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Analyzing Regional Legal Measures for Subsidizing Restrictions on Community Activities (PPKM) during the Covid-19 Pandemic: A Study of State Administrative Law in Java and Bali Regions

Rizky Arifianto¹  , Fitriani Ahlan Sjarif² 

¹² Master of Law Program, Faculty of Law, Universitas Indonesia, Indonesia

 rizkyarifiantoo@gmail.com

ABSTRACT

In recent years, Indonesia and the world have experienced a non-natural disaster, namely the Covid-19 Virus which has paralyzed the economy of almost all countries. For this reason, as a legal state, Indonesia issues several legal instruments, both legislation and policy regulations. The legal instrument that had become a polemic in Indonesia was the Minister of Home Affairs' Instruction Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for the 2019 Corona Virus Disease in Java and Bali. This paper discusses related the Instruction of the Minister of Home Affairs in the form of policy regulations, which then the regions of Java and Bali follow up on the policy regulations issued by the center. Various instruments are issued by regions such as DKI Jakarta Province, Banten Province, Central Java Province, West Java Province, East Java Province, and Bali Province. The research method that the author uses in this study is the normative juridical research method (Legal Research). From the results of this study, the authors found that policy regulations are not part of the legislation, the variety of legal instruments issued by regions in following up on the instructions of the Minister of Home Affairs, and both central and regional governments in issuing legal instruments in the form of policy regulations must pay attention to the requirements stipulated in the applicable laws and regulations. Because Indonesia is a legal state, all actions of government officials must be based on law.

Keywords: Covid-19, Instructions from the Minister of Home Affairs, Policy Regulations



INTRODUCTION

Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Implementation of Restrictions on Corona Virus Disease 2019 Emergency Community Activities in the Java and Bali Regions (Inmendagri No.15 of 2021), is the legal basis for state administrative officials in running the wheels of government in a pandemic situation that occurs. Local governments form policies as a legal basis to follow up on Inmendagri No.15 of 2021, the problems in each local government are different, so the need for follow-up of Inmendagri No.15 of 2021 is certainly different from one another.

This worsening situation, due to the increasingly widespread and massive transmission of the Covid-19 Virus which resulted in an increasingly high rate of Covid 19 transmission, thus making the government have to re-issue a policy of tightening community activities. The new variant of Covid-19, namely the Delta variant and also the high mobility of the community during the Eid al-Fitr holiday in 2021 are the main factors for the high level of Covid-19 virus transmission currently experienced by Indonesia. The latest government policy at this time is the Imposition of Restrictions on Community Activities (PPKM).

Various policies available in the Law have been selectively tried by the Government, in its efforts to reduce the number of infected patients, including Large-Scale Social Restrictions (PSBB), but the implementation of PSBB is considered ineffective in controlling the outbreak, which is why the Government initiated the implementation of the Enforcement of Restrictions on Community Activities (PPKM) which in the Instruction of the Minister of Home Affairs is called PPKM. The policy was first implemented by the Government through Inmendagri No. 01 of 2021 concerning the Implementation of Activity Restrictions to Control the Spread of Covid-19. The PPKM policy is

considered by the Government to be much more effective in tackling the spread of the Covid-19 virus compared to the PSBB policy.¹

This situation cannot be allowed, because it will cause a prolonged crisis, in order to handle it as a state of law, of course, legal instruments are needed. As laws and regulations, the Government has acted by issuing various laws and policies, including Presidential Regulation Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid-19, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB). In the context of Accelerating the Handling of Covid-19, Presidential Regulation Number 11 of 2020 concerning Determination of Public Health Emergency Status, Perppu Number 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the Covid-19 Pandemic which is now Law Number 2 of 2020, Presidential Regulation Number 54 of 2020 concerning Changes in Posture and Details of the State Budget for Fiscal Year 2020 and Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters of the Spread of Covid-19 as a National Disaster.²

Indonesia is a State of Law, therefore in implementing the government, the government must be based on the rule of law.³ The state is still required to move quickly, do not let the absence of basic laws and regulations, making the government unable to carry out its activities. In order to avoid deadlock and dysfunction in governance, the government is required to have the courage to issue Policy Regulations (*beleidsregel*).⁴ Policy Regulations function as part of the

¹ Ahmad Gelora Mahardika and Rizky Saputra, "Kedudukan Hukum Pemberlakuan Pembatasan Kegiatan Masyarakat Dalam Sistem Ketatanegaraan Indonesia," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1, (March 2021). pp. 2.

² Fahmi Ramadhan Firdaus and Anna Erliyana, "Perlindungan Kebijakan Diskresi Dalam Penanganan Covid-19 Menurut Undang-Undang No. 2 Tahun 2020," *Pakuan Law Review* 6, no. 2, (December 2020). pp. 24.

³ Pada pasal 1 ayat (3), Undang-Undang Dasar Negara Republik Indonesia, menjelaskan bahwa, "Indonesia Adalah Negara Hukum".

⁴ Reza Yustiyanto, "Diskresi Pemerintah Dalam Penanganan Pandemi Covid 19 Berdasarkan Undang-Undang Nomor 2 Tahun 2020," *Jurnal Restorasi Hukum* 5, no. 1, (June 2022). pp. 7.

operational implementation of government tasks, addressing concrete problems encountered, and therefore cannot change or deviate from laws and regulations.⁵

This Inmendagri, which was issued on July 2, 2021, also complements the implementation of the previous Inmendagri, regarding Micro-Based PPKM and Optimizing Covid-19 Handling Posts at the Urban Village Level to Control the Spread of Covid-19.⁶ This Inmendagri in its substance regulates the reduction of community activities to reduce the number of spread of Covid-19 transmission, by limiting activities that have the potential for crowds,⁷ but there are exceptions in essential and critical sectors.

Although we have Law No. 6/2018 on Health Quarantine and Law No. 4/1984 on Communicable Diseases. But the law does not regulate technical details related to procedures to reduce the rate of spread of the Covid-19 virus. So that Policy Regulations (*beleidregels*) become the means chosen by state administrative officials. We can see this in Law No. 6/2018 on Health Quarantine Article 5 paragraph (1) which reads:⁸

“The Central Government is responsible for organizing Health Quarantine at the port of entry and in the region in an integrated manner.”

⁵ Muhammad Tabrani Mutalib, “Eksistensi, Fungsi, Dan Penormaan Diskresi Pemerintah Dan Peraturan Kebijakan (Beleidsregels) Dalam Penyelenggaraan Pemerintah Di Negara Hukum Indonesia,” *Jurnal Hukum Dan Kemasyarakatan* 14, no. 2, (December 2020). pp. 155.

⁶ Detikcom, “Ini Dasar Hukum PPKM Darurat, Yuk Disimak!,” www.News.detik.com, 2021. (diakses tanggal 22 Juli 2021)

⁷ Instruksi Menteri Dalam Negeri Nomor 15 Tahun 2021 tentang Pemberlakuan Pembatasan Kegiatan Masyarakat Darurat *Corona Virus Disease* 2019 di Wilayah Jawa dan Bali, menjelaskan bahwa: “Menindaklanjuti arahan Presiden Republik Indonesia yang menginstruksikan agar melaksanakan Pemberlakuan Pembatasan Kegiatan Masyarakat (PPKM) Darurat Corona Virus Disease (COVID-19) di wilayah Jawa dan Bali sesuai dengan kriteria level situasi pandemi berdasarkan assesmen dan untuk melengkapi pelaksanaan Instruksi Menteri Dalam Negeri mengenai Pembatasan Kegiatan Masyarakat Berbasis Mikro serta mengoptimalkan Posko Penanganan COVID-19 di Tingkat Desa dan Kelurahan untuk Pengendalian Penyebaran COVID-19”

⁸ Indonesia, *Undang-undang Tentang Kekarantinaan Kesehatan*, UU No.6 Tahun 2016, LN Tahun 2016 Nomor 60, TLN Nomor 5866, pasal 5 ayat (1).

The central government issued a policy outside of the regulations mentioned above. The central government policy is the 2021 Instruction of the Minister of Home Affairs concerning the Implementation of Restrictions on Community Activities in the Corona Virus Disease Emergency 2019 in the Java and Bali Regions. Due to the increasing number of Covid-19 transmission, so that the government must again issue a policy of tightening community activities. The new variant of Covid-19, namely the Delta variant, is a contributing factor to the high rate of transmission of the Covid-19 virus in 2021 in May.⁹ Data shows an increase in Covid-19 cases as of July 23, 2021, there were 3,082,410 confirmed cases exposed to Covid-19,¹⁰ on July 6, 2021 alone, the addition of daily cases in Indonesia was recorded at 14,536 cases.¹¹ After the issuance of the Inmendagri, regions with a high level of Covid-19 virus spread made a policy regulation to tackle the spread of the Covid-19 virus. The Policy Regulation is the biological child of Discretion. Discretion is defined in Article 1 Paragraph (9) of Law Number 30 of 2014 concerning Government Administration, which explains discretion as follows:¹²

“Discretion is a Decision and/or Action determined and/or carried out by a Government Official to overcome concrete problems encountered in the administration of government in the event that the laws and regulations that provide options, do not regulate, are incomplete or unclear, and/or there is government stagnation.”

Policy Regulations are created to solve problems faced by the state, due to legal gaps and/or existing legal regulations that do not specifically regulate, due to the dynamics of community development. Therefore, Policy Regulations become an alternative in

⁹ Harris Y. P. Sibuea, *Loc-Cit*.

¹⁰ Layanan Corona Jakarta, “Data Pemantauan COVID-19 DKI Jakarta,” www.corona.jakarta.go.id, 2020. (diakses tanggal 23 Juli 2021)

¹¹ Luthfia Ayu Azanella, “Update Corona Global 22 Juni 2021: Kasus Covid-19 Di Indonesia Tembus 2 Juta | Ancaman Duterte Penjarakan Warga Filipina Yang Menolak Vaksinasi,” www.kompas.com, 2021. (diakses tanggal 22 Juli 2021)

¹² Indonesia, *Undang-Undang Tentang Administrasi Pemerintahan*, UU Nomor 30 Tahun 2014, LN No. 292 tahun 2014, TLN. No 5601, Pasal 1 Ayat (9).

order to keep up with the development of society. Policy regulations are used to take strategic policies in the form of decisions or actions in addressing urgent concrete problems that require immediate handling. Government policy is carried out as a discretionary power protected by a legal umbrella, so that every government official who acts on behalf of his position and is used for the public interest must receive legal protection.¹³

The research method that the researchers used in this research was the *Yuridis Normatif* (Legal Research) research method. Normative legal research method or library legal research method is a method used in legal research conducted by examining existing library materials.¹⁴ The research approach used was qualitative research with the aim of not only producing descriptive data but also the research to be carried out was typed as explanatory and evaluative research.¹⁵ The purpose of the explanatory type of research was because the research conducted was aimed at answering the question of how the Instruction of the Minister of Home Affairs when viewed from the theory of Legislation, and how the policies taken by the Java and Bali regions in following up on the Instruction of the Minister of Home Affairs Regarding the Enforcement of Restrictions on Community Activities of Corona Virus Disease Emergency 2019 in the Java and Bali Regions.¹⁶ From the results of the search for literature analysis and laws and regulations.¹⁷ Where, in the research in this paper a description was made of the applicability of the Instruction of the Minister of Home Affairs Regarding the Enforcement of Restrictions on Corona Virus Disease 2019 Emergency Community

¹³ Henny Juliani, "Analisis Yuridis Kebijakan Keuangan Negara Dalam Penanganan Pandemi Covid-19 Melalui Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020," *Administrative Law and Governance Journal* 3, no. 2, (June 2020). pp. 331.

¹⁴ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif*, Cet. 8 (Jakarta: PT Raja Grafindo Persada, 2004). pp. 14.

¹⁵ Andri Gunawan Wibisana, "Menulis Di Jurnal Hukum: Gagasan, Struktur, Dan Gaya," *Jurnal Hukum & Pembangunan* 49, no. 2, (June 2019). pp. 475.

¹⁶ *Ibid.*

¹⁷ Soekanto Soerjono, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2008). pp. 42.

Activities in the Java and Bali Regions as a Policy Regulation based on the positive law that regulates it.

Researchers used secondary data sources to obtain a theoretical basis in the form of opinions or writings of experts or other authorized parties and also to obtain information both in the form of several formal provisions and data through existing official texts using primary legal materials (in the form of laws and regulations), secondary legal materials (law books, legal journals, papers, etc.), and tertiary legal materials such as dictionaries. Data collection tools used literature studies or searches. Furthermore, from the results of the literature study, the researchers analyzed the data qualitatively by grouping and selecting the data obtained then arranged systematically which was reviewed by deductive thinking method then connected with theories from the field of literature study (secondary data), then conclusions were made that are useful to answer the problems in this research.

ANALYSIS OF MINISTERIAL INSTRUCTION NO. 15/2021: COVID-19 COMMUNITY ACTIVITY RESTRICTIONS IN JAVA AND BALI

The Instruction of the Minister of Home Affairs Regarding the Implementation of Restrictions on Corona Virus Disease 2019 Emergency Community Activities in the Java and Bali Regions is one of the state regulations, namely *beleidsregel* or Policy Regulations. Policy Regulations are part of State Regulations. State Regulations (*staatsregelings*) are written regulations issued by state institutions, or certain officials. Examples of regulations are Laws, Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Ministerial Regulations, Regional Regulations,

Instructions, Circulars, Announcements, Decrees, and others, this was stated by M. Solly Lubis.¹⁸

Conceptually, discretion or *Freies Ermessen* are those (Government Administration Officials) who have the freedom to make a decision under certain conditions, so that discretion is commonly used and applied in the administration of government, which then discretion is interpreted as a means of entering state officials to take action without full prosecution through laws and regulations. The direction of policy and regulation of a policy regulation (*beleidsregel*) is to focus on the performance of action-oriented government responsibilities and emphasize the aspect of expediency (*doelmatigheid*) rather than *rechtsmatigheid* in the *Freies Ermessen* framework, the principle of discretionary policy or granting freedom of action to state administrators is intended to achieve government objectives and in the public interest.¹⁹

J.M de Meij and I.C. van der Vlies explained that the law cannot answer all matters, but leaves it to government organs to practically take action regarding whatever resolution is best for the concrete matters that occur. the authority to take various considerations or choices in concrete situations is called the Discretionary authority.²⁰ This opinion explains that indeed the law will always be inferior to the development of society for the need for an instrument to regulate things that come in the future, but not yet or not clear an existing legislation to be able to regulate the objective conditions of society.

Philipus M. Hadjon is of the view that policy regulations are essentially the product of state administrative actions aimed at "*naar buiten gebracht schriftelijk beleid*", namely to bring out a written policy.²¹

¹⁸ Arif Christiono Soebroto, "Workshop Kedudukan Hukum Peraturan/Kebijakan Di Bawah Peraturan Menteri Negara Ppn/Kepala Bappenas," www.jdih.bappenas.go.id, 2012. pp. 1. (diakses pada tanggal 11 Agustus 2021)

¹⁹ Zaenuddin B. Palalas, "Eksistensi Peraturan Kebijakan (Beleidsregel) Dalam Penyelenggaraan Pemerintahan," *Jurnal Media Hukum (Jmh)* I, no. 2, (September 2013). pp. 18.

²⁰ Muhammad Tabrani Mutalib, *Op., Cit.*, pp. 165.

²¹ Eric and Wening Anggraita, "Jurnal Komunikasi Hukum," *Jurnal Komunikasi Hukum* 7, no. 1, (February 2021). pp. 474.

Policy regulations only function as part of the operational implementation of government tasks, therefore they cannot change or deviate from laws and regulations. This regulation is a kind of "shadow law" of a statute or law. Therefore, this regulation is also called *pseudo-wetgeving* (pseudo legislation) or *spiegelsrecht* (shadow/mirror law).²² In the concept of the administrative law system in the Netherlands, for example, policy regulations are defined as a decision that is determined as a general regulation, not a written regulation that is binding on the public, with regard to consideration of various interests, determination of facts or explanation of written regulations regarding the use of the authority of government organs.²³ Then other jurists such as Bagir Manan and A. Hamid S. Attamimi use the term "policy regulations" while Prajudi Atmosudirdjo uses the term "policy regulations". and also uses the term "pseudo-legislation" as a guide to the term "*pseudo-wetgeving*". In other Indonesian administrative law literature, the terms "pseudo legislation" and "policy regulations" are found.²⁴

In the hierarchy of legislation in Indonesia, as we know that which is included in statutory regulations, such as what is contained in article 7 paragraph (1) and article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, Policy Regulations are not included in Legislation. Policy regulations are born from the discretionary policies of Government Officials in this case such as the Instruction of the Minister of Home Affairs Regarding the Enforcement of Restrictions on Corona Virus Disease 2019 Emergency Community Activities in the Java and Bali Regions. Policies (*beleidsregel*) are born from discretionary policies or *freies Ermessen*,

²² Marcus Lukman, "Eksistensi Peraturan Kebijaksanaan Dalam Bidang Perencanaan Dan Pelaksanaan Rencana Pembangunan Di Daerah Serta Dampaknya Terhadap Pembangunan Materi Hukum Tertulis Nasional," (Disertasi, Pascasarjana Fakultas Hukum, Universitas Padjajaran, Bandung, 1996). pp. 29.

²³ Sadhu Bagas Suratno, "Pembentukan Peraturan Kebijakan Berdasarkan Asas-Asas Umum Pemerintahan Yang Baik," *E-Journal Lentera Hukum* 4, no. 3, (December 2017). pp. 167.

²⁴ Muhammad Thabrani Mutalib, *Op., Cit.*, pp. 160.

namely the freedom of action of government officials in solving problems that arise such as the current Covid-19 pandemic.²⁵ Then in the Regulation of the Minister of Home Affairs Number 42 of 2016 concerning Office Manuscripts within the Ministry of Home Affairs, Article 5 letter c explains that *Inmendagri* is included in one of the Regulatory Service Manuscripts.²⁶

The legislation that can be used as a legal basis for formulating and implementing policy regulations is the Government Administration Law. This law does not clearly define policy regulations. But if we use Bagir Manan's premise that policy regulations (*beleidsregel*, *pseudowetgeving*, policy rules), namely regulations made, both authoritative and material, are not based on statutory provisions, mandates or authorities, but originate from the principle of *Freies ermessen* (discretionary power), the formation and implementation of policies and regulations must pay attention to the definition, scope, requirements, procedures, and legal consequences of discretionary authority regulated in the Government Administration Law.²⁷ Bagir Manan explained that policy regulations have the following characteristics:²⁸

"(1). Policy regulations are not laws and regulations; (2). The principle of limitation and testing of laws and regulations cannot be applied to policy regulations; (3). Policy regulations cannot be tested by *wetmatigheid* (the touchstone for laws and regulations); (4). Policy regulations are made based on the function of the principle of *freies emerrmisen*; (5). Testing policy regulations emphasizes the *doelmatigheid* principle of AAUPB (6) In practice in the form of instructions, decisions, circulars, announcements."

According to A. Hamid S. Attamimi, policy regulations in practice have the same substance and binding force as laws and

²⁵ I Suryana, "Pembatasan Terhadap Asas *Freies Ermessen*," *Jurnal Ilmu Sosial Dan Ilmu Politik* 9, no. 2, (September 2018). pp. 105.

²⁶ Indonesia, *Peraturan Menteri Dalam Negeri Tentang Tata Naskah Dinas Di Lingkungan Kementerian Dalam Negeri*, *Permendagri Nomor 42 Tahun 2016*, Pasal 5 Huruf c.

²⁷ Sadhu Bagas Suratno, "*Op., Cit.*" pp. 167-168.

²⁸ Ahmad Gelora Mahardika dan Rizky Saputra, "*Op., Cit.*" pp.10.

regulations, although they are said to be different from laws and regulations, but policy regulations can be felt to be generally binding, so that people follow these policy regulations as they follow laws and regulations.²⁹ A. Hamid S. Attamimi also explained that, policy regulations when we look at the form and format are often the same as statutory regulations, such as the existence of a consideration and body, which are similar to statutory regulations. Policy regulations are not included in statutory regulations as described above, but the nature of the substance is often a regulatory norm that has a general impact.³⁰

Policy Regulations often also appear in other forms and formats, such as official notes, circulars, implementing instructions, technical instructions, announcements and so on. It can even be in oral form to subordinates who do not have a form and format.³¹ The examples above show that there is no format and substance of what should be contained in policy regulations.³² One of the requirements for government officials in issuing policy regulations is that these matters have not been regulated in laws and regulations and or as an effort to answer the stagnation and rigidity of the Law.³³ Conditions like this in practice can certainly lead to legal uncertainty, especially in terms of its binding force. Therefore, policy regulations should be regulated in law to prevent the arbitrary use of policy regulations.³⁴

The Instruction of the Minister of Home Affairs related to PPKM in Java and Bali is addressed to the Governor and Regent/Mayor, and explains in detail what must be done by regional heads whose level 3 and 4 areas must implement the Restriction of Community Activities (PPKM) in order to reduce the rate of spread

²⁹ A Hamid S Attamimi, "Hukum Tentang Peraturan Perundang-Undangan Dan Peraturan Kebijakan" (Pidato Purna Bakti, Fakultas Hukum Universitas Indonesia, 1993). pp. 12.

³⁰ *Ibid*, pp. 13.

³¹ Arif Christiono Soebroto, *Op. Cit*, pp. 5.

³² A Hamid S Attamimi, *Loc-Cit*.

³³ Zaenuddin B. Palalas, *Op. Cit*, pp. 17.

³⁴ Victor Imanuel W Nalle, "Kedudukan Peraturan Kebijakan Dalam Undang-Undang Administrasi," *Jurnal Refleksi Hukum* Vol. 10, no. 1, (April 2016). pp. 4.

of the Covid-19 virus.³⁵ So, if we measure the legal norms of this Inmendagri, it can be said to have concrete individual legal norms. Concrete individual legal norms are norms that are addressed only to a person or several specific people and regulate in detail the actions they regulate, so they are concrete.³⁶ According to Maria Farida, the reason why instructions are not included in laws and regulations is because an instruction or policy regulation (*beleidsregel*) does not apply continuously, and there must be an organizational relationship between superiors and subordinates, while the nature of legal norms in laws and regulations is general, abstract, and applies continuously.³⁷

Because policy regulations are not laws and regulations, Inmendagri cannot delegate to laws and regulations. Judging from its type, the legal instrument that is the object of this research is indeed a policy regulation issued by regional officials. The legal instrument is not a delegation of the Ministerial Instruction. By looking at the position of Policy Regulations, as explained above, so that policy regulations are only a basis for regions to make regulations on PPKM whose characteristics and substance are different from laws and regulations, and local governments cannot make local regulations that are included in laws and regulations only based on the Inmendagri.

The use of Policy Regulations is a vehicle for government officials to make breakthroughs and solve problems that require quick resolution and there are no rules governing this. However, it must be remembered that the use of discretion has legal consequences. Policy Regulations issued not based on objectives, laws and regulations, and general principles of good governance that lead to discretion will encourage arbitrary actions and abuse of power. Arbitrary behavior

³⁵ Indonesia, *Instruksi Menteri Dalam Negeri Tentang Pemberlakuan Pembatasan Kegiatan Masyarakat Darurat Corona Virus Disease 2019 di Wilayah Jawa dan Bali*, Inmendagri No. 15 Tahun 2021.

³⁶ Maria Farida Indrati S, *Ilmu Perundang-Undangan 1: Jenis, Fungsi Dan Materi Muatan* (Yogyakarta: Kanisius, 2007). pp. 18.

³⁷ Ahmad Gelora Mahardika dan Rizky Saputra, *Op-Cit*, pp. 6.

can occur because the government does not have rationality as a parameter. Therefore, all forms of Policy Regulations both at the central and regional levels must be based on the principles of legitimacy, principles of democracy, principles of purpose, and general principles of good governance as meta-norms underlying government actions.³⁸

COVID-19 COMMUNITY ACTIVITY RESTRICTIONS IN JAVA AND BALI: MINISTERIAL INSTRUCTION

Article 18 paragraph (6) of the Constitution of the Republic of Indonesia states that: "The regional government has the right to establish regional regulations and other regulations to implement autonomy and assistance tasks".³⁹ In addition to the laws and regulations referred to, the regional head has the authority to issue discretion when there is no governing legislation. During the pandemic, regions in Java and Bali made legal instruments as a follow-up to the Inmendagri related to PPKM as an effort to tackle the spread of the Covid-19 virus, these legal instruments issued by regions in Java and Bali, namely:

1. Circular Letter of the Governor of Central Java Number: 443.5/0000429 dated January 8, 2021 Regarding the Implementation of Restrictions on Community Activities and Anticipation of an Increase in Covid-19 Cases in Central Java.

In the contents of the Circular Letter of the Governor of Central Java, *Adressat* is addressed to Regent / Mayor Officials in the territory of Central Java, to carry out arrangements related to PPKM, starting from the availability of hospitals, improving health protocols by

³⁸ Henny Juliani, *Op., Cit.*, pp. 336.

³⁹ Bhenyamin Hoessein, *Perubahan Model, Pola, Dan Bentuk Pemerintahan Daerah: Dari Orde Baru Ke Era Reformasi* (Depok: Departemen Ilmu Administrasi, Fakultas Ilmu Sosial dan Ilmu Politik Universitas Indonesia, 2009). pp. 152.

involving related parties in their regional environment with specifics also written in this Circular Letter the time of implementation. In theory, the Circular Letter is included in the form of Policy Regulations (*beleidsregel*), as explained by Jimly Asshiddiqie in his book entitled Subject of Law, Jimly explains that the forms of Policy Regulations are Instructions, Circulars, Program Drafts, Project terms of reference, work guidelines, warrants, notes.⁴⁰ This Circular Letter is a policy regulation that has concrete individual legal norms. This is because the legal norm is addressed to a specific person or body, and the matter regulated is concrete.⁴¹

2. DIY Governor Instruction Number 1 of 2021 on the Policy of Limited Tightening of Community Activities in the Daerah Istimewa Yogyakarta.

In this Yogyakarta Governor's Instruction, there are at least 11 points that make up the contents of this Governor's Instruction, which in essence carry out restrictions to minimize crowds, with the aim that the DIY government can reduce the level of spread of the Covid-19 Virus. This Governor's Instruction is included in the policy regulation. This Instruction of the Governor of DIY has individual-concrete legal norms because *Adressat*, this Instruction is addressed to offices, restaurants, and places of worship. Then it is called concrete because this Instruction regulates specifically related to operating hours, crowds in restaurants, places of worship and offices.

3. Banten Governor Instruction Number 1 of 2021 concerning the Implementation of Activity Restrictions to Control the Spread of Corona Virus Disease 2019 (Covid-19) in Banten Province.

The substance of the Banten Governor's Instruction is basically the same as the Central Java Governor's Circular Letter and the DIY Governor's Instruction. As in the Circular Letter of the Governor of Central Java addressed to Regents/Mayors, implementing WFH, although the number of restrictions in the workplace is similar

⁴⁰ Jimly Asshiddiqie, *Perihal Undang-Undang* (Jakarta: Konstitusi Press, 2006). pp. 20.

⁴¹ Maria Farida Indrati. S, *Op., Cit.*, pp. 29.

between the Banten Governor's Instruction and the DIY Governor's Instruction. Then related to the tightening of health protocols, this is the same as what is regulated in the Circular Letter of the Governor of Central Java. But there are still slight differences. The difference is: in the Banten Governor's Instruction there are four parameters and other considerations to strengthen Covid-19 control efforts. The four parameters are: a. mortality rate above the average national mortality rate; b. recovery rate below the average national recovery rate; c. active case rate above the average national active rate; and four other parameters and considerations to strengthen Covid-19 control efforts. d. Hospital bed occupancy rate Bed Occupation Room (BOR) for Intensive Care Unit (ICU) and isolation room above 70% (seventy percent).

The form of the regulation made by Banten Province is clearly a Policy Regulation and this Instruction has a Concrete Individual legal norm because it is addressed to state administrative bodies or officials, namely: Regent of Tangerang, Mayor of Tangerang, and Mayor of South Tangerang. Then the action regulates specifically, which means that the action is concrete.

4. Decree of the Governor of East Java Number 188/7/KPTS/013/2021 concerning the Implementation of Restrictions on Community Activities to Control the Spread of Corona Virus Disease 2019.

The legal instrument issued by the Governor of East Java is in the form of *Beschikking* state regulation. *Beschikking* is a decision that has the nature or content of an administrative determination, and can also be a decision in the form of a judge's verdict or court decision.⁴² In general, the East Java Governor's Decree, whose state legal instruments fall into the *Beschikking* category, has or contains a consideration just like legislation. Then the legal norms of *Beschikking* are very clear, namely concrete individuals, addressed to

⁴² Jimly Asshiddiqie, *Op., Cit.*, pp. 10.

certain people and concrete in nature.⁴³ Based on Law No. 5 of 1986 concerning PTUN, a decision issued by a state administrative official must meet the requirements of being concrete, individual, and final, and has legal consequences for a person or civil legal entity.⁴⁴

5. Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 Regarding the Implementation of Restrictions on Coronavirus Disease Emergency Community Activities 2019 (Covid-19) in the Province of West Java. And Instruction of the Governor of West Java Number: 02/Ks.01.01/Satpol.Pp Regarding Enforcement of Violations of the Implementation of Restrictions on Coronavirus Disease Emergency Community Activities 2019 in West Java.

West Java Province issued two legal bases, in the context of handling the Covid-19 pandemic. These legal instruments include (1) Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 Regarding the Enforcement of Restrictions on Coronavirus Disease 2019 (Covid-19) Emergency Community Activities in the West Java Province, and (2) Instruction of the Governor of West Java Number: 02/Ks.01.01/Satpol.PP Regarding Enforcement of Violations of Restrictions on Coronavirus Disease 2019 Emergency Community Activities in West Java. These regional legal instruments are in the form of Decrees and Instructions.

The substance of the legal instrument of West Java Province in the form of Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 concerning the Implementation of Restrictions on Coronavirus Disease Emergency Community Activities 2019 (Covid-19) in the Province of West Java, which essentially regulates the implementation time and technical implementation of PPKM in West Java, Budget changes for pandemic handling, and revokes Decree of the Governor of West Java Number 443/Kep.306-Hukham/2021 concerning the Tenth Extension of the

⁴³ Maria Farida Indrati. S, *Loc-Cit*.

⁴⁴ Ahmad Gelora Mahardika, Rizky Saputra, *Op., Cit*, pp. 11.

Implementation of Proportional Large-Scale Social Restrictions in West Java Province in the Context of Handling Coronavirus Disease 2019 (Covid-19). Hukham/2021 concerning the Tenth Extension of the Implementation of Large-Scale Social Restrictions Proportionally in West Java Province in the Context of Handling Coronavirus Disease 2019 (Covid-19); and b. Decree of the Governor of West Java Number 443/Kep.316-Hukham/2021 concerning Amendments to Decree of the Governor of West Java Number 443/Kep.306-Hukham/2021 concerning the Tenth Extension of the Implementation of Large-Scale Social Restrictions Proportionally in West Java Province in the Context of Handling Coronavirus Disease 2019 (Covid-19).

Decree of the Governor of West Java Number: 443/Kep.337-Hukham/2021 Regarding the Implementation of Restrictions on Coronavirus Disease 2019 (Covid-19) Emergency Community Activities in the Province of West Java is included in the category of *Beschikking* state legal instruments, whose content material has a consideration, the nature of the legal norm is concrete individual. *Beschikking* can be said to have the nature of concrete norms because, *Beschikking* means something whose decision content is intended to complement the law or determine the law on a concrete matter.

6. Bali Governor Circular Letter Number 11 of 2021 concerning Restrictions on Community Activities (PPKM) Level 3 Corona Virus Disease 2019 in the new life order in Bali Province.

Bali Governor Circular Letter Number 11 of 2021 concerning Restrictions on Community Activities (PPKM) Level 3 Corona Virus Disease 2019 in the new order of life in Bali Province. Is one form of state regulation, namely *Beleidsregels*. In substance contained in this Bali Governor's Circular Letter, namely, classifying essential activities by limiting the number of community activities, then regulating related to PPKM level 3 funding sourced from the APBD, accelerating the vaccination process, and regulating related to testing, tracing, and treatment. The Bali Governor's Circular Letter also regulates related

to planning to minimize the spread of the Covid-19 virus, by compiling targets for conducting tests on the community in each city district in Bali Province. By examining the substance of the Bali Governor's Circular Letter, it has the nature of an Abstract General legal norm, because the legal norm is intended for the public and the action has a nature that is not yet concrete or still abstract.⁴⁵

Based on the explanation above, we can conclude that not all regions in following up the Instruction of the Minister of Home Affairs related to PPKM use Policy Regulations (*beleidsregel*). As has been explained and elaborated, Decisions are not included in policy regulations (*beleidsregel*), such as Legal Instruments issued by East Java and West Java Provinces which are included in Beschikking Legal Instruments. This means that there are indeed variants of regulations in the regions that regulate PPKM.⁴⁶ Some of the policy regulations (*beleidsregel*) above are policy regulations (*beleidsregel*) in the regions, which in their mutant material policy regulations may not contain criminal sanctions, this is regulated in Article 15 of Law No. 12 of 2011 concerning the formation of laws and regulations which explains that regulations that can impose criminal sanctions are only laws and regulations.⁴⁷ Although the legal norm of this policy regulation is Individual Concrete, it can have an impact both directly and indirectly on the general public. As explained by Bagir Manan, according to him, policy regulations are aimed at a particular body or person but will indirectly affect the general public.⁴⁸ Then related to the process of forming legal instruments of policy regulations from the provinces that have been described above, the regions issue policy regulations in tackling the spread of Covid-19, must pay attention to the conditions stipulated in the Law, must not conflict with statutory

⁴⁵ Maria Farida Indrati. S, *Op., Cit*, pp. 28.

⁴⁶ Ahmad Gelora Mahardika dan Rizky Saputra, *Op-Cit*, pp. 8.

⁴⁷ Pada Pasal 15 ayat (1) UU Tentang Pembentukan Peraturan Perundang-undangan menjelaskan bahwa "Materi muatan mengenai ketentuan pidana hanya dapat dimuat dalam: a. Undang-Undang; b. Peraturan Daerah Provinsi; atau c. Peraturan Daerah Kabupaten/Kota.

⁴⁸ Muhammad Thabrani Mutalib, *Op., Cit*, pp. 160.

regulations, and the existence of a legal vacuum. Therefore, according to the author, the policy regulations issued by these regions are in accordance with the existing conditions.

CONCLUSION

The Instruction of the Minister of Home Affairs is an instruction from the minister to lower officials, not a statutory regulation but a policy regulation. This Instruction of the Minister of Home Affairs does not constitute legislation. The regulation given is not addressed to the public, but to governors and regents/mayors. Law No.12/2011 on the Formation of Legislation also does not mention that ministerial instructions are part of legislation. This ministerial instruction only provides direction/guidance to governors and mayors/regents to make the necessary policies according to the needs of each region, and does not regulate the public.

Ministerial instructions are also known as regulatory official manuscripts in the Minister of Home Affairs Regulation No. 42 of 2016 concerning Office Manuscripts within the Ministry of Home Affairs. As part of the regulatory official script, the ministerial instruction is not binding on the public but is binding on the internal ministry.

This research focused on the implementation of 6 (six) local governments when forming legal instruments as a follow-up to Inmendagri No.15 of 2021. Looking at the form of follow-up of each local government, it turns out that it is quite varied. Four regions that issued legal instruments in their regions used policy regulations, but there were 2 regions that issued legal instruments in the form of *Beschikking*, namely East Java and West Java Provinces. The central and regional governments have the authority to issue policy regulations, but it should be noted that the formation of policy

regulations must fulfill several conditions. Among them is the existence of a legislative vacuum when there is a concrete situation that must be handled quickly but does not conflict with the applicable laws and regulations. Because policy regulations have a function to fill, complement and develop legal lacunae but remain in the corridor of good governance principles.

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Author Biography

Rizky Arifianto, S.H., M.H.

Rizky is postgraduate student in Master of Law Program, Law Faculty, Universitas Indonesia, Indonesia

Dr. Fitriani Ahlan Sjarif, S.H., M.H.

Dr. Fitriani is a faculty member in Law Faculty, Universitas Indonesia, Indonesia.