

CIVIL LIBERTIES IN LARGE-SCALE SOCIAL RESTRICTIONS DURING THE COVID 19 PANDEMIC

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ABSTRACT

This study aims to examine; 1) What are the conditions of the Covid-19 Pandemic in imposing a civil emergency?(2) How are Large-Scale Social Restrictions in handling the Cobid-19 Pandemic?. The research method used is normative juridical research, which is research focused on examining the application of rules or norms in positive law. The results of the study show that; 1) The Covid 19 Pandemic has imposed a civil emergency which shows the country is in an emergency. Dangerous situations are classified into the types of circumstances that can threaten people or countries. 2) PSBB is a restriction on certain activities of residents in an area that is suspected of being infected with disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination. Specifically in Article 1 of Government Regulation No. 21/2020, Large-Scale Social Restrictions means 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 the virus. This PSBB has the purpose of preventing the spread of public health emergency diseases that are occurring between people in a certain area. With the approval of the Minister of Health, the government, in this case, the local government, can also carry out large-scale social restrictions or restrictions on the movement of people and goods for one province or a specific district/city only.

Keywords: Freedom, Civil, Social Restrictions, Large-Scale, Pandemic, Covid-19

INTRODUCTION

The COVID-19 pandemic has caused various aspects to be affected, both socio-cultural and the weakening of the world economy. The President has issued various laws and regulations, including Presidential Decree No. 7 of 2020 concerning the Task Force for the Acceleration of COVID-19 Handling, Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) in the Context of Accelerating the Handling of COVID-19, Presidential Decree No. 11 of 2020 concerning the Determination of the Status of Public Health Emergency, Perppu No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling The COVID-19 pandemic, Presidential Decree Number 54 of 2020 concerning Changes in the Posture and Details of the State Budget for the 2020 Fiscal Year and finally Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters The Spread of COVID-19 as a National Disaster.¹

Administratively, a state of danger is regulated through 3 (three) doors. First, Regulation in Lieu of Law (Perppu) 23/1959 concerning the Determination of Dangerous Circumstances. Second, Law 24/2007 on Disaster Management. And third, Law 7/2012 on the Handling of Social Conflicts. Of the three, the most legally relevant is the second door. This is because article 1 number 3 of Law 24/2007 states that non-natural disasters are disasters caused by non-natural events or a series of events which, among others, are in the form of technological failures, modernization failures, epidemics, and disease outbreaks.²

The relevance of the statement on emergency needs to be reviewed, because the status of civil emergency is regulated in Law 6/1946 whose substance is part of the *staat van oorlog en beleg* (SOB), the colonial heritage of the Dutch East Indies

¹ Fahmi Ramadhan Firdaus and Anna Erliyana, "Protection of Discretionary Policy in Handling Covid-19 According to Law No. 2 of 2020," *PALAR (Pakuan Law Review)* July-December 2020 6, no. 2 (2020).

² A. Nurfurqon, "Corona with Discourse Network Analysis," *Journal of Indonesian Health Policy* 09, no. 02 (2020): 98–106.

period (*Regeling op de Staat van Oorlog en van Beleg* Stbl. 39-582.). The law was repealed by Law 74/1957, and amended by Perppu 23/1959. The explanation of Article 1 of Perppu 23/1959 mentions five conditions that are categorized as the basis for the President to impose a state of danger, namely with three levels of circumstances, in the form of civil emergency, martial emergency and state of war. Five conditions as conditions must be met, including: rebellion (armed riot), riots, civil wars, natural disasters and wars. The Covid-19 pandemic is clearly not fulfilled in the door of Perppu 23/1959.

Moreover, the authority given to the "civil emergency ruler", namely the president with the assistance of "the first minister, the minister of security/defense, the minister of the interior and regional autonomy, the minister of foreign affairs, the chief of staff of the Army, the chief of staff of the Navy, the chief of staff of the Air Force, and the head of the state police". Because it does not take care of outbreaks or diseases, it is clear that the involvement of health officials is actually lost in the policy-makers. Meanwhile, from a human rights perspective, the state of civil emergency confirms its repressive character. For example, it is possible to restrict freedom of expression, association, and assembly (articles 13 and 14 paragraph 1), confiscation of goods that are considered to interfere with security (article 15 paragraph 1), freedom of the press (article 17 paragraph 1), and examination of bodies and clothes by the police (article 20).³

The situation in the civil emergency status has been increasingly strengthened in practice in the field with the issuance of the Proclamation of the National Police Chief Number Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Spread of Covid19. National Police Chief Idham Azis also emphasized this in a working meeting with Commission III of the House of Representatives (Tuesday,

³ Eddy Munawar, "A Study of the Behavior of the Acehnese People in Facing the Covid-19 Pandemic," *The 2nd Seminar on Population, Family and Human Resources*, 2020, 1–9, https://eprints.latbangdjogja.web.id/147/3/03_KTI_POP - Prosiding.pdf.

31/3), by stating that the police support the government's plan to implement a civil emergency in handling the Covid-19 pandemic. On the other hand, when the Large-Scale Social Restrictions (PSBB) policy is enforced in various regions, the issue of citizens' freedom to carry out economic activities, religious rituals and express their opinions, especially on social media, often surfaces.⁴

The COVID-19 pandemic has also worsened the condition of civil space and democracy in Indonesia. When human rights protection work by civil society stalls due to limited space for movement, state repression is stronger. The dwarfing of civil space during the pandemic is the focus of this report. It describes a long list of violations of civil society's rights due to the negligence of the authorities and the government in paying attention to the rules of restrictions or reduction of citizens' rights in emergencies. With or without a pandemic, this is a real threat to the sustainability of democracy in Indonesia.⁵

LITERATURE REVIEW

Shrinking Civic Space or narrowing the space of civil liberties is a restraint on the basic rights that underlie civil society freedom, namely the right to freedom of association, assembly and opinion. *Shrinking Civic Space* limits the space for civil society to participate in claiming their rights and influencing the political and social structures around them. Article 28 (E) of the 1945 Constitution states that everyone has the right to freedom of association, assembly and expression. The three main rights of civil liberties above are derogable rights or rights that can be limited or

⁴ Arrazi Rahardiyah and Ernawati Pasaribu, "Spatial Analysis of COVID-19 Cases to PPKM Volume Two," *Seminar Nasional Official Statistics 2021* 2 (2021): 593–602.

⁵ Kirana and Mirza Fahmi, *The Darkening of Civil Space in the Midst of a Pandemic* (Jakarta: Lokataru Foundation, 2020), p. 2.

reduced in fulfillment. International human rights law provides certain conditions and conditions that states must meet before restricting or reducing *derogable rights*.⁶

Another thing that is of public concern about the government's delay in issuing legal products is reflected in the recent issuance of the Government Regulation on PPSB Guidelines or known as PP No. 21 of 2020. In fact, this Law was made last year, but the fundamental question is "Why is it only made now?" To answer this, the public needs to see the closing provisions listed in article 96 paragraph 1 of the Health Quarantine Law as follows: "The implementing regulations of this Law must have been established no later than 3 (three) years from the date of promulgation of this Law".⁷

Several previous studies have shown that the COVID-19 pandemic is a disease outbreak that must be addressed immediately, such as the research of Zulfa Harirah MS & Annas Rizaldi⁸ on responding to the reasoning of state policies in handling the Covid-19 pandemic in Indonesia. Abdulelah A. Alghamdi⁹'s research on *the Impact of the COVID-19 Pandemic on the Social and Educational Aspects of Saudi University Students' Lives*. The research of Darmin Tuwu et al.¹⁰ about the Dynamics of Policies for Handling the COVID-19 Pandemic in the Perspective of Social Welfare.

⁶ Suparman Marzuki, "POLITICS OF HUMAN RIGHTS LAW (HAM) IN INDONESIA IN THE REFORM ERA: A Study on the Enforcement of Human Rights Law in the Settlement of Past Human Rights Violations," *Dissertation of Doctoral Program in Law, Islamic University of Indonesia*, 2010.

⁷ See Article 96 paragraph (1) of Law No. 6 of 2018 concerning Health Quarantine (Statute Book No. 18, Supplement to Statute Book No. 6236)

⁸ Zulfa Harirah MS & Annas Rizaldi, "Responding to the Logic of State Policy in Handling the Covid 19 Pandemic in Indonesia," *Journal of Economics and Public Policy of Indonesia* 7, no. 1 (2020): 36–53, <https://doi.org/10.24815/ekapi.v7i1.17370>.

⁹ Abdulelah A. Alghamdi, "Impact of the COVID-19 Pandemic on the Social and Educational Aspects of Saudi University Students' Lives," *PLoS ONE* 16, no. 4 April (2021): 1–18, <https://doi.org/10.1371/journal.pone.0250026>.

¹⁰ Darmin Tuwu et al., "Policy Dynamics of Handling the COVID-19 Pandemic in the Perspective of Social Welfare," *Sosio Consepzia* 10, no. 2 (2021): 97–110, <https://doi.org/10.33007/ska.v10i2.2158>.

This research focuses on civil liberties in large-scale social restrictions during the covid 19 pandemic in Indonesia. The type of research used is non-doctrinal research¹¹ or empirical juridical research which is field research.¹²

RESEARCH METHODS

This research was prepared using a normative juridical research type, which is research focused on examining the application of rules or norms in positive law.¹³ Normative juridical is an approach that uses a positivist conception of legis. This concept views law as identical to written norms made and promulgated by authorized institutions or officials. This conception views law as a normative system that is independent, closed and independent of real public life.¹⁴ In legal research there are several approaches, the approaches used in legal research are the statute *approach*, the *case approach*, the historical *approach*, the *comparative approach*, and the *conceptual approach*.¹⁵

The data sources in this study are divided into two parts, namely primary data sources and secondary data sources. Primary data sources are data sources that directly provide data to data collectors; While secondary data sources are data sources obtained by reading, studying and understanding through other media sourced from literature, books, and documents".¹⁶

¹¹ Mahmud Marzuki and Peter Mahmud, "Legal Research," (Jakarta: Kencana Prenada Media Group, 2011), p. 9.

¹² Mukti Fajar and Yulianto Achmad, *The Dualism of Normative and Empirical Legal Research, Print IV* (Yogyakarta: Pustaka Siswa, 2017), p. 25.

¹³ Johnny Ibrahim, 2006, Theory and Methodology of Normative Legal Research, Malang: Bayumedia Publishing, p. 12, p.293

¹⁴ Ronny Hanitijo Soemitro, 1988, *Legal Research Methodology and Jurimetry*, Jakarta: Ghalia Indonesia, pp. 13-14.

¹⁵ Peter Mahmud Marzuki, *Legal Research*, Cet.2, (Jakarta: Kencana, 2008). p. 29 .

¹⁶ Sugiyono. *Mixed Research Methods*. Bandung: Alfabeta. 2015, p. 137.

The primary data sources in this study are the results of interviews and observations. The results of interviews with the informants that have been determined in the research plan have been carried out at the time of the research. Secondary data sources are in the form of: from scientific journals and also books to support the research process.

This data collection method is with literature research or commonly called literature studies, this method is carried out to obtain secondary data in the form of primary legal materials and secondary legal materials. After the inventory, a review is carried out to make the essence of each regulation concerned. Data is collected by studying literature sources in the form of literature books, laws and regulations, and collecting existing data in the form of data that is directly related to the research conducted.¹⁷

The research technique in this study is descriptive analytical, where analysis is carried out critically. The data collected in this study will be analyzed descriptively with a *qualitative approach*, namely by providing a thorough and in-depth explanation and explanation (*holistic verstelen*).¹⁸

RESEARCH RESULTS

Civil Emergency

In the practice of state administration, the state of a country is divided into two, namely the state in an *ordinary condition* and a state in an extraordinary *condition* or

¹⁷ S. Nasution and M. Thomas, *A Guide to Making Thesis, Thesis, Dissertations and Papers*, Jemmars, Bandung, 1988, p. Sec. 58.

¹⁸ Sugiyono, "Quantitative, Qualitative and R&D Research Methods," 26th (Bandung: Cv. Alfabeta, 2018), p. 34.

emergency *condition*. According to Jimly Asshiddiqie, a state of emergency ¹⁹ is a situation that suddenly threatens public order, which requires the state to act in an unusual manner according to the rules that apply under normal circumstances. Meanwhile, according to Herman Sihombing²⁰, a state of danger is a series of extraordinary and special state institutions and authorities, to in the shortest possible time to eliminate the threatening danger and restore it to ordinary life according to general and ordinary laws and laws.²¹

In general, there are two views on the state of danger. In the theoretical order, there are views that support the *rule of law approach* in which the state of danger must be subject to the constitution or law, and the view that criticizes the regulation of the state *of emergency* (*exception cannot be reduced to legal norms*) which then understands that the state of danger is part of *the extrajudicial* or as something higher than the law of its position. ²² Proponents of this approach put forward a sovereignty *approach* which argues that it is impossible to control executive actions in a state of danger using a standard legal mechanism. In this case Schmitt states:

"The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and of how it is to be eliminated. The precondition as well as the content of jurisdictional competence in such a case must necessarily be unlimited. From the liberal constitutional point of view, there would be no jurisdictional competence at all. The most guidance the constitution can provide is to indicate who can act in such a case".²³

Perppu 23/1959 regulates the state of danger in three levels, namely civil emergency, state of martial law and state of war. In the Explanation of Article 1 of

¹⁹ Jimly Asshiddiqie, *Emergency Constitutional Law*. (Jakarta: Rajagrafindo Persada, 2007), p. 213.

²⁰ Herman Sihombing, *Emergency Constitutional Law* (Jakarta: Djambatan, 1996), p. 28.

²¹ Agus Adhari, "Ambiguity of the Regulation of Dangerous Circumstances in the Indonesian Constitutional System," *Journal of Administrative Law November Edition* 11, no. 1 (2019).

²² Stephen Humphreys, "Legalizing Lawlessness: On Giorgio Agamben's State of Exception," *The European Journal of International Law* 17, no. 3 (2016): 677.

²³ Carl Schmitt, *Political Theology: Four Chapters on Theory of Sovereignty*, Terjemahan George Schwab (Chicago: University of Chicago Press, 2005), hlm. 6.

Perppu 23/1959, five conditions can be concluded that will later become part of the level of the state of danger. The five conditions are: rebellion (armed riot), riot, civil war, natural disaster and war. The division of the five conditions of danger is divided into three parts, namely: civil war, riots and natural disasters including the category of civil emergency, state of rebellion (armed) is included in the category of martial state of emergency while war is included in the category of state of war.

Perppu 23/1959 does not clearly dephysicalize these five conditions, because the interpretation of a state of danger in Perppu 23/1959 becomes the subjectivity of the President which is interpreted as a special authority based on Article 12 of the 1945 Constitution. Perppu 23/1959 only mentions five conditions and their categorization at the level of a state of danger.²⁴

Rules regarding the indication of a state of danger must be carried out in general considering that currently the state of danger that can threaten the security and defense of the country is not limited to classic factors such as riots and disasters, but economic crises are also part of the country that can threaten the security and defense of the country. Regarding the importance of the indication of threats in a state of danger, it is clearly stated in Article 4 (1) of the International Covenant on Civil and Political Rights (ICCPR):

"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social."

The Covid 19 pandemic has imposed a civil emergency which shows the country is in a state of emergency. Dangerous situations are classified into the types of circumstances that can threaten people or countries. These types include; Internal

²⁴ Ni'Matul Huda, *Indonesian Constitutional Law. Revised Edition.* (Jakarta: PT. Rajawali Press, 2012). p. 43.

armed conflict such as armed rebellion by groups that threaten the security and defense of the country. Then there was an international *armed conflict* or war between countries and subject to the 1949 Geneva Convention.

Large-Scale Social Restrictions (PSBB)

Large-Scale Social Restrictions, often abbreviated as PSBB, are regulations issued by the Ministry of Health (Kemenkes) in order to accelerate the handling of COVID-19 so that it can be implemented immediately in various regions. The PSBB rules are recorded in the Regulation of the Minister of Health Number 9 of 2020. Secretary General of the Ministry of Health, Oscar Primadi in his written statement said that the PSBB covers restrictions on certain activities of certain residents in an area suspected of being infected with COVID-19. These restrictions include closing schools and workplaces, restrictions on religious activities, restrictions on activities in public places or facilities, restrictions on socio-cultural activities, restrictions on modes of transportation, and restrictions on other activities specifically related to defense and security aspects.²⁵

PSBB or Large-Scale Social Restrictions is a term for health quarantine in Indonesia which is defined as "restrictions on certain activities of residents in an area that are suspected of being infected with diseases and/or contaminated in such a way as to prevent the possible spread of disease. This PSBB is one of the types of health quarantine implementation in the region, in addition to home quarantine, hospital quarantine, and regional quarantine." ²⁶

In restricting activities in public or public facilities, it is carried out by paying attention to the fulfillment of the basic needs of the population. What is meant by

²⁵ RR. Endang Sri Sulasih, "The Ineffectiveness of the Implementation of Large-Scale Social Restrictions (PSBB) in the Special Capital Region of Jakarta," *Journal of Binamulia Hukum* 9, no. 1 (2020): 68.

²⁶ Imas Novita Juaningsih, et al. "Optimizing Government Policies in Handling Covid-19 for the Indonesian Community," *SALAM Journal* 7, no. 6 (2020): 511.

"basic needs of the population" includes, among others, health service needs, food needs, and other daily life needs.²⁷

In Law No. 6/2018 Article 1 Number 11 states that PSBB is a restriction on certain activities of residents in an area that is suspected of being infected with disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination. Specifically in Article 1 of Government Regulation No. 21/2020, Large-Scale Social Restrictions means 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 the virus. This PSBB has the purpose of preventing the spread of public health emergency diseases that are occurring between people in a certain area. With the approval of the Minister of Health, the government, in this case, the local government, can also carry out large-scale social restrictions or restrictions on the movement of people and goods for one province or a specific district/city only.²⁸

Large-Scale Social Restrictions must meet the following criteria: a). The number of cases and/or the number of deaths due to the disease increases and spreads significantly and rapidly to several regions; and b). There are links to similar incidents in other provinces or countries. c) Large-Scale Social Restrictions are at least carried out through the closure of schools and workplaces, restrictions on religious activities; and or restrictions on activities in public places or facilities. d) Restrictions on PBSS activities must take into account the needs of education, work productivity, and worship of the population and the needs of the population such as health services, food needs, and daily life needs.²⁹

Various incidents of restraint on civil liberties are the result of the reduction of rights during health emergencies that do not respect the principles that must be

²⁷ Putu Lantika Oka Permadhi, "The Problems of the Implementation of the Regional Quarantine System and PSBB in Dealing with Covid-19," *Kertha Semaya Journal* 8, no. 9 (2020): 135.

²⁸ *Ibid*, p. 360

²⁹ Stuharyanto, *Large-Scale Social Restrictions* (Jakarta: Central Board of the Indonesian Librarians Association, 2020).

adhered to such as proportionality, necessity, not in conflict with other obligations under international human rights law, and non-discriminatory.

In this case, the principle that the government has most clearly violated is the principle of proportionality, which requires that human rights reduction measures be carried out as long as they are absolutely necessary and have a clear duration of time and restrictions. The action in question must also be based on an objective assessment and analysis of the situation. Reflecting on the above phenomena, this principle can be said to be almost completely ignored by the government. The enforcement of rules needed in a health emergency due to the pandemic, such as *physical distancing*, is a pretext for the apparatus to act arbitrarily.³⁰

Proposal for Large-Scale Social Restrictions of a region with the following Steps:

- (1) The implementation of Large-Scale Social Restrictions is proposed by the Governor/bpati/mayor to the Minister in charge of government affairs in the health sector
- (2) The Minister in charge of government affairs in the health sector has established Large-Scale Social Restrictions by taking into account the considerations of the Chief Executive of the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19)
- (3) The Chief Executive of the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19) can propose to the minister in charge of government affairs in the health sector to establish Large-Scale Social Restrictions in certain areas
- (4) If the minister in charge of government affairs in the health sector approves the proposal of the Chief Executive of the Task Force for the Acceleration of

³⁰ São Paulo, "The Ineffectiveness of the Implementation of Large-Scale Social Restrictions (PSBB) in the Special Capital Region of Jakarta."

Handling Corona Virus Disease 2019 (COVID-19), regional heads in certain regions are obliged to implement Large-Scale Social Restrictions.

CONCLUSION

Based on the results of the research, it can be concluded that several things are as follows;

1. The Covid 19 pandemic has imposed a civil emergency which shows the country is in a state of emergency. Dangerous situations are classified into the types of circumstances that can threaten people or countries. These types include; Internal *armed conflict* such as armed rebellion by groups that threaten the security and defense of the country. Then there was an *international armed conflict* or war between countries and subject to the 1949 Geneva Convention.
2. PSBB is a restriction on certain activities of residents in an area that is suspected of being infected with disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination. Specifically in Article 1 of Government Regulation No. 21/2020, Large-Scale Social Restrictions means 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 the virus. This PSBB has the purpose of preventing the spread of public health emergency diseases that are occurring between people in a certain area. With the approval of the Minister of Health, the government in this case, namely local governments, can also carry out large-scale social restrictions or restrictions on the movement of people and goods for one province or a specific district/city only.

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