

COVID-19'S LEGAL CONSEQUENCES IN INDONESIA

As a response to the COVID-19 global pandemic, we have received a considerable number of inquiries as to how businesses should best respond to the impact of the COVID-19 crisis.

In this article, we will provide an overview of the applicable laws and regulations issued by the government in relation to various countermeasures and relief for businesses and the public alike. Potential liabilities arising from non-compliance thereof will also be covered, as well as practical issues emanating from the laws and regulations within various industries.

A. Provisions Concerning Social Distance and Lockdown in Indonesian Law

As the rapid spread of COVID-19 continues to evolve around the globe, we are hearing a lot about social distancing and lockdown, which have been applied by a few countries, such as Italy and France.

Meanwhile Social Distancing and Lockdown in Indonesia are stipulated under Law No 6 year 2018 on "Health Quarantine Law". Kindly have a look at [Attachment I](#) for more information or visit this link to download the PDF file: <https://bit.ly/2VdiVuZ>.

B. OJK's Stimulus Surrounding the Economic Slowdown due to COVID-19 Outbreak

Indonesian central bank has recorded an outflow of IDR 140,000,000,000,000 (one hundred forty trillion Indonesian rupiah) of foreign capital from the beginning of 2020. In fact, the current economic condition nationwide is struggling amidst the pandemic.

In an attempt to stabilize the market, the Financial Services Authority (Otoritas Jasa Keuangan - "**OJK**") promulgated 2 (two) stimuluses to date, as elaborated below in [Attachment II](#) or you may visit the link to download the PDF file: <https://bit.ly/2w0ve42>.

C. Employment Policies in Response to COVID-19

Public and private sectors are racing to create and implement emergency policies to save the economy and at the same time make contributions to prevent the spread of COVID-19. One of the policies is related to employment. For more information, kindly find the outline on employment matters related to Covid-19 with several key notes in [Attachment III](#) or visit the link to download the PDF file: <https://bit.ly/2UVFvXJ>.

D. Second Stimulus Package from Indonesian Government

The Indonesian government unveiled the second stimulus package through Minister of Coordinator for Economic Affairs Press Conference No. HM.4.6/32/SET.M.EKON.2.3/03/2020 dated 13 March 2020 ("**Press Conference**"). The second stimulus package includes the fiscal stimulus for period of April until September 2020, non-fiscal stimulus, stimulus within the financial sector and food policy in response to COVID-19.

Our legal team consisting of Stefanny O. Simorangkir, I Ketut Dharma Putra Yoga, and Zefanya Prabowo provides ground-breaking insights about the second stimulus package. Click [Attachment IV](#) to read more or visit the link to download the PDF file: <https://bit.ly/2X1Yu5L>.

E. Covid-19 in the Ambit of Force Majeure in Indonesia

Business transactions are currently or will be facing unwanted (and perhaps, insurmountable) hurdles ranging from mere delays to arduous or impossible performance of contractual obligations. Such occurrences could invoke a breach of contract claim, which usually translates to a claim for damages by the relevant party in the transaction.

Taking these unforeseen situations into consideration, Partner Narada Kumara with Associates Febriantoro Suardy, Muhammad Ghiffari and Naila Sjarif discusses the correlation between the COVID-19 outbreak and a possible force majeure defense in today's legal alert. Click [Attachment V](#) to read more or you can visit the link to download the PDF file: <https://bit.ly/2Vckfxa>.

F. Implementation of Large-Scale Social Restrictions within Jakarta

On 7 April 2020, Indonesian Minister of Health issued Decree No. HK.01.07/MENKES.239/2020 Tahun 2020 regarding the implementation of large-scale social restrictions (Pembatasan Sosial Berskala Besar – “**PSBB**”) within the Special Capital Region of Jakarta to expedite the handling of COVID-19 (“**Decree 01/2020**”).

Kindly have a look at the infographic provided below at [Attachment VI](#) for more information or visit the link to download the PDF file: <https://bit.ly/3a6zEVa>.

G. Court Proceedings in Indonesia amidst COVID-19 Outbreak

In response to the outbreak, the Supreme Court and lower instances court (High Court and District Court) have now taken protective measures and paused several hearings. The Supreme Court through its Executive Meeting dated 16 March 2020 (“**Executive Meeting**”) deemed in reference to the President of Republic of Indonesia's statement that the outbreak is now considered as a non-natural disaster. The court proceeding for certain types of cases should proceed as scheduled, whilst the remaining cases should be conducted through e-litigation.

Based on the resolution rendered from the Executive Meeting above, the Secretary of Supreme Court issued Circular Letter No. 1 of 2020 on Adaptation of Working System for Judges and Court's Officials as Prevention for the Spread of COVID-19 in the Vicinity of Supreme Court and Lower Judiciary Bodies ("**SCL 1/2020**"). Kindly have a look at [Attachment VII](#) for more information or visit the link to download the PDF file: <https://bit.ly/2VvReN3>.

H. Large-Scale Social Restriction Due to COVID-19: Impact on the Industrial Activities

The government of Indonesia has taken further measures to prevent the spread of Corona Virus Disease 2019 (COVID-19) by providing a legal basis for the implementation of large-scale social restriction through Government Regulation No. 21 of 2020.

The Indonesian Minister of Health, as instructed under such government regulation, issued guidelines for the implementation of large-scale social restriction under Regulation No. 9 of 2020 ("**Reg 9/20**").

One of the points emphasized under Reg 9/20 is the provision of holidays in workplaces, which refers to limitations of working activities in workplaces and replacing them with work-from-home arrangements.

There are exemptions for provision of holidays in workplaces for certain activities as stipulated under Reg 9/20. These exemptions include, among others, industrial companies and production activities. Kindly have a look at [Attachment VIII](#) for more information or visit the link to download the PDF file: <https://bit.ly/34GCPSg>.

Attachment I



PROVISIONS CONCERNING SOCIAL DISTANCE AND LOCK DOWN IN INDONESIAN LAW



Trivia

Social Distance and Lock Down in Indonesia is stipulated under Law Number 6 Year 2018 ("Health Quarantine Law").

Social Distance

According to Article 59 of Health Quarantine Law, social distance in Indonesia is called as Large-Scale Social Restrictions. A part of the Public Health Emergency response with aim to prevent the widespread of public health emergencies that are occurring between people in a certain area.

Large-Scale Social Restrictions referred above at least include:

1. schools and workplaces holidays;
2. restricting religious activities; and/or
3. limitation of activities in public places or facilities.

Various related parties shall coordinate and cooperate with each other to implement the Large-Scale Social Restriction in accordance with statutory provisions.





Lock Down

Indonesia is yet to regulate the specific provision regarding lockdown due to health conditions. Health Quarantine Law, however, provides some provisions quite similar with lockdown, which are: "Home Quarantine"; "Regional Quarantine"; "Hospital Quarantine"; or Large Scale Social Restrictions by Health Quarantine Officials.

With regard to COVID-19 epidemic, Regional Quarantine provision may apply. Regional Quarantine is defined as a population restriction in an area including the entrance area and its contents that are suspected to be infected with disease and / or contaminated in such a way as to prevent the possibility of spreading the disease or contamination.

- Article 1 Paragraph (10) of Health Quarantine Law

What are the consequences if an area is locked down?

1. Health Quarantine Officials must provide an explanation to the community in the local area before implementing the Regional Quarantine.
2. The quarantined area is given a quarantine line and is continuously guarded by the Health Quarantine Officer and the Republic of Indonesia National Police that are outside the quarantine area.
3. Quarantine members of the community may not enter and exit the quarantine area.
4. During the Regional Quarantine period, it turns out that one or several members in the region have suffered from a Public Health Emergency that is happening, so an Isolation action is taken and immediately referred to the hospital.

(In accordance to Article 54 of Health Quarantine Law)

Trivia

Attachment II

OJK'S STIMULUS SURROUNDING THE ECONOMIC SLOWDOWN DUE TO COVID-19 OUTBREAK

The trade market is apparently heading to a downfall because of the COVID-19 outbreak. Indonesian central bank has recorded an outflow of IDR 140,000,000,000,000 (one hundred forty trillion Indonesian rupiah) of foreign capitals from the beginning of 2020. In fact, the current economic condition nationwide is struggling to sustain amidst the pandemic.

In the attempt to stabilize the market, the Financial Services Authority (Otoritas Jasa Keuangan/ "OJK") promulgated 2 (two) stimuluses to date as elaborated below.



1. Shares buyback relaxation

In principle, public companies are only allowed to buy back their shares in the event of "significantly fluctuating market conditions", of which the conditions among others should be determined by OJK. This provision serves as a basis for OJK to issue a circular letter No. 3/SEOJK.04/2020 ("SEOJK 3/2020") on 9 March 2020, which classifies the following conditions as "significantly fluctuating market conditions":

- a. Stock trading conditions in the stock market since the beginning of 2020 up to the date of the SEOJK 3/2020 experiences a significant pressure as indicated by the decrease of IHSG by 18.46%; and
- b. The regional and global economic slowdown as a result of COVID-19 outbreak.

Accordingly, the SEOJK 3/2020 gives permission for public companies to buy back their shares until any further notice from OJK.

As for the mechanism of shares buyback, it is prescribed under OJK Regulation No. 2/POJK.04/2013. In this sense, no approval from the General Meeting of Shareholders is required to perform the shares buyback. However, it should be noted that the amount of buyback is at maximum 20% of the company's paid-up capital, provided that the amount of shares in the market is not less than 7.5% of the paid-up capital.

The shares buyback is aimed to lessen the company's shares supply in the market which "creates the illusion" of higher demand. This stimulus is expected to eventually upturn the shares value of public companies in the stock market.



2. Countercyclical policy

The rapid transmission of COVID-19 has resulted in a disruption of people's daily activities, supply chain as well as the consumer spending in tourism sectors. In fact, this condition poses a serious risk of economy recession. In the quest to prevent further transmission of disease, Indonesian Government has enacted a stay-home policy in most of the Indonesian region. As a result, most businesses have suffered a slowdown, which affects their performance as debtors in the banks. Hence, OJK issued regulation No. 11/POJK.O3/2020 on National Economic Stimulus as Countercyclical Measure Against the Effects of COVID-19 Transmission ("POJK 11/2020").

The POJK 11/2020 is meant to give relaxation for affected debtors in performing their obligations to the bank as follows:

- a. The credit or financing quality would only be assessed based on the principal and/or interest payment for credits of up to IDR 10,000,000,000; and
- b. Credit or financing restructuring to upgrade of credit or financing quality into "performing" (*lancar*).

However, not all debtors would be eligible to receive this stimulus. The debtors eligible for this stimulus are only those directly affected by the COVID-19 outbreak in the affected sectors such as tourism, transportation, hotel, trade, processing, agriculture, mining and others deemed as affected sectors by the banks' discretion.

This policy is aimed to support the economic development for the debtors that are directly or indirectly affected by the transmission of COVID-19, which is applicable until 31 March 2021.



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Attachment III

EMPLOYMENT POLICIES IN RESPONSE TO COVID-19 PANDEMIC IN INDONESIA

It has been over a month since the government of Indonesia publicly announced the first positive corona virus disease (“COVID-19”) case in Indonesia and ever since, the number of positive COVID-19 case keeps increasing each day. This situation, without a doubt, is massively affecting business sustainability in almost every business sector.

Public and private sectors are racing to create and implement emergency policies to save the economy and at the same time contribute to prevent the widespread of COVID-19. One of the policies are those related to the employment. We outline several key notes on employment matters related to COVID-19 below.



Safety and Health in Workplace

Pursuant to the Indonesian manpower laws and regulations, employers are obligated to enforce safety and health in the workplace, including the “prevention of disease”. In this case, prevention of disease includes the control over the potential spread of COVID-19 as a “not occupational disease”.

Work from Home Policy/ Reduction of Business Activity

On 15 March 2020, the Jakarta Provincial Manpower Authority issued the Circular Letter of Head of Manpower Authority of DKI Jakarta No. 14/SE/2020 on the encouragement for Work from Home (“Circular Letter 14”). The Circular Letter 14 encouraged the employers to apply Work from Home (“WFH”) and provides guidelines on the implementation of WFH policy, divided into 3 categories:

- a. The companies provisionally could suspend their whole business activity.
- b. The companies provisionally could reduce half of its business activity (the number of its employees physically attend the office, working time, and operational facility).
- c. Several companies that operate in fields related to the basic needs of people and society such as health care, primary needs, and fuel oils (*Bahan Bakar Minyak – “BBM”*) are excluded from this policy.

The companies are expected to report the implementation of their respective preventive measure on COVID-19 and submitted to the relevant manpower office through this link bit.ly/laporanpelaksanaanwfh.

The Circular Letter 14 was then supported by the Advisory Letter of the Governor of DKI Jakarta No. 6 of 2020 regarding the Temporary Suspension of Office Activity due to Preventing the Spread of COVID-19 on 20 March 2020 and Circular Letter of Head of Manpower Authority of DKI Jakarta No. 3590/SE/2020 regarding Follow-up on the Advisory Letter of the Governor of DKI Jakarta No. 6 of 2020.

The other provinces have also implemented similar provision, such as West Java, Central Java, and DIY Yogyakarta.

Leave for Employees

On 17 March 2020, the Ministry of Manpower has issued a Circular Letter No. M/3/HK.04/III/2020 regarding the Protection to Employees/Workers and Business Continuity in relation to Prevention and Countermeasures of COVID-19 ("Circular Letter 3"). Under Circular Letter 3, the employers are allowed to tell their employees to take the sick leave if:

- (i) The employees are categorized as a person under surveillance (*Orang Dalam Pengawasan* – "ODP") as proven with the doctor's statement which prevents the employees to work within 14 days. The employees, in this case, shall be paid in full.
- (ii) The employees who are categorized as COVID-19 suspects and being isolated as proven with the doctor's statement. The employees, in this case, shall be paid in full during the isolation.
- (iii) The employees who are COVID-19 positive as proven with the doctor's statement. The employees, in this case, shall be paid in accordance with Manpower laws and regulations, which are:
 - a. First 4 months: 100% of the employee's salary;
 - b. Second 4 months of illness: 75% of the employee's salary;
 - c. Third 4 months of illness: 50% of the employee's salary;
 - d. Each subsequent month of illness: 25% of the employee's salary.

(until termination of employment)

Other than the above, the employers are not allowed to force their employees to take their leave, whether annual or unpaid leave. The employers may amicably discuss with their employees should they prefer to take their annual leave during this situation.

Deduction of Salary

In general, according to the Government Regulation No. 78 of 2015 on Wages, the employer may deduct the salary of the employees as a part of disciplinary actions in form of fine, indemnity, and or prepaid wage. However, the provisions regarding the salary deduction must be regulated under the employment agreement, the company regulation or collective labor agreement.

With regard to this COVID-19 situation, the Circular Letter 3 stated that for the company or employers who limits its operation due to government policies in the respective areas regarding the spread of the COVID-19, which cause all or half of the employees must be absent, in consideration of business sustainability, the change of amount or payment of employees' salary is allowed, provided that it has been mutually agreed between the employer and the employees.



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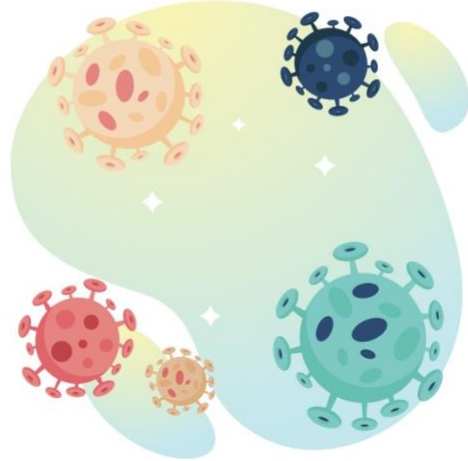
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Attachment IV

Second Stimulus Package from the Indonesian Government

The World Health Organization (“WHO”) announced on 11 March 2020 that COVID-19 is classified as a pandemic, as there has been a rapid increase in new cases of the virus in Indonesia. The series of events led to the unveiling of a second stimulus package by the Indonesian government to handle the impact of COVID-19 through the Minister of Coordinator for Economic Affairs Press Conference No. HM.4.6/32/SET.M.EKON.2.3/03/2020 dated 13 March 2020 (“Press Conference”).



Previously, the Ministry of Coordinator for Economic Affairs revealed the first stimulus package during a press conference in the Presidential Office on 25 February 2020. In essence, the press conference covered *inter alia* information related to implementation of the pre-work card program (*Program Kartu Prakerja*), incentives for the tourism industry and stimulus for the aviation sector, including reduction of Passenger Service Charge (*Tarif Pelayanan Jasa Penumpang Pesawat Udara* or “PJP2U”) and discounts to fuel/avtur prices.

The second stimulus in summary includes the following:

I. Fiscal Stimulus in response to COVID-19 for period of April 2020 to September 2020

1. Tax relief for workers' income tax (*Pajak Penghasilan Pasal 21* or “PPH 21”) in the process manufacturing industry (including ease of imports used in production of goods which will be fully exported (*Kemudahan Impor Tujuan Ekspor* or “KITE”) and KITE for small and medium industries (*KITE-Industri Kecil dan Menengah* or “KITE IKM”) for workers' income amounting to IDR 200 Million (approximately USD 12,000); The government provided fiscal stimulus for this matter in the total amount of IDR 8.6 trillion (approximately USD 527 million). This stimulus aims to maintain the purchasing power of workers in the process manufacturing industry;
2. Tax relief for import tax (*Pajak Penghasilan Pasal 22 Impor* or “PPH 22 Import”) for 19 manufacturing sectors¹, KITE Taxpayer and KITE IKM Taxpayer (“**Certain Manufacturing Sectors**”): The estimated amount of tax relief is IDR 8.15 trillion (approximately USD 499 million). The stimulus aims to provide cashflow within the industry as a switching cost compensation (cost related to switching/alteration of import origin country);
3. 30% reduction of corporate tax (*Pajak Penghasilan Pasal 25* or “PPH 25”) for Certain Manufacturing Sectors. The estimated total of tax reduction is IDR 4.2 trillion (approximately USD 257 million), which aims to provide cashflow for the industry as a switching cost compensation (cost related to switching/alteration of import origin country or export destination country) and to increase export activities;
4. Tax relief through value added tax (*Pajak Pertambahan Nilai* or “VAT”) restitution for Certain Manufacturing Sectors: The estimated total amount of VAT restitution is IDR 1.97 trillion (approximately USD 12 million). The VAT restitution aims to assist taxpayers in optimizing maintenance of liquidity.

II. Non- Fiscal Stimulus in response to COVID-19

1. Simplification and reduction of export restriction and prohibition rules (*Larangan dan Pembatasan* or "Lartas") for fisheries and forestry products;
2. Simplification and reduction of import Lartas for raw materials, i.e. steel and its derivatives products. It will be followed by extending coverage to strategic food products (such as industrial salt, sugar and flour as manufacturing raw materials) and certain commodities, i.e. animals as well as medicine and food products.
3. Expediting the export and import processes of Reputable Traders, consisting of companies that conduct export and import activities with high level of compliance. The additional incentive will include the application of auto response and auto approval for Lartas process (both for export and import). Moreover, a Surveyor Report (*Laporan Surveyor*), as required for export/import upon certain commodities, is no longer needed.
4. Improvement of export and import processes through the development of National Logistic Ecosystem (NLE) as a platform which could ease cooperation between government and private companies through data sharing, business process simplification and deletion of repetitive and duplicate export-import processes.



III. Stimulus within the Financial Sector in response to COVID-19

1. Countercyclical policy from the Financial Service Authority (*Otoritas Jasa Keuangan* or "OJK") through OJK Regulation No. 11/POJK.03/2020, which has been valid since 16 March 2020, wherein a bank may issue a policy, such as loan restructuring for micro, small and medium enterprises (*Usaha Mikro Kecil Menengah* or "UMKM");
2. Relaxation of employment social security program (*Program Badan Penyelenggaraan Jalinan Sosial Ketenagakerjaan* or "BP Jamsostek") through a plan to delay payment for the employment social security fee program for a certain period.

IV. Food Policy in response to COVID-19

Over a span of 6 months, from March 2020 to August 2020, the government will ensure availability of 11 strategic commodities, which are secured through several import recommendations from the Ministry of Industry and the Ministry of Trade for horticultural products. The strategic commodities include inter alia rice, corn, shallot, garlic, large chili, cayenne pepper, beef/buffalo meat, chicken meat, chicken eggs, sugar and cooking oil.

If you wish to follow up on any legal matter and/or require more information related to this article, kindly contact us via email at cr@budidjaja.id.



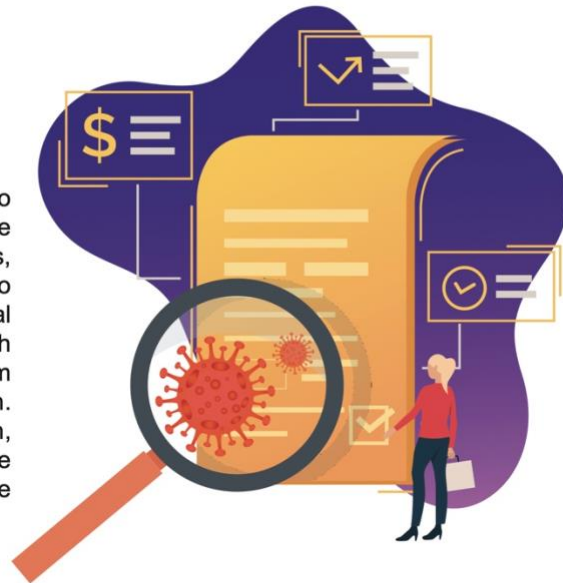
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Attachment V

COVID-19 IN THE AMBIT OF FORCE MAJEURE IN INDONESIA

As the COVID-19 global pandemic continues to proliferate at a rapid pace, business transactions are currently or will be facing unwanted (and perhaps, insurmountable) hurdles ranging from mere delays to arduous or impossible performance of contractual obligations. Such occurrences could invoke a breach of contract claim, which usually translates to a claim for damages by the relevant party in the transaction. Taking these unforeseen situations into consideration, this legal alert discusses the correlation between the Covid-19 outbreak and a possible force majeure defense.



What is force majeure under Indonesian law?

Elements

Force majeure excuses a non-performance of a contractual obligation, such that the non-performing party is exempted (relieved) from any liabilities or damages arising from its non-performance. Article 1244¹ and Article 1245² of the Indonesian Civil Code (“**ICC**”) provides elements of events that constitute as force majeure:

- a. the event is unforeseeable;
- b. the event is beyond the control of the non-performing party;
- c. absence of bad faith from the non-performing party.

It is widely accepted that the term “unforeseeable” refers to an event that is not reasonably foreseeable (beyond reasonable assumption) by the parties at the time of conclusion of a contract. Thus, if a contract is concluded to deliver goods to an area that is usually heavily flooded during the rainy season, a party that fails to deliver goods during the rainy season because of a big flood could not invoke force majeure to excuse his non-performance.

Beyond control of the non-performing party generally means that the event is outside of reasonable control and considered as unavoidable. It could also be argued that such event is external to the will of the non-performing parties.

The absence of bad faith means the non-performing party has acted reasonably and fairly. The non-performing party must establish that there is no fault on its part upon an event that prevented it to perform the obligation(s) (which it claims as a force majeure event). Otherwise, the non-performing party is exempted from raising a defense of force majeure. The result is the same if the non-performing party could have reasonably avoided his non-performance that arose from the force majeure event.

Lastly, the party relying on a force majeure defense should be able to establish the causal link between the force majeure event and the non-performance.

¹ Article 1244 of the ICC: “The debtor shall be ordered to compensate for costs, damages and interests if he cannot prove that the non-performance or the late performance of such obligation is caused by an unforeseen event, for which he is not responsible and he was not acting in bad faith.”

² Article 1245 of the ICC: “The debtor needs not to compensate for costs, damages or interests, if an act of God or an accident prevented him from giving or performing an obligation, or because of such reasons he committed a prohibited act.”

Party's autonomy

Typically, contracts (especially project finance and construction) already list events that constitute as a force majeure. The parties may agree to put a broad or narrow scope of force majeure.

Hardship

On a related note, the concept of force majeure in Indonesia is not to be mistaken with the concept of hardship, which is mainly adopted in common law countries (although the two concepts are not entirely different). The term "hardship" refers to an event that alters the balanced position of the parties in the contract (e.g. when an event causes the performance of one of the parties' obligations to be unfavorable or create unreasonable losses). In turn, the parties may opt to renegotiate or request the dispute resolution forum to terminate the contract, or otherwise revise the contract to restore the balance of the contract.



What are the consequences of a force majeure?

Force majeure may generally result in two consequences. First, termination of the obligation may occur, if the performance is rendered to be permanently impossible or if the performance on a later date would result in the obligation losing its principal purpose.

Second, a time extension for performance of the obligation or suspension of contractual performance (but not extinguish it) may occur, if following the force majeure, the obligation to be carried out is still of value. For example, an obligation of repayment under a credit agreement would not be terminated, but would only be delayed (and extended).

Party's autonomy

Otherwise, the parties may agree on the consequences of the occurrence of force majeure.

How does the COVID-19 pandemic lead to force majeure in Indonesia?

It is important to note that the relevant discussion over the effects of the COVID-19 pandemic on force majeure does not strictly contain in the virus itself. Instead, it also contains in the consequences or actions, stipulations or policies that can be taken which may affect a party's contractual performance. A notable example is the global (i.e. the World Health Organization's) declaration of COVID-19 as a pandemic, which was then followed by the government's stipulation (e.g. lockdown or limitation of activities) that impedes or prevents a particular business operation.

Agreed events

In a contract where the parties have already agreed to events considered as force majeure, clarity, reliance and effectiveness would depend on the broad wording of the force majeure provisions. A force majeure provision could already include the word "pandemic/ epidemic" or wordings that could be interpreted to include the cause of a pandemic (such as "governmental actions" or "shortage").

It is also worth noting that some force majeure provisions may disallow a party in an agreement from relying on it. For example, if a state-owned company is barred from relying on governmental actions, as an event of force majeure, and the contract does not have other wordings that would capture COVID-19, then such state-owned company would generally not be able to raise a force majeure defense (because they would be deemed to have released their rights) in the event of total lockdown imposed by the government.

Inclusion of a force majeure provision in a contract would generally not set aside the applicability of Article 1244 and 1245 of the ICC. Thus, the following elements still need to be considered.

Foreseeability

Parties that concluded a contract prior to Indonesia (Jakarta)'s government stipulation against the worsening COVID-19 outbreak that prevents the performance of an obligation would generally satisfy "unforeseeable" elements. On the other hand, a contract that is concluded after the government's stipulation and affected a party's performance may generally not suffice as "unforeseeable".

Beyond the control

This element would be satisfied since the occurrences and consequences of the COVID-19 outbreak are reasonably outside the control of and are unavoidable to the non-performing party (and to all parties of a contract).

Absence of bad faith

Although the COVID-19 outbreak and its aftermath are certainly not caused by or a fault of a non-performing party, reasonableness and fairness might still require a party to mitigate and find solutions for the difficulties caused by the force majeure unless the parties have agreed that there is no obligation to mitigate.

Claiming force majeure

A party intending to raise (rely on) or received (or are going to receive) a notice of a force majeure defense needs to understand that a mere increase of cost would generally not satisfy an excuse of non-performance. The prevention of performance should at least be that if the affected party was still forced to perform the obligation, it would be unreasonably burdensome and bring extreme or unreasonable losses. In addition, this defense is not and should not be used as a way to justify a party to simply walking away from an agreement and to divert the unfavorable situation or the risk to an innocent party, especially if that innocent party have performed their part of the obligation (unless the parties have agreed or deemed to have agreed otherwise).

Almost all contemporary contracts already contain provisions to the effect similar to "use best endeavor... cooperate in good faith...take all actions... to give full effect to agreement..." which would generally bar the non-performing party from unilaterally abandoning the contract. The above considerations should be critical to be heeded if the affected obligation would still be of value if performed on a later date, i.e. during the recovery stages of the COVID-19 pandemic.



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Attachment VI



Implementation of Large-Scale Social Restrictions within Jakarta



7 April 2020

Indonesian Minister of Health issued a **Decree No. HK.01.07/MENES.239/2020 TAHUN 2020:**

Regarding the implementation of large-scale social restrictions (*Pembatasan Sosial Berskala Besar* – “**PSBB**”) within the Special Capital Region of Jakarta to expedite the handling of COVID-19 (“**Decree 01/2020**”).

9 April 2020

Furthermore, following the issuance of Decree 01/2020, the Governor of Jakarta then issued a Decree No. 380 of 2020 to implement PSBB from 10-23 April 2020 along with Governor Regulation No. 33 of 2020 which provides guidelines for the implementation of PSBB within Jakarta region (“**Governor Regulation 33/2020**”).



In general, PSBB is a restriction of certain people’s activities in an area suspected of being infected with COVID-19 in order to prevent its spread. There are notable features of the implementation of PSBB within Jakarta region according to Governor Regulation 33/2020.

The activities restriction during PSBB includes the following:



Learning activities within schools and/or other educational institutions



Activities within the workplace



Religious activities at the houses of worship



Activities within public spaces and facilities



Social and cultural activities



Movement of people and goods using modes of transportation.

The offices within Jakarta region should be closed, except businesses related to the following sectors:



Central and local government institutions



Foreign Country Representative and/or International Organization



State-owned and regional enterprises who are involved in the handling of COVID-19



Local and international social organization engaged in the disaster and/or social activities

Business entities related to :



Health



Food and beverage



Energy



Telecommunication



Financing



Logistic



Hospitality



Construction



Strategic industry



Basic services, public and industrial utilities determined as vital objects



Daily needs

Sanctions

A person violating the implementation of PSBB may be imposed with imprisonment and/or a fine, according to the applicable laws and regulations. The sanctions due to violations of the implementation of PSBB will refer to Article 93 of Law No. 6 of 2018 regarding Health Quarantine, which impose a fine in the amount of IDR 100 million (approximately USD 6,384) and/or 1 (one) year imprisonment.



Additional Information

As per now, there are some regions in Indonesia that will also implement PSBB, they are : Bogor, Depok, Bekasi, Tangerang, South Tangerang, and Pekanbaru.

Attachment VII

Court Proceedings in Indonesia amidst COVID-19 Outbreak

In response to the occurring outbreak, the Supreme Court and lower instances court (High Court and District Court) has now taken protective measures and pause several hearings. The Supreme Court through its Executive Meeting dated 16 March 2020 ("**Executive Meeting**") deemed that in reference to the President of Republic of Indonesia's statement that the outbreak is now considered as a non-natural disaster, the court proceeding for certain type of cases should proceed as scheduled whilst for the remaining cases should be conducted through e-litigation.

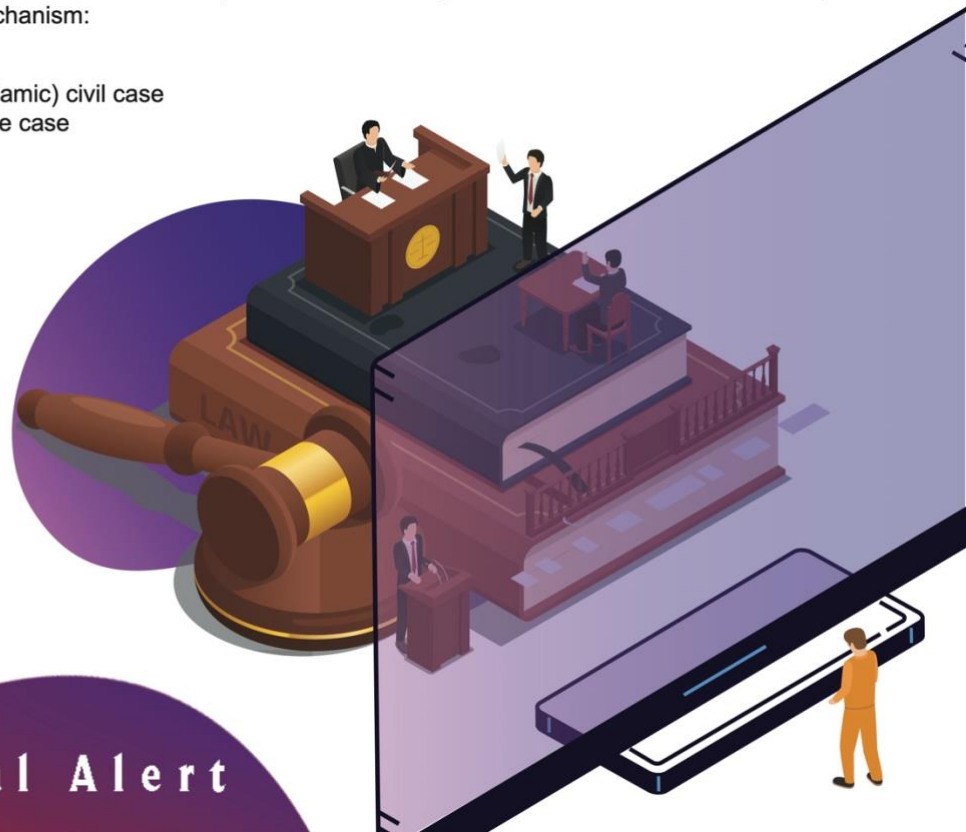
Based on the resolution rendered from Executive Meeting above, Supreme Court issued a Circular Letter No. 1 of 2020 on Conduct Guidelines during the Period of Preventing the Spread of Corona Virus Disease 2019 (COVID-19) in the Vicinity of Supreme Court and Lower Judiciary Bodies ("**SCL 1/2020**"). The applicability of SCL 1/2020 has been further extended until 21 April 2020 by the Supreme Court Circular Letter No. 2 of 2020 on the amendment of SCL 1/2020.

Based on the SCL 1/2020, the following cases' classification will proceed as scheduled in the event that further extension for the confinement of the Accused is no longer viable:

1. Criminal case proceeding
2. Military case proceeding
3. *Jinayat* or Islamic criminal case proceeding

On the other hand, the SCL 1/2020 specifies the following as cases recommended to be adjudicated under e-court mechanism:

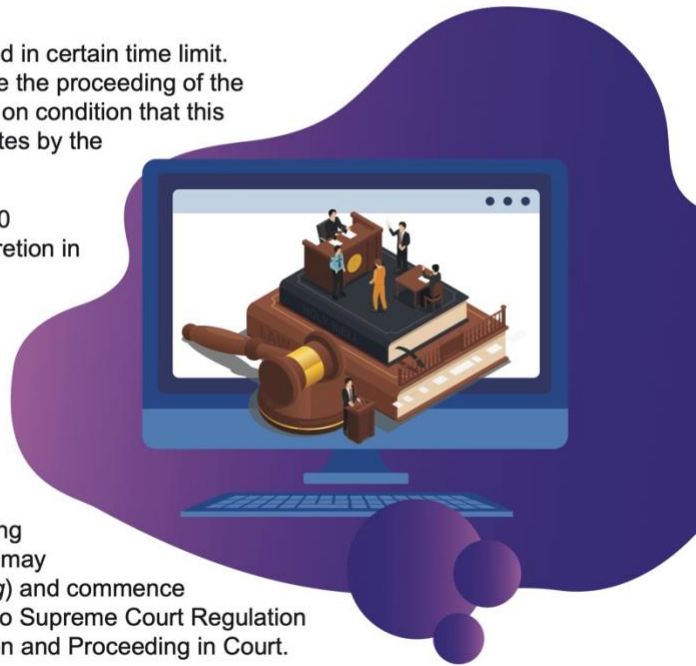
1. Civil case
2. Religious (Islamic) civil case
3. Administrative case



In regards to cases which are to be resolved in certain time limit. SCL 1/2020 allows for the court to postpone the proceeding of the aforesaid case exceeding the allowed time on condition that this extraordinary event is recorded in the minutes by the Substitute Court Clerk.

For public safety measures, the SCL 1/2020 emphasizes the Panel of Judges' sole discretion in conducting the proceeding, such as:

1. Postponement of hearing
2. Limitation of attendees and implementation of social distancing policy
3. Recommend the implementation of e-court proceeding



The e-court allows for conducting proceeding through a dedicated website where parties may conduct registration of cases online (*e-filing*) and commence proceeding by way of e-litigation pursuant to Supreme Court Regulation No. 1 of 2019 on Digital Case Administration and Proceeding in Court.

Lastly, the SCL 1/2020 also stipulates several safety internal measures which among others gives appeal for all officials in the Supreme Court and the lower courts instances not to take any domestic and international travel.

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Attachment VIII

LARGE SCALE SOCIAL RESTRICTIONS DUE TO COVID-19: IMPACT ON INDUSTRIAL ACTIVITIES

The government of Indonesia has taken further measures to prevent the spread of Corona Virus Disease 2019 (COVID-19) by providing a legal basis for the implementation of large-scale social restriction through Government Regulation No. 21 of 2020.

The Indonesian Minister of Health, as instructed under such government regulation, issued guidelines for the implementation of large-scale social restriction under Regulation No. 9 of 2020 ("**Reg 9/20**").

One of the points emphasized under Reg 9/20 is the provision of holidays in workplaces, which refers to limitations of working activities in workplaces and replacing them with work-from-home arrangements.

There are exemptions for provision of holidays in workplaces for certain activities as stipulated under Reg. 9/20. These exemptions include, among others, industrial companies and production activities.

Exempted industries and sectors include the following:

- a) Essential commodity production units such as drug, pharmacy, medical device or equipment, household health supply, raw material and intermediate;
- b) Production units that require sustainable process;
- c) The production of petroleum and natural gas, coal and mineral, and activities related to mining operations;
- d) Units that manufacture materials for packaging of food, drugs, pharmacy and medical equipment;
- e) Farming activities for staple ingredients and horticulture;
- f) Export goods production units;
- g) Production units for agricultural goods, plantations, as well as the production of micro, small and medium businesses.

Based on this list, only production units that require sustainable process (point b) must secure a license from the Ministry of Industry to ensure operations during the current situation. The guidelines and requirements for license applications are elaborated in Circular Letter No. 7 of 2020 issued by the Ministry of Industry ("**CL 7/20**"), which are provided below.



Key Provisions

CL 7/2020 contains several key provisions, as follows:

1. During the Covid-19 Public Health Emergency, industrial companies and/or industrial area companies can continue business activities by having Operational and Mobility of Industrial Activities Licenses ("**Operational License**") for factory operations, office administration, and industrial activities related to raw materials, supporting materials, finished goods and/or worker.
2. In order to have an Operational License, industrial companies and/or industrial area companies may submit an electronic application through the National Industrial Information System website/*SistemInformasiIndustriNasional* (SIINas).
3. Operational activities at factories and office administration are carried out with regard to Ministry of Industry Circular Letter No. 4 of 2020 on the Implementation of Factory Operations in the Corona Virus Disease 2019 Public Health Emergency ("**CL 4/20**").

Operating Requirements for Factories

Pursuant to CL 4/20, industrial companies and/or industrial area companies with permission to continue operating must fulfil the following conditions:

1. Conduct initial screening to check the body temperature of all workers when entering the factory area and during shift changes.
2. Unhealthy workers are PROHIBITED from participating in company activities; and the company must recommend them to check their health immediately through the company/government health facility.
3. Ensure that the work area has proper air circulation and adequate facilities for washing hands, before entering the building.
4. Ensure the availability of soap and water for hand washing or alcohol-based hand washing, as well as mask, gloves and clothing that ensure the safety of workers and products.
5. Increase the frequency of routine cleaning, among others, with disinfectant fluid for commonly used areas, such as bathrooms, registration and payment counters, and dining areas, especially during peak hours of activity.

Sanction and Validity of the Operational License

If there is a discrepancy between the submission date and the actual conditions, the Ministry of Industry may revoke the issued Operational License. The industrial companies and/or industrial area companies shall be legally responsible for acts of violation and abuse of the Operational License. Further, any actions found breaching applicable laws and regulations would result in the Operational License being declared null and void.

The Operational License is valid during the period of Public Health Emergency.

If you wish to follow up on any legal matter and/or require more information related to this article, kindly contact us via email at rizqi@budidjaja.id or ryan@budidjaja.id



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