of harm, implementation of compliance measures, and protection of victims.

Implications and Challenges

While the new laws represent progress in updating Indonesia's criminal justice system, they have generated considerable public discussion. Critics express concerns about potential infringements on civil liberties and the practicality of enforcement, especially regarding morality-based provisions. Ongoing dialogue among legal professionals, civil society, and policymakers will be crucial for effective implementation and future refinement.

In summary, Indonesia's New KUHP and New KUHAP signify a major step towards a modern, rights-based legal system. As the country adapts to these changes, ongoing evaluation and reform will be essential to balance justice, social values, and individual freedoms.

*Written in collaboration with **Rosevelt Riedel Lontoh**.*

M&A in Mining Industry

Introduction

Indonesia's investment momentum remains strong. The Investment Coordinating Board (**BKPM**) reported that in Q3 2025, realized investment reached IDR 491.4 trillion (approx. USD 29.6 billion), an increase of 13.9% year-on-year and accounting for 25.8% of the annual target. Mining continues to be a key driver, ranking second with IDR 55.9 trillion (approx. USD 3.36 billion) in investment. Supported by the ban on raw mineral exports and the push for downstream processing, investor interest in the sector remains high. However, due to complex and lengthy licensing processes for new mining companies, involving competitive tenders and extensive regulatory requirements, foreign investors often prefer acquiring existing mining companies as a more efficient entry strategy.

M&A in Indonesia

In Indonesia, a company acquisition is legally defined as the acquisition of shares that results in a change of control of a company. A company acquisition may be carried out either through a share transfer from existing shareholders or by subscribing to newly issued shares of the company. In either case, approval from the General Meeting of Shareholders ("**GMS**") is generally required.

The GMS approval must be restated in a notarial deed and submitted by the notary, together with the required supporting documents, to the Ministry of Law to obtain a notification receipt. Under a recent policy, the Ministry conducts a substantive review of the submission, which may take up to 14 working days.

M&A for Mining and Downstream Mineral Companies

Any shares transfer in a mining company holding Mining Business License (*Izin Usaha Pertambangan* or "**IUP**") would require a prior approval from the Minister of Energy and Mineral Resources ("**MEMR**"). Law No. 4 of 2009 as amended ("**Mining Law**") expressly prohibits the transfer of shares in IUP holders without first securing approval from the MEMR. Mining Law further provides that MEMR approval can be given after meeting the following requirements:

- The IUP holder has completed its exploration stage, as evidenced by the availability of data of resources and reserves; and
- The IUP holder has fulfilled the administrative, technical, environmental, and financial requirements.

With regard to the transfer of shares in a mining company that holds the status of a publicly listed company, given the specific nature of this situation, there may be different procedures involved compared to other share transfers as discussed above.



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Although foreign investment in mining companies is permitted up to 100% foreign shareholding, a foreign-invested mining company is subject to a mandatory divestment obligation. Under this requirement, at least 51% of the shares in the company held by foreign shareholders must be gradually divested, starting from the production phase, in a sequential order to the Indonesian Central Government, regional governments, state-owned enterprises, regional-owned enterprises, and/or domestic private companies. The timeline for the divestment varies by mining method and integration status, gradually increasing over specific years until reaching 51%.

In contrast to mining companies, share acquisition transactions in downstream mineral companies do not require approval from any government authority, and are subject only to the general share acquisition procedures under Indonesian company law.

In recent years, there has been a trend in share acquisition transactions involving downstream mineral companies for the deal package to also include a commercial arrangement, under which the buyer may require, or the seller may offer, rights to purchase products produced by the company's processing or refining facilities.



In the Firm

• ABNR Has Claimed the Title of Indonesia Law Firm of the Year at the 12th Annual Asian Legal Business (ALB) Indonesia Law Awards

For the second year in a row —and the third time since 2022— ABNR has claimed the title of Indonesia Law Firm of the Year at the 12th Annual Asian Legal Business (ALB) Indonesia Law Awards, presented by Thomson Reuters. This recognition cements ABNR's standing as one of Indonesia's most consistently awarded firms across key practice areas.

In addition to the top national accolade, ABNR also received awards for:

- Islamic Finance Law Firm of the Year, recognizing our role in advising on innovative Sharia-compliant financing and capital-market transactions that continue to shape Indonesia's growing Islamic finance landscape.
- Aviation Law Firm of the Year, reflecting our experience advising global lessors, financiers, and Indonesian carriers on complex aircraft leasing, financing, and regulatory matters.

• ABNR Has Once Again Been Recognized by IFLR 1000 in its 2025 Rankings

We are delighted to be ranked Tier 1 in Banking, M&A, and Project Finance, reaffirming our position at the forefront of Indonesia's transactional and financing markets.

In addition, ABNR continues to be top-tier in Capital Markets (Debt & Equity), Project Development, and Restructuring & Insolvency.

Notably, we are also recognized as Active in Islamic Finance, reflecting our growing capabilities in this important sector for Indonesia and the region.

Beyond practice rankings, IFLR1000 has also recognized the strength of our lawyers across levels. This includes rare designations such as Market Leader and Expert Consultant, distinctions awarded to only a handful of lawyers in Indonesia, as well as multiple recognitions as Highly Regarded, Women Leaders, Rising Stars, and Notable Practitioners.



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