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IMPLICATIONS OF THE CONSTITUTIONAL COURT DECISION RELATED TO DISASTER MANAGEMENT IN THE PERSPECTIVE OF LEGAL CERTAINTY IN DETERMINING THE STATUS AND LEVEL OF NATIONAL AND REGIONAL DISASTERS (STUDY OF DECISION NUMBER 261/PUU-XXIII/2025)

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Abstract

The Constitutional Court Decision Number 261/PUU-XXIII/2025 reinterprets Article 7 paragraph (2) of Law Number 24 of 2007 concerning Disaster Management. This study aims to analyze the normative conditions of determining the status and level of disaster before the decision, the remaining legal problems, and solutions so that legal certainty is truly realized. The method used is normative legal research with a legislative, case, and comparative approach (United States, Japan, and the Philippines), with qualitative analysis based on the dialectical framework of thesis, antithesis, and synthesis. The results of the study show that the decision changes the regime of five cumulative indicators to the fulfillment of at least three indicators with the number of victims as the main indicator, thereby reducing the obstacles to determining national disasters. This study recommends a Presidential Regulation that contains measurable thresholds, a mechanism for triggering assessments with deadlines, the obligation to provide written reasons, and a revision of the law.

Keywords: *Constitutional Court Decision; Legal Certainty; National Disasters; Disaster Management; Disaster Indicators*

A. BACKGROUND

Indonesia is at the confluence of three tectonic plates and crossed by the Pacific ring of fire, while climate change and environmental damage increase the frequency of hydrometeorological disasters. The National Disaster Management Agency (BNPB) records thousands of disaster events every year. Disaster management is therefore a constitutional obligation of the state to protect its citizens, in line with the guarantee of fair legal certainty in Article 28D paragraph (1) and the right to a sense of security in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution).

In Law Number 24 of 2007 concerning Disaster Management (Law 24/2007), the determination of the status and level of national and regional disasters is the authority of the Government (Article 7 paragraph (1) letter c). This determination determines the party who bears the responsibility, the source of funding, and the speed of activation of the ease of access to emergency response. Article 7 paragraph (2) mentions five indicators, namely the number of victims, property losses, damage to infrastructure and facilities, territorial coverage, and socio-economic impact, while paragraph (3) orders further regulation by Presidential Regulation.

In a solemn manner, the delegation's order should be followed up so that citizens can know when the state is obliged to be fully present. In a solemn manner, the Petitioners in the a quo case stated that they had never found the Presidential Regulation in question, so that the five indicators were understood to be cumulative and the determination depended on discretion. The impact was seen in flash floods and landslides in Aceh, North Sumatra, and West Sumatra at the end of November 2025. As of January 14, 2026, the death toll was recorded at 1,189 people, 141 people were missing, 195,500 people were displaced, and 53 districts/cities were affected, but the Government called it a "national priority" and did not designate it as a national disaster.

The main obstacles are the cumulative formulation that is difficult to meet completely, the absence of a measurable threshold, and the absence of an obligation to explain the reasons for

determination or rejection. The turning point is the Constitutional Court (MK) Decision Number 261/PUU-XXIII/2025 which was pronounced on August 28, 2026: Article 7 paragraph (2) was declared conditionally unconstitutional, and the national status is based on the fulfillment of at least three indicators with the number of victims as the main indicator. This decision has not answered all operational issues. This article offers a dialectical analysis of its implications for legal certainty, as well as solutions in the form of measurable Presidential Regulations, trigger mechanisms and accountability, and legislative follow-up.

B. RESULTS AND DISCUSSION

1. Normative and Factual Conditions for Determining Disaster Status and Level

Article 1 paragraph (3) of the 1945 Constitution affirms Indonesia as a state of law, and Article 28D paragraph (1) guarantees fair legal recognition, guarantee, protection, and certainty. Gustav Radbruch placed legal certainty (*Rechtssicherheit*) along with justice and utility as three basic legal values that[1] are intertwined. In Peter Mahmud Marzuki's formulation, legal certainty has two meanings, namely the existence of general rules that make people know what actions can and cannot be done, and legal security for individuals from state arbitrariness because the general rule limits what can be imposed on him. [2] Sudikno Mertokusumo added that the legal certainty of demanding the law is carried out as it reads so that justice seekers can estimate the consequences of their actions.[3]

Lon L. Fuller provides a more operational test through eight principles of legality, among which rules must be announable, clear, not contradictory, and there is conformity between the rules

[1]Gustav Radbruch, "Statutory Lawlessness and Supra-Statutory Law (1946)", ed. Bonnie Litschewski Paulson and Stanley L. Paulson, *Oxford Journal of Legal Studies* 26, no. 1 (2006): 1–11.

[2]Peter Mahmud Marzuki, *Introduction to Law* (Jakarta: Kencana, 2008), p. 158.

[3]Sudikno Mertokusumo, *Getting to Know the Law: An Introduction* (Yogyakarta: Liberty, 2005), p. 160.

announced and their implementation by officials.[4] The last principle is relevant to this case, because delegated orders in laws that are not implemented create a distance between written law and practice. Tom Bingham mentions a similar thing when he emphasizes that the exercise of official power must be within clear and testable legal limits.[5] These three measures, namely the clarity of norms, the measurability of application, and the test of discretion, are used in this article to assess the conditions before and after the decision.

Law 24/2007 classifies disasters into natural, non-natural, and social disasters (Article 1 numbers 2 to 4) and places the responsibility for implementation on the Government and local governments (Article 5). The Government's authority includes the determination of the status and level of national and regional disasters (Article 7 paragraph (1) letter c). Paragraph (2) then mentions five indicators without a firm link, and paragraph (3) leaves further arrangements to the Presidential Regulation. Since there is no alternative connecting word, the practice and understanding of the implementer tends to read them cumulatively.[6] Article 51 of Law 24/2007 itself stipulates that the status of disaster emergency is determined by the President at the national level, the governor for the provincial level, and the regent/mayor for the district/city level, which is strengthened by Article 23 paragraph (2) of Government Regulation Number 21 of 2008.

This status has concrete legal consequences. At the regional status, the head of the regional disaster management agency mobilizes resources and uses ready-made funds from the APBD (Articles 28, 29, and 41 paragraph (2) of GR 21/2008). At the national status, control and funding shift to the BNPB and the State Budget,

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[4]Lon L. Fuller, *The Morality of Law*, rev. ed. (New Haven: Yale University Press, 1969), pp. 33–94.

[5]Tom Bingham, *The Rule of Law* (London: Penguin Books, 2010), pp. 37–47.

[6]See the Applicant's description that the indicators are understood cumulatively in the Constitutional Court Decision Number 261/PUU-XXIII/2025, pp. 20 and 58–59; also Media Indonesia, "BNPB Respects the Constitutional Court's Decision on Indicators for Determining Disaster Status", https://mediaindonesia.com/humaniora/927594/bnpb-hormati-putusan-mk-terkait-indikator-penetapan-status-bencana, accessed October 11, 2026.

and the President can form a special task force.[7] This difference shows that the determination of status is not an administrative formality, but the entrance to state obligations at a certain level. Therefore, the benchmark for its determination is directly related to the guarantee of constitutional protection of citizens.

The delegation of Article 7 paragraph (3) has not been implemented with a Presidential Regulation that regulates indicators in detail. The government has indeed issued Presidential Regulation Number 17 of 2018 concerning the Implementation of Disaster Emergencies under Certain Conditions, but the regulation regulates emergencies under certain conditions and does not contain a threshold for determining the status and level of disasters. The Petitioners stated that they did not find the implementing regulations in question, and the Monitoring Report on the Implementation of the Law of the House of Representatives Expert Body in 2022 contained similar findings, while the discussion of changes to the law was stopped in the Plenary Meeting on May 31, 2022 because the House of Representatives and the Government had not yet agreed.[8] Eighteen years after the promulgation, the delegation's order has still not been implemented.

The practice of determining status before the verdict shows a non-uniform pattern. The 2004 Aceh earthquake and tsunami were designated as a national disaster through a presidential decree before Law 24/2007 came into effect.[9] The COVID-19 pandemic was designated as a national non-natural disaster by Presidential Decree Number 12 of 2020.[10] On the other hand, the 2018 Palu-Donggala earthquake and tsunami, which according to the Petitioners killed

[7]Constitutional Court Decision Number 261/PUU-XXIII/2025, pp. 45–46, which summarizes the differences due to the legal status of districts/cities, provinces, and nationals.

[8]Constitutional Court Decision No. 261/PUU-XXIII/2025, pp. 53–54, referring to Evidence P-15.A.

[9]Presidential Decree No. 112 of 2004 concerning the Determination of National Disasters and National Mourning Days for Natural Disasters of Earthquakes and Tsunami Waves in Nanggroe Aceh Darussalam Province and North Sumatra Province.

[10]Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster.

2,045 people, was not designated as a national disaster.[11] The difference in results on a comparable impact scale is what in Fuller's theory indicates the weakness of consistency and measurability of the rules.

The peak cases are flash floods and landslides in Aceh, North Sumatra, and West Sumatra at the end of November 2025. Data submitted by the Petitioners as of January 14, 2026 shows 1,189 deaths, 141 missing, 195,500 refugees, 53 affected districts/cities, 175,050 damaged houses, and thousands of damaged education, health, and bridge facilities. A number of regents in Aceh stated that they were unable to deal with the impact in their areas, but the national status was not determined and the Government used the term "national priority" which was not recognized in Law 24/2007. [12] In the trial, the Government witness denied the existence of unlimited discretion and stated that the determination of status remained bound by the norms and indicators of Article 7 paragraph (2), although he admitted that economic, administrative, and government stability considerations also had an effect.[13] The last admission showed that factors outside the legal indicators did indeed determine.

This case was filed by seven Applicants, namely a student who was a direct victim of the disaster in Humbang Hasundutan and six advocates, with the touchstone of Article 1 paragraph (3), Article 5 paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution. The object of the test is Article 7 paragraph (2), Article 7 paragraph (3), and Article 84 of Law 24/2007.[14] The application was registered on December 18, 2025 and decided on August 28, 2026 with a partial grant. The Court stated that Article 7 paragraph (2) is contrary to the 1945 Constitution and does not have the force

[11]Constitutional Court Decision Number 261/PUU-XXIII/2025, pp. 17–18.

[12]Constitutional Court Decision Number 261/PUU-XXIII/2025, pp. 10–11 and 15–18.

[13]NU Online, "At the Constitutional Court, the Government Denies Allegations of Unlimited Presidential Discretion on the Aceh-Sumatra Disaster", https://nu.or.id/nasional/di-mk-pemerintah-bantah-tuduhan-diskresi-presiden-tanpa-batas-soal-bencana-aceh-sumatra-MGRjK, accessed October 11, 2026.

[14]Constitutional Court Decision Number 261/PUU-XXIII/2025, pp. 1–3 and 5–6.

of conditionally binding law as long as it is not interpreted that the determination of the status and level of the disaster contains five indicators, and that the determination of national status is based on the fulfillment of at least three indicators with the number of victims as the main indicator that must be met.[15] The remaining applications were denied, including the request that Article 7 paragraph (3) be interpreted as a delegation to a Government Regulation. The discussion of the following considerations relies on the Court's official quotation published in the media and the summary of the amar, and does not include the possibility of the judge's differing opinion because it is not listed in the material referenced.

The Court's reason, as conveyed by constitutional judge Enny Nurbaningsih, is that the cumulative implementation of five indicators has the potential to slow down early determination and hinder emergency response, and that three indicators were chosen to encourage the central government to be more responsible and responsive. The Court also reasoned that if the indicators of victims, property losses, and damage to infrastructure facilities are high, the socio-economic impact must be high, and a disaster that does not meet the national indicators is in itself a regional disaster.[16] Judge Enny's statement also emphasized that if the three indicators are met, the central government must immediately establish a national status and take over the responsibility for handling it from the local

[15]The summary is quoted from Pasal.id, "Constitutional Court Decision 261/PUU-XXIII/2025 — Conditional Unconstitutional", https://pasal.id/peraturan/putusan-mk/puu-mk-261-2025, accessed October 11, 2026; compare Katadata.co.id, "Constitutional Court Changes National Disaster Determination Rules: Three Indicators Are Enough", accessed October 11, 2026.

[16]Katadata.co.id, "Points of the Constitutional Court's Decision on National Disaster Determination: No Need to Wait for 5 Indicators", https://katadata.co.id/berita/nasional/6a9948afce878/poin-putusan-mk-soal-penetapan-bencana-nasional-tak-perlu-tunggu-5-indikator, accessed 11 October 2026; RCTI+, "Constitutional Court Changes National Disaster Determination Rules, Now Enough to Meet 3 out of 5 Indicators", https://www.rctiplus.com/news/detail/nasional/5461400/mk-ubah-aturan-penetapan-bencana-nasional--kini-cukup-penuhi-3-dari-5-indikator, accessed 11 October 2026.

government.[17] The sentence "must immediately" shifts the nature of authority from freedom of choice to a legal obligation once the conditions are met.

Dogmatically speaking, amar is *conditionally unconstitutional*, which is a technique when norms are not canceled but are given meanings that are considered to be in line with the constitution.[18] The Court's decision is final and binding (Article 24C paragraph (1) of the 1945 Constitution) and is valid since it is pronounced in a plenary session open to the public (Article 47 of the Constitutional Court Law). Thus, the new meaning applies in the future and does not automatically change the status of the 2025 Sumatra floods that have occurred. This is the condition of this study's thesis: the cumulative five-indicator regime has been replaced by a three-indicator regime with the victim as the main determinant.

2. The Problem of Post-Decision Legal Certainty

The decision simplifies the number of indicators but does not fill in the content. The Petitioners' question from the outset, namely how many casualties made a disaster of national status, has not been answered by the Petitioners. The Petitioners even offered an example of a minimum number of thousand people, but the Court did not set a figure.[19] One observer wrote that the Court did not set a threshold for each indicator, so the question of how many victims were considered to be many and how many losses turned a regional disaster into a national one remained open.[20] In Fuller's

[17]CNN Indonesia, "BNPB Responds to the Constitutional Court's Decision on National Disaster Status Indicators", https://www.cnnindonesia.com/nasional/20260830181817-20-1398030/bnpb-respons-putusan-mk-soal-indikator-status-bencana-nasional, accessed October 11, 2026.

[18]Maruarar Siahaan, *Procedural Law of the Constitutional Court of the Republic of Indonesia* (Jakarta: Sinar Grafika, 2011), pp. 214–220; Jimly Asshiddiqie, *Procedural Law of Law Testing* (Jakarta: Constitution Press, 2006), pp. 305–312.

[19]Constitutional Court Decision Number 261/PUU-XXIII/2025, p. 60.

[20]Katadata.co.id, "Constitutional Court Decision and New Fence on National Disaster Status", https://katadata.co.id/indepth/opini/6a9a2becdb3a1/putusan-mk-dan-pagar-baru-status-bencana-nasional, accessed October 11, 2026.

framework, a norm that does not provide a measure will leave a wide room for interpretation so that the principle of clarity is only partially fulfilled.

The second ambiguity lies in the word "victims". Amar mentions the "number of victims" without explaining whether only dead, or missing, injured, and displaced persons are counted. In the 2025 Sumatra flood data alone, the number of deaths, disappearances, and refugees differs by hundreds to hundreds of thousands of people. Without an operational definition and verification authority, the main indicator is prone to debate, and the determination can be delayed by differences in data between local governments, BNPB, and technical ministries. Implementing regulations that explain how to calculate, who verifies, and when data is considered sufficient are considered sufficient conditions for the indicator to be used.

The placement of victims as the main indicator also has another side. It is in line with the principle of life protection, but it can shift attention away from disasters that have a wide impact without major casualties, such as volcanic eruptions with massive displacement, prolonged droughts, or flash floods that paralyze economic life. These types of disasters can fail to meet the main indicators even though the socio-economic losses and impacts are large. Policymakers need to decide whether the casualty indicators will be widely read, and whether there is a specific path for disasters without massive casualties.

The Court still considers the Presidential Regulation as a valid implementing instrument, and does not grant the request to replace it with a Government Regulation.[21] The assessment is not hierarchically wrong, because the content of the Presidential Regulation includes the material ordered by law (Article 13 of Law 12/2011). The problem is not in the form, but in the implementation: Article 7 paragraph (3) does not contain a deadline, while Article 84 only regulates a six-month limit for Government Regulations so that the Presidential Regulation is not subject to the deadline. As a result, the delegation's order can be left for many years without sanction, as has happened. The Court's decision also does not contain an order to the President to issue a Presidential Regulation within a certain time.

[21]Gebrak.id, "Constitutional Court Changes National Disaster Rules, Minimum 3 Indicators and Number of Victims as Main Requirements", https://www.gebrak.id/?p=51873, accessed October 11, 2026.

BNPB's statement that it will study the decision and adjust the internal guidelines and procedures shows that the current follow-up is at the level of internal guidelines.[22] The internal guidelines do not have the same binding force as laws and regulations and cannot be accessed by the public with certainty, so they do not meet the demands of legal certainty referred to in Article 28D paragraph (1). As long as the Presidential Regulation has not been issued, the implementation of the decision depends on the good faith of the government.

Discretion is basically necessary in an emergency. Philipus M. Hadjon explained that the government needs freedom of action (*freies Ermessen*) when the law cannot regulate everything, but that freedom is still limited to goals, principles, and tests. Law[23] Number 30 of 2014 concerning Government Administration requires discretion to be used for certain purposes, according to the purpose of authority, not contrary to laws and regulations, in accordance with the general principles of good governance, and good faith (Articles 22 and 24). Articles 25 and so on establish certain procedures and responsibilities of discretion.[24] The provision is general and does not explain how discretion should be accounted for when the President decides not to establish a national status on disasters whose indicators are met.

After a ruling, the President's authority is no longer entirely free, but the means by which it is ensured do not yet exist. There is no norm that requires the assessment to begin at a specific time, order

[22]BNPB, "BNPB Respects the Constitutional Court's Decision on the Determination of Disaster Status: Public Safety Remains a Top Priority", https://www.bnpb.go.id/berita/bnpb-hormati-putusan-mk-terkait-penetapan-status-bencana-keselamatan-masyarakat-tetap-jadi-prioritas-utama, accessed October 11, 2026.

[23]Philipus M. Hadjon et al., *Introduction to Indonesian Administrative Law* (Yogyakarta: Gadjah Mada University Press, 2011), pp. 112–115; see also Sjachran Basah, *The Existence and Benchmarks of the Administrative Justice Agency in Indonesia* (Bandung: Alumni, 1985), pp. 3–5.

[24]Law Number 30 of 2014 concerning Government Administration, Articles 22–32; Ridwan HR, *State Administration Law*, revised edition (Jakarta: Rajawali Pers, 2016), pp. 169–176.

the provision of written reasons for the determination or refusal, or specify who has the right to raise objections. The test in state administrative courts of a decision or action for determination of status has also not been tested in practice, mainly due to the nature of high-level policy actions. Meanwhile, the Petitioners themselves point out that without a clear standard the determination of status can be influenced by non-legal considerations, including politics and imagery.[25] This condition suggests that the ruling narrows, but has not yet closed, the space *for abuse of discretion*.

The issue of accountability also appears in the relationship between disaster status and international assistance. The Petitioners attribute the rejection of the offer of foreign assistance in December 2025 to the absence of a benchmark of disaster status.[26] Government Regulation No. 23 of 2008 regulates the role of international institutions and foreign non-governmental institutions in disaster management, while the IFRC guidelines on the facilitation of international disaster assistance recommend that states establish clear criteria and procedures before a disaster occurs.[27] Without a clear link between disaster status, conditions that "exceed national capacity", and the decision to receive aid, such decisions remain untestable.

Disaster management matters include concurrent government affairs in the fields of peace, public order, and community protection in Law 23/2014 on Regional Government. The logic of the decision, namely that a disaster that does not meet national indicators automatically becomes a regional disaster, emphasizes the burden on local governments. The problem is that the fiscal and institutional capabilities of regional disaster management agencies vary greatly, and a number of regents in the case of Sumatra have declared their inability. If it is not accompanied by a central support scheme, the regime of two categories (national or regional) risks creating a

[25]Constitutional Court Decision Number 261/PUU-XXIII/2025, pp. 50 and 58–59.

[26]Constitutional Court Decision Number 261/PUU-XXIII/2025, pp. 57–58.

[27]International Federation of Red Cross and Red Crescent Societies, *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines)* (Geneva: IFRC, 2007), Guidelines 3–4; United Nations International Law Commission, *Draft Articles on the Protection of Persons in the Event of Disasters* (2016), Articles 11–13.

loophole, namely disasters that exceed the capabilities of the regions but do not meet national requirements.

Observers and BNPB have reminded that central support does not have to wait for a national disaster label, but such support does not yet have a measurable normative basis and is mandatory.[28] This means that the thesis that the ruling guarantees the presence of the center in every major disaster is not entirely correct. The ruling provides a path from the regions to the nation, but it does not provide a level between the two.

3. Solutions to Realize Legal Certainty

The comparative approach shows that the three countries combine measurable criteria with procedural political decision paths, not relinquishing status determination to pure executive freedom. The summary is presented in Table 1.

Table 1. Comparison of Disaster Status Determination Mechanisms

Aspects	United States	Japan	Philippines	Indonesia (post-verdict)
Legal basis	Stafford Act; 44 CFR Part 206	Law No. 223/1961; Law No. 150/1962; Law No. 85/1996	Republic Act No. 10121	Law 24/2007; Constitutional Court Decision 261/PUU-XXIII/2025
Triggers	The governor's request	Government assessments and cabinet decisions	NDRRMC Recommendations	No triggers set yet
Criteria	Written factors in regulations; complemen	Severity standards used in cabinet appointments	NDRRMC technical recommendations	At least three indicators; main casualties;

[28]Katadata.co.id, "Constitutional Court Decision and New Fence on National Disaster Status", accessed October 11, 2026; Media Indonesia, "BNPB Respects Constitutional Court's Decision on Disaster Status Determination Indicators", accessed October 11, 2026.

	tary assistance			threshold not yet present
Settlers	President	Cabinet (cabinet rules)	President	President
Legal consequences	Tiered federal aid	Central subsidies and special facilities	Acceleration, prices, funding, international aid	Transfer of responsibility to the center; package has not been detailed

Source: processed by the author from regulations and official documents referenced in the footnotes.

In the United States, the president declares *a major disaster* after the governor submits a request showing that the handling is beyond the capabilities of states and local governments.[29] The federal emergency management agency assesses the request against factors published in regulations, such as the state's fiscal capacity and uninsured property losses for individual assistance, and declares federal assistance to be complementary and not a substitute for state programs.[30] The lesson for Indonesia is that there are written criteria that can be tested, requests from regions as triggers, and levels of assistance that do not rely on a single label. Denials of requests can also be appealed on written grounds, which in FEMA practice are recorded in damage assessment reports.[31]

In Japan, *the Basic Act on Disaster Management* (Law No. 223 of 1961) regulates the headquarters for the management of major disasters and very large disasters, while a separate law on special financial assistance for very severe disasters (*gekijin saigai*, Law No. 150 of 1962) allows the cabinet to designate a disaster as a very

[29]Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5170; 44 C.F.R. § 206.36.

[30]44 C.F.R. § 206.48, https://www.law.cornell.edu/cfr/text/44/206.48, accessed October 11, 2026.

[31]Federal Emergency Management Agency, *FY25 PDA Report: Appeal Denial*, https://www.fema.gov/sites/default/files/documents/FY25PDAReport_AppealDenial-WA.pdf, accessed October 11, 2026.

severe disaster through a cabinet regulation.[32] The determination of the 2016 Kumamoto earthquake, for example, was decided by the cabinet and accompanied by a cabinet regulation that increased the portion of central subsidies for reconstruction.[33] There is also a law on the protection of the rights and interests of victims of special emergency disasters (Law Number 85 of 1996) which provides for the extension of the validity period of administrative permits and other facilities after the determination.[34] The lesson from Japan is the tiering of status based on severity and the connection of status with concrete legal consequences.

In the Philippines, *Republic Act No. 10121* establishes the National Council for Disaster Risk Reduction and Management (NDRRMC) that recommends, and the President declares, a *state of calamity* for a group of regions or nationalities. Proclamations issued, such as for Typhoon Haiyan (2013), Typhoon Odette (2021), and Typhoon Tino (2025), contain references to the NDRRMC's recommendations, legal consequences in the form of accelerating rescue and recovery, facilitating international humanitarian assistance, controlling the price of basic necessities, and loosening the use of funds.[35] The latest proclamation even sets a one-year

[32]Basic Act on Disaster Management (Act No. 223 of 1961), Chapter III Section 3, https://www.japaneselawtranslation.go.jp/ja/laws/view/3322, accessed October 11, 2026; Act on Special Financial Support to Deal with the Designated Disaster of Extreme Severity (Act No. 150 of 1962), https://www.japaneselawtranslation.go.jp/ja/laws/view/803, accessed October 11, 2026.

[33]Prime Minister of Japan and His Cabinet, "Press Conference by the Chief Cabinet Secretary, April 25, 2016 (AM)", https://japan.kantei.go.jp/tyoukanpress/201604/25_a.html, accessed October 11, 2026.

[34]Act on Special Measures to Preserve the Rights and Benefits of Victims of Specified Emergency Disasters (Act No. 85 of 1996), https://www.japaneselawtranslation.go.jp/outline/231/905R774.pdf, accessed October 11, 2026.

[35]Proclamation No. 682 (2013), https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/7/59082; Proclamation No. 1267 (2021), https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/7/94052; Proclamation

period. Lessons from the Philippines are documented technical agency recommendations, status with validity periods, and explicit legal consequences, including opening the door to international assistance.

The comparison shows two things. First, no country relies on a single number to determine status. They use published criteria, recommendations of technical institutions, and documented political decisions. Second, status is always associated with clear legal consequences. Indonesia's post-decision formulation has minimal criteria, but it does not yet have two other elements, namely procedures and consequences packages.

The first solution is the issuance of a Presidential Regulation as ordered by Article 7 paragraph (3), with a content that closes the gap in the decision. The minimum content of the Presidential Regulation includes four things. *First*, the operational definition of each indicator, including whether the victim includes deaths, missing, serious injuries, and refugees, as well as official data formulas and sources. *Second*, quantitative or semi-quantitative thresholds per type of disaster, for example based on the number of victims per number of affected populations, the number of affected districts/cities, and the percentage of damage to vital facilities. *Third*, the rule that the fulfillment of the three indicators with victims as the main indicators gives rise to an obligation to determine, according to the Court's interpretation. *Fourth*, the criteria for disasters without massive casualties, so that disasters with a wide impact are not left behind.

The determination of the threshold should not be a single number. The tiered threshold scheme per type of disaster is more appropriate because the characteristics of earthquakes, tsunamis, flash floods, and eruptions are different. The draft is also in line with the principles of the Sendai Framework for Disaster Risk Reduction 2015–2030 which encourages the preparation of policy frameworks and comparable disaster data.[36] With such a Presidential Regulation,

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No. 1077 (2025), https://lawphil.net/executive/proc/proc2025/proc_1077_2025.html, all accessed October 11, 2026.

[36]United Nations General Assembly, *Sendai Framework for Disaster Risk Reduction 2015–2030*, A/RES/69/283 (2015), paras. 24 and 27.

Marzuki's principles of clarity and legal certainty can be fulfilled because citizens, local governments, and advocates can estimate when mandatory national status will be determined.

The second solution is a procedural mechanism that makes the threshold effective. The Presidential Regulation should stipulate that local governments or BNPB can submit proposals for status improvements, and that the fulfillment of the main indicators plus two other indicators automatically triggers a national assessment within a certain period of time, for example two times twenty-four hours after the initial data was verified. Decisions, whether determining or rejecting, must be stated in a written decision containing reasons and data bases. The obligation to explain reasons is a manifestation of the principles of openness and accountability in the general principles of good governance as known in Law 30/2014, and makes it easier for the House of Representatives to carry out its supervisory functions.

This mechanism needs to be equipped with a testing channel. Testing of decisions or actions to determine status can be taken through the state administrative court because Law 30/2014 expands the definition of state administrative decisions to include factual actions, while political supervision is carried out by the DPR. In addition, assessment data, a list of indicators are met, and reasons for decisions should be published so that civil society can monitor. In this way, discretion is not removed, but framed so that it can be tested, according to the purpose of the Article 7 test.

The third solution answers the gap between regional status and national status. Without deviating from amar, the Presidential Regulation can regulate tiered central support for disasters that remain regional status but exceed regional capacity, for example in the form of personnel assistance, logistics, budget, and BNPB coordination at the request of regional heads. This pattern is similar to the logic of the Stafford Act which makes state and local incapacities the basis for federal assistance. Thus, central support has a clear normative basis and is not just an ad hoc policy, while national status remains the highest level with full legal consequences.

In the medium term, changes to Law 24/2007 are necessary, especially since the law only recognizes the dichotomy of national and regional governments, while the implementing regulations already mention the provincial level. The revision can contain: (i) a strict mention of the status level; (ii) the obligation to issue implementing regulations within a certain time limit, overcoming the weaknesses of Article 84 which only mentions Government Regulations; (iii) the linkage of status with international assistance; and (iv) the reporting mechanism to the House of Representatives. Since the amendment bill was stopped in 2022, this decision can be a momentum to continue the discussion and include these points.

This synthesis answers the three shortcomings identified in the antithesis section. The ambiguity of the indicators is answered with definitions and thresholds, the absence of deadlines is answered with the norms of issuing implementing regulations, and the void of accountability is answered with triggers, written reasons, and supervision. With such a formulation, legal certainty in the sense of clarity of norms, measurability of application, and discretionary testing can be realized. Without these things, the Court's decision will cease to be an important interpretive step but has not solved the problem.

C. CONCLUSION

The normative conditions before the decision are based on five indicators in Article 7 paragraph (2) of Law 24/2007 which are understood to be cumulative and on the delegation of Article 7 paragraph (3) which is not implemented, so that the determination of national and regional status depends on discretion. The Constitutional Court Decision Number 261/PUU-XXIII/2025 changes it to the fulfillment of at least three indicators with the number of victims as the main indicator, and disasters that do not meet them become regional disasters, while the Presidential Regulation is still maintained as an implementing instrument.

legal certainty has not been fully realized because the quantitative threshold and definition of "victim" have not been determined, a Presidential Regulation has not been issued without a deadline, there is no trigger mechanism, written reasons, and tests for the determination or denial of status, and there is no central level of

support for disasters with regional status that exceed regional capacity.

The solutions include: Presidential Regulation with a multi-tiered definition of indicators and thresholds; an assessment trigger mechanism with deadlines, reasoned decisions, publications, and supervision; a level of central support; and a revision of Law 24/2007 which sets the deadline for the issuance of implementing regulations and links status to international assistance. The practice of the United States, Japan, and the Philippines shows that the criteria for explicit publications, procedures, and legal consequences are a whole. It is recommended that the President immediately draft the Presidential Regulation and that the House of Representatives and the Government continue to discuss changes to the law.

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