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Justifying Grounds and Excusing Grounds under the New Indonesian Criminal Code

In 2023, the Government of the Republic of Indonesia enacted the Law of the Republic of Indonesia No. 1 of 2023 regarding the Indonesian Criminal Code, also referred to as the *Kitab Undang-Undang Hukum Pidana* ("KUHP"). In addition to repealing the former KUHP, the enactment of the new KUHP renders various provisions in various existing laws and regulations inapplicable, among others, those found of in the Anti-Human Trafficking Law, the Anti-Narcotics Law and the Anti-Money Laundering Law. This new KUHP was promulgated on 2 January 2023 and will become effective on 2 January 2026.

The KUHP regulates various provisions on criminal offenses, including terminology relating to the grounds (*alasan*) for justification and excuse. In this regard, the KUHP recognizes justifying grounds (*alasan membenar*) and excusing grounds (*alasan pemaaf*). A brief outline is provided below:

1. Justifying Grounds

A criminal offense constitutes an act that is subject to criminal sanctions and/or measures under the laws and regulations. To be considered a criminal offense, an act that is subject to criminal sanctions and/or measures under the laws and regulations must be unlawful or contrary to the law living within society.

Every criminal offense is inherently unlawful, unless there is a justifying ground. The relevant provisions provide that no person shall be subject to punishment for committing a prohibited act if such act was:

- a. carried out to implement a provision of the laws and regulations;
- b. carried out in compliance with an official order from a competent authority;
- c. necessitated by an emergency situation; and/or
- d. compelled and carried out in defence against an unlawful and imminent attack or threat of attack on oneself, another person, honour in the sense of decency, or property belonging to oneself or another person.

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2. Excusing Grounds

In addition to the justifying grounds described above, the KUHP also recognizes excusing grounds (*alasan pemaaf*). The relevant provisions are as follows:

- a. Criminal liability shall not be imposed on a child who, at the time of committing the offense, is under 12 (twelve) years of age;
- b. No person shall be subject to punishment for committing a criminal offence if such act was compelled by an irresistible force or by a threat, pressure, or force that could not be avoided;
- c. No person shall be subject to punishment for committing necessary defence that exceeds limits if such excess was caused by severe mental shock directly resulting from an unlawful and immediate attack or threat of attack; and/or
- d. An official order issued without proper authority does not absolve criminal liability, unless the person receiving the order believes in good faith that the order is authorized and that its execution falls within the scope of his/her duties.

Relation to Corporations

Under the KUHP, a corporation is recognized as a subject of criminal liability. A corporation includes legal entities in the form of limited liability companies, foundations, cooperatives, state-owned enterprises, regional-owned enterprises, or entities treated as such, as well as associations with or without legal entity status, and business entities in the form of partnerships (*firma*), limited partnerships (*persekutuan komanditer*), or entities treated as such in accordance with the laws and regulations.

A corporate criminal offense is an offense committed by a managerial officer holding a functional position within the corporation's organizational structure, or by a person acting under an employment relationship or any other arrangement for and on behalf of, or for the benefit of, the corporation within the scope of its business or activities, whether individually or jointly.

With respect to justifying and excusing grounds, any such ground that may be invoked by a managerial officer with functional authority, an order giver, a controller, and/or a beneficial owner of the corporation may likewise be invoked by the corporation, provided that such grounds directly relate to the criminal offense charged against the corporation.

If an individual holding a functional position within the corporation's organizational structure acts for and on behalf of, or for the benefit of, the corporation under an employment



relationship or other arrangement within the scope of the corporation's business, a justifying ground may be invoked on behalf of the corporation. For example, an employee who damages government-owned waste disposal pipes in order to save other employees of the company.

This Client Alert is intended to provide a brief overview only on several provision and may not cover all provisions under the KUHP, thus, cannot be deemed as a legal advice. Please do not hesitate to contact us if you need a more detailed discussion, advice, and/or have specific questions.

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