

STATE ADMINISTRATIVE LAW ANALYSIS IN HANDLING THE PANDEMIC OF COVID-19

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ABSTRACT

The government formulated the Health Quarantine Law by establishing a policy for the Enforcement of Community Activity Restrictions (PPKM) to prevent the spread of the pandemic of COVID-19 (Corona Virus Disease-19). The initial implementation of the PPKM on a micro basis, which was the spearhead was the level of RT/RW. On July 3, 2021, a large-scale emergency was enacted covering the Java-Bali region. This article aims to describe by understanding the PPKM policy formulated and implemented as a strategy in handling the spread of the pandemic of COVID-19. To analyze the PPKM policy based on State Administrative Law. Because state administrative law is increasingly important in its role as a means to realize government policies.

Keywords: state administrative law; handling; covid-19

INTRODUCTION

The handling of COVID-19 is carried out in all countries, including the State of Indonesia to fight to get out of the pandemic of COVID-19, which is handled through the approach of each country's policy.

Based on WHO 2020 data, more than 152,000 people have been confirmed to have died from this virus. The government has responded to the pandemic of Covid-19 by providing special health facilities for COVID-19 patients, converting sports buildings, halls, schools, and hotels into temporary hospitals, conducting rapid tests or Polymerase Chain Reaction (PCR) on many residents, and implementing methods of isolating cities (lockdown).¹

COVID-19 began to endemic in Indonesia in January 2020 and even Indonesia has required vaccines for all citizens and vaccine certificates to be used as a requirement to enter malls and shops as well as face-to-face learning.

Indonesia is a country with the fourth largest population in the world, the Indonesian government's response to the crisis is very slow and has the potential to become the epicentre of the world after Wuhan. ²Even in cross-country human migration, other countries have strictly closed transnational human migration, Indonesia has even opened transnational human migration.

Referring to the results of media observations and comments from the elite, that Indonesia did not implement a strict lockdown, for reasons of crippling the economy, even though the lockdown policies implemented in several countries have succeeded in suppressing the spread of the Pandemic of Covid-19.

For this reason, in this article, we will analyze the Covid-19 handling policy based on state administrative law as the basis for a responsive policy to maintain the health and safety of all Indonesian citizens.

DISCUSSION

Analyzing state administrative law in handling the pandemic of Covid-19 using a qualitative approach and using analytical descriptive methods. Data collection is done by studying literature such as books, articles, journals, newspapers, online news and websites of authority institutions related to the discussion of this article.

Based on Aristotle's opinion, that a good country is a country that is ruled by a constitution and has legal sovereignty.³ The tasks of the government in a modern legal state, that the concentration of power is not in one hand. Therefore, power needs to be dispersed and separated.

The scope of state administrative law relates to executive power, but does not place executive power only in implementing laws but also taking legal actions in the fields of legislation, for example in making organic laws and making various other implementing regulations and also acting in legal settlements. through administrative efforts.

¹ AIDA NR, Harvard Expert Statement *WHO hingga Kemenkes Soal Indonesia Negatif Virus corona*, Kompas Online, 20 April, accessed 20 April 2020.

² Sari, HP, *Indonesia Disebut Berpotensi Jadi Episentrum Baru Covid-19, Ini Respons Jubir Pemerintah*, Kompas Online, April 11, 2020, accessed April 20, 2020.

³ Ridwan, HR., *Hukum Administrasi Negara*, UII Press, Jogjakarta, 2002, page 2.

As stated by Philipus M Hardjon, that the main element of state administrative law is "*sturen*" (*besturen*). *Sturen* shows the field outside the legislature and the judiciary. This field is broader than just the executive field. In addition, *sturen* is always directed to a goal (*doelgerichte*).⁴

It is further said that the field of general administrative law, which forms of law and juridical problems that occur in the special legal section of administrative law, the relationship between the government and the community in each field of government affairs by two channels of activity:

- The government influences the general public;
- Society influences the government.⁵

As a state of law, the government has the task of organizing public welfare. In carrying out public welfare, the government issues many policies that are outlined in various forms. Policy making is based on administrative law based on discretionary authority. This policy has two main aspects; First, the freedom to interpret the scope of authority formulated in the basic rules of authority. The first aspect is commonly known as the freedom to judge which is objective. Second, the freedom to determine for themselves how and when the authority possessed by the State administration is exercised. This second aspect is known as subjective freedom of judgement.⁶

Policies are "permanent decisions" characterized by the consistency and repetitiveness of the behaviour of those who make and of those who adhere to those decisions.⁷ This understanding reflects several components of public policy.

Public policy, according to James E Anderson is a series of actions that have a specific purpose that is followed and carried out by an actor or group of actors in order to solve a particular problem, while according to Fried, policy and its essence is a position which once stated will affect the success of decisions to be made. in the future.⁸

There are two legal principles, namely the principle of constitutive law, which provides the basis for the principles of regulative law and the principle of regulative law whose function is to clarify and deepen the principles of constitutive law. In state administrative law that regulates public policy, the principles of constitutive law include:⁹

- a. The principle of rescue *exceptionne*, in certain cases there are risks;
- b. The principle of revocation of rights with adequate compensation;
- c. Principles of good governance (unwritten law)

While the regulatory principle is the *solus publica* (public interest) principle.

Formulating public policy is not an easy job, many factors influence the formation process. In the process, policy makers must seek and determine the identity of public policy problems. After the public policy makers identify it into the government agenda. A government agenda should not be viewed as a formal list of issues that should be discussed by decision makers, but rather describe issues or issues to which decision makers should pay active attention. and serious about it.

According to Cobb and Elder, there are three requirements for the policy issue to enter the government's agenda, namely:¹⁰

1. The issue received wide attention or at least could raise public awareness;
2. There is a broad public perception and opinion that some actions need to be taken to solve the problem;
3. There is a common perception from the public that the problem is a legitimate obligation and responsibility of several government units to solve it.

The PPKM policy refers to Law no. 6 of 2018 concerning Health Quarantine. Law No. 6 of 2018 is known as Regional Quarantine, Hospital Quarantine, Home Quarantine and Large- Scale Social Restrictions (PSBB). PSBB is regulated in Government Regulation No. 21 of 2020. Then there is Presidential Decree No. 11 of 2020 concerning the Determination of the Covid 19 Public Health Emergency. In the 3 regulations there is no term PPKM, both Micro and Emergency.

If it is said that the PPKM policy is a discretionary authority, then it returns to state administrative law. The term discretion comes from the French *discretion* which means wisdom, discretion, prudence or *discretionnaire* (adjective), which means surrender to wisdom with freedom to determine or choose.¹¹ ¹¹According to Amrah Muslimin, interpreting *freies ermesen* as "... the field of movement as wisdom or freedom of wisdom."¹²

⁴ Philipus M. Hardjon, *Pemerintahan Menurut Hukum (wet-en rechmatigheid van bestuur)*, Unpublished paper, pp. 2-4.

⁵ Philipus M Hardjon, et al, Introduction to The Indonesian Administrative Law, Gadjah Mada University Press, Jogjakarta, 2002, pp. 38-39

⁶ Indroharto, *Perbuatan Pemerintah Menurut Hukum Publik dan Hukum Perdata*, UI, Jakarta, 1992, p 44.

⁷ Charles O Jones, *Pengantar Kebijakan Publik (Public Policy)*, in Editor Nashir Budiman, Radja Grafindo Persada, Jakarta, 1994, p 47

⁸ Bambang Sunggono, *Public Policy*, PT Radja Grafindo Persada, Jakarta, 1994, page 14.

⁹ CST Kansil, *Hukum Tata Pemerintahan Indonesia*, Ghalia Indonesia, Jakarta, 1995, page 8

¹⁰ Bambang Sunggono, op cit, pp. 51-52

¹¹ Surayin, *Kamus Lengkap Perancis-Indonesia*, Armico, Bandung, 1992, page 180.

¹² Amrah Muslimin, *Beberapa Asas dan Pengertian Pokok Tentang Administrasi dan Hukum Administrasi*, Bandung, 1985, p. 73

Marcus Luqman, stated that *freies ermesen* should not be interpreted excessively, as if a State administrative agency or official may act arbitrarily or without basis or on an unclear basis or with subjective-individual considerations.¹³ According to Sjachran Basah, the elements of *Freis Ermessen* in a legal state are as follows:

1. Intended to carry out public service tasks;
2. It is an active attitude of the State administration;
3. The attitude of the act is allowed by law;
4. The attitude of the action was taken on its own initiative;
5. The attitude of action is intended to solve important problems that arise suddenly;
6. The attitude of the action can be accounted for both morally to God Almighty and legally.¹⁴

Thus, the PPKM policy even though there is no basic rule, but because the government is obliged to protect citizens from the pandemic of Covid-19, then with reference to Sjachran Basah's opinion, the PPKM policy can be justified especially with the existence of a regulatory legal principle that the public interest and the safety of the nation are prioritized.

Then when tested with the general principles of good governance, in accordance with:

1. The principle of acting carefully (4th principle), in which the government acts carefully so that people can avoid COVID-19 by requiring vaccines
2. The principle of motivation (5th principle), that the PPKM policy has a strong motive, namely that the interests of the nation are prioritized
3. The principle of the implementation of the public interest (12th principle), which the government builds on its dedication and loyalty to the goals of the state for the benefit of all Indonesian citizens.

The PPKM policy has also been discussed, as described in the Red and White Media, that the President conveyed several things as follows:

1. The Covid-19 pandemic in the last few days has developed very quickly because of a new variant which is also a serious problem in many countries.
2. This situation requires us to take more decisive steps in order to stem the spread of Covid-19.
3. After getting input from the ministers, health experts, and regional heads, I decided to implement emergency PPKM from July 3 to July 20, 2021 in Java and Bali.
4. This emergency PPKM includes restrictions on community activities that are more stringent than previously.
5. In detail how the emergency PPKM, the Coordinating Minister of MARINVEST to explain as clearly as possible.
6. The government will mobilize all available resources to contain the spread of COVID-19. All State apparatus, TNI-POLRI and State Civil Apparatus, Doctors and health workers.
7. The Ministry of Health continues to increase the capacity of hospitals, centralized isolation facilities as well as the availability of medicines, medical devices and oxygen tanks.
8. I ask all Indonesians to remain calm and alert, to comply with existing regulations, to be disciplined in implementing health protocols, and to support the work of government officials and volunteers.¹⁵

The PPKM discussion, before the decision, the government has formulated the problem and has made a choice before it can decide on the right action. The PPKM formulation refers to Article 3 of the Health Quarantine Law, which reads "to protect the community from diseases and/or public health risk factors that have the potential to cause public health emergencies, prevent and ward off diseases and/or public health risk factors that have the potential to cause public health emergencies, increase resilience, in the field of public health and provide protection and legal certainty for the community and health workers.

Formulation is a more comprehensive term: it includes planning and a less systematic effort to determine what to do about a common problem.¹⁶ After formulating then legitimizing the program, which is a government action in the form of a potential product, namely in the form of a policy. Legitimacy can be defined as giving legal power, authority or judgment to something.

CONCLUSION

The government's efforts in handling the pandemic of Covid-19 have formulated the Health Quarantine Law Article 3, by establishing the PPKM policy. The findings obtained from the analysis of State Administrative Law, PPKM policy is in accordance with general principles of good governance and based on legal principles, namely the principle of regulation is the principle of *solus publica* (the interests of the nation take precedence).

¹³ Marcus Luqman, *Freies Ermessen dalam Proses dan Pelaksanaan Rencana Kota*, Thesis, UNPAD, 1989, page 145

¹⁴ Sjachran Basah, *Perlindungan Terhadap Sikap Tindak Administrasi Negara*, Alumni, Bandung, 1992, pp 3-5

¹⁵ *PPKM Darurat Demi Keselamatan Kita Bersama Periode Penerapan PPKM Darurat: 3-20 July 2021*, Illustration of the Implementation of Emergency PPKM Instructed by President Jokowi, *Media Merah Putih*, Thursday 9 September 2021

¹⁶ Charles O Jone, *log cit*, page 140

There are several things that need to be done in implementing the PPKM policy, namely increasing places to carry out vaccinations, and adding health workers and nurses in the regions and protecting them by providing personal protective equipment, medicines and paying attention to the impact of Covid-19 on the community. informal workers.

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