




RESEARCH ARTICLE

Constitutionality Of Implementing Asymmetric Lockdown (Regional Quarantine) When Covid-19 Increases to Accelerate Health Emergency Management



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Abstract

The constitution is the basis for all the space for a country to move, whether the country is in normal or abnormal conditions. It based on the constitution as the basic norm that is the highest guideline for a country. In the case of an abnormal state, Posner explains that there is flexibility needed to deal with abnormal conditions in the constitution. Indonesia declared the country's status in a health emergency based on Presidential Decree Number 11 of 2020 on the Determination of a Corona Virus Disease Public Health Emergency and Government Regulation In Lieu Of Law Number 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease (Covid-19) Pandemic and/or In Facing Threats That Endanger the National Economy and/or Financial System Stability that cause the economy to decline and conflict in society. The government is faced with policy choices in dealing with this Covid. In Indonesia, the real meaning of lockdown is regional quarantine. The area quarantine itself is regulated in Law Number 6 of 2018 on Health Quarantine (Health Quarantine Law). Although Indonesia has been able to adapt to Covid-19, it is possible that in the future there will be a genetic mutation of this virus, causing an increase in the spread of Covid-19. Therefore, before there is a spike in Covid-19 in the future, it must be clear in the division of

authority both in the central government and regional governments regarding the lockdown (regional quarantine).

Keywords: *Asymmestric Lockdown, Regional Autonomy, Regional Quarantine*

1. INTRODUCTION

The constitution is the basis for all the space for a country to move, whether the country is in normal or abnormal conditions. This is based on the understanding that the constitution is the basic norm that is the highest guideline for a country. U.S. Judge Richard Posner once said, "A constitution that will not bend will break". In the case of an abnormal state, Posner explains that there is flexibility needed to deal with abnormal conditions in the constitution. The state does not always run under normal conditions, where all state apparatus function properly according to the ideal state administrative design. There are certain situations where the state is faced with unusual conditions that require a special constitutional approach through emergency regulations. When the country is in a state of emergency, a leader can take quick and compelling action to overcome the state emergency (Arsil & Ayuni, 2020).

That Indonesia declared the country's status in a health emergency based on Presidential Decree Number 11 of 2020 on the Determination of a Corona Virus Disease Public Health Emergency and Government Regulation In Lieu Of Law Number 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease (Covid-19) Pandemic and/or In the Context of Facing Threats That Endanger the National Economy and/or Financial System Stability. The Presidential Decree is an absolute authority mandated by Article 12 and Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

As for certain corridors, the absolute presidential authority mentioned above can be said to be a concept of constitutional dictatorship, as stated by Carl Smith that a leader may make extraordinary policies when his country is under threat, which creates an urgent need to save the sovereignty of a country. However, such behaviour must be limited through certain corridors as stated by Herman Sihombing that the emergency is only temporary until the emergency is deemed no longer dangerous (Arsil & Ayuni, 2020).

In handling COVID-19, the Indonesian government has established legal politics by issuing 3 (three) legal instruments as a preventive measure against the spread of the COVID-19 outbreak: (1) RI Presidential Decree No. 11 of 2020 concerning the Establishment of a Public Health Emergency of Corona Virus Disease 2019 (COVID-19); (2) Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019, and; (3) Government Regulation in Lieu of Law (Perppu) No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or In Facing Threats to Endanger the National Economy and/or Financial System Stability. However, the legal politics raised criticism everywhere, the regulations were considered late to be issued, as a result of the delay both the Central Government and Regional Governments experienced stuttering in taking steps to overcome the COVID-19 pandemic outbreak. Likewise, with Perppu No. 1 of 2020 related to the policy of financial system stability. At first glance, this policy seems "positive" and is seen as a way to save state finances, as well as allow changes to the APBN budget allocation for the costs of dealing with the COVID-19 outbreak". However, in terms of its own substance, Perppu No. 1 of 2020 contains legal problems, which have the potential to create moral hazard, fraud and corruption where every action or decision taken by officials

cannot be prosecuted in a civil, criminal, or state administrative manner (Kurniawan, 2021). Of course, it would be very unfortunate if the government actually took steps to maneuver legal politics that were counterproductive to efforts to protect the people's right to health from the COVID-19 pandemic. The President's policy in the form of the stipulation of Perppu Number 1 of 2020 did not receive full support from all Indonesian people, but instead received opposition and criticism from various groups. For example, the existence of Article 27 which is considered to provide legal immunity (immunity) to officials so that it is contrary to Article 1 paragraph (3) of the 1945 Constitution, Article 7A of the 1945 Constitution, and even the Anti-Corruption Law (Tigor et al., 2020).

When referring to the current conditions, the spread of the COVID-19 virus has spread to all provinces in Indonesia, the curve of COVID-19 cases continues to increase and does not indicate a decline, the mobility of people moving is still high, as well as entertainment venues, cafes, tourist destinations are still open such as normal. On the other hand, the continued increase in the number of COVID-19 patients has the potential to collapse the health system because hospitals are overwhelmed in handling the large number of patients (Nur Indah Fitriani, 2020). This condition results in the failure to fulfill basic rights to health, including obtaining good health services. Likewise, the lack of protection for medical personnel as the front line in the fight against COVID-19 adds to the question of the extent to which the Government is serious in making policies in solving this COVID-19 problem, and the Government's commitment to the protection of human rights to public health as mandated in Article 28H paragraph (1), Article 34 paragraphs (2) and (3) of the 1945 Constitution, Article 25 of the Universal Declaration of Human Rights and article 12 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights).

Indonesia has been facing the Covid-19 outbreak for almost 2 (two) years. At the beginning of the emergence of Covid-19, Indonesia was in the position with the increasing number of the spread of Covid-19. It causes the economy to decline and the emergence of conflict in society. The government is faced with policy choices in dealing with this Covid. In Indonesia, the real meaning of lockdown is regional quarantine. The area quarantine itself is regulated in Law Number 6 of 2018 on Health Quarantine (Health Quarantine Law). Territorial Quarantine itself is a limitation on the population in an area including the entrance area and its contents suspected of being infected with disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination.

However, Indonesia has yet to implement a lockdown (regional quarantine). Several efforts have been made by the government, starting from the PSBB, the implementation of the new normal, to PPKM with levels 1-4. Regarding these various policy transitions which later became the basis when the Covid-19 response was completed by the central government, like PPKM, the handling of Covid-19 was not optimal, which led to an increase in the spread of Covid-19 and a decline in the country's economy (Tuwu, 2020). As of October 25, 2021, Indonesia has reported 4,240,479 positive cases, ranking first in the most in Southeast Asia. In terms of mortality, Indonesia ranks third in Asia with 143,235 deaths (Worldometer, 2021). To understand the various models of regional restrictions, see Table 1. In Table 1 shows that the implementation of regional quarantine has a lower risk of spreading COVID-19. In addition, Table 2 also shows that there have been several changes in the implementation of the lockdown policy in a short period of time, this shows that the government does not have a better scheme for handling the spread of COVID-19 other than the implementation of the lockdown.

TABLE 1
Comparison between Regional Quarantine Policy with PSBB and PPKM

Difference	Territory Quarantine	PSBB	PPKM
Scope	Regional Quarantine is the limitation of population in an area including the entrance area and its contents which are suspected to be infected with disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination.	restrictions on certain activities of residents in an area suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading the disease or contamination	steps to limit community activities in an effort to suppress the spread of Covid-19 on a smaller scale.
Implementation Stage	Simultaneously in areas that apply for regional quarantine	Simultaneously in areas that apply for PSBB	The area that carries out PPKM will use a level 1-4 system adapted to the conditions of the Covid-19 case in the area according to Central instructions
Implementation Initiatives	Regional government	Regional government	Central government
People Mobilization	Can't go out and enter the quarantine area	Can go in and out but there are still restrictions on some sectors	Can go in and out but there are still restrictions on some sectors adjusted to levels 1-4
Life Necessities guarantee	Guaranteed by the central government	Not guaranteed	Not guaranteed

TABLE 2
Dynamics of PSBB and PPKM Policy Implementation

Type of Policy	Timeline
Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19)	Set on March 31, 2020
Minister of Health Regulation Number 9 of 2020 as a guideline for implementing PSBB	Set on April 3, 2020
Instruction of the Minister of Home Affairs Number 1 of 2021	Set on January 6, 2021
Instruction of the Minister of Home Affairs Number 28 of 2021	Set on August 2, 2021
Instruction of the Minister of Home Affairs Number 15 of 2021	Set on July 3, 2021

If referring to Law Number 23 of 2014 on regional government, health matters are the authority of the region (concurrent government affairs). But on the other hand, the central government is in control of the handling of Covid-19. Even though each region has its own typology and features that are different from other regions. So far, the concept of the division of authority is based on the principle of decentralization which requires that the regions have autonomy in regulating regional affairs. Decentralization produces regional government, there occurs "...a superior government – one encompassing a large jurisdiction – assigns responsibility, authority, or function to "lower" government unit – one encompassing a smaller jurisdiction – that is assumed to have some degree of autonomy" (Zahrotunnimah, 2020). On the other hand, Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution has emphasized that regional governments can manage their own regions based on the principles of autonomy and assistance tasks.

This autonomy is carried out as widely as possible, except for government affairs which are stipulated by law as the affairs of the central government. Bagir Manan emphasized that the notion of autonomy is freedom and independence (*vrijheid and zelfstandigheid*) lower government units to regulate and manage government affairs (Elcaputera, 2021).

The current problem related to regional autonomy is that when a country is declared a health emergency, namely Covid-19, then all affairs in the regional government to deal with Covid-19 are directly determined by the president (Prasetio, 2021). Whether from the determination of the implementation of regional quarantine or not. On the other hand, the region has the widest possible autonomy. Autonomy which has the nature of independence from lower government to regulate and manage some governmentaffairs. When the country is in a state of

emergency (Covid-19), then the regional government should have the authority independently to deal with this condition.

In addition, based on the Article 4 of Law No. 6 of 2018 concerning Health Quarantine, regional governments have an obligation and are responsible for protecting public health from diseases and/or public health risk factors that have the potential to cause health emergencies. Regions have different typologies in the spread of Covid-19, this is evidenced by the latest data from the Covid-19 Handling Task Force (Covid-19 Task Force), that each province has a different number of Covid-19 spreads. For example, the province of DKI Jakarta, which has been confirmed to be under treatment, is 1,830 people. Meanwhile, in the Riau Islands, the number of confirmed cases of treatment is 132 people (Satgas Covid-19, 2021). It means that placing regional governments in handling Covid-19 will be much more effective and efficient. Because regions will know the conditions best, both in terms of socio-cultural, economic, and mobilization. Effectiveness in decision making in the area is supported by an understanding of decentralization should allow government programs to be completed more quickly, by granting greater authority for regional governments in decision-making, allowing them to bypass the procedure sluggish which is often associated with centralized administration (Fatmawati, 2018). Especially in a health emergency, all handling of the Covid-19 response requires quick action to save public health.

The condition of each region that has different characteristics from one another cannot be generalized to a certain degree so that it has an impact on the decentralization format developed by a country. The decentralization format that overgeneralizes (homogeneous symmetric decentralization) is often the choice of a country in carrying out its regional government management because it makes it easier for the central government to control the regions, but sometimes it often gets into trouble

because it is too forced even though it is not according to needs, in the end it cause inefficiency (Hanifa & Fisabilillah, 2021). Given these limitations, the heterogeneous (asymmetric) decentralization format can be used as an alternative policy in overcoming the limitations. Therefore, this article is intended to conduct a study on how the constitutionality of the asymmetrical lockdown (regional quarantine) in the Covid-19 situation has increased. Although Indonesia has been able to adapt to Covid-19, it is possible that in the future there will be a genetic mutation of this virus, causing an increase in the spread of Covid-19. Therefore, before there is a spike in Covid-19 in the future, it must be clear in advance the concept of the division of authority both in the central government and regional governments regarding the lockdown (regional quarantine).

2. METHOD

This research uses *normative law research*. This research is a normative case study, one of which is to examine the law. The main subject of normative research is law which is conceptually a norm or rule that applies in society and becomes a reference for people's behavior. The use of this normative research method seeks to make the writing of this research based on the suitability of the theory with the methods needed in writing. In this study, there are several approaches with which researchers are trying to obtain information from aspects regarding government policies in dealing with the Covid-19 outbreak which are currently trying to find answers. The method used is the approach of legislation (*statue aproac*) and (*Conseptual Approach*) which is associated also with the country's constitution.

3. RESULT AND DISCUSSION

A. *The Asymmetric Implementation of Lockdown When the Covid-19 Increases is a Constitutional Mandate in Carrying Out the Widest Autonomy.*

Regional autonomy is a large subsystem of a larger system, namely the national government system. As a large

subsystem, its existence becomes very important unless it is considered as part of a small subsystem that can be put aside for a while. The existence of Article 18 of the 1945 Constitution of the Republic of Indonesia which regulates autonomy shows that it is a major subsystem in the Indonesian government system. The article above mandates that the region has an important role in supporting this large subsystem. So that the regions have the autonomy to make appropriate regional policies in any situation. In line with Kaho's perspective, regional autonomy is simply a "self rule" or "self-government". Where Kaho defines autonomy as having the right/power/authority independently in managing their own area (Pratiwi et al., 2020).

This authority in addition to containing the meaning of 'laws' (*regeling*) also means 'government' (*bestuur*) (Elcaputera, 2021). It means that the implementation of autonomy has its own level of discretion as long as it still supports large subsystems, especially in a unitary state like Indonesia. This rationale shows that the widest possible autonomy in the practice of state administration in Indonesia can be interpreted very broadly, including in terms of health emergencies, especially regarding the increasing number of the COVID-19 cases. Regarding in handling and overcoming these conditions requires quick action from the government. Therefore, the implementation of autonomy in a unitary state is the key to success in speeding up the handling of COVID-19. Currently, regional governments have difficulty in carrying out such autonomy because there is a limitation meaning of autonomy.

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emergencies, including the increase in COVID-19. Where in handling and overcoming these conditions requires quick action from the government. Therefore, the implementation of autonomy in a unitary state is the key to success in speeding up the handling of COVID-19.

Autonomy also contains an element of supervision, where concerns about the misuse of power will be controlled through supervision. Therefore, when the right to autonomy is exercised, it must be accompanied by the limits contained in the legislation. However, if the practice of handling the Covid-19 outbreak, it still requires the Regional Government to follow and justify the policies of the Central Government which experience ambivalence in the juridical order. So indirectly the Regional Government has been trapped in a constellation of centralized government with a deconcentration mechanism and only makes regional heads or regional governments, as representatives of the central government in the regions. Because in truth, deconcentration is not a principle in the administration of regional government, but a way of carrying out central government affairs in the regions.

Therefore, deconcentration cannot be institutionalized as part of the local government system which is the antithesis of centralization. The context of the rejection of centralization contained in the deconcentration mechanism is also the basis for changes to the current orientation of regional autonomy. The atmosphere of *kebatinan* (*geistlichen hintergrund*) amendments to Article 18 of the 1945 Constitution by adopting decentralization also strengthened when there was a desire for regions to escape from the centralization of the Central Government. That when (before the reform) the regions tried to develop a decentralized system and were deemed not in line with the policies of the central government, the subversive threats with security approaches and the pretext of national interests had triggered injustice and even the threat of disintegration of the nation (Penyusun, 2010). Thus, decentralization and

regional autonomy is a necessity in the current implementation of local government. The authority of the Regional Government and the relationship between the Central Government in the spirit of decentralization is also interpreted as the basis for deliberation on the framework of state governance, the maintenance and development of the principles of original government, and the basis of the rule of law (Wadi, 2020).

The contextualization of the decentralization scheme becomes logical when the basis of the rule of law is the legitimacy of the authority of the Regional Government in determining Lockdown in order to alleviate or become a scheme in fulfilling legal certainty in handling the Covid-19 outbreak amid ambiguous policies carried out by the Central Government. The orientation of the spirit of decentralization is also well-organized in the legal politics of regional government at the national and regional levels. The legal politics of regional government which is national in nature is closely related to the function of public services in order to realize social justice, general welfare, and prosperity of the local people in the form of a social security, health, social development such as people's economic empowerment with MSMEs and cooperatives. This is also interpreted juridically as a concurrent government affair which is legalized in the Law on Regional Government. Although the main policies are still guided by those set by the Central Government, awareness of Regional Governments to prevent escalation of Central Government centralization because setting policies that create legal uncertainty is a necessity, especially in handling Covid-19.

Departing from this, the dimension of regional autonomy has confirmed the mechanism. Quoting what Jimly Asshiddiqie stated, that the practical paradigm of regional autonomy is not only having an ideal conception of the transfer of central authority to be regulated by the regions autonomously. However, there is also a need for initiatives originating from the regions to the Central

Government, in order to encourage the implementation of regional autonomy (Wadi, 2020), and ensure that the implementation of regional autonomy is successfully carried out within the framework of the Unitary State. Therefore, when the Regional Government establishes the Lockdown mechanism in handling the Covid-19 outbreak, it is a form of initiative or response from the Regional Government in alleviating the centralized nature of the Central Government due to policies that create legal uncertainty.

Currently, regional governments have difficulty in carrying out such autonomy because there is a narrowing of the meaning of autonomy. This limitation meaning is contained in the Health Quarantine Law, in which the regional government waits for a response and approval from the central government in terms of handling COVID-19, including determining the lockdown (regional quarantine). It doesn't in line with the original meaning of article 18 in the 1945 Constitution of the Republic of Indonesia. This limitation also does not provide legal certainty for regional governments in carrying out rapid actions to deal with COVID-19. Therefore, there is a need for legal instruments under the Constitution to accommodate the broad meaning of autonomy contained in Article 18 of the 1945 Constitution of the Republic of Indonesia in order to provide legal certainty for handling health emergencies by regional governments, including the implementation of lockdown (regional quarantine).

Indonesia can adopt a legal scheme model that is the choice of countries in the world in implementing emergencies in the face of the Covid-19 outbreak. For example, the scheme described by Ginsburg and Versteeg makes 3 models of emergency choices for countries in the world. First, the declaration of a state of emergency under the constitution, namely countries that choose to carry out emergency activation based on the constitution. Second, the use of existing legislation dealing with public health or

national disasters (legislative model), namely countries that choose to use legal instruments at the statutory level, especially those related to public health and national disasters. Third, the passing of new emergency legislation, namely countries that choose to form new legislation specifically for handling the Covid-19 pandemic (Arsil & Ayuni, 2020).

If we examine the first scheme based on the declaration of a state of emergency under the constitution, Indonesia actually has emergency provisions regulated in Article 12 and Article 22 of the 1945 Constitution. This article regulates the state in emergency condition and state in coercion. Based on the Comprehensive Manuscript on Amendments to the 1945 Constitution Book IV Volume 1., Article 12 has the meaning that *staat van beleg* = state in emergency = the state is in a state of siege/a state in danger of a civil emergency. *Staat van beleg* is a medieval concept which states that when the country is besieged by the enemy/a state of danger, civil power will temporarily switch to military power (military emergency). The draft of the 1945 Constitution only contained *staat van beleg* but was later translated into "a state in danger" which includes these two concepts. Regarding to the Legal Considerations in the Constitutional Court Decision No. 8 PUU-XII 2014 concerning Material Testing Articles 16 and 26 of Law Number 7 of 2012 concerning Handling of Social Conflicts, 3rd Paragraph, 16th Alenia, Page 92, the constitutional court in its considerations also provides signs so that the government can determine emergency conditions, namely: (i) threat to state security (ii) war (iii) emergence of certain conditions that have the potential to endanger the life of the state. Refer to the preamble to letter (a) Presidential Decree No. 12 of 2020, the spread of COVID-19, which is a non-natural disaster, has had an impact on increasing the number of victims and property losses, expanding the coverage area affected by the disaster, as well as having implications for broad socio-economic aspects in Indonesia. The impact is increasingly

widespread and endangers the life of the state and nation. Therefore, Indonesia declared itself in a state of emergency. Referring to the explanation above, when the country is declared in a state of emergency, the regions can automatically carry out any activities in dealing with emergency conditions, including implementing a regional quarantine (lockdown) constitutionally. Because the regions have the authority to carry out the widest possible autonomy. It is based on Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

This is evidence that the implementation of an asymmetrical lockdown has a constitutional basis as referred to by Ginsburg and Versteeg as the declaration of a state of emergency under the constitution. This freedom of authority in handling emergency conditions was also emphasized by Van der Pot and The Liang Gie summarized by Koesoemahatmadja who emphasized that there are 3 (three) well-known teachings regarding the content and extent of regional households, namely: (i) the teaching of material household (*material huishoudingbegri*) in this system there is a division of tasks between the central and regional governments which is clearly specified in the law (ii) formal household rules (*formele huishoudingbegrip*) in this system the relationship between the center and the regions is not detailed (iii) house teachings real ladder, this system wants harmonization between tasks and capabilities and strengths, both within the (internal) region itself and with the central government (Lekipiouw, 2020).

This concept is contained in Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, where the article explains that regional governments regulate their own government affairs based on the principles of autonomy and assistance tasks and carry out the widest possible autonomy. Refer to Article 10 of Law Number 23 of 2014 which is currently undergoing changes in Law Number 9 of 2015 concerning Regional Government, states

that co-administration tasks and autonomy to the fullest clearly inspired the concept of materiele huishoudingbegrip and the teachings of the real household. Meanwhile, the concept of formele huishoudingbegrip focuses more on the broadest meaning of autonomy which is not specified in the Constitution. Article 18 is then translated into Law Number 9 of 2015 on Regional Government (UU Pemda). However, if we look at the division of government and regional affairs in the Regional Government Law, we can see that there are two classifications of the division of functions, namely: (i) absolute authority and (ii) relative authority. The absolute authority includes foreign policy, defense, security, judicial, national monetary and fiscal authority, and religion. This absolute authority is absolute authority of the central government which cannot be taken by regional governments. While the relative authority covers education, health, social. In addition, this relative authority includes many factors, except for absolute authority. This means that constitutionally, regional governments can implement an asymmetrical lockdown based on the broadest principle of autonomy and have the authority to deal with health issues.

On this basis, the Government took action in the form of a large-scale social restriction (PSBB) policy to reduce the current spread of Covid-19 which is regulated in Minister of Health Regulation 9 of 2020 concerning PSBB Guidelines in the context of Accelerating the Handling of Covid-19. In the regulation, Large-Scale Social Restrictions are restrictions on certain activities of residents in an area suspected of being infected with Corona Virus Disease 2019 (Covid-19). Large-scale social restrictions include, at least, school and workplace holidays, restrictions on religious activities and/or restrictions on activities in public places or facilities. Based on Article 4 paragraph (3) of Government Regulation number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of the Corona Virus which reads "restrictions on activities as referred to in paragraph (1) letter c are carried out by taking

into account the fulfillment of the basic needs of the population. Even if we carry out a legal interpretation of Article 18 of the 1945 Constitution of the Republic of Indonesia, historically, this article is intended to strengthen the position of the region in terms of taking care of its household affairs (Ayu et al., 2021). It means that the constitution has legitimized the authority of the regional government based on the principle of autonomy to regulate the region for the prosperity of the region. Moreover, no one really knows the condition of the area except the regional government itself. This means that currently there are developments towards the expansion of the meaning of autonomy, one of which is autonomy in the case of health emergencies. This constitutionality space then becomes the basis for regional governments to implement an asymmetrical lockdown (regional quarantine) in order to accelerate and additionally overcome the COVID-19 pandemic (Prasetio, 2021).

B. Asymmetrical Lockdown Implementation is More Effective in Overcoming the Increase in Covid-19

Lockdown is actually an extension of social distancing, which covers certain areas and territories. If an area or region has experienced a lockdown, it means closing the entrances and exits for the community. Not surprisingly, in some reports, this lockdown policy has been taken into consideration by several local regional officials. These considerations are based on budget readiness and the social impacts that arise (Yunus & Rezki, 2020). It must be realized and watched out that the spread of Covid-19 was declared by the World Health Organization (WHO) as a pandemic in most countries around the world, including Indonesia. This Covid-19 continues to show an increase from time to time and has caused many casualties and also very large material losses so that it has implications for other aspects of social, political and community welfare (Permadhi & Sudirga, 2020).

In the context of handling the Covid-19 pandemic, refer to Law Number 23 of 2014 on Regional Government in Article 12 paragraph (1) point b, it is explained that the health sector is a concurrent government affair in accordance with Article 11 paragraph (1). In a sense, concurrent government affairs are government affairs that are divided between the central government and provincial and district/city governments (Article 9 paragraph (3) of the Regional Government Law). Based on this, the regions (provinces, districts/cities) have the right of autonomy (freedom) to regulate their respective regions (Kusumaputra & Retnowati, 2020). In this case, the region can also draw up its own legal product, which applies specifically to their region in the form of a regional regulation. Although each region has the freedom to regulate its regional household affairs, in the context of the relationship between the Central Government and the Regional Government, it is still necessary to have a form of guidance and supervision. However, the supervision carried out must be carried out in a balanced manner. If the form of supervision carried out by the Central Government is too tight, it will actually impede the existence of decentralization and autonomy.

By referring to the provisions above, within the framework of autonomy and decentralization, it can indeed lead to a dualism of interpretation. First, in the case of a health emergency, the Regional Government can determine the attitude or steps to deal with the spread of a disease outbreak, it is possible to establish a lockdown policy. Second, with the provisions of the attachment in Law Number 23 of 2014, which has divided the affairs of the health sector between the Central Government, Provincial Governments, and Regency/Municipal Governments, then there is a restricted interpretation if the region is only limited to handling in terms of treatment, drug administration, or referrals in a hospital.

Regarding the second interpretation, if referring to the Article 5 of Law Number 6 of 2018 on Health Quarantine,

that: "The Central Government is responsible for implementing quarantine at the entrance and in the region in an integrated manner". It is also continued in Article 10 paragraphs (1), (2) and (3), that: (1) The Central Government determines and revokes a Public Health Emergency; (2) The Central Government shall stipulate and revoke the determination of Entrance Doors and/or areas in the country Affected by Public Health Emergency; (3) Before establishing a Public Health Emergency, the Central Government first determines the types of diseases and risk factors that can cause a Public Health Emergency.

Thus, if an interpretation is carried out using the principle of *lex specialis derogat legi generali* (the Health Quarantine Law is a more specific law, while the Regional Government Law is a more general law), then of course the authority to establish a lockdown policy for health emergencies is carried out by the central government. is not under the jurisdiction of the regional government. However, in the context of handling a disease outbreak, it is necessary to examine whether or not the authority to establish a lockdown policy rests with the central government. Referring to the living law theory of Eugen Ehrlich (1862-1922) that the law always lives and develops in line with the needs of society, it was born and continues to grow in society. Thus, if the norms contained in a law are not in accordance with the development and needs of the community, then the law should be reformed.

In an effort to realize the effectiveness of overcoming the Covid-19 pandemic, it is very important to use a decentralized institution that uses the principle of subsidiarity (Lele, n.d.). It means that there is an emphasis on the importance of dealing with the problem from the point closest to the problem, namely by carrying out an asymmetrical lockdown by handing over the authority to set a lockdown to the regional government as the entity closest to the Covid-19 pandemic problem and as an entity that knows more about social characteristics and culture in the

area. Moreover, this was further strengthened by referring to the Constitutional Court's decision Number 8/PUU-XII-2014 which stated in its legal considerations that the regional governments are considered to be the most knowledgeable in terms of real conditions in their regions compared to the central government.

The enactment of laws and regulations by the center on regional areas that have their own characteristics is an asymmetric (non-uniform) delegation of authority (decentralization). Asymmetric autonomy is another name for asymmetric decentralization in which special powers are given by the central government in a country, so they are not given to other regions. The term asymmetric decentralization is given to areas where the level of separatism is quite high, in that context Van Houten defines special autonomy as follows: "The legal authority given to special groups of people who do not have sovereignty, or ethnically special areas, make basic public decisions and implement policies. public freely outside the source of state authority, but still subject to the law of the country as a whole" (Nurfurqon, 2020).

Refers to the concept of regional autonomy itself, the concept of regional autonomy which is restrictly defined as the exclusive rights granted to regions in relation to making decisions regarding their own regions. This right is obtained through the transfer of government affairs from the central government to the regional governments in a decentralized system. In short, decentralization is the transmission of the authority of the central government in terms of handing over the affairs of the central government to local governments, usually covering authority, institutions, finance, and control. In this case, according to Larry Diamond, decentralization as a policy to spread and strengthen democracy to the local level has the following advantages: (1) decentralization can help develop democratic values and skills in society; (2) decentralization increases accountability and responsiveness to local

interests and affairs; (3) decentralization can improve democratic representation by providing additional channels for those who were previously marginalized; (4) decentralization can improve control and balance of power at the center; (5) decentralization allows political contestation to be more open by providing opportunities for political parties and opposition factions at the central level to gain power and influence at the local level.

The point that can be taken into account is point 3, namely that decentralization can be used as a system to create responsiveness to local interests and affairs. Local affairs in question are handling the spread of the virus in their respective regions, so that if the context sought is to suppress the spread of the virus, then the spread must be suppressed from the smallest level in regional units coordinated by the center, not the other way around. So that if the authority to carry out regional quarantine is given to the regions, of course it will greatly make the handling more effective. In line with the opinion expressed by Eric Barendt, the aim of decentralization is to make decisions according to local needs and conditions. So that autonomy is a derivative of decentralization, namely the higher the degree of decentralization, the higher the level of regional autonomy. In other words, the more you are at the lowest level of government, the better the management and handling of existing problems (crises) will be.

In addition, taking into account that the geographical and demographic aspects of Indonesia are so vast in area, physically so complex, with thousands of islands and ethnicities, of course, requires a policy-making that can be adapted to the character of each region. Because regional government is the foremost system in responding to the aspirations of local people, supportive of national policies and responsive to global trends, thus the lockdown policy making by regional governments is expected to increase the effectiveness and efficiency of implementing government functions, democratization at the grassroots level (level the

most basic), and the most important thing is the effectiveness of overcoming the Covid-19 pandemic (Ismail, 2021).

The differences in socio-cultural characteristics as mentioned above can be seen from several things, such as the level of the economy, education, to the influence of customs and beliefs of the local community. For example, with regard to customs and community beliefs, of course the influence of customs and community beliefs in rural areas of Indonesia will be different from those in big cities (BBC, 2021) likewise, the level of technological literacy from one region to another will also be different (Burhan, 2021). So that differences in socio-cultural characteristics between regions will certainly greatly affect the success in overcoming the Covid-19 pandemic. Therefore, each region requires a different approach, so it is the right thing to implement an asymmetrical lockdown policy, namely by placing the regional government in the most central position in tackling the Covid-19 pandemic in order to realize the effectiveness of overcoming the Covid-19 pandemic.

C. The Implementation of Regional Quarantine (Lockdown) is the Responsibility of the State Distributed in Local Governments in Protecting Public Health

Referring to the obligation of the state to fulfill the right to health, it is described in Article 2. 1 of the ICESCR (World Health Organization Constitution) which states that: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." And also based on the considerations used by the state in determining a state of danger, it doesn't use Article 12 of the 1945 Constitution but Article 22 of the 1945

Constitution. This has a juridical consequence that Article 12 allows restrictions on human rights if the state is in a state of civil or military emergency, except for human rights. as in Article 28 I of the 1945 Constitution of the Republic of Indonesia, even more so if the consideration of the Health Quarantine Act is Article 22 of the 1945 Constitution. It means that there must be no restrictions on any human rights, including human rights.

The presence of the state here, which is none other than the central government, of course, as a facilitator in terms of optimizing the implementation of asymmetric lockdowns with regard to facilities and infrastructure and also facilitating the reach and efficiency of implementation of asymmetrical lockdowns, especially with regard to coordination. So that if the command is carried out by each region, then the response to the pandemic can be carried out quickly.

With regard to the state's obligation to guarantee people's human rights, this is in line with the opinion expressed by John Locke who stated that in the context of human rights, the state exists to serve the interests and fulfill these human rights (Fauzia & Hamdani, 2021a). In addition, in the rule of law theory, it is stated that a state of law or sovereign state must consider aspects of human rights in every action (Atmaja & Budhiarta, 2018). Then it was further strengthened through the interpretation given by the Constitutional Court in the legal considerations of the Constitutional Court's decision Number 14/PUU-XIX/2021 stating that in a democratic country, postulated the truth has been accepted that the people are the holders of the highest sovereignty. In that context, the Government has a mandate from the people to lead the administration of the state, including in public health emergencies.

With regard to the right to health, as stated by CESCR General Comment 3 in the provisions of Article 2(1) it obliges each State Party to take the necessary steps "to maximize available resources". In order for a State party to

attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy, as a priority, those minimum obligations. And at least take advantage of it by guaranteeing in terms of accessibility, according to community needs, adequate facilities and also providing satisfaction to the community.

With regard to the description above. As in Article 12 paragraph 1 of Government Regulation In Lieu Of Law Number 1 of 2020 gives the President the authority to make changes to the posture and/or details of the State Revenue and Expenditure Budget (APBN) in the context of implementing state financial policies regulated by or Presidential Regulations. Positive aspects of changes in budget posture and changes in the APBN deficit, it will give the legitimacy to the Government to move quickly and responsively to safeguard the financial system and the national economy from the threat of COVID-19. It is proven based on data released by the Ministry of Finance that with regard to the 2021 APBN budget ceiling that for regions and village funds, as much as Rp. 795.5 trillion.

In this quarantine activity, of course, the Central Government and Regional Governments are responsible for protecting public health from diseases or public health risk factors that have the potential to cause a Public Health Emergency (Policy for Enforcement of Lockdown as Anticipation of the Spread of the Corona Virus Covid-19). However, By looking at the geographical and demographic aspects of Indonesia which are so broad as mentioned in the previous discussion, it will certainly cause limitations for the central government in dealing with the complexity of the problems faced by the community, which in this case is the fulfillment of human rights in the economic and health fields (Hamdani, 2020). The differences in geographical conditions between regions also have an impact on regional economic inequality in Indonesia, which is influenced by the number

and growth of the population, the level of population density, education, health, discipline, and work ethic (Djadjuli, 2018).

On the explanation above, through the implementation of an asymmetrical lockdown, a concurrent institutional model will be applied which implements a fusion system between the central government and local governments. This system can be implemented on condition that there is a clear division of labor with a clear sequence (Rusdianto et al., 2022). The aim is to avoid overlapping authorities between the central government and regional governments as well as the attraction of interests between the center and the regions. In this case, when the determination of the lockdown policy is given to the regions, where the central government plays a role in providing guidance and supervision, the central government will be more focused or can be more intense to fulfill the needs of the community, especially in terms of economy and health which will be based on the needs of each individual in each area. It means that there is a clear division of labor between the central and regional governments, that the regional government is focused on tackling the Covid-19 pandemic as an entity that is closer to the Covid-19 problem in the regions (Fauzia & Hamdani, 2021b), while the central government can be more optimal in seeking to fulfill the economic and public health aspects. such as the procurement of vaccines and other health facilities.

Some of the government's concerns regarding the implementation of the lockdown include in terms of implementation time and in terms of costs (Kattsoff et al., 2022). First, in terms of time, the implementation of the lockdown quarantine is sufficient for 14 days or two weeks. Although the implementation time is relatively short, according to Bima Yudhistira as Director of the Center of Economics and Law Studies (CELIOS), this policy has a large positive impact in suppressing the spread of Covid-19 in Indonesia. Second, in terms of costs, according to Bhima

Yudhistira, the scenario and estimate of the funds needed by the government if the lockdown decision is taken, by taking the example of lockdown in Jakarta and then assuming a Jakarta lockdown, per day is IDR 550 billion. Thus, a 2-week lockdown will cost IDR 7.7 trillion (Masitoh, 2021).

Jakarta as the centralized center of government and business center plays an important role in national finance, where almost 70% of the national money circulation is controlled by the capital city of Jakarta. In this case, Bima Yudhistira stated that the cost of a national-scale lockdown was around 11-25 trillion in a span of 14 days. It is assessed that Bima will still be able to grow and restore Indonesia's national economy by 3% to 4.5% (TV, 2021).

In the basic concept of a welfare law state or what is also known as a legal state with a modern concept (material meaning), that the state is not only responsible for security and order, but which is primarily related to welfare (ELVIANDRI, 2019). What is meant by welfare above is not only limited to welfare in the sense of fulfilling the economy, but also the right to health (Fauzia & Hamdani, 2021c). Therefore, within the framework of optimizing the fulfillment of community needs, the presence of the central government and local governments should be within the ideal corridor in carrying out their respective functions. The optimization will be achieved if the responsibility for determining the area quarantine is handed over to the regions, because the local government is a street level bureaucrat or organizational unit that is directly related to the community (Ismail, 2021). Then efforts in terms of fulfilling welfare and national economic recovery can be carried out by the central government.

Regional governments with their authority and urgency in their regions indeed know better what their regions need, and can take policies that are deemed necessary for their regions (Putriani, 2021), so that regional governments basically have the responsibility to determine regional quarantine without dependent on the central

government (Pangerang Moenta & Anugrah Pradana, 2018). In addition, from the point of view of regional autonomy, the emphasis or main focus of autonomy is not on the number of regional affairs but on the freedom/authority of the regional government (independence) to regulate and manage interests in accordance with the real conditions of the region. So it is impossible for the central government to directly handle the affairs in detail because the conditions of each region are dynamic and complex (Nurbaningsih, 2019).

Although theoretically it can be justified that the implementation of regional quarantine should ideally be the responsibility of the state distributed in local governments in protecting public health, but at the legislative level, improvements need to be made so that there is no debate and conflict of authority between the central government and local governments regarding who is in charge. in determining regional quarantine. Because the embodiment of these legal norms basically must be in accordance with the spirit of the nation and the national interest, namely to realize welfare for the community, both from a health and social perspective (Fauzia et al., 2021).

4. CONCLUSION

That the implementation of lockdown or regional quarantine when the Covid-19 case increases asymmetrically is a form of implementation of the broadest meaning of autonomy which is directly mandated by the constitution. The constitution has a clear basis for regional governments to enforce regional quarantine as a form of government responsibility in protecting public health. In addition, the authority of the autonomous region in terms of a health emergency will accelerate the response to COVID-19, because regions have different socio-cultural characteristics and anthropological conditions that will certainly greatly affect success in overcoming the Covid-19 pandemic. Therefore, each region requires a different approach, so it is the right thing to implement an

asymmetrical lockdown policy, namely by placing the regional government in the most central position in tackling the Covid-19 pandemic in order to realize the effectiveness of overcoming the Covid-19 pandemic. When the regional quarantine is implemented, all the needs of the community will be borne by the regional government and the central government. This application is also limited by a certain period of time so that the community has certainty in dealing with this regional quarantine, so that people do not have to worry about meeting basic needs during an asymmetrical quarantine, because it is the government's obligation.

5. DECLARATION OF CONFLICTING INTERESTS

Author Puji is in charge of collecting data and research, Author Ana is in charge of summarize and finishing, Author C is in charge of analyzing the data and editing

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Lawyers are the only
persons in whom ignorance
of the law is not punished.

Jeremy Bentham