

## Implementation of The Siracusa Principles as Foundations for Reformulation of Social Restriction Policies in Public Health Emergencies



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## Implementation of The Siracusa Principles as Foundations for Reformulation of Social Restriction Policies in Public Health Emergencies

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**ABSTRACT.** The purpose of this research is to implement the Siracusa Principles as the basis for the formulation and evaluation of public policies that have the potential to restrict people's rights and freedoms during social restrictions. This research uses the statutory and conceptual approaches of normative juridical methods as instruments of analysis. The findings of this paper include 667 cases of human rights violations released by LBH Jakarta throughout 2020. There are result of the government's social restriction policy to suppress COVID-19 transmission. Although Article 4 of the International Covenant on Civil and Political Rights (ICCPR) allows governments to restrict certain rights during public emergencies that threaten the life of the nation, states are not allowed to arbitrarily restrict people's rights and freedoms. Therefore, a mechanism is needed that can set restrictions on public rights in a balanced manner. In this regard, the Siracusa Principles can be implemented as a basis for the formulation of public policy through human rights due diligence and evaluating the government's compliance in implementing its policies. The novelty of this paper contains comprehensive discourses and recommendations in reformulating social restriction policies that are less friendly to human rights protection through restrictions on rights proportionally and internationally, and allow for the existence of check and balances mechanisms for the course of public policy. Therefore, with the implementation of the Siracusa Principles can be the basis for establishing restrictions on rights proportionally in order to develop policies of social restrictions and health quarantine that are more friendly to human rights protection and can minimize the occurrence of policy formulation errors that have the potential to violate human rights.

**KEYWORDS.** Public Policy; Public Health Emergencies; Restrictions on Rights and Freedoms; Social restrictions; Principles of Siracusa

# Implementation of The Siracusa Principles as Foundations for Reformulation of Social Restriction Policies in Public Health Emergencies

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## Introduction

For more than a year, the Covid-19 pandemic has hit various parts of the world, including Indonesia. Covid-19, which stands for Corona Virus Disease 2019 is an infectious disease caused by the SARS-CoV-2 virus. The corona virus was first discovered in Wuhan, the capital of Hubei province, China on December 1, 2019 and spread globally. A person infected with Covid-19 can easily transmit the virus to others only through conversation or direct contact with sufferers. This phenomenon then triggers the spread of the virus increasingly rapidly to form a chain of Covid-19 in the community. Reporting from the covid-19.go.id page, data as of January 24, 2022, it was recorded that there were 4,289,305 Indonesians confirmed positive for the corona virus and a total of 144,227 victims died.<sup>1</sup>

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<sup>1</sup> Satuan Tugas Penanganan Covid-19. *Data Sebaran Penanganan Covid-19*, retrieved from <https://covid-19.go.id>

The public health emergency due to the Covid-19 pandemic has prompted the Government to take extraordinary policies to control the spread of the virus. Various efforts have been made, one of which is the implementation of social restriction policies. President Jokowi through Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) has firmly imposed area restrictions targeting the provincial and district/city levels. This policy is better known as the PSBB policy. Large-Scale Social Restrictions (PSBB) at least include the closure of schools and workplaces, closure of places of worship, restrictions on activities in public places, restrictions on socio-cultural activities, restrictions on transportation modes, and others.<sup>2</sup> Not long after that, the DKI Jakarta province specifically imposed a transitional PSBB in the DKI Jakarta Governor Decree Number 1295 of 2020.<sup>3</sup>

University of Indonesia epidemiologist, Tri Yunis Miko Wahyono assessed that the Large-Scale Social Restriction (PSBB) policy during the transition period implemented in Jakarta was not effective to reduce the rate of transmission of Covid-19.<sup>4</sup> Therefore, the government has again implemented Large-Scale Social Restrictions or strict PSBB. After the strict PSBB, the government issued a policy of Enforcement of Community Activity Restrictions (PPKM) for Java-Bali in early January 2021. This policy was extended and applies to all regions of Indonesia which are categorized as level 1 to level 4. The government often changes policies.

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<sup>2</sup> Desi Permatasari. Kebijakan Covid-19 dari PSBB hingga PPKM Level 4. <https://kompaspedia.kompas.id/baca/infografik/kronologi/kebijakan-covid-19-dari-psbb-hingga-ppkm-empat-level>

<sup>3</sup> Eventhough the PSBB and restriction policies have been implemented in many provinces in Indonesia, however in the practices as well as the enforcement has shown some differences, depending on the respective regional policies. For this issue and discussion, *please see* Rizki Ramadani, Yuli Adha Hamzah, and Arianty Anggraeni Mangerengi. "Indonesia's Legal Policy During COVID-19 Pandemic: Between the Right to Education and Public Health". *JILS (Journal of Indonesian Legal Studies)* 6, No. 1 (2021): 125-56. <https://doi.org/10.15294/jils.v6i1.43555>; Muhammad Haikal Fathan, "COVID-19 Emergency Regulation: How We Survive?". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 301-14. <https://doi.org/10.15294/ijicle.v2i3.38376>; Rizki Agung Prasetya, "COVID-19 Countering Policy: Latest Polemics in Indonesia". *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 271-86. <https://doi.org/10.15294/ijicle.v2i3.38371>.

<sup>4</sup> Ivany Atina Arby. 2020. PSBB Transisi di Jakarta Dianggap Tidak Efektif Seiring Meroketnya Kasus Covid-19. <https://megapolitan.kompas.com/read/2020/12/22/14115681/psbb-transisi-di-jakarta-dianggap-tak-efektif-seiring-meroketnya-kasus?page=all>, B

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President Joko Widodo said the government's policies that seemed to fluctuate while dealing with the Covid-19 pandemic were natural because the corona virus continued to mutate and give rise to new variants.<sup>5</sup>

Various policies adopted by the government illustrate the practice of authoritarianism which is marked by the existence of social restriction policies that continuously curb the human rights of the community. For example, the National Human Rights Commission (KOMNAS HAM) recorded 2841 complaints of human rights violations throughout 2020.<sup>6</sup> Likewise, in 2021, there were 2,331 complaints related to human rights. Komnas HAM commissioner, Amiruddin Al Rahab said, thousands of complaints related to the incident related to violence, restrictions on rights, arbitrary detention to alleged criminalization, as well as arrests made by the police.<sup>7</sup> The complaints related to the Police are mostly related to the unprofessionalism of police procedures. Then, violence to torture by the police against civilians.<sup>8</sup>

According to him, all forms of use of force or coercive measures need to be carried out by referring to the principles of necessity, proportionality and professionalism. This has been regulated in Article 17 and Article 34 of Law Number 39 of 1999 concerning Human Rights regarding the protection of the Right to Obtain Justice and the Right to Life of a person.

The government's authoritarianism has the potential to increase the number of cases of human rights violations in Indonesia. In this condition towards authoritarianism, KontraS noted that the recognition, protection, and fulfillment of human rights are increasingly being threatened. The threat is present in the form of state legitimacy for forms of human rights violations, both rights that fall into the category of Civil and Political Rights and Economic, Social and Cultural Rights. State legitimacy for this human rights

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<sup>5</sup> CNNIndonesia. 2021. Jokowi Respons Kritik Kebijakan Pandemi Berubah-ubah: Virus Bermutasi. <https://www.cnnindonesia.com/nasional/20211203145645-20-729523/jokowi-respons-kritik-kebijakan-pandemi-berubah-ubah-virus-bermutasi>,

<sup>6</sup> Eva Safitri. 2021. *Komnas HAM Terima 2.331 Aduan Sepanjang 2021, Tertinggi Terkait Polri*. <https://news.detik.com/berita/d-5752092/komnas-ham-terima-2331-aduan-sepanjang-2021-tertinggi-terkait-polri>

<sup>7</sup> *Ibid.*

<sup>8</sup> See Rizqi Slamet, "Indonesia in a Pandemic: A Book Review Bunga Rampai Covid-19: Tinjauan Dari Aspek Kesehatan, Ekonomi Dan Hukum". *Lex Scientia Law Review* 5, No. 2 (2021): 137-142. <https://doi.org/10.15294/lesrev.v5i2.51710>; Arya Rema Mubarak, Chalisa Jasmine Azhima, and Muhammad Pramadiathalla. "Public Government Affairs as an Alternative Mechanism for Handling the COVID-19 Outbreak in Indonesia". *Lex Scientia Law Review* 4, No. 2 (2020): 25-38. <https://doi.org/10.15294/lesrev.v4i2.41317>.

violation appears in various forms, both direct action (by commission) and omission (by omission).<sup>9</sup>

Therefore, this study analyzes the certainty of human rights protection in the substance of the laws and regulations governing the current social restriction policy. In addition, this study also formulates a model for reformulation of social restriction policies that are in line with the Siracusa Principles. With the implementation of the Siracusa principle as a guide for the formulation of public policies during a health emergency, the government can create proportional fulfillment and limitation of human rights.

## Method

Normative legal research or legal research is the type of research that will be used in this paper. This method serves to provide juridical arguments when there is a void, ambiguity, and conflict of norms.<sup>10</sup> In this study, several approaches were used. First, the statute approach or the approach to legislation, which examines all laws and regulations related to the legal issues discussed.<sup>11</sup> Second, the conceptual approach or conceptual approach, namely reviewing the various views that develop in legal science as the basis for argumentation.

In the normative research method, two legal materials will be used to form a framework for discussion, namely primary and secondary legal materials. Primary legal materials are materials that have authority, namely the 1945 Constitution and Laws and Regulations related to Human Rights, Health Quarantine, Disaster Management, and Social Restrictions.<sup>12</sup> While secondary legal materials are legal materials that provide explanations for primary legal materials, in the form of draft legislation, research results, textbooks, scientific journals, newspapers, and the internet.<sup>13</sup>

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<sup>9</sup> Tim Penulis KontraS. *Catatan Hari HAM 2020: HAM dalam Bayang-Bayang Otoritarianisme*, p. 3

<sup>10</sup> Tim Penulis KontraS. *Catatan Hari HAM 2020: HAM dalam Bayang-Bayang Otoritarianisme*, p. 3

<sup>11</sup> I Made Pask Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta, Prenada Media Group, 2017), p. 12

<sup>12</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta, Prenada Media Group, 2016), p. 133

<sup>13</sup> Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum-Normatif dan Empiris*, (Yogyakarta, Pustaka Pelajar, 2015), p. 156.

## **Analysis of Human Rights Protection Guarantees in Social Restriction Policy Implementation Regulations**

In concept, when a public emergency that threatens the life of the State arises and is officially declared, a state party can derogate a number of rights to the level permitted by the situation. However, States parties may not derogate certain special rights and may not take discriminatory measures on the basis of several reasons.<sup>14</sup> However, in the case of the Covid-19 pandemic, it is more rational to classify it as a public health emergency, not a public emergency that threatens the life of the country. So, in this case, the appropriate clause to use is “Limit/Limit”, not “Reduce/Derogate”.

This is in accordance with the 25th Principle of the Siracusa Principles, which states that a public health emergency can be used as a justification for limiting human rights.<sup>15</sup> This provision is also in line with Article 4 of the ICCPR. The Committee considers that the steps taken under Article 4 of the ICCPR must be special and temporary and should only be taken when the life of the nation concerned is threatened and that, in the event of an emergency, the protection of human rights is of the utmost importance, in particular rights that may not be derogated.<sup>16</sup> A different situation occurs in Indonesia, where the legal instruments presented do not carry out the mandate of the ICCPR.

The current implementation of social restriction policies in Indonesia is disproportionate. A number of policies actually open the gap for the criminalization of society and human rights violations. Various legal instruments regarding social restrictions in the form of laws, government regulations, as well as instructions from the minister of home affairs do not include the Siracusa and ICCPR principles as guidelines. Whereas ICCPR is an international legal standard and Indonesia has ratified it through Law No. 12 of 2005. This means that ICCPR has become part of the national legal system.

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<sup>14</sup> General Comment No. 5, International Covenant on Civil and Political Rights (ICCPR), p. 7.

<sup>15</sup> International Commission of Jurist, “Siracusa Principles on the Limitations and Derogations in the International Covenant of Civil and Political Rights”, 1984, *25th Principles*.

<sup>16</sup> *Ibid.*

The ratification has consequences for the implementation of human rights, because the Indonesian state has legally bound itself. The government has carried out the obligation to adopt this ratified agreement into legislation, both drafted and enacted as law. In addition, the government has a binding obligation to take various steps and policies in carrying out its obligations *to respect, protect and fulfill human rights*.<sup>17</sup> This obligation is also followed by other government obligations, namely, to make reports relating to legal adjustments, steps, policies and actions taken<sup>18</sup>.

After ratifying the ICCPR, the Indonesian government has a legally binding obligation to do a number of things. Among other things, the state, in this case the government, must immediately carry out legal reforms by translating the principles and provisions contained in it into national law.<sup>19</sup> The government must also harmonize national laws using the ICCPR framework. All laws and regulations that are not in accordance with the ICCPR must be repealed, revised, or reformulated.<sup>20</sup> Especially regarding the laws and regulations governing social restriction policies. Where, the regulation clearly has a direct impact on limiting the fulfillment of human rights in society.

In this regard, there are several problematic social restriction policies include:

- 1) Law of the Republic of Indonesia Number 4 of 1984 concerning Outbreaks of Infectious Diseases;
  - 2) Law of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine;
  - 3) Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) or PP PSBB; and
  - 4) Instruction of the Minister of Home Affairs Number 27 of 2021 concerning the Implementation of Restrictions on Community Activities at Level 4, Level 3, and Level 2 Corona Virus Disease 2019 in the Java and Bali Regions.
  - 5) Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) .
- Law Number 12 of 2005 concerning ICCPR Ratification. This law has

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<sup>17</sup> General Comment International Covenant on Civil and Political Rights (ICCPR), p. 4.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

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not yet been updated, while its substance regulates the handling of epidemics, including the COVID-19 pandemic, which has the potential to cause legal confusion. This can be seen from the contents of Article 14 of the Infectious Disease Outbreak Law which states<sup>21</sup>: “*Whoever deliberately hinders the implementation of the epidemic control as regulated in this Law, is threatened with imprisonment for a maximum of 1 (one) year and/or a maximum fine of Rp. 1,000,000 (one million rupiah).*”

There is no explanation in the “*obstructing*” clause in Article 14, thus creating a vague definition. According to the Big Indonesian Dictionary (KBBI), obstruct means to hinder.<sup>22</sup> The use of this term provides a ambiguous understanding of the term “*violation*” so as to open the gap for criminalization of innocent people.

*Second*, the Health Quarantine Act also has a number of defects. In the ‘*considering*’ section, this Law does not include Article 4 of the ICCPR and the Siracusa principle as consideration material. Article 4 of the International Covenant on Civil and Political Rights states that<sup>23</sup>:

*“In the event of a general emergency threatening the life of the nation and the state of emergency has been formally declared, the States Parties to the present Covenant may take measures to reduce their obligations under the present Covenant, to the extent strictly required by the circumstances of the situation, provided that such action does not is inconsistent with other obligations of States parties under international law and does not involve discrimination based solely on race, colour, sex, language, religion or social origin.”*

Letter c of the considering section only mentions “...international regulations in the health sector...” without explicitly mentioning what international regulations in the health sector are meant to cause legal confusion. Not only that, but the Health Quarantine Law also which contains the essence of limiting the activities of civilians does not include Article 28J

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<sup>21</sup> Desi Permatasari. 2021. *Kebijakan Covid-19 dari PSBB hingga PPKM Empat Level*. <https://kompaspedia.kompas.id/baca/infografik/kronologi/kebijakan-covid-19-dari-psbb-hingga-ppkm-empat-level>

<sup>22</sup> Kamus Besar Bahasa Indonesia

<sup>23</sup> Article 4 *Undang-Undang Republik Indonesia Nomor 6 Tahun 2018 tentang Kejarantinaan Kesehatan*

paragraph (2) of the 1945 Constitution of the Republic of Indonesia as part of remembering. The essence of the limitation is to ensure the fulfillment of respect, protection, and fulfillment of basic rights themselves, and not to focus on the aspect of the limitation. Therefore, in the provisions of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia<sup>24</sup>, the phrase “...with the sole purpose of guaranteeing recognition and respect for the rights of freedom of others...” and “...in a democratic society”.<sup>25</sup>

In the 1945 Constitution of the Republic of Indonesia, the article on human rights restrictions, namely Article 28J paragraph (2), is placed at the end. This position is important because, as noted in the Comprehensive Manuscript, “The placement of obligations in one concluding article of all the rights mentioned from Article 28A to Article 28I is meant that the limitation on human rights in Article 28J is intended to protect the rights of others, including restrictions on *non-derogable rights* themselves”.<sup>26</sup>

Referring to Article 28J paragraph (2) of the 1945 Constitution which is linked to Article 4 of the Covenant on Civil and Political Rights, as part of the social activities of the community in an emergency situation can be limited. However, these restrictions must be regulated by law, with the sole purpose of ensuring the recognition and respect for the basic rights and freedoms of others, and to meet fair demands in accordance with considerations of safety, health, morals, and public order in a society. democratic. The emphasis on the clause 'governed by law' is very important in *arule of law*. This clause is applied to avoid excessive discretionary space in the hands of the government, because this can encourage arbitrary policies and practices. Unfortunately, the Health Quarantine Law has missed Article 28J paragraph (2) as a very vital legal basis.

*Third*, the same fate as the Infectious Disease Outbreak Law and the Health Quarantine Law, PP PSBB when viewed from a constitutional perspective, there are also problems. The 'remembering' section of PP PSBB also does not include Article 4 of the ICCPR or the Siracusa Principles which are in line with Article 28J paragraph (2) of the 1945 Constitution of the

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<sup>24</sup> Article 28J ayat (2) *Undang-Undang Dasar NRI Tahun 1945*

<sup>25</sup> Please also see Ana Fauzia, Bayu Yusya Al Khori, and Puji Rahayu. “Constitutionality of Implementing Asymmetric Lockdown (Regional Quarantine) When Covid-19 Increases to Accelerate Health Emergency Management”. *Law Research Review Quarterly* 8, No. 1 (2022). <https://doi.org/10.15294/lrrq.v8i1.54359>; Tessa Septy Dynesia, “The Effectiveness of Indonesian Government Assistance in Handling and Breaking Covid-19 Chains”. *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020), 245-256. <https://doi.org/10.15294/ijicle.v2i3.38417>

<sup>26</sup> Article 28J ayat (2) *Undang-Undang Dasar NRI Tahun 1945*

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Republic of Indonesia. Article 28I paragraph (1) of the 1945 Constitution of the Republic of Indonesia, namely<sup>27</sup>:

*“The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before law, and the right not to be prosecuted on the basis of retroactive law is a human right that cannot be reduced under any circumstances.”*

These rights are rights included in absolute civil and political rights. Therefore, this PP PSBB also leaves a number of weaknesses in terms of the aspect of guaranteeing the enforcement of human rights during a health emergency. For example, Article 4 paragraph (3) of the PP PSBB<sup>28</sup> does not provide clarity on the procedures for meeting the basic needs of the population and does not guarantee the protection of human rights if the government neglects to carry out its responsibilities in meeting the basic needs of the population during the PSBB. Or even, the mechanism for restoring the human rights of the community to the potential for repressive actions that threatens the respect and fulfillment of human rights by law enforcement officers during the PSBB is not explained. Thus, it can be concluded that the implementing regulations for the social restriction policy do not prioritize preventive measures in protecting the human rights of the community.<sup>29</sup>

This is certainly not in accordance with the provisions of the Siracusa Principles. In fact, Principle 7 of the Siracusa Principles states that there are no arbitrary restrictions. In addition, the 8th principle states that any restrictions imposed must be directed at possible challenges to and remedies against abusive application of restrictions. Similarly, Principle 18 of the

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<sup>27</sup> Article 28I ayat (1) *Undang-Undang Dasar NRI Tahun 1945*

<sup>28</sup> Article 4 ayat (3) *Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (Covid-19)*

<sup>29</sup> For further discussion concerning to the PSBB Policy, please also see Namira Ivanka, “Large-Scale Social Restrictions: What’s Next?”. *The Indonesian Journal of International Clinical Legal Education* 2, No. 2 (2020): 201-214. <https://doi.org/10.15294/ijicle.v2i2.38324>; Yasminna Nariswari, “Infectious Disease Outbreaks Act and Its Implication for Handling Corona Virus Spreading in Indonesia”. *The Indonesian Journal of International Clinical Legal Education* 2, No. 3 (2020): 257-270. <https://doi.org/10.15294/ijicle.v2i3.38327>

Siracusa Principles also states that states that restrict human rights must provide adequate legal protection and effective remedies against illegal or abusive coercion<sup>30</sup>.

The omission of Article 4 of the ICCPR and the Siracusa Principles in the PP PSBB triggers the implementation of the PP PSBB which injures human rights, especially the rights of the community to carry out various social activities. This condition causes the absence of a single article in the PP PSBB which regulates guarantees for the protection of human rights in an emergency, indicating that this regulation has forgotten the protection of human rights. So, it can be said that the PP PSBB is contrary to the values contained in the ICCPR and the Siracusa principles.

*Fourth*, the Instruction of the Minister of Home Affairs Number 27 of 2021 concerning the Implementation of Restrictions on Community Activities at Level 4, Level 3, and Level 2 Corona Virus Disease 2019 in the Java and Bali Regions<sup>31</sup> as a legal product regarding restrictions on community activities does not refer to Article 4 of the ICCPR and The Syracuse Principle. This illustrates the inconsistency of norms between legal products and international legal and human rights standards.

*Fifth*, Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19). Permenkes No. 9 of 2020 only contains technical guidelines for implementing PSBB for local governments.<sup>32</sup> Regarding guarantees for the protection and restoration of human rights, it is not stated in the articles. This of course opens a loophole for criminalization and repressive actions by law enforcement officers in implementing social restriction policies.

## **Case Analysis of Human Rights Violations During the Policy of Social Restrictions Takes Place**

Many legal loopholes due to the absence of guarantees for human rights protection in the legislation have led to an increase in cases of human

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<sup>30</sup> Roman Podoprigora, "Freedom of Religion and Belief and Discretionary State Approval of Religious Activity", Tore Lindholm, et.al., ed., *Facilitating Freedom of Religion*, p. 425.

<sup>31</sup> *Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (Covid-19)*

<sup>32</sup> *Permenkes No. 9 Tahun 2020 tentang Pedoman Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan Penanganan Corona Virus Disease 2019*

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rights violations during the period of social restrictions. In general, there were 2841 cases of human rights violations throughout 2020 which were confirmed by KOMNAS HAM<sup>33</sup>. With the following details:

1. Alleged violation of the Right to Welfare : 1025 Cases
2. Alleged violation of the Right to Justice : 887 Cases
3. Alleged violation of the Right to Security : 179 Cases

As for the parties that most complained about, among others:

1. Police officers : 758 Cases
2. Corporations : 455
3. Local government : 276

For example, mass layoffs during the Covid-19 pandemic have become a real problem for the domestic economy. In the midst of the Covid 19 pandemic, there were mass layoffs for workers, mainly in the morning, workers in the tourism sector such as hotels. It is known that as long as the PSBB is enforced in Makassar, hotels in Makassar are ordered to be closed. Of course, the closure of the hotel has an impact on the workers at the hotel. Mass layoffs resulted in them losing their jobs<sup>34</sup>. The latest data for workers who were forced to be laid off due to the corona virus pandemic were 7,893 out of a total of 247 companies. Meanwhile, 224 people were affected by Termination of Employment (PHK)<sup>35</sup>.

From the description above, it can be concluded that none of the regulations governing health emergency situations include ICCPR and the Siracusa principle as a legal basis to accommodate the fulfillment of human rights in the midst of social restriction policies. In fact, the policies taken have implications for the destruction of the democratic order and rampant human rights violations and have no significant impact on controlling the pandemic. Several studies and recommendations have actually been submitted to the government which essentially states that the policies taken are not effective because they are only top-down and not oriented to the interests of the community<sup>36</sup>.

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<sup>33</sup> Komisi Nasional Hak Asasi Manusia Republik Indonesia, "*Laporan Tahunan KOMNAS HAM 2020: Pemajuan dan Penegakan HAM di Era Pandemi Covid-19*", (Jakarta: KOMNAS HAM, 2020), p. 10.

<sup>34</sup> Nur Akhifah Janur dan Fitri Sagita, "Pelanggaran HAM dalam Pandemi Covid-19", *Jurnal Qisthosia: Jurnal Syariah dan Hukum*, Vol 2, No. 1, June 2021, p. 48.

<sup>35</sup> *Ibid.*

<sup>36</sup> Ali Roziqin, Syasya Y.F. Mas'udi, Iradhad T. Shidiqi, "An Analysis of Indonesian Government Policies Against COVID-19", *Public Administration and Policy*, Vol. 24 No. 1, 2021, p. 56.

For example, normatively, Article 4 paragraph (3) of PP No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) states that the implementation of PSBB must take into account and pay attention to the fulfillment of the basic needs of the population. In this case, normatively the government has guaranteed responsibility for meeting the needs of the population during the PSBB.

But in fact, in meeting the basic needs of the population during the PSBB, there are many obstacles. Especially regarding social assistance/BANSOS. As the findings of the Urban Poor People Network, one of the problems in meeting the basic needs of the population during the PSBB is the uneven distribution of BANSOS. One of the inequalities in social assistance can be seen in RW 019, North Tugu Village, Koja District, North Jakarta. The head of RW 019, Ricardo, said there were a total of 1,060 families in the densely populated area. They are lower class residents who work as scavengers, parking attendants, to odd jobs. Even so, from a total of 1,060 families, about 20 percent did not get BANSOS<sup>37</sup>.

In addition, there are still many other problems in meeting the needs of the population during PSBB and PPKM. Which in turn reduces the level of public confidence in the government's responsibility in meeting basic needs. So, it is not surprising, if the community is forced to violate the provisions of the PSBB and PPKM in order to try to save themselves and survive in the midst of a crisis situation by looking for income for their daily needs<sup>38</sup>.

Likewise, KontraS also reported findings. At the PSBB and PSBB Transition stages, April 2020 – January 2021, there were 17 violent incidents involving the Police, TNI, Satpol PP, and the Joint Task Force. The incidents also varied, ranging from persecution, arbitrary arrests, shootings with *Water Cannons*, intimidation, and forced dispersal. This incident has claimed hundreds of victims with details of 1 dead, 2 injured, and 326 arrests<sup>39</sup>. As

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<sup>37</sup> Ivany Atina Arbi, “Dari Pungli Hingga Salah Sasaran Penerima, Ini Ragam Masalah Bansos di Jabodetabek”, <Kompas.com<https://megapolitan.kompas.com/read/2021/07/30/08055781/dari-pungli-hingga-salah-sasaran-penerima-ini-ragam-masalah-bansos-di?page=all>>.

<sup>38</sup> Komisi untuk Orang Hilang dan Korban Tindak Kekerasan (KontraS), “Catatan Kritis Pendekatan Keamanan dalam Penanganan Pandemi Tak Berhasil dan Harus Dihentikan!”, <[https://kontras.org/wp-content/uploads/2021/07/FINAL\\_Catatan\\_Kritis\\_Daftar\\_Langkah\\_Kontradiktif\\_Penanganan\\_Pandemi.pdf](https://kontras.org/wp-content/uploads/2021/07/FINAL_Catatan_Kritis_Daftar_Langkah_Kontradiktif_Penanganan_Pandemi.pdf)>

<sup>39</sup> *Ibid.*

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for the details of the violent incident, the majority of the prosecution aimed at the lower middle class who are looking for sources of livelihood.

The whole phenomenon certainly violates the principles of proportional limitation of human rights according to the ICCPR and the Siracusa Principles, where there is arbitrary action by law enforcement officials and omission by the government in implementing policies. In this case, the implementing regulations for the social restriction policy do not contain articles that guarantee the protection of human rights from repressive actions that could potentially be carried out by arbitrary law enforcement officers in the name of control.

Therefore, efforts to reformulate social restriction regulations are needed, considering that the Covid-19 pandemic is still not over and social restriction policies are still being enforced. This is of course aimed at realizing the fulfillment of human rights in a just manner and avoiding unprofessional implementation of human rights restrictions during the social restriction policy. Thus, the number of criminalizations and human rights violations during the implementation of social restrictions can be significantly reduced.

### **Analysis of The Principles of Siracusa as an Instrument of Proportional Human Rights Restrictions**

Previous analysis has shown that there is ambiguity in the normative protection of human rights in the regulations for implementing social restriction policies. This is due to the absence of Article 4 of the Ratification of the ICCPR and the Siracusa Principles as the basis for social restriction policies which should be contained in the weighing section of the opening of laws and regulations. Thus, it is not surprising that 2841 cases of human rights violations throughout 2020 have been confirmed by KOMNAS HAM<sup>40</sup>. Therefore, there is an urgency to strengthen and optimize the existence of the Siracusa Principles as a proportional instrument with legal certainty in implementing regulations for social restriction policies that are friendly to the protection of human rights.

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<sup>40</sup> Komisi Nasional Hak Asasi Manusia Republik Indonesia, "Laporan Tahunan KOMNAS HAM 2020: Pemajuan dan Penegakan HAM di Era Pandemi Covid-19", (Jakarta: KOMNAS HAM, 2020), p. 10.

In concept, the Siracusa Principles belong to the doctrine of legal experts, which in the history of its formation was initiated by the agreement of 31 international jurists who held a conference in the City of Siracusa, Italy on 30 April-4 May 1984<sup>41</sup>. The principle was later adopted by the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities<sup>42</sup>. So, in this case, the Siracusa Principles can be said to be valid as a source of international law, as stated in Article 38 paragraph (1) letter d of the 1920 International Court of Justice Statute which regulates sources of international law<sup>43</sup>. Therefore, the Siracusa Principles should be strengthened in their existence as a companion rule to the ICCPR regarding the limitation of human rights and be applied as the basis for designing social restriction policies.

Juridically, the Siracusa Principles make a fundamental distinction between the *limitations* and derogations of *human rights*. In this respect, Deduction is different from limitation. Especially regarding its nature and scope, as well as the conditions needed to justify it. The most obvious difference is that the reduction/derogation is only allowed in extraordinary circumstances where the state faces a danger to the life of the state, while restrictions allow the state to limit human rights even in normal circumstances, although there are limited and complete reasons<sup>44</sup>. In addition, there are several other aspects that distinguish between *limitations* and *derogations* as explained on Table 1.

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<sup>41</sup> International Commission of Jurists, "Siracusa Principles on the Limitations and Derogations in the International Covenant of Civil and Political Rights", 1984, Preamble.

<sup>42</sup> Amrei Müller, "Limitations to and Derogations from Economic, Social and Cultural Rights", *Human Rights Law Review* Vol. 9 No. 4, 2009, p. 560.

<sup>43</sup> International Court of Justice, "Statute of International Court of Justice", 1920, Article 38 (1).

<sup>44</sup> Amrei Müller, "Limitations to and Derogations from Economic, Social and Cultural Rights", hlm. 564.

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**Table 1.** List of Differences in Limitation and Reduction of Human Rights according to the provisions of the Siracusa Principles

Aspects	Derogating	Limiting
the Scope and Justifying Conditions	Public Emergency that threatens the life of the nation	Normal conditions with applicable terms and conditions, including: <ul style="list-style-type: none"> <li>- "Public order"</li> <li>- "Public health"</li> <li>- "Public morals"</li> <li>- "National security"</li> <li>- "Public safety"</li> <li>- "The rights and freedoms of others," or "the rights and reputations of others"</li> <li>- "Restrictions on public courts"</li> </ul>
Term	Temporary Period, as long as exceptions apply	Longer period
Procedure	Announced officially and must be notified immediately to other States Parties, through the intercession of the Secretary-General of the United Nations (UN), regarding the reduced provisions and the reasons therefor.	Prescribed by law
Objects of Rights	All rights, both Derogable Rights and Non-Derogable Rights	Only Derogable Rights

If all of these differentiating criteria are correlated with the social restriction policy during a public health emergency, then the "restriction clause" is more appropriate to be used as the orientation of the social restriction policy. This can be seen in the compatibility of every aspect of human rights restrictions with the reality of social restriction policies, namely:

- a. The Social Restrictions Policy is intended as a response to a Public Health Emergency. This is relevant to the 25th Principle of the Siracusa Principles which states that public health can be used as a justification for limiting human rights.

- b. The period of the Social Restriction Policy is longer, which is starting from the issuance of PP No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) on March 31, 2020, and continued with the Instruction of the Minister of Home Affairs Number 27 of 2021 concerning the Enforcement of Restrictions on Community Activities Level 4, Level 3, and Level 2 Corona Virus Disease 2019 in the Java and Bali Regions, on August 2, 2021. So it can be concluded that the social restriction policy, from PSBB to PPKM, has been going on for a long time, which is more than one year. Even in January 2022, PPKM is still being implemented in Java and Bali through the Instruction of the Minister of Home Affairs Number 05 of 2022 concerning the Enforcement of Restrictions on Community Activities Level 3, Level 2, and Level 1 Corona Virus Disease 2019 in Java and Bali Regions<sup>45</sup>.
- c. Regarding procedures, social restriction policies are implemented and initiated through laws and regulations, for example related to PSBB, ordered through Article 2 PP No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19), which stipulates that Regional Governments with the approval of the minister of health may carry out Large-Scale Social Restrictions or restrictions on the movement of people and goods for one province or district/ certain city.
- d. Regarding the objects of rights that are affected, the social restriction policies, both PSBB and PPKM, only limit non-derogable rights. Where people are prohibited from making crowds, moving/traveling to public places both within cities and between cities.

In addition to having different aspects of implementation, the Limitation and Reduction clauses have several aspects in common. These aspects are implicit in the Siracusa Principles and are summarized more clearly by scholars of international law<sup>46</sup>.

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<sup>45</sup> Indonesia, *Instruksi Menteri Dalam Negeri Nomor 05 Tahun 2022 Tentang Pemberlakuan Pembatasan Kegiatan Masyarakat Level 3, Level 2, dan Level Corona Virus Disease 2019 di Wilayah Jawa dan Bali*, Januari 2022.

<sup>46</sup> Steiner, Alston and Goodman (eds), *International Human Rights in Context: Law, Politics, Morals*, 3rd eds (Oxford: Oxford University Press, 2008), p. 385.

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**Table 2.** Table of Equation of Limitation and Reduction of Human Rights according to the Siracusa Principles and ICCPR

Aspects of Equality	Explanation
The Principle of Proportionality	principle of proportionality requires that any limitation or reduction stands in a reasonable relationship with the objectives pursued by a limitation, or with the severity of the emergency that threatens the life of each nation.
The Margin of Appreciation	Doctrine state emergency problems in the implementation of restrictions or reductions in human rights.

In the proportionality principle, it is required that any limitation or reduction must be based on reasonable grounds to achieve the intended purpose of the limitation or emergency standard that threatens the life of each country. In this context, it is important to note that the principle of proportionality that applies to restrictions and reductions also ensures that neither restrictions nor reductions, in practice, do not allow states to completely ignore their obligations to fulfill their human rights<sup>47</sup>.

Meanwhile, in the Appreciation Margin Doctrine, it is required that the state be given the authority to determine the size of the emergency. This is based on the assumption that the governments of these countries have a better understanding of the emergency situation in their country, and generally make their decisions in good faith in accordance with international law<sup>48</sup>.

Therefore, by reflecting on the existence of the principle of proportionality and the doctrine of margin of appreciation in the Siracusa Principles, it should be possible that all policies restricting human rights carried out by a country must be carried out according to applicable procedures and be applied proportionally. Where the state is not justified arbitrarily, both in forming its legal regulations, as well as taking legal action in its implementation.

<sup>47</sup> Human Rights Committee, General Comment 29: States of Emergency (art. 4), 31 August 2001.

<sup>48</sup> Amrei Müller, "Limitations to and Derogations from Economic, Social and Cultural Rights", p. 566.

## **Implementation of The Principles of Syracuse as Foundations of Social Restriction Policy Reform**

In the analysis of the previous problem formulation, it has been explained that there are various repressive actions carried out by law enforcement officers in the implementation of social restriction policies. This certainly proves that there is a legal gap between the contents of the regulations and their implementation in the field. This is due to the lack of guarantees for the protection of human rights in the articles of the regulation. Moreover, the regulation does not instruct preventive measures if the government is negligent in carrying out its responsibilities during social restrictions.

Thus, in an effort to reformulate social restriction policies, the government can implement the Siracusa principles as the basis for designing social restrictions policies. Of course, by prioritizing the application of the principle of proportionality in every draft of the norm. With these efforts, the government has also been able to carry out a kind of due diligence to map the risks of human rights violations that could potentially occur as a result of the social restriction regulations that will be enforced.

In making it happen, there are four steps that must be taken. First, legitimacy measures aimed at confirming the government's legitimacy in imposing social restrictions. Second, the suitability step is to verify the legitimacy of the government's actions related to the social restrictions that will be enforced. Third, necessary measures to ensure that restrictive measures do not sacrifice human rights beyond the goals to be achieved. Fourth, a balancing step to weigh the pros and cons of the social restriction policy that will be implemented<sup>49</sup>.

In addition to implementing the four proportionality measures, the government is also required to provide a means for complaints and reporting related to human rights violations by law enforcement officials. As mandated by the 18th Principle of the Siracusa Principles, namely, to provide effective remedies for victims of human rights violations and guarantees of legal protection, which are normalized in the articles of implementing regulations for the reformed social restriction policies. Of course, in its implementation,

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<sup>49</sup> Alec Stone, Sweet, dan Jud Matthews, "Proportionality Balancing and Global Constitutionalism". *Columbia Journal of Transnational Law* Vol. 47, 2008, p. 89.

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the government needs supervision and evaluation in the implementation of its policies as an effort to *check and balance*.

In this case, the government can establish partnerships with Non-Governmental Organizations (NGOs) and *Non-Government Organizations* (NGOs) engaged in human rights and social affairs to be able to synergize in tackling the Covid-19 pandemic. These NGOs and/or NGOs can be an extension of the government in monitoring and evaluating the implementation of social restriction policies and analyzing their impact on society. These NGOs and NGOs can provide effective policy briefs or recommendations to the government in order to minimize the occurrence of human rights violations, as well as accelerate the recovery of the rights of people affected by social restrictions.

In addition to involving NGOs and NGOs, the government must also involve law enforcement officers in the implementation of proportional social restriction policies. The government must be able to provide education related to the principles of Siracusa to law enforcement officers, both TNI, POLRI, and SATPOL PP. In particular, the SATPOL PP, because this unit often takes repressive actions against the community in enforcing government policies. In order to support effective education and outreach, the government must also tighten the Standard Operating Procedures (SOP) for public action so that repressive actions can be reduced as much as possible.

### **Conclusion**

The social restriction policy during a public health emergency is a form of government responsiveness to the Covid-19 pandemic. Every government policy actually has clearly regulated the procedures for implementing the policy. Including in efforts to limit the human rights of the community, the government's reasoning is very reasonable and in accordance with the conditions for limiting human rights according to the Siracusa Principles, namely, to guarantee the right to life of the community in the midst of the Covid-19 pandemic. However, these regulations still cannot guarantee the fulfillment and protection of human rights proportionally. This is because the guarantees for the protection and restoration of human rights are not included in accordance with the Siracusa principles in these regulations. Thus, it is not surprising that the number of criminalization and

human rights violations by law enforcement officers increased greatly during the PSBB and PPKM periods.

This study recommend that the government needs to incorporate the principles of siracusa into the formulation of social restriction policies as a step for policy reformulation. Several important principles such as Principles 7 and 8 concerning the prohibition of arbitrary restrictions, as well as Principle 18 concerning the obligation to provide a means of complaint and rehabilitation for victims of human rights violations during the period of social restrictions. In addition, the government must also take steps to preventive measures to narrow the potential for criminalization and human rights violations by mapping the risks of human rights violations by prioritizing the principle of proportionality. Then, the government can establish partnerships with NGOs and NGOs as an effort to check and balance. As well as educating and tightening SOPs for enforcement for law enforcement officers, such as the TNI, POLRI, and SATPOL PP.

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