

MEASURING LEGAL CERTAINTY IN ESTABLISHING REGIONAL LEGAL PRODUCTS: AN ANALYSIS OF HEALTH EMERGENCY AND PUBLIC INTEREST

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Abstract

In the establishment of laws and regulations, the contents of the content material in statutory regulations must reflect legal certainty. Having regional legal products that are designed effectively and efficiently in health emergency situations is very important to provide legal certainty to the community and ensure that the response to the crisis is effective and in accordance with the broader legal framework. The research is a normative legal research. The researcher used a statutory approach and interviews. The data obtained was analyzed qualitatively. The results show that the establishment of regional legal products related to health emergencies in the aspect of legal certainty and usefulness, at least includes subsidiarity, hierarchy of norms, and legal certainty. Overall, this research demonstrates the important role of law in society, particularly in the context of health emergencies. In addition, it also shows how laws, both at the national and regional levels can work together to achieve common goals, protecting the health and welfare of society. Furthermore, this research also shows that the establishment of regional laws in the context of health emergencies is not only about overcoming the current crisis but also preparing the community and local government to face future health crises. In this case, law not only functions as a tool to regulate society, but also as a means to build community resilience and adaptability to public health challenges that may arise in the future.

Keywords: Legal Certainty; Legal Policy; Health Emergency; Public Interest.

1. INTRODUCTION

Government administration that exercised by the government with the issuance of a statutory regulation or decision is often something that is routinely conducted in the administration of the State. The establishment of regulations should be more intended to increase efficiency in the government and provide a sense of justice, certainty, and the usefulness of law for the community. However, at this time, the issue of efficiency does not have to be responded to with regulations or rearranging regulations or enacting as many regulations as possible, which in the end will actually create inefficiency.¹ from a regulatory perspective, good regulatory quality and proportional quantity of regulation is the answer to the problem of inefficient regulation.

In administering government, Indonesia has experienced several problems related to health emergencies, including: 1) Bird flu (*flu burung*), it is caused by a virus influenza type-A (Variant H5N1). Based on reports that in Indonesia it happened for the first time in August 2003; 2) SARS (*severe acute respiratory syndrome*), this case originally came from Guangdong in November 2002, April 2003, and it was found that the cause was a coronavirus. At that time,

various efforts had been made by the Ministry of Health by seeking public awareness, monitoring cases epidemiologically and increasing the knowledge and skills of officers; 3) Swine flu (*flu babi*), emerge in 2009, where it was first discovered in the United States and is caused by a new type of H1N1 influenza virus. This causes available seasonal influenza A and B vaccines useless, and to prevent the spread of these new viruses required a new influenza A vaccine. Finally, Corona Virus Disease 2019 (COVID-19) is a global health problem. This case began with information from the World Health Organization (WHO) on December 31, 2019 which stated that there was a case of cluster pneumonia in Wuhan city, Hubei province, China. On March 11 2020, WHO declared COVID-19 as a pandemic.²

In order to anticipate and resolve health emergency problems as referred to above, the Government has made several regulations at the central level, including the law on Infectious Disease Outbreaks, Act No. 6 of 2018 concerning Health Quarantine, and Act No. 36 2009 concerning Health. However, for several pandemic diseases mentioned above that cause health emergencies, Corona Virus Disease 2019 (COVID-19) is the most serious cause.³ the increasing cases of Corona Virus Disease (Covid-19) transmission and the World Health Organization (WHO) declaring it a global pandemic, make entire community anxious and worried about their health status. Covid-19 disease caused by the SARS-Cov-2 virus or known as corona virus is an acute infectious disease of the respiratory system that has infected millions of people and killed thousands of people in the world, including Indonesia.

In order to prevent economic situation of Indonesia becoming unfavorable, the government is starting to look at the possibility of relaxing social restrictions, and on May 27, 2020 socialization was conducted to the public about the protocol for the new normal order. It is hoped that the government's policy to implement this new normal will go hand in hand with increasing public awareness to maintain strict health protocols because Covid-19 has not completely disappeared. As for regional legal products that regulate the application of discipline and law enforcement of health protocols during the Covid-19 pandemic, which were formed based on an order/delegation from Presidential Instruction No. 6 of 2020 concerning Increasing Discipline and Law Enforcement of Health Protocols in Prevention and Control and Instructions of the Minister of Home Affairs No. 4 of 2020 concerning Technical Guidelines for Compiling Regional Head Regulations in the Context of Implementing Discipline and Law Enforcement of Health Protocols as an Effort to Prevent and Control Corona Virus Disease 2019 in the Regions, in Regional Government, especially in Gorontalo province.

Regional legal products as mentioned above, in Gorontalo province and in Central Sulawesi province contain content material including administrative sanctions as an effort to prevent and control Corona Virus Disease 2019 in the region. Juridically, the establishment of a regional head regulation is different from the establishment of a regional regulation, if the regional head regulation emphasizes the delegation of authority from higher legislation or based on authority. Therefore, even though in the 1945 Constitution, the regional governments have the authority to establish regional head regulations and regulations to conduct autonomy and assistance duties, the establishment of regional head regulations must be an order/delegation/on the authority of higher statutory regulations.

However, the establishment of regional head regulations related to the enforcement of Covid-19 health protocol is not in accordance with or based on the provisions of Act No. 23 of 2014 concerning Regional Government, where the regional government establishes regional head regulations as intended to contain content material, one of which is related to sanctions administration for everyone who violates the health protocol is not an order/delegation from regional regulations or higher laws and regulations.⁴ In contrast, in its establishment it is only in the context of carrying out orders/delegations from presidential instructions and instructions from the Minister of Home Affairs, as well as changes to head regulations the area referred to in the context of implementation of the Circular Letter of the Minister of Home Affairs.

It should be noted that the Presidential Instruction and the Instruction of the Minister of Home Affairs as well as the Circular Letter of the Minister of Home Affairs are not statutory rules (*wittelijk regeling*) but are policy rules (*beleidsregels*), which cannot be used as a reference or basis for the establishment of regional regulations and regional head regulations. The content material related to the imposition of administrative sanctions for anyone who violates the health protocols contained in the regional head regulations as intended is the content material that should be contained in regional regulations.⁵ Therefore, the material contained in regional head regulations should only be related to the technical application of administrative sanctions, namely the procedure for imposing administrative sanctions.

In the establishment of laws and regulations, the contents of the content material in statutory regulations including the establishment of regional legal products in the establishment of regulations must reflect legal certainty, so with legal certainty these regulations can become a limit for the community in carrying out an action from one person over another. The existence of a limitation in a legal regulation is that it cannot contain substances that tend to lead and have multiple meanings or are called multiple interpretations if it is correlated with another statutory regulation or another applicable norm. There was a conflict of norms and values and principles of human rights in the formation of regional legal products for the enforcement of health protocols during the Covid-19 pandemic in providing or guaranteeing legal certainty and benefits.

2. METHODOLOGY

The research is a normative legal research.⁶ The researcher used a statutory approach and interviews. The data obtained was analyzed qualitatively. Qualitative analysis is an analysis to describe qualitatively in the form of regular, coherent, logical and effective sentences, so as to facilitate interpretation of data and understanding of research results. Before analyzing the data, the data obtained was organized, then analyzed qualitatively and presented descriptively.

3. RESULTS AND DISCUSSION

3.1. The Essence of Establishing Regional Legal Products During Health Emergencies

In the last few decades, not a few regional law products have been formed without going through the mechanism process of an integrated, structured and planned program resulting in the results of the regional regulation products being less than optimal. The regional legal products produced were later amended and even canceled because they conflicted with higher laws and regulations. In this regard, the position of the Planner for Formation of Regional Legal Products is very important, bearing in mind that it is the basis or reference for the regional government to carry out the development process.

In the establishment of a good regional legal product, several provisions are required. In general, these provisions are divided into several stages, such as planning, preparation, formulation, discussion, ratification, promulgation, and dissemination. Understanding the existence of Planning for the Formation of Regional Legal Products has now become quite popular, but is only deeply imbued as an obligation carried out as a form of regulatory mandate.⁷ It is necessary to pay attention to the regional government that good planning for the establishment of regional legal products will be the key to the creation of regional legal products that are planned, directed and integrated and can be implemented in a real way and according to the needs of the community.

This is illustrated in initial research that the birth of the idea of *Raperda*, *Raperkada*, *Perda* and *Perkada* has been established but cannot be implemented and is not even in accordance with higher regulations. Based on the description above, it can be interpreted that there is a lack of harmony or understanding of the existence or position of planning for the establishment of regional legal products. The lack of an integrated, structured and planned program mechanism in the establishment of regional legal products can result in less than optimal results. This requires a well-organized system to ensure that all stages in the establishment of regional legal products can be carried out efficiently and effectively.

Non-compliance with higher laws and regulations. The resulting regional legal products are often amended or canceled because they conflict with higher laws and regulations. It shows the need for an in-depth understanding of the hierarchy of laws and regulations and consistency with higher regulations in the establishment of regional law products.

During a health emergency, an in-depth understanding of the planning for the establishment of regional legal products is very important. This is because an emergency situation requires a quick and effective response, which can only be achieved if there is a good understanding of the process and objectives of establishing the regional law products. This understanding will help regional governments make the right and effective decisions in dealing with the pandemic. Based on this, the establishment of regional legal products during health emergencies plays a very important role in efforts to deal with pandemics and post-pandemic recovery. Although there are some challenges faced, such as the lack of an integrated program mechanism, incompatibility with higher laws and regulations, and a lack of in-depth understanding of planning for the establishment of regional law products, through better understanding and

stronger cooperation between the central and local government, regional legal products can be an effective tool to overcome the health crisis. The key is openness, coordination, and a strong commitment from all parties to ensure that the regional law products that are made really reflect and respond to the needs of the community in times of health emergencies.

The establishment of regional regulations during health emergency is important to ensure effective coordination between the central and local government. Regional regulations can function to implement and adjust central policies according to regional specific conditions.⁸ For example, in terms of determining and implementing social distancing protocols, or in providing protection and safety for medical personnel. However, the importance of regional regulations must be balanced with the need for transparency and accountability. Local governments must ensure that their communities understand and support the measures taken, and these measures are truly effective in preventing the spread of the virus. In addition, monitoring and accountability mechanisms must be in place to ensure that the policies implemented are truly effective and are not misused.⁹

In this context, issues related to the handling of COVID-19 in Indonesia highlight the importance of coordination, transparency and accountability in public policy making, especially during a public health crisis.¹⁰ The polemic on handling COVID-19 in Indonesia shows a number of important issues in the establishment of regional legal products during a health emergency.

Table 1: Analysis of Legal Substance in Handling Covid-19 Pandemic in Indonesia

No.	Legal Substance	Issues	Analysis
1	Act No. 36 of 2009 concerning Health	Delays and lack of transparency of the central government in providing information and policies for handling COVID-19	The central government needs to increase speed and transparency in providing information and policies related to COVID-19 so that regional governments can respond appropriately and quickly through the establishment of regional regulations according to the local context
2	Act No. 23 of 2014 concerning Regional Government	Lack of coordination between central and local governments	Effective coordination between central and local governments is very important in handling the pandemic. The regional regulation can serve as a tool to adapt central policies to local contexts, but this requires good communication and coordination
3	Government Regulation of the Republic of Indonesia No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Management of Corona Virus Disease 2019 (COVID-19)	Lack of protection and safety for medical personnel	Health officers are at the forefront of handling a pandemic and need adequate protection and work safety. The regional regulation can serve to set work safety standards and compensation for health officers

Source: Primary data (2023).

Based on the table above, several important things to pay attention to are: *The first*, there is a need to build a stronger coordination mechanism between the central and regional governments. Act No. 23 of 2014 concerning regional government gives the authority to adapt central policies to suit the local context through regional regulations. However, in handling COVID-19, there has been a polemic regarding the level of speed and transparency of the central government in providing information and policies that affect the quality of regional regulations made by regional governments.

The second, the importance of transparency and accountability in the establishment and implementation of regional regulations. Communicable diseases like COVID-19 require a quick and effective response, and local regulations must reflect this. However, there are concerns that some the rules may not be sufficiently transparent or accountable, given the level of urgency and need for rapid action. *The third*, there is a need to protect the rights and welfare of health officers. In the context of a pandemic, health officers are at the forefront and they need special protection, both in terms of work safety and compensation. Regional regulations can play an important role in this regard, for example by establishing work safety standards and compensation for health officers. Thus, in the context of the polemic on the handling of COVID-19, the establishment of regional legal products can be an important tool for dealing with the various issues above, as long as it is carried out in a transparent and accountable manner.

3.2. The Concept Of Establishing Regional Legal Products Related To Health Emergencies Based On The Establishment Of Laws And Regulations

Przeworski in public participation theory emphasizes the importance of community involvement in the public decision-making process.¹¹ In this context, the community is expected to be able to actively provide input and criticism in the process of establishing regional regulations, so that the resulting regional regulations truly reflect their needs and aspirations. Przeworski argues that public participation in public decision-making processes allows communities to play an active role in creating the policies and regulations that affect them.¹² In this way, the resulting policies and regulations are more likely to reflect the needs and aspirations of society.

The process of establishing a regional regulation begins with planning, where ideas regarding a regional regulation are prepared based on the needs and aspirations of the community. Then, these ideas are formulated into a draft of regional regulation by the regional government or members of the local legislature. Then, the draft of rules is discussed in a council meeting to get approval and become a regional regulation. In the establishment of legislative regulations, there are at least several guidelines that must be developed in order to understand the principles of forming good legislative regulations (*algemene beginselen van behorlijke regelgeving*) correctly.¹³ In this regard, the establishment of good regional regulations, apart from being guided by the principles of establishing a good legislative regulations (*beginselen van behoorlijke wetgeving*), also needs to be based on the principles of general law (*algemene rechtsbeginselen*), which consists of state principles based on law (*rechtstaat*), the government based on a constitutional system, and a state based on people's sovereignty.

In the context of establishing the regional regulations related to health emergencies, these principles become even more important. For example, the principle of openness indicates that the process of establishing a regional regulation must involve as much public participation as possible. In health emergencies, community participation can help ensure that the regional regulations produced truly reflect the needs and aspirations of the community. In the context of a health emergency, the process of establishing a regional regulation must be able to adapt to the situation.¹⁴ For example, the process of establishment can be accelerated to immediately handle emergency situations, and community participation can be carried out through safe and healthy mechanisms, such as through online media. The results of research show that the process of establishing a regional legal product in the context of a health emergency has several challenges and opportunities. In the context of a health emergency, such as the COVID-19 pandemic, it is important to ensure that the process of establishing regional regulations can take place quickly and effectively without neglecting basic principles in establishing regional regulations such as community participation.

Based on the table, it can be seen that Act No. 23 of 2014 provides a strong legal basis for the establishment of a regional regulation. However, in the context of a health emergency, the process for establishing a regional regulation may need to be adapted. As suggested by the Ministry of Home Affairs, public participation in the establishment of regional regulations may need to be carried out through safe and healthy mechanisms, such as through online media. However, it should be remembered that the rapid and effective establishment of regional regulations in the context of a health emergency must not sacrifice the basic principles in the establishment of regional regulations. It means that local governments must continue to ensure that the regional regulations produced reflect the needs and aspirations of the community, and are in accordance with applicable laws and regulations. Therefore, the establishment of regional legal products related to health emergencies must be carried out by considering a balance between the need for a rapid and effective response to emergency situations, and the need to maintain the basic principles in establishing regional regulations.

Even though the regional governments have fairly broad authority, their effectiveness in responding to health emergencies is sometimes hampered by limited resources and inter-regional coordination. Improving local government capacity and resources is very important, both in terms of personnel, finance, and infrastructure. In addition, it is also necessary to improve inter-regional coordination mechanisms. According to Oates's theory of decentralization¹⁵, regional governments must have sufficient autonomy to respond to local needs, but still require coordination with the central government and other regions for cross-regional issues. The quality and effectiveness of regional regulations related to managing health emergencies is very dependent on the capacity and commitment of regional governments, as well as community support and participation. Improving the capacity and commitment of local governments in formulating and implementing regulations, as well as building community participation in the process. According to Fuller's legal theory¹⁶, law must be applied fairly, consistently, and take into account the interests of society. There are challenges in implementation, especially related to the issue of affordability and quality of health services, as well as preparedness in dealing with emergency situations.¹⁷ Increasing investment and

attention to the health sector, both in terms of infrastructure, personnel and services. Rawl's theory of social justice¹⁸ emphasizes the importance of ensuring fair and equitable access to basic services, including health. Based on this, the content and adjustments to regional legal products related to health emergencies emphasize the importance of comprehensive and clear regulations. This includes the importance of in-depth knowledge and understanding of legal structures, as well as a clear understanding of how laws and regulations operate at different levels of government. When formulating regional regulations related to health emergencies, local governments must ensure that these regulations do not conflict with higher laws.

As result, this is important to ensure legitimacy and compliance with the regulations. However, in responding to a health emergency, coordination between central and local government is also very important. Therefore, a comprehensive and clear mechanism for this coordination should be stipulated in regulations. Theory of Good Governance emphasizes the importance of mechanisms like this in achieving efficiency and effectiveness in government management.¹⁹ Finally, in the process of adjusting local law products, community participation is also very important. The community must be involved in the process of forming laws and regulations, as well as in monitoring their implementation. This is in line with the theory of participatory democracy, which emphasizes the importance of community participation in decision-making processes that have legal certainty.

4. IMPLICATIONS AND RECOMMENDATIONS

An ideal construction of the establishment of regional legal products related to health emergencies in the aspect of legal certainty and usefulness, at least includes subsidiarity, hierarchy of norms, *lex specialist derogat legion generality*, and legal certainty. Having regional legal products that are designed effectively and efficiently in health emergency situations is very important to provide legal certainty to the community and ensure that the response to the crisis is effective and in accordance with the broader legal framework. Overall, this research demonstrates the important role of law in society, particularly in the context of health emergencies. In addition, it also shows how laws, both at the national and regional levels can work together to achieve common goals, protecting the health and welfare of society. Furthermore, this research also shows that the establishment of regional laws in the context of health emergencies is not only about overcoming the current crisis but also preparing the community and local government to face future health crises. In this case, law not only functions as a tool to regulate society, but also as a means to build community resilience and adaptability to public health challenges that may arise in the future.

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Declaration of Interest

Authors declare there are no competing interests in this research and publication.

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