

REVIEW ARTICLE

DETERMINATION OF EMERGENCY CONDITIONS: HOW GOVERNMENT FULFILL THE WORKERS RIGHTS DURING LARGE-SCALE SOCIAL RESTRICTIONS?

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Some of regions in Indonesia decided to implement Large-Scale Social Restrictions to reduce the spread and transmission of the corona virus. Large-Scale Social Restrictions are restrictions on certain activities to people in a certain area who are suspected of being infected with the corona virus to prevent the possibility of spreading and spreading. The Indonesian Ministry of Health has issued regulations regarding the technical implementation of Large-Scale Social Restrictions through Minister of Health Regulation No. 9 of 2020 concerning Large-Scale Social Limitation Guidelines in the Framework of Accelerating Handling of Corona Virus Disease 19 (Covid-19). Large-Scale Social Restrictions will have an impact on the reduction or cessation of worker's activities and the income or rights of workers that may be reduced or even not given by the company. For companies that continue to operate normally when implementing Large-Scale Social Restrictions, in order to provide security procedures and ensure work safety for their workers. Whereas companies that terminate employment must fulfill their workers' rights and implement government programs as skills development support programs such as the Pre-Employment Card, improve social protection programs through exemptions from cutting electricity payments, family

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hope programs, and basic needs. Finally, Indonesian President Joko Widodo issued three legal products in accordance with the mandate of Law Number 6 of 2018 on Health Quarantine. But from the perspective of Constitutional Law in a State of Emergency, the three legal products cause problems.

Keywords: *Emergency Condition; Limitation; PSBB; Large Scale-Social Restrictions; Covid-19*

I. INTRODUCTION

Corona virus is a type of virus that is identified as a cause of diseases of the respiratory tract, which was first detected appearing from the city of Wuhan, located in Hubei Province, China. The corona virus which is currently attacking the world community in medical terms is called the 2019 Coronavirus Novel (2019-nCov).¹ According to Chinese government data, the Hubei population that was first exposed to the corona virus was a person aged 55 years on November 17, 2019. Since then, one by one the case was reported every day and is still haunting a number of countries in the world.² Indonesia has become one of the many countries affected by the corona virus outbreak and initially it was discovered that two Indonesian citizens were infected with the corona virus. The Indonesian Minister of Health, Terawan Agus Putranto, gave a chronological description of the two residents of Depok, West Java who had contracted the corona virus. According to Terawan, on February 14, 2020, a woman from Depok made direct contact (dancing) with Japanese citizens living in Malaysia that took place at the Paloma & Amigos Club, Jakarta. On the same day, this 31-year-old Depok resident felt discomfort marked by coughing and finally he went to the Mitra Keluarga Hospital in Depok. Until on February 26, 2020 the cough did not heal so it was transferred to the Sulianti Saroso Hospital, Jakarta and on February 28, a Japanese citizen who danced with a woman from Depok stated that she was positively affected by the corona virus (Covid-19) in Malaysia. At Sulianti Saroso Hospital, the woman from Depok was tested positive for corona virus. It turns out that this Depok resident woman also made direct contact with her 64-year-old mother.³

From the beginning the government was late in preventing the corona virus, but after the confirmation of two Indonesian citizens who were positively exposed to the corona virus and an increasingly

¹ <http://www.cdc.gov>, "The Centers for Disease Control and Prevention (CDC)", accessed on April 10, 2020.

² <https://www.theguardian.com>, "First Covid-19 Case Happened in November, China Government Records", accessed on April 10, 2020.

³ <https://www.cnbindonesia.com/news/20200302164735-4-141834/kisah-warga-depok-positif-covid-19-berawal-dar-lantai-dansa>, accessed on April 10, 2020.

precarious situation, the government was more alert, responsive, and strict in its handling. The initial effort to minimize the spread of the corona virus taken by Indonesian President Joko Widodo is by issuing an appeal for all Indonesian people to be able to carry out their activities at home, such as school, work, and worship. All activities carried out outside the home are temporarily postponed, but health service facilities such as puskesmas and public hospitals are still being improved. Within 14 days from March 16, 2020 the Work From Home (WFH) mechanism was implemented during the corona virus pandemic (Covid-19)⁴, while looking at the development of this pandemic, was it better or worse. The public is expected to be able to comply with the government's appeal by limiting activities outside the home and activities at home. But not all work and activities can be done at home, there are times when it is necessary to leave the house to buy household needs and consumption materials. There are also some jobs that are not possible to do at home, so they must be done outside the home. Therefore, the Government strongly urges people who are forced to leave the house by doing physical distancing with the people around them. Another way that can be done is to always wear a mask when leaving the house, pay more attention to hygiene and health by diligently washing hands with soap and clean running water, when you are outside the house and do not find clean water and soap can use anti-septic liquid.

However, only with an appeal, this step apparently was not effective enough in suppressing the number of corona virus spreads. This is evidenced by the increase in cases every day and the death rate continues to grow. The nature of the corona virus that is highly contagious, physical distancing cannot be placed as an appeal, but rather an obligation for anyone. The consequence is that policies need to be issued at the same level as government regulations to ensure that this can be obeyed by all citizens, because this is a legal problem. To that end, the obligation of the community to help prevent the spread of the corona virus must be contained in regulations, which if ignored will lead to sanctions. This issue will indeed lead to legal issues relating to limiting individual rights. So based on the constitution, restrictions on rights must be based on laws. The President should consider issuing government regulations in lieu of laws regarding efforts to deal with the corona virus outbreak. Restrictions on individual rights are certainly legal, because the present conditions are critical conditions that threaten public health. The second legal issue is related to the balance between workers' rights and the obligations of business actors (companies) to fulfill the rights of workers amid the corona virus pandemic that attacks all aspects of life, especially economic sectors. The business world and business actors

⁴ <https://www.cnbcindonesia.com/news/20200317125030-4-145466/kemenko-perekonomian-ppatk-juga-berlakukan-work-from-home>, accessed on April 10, 2020.

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suffered not insignificant losses because many businesses had to stop their production and stop their operations temporarily, some even went bankrupt because there was no income so they could not pay their workers and finally cut off work relations with their workers. In a situation like this, the government must ensure that businesses do not neglect their obligations to provide wages that are entitled to workers, including workers with daily wages. But for businesses that still require workers to come in, policies are needed regarding work time, health of the work environment, and patterns of interaction between workers to avoid transmission of the corona virus.

Until finally with careful consideration regarding all aspects of people's lives, Indonesian President Joko Widodo published three legal products in accordance with the mandate of Law Number 6 Year 2018 on Health Quarantine. First, establishing Covid-19 as a national health emergency through Presidential Decree No. 11 of 2020 concerning Determination of Corona Virus Disease Public Health Emergency (Covid-19). Second, choose the policy of Large-Scale Social Restrictions to overcome health emergencies by issuing Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Framework of Accelerating the Management of Corona Virus Disease (Covid-19) and the third instructs the Minister of Health to issue Minister of Health Regulation Number 9 of 2020 concerning Guidelines for the Implementation of Large-Scale Social Restrictions in the Framework of Accelerating Handling of Corona Virus Disease (Covid-19). This policy is a form of response from the health emergency that occurred in Indonesia.

II. ENFORCEMENT OF LARGE-SCALE SOCIAL RESTRICTIONS TO PREVENT THE SPREAD OF CORONA VIRUS DISEASE (COVID-19)

The pattern of corona virus spread is very fast, where one person can spread to two people, two people spread to four people, four people spread to eight people, and so on so that the pattern of sequences in its spread. Now in Indonesia the number of people infected with the corona virus and dying from being infected by the corona virus continues to increase, with the spread of the area that is expanding every day. This requires an effort to break the chain of distribution. One effort that can be taken is to ask everyone's awareness to participate in deciding the spread of the corona virus through independent isolation for those who have just traveled from places that span the corona virus spread. Basically, everyone's awareness is really needed, but it will be difficult

to implement if the community has not fully placed efforts to break the chain of virus distribution as a form of obligation which is at the same time a right for others, and vice versa. Without awareness to implement these efforts, the government will not be able to reach the optimal point. Because the motion of an infected person is the same as the movement of a virus, limiting the range of movement of people becomes very important. Therefore, there is a need for cooperation of all parties who become the main capital for the success of large-scale social restrictions to stop the chain of spreading of the corona virus, because each individual has the right to health protection and at the same time has an obligation to help realize the protection of other fellow individuals.

The Indonesian Ministry of Health has issued regulations regarding the technical implementation of Large Scale Social Restrictions through Minister of Health Regulation Number 9 of 2020 concerning Large Scale Social Limits Guidelines in the framework of Accelerating the Management of Corona Virus Disease 19 (Covid-19) as a derivative regulation of Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease (Covid-19). For regional governments that want to impose large-scale social restrictions, they must first pay attention to the terms and mechanisms. Basics of consideration with criteria such as the number and cases of deaths due to Covid-19 and the presence of epidemiology in other areas connected to regions that will propose large-scale social restrictions, prepare data for case improvement according to time and epidemiological curves studied by local governments, prepare availability of needs basic living for the community, and a budget for the realization of three main things (fulfilling medical devices, reviving industries that support large-scale social restrictions, and basic service needs through social assistance), and preparing in terms of security.⁵

When a region wishes to impose a large-scale social restriction policy, the governor or district head or mayor or the chief executive of the task force for the acceleration of handling of Covid-19 can submit an application to the minister of health. Then the health minister will process the conditions for submitting large-scale social restrictions. In response to a proposal from the regional government, the health minister asked for consideration of the chief executive of the task force for the acceleration of co-19 handling, whether or not large-scale social restrictions could be imposed in the area or not. If there are deficiencies, the application will be returned to the local government to improve the supporting data. If it

⁵ Government Regulation Number 21 Year 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease (Covid-19).

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meets the requirements and gets approval, then the submitting area can impose large-scale social restrictions.⁶

In terms of Human Rights (HAM), Large-Scale Social Restrictions are allowed in the interest of protecting public health, as in the current threat of the corona virus pandemic. Article 4 and Article 12 paragraph (3) of Law Number 12 Year 2005 concerning Ratification of the International Covenant on Civil and Political Rights provides a space for the state to limit one's movements when the state really faces a state of health emergency. Furthermore, the principles for limiting the rights of individuals to freedom of movement are contained in the Siracusa Principles issued by the United Nations in 1984. In Siracusa Principles, large-scale social restrictions can be imposed by governments on the basis of clear national laws, generally accepted, and not arbitrary, and made democratically. Restrictions are aimed at public order and are carried out by the state apparatus which can be controlled in a democratic system. This is done for the sake of public health on the basis of the existence of a serious threat to the health of the population or the community specifically aimed at preventing the spread of disease or providing care to those who are sick. It is also intended for public safety from the threat of real danger. However, restrictions must not conflict with protecting rights that cannot be reduced.⁷

Seeing the development of the spread of people infected with the corona virus in Indonesia, Large-Scale Social Restrictions need to be taken by the government to protect public health. At least the government can limit the mobility of people between islands and limit people gathering or crowding in large numbers in one place. Thus, the government will have room to organize health service zones and maximize the use of resources for the better, while localizing the distribution area. In addition, the government must immediately carry out its obligations to protect the right to health services. There are several principles that need to be referred to. First, there needs to be an adequate availability of health services for the population as a whole. Second, the health service must be accessible to the population both in terms of cost and location. Third, the health services must be in accordance with existing standards, and fourth, the health services must be equally accessible to everyone with special attention to the most vulnerable groups.

⁶ Minister of Health Regulation No. 9 of 2020 concerning Guidelines for the Implementation of Large-Scale Social Restrictions in the Framework of Accelerating the Management of Corona Virus Disease (Covid-19).

⁷ <https://www.icj.org/siracusa-principles-on-the-limitation-and-derogation-provisions-in-the-international-covenant-on-civil-and-political-rights/>, accessed April 10, 2020 .

III. ENSURING EQUALITY BETWEEN WORKERS RIGHTS AND COMPANY OBLIGATIONS AMID CORONA VIRUS DISEASE (COVID-19)

Law No. 11/2005 concerning Ratification of the International Covenant on Social, Economic and Cultural Rights confirms the obligations of the state in the prevention, treatment and control of all infectious, endemic and other occupational diseases. This provision is in line with Law Number 6 Year 2018 regarding Health Quarantine. Workers are one of the vulnerable parties affected by the corona virus pandemic, both in terms of health and economic aspects. The status of large-scale social restrictions imposed by the government will have an impact on the reduction or cessation of the activities of workers or laborers and will have an impact on the income or rights of workers or laborers who may be reduced or even not given by the company. The government must be responsible for the protection, fulfillment of the rights of workers or laborers, and actively overseeing the interests of health and the rights of workers or laborers. The Minister of Manpower issues a Circular on the Protection of Workers or Workers and Business Continuity in the Context of Handling and Handling Corona Virus Disease (Covid-19). However, the Circular Letter is still not in favor of workers or laborers because by law the Circular only applies to internal government. This does not rule out the possibility that the business actor or entrepreneur is not compliant with the Circular, which is certainly very threatening for workers or laborers.

The impact of the corona virus pandemic is very significant for all sectors of public life, whether economic, social, political, to employment. The corona virus outbreak threatens the right to work health and safety of workers. The threat is in the form of wage cuts, denial of leave rights, laid off without pay, until termination of employment. Some companies prefer to lay off or lay off workers for a while compared to terminating employment. But companies still have to provide a decent wage to workers who are laid off even though the wages provided are not up to one hundred percent. The importance of supervision and sanctions against companies that violate legal provisions that do not carry out their obligations in providing workers' rights such as occupational safety and health and decent wages, so that the government ensures there is no termination of employment on co-19 reasons. Regarding the length of time the company laid off its workers is an agreement between workers and the company. Temporary closure of the workplace or factory must be in accordance with the mandate of Article 59 paragraph (3) letter a of Law Number 6 Year 2018 concerning Jo's Health Qantity. Article 4 paragraph (1) letter (a) of Government Regulation Number 21 of 2020

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concerning Large-Scale Social Restrictions in the Context of Handling Corona Virus Disease (Covid-19) while ensuring receipt of workers' rights from companies and governments. For companies that continue to operate normally when implementing large-scale social restrictions, it is expected to provide security procedures and ensure work safety for their workers. One of them is by providing facilities in the work area with sanitary equipment or safer work procedures. Workers must also be able to be accommodated with all their work needs, for example leave permission, payroll distribution, and pay slips. The state is also obliged to protect the basic needs of workers who continue to serve the needs of the community when large-scale social restrictions take place both in economic and health aspects.

Employers, workers, trade unions and the government must be able to establish good cooperation in order to anticipate the termination of employment. Dialogue between employers and workers is also needed to discuss anticipation of the worst conditions of employment relations between them (employers and workers). This dialogue is the main door in building mutual understanding in facing the impact of the corona virus pandemic both for companies and for workers. Changes in employment policies amid the pandemic include the application of work from home systems, physical distancing, and restrictions on public transportation facilities. The government, in this case the Ministry of Manpower, must be active in providing policy information for work and conducting regular policy reviews. Policies that can be applied for example policies to reduce working days and hours, dismiss or lay off workers, and so forth. Basically, the company must not terminate the employment of workers or workers arbitrarily in any situation, including in situations of public health emergencies. This is stated in Article 151 paragraph (1) of Law Number 13 of 2003 concerning Manpower which states that the company, trade unions, and workers must make every effort to prevent termination of employment.⁸

As for companies that are forced to terminate employment, they must also fulfill the rights of their workers. Termination of employment on the one hand is in a condition of not being able to produce profits while at the same time bear the loss due to their production not being absorbed by the market. To ease the burden of workers or workers who are terminated from employment, the government also needs to carry out an employment mitigation plan in the face of worsening work situations due to the economic crisis which is the impact of the corona virus pandemic. With the implementation of government programs that can absorb a large workforce and skills development support programs such as the provision of Pre-Work Cards, improving social protection programs through exemption from cutting electricity payments, family

⁸ Law Number 13 of 2003 concerning Manpower.

hope programs, and groceries cards.⁹ Regarding the legal basis for worker protection regulated in the regulations in Article 27 paragraph (2), 28 H paragraph (1), 28 I paragraph (4) of the 1945 Constitution, article 86 and article 87 of Law Number 13 of 2003 concerning Labor, article 12 Law Number 11 of 2005 concerning Ratification of the International Covenant on Social, Economic and Cultural Rights and other regulations. That is, through the many regulations that govern the country should take seriously the employment sector in the form of quick and appropriate action.

IV. LEGAL ISSUES IN THE REGULATION OF ESTABLISHING HEALTH EMERGENCY CONDITIONS BY THE PRESIDENT

In dealing with the danger of a corona virus outbreak (Covid-19), Indonesian President Joko Widodo has published at least three legal products. But from the perspective of Constitutional Law in a State of Emergency, the three legal products cause problems. Presidential Decree No. 11 of 2020 concerning the Establishment of the Covid-19 Public Health Emergency stipulates a national health emergency that is not specified when the emergency ends. Constitutionally, the President is given the authority to declare and determine a state of danger or national emergency and can be done through a Presidential Decree. The determination of an emergency will always have an impact on the restriction, reduction, or freezing of human rights. Therefore, in the study of emergency state administrative law, the authority of the President to determine emergencies also needs to be limited.¹⁰ At present, legislation has not yet set a time limit. But there are principles of emergency that apply internationally that can and must be referred to by the President. One principle that requires certainty when an emergency is over is the principle of temporary (limitation of time). This principle requires the limitation of the application of emergencies to avoid the abuse of power that threatens the freedom and constitutional guarantees of human rights. This is so that all legal actions in an emergency can be measured and controlled as well as possible.¹¹ Presidential Decree No. 11 of 2020 concerning Stipulation of the Covid-19 Public Health Emergency

⁹ <https://bisnis.tempo.co/amp/1333228/dampak-corona-19-juta-pekerja-kena-phk-dan-dirumahkan>, accessed on April 10, 2020.

¹⁰ Siti Marwiyah, "Kewenangan Konstitusi Presiden Terhadap Hal Ihwal Kegentingan yang Memaksa", *Jurnal Masalah-Masalah Hukum*, Vol. 44 No. 3, 2015, p. 299.

¹¹ Osgar S. Matopo, "Pembatasan Terhadap Hak Asasi Manusia dalam Perspektif Keadaan Darurat", *Jurnal Media Hukum*, Vol. 21 No.1, 2014, p. 66.

without a time limit on enactment will potentially be misused to threaten freedom and human rights.

Secondly, Law Number 6 Year 2018 on Health Quarantine requires that before the President establishes a health emergency, the President needs to first determine the terms and procedures for the determination and revocation of a health emergency through Government Regulation. After that, criteria and methods for implementing home quarantine, regional quarantine, hospital quarantine, and large-scale social restrictions are formulated as an action in the case of a health emergency. But Government Regulation Number 21 Year 2020 concerning Large-Scale Social Restrictions in the Context of the Acceleration of Handling Corona Virus Disease (Covid-19) does not regulate the terms and procedures for the determination and revocation of health emergencies. There are no clear benchmarks when the President must determine and revoke a national health emergency. As a result, until now the criteria contained in these government regulations are still based on the subjectivity of the President and are partial because they only regulate large-scale social restrictions on emergencies. The same government regulation should also regulate the criteria and methods for implementing house quarantine, hospital quarantine and regional quarantine which are also government actions in handling health emergencies in accordance with the mandate of Law Number 6 Year 2018 on Health Quarantine.¹² Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Framework of Accelerating Handling of Corona Virus Disease (Covid-19) was also established for the handling of Covid-19. In fact, Government Regulations are generally accepted legal rules (not applicable only refer to one event) so they must regulate for all cases, both those that are or will occur in the future. If this is not the case, then every time a new event occurs, rules will be made again. Besides being inefficient, this is contrary to the simplification of regulations. In addition, Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Framework of Accelerating Handling of Corona Virus Disease (Covid-19) was also formed for handling Covid-19 nor does it regulate citizens' rights and state obligations during emergencies so that they do not receive legal guarantees. Even though Law Number 6 Year 2018 on Health Quarantine has affirmed the state's obligation to guarantee the basic rights of citizens are fulfilled during the health emergency action.

Third, Minister of Health Regulation No. 9 of 2020 concerning Guidelines for the Implementation of Large-Scale Social Restrictions in the Context of Handling Corona Virus Disease (Covid-19) does not reflect a regulation for handling in an emergency. In emergencies what is needed is a law that makes it easy for countermeasures of a situation to

¹² Law Number 6 Year 2018 concerning Health Quarantine.

proceed quickly without being constrained by complicated bureaucracy. According to Kim Lane, professor of sociology and international relations at Princeton University, United States, in a state of emergency was forced to violate his own principles. This is because there is a serious threat, so to save the country, the act of deviation is forced to do.¹³ Amid the corona virus pandemic, Minister of Health Regulation No. 9 of 2020 concerning Guidelines for the Implementation of Large-Scale Social Restrictions in the Context of Accelerating Corona Virus Disease Management (Covid-19) actually adds a new bureaucratic chain in handling Covid-19. For example, in Article 6 which states that it can take large-scale social restrictions with the recommendation of the regional head or the task force for the acceleration of handling co-19. In article 4, the regional government is required to submit an application based on a number of data, namely an increase in cases according to time, distribution of cases according to time, and local transmission reports. In fact, the Ministry of Health has collected and processed these data in every region in Indonesia. Every day the government announces the data to the public through a special spokesperson. Furthermore Article 7 states that proposals or requests from the regional government will be reviewed by a team formed by the Ministry of Health before they are decided. This means that there is a long bureaucracy which actually makes handling emergency situations slow. The ministry of health should be able to directly determine which regions need to implement large-scale social restrictions without the need for proposals from local governments, because the national emergency management authority is in the central government.

V. CONCLUSION

Since the beginning the government was late in handling the corona virus prevention, only after the confirmation of two Indonesian citizens who were positively exposed to the corona virus the government was more alert and responsive to its handling. The initial effort to minimize the spread of the corona virus is to issue an appeal for the whole community to be able to carry out its activities at home, such as school, work, and worship. But only with an appeal, these steps are not effective enough in suppressing the number of corona virus spreads. This issue raises legal issues relating to the limitation of individual rights by the imposition of large-scale social restrictions, but this is legitimate because it involves critical conditions that threaten public health. Then a balance is needed between workers' rights and the obligations of business actors (companies) to fulfill workers' rights. Rights of workers who are still

¹³ Kim Lane Scheppele, Law in a Time of Emergency: States of Exception And The Temptation of 9/11", Journal of Constitutional Law, Vol. 6 No. 5, 2003.

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employed normally, are employed at home, or who have been forced to be terminated from work. With careful consideration, the President of Indonesia issued three legal products in accordance with the mandate of Law Number 6 Year 2018 on Health Quarantine. First, establishing Covid-19 as a national health emergency through Presidential Decree No. 11 of 2020 concerning Determination of Corona Virus Disease Public Health Emergency (Covid-19). Second, choose the policy of Large-Scale Social Restrictions to overcome health emergencies by issuing Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Framework of Accelerating the Management of Corona Virus Disease (Covid-19) and the third instructs the Minister of Health to issue Minister of Health Regulation Number 9 of 2020 concerning Guidelines for the Implementation of Large-Scale Social Restrictions in the Framework of Accelerating Handling of Corona Virus Disease (Covid-19). But from the perspective of Constitutional Law in a State of Emergency, the three legal products cause problems. Legislation has not yet set the time limit, but there are principles of emergency that apply internationally, one of which is the principle of certainty when an emergency ends, is the principle of temporary (limitation of time). This principle requires the limitation of the application of emergencies to avoid the abuse of power that threatens the freedom and constitutional guarantees of human rights.

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