

# WHAT HAS CHANGED IN INDONESIA'S CRIMINAL JUSTICE SYSTEM

*A Quick Guide to the  
2023 Criminal Code and  
the 2025 Code of Criminal Procedure*

# What Has Changed in Indonesia's Criminal Justice System? A Quick Guide to the 2023 Criminal Code and the 2025 Code of Criminal Procedure

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## Abbreviation:

1. Old Criminal Code (*Wetboek van Strafrecht* 1915): CC 1915
2. New Criminal Code (Law No. 1/2023): CC 2023
3. Old Criminal Procedure Code (Law No. 8/1981): CPC 1981
4. New Criminal Procedure Code (Law No. 20/2025): CPC 2025
5. Criminal Adjustment Act (Law No. 1/2026): CAA 2026

## I. INTRODUCTION

Indonesia just enacted three new laws that would greatly affect the Criminal Justice System in Indonesia. The Criminal Code (CC) 1915 as a Dutch colonial inheritance will be replaced with the CC 2023. The Old Criminal Procedure Code (CPC) 1981 will also be replaced by the CPC 2025. Lastly, the Criminal Adjustment Act (CAA) 2026 will also come into effect, which will revise some provisions in the CC 2023 and over 180 sectoral laws governing criminal provisions.

## II. SELECTED ISSUES REGARDING THE CRIMINAL CODE (CC 2023) & CRIMINAL ADJUSTMENT ACT (CAA 2026)

The CC 1915 consists of 3 (three) books, namely: (i) general provisions; (ii) criminal offenses (*kejahatan*); and (iii) violations (*pelanggaran*). Under the 2023 Criminal Code, however, this structure has been changed to only 2 (two) books, namely: (i) general provisions; and (ii) criminal offenses. The previous third book on violations is no longer regulated in a separate book, but has instead been incorporated into Book Two.

In general, one of the most significant changes introduced by the CC 2023 lies in Book One, particularly in relation to the concept of punishment and sentencing. First, regarding the types of punishment, the CC 2023 introduces 2 (two) new principal punishments, namely suspended sentence (*pidana pengawasan*) and community service (*pidana kerja sosial*). In addition, the CC 2023 also introduces 2 (two) new additional punishments, namely restitution and the fulfilment of local customary obligations. Second, regarding sentencing the CC 2023 now regulates the philosophy and guidelines of sentencing, including the purposes of punishment, the factors that judges must take into account when imposing a sentence, and standards for determining the type of sanction. Book Two has likewise undergone several changes, including the consolidation into the Criminal Code of criminal provisions previously regulated in various other laws, as well as the

addition of and amendments to several criminal offenses, including those concerning morality and decency, narcotics, and freedom of expression.

## **BOOK I: REFORMS TO THE GENERAL RULES ON PUNISHMENT AND SENTENCING**

### **A. General Principle of Sentencing under the Criminal Code 2023 / CC 2023**

1. Article 51 of the CC 2023 explicitly sets out the purposes of punishment, namely to:
  - a. prevent criminal offenses;
  - b. rehabilitate offenders;
  - c. resolve the conflict arising from a criminal offense, restore balance, and foster a sense of security and peace within society; and
  - d. cultivate remorse in the offender and relieve their sense of guilt.
2. Article 54 of the CC 2023 provides a structured list of factors that must be considered by the judge, the list is not strictly closed. Judges still retain discretion to consider other factors outside the statutory sentencing guidelines.

<b>Sentencing Factors</b>			
1.	the degree of culpability of the offender in committing the criminal offence	7.	the life history, social circumstances, and economic circumstances of the offender
2.	the motive and purpose for committing the criminal offence	8.	the impact of the sentence on the future of the offender
3.	the mental attitude of the offender	9.	the impact of the criminal offence on the

			victim or the victim's family
4.	whether the criminal offence was committed with prior planning or without prior planning	10.	forgiveness from the victim and/or the victim's family
5.	the manner in which the criminal offence was committed	11.	the values and sense of justice prevailing in society.
6.	the attitude and conduct of the offender after committing the criminal offence		

3. The CC 2023 also establishes guidelines for determining the type of sanction, including non-custodial punishments and fines. [Art. 70 and 80 CC 2023].

#### **B. Shifting the Paradigm: From Prison as the “Primary Punishment” to Prison as the Last Resort**

Through the CC 2023, imprisonment is preferably opted out in cases of criminal acts which are punishable by imprisonment of no more than 5 years with certain circumstances, such as: the defendant is a child, the defendant is over 75 years old, the defendant has paid restitution to the victim, the crime was committed due to negligence, etc. [Art. 70 (1) CC 2023]. In this case, the court can choose an alternative punishment other than imprisonment, namely:

1. **Criminal fines** of at least Category III/IDR 50,000,000 and at most Category V/IDR 500,000,000 [Art. 71 CC 2023 & Art. 78-83 CC 2023 & CAA 2026].

2. **Suspended Sentence**, with a maximum probation period of 3 years, and can be attached with special conditions, such as: requirement to report regularly, prohibition from visiting certain places, prohibition from meeting certain people, requirement to pay compensation to the victim, etc. [Art. 75-77 CC 2023 & CAA 2026].
3. **Community Service**, which can be sentenced for a maximum period of 240 working hours [Art. 85 CC 2023]. Community Service can only be imposed when the judge wishes to impose a maximum prison sentence of 6 months or a maximum fine of Category II/IDR 10,000,000.

*\*) Note: Imprisonment remains the primary punishment for criminal acts which is punishable by imprisonment of 5 (five) years or more, criminal acts with minimum mandatory punishment, and criminal acts that are considered very dangerous or detrimental to society. [Art. 70 (2) CC 2023].*

### **C. Restitution for Victims of Crime**

1. CC 2023 regulates a new type of additional punishment, namely the payment of compensation (restitution). If a crime causes real harm to the victim, the judge can actively impose this additional punishment on the perpetrator, so that the perpetrator is required to pay restitution to the victim. [Art. 66 (1) d CC 2023].
2. Investigators, Public Prosecutors, and Judges are required to inform victims of their right to restitution [Article 179 (1) CPC 2025].
3. Investigators, Public Prosecutors, and Judges are also required to facilitate the calculation for the restitution amount [Article 179 (2) CPC 2025].
4. To ensure that compensation will be paid:
  - a. The suspect or defendant can voluntarily deposit a sum of money with the local district court clerk as a guarantee of compensation (consignment). [Art. 179 (3) CPC 2025];  
or

- b. Investigators may confiscate the assets of suspects/defendants as collateral for compensation [Art. 179 (4) CPC 2025]. The confiscated assets must have a value equal or similar to the amount of compensation for the crime. The confiscation of the suspect/defendant's assets must also be based on a court warrant. [Art. 179 (4) CPC 2025].

**D. Fulfilment of Local Customary Obligations [Art. 66 (1) F, Art. 96, & Art. 97 CC 2023]**

1. The CC 2023 introduces fulfilment of local customary obligations as a new form of additional punishment. As an additional punishment, it functions as a supplement to the principal punishment where the principal punishment alone is considered insufficient to achieve the purposes of sentencing.
2. Under the CC 2023, this refers to customary law that remains alive and develops within Indonesian society, and its application must be reinforced through a Regional Regulation (*Peraturan Daerah*). In other words, the customary offense must first be translated into a regional legal instrument before it can operate within the national criminal law system.
3. This additional punishment is prioritized where the offense meets the requirements under Article 2(2) CC 2023. That means the relevant living law applies only in the place where it lives, must not already be regulated in the CC 2023, and must be consistent with Pancasila, the 1945 Constitution, and human rights.

**E. Capital Punishment and Death Penalty Commutation [Art. 98-102 CC & Art. 98-101 CAA 2026]**

1. The capital punishment is positioned as a special sentence, which is imposed with a 10-year probation period. If within the probation period, several requirements are fulfilled (i.e., the convicted person demonstrates commendable attitude and conduct), the capital punishment is converted into life

imprisonment through a Presidential Decree (“*Keputusan Presiden*”)

2. If the pardon application is rejected, but no execution is carried out within 10 years from the date the pardon is rejected, the capital punishment is, by law (*demi hukum*), converted into life imprisonment.
3. The implementation of capital punishment for pregnant women, women who are breast-feeding their babies, or mentally ill persons is postponed until said women give birth, said women no longer breastfeeding their babies, and mentally ill persons are recovered.
4. The probation period is calculated from the date the judgment becomes final and binding.
  - (-) The period of arrest and detention is not deemed as time served that can be credited toward the sentence.
  - (-) The probation period calculation will differ across prisoners. This may discourage convicted persons from pursuing legal remedies so that the probation period can commence earlier, as if it “prohibits” correction of judicial decisions.

## **BOOK II: NEW CRIMINAL OFFENSES**

### **A. Criminal Provisions Related to “Moral Crimes” & Decency (“*Kesusilaan*”)**

#### **1. Cohabitation (“*Kohabitasi*” or “*Kumpul Gebouw*”) [Art. 412 CC 2023]**

Any person who lives together as husband and wife outside of marriage shall be sentenced with imprisonment for a maximum of 6 (six) months or a maximum criminal fine of category II/IDR 10,000,000.

*\*) Note: The crime as referred to in paragraph (1) shall not be prosecuted unless it is reported by: spouses; parents, or their children; Without a report, law enforcement will not process this offense [Art. 412 (2) CC 2023].*

#### **2. Expansion of Adultery (“*Zina*”) Definition [Art. 411 CC 2023]**

Any person who has sexual intercourse with a person who is not their husband or wife, shall be sentenced due to adultery, with imprisonment for a maximum of 1 (one) year or a maximum criminal fine of category II/IDR 10,000,000.

*\*) Note: Prosecution may only be initiated by the husband or wife for a person who is bound by marriage, and by the parents or child for a person who is not bound by marriage.*

The scope of Adultery (zina) under the CC 2023 is expanded. It no longer only criminalizes the married party but now also targets couples who are not married.

## **B. Criminal Provisions Relate to Freedom of Expression**

### **Direct public insult on the Honor or Dignity and Prestige of the President and/or Vice President [Art 218 (1) CC 2023]**

Any Person who assault the honor or dignity and prestige of the President and/or Vice President in public, shall be sentenced with imprisonment for a maximum of 3 years or a maximum criminal fine of category IV/IDR 200,000,000

*\*) Note: it is not an assault to the honor or dignity and if the act is carried out in the public interest or self-defense. [Art 218 (2) CC 2023]. This offenses are complaint-based offenses and may only be prosecuted upon a complaint by the president and/or vice president [Art 220 CC 2023]*

## **C. Criminal Provisions Relate to Drug-Related Crimes**

Through CAA 2026, drug-related crimes no longer have mandatory minimum sentences. Here are some of the most common drug-related crimes:

### **1. Possession of Drugs [Art. 111 Drug Law 35/2009 & Appendix 3 CAA 2026 and Art. 609 CC 2023]**

- Any Person who controls or possesses class 1 narcotics shall be sentenced with imprisonment for a maximum of 12 years and/or a fine of up to Category VI/IDR2.000.000.000. *(Previously, the mandatory minimum was 4 years.)*
- If the amount of narcotics exceeds 5 grams (for non-plant narcotics) or exceeds 1 kilogram or 5 plants (for plant narcotics), the penalty is increased to life

imprisonment or a maximum of 20 years and/or a fine of up to Category VI/IDR2.000.000.000. *(Previously, the mandatory minimum was 5 years.)*

## **2. Buying and Selling Drugs [Art. 114 Drug Law 35/2009 & Appendix 3 CAA 2026]**

- Any Person who buys or sells class 1 narcotics shall be sentenced with life imprisonment or a maximum of 20 years and/or a fine of up to Category VI/IDR2.000.000.000. *(Previously, the mandatory minimum was 5 years.)*
- If the amount of narcotics exceeds 5 grams (for non-plant narcotics) or exceeds 1 kilogram or 5 plants (for plant narcotics), the penalty is increased to capital punishment, life imprisonment or a maximum of 20 years and/or a maximum fine of up to Category VI/IDR2.000.000.000 with plus 1/3. *(Previously, the mandatory minimum was 6 years.)*

## **3. Producing Drugs [Art. 610 CC 2023]**

- Any Person who produces class 1 narcotics shall be sentenced with imprisonment for a maximum of 15 years and/or a fine of up to Category V/IDR500.000.000. *(Previously, the mandatory minimum was 5 years.)*
- If the amount of narcotics exceeds 5 grams (for non-plant narcotics) or exceeds 1 kilogram or 5 plants (for plant narcotics), the penalty is increased to capital punishment, life imprisonment or a maximum of 20 years and/or a maximum fine of up to Category VI/IDR2.000.000.000. *(Previously, the mandatory minimum was 5 years.)*

## **III. SELECTED ISSUES REGARDING THE CRIMINAL PROCEDURE CODE 2025 (CPC)**

In late 2025, Indonesia officially enacted a new CPC to replace the CPC 1981. The following are some of the changes introduced by the 2025 Code of Criminal Procedure.

## **A. Diversion and Out of Court Settlement:**

### **1. Voluntary Maximum Fines Payment for Petty Crimes (“Pembayaran Denda Maksimal secara Sukarela untuk Tindak Pidana Tidak Serius”) [Art. 24 (2) i & j CPC 2025; Art. 71 (2) e & f CPC 2025; Art. 132 (1) d & e CC 2023]**

- a. Where a suspect/defendant is investigated or prosecuted for an offense punishable only by a fine of up to Category II/IDR 10,000,000 [Art. 132 (1) d CC 2023], the Investigator or Prosecutor may offer the suspect/defendant the option to pay a fine equal to the maximum fine. If the suspect/defendant agrees to pay, the case is dropped, as indicated by the Investigator issuing a warrant of termination of investigation (SP3) or by the Prosecutor issuing a warrant of termination of prosecution (SKP2).
- b. In addition, where a suspect/defendant is investigated or prosecuted for an offense punishable by a maximum imprisonment of 1 year, or a fine of up to Category III/IDR 50,000,000 [Art. 132 (1) e CC 2023], the Investigator or Prosecutor may offer the suspect/defendant the option to pay a fine in the amount of Category IV/IDR 200,000,000. If the suspect/defendant agrees to pay, the case is dropped, as indicated by the Investigator issuing a warrant of termination of investigation (SP3) or by the Prosecutor issuing a warrant of termination of prosecution (SKP2).
- c. This voluntary payment must be made no later than before the Prosecutor reads out the Prosecution Letter at trial.

*\*) Note: This provision is an update to the “Denda Damai” procedure under Art. 82 (1) CC 1915.*

### **2. Fines Negotiation (“Denda Damai”) [Art. 66 CPC 2025]**

- a. Prosecution may be terminated where the suspect pays a fine in an amount approved by the Attorney General.
- b. This procedure applies on a limited basis to taxation offenses, customs offenses, natural resources and mineral offenses, and other economic offenses [Art. 92 (3) D-GR-CPC].

- c. (-) The law does not clearly regulate the fine amount that must be paid, for example, whether it must equal the statutory maximum fine, or whether there are minimum and maximum boundaries that would define the negotiation range.

### **3. Case Disposal Based on Restorative Justice [Art. 79-84 CPC 2025]**

- a. In principle, case disposal through a Restorative Justice approach may be applied to offenses that cause real harm to the victim, and to offenses punishable by a maximum imprisonment of 5 years, or punishable only by a fine with a maximum of Category III/IDR 50,000,000 [Art. 80 (1) a CPC 2025].
- b. Restorative Justice case disposal begins with a mediation offer by law enforcement, or a mediation request by the victim or the suspect/defendant [Art. 81 (1) CPC 2025]. The mediator must be a Preliminary Investigator, Investigator, or Prosecutor who is not handling the case [Art. 83 (1), 85 (1) CPC 2025]. If mediation succeeds, the result is set forth in a peace agreement letter, which may include obligations for the suspect/defendant, such as [Art. 79 (1) CPC 2025]:
  - (1) The suspect/defendant returns property obtained from the crime to the victim;
  - (2) The suspect/defendant pays compensation for the victim's losses;
  - (3) The suspect/defendant repairs damage arising from the criminal act experienced by the victim.
- c. Within no later than 7 (seven) days, the suspect/defendant must fulfill the obligations set out in the peace agreement letter [Art. 79 (3) CPC 2025]. If all obligations are fulfilled, the case is dropped, as indicated by the Investigator issuing a warrant of termination of investigation ("SP3") or by the Prosecutor issuing a warrant of termination of prosecution ("SKP2").
- d. Thereafter, the warrant of termination of investigation ("SP3") or the warrant of termination of prosecution

("SKP2") must be submitted to the Head of the District Court to obtain a court determination (*penetapan*) [Art. 79 (5), 84, and 86 CPC 2025].

- e. (-) The CPC 2025 does not regulate indicators for the Head of the District Court to accept or reject Restorative Justice determinations. This may reduce the court's determination into a mere formality.
- f. (-) The Restorative Justice procedure under the CPC 2025 eliminates the deterrence effect for offenders, because offenders are no longer sentenced to punishment (imprisonment, fines, community service, etc.), and are only required to restore the losses arising from the criminal act.

*\*) Note 1: This Restorative Justice procedure is prone to misuse. For example, it may be applied to a person who is not necessarily the actual offender, used to obscure the true offender, or conducted under coercion where there is an imbalance of power between the offender and the victim.*

*\*) Note 2: Restorative Justice is particularly vulnerable to misuse at the Pre-Investigation stage. This is because the stage remains highly closed and monopolized by Police/Preliminary Investigators' powers (without checks and balances). By contrast, once a case enters the Investigation stage, the Investigator's work is supervised by the Prosecutor.*

## **B. Objection to a Criminal Report that is Not Processed [Art. 23 (6) CPC 2025]**

Under the CPC 2025, if the Preliminary Investigator/Investigator does not respond to a criminal report within 14 (fourteen) days, the victim/reporter may submit a complaint to the investigator's superior or the official supervising the investigator.

- 1. (+) This type of complaint mechanism did not exist under the CPC 1981.
- 2. (-) The complaint mechanism remains within the same institution. There is no procedure to file a complaint to an external institution, such as the Pre-trial Hearing

(“Praperadilan”), the Prosecutor, or the Ombudsman, resulting in a weak checks and balances mechanism.

**C. Arrest and Pre-Trial Detention**

There is no significant difference in the regulation of arrest and pre-trial detention between the CPC 1981 and the CPC 2025. Investigators and Prosecutors may order detention without a court warrant and without prior judicial examination or a court hearing (or, as it is known, “habeas corpus”), and the grounds for detention are not strictly regulated, thereby providing broad discretion to law enforcement [Art. 21 CPC 1981 and Art. 100 CPC 2025]. However, there are several differences between the CPC 1981 and the CPC 2025:

1. Comparison of detention grounds:

<b>Grounds for Detention</b>	
<b>Art. 21 CPC 1981</b>	<b>Art. 100 CPC 2025</b>
1. There are circumstances giving rise to concern that the suspect/defendant will flee.	1. The suspect/defendant attempts to flee
2. There are circumstances giving rise to concern that the suspect/defendant will destroy or remove evidence.	2. The suspect/defendant attempts to destroy or remove evidence
3. There are circumstances giving rise to concern that the suspect/defendant will re-offend.	3. The suspect/defendant re-offends
	4. The suspect/defendant’s safety is threatened, and the suspect/defendant requests to be detained

	5. The suspect/defendant ignores two consecutive summonses from the Investigator without a lawful reason
	6. The suspect/defendant provides information that is not in accordance with the facts during examination
	7. The suspect/defendant obstructs the examination process
	8. The suspect/defendant influences witnesses to lie

2. Under the CPC 2025, any arrest and detention carried out by Special Investigators (Sectoral) (e.g., Civil Servant Investigators/PPNS within Immigration, the National Narcotics Board, the Ministry of Environment, and Taxation and Customs) must first obtain an order from the Indonesian National Police (“*Polri*”) Investigator [Art. 93 (3) and 99 (3) CPC 2025]. This provision may be used by the suspect/defendant for defense purposes. For example, when a suspect/defendant is investigated by Special Investigators (Sectoral), the completeness and validity of the *Polri* Investigator’s arrest and detention order become subject to challenge.

#### **D. Challenge to Undue Delay in a Pre-Trial Hearing (“Praperadilan”) [Art. 158(e) CPC 2025]**

1. (+) Under the CPC 2025, any undue delay may be challenged before the Pre-trial Hearing (“*Praperadilan*”). This is a new mechanism that was not regulated under the CPC 1981.
2. (-) The CPC 2025 does not regulate the procedure for examining undue delay at all, including the criteria for what

constitutes undue delay and the form or legal consequences of the Pre-trial Hearing judge's decision.

*\*) Note: Undue delay may occur at the stages of case reporting, Pre-Investigation, Investigation, Prosecution, and trial. However, undue delay most frequently occurs at the reporting and Pre-Investigation stages. This is because these stages remain highly closed and are monopolized by Police/Preliminary Investigators' powers (without checks and balances). By contrast, once a case enters the Investigation stage, the Investigator's work is supervised by the Prosecutor. Likewise, once a case enters trial, the process can be supervised by the public through hearings that are open to the public.*

#### **E. Surveillance Camera in Every Interrogation Process [Art. 30 CPC 2025]**

1. (+) Surveillance camera recordings may be used by the defendant for defense purposes at trial.
2. (-) The retention period for surveillance camera recordings is until the statute of limitations for the criminal offense expires. This is not feasible in practice; it would be more realistic if retention were limited to, for example, 5 (five) years after the judgment becomes final and binding.
3. (+) On the other hand, a sufficiently long retention period may be useful for defendants seeking Judicial Review (*Peninjauan Kembali*).

#### **F. Plead Guilty (“*Pengakuan Bersalah*”) [Art. 78, 205, and 234 CPC 2025]**

The Plead Guilty process may be conducted at two stages:

1. Plead Guilty before trial (Pre-Trial Phase). Plead Guilty at the pre-trial phase may be applied to offenses punishable by a maximum imprisonment of 5 years, or a fine of up to Category V/IDR 500,000,000 [Art. 78 (1) CPC 2025]. It begins with an offer from the Prosecutor for the suspect to plead guilty [Art. 78 (2) CPC 2025]. The Plead Guilty process is conducted in a “special” hearing before a single judge [Art. 78 (5) CPC 2025], and the suspect must be accompanied by an Advocate [Art. 78

- (3) CPC 2025]. If the suspect pleads guilty, the trial will proceed under a Summary Trial (“*Acara Pemeriksaan Singkat*”) [Art. 78 (9) CPC 2025].
2. Plead Guilty at the first hearing / Indictment reading (Trial Phase). Plead Guilty at the first hearing may be applied to offenses punishable by a maximum imprisonment of 7 years [Art. 234 (1) CPC 2025]. The plea is made before the judge. If the defendant pleads guilty, the trial will proceed under a Summary Trial (“*Acara Pemeriksaan Singkat*”) [Art. 234 (1) CPC 2025], and the sentence imposed may not exceed 2/3 of the maximum punishment of the charged offense [Art. 234 (5) CPC 2025].
  3. (-) The CPC 2025 regulates Plead Guilty twice in a conflicting manner. One provision limit Plead Guilty to offenses punishable by a maximum imprisonment of 5 years [Art. 78 (1) CPC 2025]; another provision allows Plead Guilty for offenses punishable by a maximum imprisonment of 7 years [Art. 234 (1) CPC 2025].
  4. (-) In addition, Plead Guilty for offenses punishable by a maximum imprisonment of 5 years [Art. 78 (1) CPC 2025] results in the case being tried through a Summary Trial (“*Acara Pemeriksaan Singkat*”) [Art. 78 (9) and 205 (3) CPC 2025]. Meanwhile, Plead Guilty for offenses punishable by a maximum imprisonment of 7 years [Art. 234 (1) CPC 2025] results in a Summary Trial (“*Acara Pemeriksaan Singkat*”) [Art. 234 (1) CPC 2025] and a sentencing cap of 2/3 of the maximum threatened punishment [Art. 234 (5) CPC 2025].  
*\*) Note: Conflicting articles of this kind create legal uncertainty, which may open room for illegal transactions (= corruption) in practice.*
  5. (-) Although the Plead Guilty provisions above regulate a “reward,” such as a 1/3 reduction from the maximum threatened punishment of 7 years imprisonment [Art. 234 (5) CPC 2025], in practice, the maximum imprisonment that can be imposed through the Summary Trial is no more than 3 years [Art. 257 (3) CPC 2025]. So, what is the practical value of the 1/3 reduction reward?

## **G. Selected Provisions Relating to the Equality of Arms Principle**

Several provisions in the CPC 1981 that protected the suspect/defendant's right to equality of arms are deleted or amended under the CPC 2025.

1. (-) There is no guarantee for the suspect/defendant will be able to have exculpatory witnesses heard. Article 35 CPC 2025 amends the CPC 1981 by removing the investigator's obligation to make efforts to secure or summon witnesses favorable to the suspect. Defense lawyers are therefore left to undertake such efforts themselves. At the same time, investigators may issue official summonses or compel attendance for witnesses they themselves propose. This creates inequality in evidentiary opportunities for suspects/defendants
2. (-) If at the Investigation stage the investigator is unwilling to include witnesses favorable to the suspect/defendant, it becomes even more difficult for the suspect/defendant to present those witnesses at trial. Article 210 CPC 2025 amends the CPC 1981 by allowing the judge to refuse to hear a witness whose testimony is not included in the case file. Under the CPC 1981, judges were required to hear witnesses, including witnesses favorable to the defendant, even if they had not yet been included in the case file (i.e., not examined during the Investigation stage) and even if they were proposed by the defendant. This new provision may hinder the defendant's right to mount a defense, as it creates a risk that key defense witnesses will not be presented or examined.

## **H. Out of Court Settlement for Corporations: Deferred Prosecution Agreement for Corporations (DPA)**

Unlike the CPC 1915, the CC 2023 recognizes corporate criminal liability. In theory, any criminal offense that a natural person can commit can also be attributed to a corporation. In practice, not all crimes can be committed by corporations. Generally, corporate liability arises in financial crimes such as embezzlement, money laundering, and tax-related offenses, or in environmental crimes.

A corporation named as a suspect may submit an application for a DPA to the Prosecutor before the case is transferred to court [Art. 328 (3) CPC 2025]. The Prosecutor may impose conditions that, if fulfilled, serve as the basis for not proceeding to trial. These conditions include: the corporation pays compensation to the victim; the corporation implements a legal compliance program or anti-corruption corporate governance reforms; the corporation is required to report and cooperate with law enforcement during the deferred prosecution period; or the corporation is required to take other corrective measures as determined by the Prosecutor [Art. 328 (12) CPC 2025]. Negotiations on these conditions are conducted by the Prosecutor and the corporate suspect before a judge [Art. 328 (7) CPC 2025]. If the corporate suspect successfully fulfils all conditions imposed by the Prosecutor, the judge may determine the termination of the case [Art. 328 (13) CPC 2025].

(-) Similar to the Restorative Justice procedure above, this DPA procedure eliminates the deterrent effect for corporate offenders, because the corporation is no longer punished and is only required to pay compensation as a restorative measure or to fulfil other corrective obligations.

## **I. Strict Separation of Investigative and Prosecutorial Powers**

**1. Prosecutors do not control investigations.** The CCP 2025 places investigative authority in the hands of investigators (police), while prosecutors are primarily positioned at the charging and prosecution stages. Although such a separation might theoretically strengthen checks and balances, it does not necessarily do so in the CCP 2025 case. There is coordination between investigators and prosecutors, including the return of case files, supplementary investigations, and case evaluation meetings. However, prosecutors do not seem to have enough authority to significantly influence the direction of the investigation in line with trial requirements. Prosecutors do not have enough authority to meaningfully influence the direction of the investigation. Prosecutors are later expected to prove the case in court, yet they do not have adequate control

over how the evidence was gathered. [See Art. 2(2) CCP 2025 on functional differentiation and Art. 65 CCP 2025 on the powers of the public prosecutor]

**2. Limiting the exchange of case files weakens oversight.**

Another institutional concern involves limiting the iterative exchange of case files between investigators and prosecutors to just one initial transmission. Once a file has been returned by prosecutors to investigators, and investigators add further information through additional investigation, prosecutors seem to have little choice but to accept it, even if they still consider the investigation or evidence insufficient. Such a restriction is difficult to justify in complex cases, where case development, evidentiary needs, and file completeness often require ongoing exchanges before the case proceeds to court. [Art 61-62 CCP 2025]

**3. Removal of the prosecutor's authority to discontinue a case on the grounds of insufficient evidence or because the conduct does not constitute a criminal offense.**

Under the 1981 CCP, a prosecutor may discontinue prosecution where the evidence is insufficient, the alleged act does not constitute a criminal offense, or the case must be closed by operation of law. By contrast, CCP 2025 appears to confine discontinuance to cases involving the extinction of the right to prosecute, such as where the case must be closed by operation of law, there is a final judgment in the same matter, the prosecution is time-barred, or the defendant has died. Under the new regime, there appears to be no basis for discontinuing prosecution on the grounds of insufficient evidence or non-criminal conduct, both of which were previously recognised under Article 140 CPC 1981. This may create room for manipulation, including the deliberate submission of weak or inadequate evidence so that the case proceeds to court only to end in acquittal or collapse at trial. [See Art. 71 CCP 2025]

**4. The regulation of Crown Witnesses is also problematic.**

Under CCP 2025, investigators are authorised to determine Crown Witness status. This is difficult to justify, as Crown Witness status should be determined only by the prosecutor,

since it is closely tied to prosecutorial authority to offer sentencing-related benefits, such as a lesser charge, a lighter sentence, or a less severe form of punishment. This arrangement raises the risk that investigators may designate an offender as a Crown Witness and obtain incriminating testimony from that person, only for the prosecutor at a later stage to decline to recognise that status or to withhold any sentencing benefit. Therefore, any Crown Witness arrangement should be made only between the suspect and the prosecutor. [See Art. 22 CCP 2025]



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