



A CALL FOR THE REVISION OF THE DISASTER MITIGATION ACT TO DEVELOP ADAPTIVE DISASTER MITIGATION MANAGEMENT: LESSONS LEARNED FROM THE MANAGEMENT OF THE COVID-19 PANDEMIC IN INDONESIA



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EXECUTIVE SUMMARY

Learning from the management of the coronavirus disease 2019 (COVID-19) pandemic, the Indonesian government needs to immediately revise Law No. 24 of 2007 on Disaster Mitigation (Disaster Mitigation Act) in order to strengthen the system of command and authority of the National Agency for Disaster Management (BNPB). The need for the revision is evident, at least from the implementation of the programs and policies, where there are issues concerning the beneficiary data collection and the distribution of social assistance, as well as how the COVID-19 testing laboratories were determined. Despite its role as the head of the implementing team of efforts to manage the COVID-19 pandemic, the BNPB does not have much authority to deal with the issues. The system of command and coordination in dealing with disaster should be strong and stable so that disaster mitigation management can be more adaptive.

We recommend that the Disaster Mitigation Act be revised, taking into account the following three improvement strategies to develop a more adaptive disaster mitigation system.

- First, define more clearly the division of authority between institutions (layers) in the government for the mitigation effort of a disaster according to its status.
- Second, strengthen the BNPB's authority to use and manage the strategic resources.
- Third, strengthen the BNPB's strategic authority to design an institutional system/structure for disaster mitigation, including its derivative command system at both the national and regional levels.

AMBIGUOUS REGULATIONS AND AUTHORITY IN THE MANAGEMENT OF THE COVID-19 PANDEMIC

The coronavirus disease 2019 (COVID-19) pandemic has tested the readiness of many countries, including Indonesia, in responding to a disaster impacting not only the health sector, but also the economy. In dealing with the pandemic, the Indonesian government uses Law No. 24 of 2007 on Disaster Mitigation (Disaster Mitigation Act) as the main legal framework. However, various problems that emerged in the implementation of programs/policies to manage the pandemic and the ineffective steps taken by the government to address them indicate that there is a need for a fundamental revision of the Disaster Mitigation Act.

In terms of coverage, the Disaster Mitigation Act needs to be revised to strengthen the mitigation of nonnatural disasters.¹ The Act seems to only focus on the mitigation of natural disasters, the loss of lives, and the damage to the infrastructures. Meanwhile, the mitigation of nonnatural disasters, including a pandemic, is regulated by separate laws, namely Law No. 4 of 1984 on the Epidemic of a Disease and Law No. 6 of 2018 on Health Quarantine. The separate regulations need to be synchronized in order to overcome differences in perception and ambiguities about roles of the leading actors in the mitigation of disasters, especially nonnatural disasters.

At the same time, improving the context of nonnatural disaster only is not enough to develop the government's readiness to adaptively manage a disaster. In the management of the COVID-19 pandemic, there have been frequent polemics between government institutions due to the issuance of policies that are reactive, in contradiction with each other, or poorly targeted. Amid the polemics, the role of the command system of the National Task Force for the Acceleration of the Handling of COVID-19 (the COVID-19 National Task Force)² led by the BNPB has not been clear and effective in addressing the issues.

This situation indicates that the improvement of BNPB's command system and authority is substantial for the revision of the Disaster Mitigation Act. This is important in order to establish a disaster mitigation management that is adaptive and founded on a stronger regulatory basis. We recommend three strategies to improve the disaster mitigation system with emphasis on the BNPB's authority and command. The three strategies are (i) clarifying the position of the BNPB and its relationship with other institutions, (ii) strengthening the BNPB's authority to manage strategic resources, and (iii) strengthening the BNPB's authority to design institutional system/structure³ for disaster mitigation effort.

Recommendation 1: Clarifying the position of the BNPB and its relationship with other institutions in disaster mitigation effort

The first strategic step in revising the Disaster Mitigation Act should be synchronizing this Act with the spirit of Law No. 23 of 2014 on Regional Governments (Regional Government Act). This is important to do in order to clarify the BNPB's command system in the mitigation effort of a disaster according to its status.

In articles 10–25, the Disaster Mitigation Act regulates the institutional arrangement or system of disaster mitigation through the formation of the BNPB and Regional Disaster Management Agency (BPBD). Also, Article 51, Section 2, of the Act regulates the authority of multiple parties to determine the status of a disaster.⁴ However, the Act does not have any articles that clearly regulates authority relations between institutions based on the status of a disaster. For instance, authority relations between the central government, provincial governments, and *kabupaten/kota* governments are not regulated in the event of the president declaring a national disaster. Furthermore, the Act does not regulate the division of authority or responsibility between the actors of the central and regional levels in the event of a disaster.

Unclear authority relations inhibit the government's effort to swiftly and accurately manage the COVID-19 pandemic. This can be seen from the weak coordination between the central government and regional governments in the health sector that has resulted in varied data of COVID-19 cases, overlapping authorities in the administration of COVID-19 testing, and failure to provide the necessary facilities at the government-appointed examination laboratories (Saputri, 2020). Ambiguity in authority relations is also seen from the prolonged conflict between the central government and the heads of regional governments of the Greater Jakarta area⁵ regarding the implementation of Large-scale Social Restriction (PSBB), for example, about the prohibition of the annual homecoming travels (Wahyu, forthcoming).

The weak regulation on authority relations is also reflected in Government Regulation No. 21 of 2008 on the Administration of Disaster Mitigation Effort and Presidential Decree No. 7 of 2020 on the Task Force for the Acceleration of the Handling of Coronavirus Disease 2019 (COVID-19) and its replacement, Presidential Decree No. 9 of 2020 on the Revision of Presidential Decree No. 7 of 2020 on the Task Force for the Acceleration of the Handling of Coronavirus Disease 2019 (COVID-19). These regulations made no reference to the Regional Government Act⁶ when, in fact, the Act should be made a reference as it stipulates more clearly the positions and authority relations of multiple layers of the government in the mitigation of a disaster based

¹ In this Act, we can even find inconsistency in the classification of an epidemic as a disaster. Article 1, Section 3, of this Act states that an epidemic is classified as a nonnatural disaster, but Part I of its explanation (General) classifies it as a natural disaster.

² As this policy brief was being written, President Joko Widodo issued Presidential Regulation No. 82 of 2020 on the Committee for the Handling of Coronavirus Disease 2019 (COVID-19) and Economic Recovery to replace the Presidential Decree No. 9 of 2020 on the Revision of Presidential Decree No. 7 of 2020 on the Task Force for the Acceleration of the Handling of Coronavirus Disease 2019 (COVID-19). Yet, the presidential regulation made no reference to the Disaster Mitigation Act. Moreover, until this brief was completed, there has been no new regulation regarding the structure of the new task force and its scope of authority, meaning that the presidential decree is still in effect.

³ The institutional system/structure referred to here is a system that regulates the institutions that should be involved in the disaster mitigation effort, as well as their respective responsibilities and levels of authority.

⁴ Article 51, Section 2, of the Disaster Mitigation Act: "The establishment of a disaster's status as stated in Section 1 is the authority of the president, in the case of a disaster that is national scale; of the governor, in the case of a provincial scale; and of the head of *kabupaten* (district)/*kota* (city), in the case of a *kabupaten/kota* scale."

⁵ Locally known as Jabodetabek–Jakarta, Bogor, Depok, Tangerang, Bekasi.

⁶ The Regional Government Act in this context includes Law No. 23 of 2014 on Regional Governments and the Regional Government Act that was previously in effect, namely Law No. 32 of 2004.

on its scope of impact.⁷ As the impact of COVID-19 pandemic is cross-provincial, the authority to mitigate it should be in the hands of the BNPB as the agency appointed by the central government.

Revision of the Disaster Mitigation Act needs to include the spirit of the Regional Government Act to make the positions and authority relations of multiple layers of the government in the mitigation of a disaster clear based on its status. Thus, the BNPB holds the command to determine the steps to be taken by various ministries or institutions at the central and regional levels. The agency is also responsible for addressing any conflict of interest between institutions.

Recommendation 2: Strengthening the BNPB's authority to manage strategic resources

The Disaster Mitigation Act also needs to be revised in order to strengthen the BNPB's authority to manage the strategic resources in the event of a disaster emergency. The emergency referred to here is not of the civil emergency context, as stipulated in Government Regulation in Lieu of Law No. 23 of 1959 on the State of Emergency. Public health emergency can be categorized as a disaster emergency referring to its definition in Law No. 6 of 2018 on Health Quarantine.⁸

In the management of the COVID-19 pandemic, it may seem that the Disaster Mitigation Act has provided the BNPB with a fairly strong foundation to respond to the pandemic in an integrated way by requiring that the related institutions provide easy access to resources. However, Article 50 of the Act states that the freedom of the BNPB to manage the resources is actually limited to the use of technical resources, including human resources, tools, and logistics, and does not include strategic resources. In terms of managing finances, the BNPB's authority in the command system is also limited to the ready-to-use fund set by the government in the event of a disaster.

The limited authority of the BNPB to manage resources has made the government seem to be unable to address various issues related to disaster mitigation. During the COVID-19 pandemic, the BNPB has been intensively giving information about the number of cases and distributing medical equipment. However, the agency has been weak, for example, in addressing the complicated problem of social assistance in West Java as a result of unsynchronized data of recipients and unclear distribution mechanism, which was left to each institution/agency to deal with (Oley, 2020).

Revision of the Disaster Mitigation Act is important in order to strengthen the BNPB's authority to manage the strategic resources in the event of a disaster emergency. This includes the authority to develop a database dashboard and a contingency plan⁹ and make necessary adjustments to various programs/policies of ministries or institutions at the central and regional levels so that a disaster mitigation effort can be pursued synergistically.

Recommendation 3: Strengthening the BNPB's authority to design institutional system/structure for disaster mitigation

The BNPB's leadership should be made more strategic by giving it authority to design an institutional system/structure during the mitigation process of a national-level disaster. That way, the BNPB will have the authority to design a command system to respond to a disaster and be in command of such system.

Detailed elements about the command system in disaster mitigation, including its structure and authority, is currently stipulated only in Regulation of the Head of BNPB No. 3 of 2016 on the Command System for the Mitigation of a Disaster Emergency, which is aligned with the mandate of Article 47, Section 5, of the Government Regulation on Disaster Mitigation. However, the BNPB head's regulation only regulates a command system limited to its internal system and not for an institutional system that involves other actors or institutions. Moreover, it only regulates the command posts and the mitigation of a disaster emergency that structurally have no direct relevancy with nonnatural disasters, including the COVID-19 pandemic. Nevertheless, the regulation is principally important to be used as a model when revising the Disaster Mitigation Act as it makes reference to the Regional Government Act.

Strengthening the BNPB's authority to design an institutional system/structure is essential because its weak authority in managing the COVID-19 pandemic (in the COVID-19 National Task Force) does not allow the agency to make any institutional changes that will enable it to manage issues between government institutions. This is evident in the polemics on the operation of commuter trains (Kurniawan, 2020) and the distribution of social assistance (Oley, 2020). The BNPB has often left the solution to such problems to be handled by the government institutions at the regional level.

The BNPB's strategic role in designing the institutional system/structure should at least start by making changes to the following two aspects: (i) the flow of control, reporting, and accountability of various government institutions, and (ii) the form and system of command in the implementation of programs by government institutions. These two aspects can be put into operation when a disaster has been declared a national disaster, which calls for the BNPB to play a role as the coordinator and take command of multiple programs/policies for its mitigation.

For the first aspect, the BNPB fully acts as the executive team leader of all government institutions/agencies assigned to work in the mitigation effort. The agency reports directly to the president, who takes the lead during the national disaster emergency. The BNPB's full leadership is especially effective in terms of coordinating the institutions, monitoring the technical implementation, and conducting the evaluation.

⁷ The Regional Government Act includes disaster mitigation in the government subdivision of public peace, order, and safety affairs. The Act states that disaster mitigation is fully the responsibility of (i) the central government, if the impact is cross-provincial or countrywide; (ii) the provincial government, if the impact is cross-*kabupaten/kota*; and (iii) the *kabupaten/kota* government, if the impact is local or within one *kabupaten/kota*.

⁸ In this Act, a public health emergency is defined as "an event of public health that is extraordinary in nature, characterized by the spread of an infectious disease and/or an event caused by nuclear radiation, biological contamination, chemical contamination, bioterrorism, and foods, which are hazardous to health and have a potential danger to spread cross-regions or cross-country."

⁹ Contingency in this policy brief refers to the contingency plan stipulated in Government Regulation No. 21 of 2008 on Administration of Disaster Mitigation Effort.

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For the second aspect, the BNPB can fully coordinate various institutions in a command system according to the strategic functions needed. This results in two implications. First, the BNPB will have the authority to form a derivative command system in each layer of the government and delegate some of its authority to the command system. Second, the government agencies/institutions needed in the disaster mitigation effort will work under the BNPB's coordination or under the established derivative command system.

For example, based on the need for synchronized policies on the operation of commuter trains in the Greater Jakarta area during the pandemic, the BNPB can set up a Jabodetabek task force to coordinate solutions to the problems with the regional heads. Under the authority of the COVID-19 National Task Force, the Jabodetabek Task Force is responsible to take command and coordinate with the regional heads. The capacity to make such adjustments will ensure the strategic leadership of the BNPB as the leading actor in disaster mitigation. This will also ensure a swifter process of synchronizing the implementation, monitoring, and evaluation of the programs to manage the pandemic.

THE DISASTER MITIGATION ACT SHOULD BE REVISED IMMEDIATELY

Disaster mitigation in an emergency requires extraordinary effort. In this case, an improvement to the command system is a fundamental step in revising the Disaster Mitigation Act. The improvement includes strengthening the BNPB in terms of its position and relationship with other institutions, freedom to manage the resources, and authority to manage the institutional system/structure. This way, the government can develop a more adaptive disaster mitigation management. ■

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