

Covid-19 as a National Disaster and Its Impact on Infrastructure Development

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ABSTRACT: Indonesia's Vision 2045 to become a developed country with the fifth largest GDP / GDP in the world needs to be supported by infrastructure which has a multiplier effect directly or indirectly for improving the nation's economy. However, the spread of Covid-19 around the world has had a significant impact on Indonesian economic actors in the infrastructure sector. The purpose of this research is to examine the Indonesian Government's policies on the sustainability of infrastructure project development due to Covid-19. The research method is based on normative juridical approach with analytical descriptive research specifications supported by primary legal materials, secondary law, tertiary law, and qualitative data analysis. Research results: (1) The policy of refocusing activities and budget reallocation to accelerate Covid-19 pandemic control has the effect of slowing the completion of infrastructure project development, however the government remains committed to infrastructure development as a national strategic program while still paying attention to the Covid-19 protocol and (2) Covid -19 as a non-natural national disaster is a form of force majeure that is temporarily (relatively) delaying the implementation of infrastructure development.

KEYWORDS: Covid-19, National Disaster, Infrastructure, Relative Force Majeure.

I. INTRODUCTION

The Indonesian economy is the 16th largest country in the world with a total Gross Domestic Product (GDP) of nearly USD 1 trillion. In 2025, Indonesia is predicted to increase per capita income to US \$ 14,900, and in 2045 to US \$ 46,900 (ranked 7th or 8th in the world) (KAK, 2020). In order to achieve that, Indonesia already has the initial capital to enter into a category *high income country* in 2025, apart from being supported by abundant natural resource potential, strategic location, demographic bonus (large labor and market), it also needs to be supported by availability of infrastructure.

Therefore, the Government has great interest in accelerating the provision of infrastructure, because Indonesia experienced a national infrastructure crisis due to the 1997 global economic crisis and the 2007-2008 Asian financial crisis which resulted in limited government budgets in meeting the needs for infrastructure maintenance and development. In the transportation sector, the impact is hampered by mobility from one region to another, as well as obstruction of smooth distribution which causes an increase in transportation costs and production costs so that the selling price of goods and services becomes more expensive. In addition, it is indicated from several indicators of *competitiveness index* that logistics costs in Indonesia reach 17% of the total costs incurred by entrepreneurs. This figure is high compared to logistics costs in Malaysia which are only 8%, the Philippines, 7%, and Singapore 6%. Then, logistics costs in Indonesia reach 24% of total gross domestic product (GDP) and are the highest logistics costs in the world, thus affecting the attractiveness of the world investment climate in Indonesia (*Steps to Overcome the Global Financial Crisis*, 2009). This is in line with the report *Global Competitiveness Index (GCI) 2019 World Economic Forum (WEF)* that Indonesia's

competitiveness ranks 50th, far behind Singapore's first, Malaysia's 27th and Thailand's 40th.

To realize this condition, in 2018 the Government of Indonesia has set infrastructure development as one of the priority targets in increasing inter-regional connectivity and national strategic development.

However, at the beginning of 2020, the world including Indonesia was faced with the issue of the Covid-19 pandemic which had a huge impact on the world economy compared to the global financial crisis in 2008-2009, or the previous economic situation crisis. Based on the results of collaborative research by the LIPI Population Research and Development Center, the Ministry of Manpower's Labor Research and Development Center, and the Demographic Institute at UI on 24 April - 2 May 2020, the Covid-19 pandemic has an impact on the obstruction and even cessation of infrastructure development, due to the *lockdown* / Large-Scale Social Restrictions Policy (PSBB), as well as funding for the 2020 State Budget which is focused on mitigating Covid-19. The respond to these problems, firstly, this research has an important role to play in examining the government's policy on the of Indonesia's infrastructure sustainability development due to the Covid-19 pandemic. Second, can Covid-19 be used as an excuse for *force majeure* due to delays in infrastructure development.

II. METHODOLOGY

The approach method used in this juridical normative research is to study legal principles, especially positive legal principles that are sourced from existing library materials from statutory regulations, as well as provisions in particular relating to the impact of Covid-19 on the sustainability of infrastructure development.

Research Specifications, descriptive analysis to provide a comprehensive and systematic picture of the impact of Covid-19 on follow-up on infrastructure development with the aim of finding and obtaining answers to main problems that will be discussed further (Nyoman, Kutha, Ratna, 2010). Types and sources of data used are obtained through primary legal materials, secondary legal materials, among others in the form of scientific writings from experts related to the problem under study, as well as supported by secondary legal materials and tertiary legal materials. Data processing techniques are carried out through library research (*Library Research*), namely by collecting and studying secondary data (Hadi, Sutrisno, 1990). Furthermore, qualitative data analysis is carried out, namely a research procedure that produces descriptive analysis data, without using numbers or formulas.

III. RESULTS AND DISCUSSION

A. Indonesian Government Policies in Support of the Implementation of Infrastructure Development during the Covid-19 Period.

The President of the Republic of Indonesia, Joko Widodo, has a focus on developing Indonesia through infrastructure development such as toll roads, seaports, airports, reservoirs or dams, national roads, railways and other types of infrastructure. Also built *hinterland areas* in the form of industrial centers, industrial estates and Special Economic Zones, including infrastructure and industrial estate development with the aim of making Indonesia have high competitiveness in the global world (Joubert B. Maramis, 2018).

Infrastructure according to Law no. 1 of 2011 concerning Housing and Settlement Areas is a basic physical feature which includes: roads, drainage, clean water, solid waste, sanitation, electricity, and telephones. In economics, infrastructure is a form of public capital (*public capital*) sourced from government investment, including roads, bridges, irrigation and others that have a strategic role form of basic state services to support the social life of the community and the development of the wheels of activity economics (Putra, Kharisma, Agung, 2015).

The World Bank divides infrastructure into three parts, namely:

- (1) Economic infrastructure is the physical infrastructure needed to support economic activity, including *public utilities* (electricity, telecommunications, water, sanitation, gas), *public work* (roads, dams, canals, irrigation and drainage) and the transportation sector (roads, rail, ports, airports and so on).

- (2) Social infrastructure includes education, health, housing and recreation.
- (3) Administrative infrastructure includes law enforcement, administrative control and coordination (World Bank, 1994).

In addition, in a broad sense infrastructure can be divided into three types. First, public infrastructure, namely infrastructure that can be freely enjoyed by all citizens. For example: public roads, bridges, reservoirs or dams, irrigation and other public facilities. Second, semi-private infrastructure is infrastructure or facilities that are paid for but are not *profit-oriented* which are managed by the government. For example: electricity (PLN), buildings or art facilities, public tourist objects and the like. Third, private infrastructure is profit-oriented infrastructure or facilities. For example: toll roads, seaports, airports, industrial estates, Special Economic Zones (KEK) and the like. The first type of infrastructure is usually built by the government. However, the second and third infrastructure is usually built by BUMN or BUMD, private or government-private collaboration (Joubert B. Maramis, 2018).

The government places infrastructure as a national strategic project, due to the large role of infrastructure in supporting connectivity and eliminating regional disparities, improve the quality of life of the community, improve the level of welfare, encourage movement various economic activities and the flow of goods, reducing logistics costs, and creating sustainable development in realizing a high income country by 2025.

The Ministry of Public Works and Public Housing made several breakthroughs (KM Arsyad, 2017). First, structuring regulations and laws as an effort to guarantee certainty in the implementation and acceleration of infrastructure development. Second, to organize coordination between institutions. Third, increase infrastructure spending by IDR 409 trillion compared to the Revised Revenue and Expenditure Budget (APBNP) of IDR 387.3 trillion. These amounts include Rp. 395.1 trillion for economic infrastructure, Rp. 8 trillion for social infrastructure, and Rp. 4.9 trillion for supporting infrastructure. Likewise, in 2020 the government has allocated a budget of IDR 419.2 trillion which is focused on building roads, railways, airports, dams and towers, and housing (Agustiyanti, 2019). Fourth, the Ministry of Public Works and Public Housing encourages innovative funding through the involvement of the private sector, independently or through Public Private Partnership (PPP) and other financing alternatives so that they can play an active role in infrastructure development amid the limitations of the APBN / APBD in funding all infrastructure development. the impact of which in recent years has been significant progress in infrastructure development.

The 2019 Coronavirus Disease (Covid-19) outbreak, which started in Wuhan, Hubei Province, then spread rapidly to more than 190 countries including Indonesia (Susilo, Adityo, 2020), the Government of Indonesia has designated as a non-natural national disaster that has implications for health and social aspects, culture, global economic slowdown, including slowdown in infrastructure development. In the context of the Acceleration of Handling Coronavirus Disease 2019 (Covid-19), the Government, among other things, ratifies Presidential Instruction No. 4 of 2020 concerning Activity Refocusing, Budget Reallocation and Procurement of Goods and Services and Presidential Decree 54 of 2020 concerning Posture Changes and Details of the State Budget for the 2020 Fiscal Year.

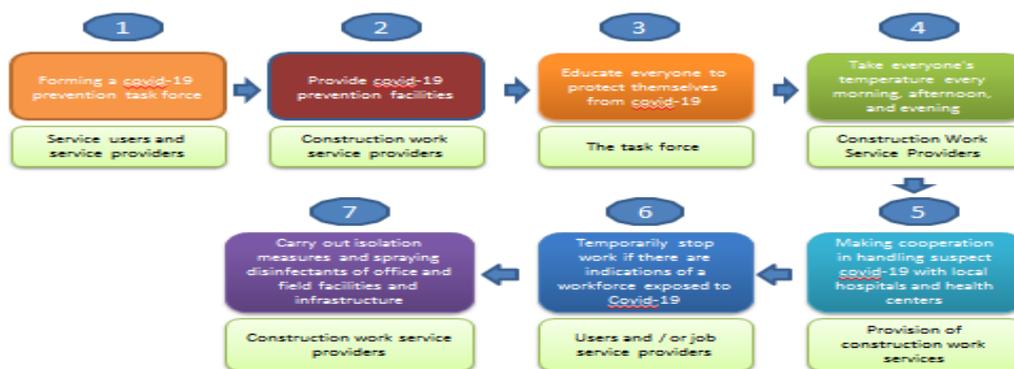
As a follow-up to these two regulations, to accelerate the response to the COVID-19 pandemic from the budget In 2020, the Ministry of Public Works and Public Housing (PUPR) reallocated the infrastructure budget of IDR 24.53 trillion, including:

1. Canceling contractual infrastructure packages that have not yet been auctioned.
2. Recomposition of the 2020 budget allocation in the multi-year policy package,
3. Changing Policy *single year contract* the 2020 packages to multi-year packages, including contractual packages whose value is not more than IDR 100 billion, so that their implementation can be further extended as in construction of several road infrastructure.
3. Optimizing non-physical activities that can be postponed / saved.

However, for infrastructure projects whose funding comes from outside the APBN and APBD, the Ministry of Public Works and Public Housing (PUPR) is committed to continuing to run the project with the

issuance of the Instruction of the Minister of Public Works and Public Housing Number: 02 / IN / M / 2020 Regarding Protocol Prevention of the Spread of Coronavirus Disease 2019 (Covid-19) In the Implementation of Construction Services, with the aim of providing assurance that the implementation of Indonesian Construction Services / infrastructure can continue to be carried out effectively and efficiently, by fulfilling the Covid-19 prevention protocol scheme, as illustrated in the chart below this:

Chart 1. Protocol mechanisms Preventing the spread of Coronavirus Disease 2019 (Covid-19) in the Implementation of Construction Services / Infrastructure



Source: Instruction of the Minister of Public Works and Public Housing No. 02 / IN / M / 2020 About Protocol Corona Virus Spreading Disease Prevention 2019 (Covid-19)

1. Establishment of a Prevention Task Force an Covid-19.
 Service Users and Service Providers are required to form a Covid-19 Prevention Task Force which is part of the Construction Safety Unit, which consists of at least 5 (five) people consisting of: (1) One Chair who is also a member and (2) Four Members representing Service Users and Service Providers. The Covid-19 Prevention Task Force has the task, responsibility and authority to: (1) socialize; (2) learning (education); (3) promotion of techniques; (4) methods / implementation of Covid-19 prevention in the field; (5) coordinating with the Covid-19 Response Task Force of the Ministry of PUPR to identify the Potential Covid-19 Hazards in the field; (6) health checks related to the potential for Covid-19 infection to all project workers and guests; (7) monitoring workers' health conditions and controlling worker mobilization / demobilization; (8) providing additional vitamins and nutrients to increase worker immunity; (9) Procurement of health facilities in the field; and (10) report to PPK in the event that a positive worker and / or Patient Under Supervision (PDP) has been found and recommends a temporary suspension of activities.
2. Identification of the potential dangers of Covid-19 in the field.
 The Covid-19 Prevention Task Force coordinates with the Covid-19 Response Task Force of the PUPR Ministry, identifies the risk of the project location to the distribution center of the Covid-19 spread in the area concerned, and provides health facilities in accordance with the Covid-19 handling protocol issued by the Government.
 In the event that the implementation of the construction is identified as having a high risk due to the project location being in the distribution center and workers who are positive and / or have the status of Patients Under Supervision (PDP), or there are regulations issued by the Head of Ministries / Institutions / Agencies / Regional Heads, then the operation of the construction / infrastructure service may be suspended temporarily due to Force Majeure.

However, if according to the nature and urgency, the implementation of construction / infrastructure services must be carried out as part of handling the social and economic impacts of Covid-19, then the Construction Service Implementation can be carried out with the following provisions: (1) Obtaining approval from the Minister of Public Works and Public Housing ; and (2) Implement the Covid-19 prevention protocol with high discipline and be reported regularly by the Covid-19 Prevention Task Force.

3. Provision of Health Facilities in the Field.

Construction work service providers are required to provide a health clinic in the field equipped with adequate health facilities. In addition, it is mandatory to have operational cooperation for health protection and prevention of Covid-19 with the nearest hospital and / or community health center for force majeure (*emergency*).

4. Implementation of Covid-19 Prevention in the field.

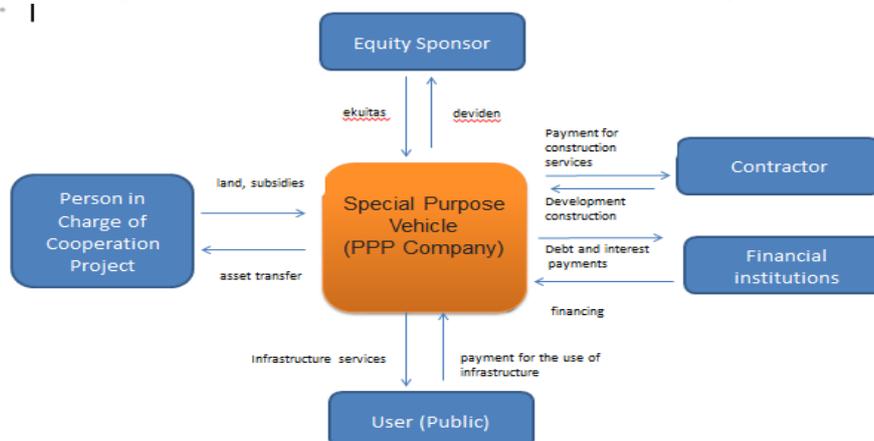
The Covid-19 Prevention Task Force put up posters (*flyers*) both digital and physical at strategic places at the project locations for the Covid-19 prevention appeal. Then, the medical officer and the *Security Staff* carry out body temperature measurements for all workers and employees every morning, afternoon, and evening. If a worker is found to have a body temperature of ≥ 38 (thirty eight) degrees Celsius, then he is categorized as a Covid-19 Patient Under Supervision (PDP), so that the Service User and / or Service Provider can temporarily suspend 14 (fourteen) working days.

Medical Officers, assisted by *Security Staff*, carry out evacuations and spray disinfectants in all places, facilities and work equipment and isolate workers who have had physical contact with workers exposed to Covid-19. (Instruction of the Minister of Public Works and Public Housing Number: 02 / IN / M / 2020 concerning the Protocol to Prevent the Spread of Coronavirus Disease 2019 (COVID-19) in the Implementation of Construction Services).

B. Determination of Covid-19 as a National Disaster that Hinders the Sustainability of Infrastructure Development as a Form of Force Majeure

Implementation of infrastructure development is a complex economic production chain because it is carried out through several stages and requires quite a long time starting from planning, development, financing, operation of infrastructure, including its maintenance. In addition, specifically for the implementation of innovative funding infrastructure development through the involvement of the private sector, involving the role of stakeholders as illustrated in the chart below:

Figure 2. Data of Parties Involved in Infrastructure Development



Source Guidelines for the Implementation of Public-Private Partnership (PPP) in Infrastructure Provision

Based on this chart, the parties involved in infrastructure funding through the Public Private Partnership (PPP) scheme, namely:

1. Responsible Agency for Cooperation Projects (PJPK) is an institution / institution that acts as a representative of the Government, which can be a Ministry / Institution / Government. Regions or State owned Enterprises (BUMN) / Regional Owned Enterprises (BUMD) which are responsible for providing infrastructure in accordance with statutory regulations.
2. Equity Sponsors are private companies that usually join forces to form a consortium to participate in company procurement auctions.
3. KPS Company is a company specifically established by a sponsor who wins the process Business Entity auction.
4. Contractor is the party responsible for carrying out the construction of infrastructure projects and / or project management.
5. Financial Institutions are lenders who provide funds for PPP companies to build joint projects.
6. The public is the community as the end user of a facility or service (Emma, Sri, Martini).

Cooperation between the Government and Business Entities in the Provision of Infrastructure is based on the Construction / Infrastructure Work Contract as a whole contract document that regulates the legal relationship between the Service User as the owner or employer who uses construction services and the Service Provider as a construction service provider, which places the rights and obligations of the reciprocal parties (Sri Redjeki Slamet, 2016).

The Black's Law Dictionary states that "a contract is an agreement between two or more persons which creates an obligation to do or not to do a particular thing." A contract (agreement) is defined as an agreement between two or more people who give rise to an obligation to perform or not doing something, which in the agreement law is called achievement (Elfiani, 2012). The complexity of the infrastructure development agreement, Grimsey and Lewis identified several risks, namely (1) technical risk; (2) construction risk; (3) operational risk; (3) 4) the risk of revenue; (5) financial risk; (6) the risk of *force majeure*; (7) the political risk; (8) environmental risks; and (9) the risk of project failure (D. MK Grimsey and Lewis, 2002).

From some the risk above, *force majeure* which in Roman law (*vis motor cui resisti non potest*) is a condition that occurs after an engagement is carried out that prevents the debtor from fulfilling his achievements, so that the debtor does not can be blamed, do not have to take risks, and all this happens before the debtor is negligent in fulfilling his achievements (Fuady, Munir, 2001).

According to Johari Santoso and Achmad Ali, there are 2 (two) types of *force majeure*, namely as follows:

1. *Force majeure* absolute: the implementation of an agreement is no longer possible at all, for example infrastructure buildings are destroyed due to natural disasters.
2. *force majeure* Relative: the implementation of the agreement is still possible, but with too great a risk and sacrifice from the debtor, for example an increase in the price of goods, prohibition of delivery of goods, and so on (Santoso, Johari and Ali, Achmad, 1989).

There are two consequences of *force majeure*, namely: (1) "freeing" the debtor from the obligation to carry out "fulfillment" (*nakoming*) of achievements, and (2) Freeing the debtor from "compensation" (*schadevergoeding*) even though he cannot fulfill the fulfillment of the infrastructure development. (Rasuh, John, Daryl, 2016).

Indonesian scholars have different views about Covid-19 as a form of *force majeure* in the business / infrastructure sector. Regarding these differences of view, the author has the opinion that the temporary suspension of the implementation of infrastructure development due to the Covid-19 pandemic can be used as one of the reasons *force majeure* for temporary (relative), namely delaying the implementation of infrastructure development, if the situation *force majeure* is passed, the implementation of infrastructure development must still be implemented. This is based on Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of CoronaVirus

Disease 2019 (Covid-19) and Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters of the Spread of Coronavirus Disease 2019 (Covid-19) as a National Disaster.

The existence of Large-Scale Social Restrictions (PSPB) limits the process of mobilizing people (labor) including goods (materials) or equipment, causing a delay in the completion of infrastructure projects. Even for infrastructure projects that are located in areas that have been designated as red zones, infrastructure development can be suspended temporarily. Violation of Large-Scale Social Restrictions (PSPB) as stated in Article 93 of Law No. 6 of 2018 concerning Quarantine is subject to a criminal sanction of 1 year and / or a maximum fine of one hundred million.

However, to categorize the temporary suspension of construction / infrastructure service contracts as a *force majeure*, in accordance with the Instruction of the Minister of Public Works and Public Housing No. 02 / IN / M / 2020 Regarding the 2019 Coronavirus Disease Prevention Protocol (Covid-19), the following steps must first be taken:

1. PPK or Service Provider proposes to stop construction service work based on the Task Force's proposal Prevention of Covid-19 after identifying the potential dangers of Covid-19 in the field.
2. PPK will freeze after obtaining approval from the Directorate General of Housing for further reporting to the Director General.
3. The time for stopping construction work is at least 14 working days or as needed, accompanied by a report prevention and handling of Covid-19 at the project site and determining *force majeure*.
4. In the event that the construction service contract document does not specifically regulate the mechanism for determining status *force majeure* and temporary stoppages of work due to the handling of Covid-19 were recommended by the Task Force Covid-19 prevention to PPK and its supporting documents.
5. PPK together with the Covid-19 Prevention Task Force, Service Providers, and Work Supervisors agree recommendation for temporary suspension of work due to *force majeure*.
6. Especially for construction services that are strategic in nature as the implementation of the Presidential Decree / Keppres / Inpres and other directives, PPK stipulates a temporary suspension due to *force majeure* and reports it to receive approval from the Minister of PUPR.

Reviewing the provisions contained in the Instruction of the Minister of Public Works and Public Housing No.02 / IN / M / 2020, it is not easy for Construction Service Providers to claim that construction construction / infrastructure that cannot be implemented due to the Covid-19 pandemic as a reason for *force majeure*, because they must really meet the requirements and procedures of something that is stipulated by the rules regarding 2019 (Covid-19) Corruption Virus Disease Prevention Protocol.

IV. CONCLUSION

Government policies in supporting accelerated control of the Covid-19 pandemic through refocusing of activities, budget reallocation, and procurement of goods and services have a major impact on the slowdown in development and completion of infrastructure projects. However, as a manifestation of the Government's commitment to infrastructure development as a national strategic program in realizing Indonesia as a country with global competitiveness, the government, with the support of private funding, continues to carry out infrastructure projects by complying with the Covid-19 prevention protocol scheme.

Government policy in determining non-natural disasters for the spread of coronavirus disease 2019 (Covid 19) as a national disaster which is followed up by Large-Scale Social Restrictions (PSBB), is a form of *force majeure* that is temporary (relatively) to delay or even stop the implementation of infrastructure development. *The force majeure* is based on restrictions on the mobilization of people (labor) including goods (material) or equipment, so that it has an impact on the sustainability of infrastructure development, and violations of the PSBB are faced with a legal sanction.

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