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THE DECLARATION OF A NATIONAL DISASTER BECAUSE OF THE COVID-19 PANDEMIC: WHAT IS THE IMPACT?

Introduction

President Joko Widodo has finally declared the spread of Coronavirus Disease 2019 (“COVID-19”) a National Disaster under Presidential Decree No. 12 of 2020 (“PD 12/2020”) which was issued on Monday, 13 April 2020. Through PD 12/2020, the President has strengthened the role of the National Disaster Mitigation Agency (*Badan Nasional Penanggulangan Bencana* / “BNPB”) as the COVID-19 Task Force (*Gugus Tugas Percepatan Penanganan Corona Virus 2019*). BNPB will lead the national effort to tackle the COVID-19 directly under the President’s command, in cooperation with the relevant ministries and regional government agencies. The President also emphasizes the need for central-regional government congruity in policy-making for COVID-19, as he has instructed the heads of regional governments to refer to the central government’s policies when establishing the policies for their respective regions.

The declaration of a national disaster is briefly regulated under Law No. 24 of 2007 regarding Disaster Mitigation (“**Disaster Mitigation Law**”), under which the criteria for the declaration of a national or regional disaster level include: the number of victims, material losses, damages to facilities, the area affected in the region and the socio-economic impact of the disaster. Under Government Regulation No. 21 of 2008 on the Implementation of Disaster Mitigation (“**GR 21/2008**”) which is an implementing regulation of the Disaster Mitigation Law, a disaster emergency is to be declared by the central or regional government, depending on the level of the disaster.

The President does not refer to any of the above criteria for a national disaster emergency in the recently issued PD 12/2020. However, on the date of issuance of PD 12/2020, 13 April 2020, the confirmed COVID-19 cases had officially reached 4,557 with 399 dead nationwide. From various sources, we gather that the numbers of confirmed cases and dead are growing exponentially every day.

The impact of the President’s national disaster declaration

The following consequences are worth noting following the declaration of the national disaster:

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a. BNPB's authority

As explained briefly above, the declaration of a national disaster by President Joko Widodo has strengthened the role of BNPB and broadened its authority. Under GR 21/2008, the declaration of a disaster emergency allows BNPB and the regional Disaster Mitigation Agencies (*Badan Penanggulangan Bencana Daerah*/"BPBD") to mobilize human resources, equipment and logistics swiftly, and gives them authority to procure goods and services, to use ready to use funds allocated by the government, and to issue orders to any institution in order to try to mitigate the disaster.

Since the central government has declared a national-scale disaster emergency, the BNPB is now performing the national command function over these efforts. Before PD 12/2020 was issued, the BNPB had no command function.

In addition to the above, the BNPB and BPBD also have control over foreign humanitarian assistance that includes the ability to use the equipment brought into Indonesia by foreign humanitarian personnel. In a disaster emergency, GR 21/2008 relaxes the immigration, excise and quarantine procedures for importing foreign humanitarian assistance.

b. Protecting citizens in times of disaster

The Disaster Mitigation Law makes sure that the basic needs of every affected person are met in times of a disaster emergency. Under GR 21/2008, this is the responsibility of various stakeholders, rather than the government's responsibility alone. Under GR 21/2008, it is also the responsibility of the public, business institutions, international institutions and non-governmental foreign institutions.

Further, under the Disaster Mitigation Law, the government may also aid affected people who lose their jobs due to a disaster by providing soft loans for productive businesses. The Law also emphasizes the protection of vulnerable groups who include the underaged, pregnant and nursing women, those with disabilities and the elderly. Protection, security, healthcare and psycho-social services are prioritized for these particular groups.

c. Restrictions on peoples' movement and activities

Although the Disaster Mitigation Law does not recognize restrictions on peoples' movements and activities like Health Quarantine Law does, the declaration of COVID-19 as a national disaster under PD 12/2020 may still provide a basis for the heads of regional governments to extend the Large-Scale Social Distancing/"LSSD" which applies in their regions for a certain time as a disaster mitigation measure. The LSSD, or restriction on peoples' movements and activities, currently applies in many areas worst hit by COVID-19 and has resulted in the closure of offices, businesses, schools, entertainment centers, and limited public transportation and other services. Currently, the LSSD must be proposed by the head of each regional government to the Minister of Health.

d. Impacts related to the law of contracts

From various news sources we note that on Tuesday, 14 April 2020, the Coordinating Minister for Politics, Legal and Security Affairs, Mahfud MD, conveyed that PD 12/2020 only serves as a notification of the occurrence of *force majeure* by the government. It does not automatically terminate any existing business contract. He explained that this notification leaves room for the parties to renegotiate their contracts.

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In our view, the declaration of COVID-19 as a national disaster by the government under PD 12/2020 could indeed support affected parties applying their *force majeure* clause, especially if their contracts only allow *force majeure* to apply if the Government declares a *force majeure* event. However, this still depends on the *force majeure* clause of the contract, and therefore must be assessed on a case-by-case basis.

For more information regarding *force majeure* and the COVID-19 pandemic, please refer to our following published advisory by clicking [[this link](#)].

Conclusion

Since the confirmed number of cases and deaths is increasing exponentially, effective and immediate action is essential to reduce the spread of COVID-19. The declaration of the COVID-19 pandemic as a national disaster under PD 12/2020 is a strategic step to ensure a smooth chain of command by strengthening the role of BNPB and the synergy between the ministries and other government agencies. It also provides a basis for applying the Disaster Mitigation Law and its implementing regulations to ensure the protection of people affected by the disaster.

PD 12/2020 may also provide a basis for regional government heads to extend LSSD in their regions. For business contracts, depending on the definition of *force majeure*, PD 12/2020 may serve as a legal basis for an affected party to claim that the COVID-19 pandemic is a *force majeure* event. However, this must be assessed on a case-by-case basis.

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