

Client Alert

Jakarta, 24 April 2020

Force Majeure Event during COVID-19 situation

President of the Republic of Indonesia has declared the COVID-19 is the non-natural disaster and mandates the regional governments to set regional policies and regulations based on the central government's policy through the issuance of the Presidential Decree Number 12 of 2020 on the Declaration of COVID-19 as Non-Natural National Disaster ("Keppres 12/2020"). However, Keppres 12/2020 merely declared the non-natural disaster status without providing any further provisions concerning the impacts to the business and society in general. The issuance of Keppres 12/2020 referred to the Law Number 24 of 2007 on Disaster Management ("Law 24/2007"), but there is also no specific stipulation concerning the impacts to the business continuation under Law 24/2007. Both Keppres 12/2020 and Law 24/2007 also don't regulate and declare whether the occurrence of non-natural disaster such as COVID-19 is concluded as the force majeure event in the private agreement and therefore the issuance of Keppres 12/2020 doesn't automatically determine the non-natural disaster status of COVID-19 as the force majeure event in the private agreement.

As the private agreement, force majeure event is regulated under Article 1244 and 1245 of ICC (Indonesia Civil Code). Article 1244 of ICC states that the debtor shall 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. Furthermore, Article 1245 states that the debtor does not need to compensate for costs, damages, or interests, if an act of God or an accident prevented him from giving or doing an obligation, or because of such reasons he committed a prohibited act. These Articles exempted a party to bear the costs, damages, or interests for the non-performance or the late performance of the party's obligation as long as such non-/late performance caused by an unforeseen event, act of God, or an accident preventing the performance, for which he is not responsible and he was not acting in a bad faith.

In addition, Article 1338 of ICC is applying the principle of freedom of contract, therefore, the parties may regulate further element or technicality of the Force Majeure Event. Please note some agreements may have a serious consequence as written in the agreement, therefore it is advisable for the business entity to be careful on declaring the force majeure event. Accordingly, it is therefore important to examine and analyze the force majeure clause in the agreement in order to confirm whether COVID-19 can be classified as the force majeure event by the parties, its consequences and the further procedure on the occurrence of such event.

Moreover, Articles 1244 and 1245 of the ICC are rather general and further specific regulation concerning the classification of force majeure event may be available for certain business sectors e.g. construction, employment, banking, oil and gas. It is therefore important to examine the specific regulations in accordance with each business sectors in navigating the business activities during the on going COVID-19 outbreak.

We are willing to assist you on the above related matter, therefore please let us know if you have any inquiries on such matter.

LOKA LAW OFFICE

Menara Standard Chartered, 9th floor
Jl. Prof Dr. Satrio No. 164, Jakarta 12930
Phone: 021-50986305 email: admin@lokalegal.com