

Indonesia's Legal Framework in Combating COVID-19

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On 11 March 2020, the World Health Organisation (WHO) enhanced the outbreak status of COVID-19 from an epidemic to a pandemic. This indicates that COVID-19 is highly contagious, with a high fatality rate and no effective medical treatment.¹ Thus, the WHO has urged countries to enact strategic policies to slow the spread of the virus and manage its impacts.

In Indonesia, laws were already in place to allow the government to respond to the pandemic. Under Article 12 of the Indonesian Constitution, the President has the authority to declare a state of emergency, where the conditions and subsequent measures for a state of emergency are to be explained in legislation.² Other relevant legislation that authorises the government to take action includes the Emergency Situation Law (Law No.74/1957 jo. Law No.23/1959), Contagious Diseases Law (Law No.4/1984), Disaster Management Law (Law No.24/2007), and Health Quarantine Law (Law No.6/2018).

To combat COVID-19, the Indonesian government opted to act via the Contagious Diseases Law instead of the Emergency Situation Law. The Contagious Diseases Law outlines the requirements for establishing perimeter areas of contagion and management efforts. Under this law, the Minister of Health can designate specific areas as contagion areas³ by relying on epidemiological and community factors.⁴ Epidemiological factors refer to epidemiological data such as the numbers of patients, number of fatalities, and methodology of managing the virus spread. On the other hand, community factors include socio-cultural, economic, and security factors that are reported to the Minister by the Head of Regency.⁵

Under the Contagious Diseases Law, disease spread management includes the following measures:⁶

¹ Amesh A. Adalja et al, "The Character of Pandemic Pathogen," accessed June 5, 2020,

https://www.centerforhealthsecurity.org/our-work/pubs_archive/pubs-pdfs/2018/180510-pandemic-pathogens-report.pdf

² 1945 State Constitution of the Republic of Indonesia. art. 12.

³ Law No. 4 Year 1984 on Contagious Diseases. art. 4, para. 1 and 2

⁴ Governmental Regulation No. 40 Year 1991 on the Management of Contagious Diseases. art. 2.

⁵ Governmental Regulation No. 40 Year 1991 on the Management of Contagious Diseases. art. 4 and 5.

⁶ Law No. 4 Year 1984 on Contagious Diseases. art. 5, para. 1.

- a. Epidemiological research;
- b. Handling of patients, including isolation of patients in quarantine;
- c. Preventing infection and increasing immunity;
- d. Elimination of disease sources;
- e. Handling of cadavers;
- f. Community counselling; and
- g. Other efforts.

Additionally, another important Indonesian law for combating COVID-19 is the Health Quarantine Law, which aims to mitigate risk factors and protect the community from diseases so as to avoid emergency health problems from emerging in the country. The Health Quarantine Law allocates responsibility to both the central and local government. The central government, in collaboration with local governments, is responsible for managing the movement of people in and out of the country and for implementing the necessary quarantine orders. Under this law, every person is entitled to essential services during their period of quarantine, including basic health services, food and other essential needs. Moreover, the Health Quarantine Law specifically allows the government to declare a community emergency situation in the event of a contagious disease, nuclear radiation, biological pollution, chemical contamination, bioterrorism, or other events which have the potential to spread to other countries. The law also sets out the requirements for establishing a community emergency.

In Indonesia, there are four types of health quarantine with varying degrees of seriousness: home quarantine, regional quarantine, hospital quarantine, and large-scale social quarantine. Due to the gravity of COVID-19, the Indonesian government has chosen to activate large-scale social quarantine. This includes the shutting down of schools and places of worship, as well as social distancing in common facilities. Furthermore, the government is responsible for the medical needs, food, and other essential needs of the people who are under quarantine.

COVID-19 Expediting Management Task Force

The President of Indonesia enacted the Presidential Decree (No.07/2020) on COVID-19 Expediting Management Task Force two days after COVID-19 was designated as a pandemic. This task force is responsible for:

- a. Increasing national resilience with regards to health;
- b. Expediting the management of COVID-19 through collaboration between governmental institutions, national institutions and locals;
- c. Increasing preparedness for the escalation of the spread of COVID-19;
- d. Increasing effectiveness of operational policy making; and
- e. Enhancing the COVID-19 response via better management of measures to prevent and detect COVID-19.

Subsequently, the Ministry of Home Affairs Decree (No.20/2020) on Expediting the Management of COVID-19 in the Regional Government was issued. Under this decree, the task force is to be established in the regions. Both regional and local governments are ordered to anticipate and manage the impact of COVID-19, and to prioritize COVID-19 management within existing local budgets. If there is no prior budget for COVID-19 management, local governments are to record their COVID-19 expenditure under the unexpected expenditure category, and revise the annual budget as soon as possible.

To provide further guidance on the implementation of the Ministry of Home Affairs Decree, a Ministerial Letter (No. 440/2622/SJ) was published on 29 March 2020. According to the letter, the COVID-19 regional task force is to be headed by the Regional Head (either the Governor or Head of Region) and each region is authorised to independently declare a regional emergency situation, even in the absence of approval from the national government. However, the fact that each region is able to declare their own emergency status is in opposition with the Health Quarantine Law. Furthermore, three months after the regional task forces were established, there have been varying approaches towards COVID-19 management and handling across different regions in Indonesia. This could point towards the fact that the national and regional governments are lacking coordination.

Large-scale Social Distancing

In addition to the regional task force, social distancing measures were also implemented via the Governmental Regulation (No. 21/2020) on Large-scale Social Distancing for COVID-19 Management.⁷ The regulation is largely similar to Article 59 of the Health Quarantine Law, although

⁷ Popularly known as “PSBB” in Indonesia, which stands for Pembatasan Sosial Berskala Besar dalam Rangka

this regulation specifically focuses on COVID-19. It must also be noted that this regulation is unconventional. In Indonesia, “abstract substance” legislation that deals with generalities should fall under Government Regulations, whereas “concrete substance” legislation that deals with specifics should be dealt with in the Presidential Decree. Governmental Regulation (No. 21/2020), in dealing specifically with the management of COVID-19, is a “concrete substance” legislation that should fall under Presidential Decree instead.

Nevertheless, since Large-scale Social Distancing was the option chosen by the Indonesian government, all regions are required to adhere to the abovementioned regulation. In brief, the regulation provides for specific steps that the government should take to manage COVID-19, the scope of the government’s responsibility to its people during the pandemic, and budget allocation for the management of COVID-19.

Table 1: List of Indonesian legislation and regulations in response to COVID-19

| No. | Name | Authorising body |
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| Direct steps taken by the government for the management of COVID-19 | | |
| 1 | General policy | |
| a. | Health Ministry Regulation No. 9 Year 2020 on Guidelines for Large-Scale Social Distancing | Health Ministry |
| b. | Information Letter No. SR.03.04/II/691/2020 (9 March 2020) on the implementation of government policy during the development of COVID-19 | Health Ministry |
| c. | Information Letter of Education Minister No.3 Year 2020 on the prevention of COVID-19 in the education sector | Education and Cultural Ministry |
| d. | Information Letter Ministry of Health No. HK.02.01/MENKES/199/2020 (12 March 2020) on communicating the management of COVID-19 | Health Ministry |
| 2 | Policies geared towards COVID-19 patients | |

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| a. | Presidential Regulation No. 52 Year 2020 on the development of observation and containment facilities in in Galang Island, Batam City, Riau Province in relation to COVID-19 or other infectious diseases | President |
| b. | Trade Ministry Regulation No. 23 Year 2020 on the Temporary Ban on export of antiseptics, masks, raw materials for masks, safety precautions suits | Industrial and Trade Ministry |
| c. | Health Minister Decision No. HK.01.07/MENKES/169/2020 on the establishment of appointed hospitals for certain emerging infections | Health Ministry |
| d. | Health Minister Decision No. HK.01.07/Menkes/182/2020 on a network of laboratories for investigation into COVID-19 | Health Ministry |
| . | Health Minister Information Letter No. HK.02.01/MENKES/202/2020 (16 March 2020) on self-isolation protocols for the management of COVID-19 | Health Minister |
| f. | Investment Agency No. 86 Year 2020 on easier licensing processes for certain sectors related to COVID-19 | Indonesian Investment Coordinating Board (BKPM) |
| 3 | Stay-home policy to prevent spread of COVID-19 | |
| a. | Ministry of Home Affairs Regulation No.10 Year 2020 on temporary ban on live imports from China | Ministry of Home Affairs |
| b. | Information Letter from Ministry of Education No. 4 Year 2020 on the Implementation of Education during COVID-19 | Ministry of Education and Culture |
| c. | Information Letter No. SE-1/MBU/03/2020 Year 2020 on increasing awareness of the spread of COVID-19 | State-owned Company Ministry |
| d. | Information Letter from Ministry of Labour No. M/1/Hk.04/II/2020 Year 2020 on employing Chinese labourers during COVID-19 | Labour Ministry |
| e. | Information Letter from Ministry of Labour No. M/3/HK.04/III/2020 Year 2020 on protection of labourers and sustainability of activities during COVID-19 | Labour Ministry |

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| f. | Information Letter from Supreme Court No. 1 Year 2020 on Guidelines for duties during COVID-19 | Supreme Court |
| g. | Information Letter from Civil Servant and Bureaucratic Reform No. 19 Year 2020 on adjustment of working arrangements for civil servants during COVID-19 | Civil Servant and Bureaucratic Reform Ministry |
| h. | Work adjustment policies during COVID-19 | All ministries are making working adjustment policies |
| 4 | Travel bans to prevent spread of COVID-19 within and outside Indonesia | |
| a. | Law and Human Rights Ministry Regulation No. 03 Year 2020 on the temporary ban on free pass visitor visas, visas, and long-term visas for Chinese citizens | Law and Human Rights Ministry |
| b. | Law and Human Rights Ministry Regulation No. 07-11 Year 2020 on temporary ban on foreign visitors to Indonesia, visas and long-term stays in relation to COVID-19 Prevention | Law and Human Rights Ministry |
| c. | Transport Ministry Regulation No. 18 Year 2020 on transportation control during COVID-19 | Transport Ministry |
| g. | Information Letter from Civil Servant and Bureaucratic Reform Ministry No. 36 Year 2020 on ban on domestic travel for civil servants | Civil Servant and Bureaucratic Reform Ministry |
| h. | Information Letter No. D/00663/03/2020/64 from the Foreign Affairs Ministry on additional policies regarding the transboundary movement of people into and out of Indonesia | Ministry of Foreign Affairs |
| i. | Information letter No.14 Year 2020 from Director-General of ocean transportation on Guidelines for the management of ship safety to reduce the spread of COVID-19 | Transportation ministry |
| Softening the economic impact of COVID-19 | | |

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| a. | Various regulations from Bank of Indonesia, Industrial and Trade Ministry, and Financial Services Authority on exports, imports, international currency, Giro, regular banking, Syariah banking, stock exchange, etc, in relation to COVID-19 | Bank Indonesia Industrial and Trade Ministry, Financial Services Authority |
| Financing the Management of COVID-19 | | |
| a. | Government Regulation in Replacement of Law No.1 Year 2020 on the State's financial policy and stability of financial system during COVID-19 | President |
| b. | Presidential Regulation No. 54 Year 2020 on revision of annual budget for 2020 | President |
| c. | Presidential Decree No. 4 Year 2020 on the refocusing of activities, reallocation of budget, and procurement during COVID-19 | President |
| d. | Finance Ministry Regulation No. 19/PMK.07/2020 on allocation of funding, budget and incentives of budget year 2020 during COVID-19 | Finance Ministry |
| e. | Various budget regulations and/or revisions from the Finance Ministry, Financial Services Authority, and Health Ministry | Finance ministry, Financial Services Authority, and Health Ministry |

Conclusion

The Indonesian government has made much effort to manage the impact of COVID-19. Based on the regulations discussed, a few main points may be highlighted:

a. Government efforts in managing COVID-19

As shown in Table 1, the government policies can be categorised into four major groups: general policies, policies for COVID-19 patients, stay-home policies, and travel bans. The main regulation in place is the Large-Scale Social Distancing Regulation by the Ministry of Health. However, there is a lack of coordination between national and regional governments, and miscommunication and lack of coordination within localities is also another problem faced.

b. Government's responsibility towards its people during the COVID-19 pandemic

During the COVID-19 pandemic, the government holds responsibility for guarding the economic stability of the country, establishing easier licensing processes for businesses, and increasing direct investments for the essential needs of the people. In guarding economic stability, government policies are centred on the banking industry, and this includes export credits, payments made by the government for export fees, import credit for productive goods, L/C, credits for small and medium enterprises, or other types of credits approved by the central bank of Indonesia.

With regards to essential needs, the government has acted via the Ministerial Letter (No. 440/2622/SJ) issued by the Ministry of Home Affairs on the establishment of a regional task force, and the emergency regulation on State finances and stability of Financial System during COVID-19. In the Letter, the Ministry highlighted that unprecedented spending due to COVID-19 can be a burden on the annual regional budget, especially when funds are needed for the provision of clean water, sanitation, food, clothing, and housing. Thus, the government will also provide direct cash assistance for the poorest during the COVID-19 pandemic.

c. Funding for measures to combat COVID-19

The main sources for financing the slew of COVID-19 measures are the Annual National Budget and the Annual Regional Budgets. The key obstacle faced in using these budgets is the fact that most of the funds have already been earmarked for anticipated events. Since COVID-19 was not anticipated, the national and local governments can only draw from the "spare budget", which is allocated for unplanned activities, to finance the measures for combatting COVID-19. However, this spare budget allocation is small and likely insufficient for COVID-19 activities. Hence, the national and local governments need to revise their current budget as soon as possible so as to be able to tap into more funds to finance COVID-19 measures.

As an alternative, the Ministry of Finance has enacted Regulation No.19/PMK.07/2020 on Allocation of 2020 Budgets in Relation to COVID-19, to redirect funds to finance COVID-19 measures. For example, tobacco taxes are reallocated for healthcare measures, and income from oil and gas sales are channelled towards activities for COVID-19 prevention and management. In the financial sector, the main COVID-19 regulation is the Emergency Regulation in Replacement of Law (PERPU) No. 1 Year 2020 on Financial State Policy and Financial System Stability to Manage COVID-19. This regulation enables the government to widen the budget deficit to 3% of Gross Domestic Product,

relocate mandatory spending, shift budgeted funds between institutions, authorise procurement, and use available finances within the State budget. Evidently, the government has made every effort to shoulder the heavy financial burden brought about by the COVID-19 pandemic.

d. Legal framework preparedness during COVID-19

As discussed above, the legal framework for combatting COVID-19 is already in place in Indonesia. There are many laws and regulations that are available, including the Constitution, presidential, governmental and ministerial regulations. However, overlaps and inconsistencies can be seen in some cases, for example the presence of the “concrete substance” Governmental Regulation that regulates COVID-19 when Governmental Regulation are conventionally more abstract. These inconsistencies should be resolved quickly by the government.

It is difficult to estimate to what extent COVID-19 will hinder Indonesia’s development in the near future, but what is certain is that the people and the government must work with other countries to ensure that the world will be able to survive this pandemic together.