



ANALYSIS OF CENTRAL AND LOCAL GOVERNMENT REGULATIONS IN HANDLING PANDEMICS IN INDONESIA: A SOCIO-LEGAL PERSPECTIVE

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ABSTRACT


The health emergency in Indonesia is destabilizing. The rapid spread of COVID-19 has resulted in a crisis. The severity of the outbreak in regions where the central government has not responded promptly has prompted various preventive measures by local governments. The central government has the authority to legally determine public health emergencies, as stated in Article 10, paragraph 1, of Law No. 6/2018. However, it is perceived that PMK No. 9 of 2020, issued by the Minister of Health, is excessively procedural amidst local governments' eagerness to safeguard their citizens by implementing various measures to curtail the transmission of COVID-19. This study aims to determine the reconstruction of the legal relationship between the central and local governments in handling the pandemic in Indonesia. The method used is a normative legal research method with a statutory and conceptual approach. The foundation of this research is a law that regulates the handling and prosecution of COVID-19 and then analyzed with the concept of determining the regulation of the law. The results show that the substance of Law No. 24/2007, Law No. 6/2018, and Law No. 23/2014 leads to an unclear legal relationship between the central government and local governments in emergencies (extraordinary), especially in pandemic enforcement. The legal enforcement of Law No. 6/2018 regarding Health Quarantine by the Central Government and the Regions is not running effectively due to the unclear substance of the rules, the structure of law enforcement officials who do not understand the significance of Law No. 6/2018, and the legal culture of the people who tend to ignore existing rules. The reconstruction of the legal relationship between the central and regional governments in prosecuting the COVID-19 pandemic requires a more comprehensive arrangement by referring to the 1945 Constitution.

Keywords: Law; Pandemic; Local Government; Central Government

INTRODUCTION

In Indonesia, the COVID-19 pandemic was first announced by President Joko Widodo on March 2, 2020. It has had an exclusive and indirect impact on various levels of society. Indonesia is one of 233 countries affected by the COVID-19 pandemic. The rapid spread of the coronavirus has negatively affected social activities at the community, national, and state levels. To combat COVID-19 and break the chain of virus transmission, the active involvement of all segments of society is crucial. This includes practicing social distancing, implementing lockdowns, regional quarantines, maintaining personal and environmental hygiene, staying at home, and observing physical distancing. When in public places or crowds, individuals should wear masks, practice frequent handwashing, and ensure they get adequate rest to maintain their immunity (Syafrida & Hartati, 2020). The government has taken various measures in collaboration with the community to combat the pandemic, including implementing work-from-home (WFH) policies, imposing Large-Scale Social Restrictions (PSBB), promoting social distancing, mask-wearing, disinfection, and prohibiting homecoming, among other policies. These efforts are aimed at ending the COVID-19 pandemic quickly (Norman et al., 2022).

COVID-19 is becoming increasingly widespread, creating an emergency situation. Various preventive measures are carried out in each region because of the rapid spread of COVID-19. These actions include closing access out of the city for 4 months, closing sea and air routes, and designating COVID-19 as an extraordinary event (Gani et al., 2020). But the actions of the local government do not seem to be in line with those of the central government (Rizqya, 2021).



The increasing severity of COVID-19 spread in areas that have not received a prompt response from the central government has prompted local authorities to take various enforcement and prevention measures. These actions align with their jurisdiction and their understanding of the actual conditions of their citizens. For instance, the DKI Provincial Government proposed a Large-Scale Social Restriction (PSBB) to the Minister of Health on April 1, 2020. However, this proposal was rejected because it did not align with Ministry of Health Regulation (PMK) No. 9 of 2020, which was issued on April 3, 2020.


The authority to declare health emergencies with legal implications rests with the central government, as stated in Article 10, paragraph (1) of Law No. 6/2018. This article explains that Large-Scale Social Restrictions (PSBB) are one of the mitigation measures in health emergencies. However, the Minister of Health issued PMK No. 9 of 2020, which was seen as overly procedural, while local governments were eager to protect their citizens by taking various measures to curb the spread of COVID-19. The procedural nature of PMK No. 9 of 2020 required local governments to provide detailed information regarding four key aspects: (1) the operation and budget of the social safety network; (2) an increase in the number of cases over time; (3) cases of local transmission; and (4) regional readiness, including health infrastructure and facilities, to support people's basic needs.

The Minister of Health's regulation will be implemented for the Large-Scale Social Restrictions (PSBB) to be consistent and accountable. However, in the context of public health emergencies related to the spread of COVID-19, the local government will focus on preparing administrative data for Large-Scale Social Restrictions (PSBB) submissions and handling COVID-19 cases. In this way, the provincial government is playing catch-up. On the one hand, the local government has to prepare detailed data, but on the other hand, it also has to save people's lives. This makes procedural things inappropriate in a pandemic situation that has spread. Although the aim is for the central government, through the Minister of Health, to be able to carry out control functions in the status of Large-Scale Social Restrictions (PSBB) so that it is not perceived as a unitary state, the local government is operating on its own.

This is evidenced by some regulations from the central government to deal with the health emergency of the COVID-19 outbreak:

1. Presidential Decree No. 7 of 2020 regarding the Task Force for the Acceleration of COVID-19 Enforcement.
2. Presidential Decree No. 11 of 2020 regarding the Determination of Citizen Health Emergency Status.
3. Presidential Decree No. 12 of 2020 regarding the Determination of Non-Natural Disasters for the Spread of COVID-19 as National Disasters.
4. Government Regulation (PP) No. 21 of 2020 regarding Large-Scale Social Restrictions (PSBB) to Accelerate COVID-19 Enforcement.
5. Circular Letter (SE) HK.02.01/MENKES/202/2020 regarding the Self-Isolation Protocol in COVID-19 Enforcement.

This regulation serves as the basis for drafting regulations by local governments. Therefore, in health emergency situations, local governments must await decisions from the central government before taking any action (Hasibuan & Ashari, 2020). In a previous study conducted by Ariyanto (2020), it was explained that the primary basis for managing the relationship between the central government and local government is socialization. According to the new rules outlined in Regional Apparatus Organization Law No. 23 of 2014, this collaboration has been consolidated. Research conducted by (Ristyawati, 2020) highlighted that, concerning the authority of the 1945 Constitution, most Large-Scale Social Restrictions (PSBB) regulations have been perceived as ineffective by the public, as they believe they don't receive adequate legal protection under the regulations established by the current government. To prevent further casualties, various efforts have been made to align Large-Scale Social Restrictions (PSBB) regulations issued during disasters with the 1945 Constitution. This includes ensuring their accuracy, involving both the central government and local government, and providing general data to illustrate the chain of transmission. Moreover, these efforts aim to enable individuals with moderate to lower economic conditions to meet their basic needs for a secure life while upholding their national dignity. Additionally, there's a need for civil society to protect, remind one



another, and offer mutual assistance to ensure that these efforts don't diminish in any way. The novelty of this study is that it describes policies that are different between the central government and local governments.

Establishing a foundation for national needs in alignment with the Constitution is essential. This, in turn, serves as a standard parameter for interpreting the legal relationship between the central government and the regions, ensuring it remains unbiased. This is particularly important when addressing the COVID-19 pandemic, affecting the Indonesian population since March 2020. This study's guiding discourse revolves around the systematic and logical thinking required to comprehend coherent social needs. It harks back to Indonesia's founding purpose, which is its people's sovereignty, as articulated in the preamble to the 1945 Law. The integrity of this sovereignty lies in the embodiment of Pancasila values as fundamental norms of the Indonesian nation, which must not be violated, as stipulated in the 1945 Constitution. Therefore, this study aims to analyze the regulations of both the central and local governments concerning their approach to managing pandemics in Indonesia.

METHODS

This study employed normative legal research methods. The normative juridical approach is an approach that refers to applicable laws and regulations (Benuf & Azhar, 2020). Normative juridical research is a form of scientific research activity that uses literature and conceptual materials (Rahmawati, 2020). This research approach combines legal and conceptual methods, with the foundation being the laws governing the handling and enforcement of COVID-19, further analyzed using the concepts outlined in these laws.

The study utilized both primary and secondary sources of legal materials (Diantha, 2016). Primary legal materials consist of norms and legal principles contained within the legislative regulations. Secondary legal sources include legal journals, books, legal encyclopedias, and dictionaries related to the research topic.

These secondary sources encompass a wide range of documents, including comprehensive texts addressing amendments to the 1945 Constitution, national and international journals, legal publications, and scientific articles.


RESULT AND DISCUSSION

Indonesia, as a state of law (Article 1, Paragraph 3 of the 1945 Constitution), demands that all actions taken adhere to legal principles. The fundamental underpinning of the rule of law is the use of legal instruments in all legal proceedings. The principle of a unitary state forms the constitutional basis for the relationship between the central government and regional authorities. This principle emphasizes that, within a unitary state, all governmental functions fall under the jurisdiction of the central government, without delegation to local authorities (Huda, 2011).

In terms of legal matters, the amendments to Article 18 of the 1945 Constitution reflect a new paradigm in the political direction of local governments. The COVID-19 pandemic's nationwide outbreak has led to a public health emergency. Various regions have adopted preventive measures due to the widespread transmission of COVID-19. The preventive actions taken by different regions vary widely, including the temporary closure of entrances and exits and the suspension of air travel for up to four months (Purba, 2021). However, these local government regulations often do not align with the regulations imposed by the central government.

In suppressing the pandemic outbreak as legality, Government Regulation in Lieu of Law (Perppu) No. 1/2020 was issued, which previously utilized Perppu No. 1/2020, which has arranged the financial substance in pandemic enforcement. Law No. 6/2018 has conveyed the legality of taking action for the government in the COVID-19 pandemic to benefit citizens. Some parts can be seen to find government regulations for enforcing COVID-19, such as economic, political, cultural, social, and legal exceptions.

On April 13, 2020, President Jokowi declared Indonesia a state of national disaster, starting from March 31, 2020, marking a health emergency. The two different status determinations have led to increased confusion among the public due to the need for more legal certainty regarding the



pandemic's status in Indonesia. The concepts of a health emergency and a national disaster are significantly different, each governed by distinct laws. This discrepancy poses challenges regarding which institution should take the lead in enforcing COVID-19 measures.

The decentralization process encompasses delegation, deconcentration, and devolution. In regions with autonomy, the final step is devolution into regional legitimacy. In the new law on provincial government, the authority of local governments is not as extensive as outlined in Law No. 22/1999. Devolved regions allow for direct participation through local elections, enabling regional populations to contribute to their region's development actively. This condition means that if the local government does not do anything to handle COVID-19, residents may blame their local leaders. One of the differences between the central and local governments is based on the high demands from residents regarding the actions of local governments in handling COVID-19. Besides that, the government also gets weak coordination and regulatory uncertainty from the centre, which further strengthens the initiative of local governments. Then, the government followed up on responding to the people's demands in the regions to realize more progressive regulations. Presidential Regulation No. 11/2020 was issued at the end of March 2020. The Presidential Decree was followed by the implementation of Large-Scale Social Restrictions (PSBB), as per Government Regulation (PP) No. 21/2020, to accelerate the implementation of COVID-19 measures. The government chose Large-Scale Social Restrictions (PSBB) instead of regional quarantine, allowed and contained in Law No. 6/2018, to minimize the economic consequences. Although the economy can still function under the limitations of Large-Scale Social Restrictions (PSBB), implementing regional quarantine would require the government to take responsibility for people during the quarantine period, causing an automatic stall in the economy. Due to the government's limited budget for regional quarantine, it poses a significant risk. Additionally, political, cultural, social, and geographical issues must be considered when implementing and selecting regulations in Indonesia.

The central government retains control over which regions can implement Large-Scale Social Restrictions (PSBB) and which require local government permission via the central government. This indicates that complete power remains with the central government. However, guidelines have been introduced in the region to mitigate the spread of COVID-19. The government issued further regulations after implementing Large-Scale Social Restrictions (PSBB). Specifically, Presidential Decree No. 12/2020 was issued to determine the spread of COVID-19 as a national disaster, classified as a non-natural disaster. The Presidential Decree activated Law No. 24/2020. It granted flexibility to the head of the National Disaster Mitigation Agency (BNPB), allowing the current head of the task force for COVID-19 enforcement to take strategic and maximum regulatory actions.

The division of responsibilities between the central and regional governments in the development of Law No. 23/2014 aims to strike a balance in government tasks and structure. However, this approach has led to overly centralized regulations. The regulatory direction of Law No. 23/2014, as elucidated by Yusdianto, leans towards centralization with a focus on concentration. This shift has occurred because the authority of the central government and the regions does not align with the principles of the 1945 Constitution (Perwira, 2015). The move towards centralization is primarily concerned with the monitoring of authority relations, with an emphasis on stricter preventive supervision.

The analysis of Law No. 23/2014 should ideally align with the laws regulating the COVID-19 pandemic. However, in practice, many regulations lack consistency and overlap. The government has issued a series of regulations to address COVID-19.

Subsequently, Government Regulation in Lieu of Law (Perppu) No. 1/2020 and Presidential Decree No. 12/2020 were issued, officially declaring the COVID-19 pandemic a national disaster. This shift is reflected in the legal framework. Perppu No. 1/2020 was later enacted as Law No. 2/2020, focusing on the financial regulations of the state in managing the COVID-19 crisis. The government established Perppu No. 1/2020, comprising five chapters, as a legal instrument to oversee and control state finances during the pandemic. The introduction of Perppu No. 1/2020 is akin to launching a ship into the ocean; the sails are yet to be unfurled, but the waves have already arrived to test the vessel's resilience. Shortly after the introduction of Perppu No. 1/2020, a series of judicial reviews were



initiated in the Constitutional Court by various people's organizations and individuals.

A judicial review of Law No. 2/2020 is deemed necessary due to several articles that have the potential to infringe upon citizens' constitutional rights and provide space for legal immunity for officials involved in COVID-19 management. This is particularly evident in the wording of Article 27, paragraph (2), which states that "members of the Secretariat of the Financial System Stability Committee (KSSK), secretary and officials/employees of the Ministry of Finance, Financial Services Authority (OJK), Bank Indonesia, deposit insurance institutions, and other state officials, while acting in good faith and in accordance with legal regulations, shall not be subject to criminal or civil prosecution." During the judicial review process, many individuals have emphasized this particular article, as it does not adequately uphold the principles of justice for citizens.

As described by Fuller (1975), in the preparation of legal rules, at least eight principles, collectively known as the Principles of Legality, must be met. These principles are as follows:

1. There is a discrepancy between the submitted regulations and the existing administration;
2. Notify subjects of frequent changes to regulations that prevent them from taking action on them.
3. Rules that require actions outside the control of the affected party.
4. Failure to establish rules is understandable.
5. Enforcement of contradictory rules.
6. Misuse of applicable laws is retroactive and cannot obtain a direction of action, but instead undermines the integrity of existing rules because it positions them full of threats of retrospective change.
7. Failure to publish or at least be able to convey to the affected parties so that the rules can be obeyed.
8. Failure to implement the rules at all, leaves all problems to be solved on an ad hoc basis.

A good rule of law should meet the eight criteria mentioned above. However, when we examine government regulations related to the enforcement of COVID-19, it becomes apparent that they do not align with these principles of justice, resulting in the formulation of laws that are not by intended legal principles and, consequently, leading to various implementation issues. The state is obligated to uphold the principle of equality before the law, which means that no individual in the state is entitled to legal immunity, especially concerning regulations related to public health. This principle ensures that the law applies universally without exception (Walukow, 2013).

Despite good intentions by local governments and their constituents, the implementation of local lockdowns contradicts the central government's stance, as it violates Article 11 of Law No. 6/2018. This article states that the authority to impose health quarantines falls under the exclusive jurisdiction of the central government. President Jokowi, during a press conference on March 31, 2020, emphasized that local governments should not act independently within their territories. He also explained why the central government did not impose lockdown regulations during the period of health sovereignty.

Local governments play an essential role because they are better equipped to understand the conditions and needs of their region's residents. This means that the fate of the people should not solely rely on the central government; local governments should also be responsive to their citizens. However, it's crucial to consider the broader implications of local government regulations. While implementing Large-Scale Social Restrictions (PSBB) measures poses challenges to the economy, it must still bring it to a complete standstill. A balance has been struck by introducing health protocols for economic actors, with effective measures such as physical and social distancing.

According to the principle of autonomy, local governments should possess the flexibility to manage and organize beyond their established responsibilities. However, in practice, the freedom to engage in activities beyond their prescribed scope can only be exercised with prior approval from the central government. The initial concept of Regional Autonomy (Otonomi Daerah/Otda) was to empower local governments to develop their regions independently, reducing dependence on the central government. Regional Autonomy (Otda) was designed to facilitate regional development while preserving its unique characteristics. However, the flexibility to manage and organize activities beyond the scope of their designated functions is subject to central government approval. In the current situation, the central government determines the state of disaster, necessitating

collaboration between local and central authorities to prioritize the everyday needs of their respective regions. Local governments must adhere to guidelines from the central government when creating regulations within their territories. This reflects the essence of Regional Autonomy (OTDA) in government management during the COVID-19 pandemic.

CONCLUSION

Based on the study's findings, it can be concluded that under Article 4 of Law No. 6/2018, both the central government and local government share the responsibility of safeguarding the public during health emergencies. Furthermore, Article 5 of Law No. 6/2018 dictates that the Central Government, in conjunction with the Regional Government, is accountable for organizing health quarantines. In line with this regulation, local governments also possess the authority to enforce health emergencies. The enforcement of Law No. 6/2018, which concerns Health Quarantine and involves both the central and regional governments, has proven to be ineffective. This ineffectiveness can be attributed to the unclear substance of the rules, a lack of understanding among law enforcement officials regarding the provisions of Law No. 6/2018, and a prevailing legal culture among the populace that tends to disregard existing regulations. To address the enforcement of COVID-19 pandemic regulations by both the central and regional governments, it is imperative to establish a more comprehensive framework that aligns with the 1945 Constitution. Collaborative relationships should be prioritized over jurisdictional disputes, particularly considering that many issues arise from losing the spirit of deliberation within the fourth principle of Pancasila. Deliberation is a fundamental element of Indonesian national identity, and it is crucial to formulate suitable approaches and strategies for governance in the fight against the COVID-19 pandemic at both levels of government.

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