

JURIDICAL REVIEW OF CIVIL LIBERTIES IN LARGE-SCALE SOCIAL RESTRICTIONS DURING THE COVID 19 PANDEMIC

KHOLILUR ROCHMAN^{1*}, RETNO SARASWATI², and DEDI PRASETYO³

¹ Student of Doctoral Program in Law, Faculty of Law, Diponegoro University, Jl. Prof. Soedarto, SH., Tembalang, Semarang, Indonesia. *Corresponding Author Email: kholilurrochman@students.undip.ac.id

^{2, 3} Lecturer of Doctoral Program in Law, Faculty of Law, Diponegoro University, Jl. Prof. Soedarto, SH., Tembalang, Semarang, Indonesia.

Abstract

This study aims to analyze civil liberties in large-scale social restrictions during the Covid-19 pandemic. This type of research is normative legal research, with library research methods, with the approach used is a statutory approach, a concept approach, and a case approach. The results showed that 1) the legal framework for the implementation of Large-Scale Social Restrictions (PSBB) during the Covid-19 Pandemic Period was based on the following laws and regulations: a) Presidential Decree (Keppres) No. 11 of 2020 concerning the Determination of Public Health Emergency Status, b) Government Regulation (PP) No. 21 of 2020 concerning Large-Scale Social Restrictions. c) Regulation of the Minister of Health of the Republic of Indonesia No. 9 of 2020, followed by various regional laws and agencies related to handling Covid-19. 2) The Implications of Large-Scale Social Restrictions on Civil Liberties in the Pandemic Period show that there have been various incidents of restraint on civil liberties, as a result of the reduction of rights during health emergencies that do not respect the principles that must be adhered to such as proportionality, necessity, do not conflict with other obligations in international human rights law, and are not discriminatory.

Keywords: PSBB, Civil Liberties, Covid 19, Human Rights.

A. INTRODUCTION

The COVID-19 pandemic has caused various aspects to be affected, both socio-culturally and the world economy is weakening. This situation certainly cannot be allowed because it will cause a prolonged crisis, in order to handle it as a state of law, of course, legal instruments in the form of laws and regulations are needed. The President has issued various laws and policies, including Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of COVID-19 Handling, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) in the Framework of Accelerating COVID-19 Handling, Presidential Decree Number 11 of 2020 concerning Determination of Public Health Emergency Status, Perppu No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling COVID-19 pandemic, Presidential Decree Number 54 of 2020 concerning Changes in Posture and Details of the State Budget for Fiscal Year 2020 and finally Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters for the Spread of COVID-19 as National Disasters.¹

The designation of Covid 19 as a National Disaster makes the declaration of civil emergency indeed surprising. Without explanation to the public, it is not surprising that the government actually seems to be legally panicked, with the reality of failing to prevent the spread of the Covid-19 pandemic. So when viewed as a state of emergency, the government seems to use

emergency constitutional shortcuts, namely through the content regulated in article 12 of the 1945 Constitution. Constitutionally, a state of danger is regulated through 3 (three) doors. First, Regulation in Lieu of Law (Perppu) 23/1959 concerning the Determination of Dangerous Conditions. Second, Law 24/2007 on Disaster Management. And third, Law 7/2012 on Social Conflict Handling. Of the three, the most legally relevant is the second door. This is because article 1 point 3 of Law 24/2007 states that non-natural disasters are disasters caused by non-natural events or series of events which, among others, are in the form of technological failures, failed modernization, epidemics, and disease outbreaks.²

The relevance of the declaration of emergency needs to be reviewed, because the status of civil emergency is regulated in Law 6/1946 whose substance is part of the *staat van oorlog en beleg (SOB), the colonial legacy of the Dutch East Indies period (Regeling op de Staat van Oorlog en van Beleg Stbl. 39-582.)*. The law was repealed by Law 74/1957, and amended by Perppu 23/1959. The explanation of Article 1 of Perppu 23/1959 states five conditions categorized as the basis for the President to impose a state of danger, namely with three levels of circumstances, in the form of civil emergency, martial law and a state of war.

Five conditions as conditions must be met, among others: rebellion (armed riots), riots, civil war, natural disasters and war. The Covid-19 pandemic is clearly not fulfilled in the door of Perppu 23/1959. Moreover, the authority given to the "civil emergency authority", namely the president with the assistance of "the first minister, the minister of security/defense, the minister of interior and regional autonomy, the minister of foreign affairs, the chief of staff of the Army, the chief of staff of the Navy, the chief of staff of the Air Force, and the chief of police of the country". Because it does not take care of outbreaks or diseases, it is clear that the involvement of health officials is missing in these policymakers. Meanwhile, from a human rights point of view, the state of civil emergency confirms its repressive character. For example, restrictions on freedom of expression, association, and assembly (articles 13 and 14 paragraph 1), confiscation of goods considered to disturb security (article 15 paragraph 1), suppression of the press (article 17 paragraph 1), and inspection of body and clothing by the police (article 20).³

The situation in the civil emergency status has strengthened in practice in the field with the issuance of the Declaration of the Chief of Police Number Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Spread of Covid19. National Police Chief Idham Azis also emphasized it in a working meeting with Commission III of the House of Representatives (Tuesday, 31/3), stating that the police support the government's plan to implement civil emergency in handling the Covid-19 pandemic. The unexpected and unavoidable thing from this pandemic is related to the issue of fulfilling the civil, political, economic, social and cultural rights of citizens. On the other hand, when the Large-Scale Social Restrictions (PSBB) policy is imposed in various regions, the issue of freedom of citizens to carry out economic activities, religious rituals and express opinions, especially on social media, often surfaces. How far the state protects the space for civil liberties is one of the main questions.⁴

The COVID-19 pandemic has also worsened the condition of civic space and democracy in Indonesia. When human rights protection work by civil society stagnates due to limited space for movement, state repression intensifies. Under the pretext of an emergency situation, the state repeatedly ignored the fulfillment of civil rights and the provisions of the applicable reduction of rights. This can be seen from the increasing incidents of prohibition of freedom of assembly by police officers followed by the indiscriminate use of articles in convicting perpetrators. Socio-economic conflicts and civil emergency discourse that continue to loom over society during the pandemic are also concerns in the issue of narrowing civic space. The dwarfing of civic space during the pandemic is the focus of this report. It lays out a long list of violations of civil society rights due to the negligence of the authorities and the government in observing the rules limiting or reducing the rights of citizens in emergencies. With or without a pandemic, this is a real threat to the survival of democracy in Indonesia.⁵

Shrinking Civic Space or narrowing the space of civil liberties is a restraint on the basic rights that underlie civil society freedoms, namely the rights to freedom of association, assembly and opinion. *Shrinking Civic Space* limits the space for civil society to participate in claiming their rights and influencing the political and social structures around them. These rights have long been recognized in international human rights covenants and declarations that have been adopted and ratified by Indonesia and constitutionally guaranteed in the 1945 Constitution. Article 28 (E) of the 1945 Constitution states that everyone has the right to freedom of association, assembly and expression. The three main rights of civil liberties above are derogable rights or rights that can be limited or reduced in fulfillment. However, this does not automatically justify any restriction or reduction of these rights. International human rights law provides certain conditions and conditions that states must meet before limiting or reducing *derogable rights*.⁶

Another thing that concerns the public is the government's slow pace in issuing legal products reflected in the recent issuance of Government Regulation on PPSB Guidelines or known as PP No. 21 of 2020. In fact, this law was made last year but the fundamental question is "Why it is only made now?" To answer this, the public needs to see the closing provisions contained in article 96 of the Health Quarantine Law as follows:

- (1) The implementing regulations of this Law shall have been established no later than 3 (three) years from the promulgation of this Law."⁷

Based on the above, it can be concluded that there is no problem with this matter juridically because it is in accordance with existing provisions. However, the logic of legal positivism cannot be used as legitimacy for the government to be slow to issue *a quo* PP because if we look at the existing reality, the government has more than enough time for two months before the outbreak of this outbreak by ratifying this PP sooner.⁸

Based on the description above, the author is interested in examining civil liberties from a human rights perspective during the Covid 19 pandemic in a study entitled JURIDICAL REVIEW OF CIVIL LIBERTIES IN LARGE-SCALE SOCIAL RESTRICTIONS DURING THE COVID 19 PANDEMIC.

B. DISCUSSION

1. Legal Framework for Large-Scale Social Restrictions During the Covid 19 Pandemic

Since the announcement of the first case of COVID-19 in Indonesia on March 2, 2020, the central government has issued a number of legal products as an effort to handle the COVID-19 pandemic which has an impact on civil liberties, including:⁹

1. Presidential Decree (Keppres) No. 11 of 2020 concerning the Determination of Public Health Emergency Status (Presidential Decree No. 11/2020)
2. Government Regulation (PP) No. 21 of 2020 concerning Large-Scale Social Restrictions (PP No. 21/2020)
3. Regulation of the Minister of Health of the Republic of Indonesia No. 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Framework of Accelerating the Handling of Coronavirus Disease 2019 (COVID-19) (Permenkes RI No. 9/2020)

All three are derivatives of Law No. 6 of 2018 concerning Health Quarantine. Although the determination of the status of Public Health Emergency (KKM) is considered the right step because it is based on threats to public health due to infectious diseases.

The condition of the Covid-19 pandemic has been responded by the Indonesian government by issuing Presidential Decree Number 11 of 2020 on March 31, 2020 concerning the Determination of the Corona Virus Disease 2019 (Covid-19) Public Health Emergency. This is motivated by the extraordinary spread of Corona Virus Disease 2019 (COVID-19), characterized by the number of cases and/or the number of deaths has increased and expanded across regions and across countries and has an impact on political, economic, social, cultural, defense and security aspects, as well as the welfare of people in Indonesia. So with reference to Law Number 6 of 2018 concerning Health Quarantine, Covid-19 is seen as a type of disease that causes a Public Health Emergency.¹⁰

The selection of Large-Scale Social Restrictions as an effort for Health Quarantine still draws criticism from the public. Before PP No. 21.2020 concerning PSBB was stipulated by President Joko Widodo, several Regional Heads had first signaled the implementation of lockdowns in their respective regions since mid-March. Not only the Governor and Mayor, in the scope of RWs, residents also agreed to set a lockdown for the common good. The president then refuted these decisions by affirming the authority of the central government to determine the efforts taken. The Health Quarantine Law explains several risk factor mitigation measures in the KKM area, including Home Quarantine, Regional Quarantine, Hospital Quarantine, and Large-Scale Social Restrictions (PSBB). The lockdown typology basically refers to the Regional Quarantine of the Health Quarantine Law. Unlike the PSBB, Regional Quarantine has several more specific handling steps in the Health Quarantine Law.¹¹

Responding to the pros and cons of implementing PSBB and Regional Quarantine (*lockdown*), President Jokowi emphasized that PSBB was chosen according to the specificity or characteristics of the situation in Indonesia such as the number of population, islands in the archipelago and demographics that are so large. So according to him, this decision cannot be

equated with the choice of other countries to implement lockdowns. However, the matter of public concern is the absence of government obligations in meeting the basic living needs of the community during the PSBB period. Ironically, this was emphasized by the Chief of Presidential Staff, Moeldoko, as the reason for choosing PSBB as an effort to handle COVID-19 rather than Regional Quarantine. According to him, the issue of fulfilling these obligations is a difficult problem. He also said that in a pandemic situation, not only the safety of people's lives must be prioritized, but also economic activities that should not die.¹²

At a limited meeting at the Bogor Palace, President Jokowi also threw a discourse on the determination of civil emergency in tandem with PSBB.¹⁵ civil emergency in question refers to the Regulation in Lieu of Law No. 23 of 1959 concerning the Repeal of Law No. 74 of 1957 and the Determination of Dangerous Conditions (Perpu No. 23/1959). According to Acting Deputy IV of the Presidential Staff Office for Political Communication Juri Ardiantoro, this discourse is actually only a last resort and will only be determined if there is chaos and disobedience that disrupts social stability. In fact, the plan to declare civil emergency is only a 'warning' from the President so that the public complies with the provisions of the PSBB.¹³

Although claimed to be only a 'warning', the above discourse received strong criticism. The hashtag #TolakDaruratSipil went viral on social media followed by statements of rejection by various civil society coalitions. This is because the implementation of Civil Emergency is not based on health threats but rather on threats to the security and integrity of the country.

Article 1 of Perpu 23/1959 Enforcement of Civil Emergency

"The President/Supreme Commander of the Armed Forces declares all or part of the territory of the Republic of Indonesia to be in a state of danger with the level of a civil emergency if:

1. Security or legal order throughout the territory or in part of the territory of the Republic of Indonesia is threatened by rebellions, riots or due to natural disasters, so it is feared that it cannot be overcome by ordinary equipment;
2. War arises or danger of war or fear of rape of the territory of the Republic of Indonesia in any way;
3. The life of the State is in danger or from special circumstances it turns out that there are or it is feared that there are symptoms that can endanger the life of the State.

In addition to the three sets of regulations above, the police issued three instruments to support the implementation of PSBB in the regions, namely:

1. Declaration of the Chief of National Police Number Mak/2/III/2020 concerning Compliance with Government Policies in Handling the Spread of the Corona Virus;
2. Telegram letter ST/1100/IV/HUK.7.1./2020; and
3. Telegram letter ST/1098/IV/HUK.7.1./2020.

The Declaration of the Chief of Police reiterated the restrictive provisions in the PSBB, namely not holding social community activities that cause large gatherings of people, both in public

places and within the police including social gatherings, cultural activities, rallies, private family receptions and others. However, it should be underlined that the Declaration of the Chief of Police also emphasizes the obligation of members of the National Police to take necessary police action if they find acts that contradict the contents of the Information. On the other hand, the issuance of Telegram 1100 is considered an effort to handle the situation in cyberspace in line with the government's unpreparedness in handling the COVID-19 outbreak which continues to attract criticism. Telegram 110 ordered police to increase "cyber patrols" targeting not only hoaxes related to the COVID-19 pandemic, but also insults to rulers, presidents and government officials, as well as government policies in anticipation of the spread of the outbreak.

The PSBB technical guidelines are regulated in the Minister of Health Regulation Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Framework of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19). The criteria for PSBB are the number of cases and/or the number of deaths due to the disease increases and spreads significantly and rapidly to some regions and there is an epidemiological link with similar events in other regions. The proposal is accompanied by data on increasing the number of cases by time, the spread of cases by time and the incidence of local transmission.

Furthermore, the implementation of PSBB is based on the following laws and regulations:

- 1) Government Regulation Replacing Law of the Republic of Indonesia Number 1 of 2020 concerning Financial Policy and Financial Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in Dealing with Threats that Endanger the National Economy and/or Financial System Stability;
- 2) Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19);
- 3) Presidential Decree Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Covid-19 Handling;
- 4) Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergencies Due to Corona Virus Disease 2019 (Covid-19);
- 5) Presidential Instruction of the Republic of Indonesia Number 4 of 2020 concerning Refocusing, Reallocation of Budget, and Procurement of Goods and Services in the context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19)
- 6) Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the context of Accelerating the Handling of Corona Virus Disease 2019;
- 7) Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 20 of 2020 concerning the Acceleration of Handling Corona Virus Disease 2019 (Covid-19) in Local Government Environments;

- 8) Regulation of the Minister of Transportation of the Republic of Indonesia Number PM 18 of 2020 concerning Transportation Control in the Framework of Preventing the Spread of Corona Virus Disease 2019 (COVID-19)
- 9) Decree of the Minister of Finance Number 6/KM7/2020 concerning the Distribution of Physical Special Allocation Funds for the Health Sector and Health Operational Funds for Handling Corona Virus Disease 2019 (Covid-19);
- 10) Decree of the Minister of Finance Number S-239/MK.02/2020 concerning Monthly Incentives and Death Compensation for Health Workers Handling Covid-19;
- 11) Decree of the Minister of Health Number HK.01.07/Menkes/215/2020 concerning the Utilization of Special Allocation Funds for the Health Sector for the Prevention and/or Handling of Covid-19 FY 2020;
- 12) Minister of Home Affairs Instruction Number 1 of 2020 concerning Prevention of the Spread and Acceleration of Handling Corona Virus Disease 2019 in Local Government Environments;
- 13) Circular Letter of the Minister of Finance Number S-247 / MK.07 / 2020 concerning Termination of the Procurement Process of Goods and Services Physical Special Allocation Fund FY 2020;
- 14) Decree of the Head of BNPB Number 13.A of 2020 concerning the Extension of Certain State of Emergency Status for the Corona Virus Disease Outbreak in Indonesia;

2. Implications of Large-Scale Social Restrictions on Civil Liberties during the Pandemic

After the Declaration of the Chief of Police on March 19, 2020, there was an increase in forced dispersal by the authorities through crowd raids. These crowd raids are generally carried out on roads and entertainment venues. Not only that, the authorities also made security efforts by bringing several people who were caught in the crowd raid to the police station. Actions taken include providing education on COVID-1918 prevention measures to orders to make statements. As of March 31, the police claimed to have carried out 11,145 mass dispersal in accordance with the mandate of the National Police Chief's Declaration for the prevention of COVID-19.¹⁴

According to KontraS records, as of March 31, 2020, at least 944 people have been arrested for allegedly violating the PSBB.2 However, it can be seen that the arrest and determination of suspected 'PSBB violators' had been carried out before the PSBB was enacted. When asked for clarification, the Head of Public Relations of Polda Metro Jaya Kombes Pol Yusri Yunus only said that the enforcement does not need to wait for the PSBB and has been carried out since a few days ago with reference to Article 92 Jo. Article 9 paragraph (1) of the Health Quarantine Law and Article 218 of the Criminal Code.¹⁵

Article 218 of the Criminal Code

"Whoever crowds and deliberately does not leave immediately after being ordered three times by the authorities is threatened for participating in a group with a maximum imprisonment of 4 (four) months 2 (two) weeks and a maximum fine of Rp.9000 (nine thousand)"

Article 93 of the Health Quarantine Law

"Any person who does not comply with the implementation of Health Quarantine and/or obstructs the implementation of Public Health Quarantine so as to cause a Community Emergency shall be punished with a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp.100,000,000.00 (one hundred million rupiah)."

In areas that do not even implement the PSBB, control by repressive means occurs. As can be seen in the confession video of Edo Mense, the victim of the police beating in Labuan Bajo circulating on social media. Edo recounted the beatings and torture he and some of his friends endured on Saturday, April 11, 2020. With their faces still bleeding, he told how they were beaten by members of the West Manggarai Regional Police for disobeying the ban on gathering. Edo and his friends have made it clear that they have nowhere to stay because the family refuses to attend those who have just arrived from areas affected by COVID-19. When they were taken to the West Manggarai police station, they were beaten again. Two hours later, the authorities informed them that they would be placed in the regent's office as a quarantine location belonging to the Mabar Regional Government. However, due to lack of preparation, they were returned to their original place where they were again beaten.¹⁶

Cases of using violence in community control during the pandemic in Papua even led to the death of a resident. Justinus Silas Dimara, a resident of Hamadi, Jayapura, was allegedly killed by water cannon spray belonging to the Regional Police who passed on Jalan Amphibi to follow up on reports of a group of residents who gathered despite passing the restriction hours. Papua's COVID-19 Task Force claimed it was forced to use water cannons to disperse the crowd because residents did not obey warnings. As a result, Justinus, who was in the crowd, was crushed and bleeding.¹⁷ The order to use force also came from the Sidoarjo Police Chief who emphasized his subordinates to directly shoot perpetrators of crimes during the PSBB period right in the chest, not legs or other body parts that were only paralyzing.¹⁸

The potential for social conflict from the implementation of the PSBB also arises when people's houses of worship are closed and residents are forced to carry out worship activities in their homes. In Cikarang, a family was intimidated and banned from Christian worship. Hymns performed during the online worship session were heard by local residents who came and forced the family to stop their activities.¹⁹

The ban on congregational prayers in mosques also reaps pros and cons in the community. Although this has been explained by the Ministry of Religious Affairs of the Republic of Indonesia through the Circular Letter of the Minister of Religious Affairs Number 6 of 2020 concerning Guidelines for Ramadan and Eid al-Fitr 1 Shawwal 1441 H in the midst of the

COVID-19 Pandemic, and supported by religious organizations such as Nahdlatul Ulama²⁰, Muhammadiyah,²¹ and the Indonesian Ulema Council²².

The above incidents of restraint on civil liberties are the result of the reduction of rights during health emergencies that do not respect the principles that must be adhered to such as proportionality, necessity, do not conflict with other obligations in international human rights law, and are not discriminatory. In this case, the principle most clearly violated by the government is the principle of proportionality which requires that human rights reduction measures be carried out to the extent absolutely necessary and have a clear duration of time and restrictions. The action in question should also be based on an objective assessment and analysis of the situation. Reflecting on the above phenomena, this principle can be said to be almost entirely ignored by the government.²³

Enforcement of rules needed in health emergencies due to the pandemic, such as physical distancing, is a pretext for officials to act arbitrarily. In the incident of beating and torturing residents who were caught crowding in Labuan Bajo, the West Manggarai Regional Police had no justification at all. Labuan Bajo did not establish the status of PSBB at the time of the beating. Even if the PSBB has been established, it does not legitimize the repressive actions of the apparatus at all. The form of enforcement of citizens who violate physical distancing clearly does not require violence, especially to lead to the death of residents as happened in Jayapura. Not only ignoring the principle of proportionality, beatings and violence through the use of water cannons by the authorities also contradict the state's obligations in Law No. 5 of 1998 concerning the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.²⁴

The error of the authorities in convicting PSBB violators was also fatal. As stated by the Institute for Criminal Justice Reform (ICJR), Article 93 of the Health Quarantine Law can only be used when a region has established PSBB or other Health Quarantine efforts. In addition, Article 218 of the Criminal Code also does not refer to ordinary types of crowds. The crowd referred to in Article 218 of the Criminal Code only applies to "volksoploop crowds," so they are not peaceful and peaceful crowds. Therefore, the²⁵ punishment of residents who crowded in cafes, gyms, and other public facilities before the PSBB was carried out without having a clear basis. It can also lead to violations of other principles, namely non-discriminatory principles.

The use of criminal law to regulate behavior and prevent transmission of the virus is a misnomer because it is prone to arbitrary, grey and discriminatory reasons. Evidently, the crowd control that occurs is very class-biased. The effectiveness and success of efforts to prevent the spread of COVID-19 also depends a lot on people's personal awareness in carrying out their daily activities. This will not be achieved if criminalization and repression continue. Rivanlee also added that repressive measures only "cut off the compass" of people's consciousness, not provide understanding. The authorities demonstrate power relations with citizens and spread 'terror' in society through control using troops, weapons etc.

In addition, legal policies for handling Covid-19 in Indonesia in terms of impact on efforts to protect human rights include the following:

- 1) The political narrative of the presidency, through its spokesperson on civil emergency, is false and contrary to the obligation to meet the basic needs of the people. This is different if Jokowi firmly issues a disaster determination (Article 8 of Law No. 24/2007) and a public health emergency declaration with regional quarantine (Article 55 paragraph 1 of Law No. 6/2018), where the state is bound by legal obligations to ensure the availability of resources for the basic living needs needed by citizens.
- 2) The declaration of civil emergency has the potential to further endanger the security and health of citizens. Because, entering the territory of restrictions on civil liberties of expression. In practice, sociologically and historically, this status actually develops repressive properties and nourishes the character of state authoritarianism.
- 3) The delay and neglect of anticipating the handling of Covid-19, especially resulting in thousands of people being exposed and many citizens and medical personnel dying, is not just maladministration, but a form of human rights violations. Both civil and political rights as well as economic, social, and cultural rights.

In a pandemic situation, people should not be placed as enemies of the state as in the Civil Emergency scheme. Because the implementation of Civil Emergency automatically turns off all aspects of people's lives. In light of this, states should not forget that human rights reduction measures should not be taken simply out of concern for potential harm, but on threats that clearly exist, are or will occur. That is, the state must be able to provide evidence of chaos in society that really needs a civil emergency situation to be established. This principle is basically done to avoid abuse of power in emergencies.

Currently, the latest new normal protocol from the government actually involves members of the TNI-Polri to ensure that the public implements health protocols to prevent transmission of the COVID-19 virus during the COVID pandemic. In addition to the involvement of the TNI-Polri in this regulation, the implementation of *the new normal* which refers to the easing of the PSBB is also considered inappropriate when referring to the protocol requirements set by WHO. This is because the curve of the COVID-19 pandemic has not decreased.

C. CONCLUSION

The COVID-19 pandemic has not only brought disaster to the public health sector but also to the situation of democracy and civil liberties in Indonesia. We consider that efforts to deal with COVID-19 often ignore the rights of civil society. Although the fulfillment of rights in emergency situations can be reduced, the government does not comply with the principles and conditions specified in international human rights law standards. Enforcing COVID-19 prevention rules that tend to be punitive rather than corrective is not in line with the main goal of building individual health awareness. The use of violence and intimidation is also disproportionate to the purpose of control or socialization. Errors and lack of a clear legal basis in restricting civil society activities also violate the principles of necessity and legality. The

announcement of sensitive information that lacks verification only adds to the concerns of people who are struggling with a deadly virus and economic crisis. Not to mention the shadow of civil emergency that has not completely disappeared. In the midst of a crisis that is not clear when it will subside, all are signs of the collapse of democracy at the hands of authoritarian regimes.

The above incidents of restraint on civil liberties are the result of the reduction of rights during health emergencies that do not respect the principles that must be adhered to such as proportionality, necessity, do not conflict with other obligations in international human rights law, and are not discriminatory. In this case, the principle most clearly violated by the government is the principle of proportionality which requires that human rights reduction measures be carried out to the extent absolutely necessary and have a clear duration of time and restrictions. The action in question should also be based on an objective assessment and analysis of the situation. Reflecting on the above phenomena, this principle can be said to be almost entirely ignored by the government. Enforcement of rules needed in health emergencies due to the pandemic, such as *physical distancing*, is a pretext for officials to act arbitrarily.

Foot Notes

- 1) Fahmi Ramadhan Firdaus and Anna Erliyana, "Protection of Discretionary Policies in Handling Covid-19 According to Law No. 2 of 2020", PALAR (Pakuan Law Review) Volume 06, Number 02, July-December 2020, p. 23
- 2) Herlambang P. Wiratraman, "Protection of Human Rights in Life", Retrieved from <https://herlambangperdana.files.wordpress.com/2020/04/perlindungan-ham-dalam-kehidupan.pdf>
- 3) *Ibid*
- 4) Cipta Indralestari Rachman and Bimantara Adjie, "Human Rights, Culture and Indonesia's Sustainable Development Goals during the Covid-19 Pandemic: Challenges for Legal and Social Science", 2020 Pancasila University Online National Conference, p. 1
- 5) Kirana and Mirza Fahmi, *Dwarfing Civic Space in the Middle of a Pandemic*, Jakarta: Lokataru Foundation, 2020, p. 2
- 6) *Ibid*, p. 3
- 7) *See* Article 96 paragraph (1) of Law No. 6 of 2018 concerning Health Quarantine (State Gazette No. 18, Supplement to State Gazette No. 6236
- 8) Adelia Rachma Indriaswari Susanto, et al, "Political Study of Government Law in Handling the Covid-19 Pandemic", Justicia Student Council, Faculty of Law UGM, Yogyakarta, 2020, pp. 4-5
- 9) Kirana and Mirza Fahmi, *Dwarfing Civic Space in the Middle of a Pandemic*, Jakarta: Lokataru Foundation, 2020, p. 5
- 10) *See* Presidential Decree Number 11 of 2020 dated March 31, 2020 concerning the Determination of the Corona Virus Disease 2019 (Covid-19) Public Health Emergency.
- 11) *Ibid*, p. 6
- 12) Rakhmat Nur Hakim, "Civil Emergency Discourse in the Final Option of PSBB that Reaps Polemics", Retrieved from <https://nasional.kompas.com/read/2020/04/06/09383231/wacana-darurat-sipil-dalam-opsiakhir-psbb-yang-menuai-polemik>.

- 13) *Ibid*
- 14) Rindi Nuris Velarosdela, "Police Secure 19 Youths Crowded in Palmerah and Grass Market", <https://megapolitan.kompas.com/read/2020/04/03/10523081/polisi-amankan-19-youth-who-crowded-in-palmerah-and-grass-market>.
- 15) CNNIndonesia, "Police Say They Can Act on Residents Even though DKI Has Not PSBB Status", <https://www.cnnindonesia.com/nasional/20200406105426-12-490679/polisi-sebut-bisa-tindakwarga-meski-dki-belum-berstatus-psbb>
- 16) Floresa.co, "Through Video, Youth in Labuan Bajo Tell of Police Beating", <https://www.floresa.co/2020/04/12/lewat-video-pemuda-di-labuan-bajo-kisahkan-pemukulanoleh-polisi/>.
- 17) Victor Mambor, "Water Canon Spray COVID-19 Task Force Kills Citizens, Papua Needs a Legal Umbrella for Social Restrictions", <https://jubi.co.id/semprotan-water-canon-satgas-covid-19-kill-citizens-papua-need-umbrella-law/>, accessed 29 May 2020.
- 18) Adi Briantika, "Regional Quarantine: Why is Local Government More Sensitive & Firm than Jokowi?", <https://tirto.id/karantina-wilayah-mengapa-pemda-lebih-peka-tegas-dari-jokowi-eJH5>, accessed 28 April 2020.
- 19) CatholicNews, "Father Benny and Muslim Leaders Strongly Protest the Ban on Worship at Home in Cikarang", <https://katoliknews.com/2020/04/20/romo-benny-dan-tokoh-muslim-protas-keraspelarangan-ibadah-di-rumah-di-cikarang>
- 20) Nahdlatul Ulama Executive Board Instruction regarding NU Care for COVID-19 Protocol, Number: 3945/C.I.34/03/2020.
- 21) Circular Letter of the Central Leadership of Muhammadiyah concerning Guidance for Worship in Emergency Conditions.
- 22) MUI Fatwa No. 14 of 2020.
- 23) Kirana and Mirza Fahmi, *Dwarfing Civic Space in the Middle of a Pandemic*, Jakarta: Lokataru Foundation, 2020, p. 20
- 24) *Ibid*
- 25) Institute for Criminal Justice Reform, "Government Unclear About PSBB, Police Action to Make Arrests on the Basis of PSBB Violates the Law", <http://icjr.or.id/pemerintah-tidak-jelas-soal-psbb-tindakan-kepolisian-melakukan-penangkapan-atas-dasar-psbb-melanggar-hukum/>

Bibliography

- 1) Adelia Rachma Indriaswari Susanto, et al, "Political Study of Government Law in Handling the Covid-19 Pandemic", Justicia Student Council, Faculty of Law UGM, Yogyakarta, 2020, pp. 4-5
- 2) Adi Briantika, "Regional Quarantine: Why is Local Government More Sensitive & Firm than Jokowi?", <https://tirto.id/karantina-wilayah-mengapa-pemda-lebih-peka-tegas-dari-jokowi-eJH5>, accessed 28 April 2020.
- 3) Cipta Indralestari Rachman and Bimantara Adjie, "Human Rights, Culture and Indonesia's Sustainable Development Goals during the Covid-19 Pandemic: Challenges for Legal and Social Science", 2020 Pancasila University Online National Conference, p. 1
- 4) CNNIndonesia, "Police Say They Can Act on Residents Even though DKI Has Not PSBB Status", <https://www.cnnindonesia.com/nasional/20200406105426-12-490679/polisi-sebut-bisa-tindakwarga-meski-dki-belum-berstatus-psbb>

- 5) Fahmi Ramadhan Firdaus and Anna Erliyana, "Protection of Discretionary Policies in Handling Covid-19 According to Law No. 2 of 2020", PALAR (Pakuan Law Review) Volume 06, Number 02, July-December 2020, p. 23
- 6) MUI Fatwa No. 14 of 2020.
- 7) Floresa.co, "Through Video, Youth in Labuan Bajo Tell of Police Beating", <https://www.floresa.co/2020/04/12/lewat-video-pemuda-di-labuan-bajo-kisahkan-pemukulanoleh-polisi/>.
- 8) Herlambang P. Wiratraman, "Protection of Human Rights in Life", Retrieved from <https://herlambangperdana.files.wordpress.com/2020/04/perlindungan-ham-dalam-kehidupan.pdf>
- 9) Institute for Criminal Justice Reform, "Government Unclear About PSBB, Police Action to Make Arrests on the Basis of PSBB Violates the Law", <http://icjr.or.id/pemerintahtidak-jelas-soal-psbb-tindakan-kepolisian-melakukan-penangkapan-atas-dasar-psbbmelanggar-hukum/>
- 10) Nahdlatul Ulama Executive Board Instruction regarding NU Care for COVID-19 Protocol, Number: 3945/C.I.34/03/2020.
- 11) CatholicNews, "Father Benny and Muslim Leaders Strongly Protest the Ban on Worship at Home in Cikarang", <https://katoliknews.com/2020/04/20/romo-benny-dan-tokoh-muslim-protas-keraspelarangan-ibadah-di-rumah-di-cikarang>
- 12) Kirana and Mirza Fahmi, *Dwarfing Civic Space in the Middle of a Pandemic*, Jakarta: Lokataru Foundation, 2020, p. 2
- 13) Rakhmat Nur Hakim, "Civil Emergency Discourse in the Final Option of PSBB that Reaps Polemics", Retrieved from <https://nasional.kompas.com/read/2020/04/06/09383231/wacana-darurat-sipil-dalam-opsiakhir-psbb-yang-menuai-polemik>.
- 14) Rindi Nuris Velarosdela, "Police Secure 19 Youths Crowded in Palmerah and Grass Market", <https://megapolitan.kompas.com/read/2020/04/03/10523081/polisi-amankan-19-youth-who-crowded-in-palmerah-and-grass-market>.
- 15) Circular Letter of the Central Leadership of Muhammadiyah concerning Guidance for Worship in Emergency Conditions.
- 16) Victor Mambor, "Water Canon Spray COVID-19 Task Force Kills Citizens, Papua Needs a Legal Umbrella for Social Restrictions", <https://jubi.co.id/semprotan-water-canon-satgas-covid-19-kill-citizens-papua-need-umbrella-law/>, accessed 29 May 2020.
- 17) Law No. 6 of 2018 concerning Health Quarantine (State Gazette No. 18, Supplement to State Gazette No. 6236)
- 18) Presidential Decree Number 11 of 2020 dated March 31, 2020 concerning the Determination of the Corona Virus Disease 2019 (Covid-19) Public Health Emergency.