
Legal Protection For Citizens Rights' From Quarantine Areas Secretly And Without a Basis During The Covid19 Pandemic

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Abstrak: Covid-19 pandemic that occurred in several countries in the world, including Indonesia, caused many new phenomena in society, including in legal, social and economic terms. The police have carried out many dispersal of crowd activities ranging from cafes to parties. Many short videos have been circulated about the disbandment of the party and statements by members of the National Police that ordering their subordinates to take the organizer of the activity to the police station. Starting with the Declaration of the Head of the Indonesian National Police Number: Mak/2/III/2020 regarding Compliance with Government Policies in Handling the Spread of the Corona Virus (Covid-19) on March 19th 2020. POLRI also issued the "Covid-19 Pandemic Guidelines for Law Enforcement". On page 9 it says that, "Restriction of movement at crossing points the border, in the Lock Down area". The implementation of emergency conditions, dispersal force, including the secretive area quarantine not only caused panic for the community but also had an impact on social and economic life, especially for the poor and vulnerable group. The fulfillment of basic human rights, such as the right to get

food and other necessities during the emergency period becomes very difficult, on the other hand they are actually sanctioned because they do not follow the emergency status, which actually doesn't exist yet. Basically, guarantees for the protection of the rights of Indonesian citizens have been guaranteed in the 1945 Constitution of the Republic of Indonesia and there are also various laws that regulate human rights. However, there are several forms of government discretion regarding emergencies that have resulted in many interpretations of guaranteeing the rights of citizens in the future, in addition, many legal policies have changed as an effort to deal with the Covid-19 Pandemic in Indonesia. The identification and analysis of legal regulations needs to be carried out more in-depth research, both in terms of regulations and policies to ensure the rights of citizens so that they are protected during the pandemic in Indonesia. The phenomenon of regional quarantine is becoming widely practiced in various regions, but have these activities been researched regarding the fulfillment of the basic rights of citizens? Especially for regional quarantine which is implemented secretly and is not in accordance with the Covid-19 pandemic. Therefore, it is necessary to analyze the legal regulations properly so that Government policies in order to accelerate the handling of the Covid-19 Pandemic do not violate the basic rights of citizens. The research method that used in this research is Normative legal research, with an emphasis on the source of law, legislation, government policies and existing literature. The research analysis method that used is descriptive analysis. To do a follow up of this research in order to have more value, then after this research is complete, the researcher will upload the results of this research to an accredited national journal and this can be used as teaching materials and discussions related to Law and Human Rights and the State of Law and Democracy especially in the Faculty of Law, University of Merdeka Pasuruan..

Keywords: legal protection; citizens 'rights; regional quarantine; covid-19 pandemic.

INTRODUCTION

On March 11th, 2020, World Health Organization (WHO) announced the status of a global pandemic for the Corona Virus Disease 2019 (COVID-19). In health terms, a pandemic is defined as an epidemic occurring worldwide or over very wide area, crossing countries or international boundaries and usually affecting a large number of people in the world. COVID-19 is designated as a global pandemic because all citizens of the world have the potential to be infected by this virus. With the stipulation of a global pandemic status on the corona virus, at the same time WHO also confirmed that COVID-19 was an international

emergency. This means that every hospital and clinic around the world is advised to be able to prepare themselves to treat patients with this disease [1].

In early 2020, Indonesia became one of the countries whose citizens were infected by Covid-19. As announced directly by President Joko Widodo on Monday, March 2, 2020 at the Presidential Palace, Jakarta, the first case that occurred in the country was experienced by two residents from Depok, West Java. More and more people throughout Indonesia are confirmed that they are positive for Covid19. Various kinds of policies were taken by the government both at the central and regional levels. Unfortunately, some time ago, the policy was taken and implemented without coordination with the central government, the reason is for the sake of public health and one of which is the regional quarantine policy.

The regional quarantine policy in several areas was implemented by the government, such as at the regional level up to the hamlet level. However, it is not balanced with social distancing and various mitigation measures, such as restrictions on public transportation without good socialization and without careful planning. As a result, infection prevention will fail and an exponential increase in the number of infections placing a heavy burden on the health system will occur.

On the other hand, another impact of the area quarantine policy is that many residents feel that their daily activities are disturbed and hampered. The policies that taken by the government are a sensitive issue if they are linked to the rights of citizens. As we know that human rights and human rights for citizens are an important element of democracy besides the rule of law, this has been regulated in our Constitution (UUD 1945).

Legal protection against government action stems from the concept of recognition and protection of human rights because according to western history, the birth of concepts about recognition and protection of human rights is directed at limiting and placing the obligations of society and government. Where the dominant aspect of the western concept of human rights emphasizes the existence of rights and freedoms inherent in human nature and status as individuals, these rights are above the state.

The preamble to the 1945 Constitution which animates the human rights regulation in the body of the 1945 Constitution and other statutory regulations as positive law, in each paragraph reflects of Human Rights. If in the preamble of the 1945 Constitution the first and second paragraphs reflect recognition of the existence of freedom and justice, then the third and fourth paragraphs reflect the existence of equality in the political, economic, legal, social and cultural fields. This means that the substance of Human Rights in the Preamble of the 1945 Constitution is very broad, but unfortunately this norm does not get a more detailed description in the body of the 1945 Constitution. Therefore, the MPR through the decree Number: XVII / 1998 and the second amendment of the 1945 Constitution pasal 28 to pasal 28 J further clarifies and details which constitute human rights and obligations of citizens [2].

In the Second Amendment of the 1945 Constitution, MPR Decree number XVII / 1998 as well as other laws and regulations, basically human rights include:

- a. The right to live, maintain and improve the standards of living
- b. The right to have a family and continue the offspring through a legal marriage.
- c. The right to self-development
- d. The right to justice
- e. The right to freedom / freedom.
- f. The right to freedom of information
- g. The right to security

h. The right to welfare

The regulation of human rights in statutory regulations as positive law is essentially intended for:

1. Provides protection so that human rights are not violated by the government and others.
2. Limiting the power of the ruler
3. Ensuring the survival, independence and development of humans and society.

Based on the foregoing, researchers are interested in further deepening and raising the issue of how to protect the legal rights of citizens to quarantine areas secretly and baselessly carried out during the Covid-19 pandemic.

METHOD

The research method that used in this legal research is normative legal research and the research approach used is statute approach, case studies, legal comparisons, historical approach, and conceptual approach. The research theme that taken is "Legal Analysis Of The Protection Of Citizens' Rights From The Impact Of The Quarantine Area With The Role Of The Government That Must Protect All The Rights And Needs Of The Community Due To The Impact Of Covid19". In analyzing this legal research used descriptive analysis and descriptive quantitative methods.

RESULTS AND DISCUSSION

1. Health quarantine during the Covid19 Pandemic

Since at the end of 2019 until now, all of the country around the world is still troubled by an infectious disease called Coronavirus Disease 19 (Covid19). This disease is caused by the Systemic Acute Respiratory Syndrome (SARS) and Corona virus-2 (SARS-COV2) viruses [3]. The virus, which was first detected in early December 2019 at the Hunan seafood market, Wuhan, China, resulted in respiratory infections (pneumonia) in 50 local residents. It is because this disease can be carried by animals sold in the market such as bats, dogs, snakes and so on. However, it turns out that many cases of someone who does not eat food from the Hunan Market in Wuhan have also been infected with this virus. So it was concluded that this virus can spread through droplets (particles), when humans make contact (communication) with each other. Slowly, this virus resulted in 8,000 deaths and hundreds of thousands of individuals infected within the first 50 (fifty) days of the infection's determination by the Chinese government. As what Sheereen said that finally, in no time, this virus infection spread to more than 100 (one hundred) countries in the world [3].

The number of Corona Virus cases continues to increase every day with some reporting recoveries, but not a few who have died. Government efforts in handling and prevention are continuing to be carried out to fight the Covid-19 pandemic. Putu Lantika Oka Permadhi and I Made Sudirga in their Journals said that Covis19 have initial symptoms similar to flu illness can actually cause more severe diseases, such as Middle East Respiratory Syndrome (MERS-CoV) and Severe Acute Respiratory Syndrome (SARS-CoV) [4]. Considering the increasing number of people infected with the corona virus, the government urges that everything should be done from home, such as school, college, work, or other activities. However, with increasing human activity, prevention of the transmission of the corona virus was not effective enough, until finally the government established Covid 19 as a health emergency status and established a policy related to health quarantine in a certain area which is considered to have great potential to transmit the corona virus.

Pasal 1 ayat 1 Undang-Undang Nomor 6 tahun 2018 tentang Kekarantinaan Kesehatan, states that health quarantine is an effort to prevent and prevent the exit or entry of diseases and / or public health risk

factors that have the potential to cause public health emergencies. In paragraph 2, explained that a Public Health Emergency is a public health event of an extraordinary nature characterized by the spread of infectious diseases and / or events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and food that cause health hazards and have the potential to spread. cross-region or cross-country. A further explanation in Undang-Undang Nomor 6 tahun 2018 tentang Keekarantinaan Kesehatan gives a mandate to the central and local governments to be responsible for protecting the public from disease and / or public health risk factors that have the potential to cause health emergencies through the implementation of health quarantine. Referring to the WHO's declaration on March 12th, 2020, which stated that Covid19 was a global pandemic with the increasing number of patients infected with the corona virus, in order to further tackle the spread of Covid-19, the Indonesian government issued 3 (three) regulations to fight Covid-19 by referring to Undang-Undang Nomor 6 tahun 2018 tentang Keekarantinaan Kesehatan concerning Territorial Quarantine, the three regulations are:

- a. Presidential Decree No. 11 of 2020 concerning the Determination of Covid-19 Public Health Emergencies (Keppres No. 11/2020)
- b. Government Regulation in Lieu of Law Number 1 of 2020 concerning Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic and / or in order to face threats that endanger the National economy and / or Financial System Stability (Perppu No.1/2020)
- c. Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in order to accelerate the handling of Covid-19 (PP No. 21/2020).

Considering that the implementation of the health quarantine policy is a shared responsibility between the central government and regional governments, it is necessary to carry out good coordination between the two of them. Where must carry out several activities, such as monitoring disease and public health risk factors for transportation means, people, goods, and / or the environment, as well as from responsiveness to a health emergency in the community in the form of health quarantine [5].

Determination of regional quarantine in accordance with the law is urgently needed. Because it is closely related to the realm of the Indonesian legal order, namely in accordance with the function of Pancasila as the basis of the state ideology. In line with the thoughts of Hans Kelsen, Gustav Radbruch and Hans Nawiasky, the idea that Pancasila is a kind of "Leitstern" (guiding star) directs law not to itself but to what society aspires to (including social justice for all Indonesians as focus of this study) [6]. Furthermore, in applying the rules regarding health quarantine during the Covid 19 Pandemic, it must meet the elements contained in the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights and the 1945 Constitution, the public has the right to get protection and health insurance from the State so that It is clear that the legal protection obtained is in accordance with justice and legal certainty. So that in making laws and regulations that become legal products must be based on human rights and must go through scientific studies, because bad legal products are still called legitimate laws if they do not violate the constitution [7].

2. The Problem of Implementing The Regional Quarantine Policy

The Undang-Undang Nomor 6 tahun 2018 tentang Keekarantinaan Kesehatan concerning Health Quarantine states that health quarantine measures can be carried out in two ways. First, conduct health quarantine at the entrance and second, implementing health quarantine in the region. In Undang-Undang Nomor 6 tahun 2018 tentang Keekarantinaan Kesehatan statet that the Regional Quarantine is the limitation of the population in an area including the Entrance Gate area and its contents suspected of being infected with a disease and / or contamination in such a way as to prevent the possibility of spreading disease or

contamination. In terms of implementing health quarantine in areas, there are four (4) types of action, namely home quarantine, regional quarantine, hospital quarantine, and PSBB. When an area implements health quarantine, the area should limit every movement of people and / or goods for a certain province or district / city in an effort to cut the spread of Covid-19. The limitation in question is to minimize any activity that involves many people and leaving the house, such as school, work, including limiting religious activities and / or also limiting activities in public facilities.

Even though it is carried out strictly on the activities of residents, in its application of the area quarantine there tends to be a lack of good and equitable socialization to all residents, so that violations often occur in the territorial quarantine. Many parties said that the implementation of the regional quarantine policy that closed schools and workplaces did not take into account the fulfillment of the right to education, work productivity which led to the dismissal of workers. In their journals, Putu Lantika Oka Permadhi and I Made Sudirga also said that The government also pays less attention to fulfilling the basic rights and needs of the population when imposing restrictions on activities in public areas and in public facilities. The term "basic needs of the population" means, among others, the need for health services, food needs and other daily needs [8].

In some cases, there are even several regions in Indonesia that carry out regional quarantine secretly, without any basis and coordination between the central and regional governments. As a result, various community activities are disrupted due to the limited movement of residents. This is not only detrimental to society in fulfilling their daily needs, but also in terms of human rights and legal certainty. As Roscoe Pound argues with his theory, Law as a tool of social engineering or Law is a tool to renew or engineer society. So in implementing the territorial quarantine policy, it should not conflict with the rights of citizens and should be able to run in accordance with and side by side with the existing pandemic conditions without endangering public health.

The implementation of the regional quarantine policy which has been carried out secretly is deemed to have departed from the standard stipulated Undang-Undang Nomor 6 tahun 2018 tentang Kekarantinaan Kesehatan. Based on it, to implementing regional quarantine policy, the Central Government should determine the status of a Public Health Emergency. Unfortunately, until now, the Government Regulation on implementing the Undang-Undang Nomor 6 tahun 2018 tentang Kekarantinaan Kesehatan, regarding the technical procedures for the enforcement of these two matters has not yet been discussed and even ratified. Yafet Y W Rissy in his journal said that although the government can use discretionary reasons, the policy of imposing regional quarantine should not be carried out without transparency and without careful calculations, which in turn ignores the rights of local residents that should be obtained in the Territorial Quarantine situation. Because the implementation of regional quarantine is not only a matter of authority or bureaucratic nature, but more than that to ensure that the arrangement is not arbitrary and its implementation does not go beyond what is stipulated. Even in a health emergency condition, the legal construction that is built should be extraordinary legal construction, not the opposite or just ordinary. If the law is not strong, has no authority, and moreover, the law no longer contains certainty, then the law has less binding power to society and will only create legal uncertainty. In his further explanation, Yafet Y W Rissy said that law is far from the goal of its existence, which in the sense of a formal law state, at least wants to make law an instrument for government action to create legal certainty for citizens, protect citizens' rights and to achieve legal justice and substantive justice [9].

3. Legal Protection for Citizen Rights during Regional Quarantine

The Covid-19 pandemic is a difficult time for every country, where almost all government policies have changed to make adjustments or adaptations. Besides that, the formulation of policies during the Covid 19 pandemic was a complicated issue, because previously there was no precedent that could be applied. In a complex situation like today, the law tends to become weak and does not have the ability to create legal certainty and justice, let alone achieve its ideal goal of social prosperity. The slow application of policies and the simplicity of regulations that are applied tends to under-protect the rights of citizens that should be obtained. Referring to pasal 4 of the Covenant on Civil and Political Rights which has become Indonesian law with Law 12/2005, it states that in an emergency that threatens the life of the nation and its existence, which has been officially announced, the states parties to this covenant can take steps that are reduce their obligations under this Covenant. Therefore, it is necessary that the central government and regional governments in implementing the regional quarantine policy pay attention to the welfare of citizens, guarantee the protection of citizens' rights, and avoid secretly implementing regional quarantine [10].

In the provisions of pasal 7, pasal 8, pasal 39, pasal 52, pasal 55, and pasal 79 of Undang-Undang Nomor 6 tahun 2018 tentang Kekarantinaan Kesehatan and pasal 8 jo. pasal 5 Undang-undang No. 4 Tahun 1984 tentang Wabah Penyakit Menular, it has been written about the rights of citizens that must be fulfilled by the central government and local governments and related agencies in the event of an infectious disease outbreak, a public health emergency situation, and is in a Regional Quarantine or in the status of Large-Scale Social Restrictions [11]. In the context of the Covid19 pandemic, of course this can be a reference for protecting citizens' rights when implementing regional quarantine, which includes:

- a. The right to basic health services according to medical needs;
- b. The right to get food needs and other daily needs;
- c. The right to receive the same treatment in the administration of Health Quarantine;
- d. The Government has the right to fulfill the basic necessities of life and fodder for livestock, which implementation involves the Central Government, Local Government and related parties;
- e. For every person who comes from a country and / or area of a Public Health Emergency, he / she is entitled to get services from a Health Quarantine Official which includes: (1) Screening; (2) Health Vigilance Card; (3) Information on procedures for prevention and treatment of outbreaks; (4) Taking specimens / samples; (5) Reference; and (6) Isolation;
- f. The right to receive compensation due to loss of property caused by efforts to contain the epidemic;
- g. The right to obtain Health Quarantine information as an effort to prevent and eradicate the entry and / or exit of events and / or risk factors that may cause a Public Health Emergency.

In an effort to fulfill the basic rights of citizens during the COVID-19 pandemic situation, the status of public health emergencies, home quarantine, and regional quarantine, the central and local governments should be ready to calculate the budget allocation for funds to fulfill the basic rights of these citizens. In addition, the government must prioritize the allocation of assistance and mitigation for the prevention of Covid19, especially for vulnerable groups, especially underprivileged people, women, children, the homeless, informal workers with disabilities, minority groups, and others, which these groups are often neglected and difficulty getting access to the rights of citizens.

According to Asfinawati, Chairperson of the Indonesian Legal Aid Foundation (YLBHI) quoted by Kompas.com on March 20, 2020, said that basically there are citizens' rights that should have been obtained during the Covid10 pandemic, such as the right not to be dismissed from work or derived from position, the

right to be actively involved in fighting the outbreak, to the right to recover from the impact of Covid19 [12]. In her further explanation said that one of the efforts to protect citizens' rights is to collect data regarding the number of citizens entitled to assistance. In principle, the stipulation of a regional quarantine policy must pay attention to guaranteeing the protection of human rights for citizens from all sides and under any circumstances citizens should not basically be limited to their activities. However, because the constitutional rights originate from the state, the state can take back the right to freedom of citizens to move. One of them is the implementation of regional quarantine, at first glance it looks contrary to human rights, but this is not a violation if it is applied during a pandemic, because the state has the responsibility to protect everyone. As long as the restrictions imposed by the state are regulated in written regulations and are not carried out secretly.

In order to apply the principles of legal protection in carrying out regional quarantine, one must use the Pancasila as the state ideology and philosophy. The conception of legal protection for people in the West is based on the concepts of *Rechtstaat* and "Rule of The Law". By using the Western conception as a framework of thinking based on Pancasila, the principle of legal protection in Indonesia is the principle of recognition and protection of human dignity which is rooted in Pancasila. The principle of legal protection against government actions rests on and originates from the concept of recognition and protection of human rights because according to its history in the West, the birth of the concepts of recognition and protection of human rights is directed at limiting and placing the obligations of society and government [13].

CONCLUSION

1. In an effort to minimize the spread and take efforts to prevent the corona virus, the Indonesian government is carrying out health quarantine measures in the form of regional quarantine. In its application, regional quarantine has the right to be determined by the central government and local governments. But before that, several actions must be taken, observing the disease or outbreak that occurs and how much risk it occurs. In addition, good coordination between the central and regional governments and socialization to the community is needed so that there are no problems during the implementation of the regional quarantine policy.
2. Although regional quarantine is carried out strictly on the traffic of residents, in its application, regional quarantine tends to lack good and equitable socialization to residents, so that violations often occur. In restricting activities in public or public facilities, the government also pays less attention to meeting the basic needs of the population. What is meant by "the basic needs of the population. As a result, various community activities are disrupted due to the limited movement of citizens. This is not only detrimental to the community in terms of fulfilling daily life, but also in terms of human rights and legal certainty.
3. In the provisions of pasal 7, pasal 8, pasal 39, pasal 52, pasal 55, and pasal 79 of Undang-Undang Nomor 6 tahun 2018 tentang Keekarantinaan Kesehatan and pasal 8 jo. pasal 5 Undang-undang No. 4 Tahun 1984 tentang Wabah Penyakit Menular, it has been written about the rights of citizens that must be fulfilled by the central and local governments and related agencies in the event of an infectious disease outbreak, a public health emergency situation, and is in a Regional Quarantine and Quarantine situation Home or in the status of Large-Scale Social Restrictions, such as the right to get basic health services according to medical needs, the right to get food needs and other daily needs, the right to receive the same treatment in the administration of Health Quarantine, and so on.

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REFERENCES

- [1] <https://www.allianz.co.id/explore/detail/yuk-pahami-lebih-jelas-arti-pandemi-pada-covid-19/101490>
- [2] Undang-Undang Dasar Negara Republik Indonesia Dasar 1945
- [3] Sheereen, M., Khan, S., Kazmi, A., et al. 2020. Covid-19 Infection: Origin, *Transmission and Characteristics of Human Coronaviruses*. Journal of Advanced Research: Elsevier.
- [4] Putu Lantika Oka Permadhi dan I Made Sudirga, "Problematika Penerapan Sistem Karantina Wilayah Dan Psbb Dalam Penanggulangan COVID-19", Jurnal Kertha Semaya, Vol. 8 No. 9 Tahun 2020, hlm. 1356
- [5] Putu Lantika Oka Permadhi dan I Made Sudirga, "Problematika Penerapan Sistem Karantina Wilayah Dan Psbb Dalam Penanggulangan COVID-19", Jurnal Kertha Semaya, Vol. 8 No. 9 Tahun 2020, hlm. 1356
- [6] Sujadi, Suparjo. 2008. Kajian Tentang Pembangunan Proyek Strategis Nasional (PSN) dan Keadilan Sosial (perspektif Hukum Pancasila). Jurnal Hukum Lingkungan 4 Vol. 4 Issue 2, Februari 2008
- [7] Sudiyana, Suswoto. 2018. Kajian Kritis Terhadap Teori Positivisme Hukum Dalam Mencapai Keadilan Substansif. Jurnal Ilmiah Ilmu Hukum QISTIE Vol 11 No. 1, 01 Mei 2018
- [8] Putu Lantika Oka Permadhi dan I Made Sudirga, "Problematika Penerapan Sistem Karantina Wilayah Dan Psbb Dalam Penanggulangan COVID-19", Jurnal Kertha Semaya, Vol. 8 No. 9 Tahun 2020, hlm. 1356
- [9] Yafet Y W Rissy, "Pergeseran Negara Hukum Ke 'Negara Hibauan': Menakar Dampak Regulasi Penanganan Covid-19 Terhadap Perekonomian Dan Keuangan Indonesia", Jurnal Hukum Bisnis Bonum Commune Volume 3 Nomor 2 Agustus 2020, hlm. 222
- [10] Undang-Undang Republik Indonesia Nomor 12 Tahun 2005 Tent Angpengesahan International Covenant On Civil And Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik)
- [11] Undang-undang No. 4 Tahun 1984 tentang Wabah Penyakit Menular
- [12] Fitria Chusna Farisa, "YLBHI Ingatkan Kewajiban Pemerintah Jika Karantina Wilayah Diterapkan", Kompas.com 20 Maret 2020, <https://nasional.kompas.com/read/2020/03/30/13530081/ylbhi-ingatkan-kewajiban-pemerintah-jika-karantina-wilayah-diterapkan>, diakses pada 11 Desember 2020.
- [13] Hadjon, Philipus M. 1987, *Perlindungan Hukum Bagi Rakyat Indonesia*. Bina Ilmu. Surabaya