

Policy Evaluation of the Imposition of Restrictions on Emergency Community Activities (PPKM) in East Java

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ABSTRACT

Policy Evaluation of the Imposition of Restrictions on Emergency Community Activities (PPKM) as a policy aimed at preventing the spread of COVID-19. This policy is based on the instructions of the Minister of Home Affairs. This research is a socio-legal legal research with primary data in the form of a questionnaire distributed randomly to the community in East Java Province. The secondary data in this study are books, journal articles, and websites related to the legal system theory of Lawrence Friedman. The results of this study confirm that this policy is not optimal because it does not meet the aspects of legal substance, legal structure, and legal culture in society as proposed by Lawrence Friedman. Therefore, it is hoped that optimization of aspects of legal substance, legal structure, and legal culture is needed to make a policy effective.

Keywords: *Legal System, PPKM, Policy*

1. INTRODUCTION

Since 2019, the world has been shaken by the biggest pandemic of this century, namely the COVID-19 pandemic. It started with the discovery of a mysterious pneumonia outbreak in Wuhan, Hubei Province. This case was initially named as 2019 Novel Corona (2019.nCoV) which then WHO announced a new name for the pneumonia, namely Coronavirus Disease (COVID-19) on February 11, 2020 [1]. COVID-19 virus is thought to have originated in the animal market, was transmitted from animals to humans, which turned out to be contagious to humans quickly, and also spread to several other countries. So the WHO changed the status of the COVID-19 outbreak to a COVID-19 pandemic [2].

The COVID-19 pandemic has quickly forced other countries to adapt and focus on dealing with this pandemic. However, there are still many countries that are not ready to adapt in dealing with the COVID-19 pandemic for various reasons, even

though the WHO has advised to prevent the transmission of COVID-19, as well as many countries who do not believe in this COVID-19 case for a long time. This has resulted in a fairly high increase in COVID-19 cases, and Indonesia is one of the countries that has been slow to prevent transmission of the COVID-19 virus at the beginning of the pandemic [3]. Cases of transmission of COVID-19 are also exacerbated by the presence of viral mutations, thus making the virus more virulent and rapid in transmission [4]. To date, there have been 198,765,681 cases of COVID-19, of which 4,237,501 people died, and 179,453,588 people were declared cured [5].

Indonesia is facing the spread of COVID-19 which was first identified in Indonesia on March 2, 2020 [6].

Indonesia is one of the countries that has responded slowly to the WHO's call for preventing the transmission of COVID-19, so many experts doubted before the discovery of COVID-19 cases

in Indonesia, because experts already suspected that there were already many cases of COVID-19 transmission in Indonesia. Indonesia before March 2, 2020 [7]. So that until now, Indonesia is still very overwhelmed in dealing with the COVID-19 pandemic, especially with the entry of the delta variant of the COVID-19 virus which has made COVID-19 cases in Indonesia which previously had started to slope back up again. While many other countries have succeeded in dealing with the COVID-19 pandemic. To date, there are 3,440,396 positive cases of COVID-19 in Indonesia, with 2,809,538 people declared cured, and 95,723 people declared dead.

The COVID-19 pandemic has become a very difficult period for countries experiencing it, especially Indonesia. This pandemic not only has a direct impact on the health aspect, but also has a direct impact on the social, economic and educational aspects. In the health aspect, COVID-19 has had a major impact on the Indonesian state. Starting from the unbalanced ratio of the availability of health facilities to patients, the scarcity of medicines to relieve the symptoms of COVID-19, the scarcity of oxygen supply, to public mental health.

The economy is also experiencing obstacles due to the COVID-19 pandemic. Since the entry of the delta variant of the COVID-19 virus, the government is required to re-implement the implementation of restrictions on emergency community activities in Java and Bali in order to reduce the level of transmission of COVID-19, but this will have a direct impact on the economy. These social restrictions disrupt the distribution of goods, and also disrupt factory operations. This has forced many factories to terminate their employment or lay off their workers due to a lack of income for the company to cover operational costs due to the social restrictions [8]. This can also affect the sociological aspect due to the mass layoffs that occur, which directly have an impact on increasing the unemployment rate during the pandemic.

The social aspect is also affected by the COVID-19 pandemic, the number of layoffs that have occurred due to the COVID-19 pandemic has increased the poverty rate, and this is one of the big problems that the government must immediately resolve. It was recorded that the number of poor people in March 2021 was 27.54 million people, a decrease of 0.01 million people against September 2020 and an increase of 1.12 million people in

March 2020 [11]. There was a decline in poverty before the surge in cases due to the entry of the delta variant of COVID-19, which later became the reason for the implementation of the Java and Bali emergency PPKM, so that until now the exact number of poverty rates was not known after the surge in cases of the delta variant COVID-19 because there was no there is another poverty rate data released by the Central Statistics Agency for that.

The education aspect has also been affected by the COVID-19 pandemic. The policy of banning face-to-face schools is a dilemma for the community, as well as the government. Because on the other hand, distance or online learning is less effective than face-to-face learning, but the health aspect of course must be a priority for the government, and also the community for the common good. Of course, online learning becomes very difficult for students and also teachers who are used to teaching face-to-face. This situation is exacerbated by the availability of the internet network in Indonesia which is not evenly distributed and stable [9].

The government policies implemented during the COVID-19 pandemic did reap many pros and cons from various parties. And of course the policies set by the government must go through various considerations, and take into account input and comments from various parties. Don't let the government be too confident until the incident at the beginning of the pandemic as stated above. The government has responded too slowly to the pandemic, has not set policies to prevent the transmission of the COVID-19 virus, so that political elites make jokes as if they are underestimating the threatening and deadly pandemic. The government is considered not to have a sense of crisis due to this, the government's inability to respond to the COVID-19 pandemic. The Indonesian government at that time was very confident in attracting foreign tourists to travel in Indonesia, when other countries actually closed the entrance to their respective countries. Of course, this policy will actually backfire for the Indonesian state, because that amount of funds should probably be used for funds handling the COVID-19 pandemic.

Of course, now the government has learned from its policies at the beginning of the COVID-19 pandemic, and now the government is focusing on handling the COVID-19 pandemic. The policies taken by the government must of course

be implemented, but of course there will be problems that must be solved by the government. Until now, the government is still implementing policies related to the COVID-19 response which also affects several aspects, namely the online learning policy, the homecoming ban policy, the vaccination acceleration policy, to the policy for the treatment of the Java and Bali emergency community activity restrictions (PPKM). reap the pros and cons for limiting community economic activities, limiting essential sector employees and working from home for non-essential sector employees to reduce employee mobility, to prohibition of worship together in vulnerable areas [13].

Government policies related to the Emergency PPKM in Java and Bali, received both pro and contra responses from the community. Some people agree with this Emergency PPKM in the hope of reducing the number of COVID-19 transmissions which are currently experiencing a spike. Most of the people who agree with the implementation of Emergency PPKM are people whose income is not much affected, so it is not a big problem. There are several things that cause public disapproval of the PPKM, namely its implementation which raises various kinds of problems from various aspects of life, especially from the economic aspect. The existence of restrictions on community activities causes business actors, especially small traders to scream. The implementation of a ban on eating on the spot as well as restrictions on operating hours are the main causes of the drastic decline in income [10]. Furthermore, the public also criticized the repressive actions of the authorities against small traders who were considered to be disobedient to the rules. This repressive action by this apparatus does not make the people more obedient, but instead raises criticism and rejection. This is certainly not in accordance with the purpose of the concept of justice where every society has the right to survive.

When viewed from the legal aspect, the implementation of the Emergency PPKM in Java and Bali is based on 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 and Bali Regions. This instruction regulates the grouping of Regency/City areas at level 3 or level 4. Some of the rules contained in the Instruction of the Minister of Home Affairs, namely, teaching and learning activities are carried

out online. Implemented 100 percent WFH for non-essential sectors. The closure of shopping centers except for restaurants, supermarkets and supermarkets is allowed under certain conditions. Prohibition of eating in places for restaurants, restaurants, cafes and others. The application of the rules related to Emergency PPKM is of course accompanied by several rules governing sanctions if in the implementation there is a violation. If the Governor, Regent and Mayor do not carry out the stipulated provisions, they will be subject to sanctions as stipulated in Article 68 paragraph (1) and paragraph (2) of Law Number 23 of 2014 concerning regional government. Administrative sanctions up to business closure can also be given to business actors who violate the provisions. This sanction is based on Law no. 4 of 1984 concerning Communicable Disease Outbreaks, Law Number 6 of 2018 concerning Health Quarantine, regional regulations, regional head regulations, and other relevant statutory provisions.

Emergency PPKM policies such as closing shopping centers, limiting curfews, and working from home of course have an impact on decreasing community mobility. However, the decrease in community mobility does not mean that the number of additional COVID-19 cases has also decreased. According to the Disaster Management Agency (BNPB) the day after the implementation of the Emergency PPKM, namely July 4, 2021, the number of additional COVID-19 cases increased by 27,233 cases. Then on July 10, 2021, the number of additional Covid-19 cases increased by 56,757 cases. From this data, it can be seen that the implementation of the Emergency PPKM policy has not succeeded in reducing the number of additional Covid-19 cases. Moreover, the number of cases does not include some areas that tend to be lacking in the application of 3T (Testing, Tracing, Treatment).

Similar research has been carried out by Ahmad Gelora Mahardika and Rizky Saputra (2021) [15] which focuses his research on the legal position of PPKM in the Indonesian constitutional system, where the PPKM policy has a formal flaw in the process of its formation. Other studies have also been carried out by Sukendar, et al (2021) [10] which examines how freedom of trade in the midst of the implementation of the Emergency PPKM policy is viewed from the point of view of sociological jurisprudence and the concept of justice. Other research related to PPKM has also been carried out by Aldi Kurnia Wahyu, et al (2021)[16]

whose focus is on the effectiveness of the implementation of operating hours for SMEs in the city of Surabaya as stated in the Decree of the Governor of East Java Number 188/59/KPTS/013/2021. Other research was also carried out by Silpa Hanoatubun (2020) [17] which examines the impacts of the Covid-19 pandemic on the economy in Indonesia.

2. METHODS

The type of research used by the authors in this study is a type of juridical-empiric research. The research approach in this study is a statutory and concept approach.

3. RESULTS AND DISCUSSION

3.1 Instructions From The Minister of Home Affairs (INMENDAGRI) as The Legal Basis For PPKM

In Law Number 12 of 2011, the Legislation has the definition of a generally binding norm which includes legal norms. State institutions or officials are authorized to form and stipulate laws and regulations. In Law no. 12 of 2011 regulates the types and hierarchies of laws and regulations in Indonesia.

The hierarchy of laws and regulations in Indonesia with the highest order based on Law no. 12 of 2011 namely:

1. 1945 Constitution of the Republic of Indonesia (UUD 1945)
2. Decree of the People's Consultative Assembly (Tap MPR)
3. Law (UU) or Government Regulation in Lieu of Law (Perppu)
4. Government Regulation (PP)
5. Presidential Regulation (Perpres)
6. Provincial Regulations
7. Regency or City Regulations

In this COVID-19 pandemic situation, the Indonesian government has implemented a policy to reduce the number of additional cases, one of which is the implementation of PPKM (Enforcement of Community Activity Restrictions). This policy is regulated in the Instruction of the Minister of Home Affairs Number 15 of 2021 Regarding Restrictions on Emergency Community Activities of Corona Virus Disease 2019 in Java and Bali Region.

Then what is the position of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions when viewed from the types of regulations. When viewed from the types of regulations, the Instruction of the Minister of Home Affairs Number 15 of 2021 is a type of *beleidsregel* regulation or policy regulation. Regulations regarding the implementation of government authority over its citizens, which are prepared based on their own power by government agencies that have this authority, are called *beleidsregel* or policy regulations [18].

The authority of the actions of free government officials or *freis ermissen* gave birth to *beleidsregel*. Along with its development, *beleidsregel* was realized in written form and published. This has resulted in *beleidsregel* having binding power like the rule of law and being labeled as a regulation. However, the scope of *beleidsregel* is only limited in terms of administration.

Judging from Law Number 12 of 2011 concerning the Formation of Legislation, this policy regulation or regulation cannot be categorized as a statutory regulation. A policy regulation cannot be categorized as a statutory regulation because in making the regulation, the official or agency that forms it does not have the authority to form regulations.

According to JH van Kreveld, the formation of this policy regulation is based on the absence of official authority so that it is substantively considered not a statutory regulation so that it cannot be regulated in legislation. In his writings, van der Hoeven also clearly states that this policy regulation is a rule that has no force.

Types of Regulations Divided into *Regeling*, *Beschikking*, *Beleidsregel*. *Regeling* is a decision that has a general, abstract and governing nature. *Beschikking* is a decision that is individual and real in the form of an administrative determination and a judge's verdict or decision. *Beleidsregel* or regulations that cannot fall into the category of ordinary laws and regulations but are in a special form or policy rules [19].

Regulations or regulations are always general and undefined. The review can be carried out at the Supreme Court for regulations that are under the law and to the Constitutional Court for judicial

review. This regulation is *dauerhaftig* or continuous.

While the nature of the decision or *beschikking* is always individual and real. Can be tested with a lawsuit through the State Administrative Court. This decision is *enmahlig* or once completed. According to JH van Kreveld, *beleidsregel* has the following characteristics:

1. Based on the provisions of the law directly or indirectly that give the authority to regulate and the basis in the law is not found.
2. Determined in writing by the government or unwritten through agency decisions that are free from citizens
3. There are no statements from citizens who are in the situations formulated in the regulations so that the regulations provide general instructions.

The forms of *beleidsregel* or policy regulations according to JH van Kreveld are lines of wisdom, policies, regulations, guidelines, instructions, circulars, resolutions, instructions, policy notes, government regulations, decisions, and announcements [18].

3.2 Legal System of PPKM

Legal system is the theory proposed by Lawrence Friedman which emphasizes three aspects, namely: legal structure, legal substance, and legal culture. In the Big Indonesian Dictionary (KBBI), structure has the following meanings: (1) the way something is arranged or constructed, arrangement, building; (2) which are arranged in a certain pattern; (3) arrangement of elements or parts of an object; (4) the provisions of the elements of an object; (5) syntagmatic arrangement of patterns in language [20], while law is difficult to define because it covers a broad and abstract field. Therefore, experts provide various definitions according to their respective points of view. In the opinion of an ancient philosopher, Immanuel Kant "Noch suchen die juristen eine definition zu ihrem begriffe von recht" [16] which means that no jurist can give a precise legal definition. However, in general, law can be interpreted as the whole of the rules that regulate human behavior in society which aims to maintain order made by the authorized institution.

The legal structure is a permanent framework of the legal system that moves within a mechanism to stay within its boundaries. According to Laurence M. Friedman, legal structure is defined as a structural system that shows whether the law can be implemented based on its formal provisions or not. The legal structure includes law enforcement institutions or institutions, agency authorities, and law enforcement officers [22]. Based on Law Number 8 of 1981, the legal structure includes the Police, the Prosecutor's Office, the Court and the Criminal Executing Body (*Lapas*) [23].

The legal structure has a strong influence on the color of legal culture [22]. If the legal structure is not able to move the legal system, it will cause disobedience (non-compliance) with the law. The functioning of the mechanism in the legal structure is closely related to its implementation, namely the integrity of law enforcers [18]. This is because if the mentality of law enforcement officers is not good, there will be interference with law enforcement. Where the mentality of law enforcement officers plays a very important role because based on several cases that occurred, such as the repressive actions carried out by 'unscrupulous' law enforcement officers due to the low mentality of law enforcers themselves. Thus, it is necessary to have credibility, competence, and independence that is firmly entrenched in every soul of law enforcement officers.

In the perspective of legal substance, Lawrence Friedman emphasizes that legal substance is related to legal substance that regulates society, of course with certain goals. The purpose of PPKM as it is known is to tackle community movements in order to minimize the spread of COVID-19. However, regulations regarding PPKM should be based on regulations in the form of Government Regulations or Presidential Regulations as implementing laws. Not through the Instruction of the Minister of Home Affairs which is characterized by policy regulations

In the perspective of legal culture, Lawrence M. Friedman asserts that as part of the legal system, legal culture refers to two different attitudes and values, namely: "...Legal culture refers to two rather different sets of attitudes and values: that of the general public (we can call this 'lay legal culture'), and that of lawyers, judges, and other professionals (we can call this 'internal legal

culture)'...' From Lawrence M. Friedman's view, legal culture actually refers to on the set of general public values which are commonly referred to as the 'law culture of the common people' and the set of attitudes of internal legal culture, which are identically implemented by judges, lawyers, bureaucracy, and local community leaders. usually carried out only based on traditions that are hereditary or in the form of repeated actions carried out by community leaders and then imitated and implemented by ordinary people. The attitude of internal legal culture is usually carried out by professionals such as the bureaucracy, judges in court, law enforcement officers, and local community leaders. In this case, the community's legal compliance with health protocols is also influenced by the behavior of public officials who also sometimes do not comply with health protocols. It can be seen that the orientation of the community actually looks more at the exemplary aspect and not on how the rules sound. For the community, a good rule if the official does not give a good example of the contents of the regulation, then the public will pay more attention to the behavior of public officials. Therefore, good regulations need to be supported by the integrity and behavior of public officials and law enforcers who obey the law and ethics.

The role of law enforcement officers is urgently needed in efforts to contain the spread of Covid-19. The Covid-19 pandemic demands a response from the National Police Chief as a law enforcement officer in playing his role in controlling the spread of Covid-19, which is still difficult to contain. Based on Article 13 of Law Number 2 of 2002 concerning the Indonesian National Police, the main tasks of the Indonesian National Police are: (a) maintaining public security and order; (b) enforce the law, and (c) provide protection, protection, and services to the community ke[25]. However, in the face of the Covid-19 pandemic, the task of the National Police Chief has become more complex, especially during the implementation of the Emergency PPKM policy. This was confirmed by the issuance of several Telegram letters from the National Police Chief, including:

1. Telegram Letter
Number ST/173/VII/HUK/7.1/2021 concerning the highest retail price (HET) for medicines and medical devices addressed to the Kapolda [26].
2. Telegram Letter
Number STR/577/VII/OPS.2./2021

regarding Safe Operation Nusa II [27].

3. Telegram Letter
Number ST/1590/VIII/OPS.2./2021 addressed to the Kapolda to instruct the Direskrimun and Direskrimsus to continue and improve communication, collaboration, and coordination with BPKP, the Prosecutor's Office, and BPK RI in their respective regions [27].

Based on the Telegram Letter issued by the National Police Chief during the implementation of the Emergency PPKM policy, there are at least two important roles of the National Police as law enforcement officers. First, in relation to law enforcement, the National Police strictly enforces the law against business actors who sell and stockpile medicines and medical devices above the highest retail price (HET) which makes it difficult for the public to obtain medicines and medical devices. In addition, the National Police also carried out Safe Operation Nusa II which deployed seven task forces (Satgas), namely the Detection Task Force, Binmas Task Force, Health Protocol Compliance and Vaccination Security Task Force, Bayankes Task Force, Vaccine Guard Security Task Force, Law Enforcement Task Force, and Public Relations Task Force [28]. Operation Safe Nusa II is a follow-up 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 and Bali Regions. Second, in relation to economic improvement, there are four important points contained in the Telegram Letter Number ST/1590/VIII/OPS.2./2021 issued by the National Police Chief, including (1) monitoring and supervising the APBD through communication and coordination. with local government; (2) monitoring, supervising, assisting, and providing assistance to the implementation of the national economic recovery program; (3) support government policies, especially in the context of accelerating business licensing; (4) avoiding counter-productive law enforcement actions [27].

In addition to strengthening law enforcement carried out by the National Police Chief, the regional government has also encouraged the Civil Service Police Unit (Satpol PP) to take non-judicial control measures against the public regarding health protocols as a preventive measure that can be taken to reduce the rate of transmission of Covid-19. Based on Law Number 23 of 2014 concerning Regional Government, the Satpol PP

was formed to enforce regional regulations (Perda), maintain public order, and provide community protection. The existence of the Satpol PP is part of the law enforcement process as a local government instrument needed to support the successful implementation of regional autonomy [19]. Satpol PP personnel must also be more responsive to the governor's instructions when the Emergency PPKM policy is implemented.

The Civil Service Police Unit (Satpol PP) has made a major contribution to efforts to handle and control the Covid-19 pandemic, which continues to this day. Through an educative and humanist approach, it is the foremost effort to oversee the implementation of regional regulations in the context of monitoring the implementation of Emergency Community Activity Restrictions (PPKM). In addition, the Satpol PP also carried out joint operations with the TNI and Polri to control and supervise the community and take strict action against violators who continued to be stubborn. However, the active role carried out by Satpol PP is closed by the spotlight on actions carried out by 'unscrupulous' Satpol PP officers who carry out enforcement by means of violence.

The repressive actions carried out by 'unscrupulous' Satpol PPbe in the public eye. A case that has emerged and has attracted public attention is an unscrupulous Satpol PP officer who abused a married couple who owned a coffee shop in Gowa Regency and sprayed a shop using a fire engine in Semarang, Central Java [26]. The action of the Satpol PP officers was carried out under the pretext of controlling the community. However, the violent practices carried out by Satpol PP actually show the failure of Satpol PP in carrying out their duties as local government officials and public service agents. This excessive action will also cause new problems in the community, just as people will no longer trust the government. Therefore, Circular Letter (SE) Number 440/3929/SJ was issued by the Minister of Home Affairs addressed to governors, regents, and mayors throughout Indonesia. One of the instructions in it is to instruct the Satpol PP ranks in their respective regions to prioritize professional, humanist, and persuasive steps in implementing the Emergency PPKM policy [20].

Judging from the aspects of the legal system which includes: legal substance, legal structure, and legal culture initiated by Lawrence Friedman, the implementation of The Imposition of Restrictions on Emergency Community Activities

in East Java (PPKM) is still not optimal both in terms of legal substance, legal structure, and legal culture.

4. CONCLUSION

The application of PPKM in East Java in terms of the legal system theory of Lawrence Friedman concluded that: from the aspect of legal substance, restrictions on community activities should be carried out through Government Regulations or Presidential Regulations and not through ministerial instructions with the character of policy regulations. From the aspect of the legal structure, it can be seen that the lack of coordination and the lack of understanding of the community's legal awareness in a persuasive manner are obstacles in the aspect of limiting community activities. In the aspect of legal culture, the biggest obstacle is the level of legal awareness of the community which is still low and the lack of exemplary public officials regarding health protocols, so that people see the attitude of public officials more than the rules regarding the purpose of limiting community activities. Therefore, improvements to aspects of substance, structure, and legal culture are needed in optimizing policies for handling COVID-19

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