

IMPLEMENTATION OF THE IMPOSITION OF RESTRICTIONS ON EMERGENCY COMMUNITY ACTIVITIES FOR CORONA VIRUS DISEASE (PPKM) IN RELATION TO POSITIVE LAW IN INDONESIA

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ABSTRACT

This study aims to analyze the legal basis for implementing Emergency PPKM and sanctions if the community violates Emergency PPKM. This research is a type of normative juridical law research. To obtain the data needed in this study, literature research was used and then analyzed qualitatively by collecting primary, secondary and tertiary legal materials related to research. Based on the results of data analysis, the results obtained: The legal basis for implementing Emergency PPKM based on the perspective of the Government of the Republic of Indonesia is the Law of the Republic of Indonesia Number: 4 of 1984 concerning Outbreaks of Infectious Diseases in Article 1 to Article 6 while sanctions are regulated in Article 14 paragraph (1) to paragraph (3) and the Law of the Republic of Indonesia Number: 6 of 2018 concerning Health Quarantine in Article 9 while sanctions are only given to the captain, pilot captain and person in charge of land transportation with the overall implementation regulated in government regulations where government regulations are statutory regulations determined by the President to carry out the law properly, The sanctions given if the public violates the Emergency PPKM do not have a strong legal basis and the issuance of the Instruction of the Minister of Home Affairs is not appropriate because Indonesia is still in a state of emergency based on Presidential Decree Number: 11 of 2020 concerning the Determination of the Covid-19 Public Health Emergency so that emergency handling must refer to Presidential Decree Number: 11 of 2020 concerning the Determination of the Covid-19 Public Health Emergency or through a Government Regulation.

Keywords: Emergency PPKM, Positive Law, Corona Virus

INTRODUCTION

The outbreak of this case outbreak was first reported from Wuhan, China on December 31, 2019. Even the cases of the corona virus continued to increase from day to day to create global panic. Likewise in Indonesia, there was also an outbreak of the covid-19 virus where the covid-19 virus was first discovered from two residents of Depok, West Java in early March 2020. The positive patient contracted the covid-19 virus from a Japanese citizen who had come to Jakarta.

With the outbreak of this virus, the Government is taking steps to deal with and overcome this virus by looking at the definition of an outbreak of infectious diseases such as the covid-19 virus which is contained in RI Law Number: 4 of 1984 concerning Infectious Disease Outbreaks with the aim of protecting the population. from the catastrophe caused by the epidemic as early as possible in order to improve the community's ability to live healthy.

In the implementation of controlling the spread of the COVID-19 virus, the Government of Indonesia has issued several policies, including the Indonesian Government Regulation Number: 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (PP No. 21/2020), Ministerial Regulation Health Number: 9 of 2020 Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Permenkes No. 9/2020), but all of them have not shown maximum results until finally at the direction of the President of the Republic of Indonesia, the Minister of Home Affairs of the Republic of Indonesia issued an Instruction The Minister of Home Affairs of the Republic of Indonesia Number: 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 which is valid from 3 July 2021 to 20 July 2021.

The enactment of this Instruction from the Minister of Home Affairs based on the direction of the President of the Republic of Indonesia is because the data shows that there is a continuous spike in people exposed to COVID-19 so it is deemed necessary to make efforts to reduce the transmission rate of the COVID-19 virus to at least below 10,000 cases per day. Spokesperson for the Coordinating Ministry for Maritime Affairs and Investment emphasized that the TNI and Polri have prepared troops at a number of points to carry out law enforcement in the context of Emergency PPKM. However, the question is what is the legal basis for the Instruction of the Minister of Home Affairs as an effort to overcome the Covid-19 virus in Indonesia?.

RESEARCH METHODS

This research is a type of normative juridical law research. To obtain the data needed in this study, literature research was used and then analyzed qualitatively by collecting primary, secondary and tertiary legal materials related to research.

RESULTS AND DISCUSSION

Legal Basis for Implementation of Emergency PPKM

The steps taken by the Indonesian government to quickly contain the spread of the COVID-19 virus refer to Law Number. 4/1984 and Law Number. 6/2018. The determination of the spread of the covid-19 virus as an outbreak declared by the Government of the Republic of Indonesia is the right decision because the covid-19 virus is indeed very fast in transmission and has infected almost all parts of Indonesia, which is very large in territory and people. who are exposed to the covid-19 virus can cause death where data shows an increase in people who die due to exposure to the covid-19 virus and in dealing with disease outbreaks it is regulated in "Government Regulations" where Government Regulations are laws and regulations set by the President to carry out laws and regulations. law properly. When viewed from the contents of Law no. 4/1984 related to the prevention of disease outbreaks must be issued by the President of the Republic of Indonesia and not the ministry while the criminal sanctions in Law Number: 4/1984 regulated in Article 14.

Based on article 14 of Law Number. 4/1984 which contains the sanctions, it is very clear that the person who hinders the implementation of the epidemic control as referred to in Article 5 is in the case of an epidemiological investigation; examination, treatment, care and isolation of patients, including quarantine measures; prevention and immunity; extermination of the cause of the disease; handling of corpses due to epidemics; counseling to the public, or in other words that there is no mention of a phrase regarding restrictions on community activities as mandated in the Instruction of the Minister of Home Affairs regarding Emergency PPKM. The Government's step to suppress the spread of Covid-19 is to issue a Government Regulation through PP Number. 21/2020 regarding the policy of Large-Scale Social Restrictions.

PP Number. 21/2020 refers to Law Number. 4/1984, Law Number. 6/2018 and Law of the Republic of Indonesia Number: 24/2007 concerning Disaster Management. In PP Number. 21/2020 does not contain sanctions against people who violate the PSBB rules as stated in Law Number: 4/1984 which also regulates criminal sanctions for perpetrators of criminal acts that hinder the prevention of the spread of the Covid-19 virus. Several "cases" that occurred from people who hindered the handling of the covid-19 virus were found guilty by the judge who handled the matter with administrative sanctions in the form of fines and some were sentenced to prison.

In addition to PP Number: 21/2020, the government through the Ministry of Health of the Republic of Indonesia also issued Permenkes Number 9/2020 as an effort to suppress the spread of the covid-19 virus by issuing a PSBB policy or restrictions on certain activities of residents in an area suspected of being infected with Covid-19 in such a way as to prevent the possible spread of Covid-19.

However, from the several policies issued, they have not shown maximum results where every day the data shows an increase in people exposed to COVID-19 and also an increase in people exposed to Covid-19 who died. There has been an increase in people exposed to COVID-19, the President of the Republic of Indonesia, Mr. Ir. Joko Widodo gave directions to his ministers to take steps to deal with these problems so that the Minister of Home Affairs Instruction Number: 15/2021 concerning the Implementation of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 was issued in the Java and Bali Regions.

Based on the description above, what needs to be considered is the legal basis for the issuance of the Instruction of the Minister of Home Affairs Number 15/2021 is because the instructions of the Minister of Home Affairs do not refer to the applicable laws and regulations and the instructions are stated for the Java and Bali regions while the fact is that almost all parts of Indonesia apply Emergency PPKM and there are even people outside the islands of Java and Bali who are found guilty of violating the rules. from the instructions of the Minister of Home Affairs.

From the description above, it can be seen that the legal basis for the Instruction of the Minister of Home Affairs regarding the Implementation of Emergency PPKM according to the Government is Law No.4/1984, Law No.6/2018, PP No.21/2020, Permenkes No.9/2020. The Instruction of the Minister of Home Affairs is based on the Presidential Directive of the Republic of Indonesia because every day there is an increase in people exposed to the Covid-19 virus and an increase in people exposed to Covid-19 dying, especially in the Java and Bali regions.

Based on the instructions from the Minister of Home Affairs, it can be seen that the instructions are aimed at limiting the public in certain activities as well as limiting mobility and limiting community crowds as part of efforts to suppress people exposed to the Covid-19 virus. This restriction is divided into two parts, namely: WFH, which is 50% working from home for certain places and WFO, which is working 100% from the workplace for essential things such as hospitals, the Indonesian Police as well as state defense and security and others.

If referring to Law Number: 4/1984 and Law Number: 6/2018, it can be seen that the benefits that can be obtained from the instructions of the Minister of Home Affairs regarding Emergency PPKM are to suppress the spread of the Covid-19 virus in certain activities or in other words on non-essential activities. The reason the President of the Republic of Indonesia gave directions to his ministers to issue instructions related to PPKM was because the public did not understand the importance of implementing health protocols.

The benefits of the Emergency PPKM being implemented are to suppress the spread of the covid-19 virus in certain activities or in non-essential activities as a form of follow-up to the direction of the President of the Republic of Indonesia because people do not understand the importance of implementing health protocols so that there is an increase in people exposed to the corona virus every day.

From the results of the analysis above, it can be concluded that the legal basis for implementing Emergency PPKM based on the perspective of the Government of the Republic of Indonesia is the Law of the Republic of Indonesia Number: 4 of 1984 concerning Outbreaks of Infectious Diseases and Law of the Republic of Indonesia Number: 6 of 2018 concerning Health Quarantine.

Benefits of Enforcement of Emergency PPKM Regulations

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Sanctions If People Violate Emergency PPKM

The existence of law is needed to regulate human social life so that without law, human life will be wild where whoever is strong will win (Sutiyo, 2016). Law is defined as a system of norms/rules. Rules/norms are rules that live in society. These rules/norms can be in the form of norms of decency, morality, religion and law (written) which are binding on all members of the community and receive sanctions for violators. Law is also defined as a legal order. In this context, law is defined as regulations that are currently in effect (positive law) and regulate all aspects of people's lives, both those concerning individual interests (private law) and interests with the state (public law). These private and public regulations are embodied in various legal rules with different levels, limits of authority and binding powers. Law as a legal order, its existence is used to regulate the order of society and is in a hierarchical form (Wasis, 2012).

Understanding positive law can be interpreted as a collection of written legal principles and rules that are currently applicable and binding in general or specifically and enforced by or through the government or courts in the State of Indonesia (Astawa, 2008). The basic thing related to the meaning of legal certainty is that the law is positive, meaning that positive law is legislation; that the law is based on facts, meaning that it is based on reality; that the facts must be formulated in a clear way so as to avoid mistakes in meaning, as well as being easy to implement and that positive law cannot be changed (Radbruch, 2012).

From some of these opinions, it can be seen that positive law is a written legal rule that is still valid at this time and is binding in general or specifically and is enforced through the government or courts in the State of Indonesia which is stated in the legislation. Legalization of laws that are enforced according to procedures in Indonesia must go through the legislature to ratify the law and from the resulting law products always contain sanctions against violators of the law through administrative sanctions and or imprisonment. Based on this, positive law must be written in the form of a law that is adapted to the needs or phenomena in society to regulate all aspects of community life involving individual interests (private law) and interests with the state (public law). To implement the enacted laws, sometimes or often implementing regulations are made which are stated in Government Regulations, Presidential Regulations, Ministerial Regulations and Regional Regulations that are adapted to the needs with the content and intent of the enacted laws. This also shows that every regulation made is based on the authority possessed by each related institution.

Likewise, the existence of Emergency PPKM to regulate people's lives in the midst of the covid-19 pandemic that hit Indonesia with the aim of suppressing the surge in transmission of the covid-19 virus. Anyone who violates the instructions regarding the Emergency PPKM will be subject to administrative sanctions in the form of fines or imprisonment. This can be seen from the statement from the Minister of Home Affairs published on the tempo.com page stating that the criminal sanctions used for violators of the Emergency PPKM policy refer to the Criminal Code or the Criminal Code Article 212 and Article 218, and Article 14 of Law Number: 4 of 1984 concerning Outbreaks of Infectious Diseases and Article 93 of Law Number: 6 of 2018 concerning Health Quarantine. The statement from the Minister of Home Affairs must first be studied whether based on the instructions issued can be related to the Criminal Code, Law Number: 4 of 1984 concerning Outbreaks and Law Number: 6 of 2018 concerning Health Quarantine and whether the instructions regarding PPKM are a legal form that if it is violated, it can be subject to administrative sanctions or imprisonment.

The imposition of sanctions on people who violate the rules of Emergency PPKM shows the existence of legal force in the instruction. As a result of the issuance of Emergency PPKM regulations throughout Indonesia, there are pros and cons among the community, especially outside the islands of Java and Bali. This can be seen from the Tribun-Medan.com page which reports that one of the prominent figures for protesting the implementation of Emergency PPKM in Medan is Rakesh, a coffee seller on Jalan Gatot Subroto, the intersection of Jalan Nibung, Medan. Rakesh was tried because he was proven to have violated the emergency

PPKM so that he was sentenced to prison for two days. For the next 14 days is a trial period. If stubborn then confinement will be carried out. Rakesh was sentenced to two days in prison and a fine of IDR 300,000. However, the confinement does not need to be served unless there is a sentence on another day. The imposition of sanctions on Rakesh for violating the Emergency PPKM in the city of Medan must of course be questioned again where at least the instructions issued regarding the Emergency PPKM are only aimed at the Java and Bali regions but the fact is that the Medan City Government implements the Emergency PPKM so that it takes steps which include limiting community activities and if a violation is found, it will be subject to sanctions as has happened to Rakesh. If it is associated with positive law in Indonesia, then of course it is not appropriate because positive law in Indonesia is based on written regulations that refer to the current law.

As stated above, the Emergency PPKM was created to suppress the surge in the spread of the COVID-19 virus in the community by limiting space or community activities with the aim of reducing crowds or the mobility of people in a certain place. People who violate the Emergency PPKM rules may be subject to administrative sanctions in the form of fines and/or imprisonment. If the imposition of sanctions for people who violate the Emergency PPKM in the Java and Bali islands, of course it is still seen as normal in the eyes of some people's minds, but if the imposition of sanctions is imposed outside the territory of the islands of Java and Bali, of course this is not in accordance with legal theory. positive in Indonesia.

The weakness of the Emergency PPKM instructions at least lies in the application of the designated areas, namely the Java and Bali regions or in other words that the instructions are only aimed at the Java and Bali regions and do not apply outside the Java and Bali regions so that if the imposition of sanctions on violators of the Emergency PPKM in outside the areas of Java and Bali, it is clear that this violates the human rights of the person being sanctioned.

Therefore, the Minister of Home Affairs made a change from the previous instruction by issuing a new instruction, namely the Instruction of the Minister of Home Affairs Number: 16 of 2021 concerning Changes to the Instruction of the Minister of Home Affairs Number: 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java Region. And Bali and changed it again so that the Minister of Home Affairs Instruction Number 17 of 2021 concerning the Enforcement of Restrictions on Micro-Based Community Activities and Optimizing the Handling of Corona Virus Disease 2019 at the Village and Sub-District Levels for Controlling the Spread of Corona Virus Disease 2019 was issued addressed to all Governors and Regents/ Mayors throughout Indonesia where the implementation of sanctions given to violators refers to the Instruction of the Minister of Home Affairs Number: 16 of 2021 concerning Changes to the Instruction of the Minister of Home Affairs Number: 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities Corona Virus Disease 2019 in Java and Bali Region.

The occurrence of several changes to these instructions shows that the government lacks understanding in dealing with the spread of the 2019 corona virus disease which is stated in a regulation or instruction and of course the implementation of instructions related to emergency PPKM does not have a strong legal basis, especially in the imposition of administrative sanctions and or imprisonment. This is what raises the pros and cons in the community regarding the implementation of the Emergency PPKM, especially for people with a weak economy.

Based on the description above, it can be concluded that the sanctions given if the community violates the Emergency PPKM do not have a strong legal basis and the issuance of the Ministry of Home Affairs instructions is inappropriate because Indonesia is still in a state of emergency based on Presidential Decree Number: 11 of 2020 concerning the Determination of the Covid-19 Public Health Emergency. 19 so that emergency handling must refer to Presidential Decree Number: 11 of 2020 concerning the Determination of the Covid-19 Public Health Emergency.

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