

Local Government Authority in Implementing Lock Down to Cope with the Spread of Covid- 19 in Indonesia

by Mohamad Khamim

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Local Government Authority in Implementing Lock Down to Cope with the Spread of Covid-19 in Indonesia

Mohamad Khamim¹, Achmad Irwan Hamzani², Tarno, Ratna Riyanti³, Imam Asmarudin⁴,
Toni Haryadi⁵

^{1,2,3,4,5}Universitas Pancasakti Tegal, Indonesia.

ABSTRACT

The Central Government's policy with local governments in handling the Covid-19 pandemic has been discussed. The authority is in the Central Government and the position of the Local Government is only as a subordinate. In practice, the policy taken by the Central Government creates legal uncertainty because it does not follow the mechanism of handling disease outbreaks. The purpose of this study is to describe the implementation of central government policies in handling the Covid-19 pandemic and to view the legitimacy of local governments in the implementation of Lockdown. This study uses a normative approach and uses secondary data in the form of legal materials. The data is qualitatively analyzed. The results of this study show that the authority to establish health quarantine mechanisms in the handling of the Covid-19 pandemic is the authority of the Central Government. Local Government policy in establishing a lockdown mechanism has validity under the perspective of the constitution and the framework of regional autonomy. The policy applied by the Local Government is to fill the legal uncertainty due to the policy by the Central Government that establishes civil emergency. Another legitimacy is the 1945 Constitution which has confirmed the conception of local government using decentralization. The concept of decentralization makes the Local Government one of the entities in the administration within the framework of the Unitary State of the Republic of Indonesia.

Keywords

Covid-19, Lockdown, PSBB, Legitimacy, Ambivalent.

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Introduction

Corona Virus Disease 2019 (Covid-19) is currently the main problem globally including in Indonesia. As of January 2021, the Government of Indonesia announced 1.26 million confirmed cases of Covid-19, 34,152 cases of death, and 1.07 million cases recovered from 424 districts/cities in all 34 provinces in Indonesia.

The wide scope of the scale of the outbreak and a large number of the world's affected population led the Director-General of WHO on January 30, 2020, in Geneva to declare the current situation as a Public Health Emergency of International Concern (PHEIC). The policy is adopted under the International Health Regulations (IHR 2005). The Director-General of WHO warns all countries to be aware of the spread of Covid-19 in any region of the country. All countries must be prepared for quarantine programs, including active monitoring, early detection, isolation and case management, contact tracing and prevention of the spread of Covid-19 infections, and to share complete data with WHO (Hairi, 2020).

The government asks that all people should keep up to date with the development of Covid-19. The virus has spread to more than 110 countries since December 2019. Countries with many cases have issued new regulations to stop the spread of the virus and address the KLB (Extraordinary Events). As part of the world community, Indonesia is also obliged to prevent the occurrence of Public Health Emergency of International Concern as mandated in international regulations in the field of health (International Health Regulations / IHR 2005).

Indonesia must of course fully respect one's dignity, human rights, the fundamentals of one's freedom, and its universal application. The political configuration of Local Government law in Indonesia is inseparable from the values contained in the 1945 Constitution. These values are manifested in the principles of the unitary state, the sovereignty of the people, the state of law, and/or the state of law based on Pancasila. The implementation of Local Government must still pay attention to the parts of authority between the Central Government and the Local

Government, with legal instruments to adjust the wishes of the people. However, in measuring policy constitutionality of both Central and/or Local Government there is a key-value contained in the constitution.

The main value hierarchically consists of human dignity and is followed by equality and freedom as supporting values that are packaged with the concept of Human Rights in the constitution (Prasetianingsih, 2020). As the main value, the state through the Central Government and Local Government must bind itself to always guarantee elements of the main value by implementing a fair legal certainty in the implementation of government both at the central and regional levels. Synchronization and coordination between the Central and Regional Governments is an inevitability in achieving these key values.

In fact, in handling the Covid-19 pandemic, the implementation of the government experienced policy disparity between the Central and Regional Governments. These differences occur when some regions set the Quarantine Region or Lockdown option. Several areas set lockdown or semi-lockdown options, namely Solo which sets semi-lockdown, Tegal full lockdown, Papua semi-lockdown, Maluku semi-lockdown (<https://www.cnbcindonesia.com/news/20200330104913-4-148387/>).

The determination of Lockdown or semi-lockdown conducted by the Local Government due to the spread of Covid-19 disease is increasing with a growing number of cases. Even until January 29, 2021, positive cases of Covid-19 have reached 1.26 million people and still high numbers increase every day (<https://news.detik.com/berita/d-4964071>).

The Central Government instead set policies in handling the Covid-19 pandemic with Large-Scale Social Restrictions (PSBB) or Physical Distancing followed by the final stages of Civil Emergency (<https://www.cnnindonesia.com/nasional/20200331162012-20-488770/>).

Such policies, considered by many to be policies that experience disorientation. This is because the Civil Emergency in the Government Regulation Substitutes Law No. 23 of 1959 on The State of Danger which is the stage at the end of the handling of disease outbreaks, has the orientation of handling order and legal security in the context of war emergencies conducted by the security

forces. So that the handling has a repressive orientation.

Inversely proportional when the beleid is vis-à-vis (faced) to the Law on Health Quarantine that has the aim of preventing and warding off the influx of diseases with the mechanism of Health Quarantine. Beleid has an orientation by quarantine the territory and followed by government accountability with the fulfillment of the needs of the citizens whose areas are set Lockdown. Thus, the implementation of PSBB policy and the first stages of Civil Emergency in the handling of the Covid-19 pandemic by the Central Government is considered enigmatic compared to the political will conducted by the Local Government by suppressing the significance of cases through the Lockdown or Semi-Lockdown mechanism.

The determination of mechanisms in handling the Covid-19 pandemic juridically is the authority of the Central Government. This is affirmed through the Law of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine (Law on Health Quarantine) which states that the Central Government is responsible for organizing Health Quarantine and can involve the Local Government. The authority of the Local Government in setting lockdown policy and in contrast to the Central Government received special attention in this discourse on the validity and legitimacy in handling the Covid-19 pandemic.

Based on this, the issue is important to review in this article. The issue to be reviewed is the constitutionality of the practices carried out by the Local Government in setting the Lockdown policy, and the appropriate parameters in assessing the validity and legitimacy of local government actions that are different from the Central Government.

4 Research Methods

The approach used in this study is normative. The normative approach in legal research is to examine legal issues with a positive legal perspective. This study uses a normative approach because it examines the Authority of Local Government in Implementing LockDown to Cope with the Spread of Covid-19 in Indonesia based on applicable laws and regulations. The

data source used by this study is secondary data. Secondary data is data obtained indirectly or has been provided by another party. Secondary data used in the form of legal documents that serve as the main reference to review the Authority of Local Government in Implementing LockDown according to the ³⁴ concept of decentralization of local government. Data collection techniques were used in this study through offline and online research. Offline library expansion is the activity of finding library resources to where data is stored. While online approval is the activity of finding library resources in cyberspace through the internet network. Library expansion is conventionally done by finding library materials to libraries, collections of books and personal journals, purchasing books, and visiting scientific activities (seminars). While online expansion is done by searching on the internet. The method of data analysis used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories, and units of the basic description so that themes can be found presented in the form of narration (Hamzani, 2020). This study uses qualitative data analysis because the data will be presented narratively-descriptively, not in the form of numbers or numerical.

Discussion

1. Implementation of Central Government Policy Law in Handling the Covid-19 Pandemic

⁷ Initially, the Government of Indonesia to prevent ³⁵ the spread of Covid-19 stipulated that it would not lockdown, but physical distancing since mid-March 2020. The use of the term physical distancing is considered more appropriate than social distancing because basically all that is needed is to maintain physical distance instead of social distance. Social interaction through gadget devices or other non-physical means of communication is still indispensable.

The use of social media expands social interaction in this day and age, so it will be very helpful for everyone's mental health. Self-isolation is an act of not being physically related to others, but still having social interactions with people as usual (<https://www.halodoc.com/>).

³ The government urges the public to avoid and not to hold large gatherings or crowds. If you have to be around people, keep your distance from others about 6 feet (2 meters). With the widespread of COVID-¹² the government then established the rules of Large-Scale Social Restrictions (PSBB). This policy is intended to restrict people from working, traveling, and physical interaction (Damascus, 2020).

The Central Government's policy, which stipulates the PS²⁴B and the final stages of civil emergency in the handling of the Covid-19 pandemic, is disoriented in the juridical order. This is because the material of the Government Regulation Replacement Law on The State of Danger explains, that civil emergency is established in case of a threat of law order by riots caused by the threat of a state of war that is worrying for the life of the State and society.

One of the keys to stopping the spread of Covid-19 is through policies and regulations. The policy steps taken are: First, there is a clear legal umbrella (norm). Second, the existence of legal products is a technical step of paying existing laws (instruments). Third, there is legal protection for all stakeholders in the process of preventing the spread of Covid-19. Regulation needs to be relaxed, should not be too much to issue regulations, because many regulations and out-of-sync can hit back for government officials (Hamzah, 2020).

There are 3 (three) stages that are done in managing post-crisis, namely: First, protection & anticipation. Protect affected communities and anticipation of the sustainability of the crisis. Second, restoration. Restoring with the right time and fast to re-realize normal life. Third, formulation. Formulate common objectives from all parties involved or affected (Alexander, 2013). Such circumstances are reinforced by juridical affirmations in the Government Regulation Replacement Law that if a civil emergency is not continued with a military emergency or war, then the legal norms (rechtsnorm) that govern when the Civil Emergency is applied, no longer have the legal force to bind the Establishment of Perppu a quo is also inseparable from the atmosphere of spirituality (geistlichen Hintergrund) political manifesto of President Sukarno in the concept of Guided Democracy that is authoritarian.

The manifesto comes at a time when political instability is at its peak, starting with the fall of the cabinet when implementing a parliamentary system of government. Ideological opposition between Islam and Nationalists, as well as³⁷ the height of the insurgency in various regions by the Revolutionary Government of the Republic of Indonesia (PRRI) that occurred in 1958 (Mahfud MD., 2012). The magnitude of the President's power causes one of them, the content material does not justify the supervision of judges and the House of Representatives in the implementation of the Regulation in practice. This causes the handling of the Civil Emergency to be justified by repressive actions.

The phrase "natural disaster" in Government Regulation Replacement Law, which serves as a juridical basis in the final stages of handling the Covid-19 pandemic is also experiencing ambivalence. Because in disaster management, especially disease outbreaks, not including natural disasters, but non-natural disasters th²⁶ have been specifically regulated through the Law of the Republic of Indonesia Number 24 of 2007 on Disaster Management. The handling follows the provisions that have been set more specifically in the Law on Health Quarantine. Such ambivalence obtains academic justification, because legal norms have a static system or common legal norms can be drawn into a special norm or better known as *adagio "lex specialis derogate legi generalis"* (Farida, 2007).¹

The policy taken by the President in handling the Covid-19 disease outbreak with the final emergency stage, i²⁴ consequence, is to create legal uncertainty in the handling of the Covid-19 pandemic. It is based on the final stage of Civil Emergency as a continuation of the PSBB which is not oriented to the prevention process, but security and law order. The content material of the Government Regulation Replacement Act which is based on the natural disaster' has been specifically regulated in the Law on Health Quarantine, so there is no real urgency to establish.

Civil Emergency is a policy process taken by the Central Government. Such legal uncertainty has the consequence that a rule or policy that is made and enacted in no uncertain way will be ambiguous and illogical. Ambiguous means that the rule gives rise to multi-interpretation, while

illogical because it clashes or creates conflicting norms. The conflict of norms over the uncertainty of the implementation of the law can take the form of a reduction or distortion of a norm, or against the highest norm though (Widiarto, 2015). The legal uncertainty also results in people not knowing what to do and with such legal uncertainty that will eventually lead to violence due to the indecision of a legal system or policies taken (Julyano & Sulistyawan, 2019).

It is important to fulfill a legal certainty in the implementation of government. The role of legal certainty is an inevitability in meeting very practical demands, namely the existence of certain rules or can be interpreted as a juridical-formal form. Nevertheless, a certainty of the law in practice is the inevitability of containing certain values. This value if contextualized in the concept of the constitution, in the form of human dignity, as a value that is not only justiciable and enforceable, but the value is used in the interpretation of all fundamental rights (Harijanti, 2016). Based on this, in practice the administration, both at the central and regional levels, legal uncertainty mus⁵ be avoided to meet the main element of value in the fulfillment of the rights of citizens carried out by the state.

2. Local Government Legitimacy in Establishing Lockdown Policy Enforcement

As a derivative of the Health Quarantine Law and seeing the condition that occurred due to the outbreak of Covid-19, the Government issued Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions to accelerate the handling of Covid-19. Covid-19 has been declared by the World Health Organization (WHO) as a pandemic and Indonesia has declared Covid-19 as a non-natural disaster in the form of disease outbreaks that must be carried out countermeasures so that there is no increase in cases.

The issuance³² of the Government Regulation is also due to the increase in the number of cases¹⁶ the spread of Covid-19 to cross-border to have an impact on the political, economic, social, cultural, defense, and security aspects, as¹⁴ as the welfare of the Indonesian people. PSBB is a restriction of certain activities of residents in an area suspected of being infected with Covid-19 in

such a way as to prevent the possible spread of Covid-19. PSBB is organized by the local government that must be approved by the minister of health so that with the approval of the local government can do PSBB or in other words restrictions on the movement of people or goods in one particular province or district.

The State is an important entity in the fulfillment of the human rights of citizens. This is because the fulfillment of the rights of citizens is the responsibility of the state as a result of the duty to respect, protect, and fulfill these human rights. In the event of human rights violations, the state has to restore (to recovery) those rights. Such violations may be his negligence (state) or failure to take adequate steps under certain circumstances (Smith, et.al., 2008). The obligations of the state in the 1945 Constitution are expressly stipulated verbis, that the protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government.

In line with this, the Decision of the Constitutional Court No. 87/PUUXIII/ 2015 also is an aligned opinion. Based on Article 4 paragraph (1) of the 1945 Constitution, the highest authority holder in government is the President, therefore the responsibility for the implementation of the Government rests with the President (Central Government). Article 18 paragraph (1) of the 1945 Constitution that the Unitary State of the Republic of Indonesia consists of provinces, and districts/cities and has a local government regulated by law. Based on the Article produced a legis ratio, that although the final responsibility of daily governance is in the hands of the Central Government. The Regional Government has a responsibility in the administration as long as it belongs to the scope of its autonomy and acts on behalf of the state. The implementation of government functions by the Local Government in the form of regional policy is a unity that is integral to the central or national government (Pide, 2018). The Local Government is personified as a state institution that also should fulfill the human rights of citizens as part of the state.

The handling of the Covid-19 pandemic, juridically through the Law of the Republic of Indonesia Number 23 of 2020 on Local Government, can be analyzed that the authority of

government affairs are concurrent, namely government affairs that are divided between the Central Government and Local Government (Manan, 2009). The concurrent government affairs are divided into two things, namely Compulsory Government Affairs and Preferred Government Affairs, and the health sector is included in mandatory government affairs related to basic services. It is thus affirmed through the Law on Health Quarantine, that the determination of the mechanism of Health Quarantine is the authority of the Central Government and Local Government, but the Local Government is only as a sub-ordination in the implementation of the handling of the disease outbreak.

Political will conducted by the Local Government in setting the policy of Lockdown or Semi-Lockdown also got affirmations in the dimension of the spirit of regional autonomy embraced by the current 1945 Constitution. Due to the contextualization of regional autonomy within Indonesia, it has gone from the spirit of centralization to decentralization. The current local government is not only administrative (deconcentration) but has been based on a government based on autonomy and auxiliary duties. It is even further asserted in the 1945 Constitution that the Regional Government exercised the widest autonomy, except for governmental affairs that by law have been determined as the affairs of the Central Government.

Along with this, the widest autonomy does not mean that the implementation of local government can be done freely. It should still refer to the conception of the Unitary State of the Republic of Indonesia. Because in the sense of autonomy in a unitary state means it has contained the essence of maintenance of the unitary state. Without unity, there is no autonomy. Autonomy also contains an element of surveillance, where concerns about abuse of power will be controlled through supervision. When the right of autonomy is exercised, it must be accompanied by the boundaries contained in the legislation. If the practice of handling the Covid-19 pandemic, still requires the Local Government to follow and justify the policies of the Central Government that are subject to ambivalence in the juridical order. Indirectly the Regional Government has been included in the constellation of centralized

government with a deconcentration mechanism and only makes the regional and/or local government, as representatives of the central government in the region. Deconcentration is not the basis in the implementation of local government, but rather a way of organizing the affairs of the central government in the region. Deconcentration cannot be institutionalized as part of the structure of the local government system which is the anti-thesis of centralization (Manan, 2009).

The context of the rejection of centralization loaded with deconcentration mechanisms is also the basis for changes in the orientation of regional autonomy used today. The atmosphere of spirituality (geistlichen Hintergrund) changes to the 1945 Constitution by embracing decentralization also strengthened due to the regional desire to escape the centralization of the Central Government. Before the regional reforms tried to develop the system was decentralized and considered not in line with the policies of the central government. Subversive threats with security approaches as well as national interest pretexts have fueled injustice and even the threat of national disintegration. Decentralization and regional autonomy are an inevitability in the implementation of the current local government.

The authority of the Local Government with the relationship between the Central Government in the spirit of decentralization is also interpreted as the basis of deliberation on the framework of state government, the maintenance and development of the principles of the original government, and the basis of the state law (Manan, 1994). Contextualization of the decentralization scheme becomes logical when the basis of the state law is the legitimacy of the authority of the Local Government in setting lockdown to eliminate or become a scheme fulfillment of legal certainty in the handling of the Covid-19 outbreak amid the ambiguity of policies carried out by the Central Government.

The orientation of the spirit of decentralization is also well-established in the politics of local government law at the national and regional levels (Harijanti, 2015). The politics of local and national government law is closely related to the function of public services to realize social justice, general welfare, and prosperity of local people in the form of social security, health, social

development such as economic empowerment of the people with Small and Medium Micro Enterprises and cooperatives. It is also juridically integrated as a legalized concurrent governmental matter in the Law on Local Government.

Although the main policy remains guided by that set by the Central Government. Awareness of local governments to prevent the escalation of centralization of the Central Government because setting policies that create a legal uncertainty is an inevitability, especially in the handling of the Covid-19 pandemic. The dimension of regional autonomy has confirmed the mechanism. The practical paradigm of regional autonomy is not only to have the ideal conception of handing over central authority to be regulated by the region autonomously.

There need to be initiatives originating from the region to the Central Government, to encourage the implementation of regional autonomy and ensure that the implementation of regional autonomy is successfully carried out within the framework of the Unitary State (Asshiddiqie, 2011). When the Local Government establishes a Lockdown mechanism in the handling of the Covid-19 pandemic is a form of initiative or response of the Local Government in alleviating the centralization nature of the Central Government because of policies that create legal uncertainty.

At the political stage of local government law at the regional level, it translates as the best service to the people (the service state). The ministry is only created when the government is close to the people, so the institution of autonomy is something that brings the people closer to the government, especially the state government (Harijanti, 2016). The ambiguity of the Central Government in setting policies, especially policies in the field of health, Local Government in the scheme of regional autonomy is an inevitability in bringing the State Government closer to the people by setting policies in the Lockdown mechanism or its application known as PSBB as a form of the state government's approach to the people, especially in the fulfillment of human rights.

Relevance between the fulfillment of human rights as a constitutional right becomes the main thing in the implementation of regional autonomy that is packaged in a policy carried out by the

Local Government, especially in terms of public services, which must be fulfilled by the state, be it the Central Government or local government. Local Government Policy in handling the Covid-19 pandemic is a structure created in the implementation of regional autonomy to create a fair legal certainty, amidst the legal uncertainty of the implementation of the Central Government which tends towards centralistic. Regional autonomy must also be accompanied by a form of supervision conducted by the community against a local government. Because of regional autonomy in addition to talking about the transfer of authority of the Central Government to the Local Government, also spoke of a public relationship with the local government directly (Assidique, 2011). This is based on the autonomous authority that has been owned by the Local Government in the implementation of local government. In addition to abuse can be done by the Central Government, it is also done by the Local Government because of its authority.

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Conclusion

Based on the above discussion, it can be concluded that basically the authority to establish a health quarantine mechanism, namely PSBB, is the authority of the Central Government. Local Government policy in establishing PSBB mechanism in handling Covid-19 pandemic also has validity under the perspective of the constitution and regional autonomy. This is based on a conception that the policy implemented by the Local Government is to fill a legal uncertainty due to the policy by the Central Government in handling the Covid-19 pandemic that establishes a Civil Emergency. Authority following the regulation (constitutional) is interpreted as a form of fulfillment of human rights and is the main value in the constitution in the form of human dignity. It is also carried out by the Local Government as an integral part of the Unitary State of the Republic of Indonesia and the national government. Another legitimacy of local government policy in setting the PSBB policy is that the current Constitution of 1945 has strengthened the concept of local government by using decentralization, which is different from the centralistic concept with a deconcentration mechanism that means that the regional head is

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only a representative of the Central Government in the region. The concept of decentralization, making the Local Government is one of the entities in the administration within the framework of the Unitary State of the Republic of Indonesia. Because the centralistic concept will return to the surface if the Local Government continues to follow the imbalance in the juridical order experienced by the Central Government in handling the Covid-19 pandemic.

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