

The Legal Effectiveness Limitation on Freedom of Movement in According to Overcoming the Spread of Covid-19 Pandemic in Indonesia



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ABSTRACT: The Covid-19 pandemic has been spread throughout the world, which has caused the governments of each country to implement a restriction on human rights, which is freedom of movement. This is a step and a response from the government to overcome the spread of Covid-19, as well as the Indonesian government. As a state of law (rechtstaat), of course the Indonesian government has its own specialty to respond and to enforce a regulation to deal with di Covid-19 pandemic, in accordance with the provisions of the emergency constitutional law and the limitation on human rights. The limitation on freedom of movement throughout the implementation of limitation on human rights that have been implemented by the Indonesian government, if it traced, they are PSBB, Transitional PSBB, Emergency PPKM and 4-Level PPKM. These are all of the responses and steps that have been taken by the government to cope and to overcome the Covid-19 pandemic. However, of course, the implementation is not always in accordance with what is expected, so it is worth questioning the legal effectiveness, whether it is in accordance with the sense of justice as the law is implemented, or not in accordance and far-reached from the sense of justice as one of the objectives of the law.

KEYWORDS: legal effectiveness, limitation on freedom of movement, spread of covid-19 pandemic.

A. INTRODUCTION

The virus of covid-19 has been a pandemic in whole world since in the beginning of 2020 until now, has a negative effect towards various factor in the life of state and nation, social, culture, healthiness, economic as well as law factor. Within the existential of covid-19, various of pol-icy has been taken by the government to decrease the spreading. In the context of Indonesia, there are regulatory measures for reducing in a more severe direction, that is Pembatasan Sosial Berskala Besar (PSBB) (or in English: large-scale social restrictions). However, in its development, the steps that has been taken by the government to overcome and reduce the spread of Covid-19 have changed to PPKM (Pemberlakuan Pembatasan Kegiatan Masyarakat (Enforcement of Restrictions on Community Activities). So, if it is traced, the implementation of restrictions on community activities in order to contain the spread of Covid-19 starts from the implementation of PSBB, Transitional PSBB, Emergency PPKM, 4 Level PPKM. This PPKM 4 Level is determined based on the adjustment indicators set by the government, that is the Minister of Health, by referring to the guidelines that have been made and set by the World Health Organization (WHO). The purpose of Implementing this PPKM, with various nomenclatures set by the government, is to reduce the community mobility by controlling the rate of transmission and the spread of the Covid-19 virus.

With all the regulations that has been made and stipulated by the Indonesian government, there is one thing that is limited by the government, which is the right to move/freedom of movement. The right to move/freedom of movement independently is a right for citizens or the community as a personal right to mobilize and enter the other areas, both from a small scale to a large scale, without any restrictions or limitations. So, the right to move has become one of the human rights guaranteed in International Law, that is Article 12 of Law Number 12 2005 Concerning the Ratification of the International Covenant on Civil and Political Rights. In the international human rights instrument, it is guaranteed that the right to move is a very important human right and should not be unlawfully deprived of it. As was done by the Italian State which imposed restrictions on the right to move of its citizens to suppress the spread of the covid-19 virus which was first detected on January 30, 2020. The imposition of restrictions on the movement of Italian citizens was applied to 12 provinces in Lombardy and 14 provinces in Piedmont, Veneto, Emilia-Romagna and Marche, which are subject to places that are prohibited from carrying out various kinds of economic and social activities.

Similar to what happened in Australia, since the first case was confirmed in Australia on January 26, 2020, and continued in the following weeks, cases of the Covid-19 virus continued to spread so that the Australian government authorities implemented a

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policy to contain the spread. The policy is to apply restrictions. These restrictions are imposed and enforced by the state authorities and the scope of the government, in which the restrictions are in the form of restrictions on public gatherings and the right to move. Restrictions on borders were also introduced in this restrictive policy, so many trading businesses, schools and universities were closed. There are 4 reasons that are allowed by government authorities to leave the house as a form of restrictions on assembly and the right to move, namely travel to and from medical or work needs, purchases of essential and essential logistical items, and sports. People are also prohibited from socializing with friends and family, so that social distancing or social re-restrictions has become a new term, so that people directly maintain physical distance from each other when they must leave their homes.

This is a response to the spread of COVID-19 throughout the world, including in Indonesia, all governments in each of these countries have imposed a very strict lockdown policy, thus limiting people's freedom to move, work and assemble. The implementation of re-restrictions on the movement of people, which each country has with different nomenclatures, but has the same function and purpose, namely limiting the free movement of people to achieve the goal of overcoming the COVID-19 pandemic as a response to dealing with it. However, of course, the implementation is a question for the international and national communities related to the legal effectiveness of the system that limits the free movement of the people. This system was first used in the international situation of the COVID-19 pandemic in China, as the country where the Covid-19 virus was first detected, which was later used by the Italian state, which witnessed the first major outbreak of COVID-19 on the European continent.

The Government of Indonesia has done the same thing, with various nomenclatures for the application of restrictions on the free movement of its citizens. Indeed, this will have an impact on the social, economic, cultural, and legal conditions of the community. As is the case with the stipulation of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions. Then because the problem of the spread of COVID-19 is not only in the Java and Bali regions, the Minister of Home Affairs Instruction Number 25 of 2021 concerning PPKM Level 4 Corona Virus Disease 2019 has been stipulated in the Sumatra, Kalimantan, Sulawesi, Nusa Tenggara, Maluku, and Papua Regions. This de-termination considers the economic aspect and still pays attention to the health aspect.

However, restrictions on the right to move through the implementation of PPKM will certainly not be as expected, because as in essence, positive law and law in the empirical scope are always contradictory, there are *das sein* and *das sollen*, The social symptoms of the community related to the implementation of restrictions on community free movement with PPKM have an impact on the habit structure of the community, which usually gathers and interacts socially and economically, but has changed because of the government's response to the spread of COVID-19 by limiting human rights, namely right to move. So, in this article, the author wants to analyze the legal effectiveness of the implementation of restrictions on people's free movement with the PPKM system, whether it can accommodate the rights of citizens to maintain the stability of social and state life, or even further violate the basic rights of citizens, such as the right to health and the right to the economy.

B. RESEARCH METHOD

The type of research that the author uses is normative legal research, namely research that is conceptualized as what is written in legislation (law in books) or the law is conceptualized as a rule/norm which is a benchmark for human behavior that is considered appropriate. The research in writing this thesis is descriptive, namely research conducted to get suggestions on what to do to overcome certain problems. From the legal issues raised, the descriptive method can solve the legal issues in this thesis research. The type of research that the author uses is Antinomy (Conflict Norm) / conflicting norms / legal norms conflicts which of course will conflict with existing legal principles. So, the approach taken by the author in analyzing the research is a statutory approach and a conceptual approach.

C. RESULT AND DISCUSSION

1. Enforcement of Law Restrictions on the Right to Move People in Indonesia

Indonesia also got an impact of the COVID-19 virus pandemic which has spread throughout the world and Indonesia has also imposed restrictions on human rights, namely the right to move, as one of the emergency constitutional legal steps to respond to dangerous situations and matters of urgency. The Indonesian government has set restrictions on the right to move for the community through various policies and if it is traced to the implementation of restrictions on community activities so that the spread of COVID-19 can be overcome, starting from the implementation of PSBB, Transitional PSBB, Emergency PPKM, 4 Level PPKM. PPKM 4 This level is determined based on the adjustment indicators set by the government, namely the Minister of Health by referring to the guidelines that have been made and set by the World Health Organization (WHO). All of these policies have the same function and purpose, namely to overcome the spread of the COVID-19 virus by limiting the freedom of movement of its citizens, so that mitigation of the spread of COVID-19 can be achieved. In accordance with international human rights law,

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government actions that promote public health must protect and promote the health of the population, while protecting fundamental human rights and social values. Thus, the protection of individual human rights is subject to restrictions and international human rights law provides the authority to limit these rights with the aim of protecting public health, when necessary.

Large-Scale Social Restrictions (PSBB-Pembatasan Sosial Berskala Besar)

The restriction on the right to move that has been implemented by the Indonesian government and which was first set and enforced is the PSBB, regulated through Government Regulation no. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19). This PP becomes the implementing regulation of Law no. 6 of 2018 concerning Health Quarantine in Article 1 point 11 and Article 15 paragraph (2) letter b. The definition of PSBB itself is the restriction of certain activities of residents in an area suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination. The provisions of the PSBB itself must be based on epidemiological considerations, the magnitude of the threat, effectiveness, resource support, operational technical, political, economic, social, cultural, defence and security considerations.

Transitional Large Scale Social Restrictions (PSBB-Pembatasan Sosial Berskala Besar)

The restriction on the right to move that is set and enforced by the next government is the Transitional PSBB, but within the scope of the jurisdiction of the Capital City of Jakarta, namely through the Regulation of the Governor of the Special Capital Region of Jakarta Number 51 of 2020 concerning the Implementation of Large-Scale Social Restrictions during the Transition Period Towards a Healthy, Safe Society. and Productive. The purpose of this transition period towards a healthy, safe and productive society in accordance with Article 1 paragraph (4) is the implementation of the PSBB by making adjustments to various community activities/activities based on indicators of epidemiological studies, assessment of public health conditions and assessment of the readiness of health facilities and community obligations to implement PHBS prevention of Covid-19. PHBS itself is a Clean and Healthy Lifestyle during the Covid-19 Pandemic, which aims to prevent Covid-19 based on a set of behaviours that are practiced based on awareness to prevent exposure to oneself and the surrounding environment and the spread of Covid-19.

The transitional PSBB was chosen by the DKI Jakarta Regional Government as an option to move towards a new habit and adapt to it, namely the new normal. This policy is a relaxation from the previous policy, namely PSBB, because it pays attention to economic growth that does not work because of the restriction of the right to move all Indonesian citizens, so that it has bad consequences and gives negative intensity to the life of the nation and state, both from the social aspect, economics, culture and law. so that this transitional PSBB becomes the choice of the DKI Jakarta Regional Government.

Enforcement of Restrictions on Community Activities (PPKM-Pemberlakuan Pembatasan Kegiatan Masyarakat) Emergency and 4 Levels

The implementation of Restrictions on Emergency Community Activities or often referred to as the abbreviation PPKM Emergency is a policy from the Government to limit the right to move its citizens to overcome and suppress the spread of the 2019 corona virus disease. This Emergency PPKM has a legal basis in the Instruction of the Minister of Home Affairs, namely No. 15 to 17 of 2021 concerning the Implementation of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions. The latest PPKM legal basis, until now the legal basis is the Minister of Home Affairs Instruction No. 61 of 2021 concerning the Enforcement of Restrictions on Community Activities at Level 3, Level 2 and Level 1 at the Village and Sub-District Levels. Another legal basis that limits the right to move most recently for national holidays on Christmas and New Year's the Instruction of the Minister of Home Affairs No. 62 of 2021 concerning Prevention and Control of Covid-19 at Christmas 2021 and New Year 2021. This PPKM is an accelerated step taken to reduce the number of Covid-19 cases.

Almost all over the world, very significant restrictions have been set and imposed on the freedom to move, to assemble and to be in a public place. Of course, this has received a variety of responses from various parties, there are those who enjoy the time limiting the right to move and there are also those who are contra and give contradictory responses to this. This, of course, depends on the social stratification of each country's economically affected citizens. The social impact of the imposition of a system of restrictions on the right to move raises the issue of who is the most severely affected in this scenario of restricting the right to move. When viewed from the point of view of young people, this restriction becomes a damage and destruction in their social development, education and limits their freedom and their choices at critical times.

2. Effectiveness of Imposing Restrictions on the Right to Move in Suppressing the Spread of Covid-19 and Guaranteeing Human Rights

As a step taken by the government to overcome and overcome the spread of COVID-19, of course the restriction on the right to move as one of the human rights guaranteed by international and national legal instruments has obstacles and is not as expected by

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the government that set the policy. These restrictions were also carried out throughout the world, many governments implemented a system of restrictions on the right to move with the aim of controlling the spread of COVID-19 as a new virus. So from there it can be seen whether the imposition of restrictions on the right to move in suppressing the spread of COVID-19 has legal effectiveness in its application.

The response to the spread of the COVID-19 pandemic by limiting the space for people's right to move that has been guaranteed in international and national human rights law, is a sign of action being taken by the whole world, where taking this action is at a higher level. unprecedented in democratic countries. With various forms of action taken by each country, including in Indonesia with restrictions on the right to move to date, the steps or actions taken are broadly aimed at enforcing and enforcing social distancing or maintaining social distance between each other. Each community minimizes the transmission or spread of the Covid-19 virus. Consequently, the entire international community is in a situation that requires them to limit their right to move.

An affirmation of the steps taken and determined in the case of the COVID-19 pandemic, the fact that this virus threatens the right to life and health of the entire international community around the world. The ruling public authority, namely the government, through the steps taken as a step to fight and suppress the spread of covid-19, will instead jeopardize the peace of so many individual or personal rights, so it is quite clear that widespread restrictive measures and covers a wide range can also have a direct impact on the fulfillment of human rights itself. Actions or delays from the government in responding to the health crisis caused by the COVID-19 pandemic can also have a negative effect on human rights.

In the empirical facts of the law, this is not as expected by the law itself as the government makes and stipulates. Regarding social stratification, the imposition of re-strictions on the right to move from contradicting each other according to the ability of the community itself. For people who have high social stratification, sufficient economy, of course the imposition of restrictions on the right to move can be accepted and understood by them. Because from an economic point of view, they are well-off, so if they restrict the right to move for themselves it won't be a big problem. However, what is a social and legal problem, if the implementation of this limitation on human rights is also applied to people who have low social stratification, their economy is also low, so that the restriction on the right to move becomes a contradiction in living their own social life. If they force them to leave, then what happens is that their health will be affected by Covid-19, but if they lock themselves up to self-quarantine, with very low economic quality, of course it will have an impact on their health as well. So that people who have low social stratification are like if they leave, they will risk their lives, if they don't come out, they will risk their lives too, because of hunger. People who are in the category of low social stratification, are greatly affected by the new virus covid-19, not only in Indonesia, but also throughout the world. For people with low social stratification, this restriction on the right to move has a very negative impact on them. Most of the people with low social stratification live their livelihoods without making formal or informal savings to maintain their lives in this state of limitation on the right to move. Even in the context of workers/laborers who must work in the field, they cannot do their work from home, so they get no income at all.

The impact that occurs because of covid-19 is very unbalanced, equal and equivalent for people who have their own social stratification. When viewed from a public health perspective, restrictions on the right to move that require the application of social distancing, trade businesses that are not too essential, restrictions on travel and people staying in their respective homes, community interactions that develop the economy such as working together in closed spaces and holiday activities are very important. is important, so the reduction, restriction, and prohibition of the right to move is important. However, the implementation of restrictions on the right to move, especially for developing countries, including Indonesia, has a very bad impact on the economy of the community and the state. This restriction on the right to move has a very bad impact on the growth and development of the economy on a large scale on the population and this has a big impact and has a big effect on those who have low and relatively small incomes in this Covid-19 pandemic.

In fact, based on data obtained in the International Journal of Management, the COVID-19 pandemic is estimated to increase the number of very poor people from 88 million to 115 million, depending on the severity of the downward trend from this pandemic. Extreme or severe poverty is defined as income or income of less than US \$ 1.90 per day, or if converted into IDR 27,836 per day. Restrictions on the right to move along with the measures that go along with it, pose a productivity challenge for the poor or those with low social stratification. The potential difference because of this limitation on the right to move on income is not balanced or equivalent, unstable for the poor, when compared to the middle class, it is still effective if this system of restrictions on the right to move is implemented. The application of restrictions on the right to move is highly dependent on the social stratification of each society.

Restrictions on the right to move, which each country has its own policies according to the severity and legal system, have a relatively similar impact on the suspension of economic activity as a measure to anticipate the spread of COVID-19 until the restrictions on the right to move are relaxed. With this, some workers keep their jobs to come back later. However, when the restrictions were enforced, they did not work nor did they earn any income, but they had jobs again, but there were also some workers who were laid off. The difference between those who are on leave and dismissed because of COVID-19 itself is one form or example of differences in treatment and social stratification itself.

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It is the government's obligation to help its citizens fulfill the right to food and a de-cent life while undergoing health quarantine, so that imbalances and equivalence can be over-come, namely by providing social assistance with various kinds of assistance as a form of state responsibility and obligation. In order to fulfill the human rights of its citizens, other social and legal issues have also re-emerged, one of which was the former Minister of Social Affairs, Juliari Peter Batubara. He committed a criminal act of corruption when the country was in a state of emergency, a danger that met the criteria for matters of urgency. Central Jakarta District Court Decision Number 29/Pid.Sus-TPK/2021/PN Jkt.Pst. has been handed down and as-signed to the defendant, with a note that the order is to declare that the defendant Juliari P. Batubara above has been legally and convincingly proven guilty of committing the criminal act of Corruption Together and Continuously; Therefore, the Defendant is sentenced to imprisonment for 12 (twelve) years and a fine in the amount of Rp. 500,000,000.00 (five hundred million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 6 (six) months; To impose additional penalties on the Defendant to pay compensation in the amount of Rp. 14,597,450,000.00 (fourteen billion five hundred ninety-seven million four hundred and fifty thousand rupiah) provided that if it is not paid, no later than 1 (one) month after this case has permanent legal force, the convict's property is confiscated to cover the loss to the state and if the property is not sufficient to pay the replacement money, it is replaced with a prison sentence of 2 (two) years.

With empirical legal facts like this, the policy of the government by imposing re-strictions on the rights of its citizens to move, becomes questionable for its legal effectiveness. The restrictions on human rights that are affected by the government's actions to sup-press the spread of COVID-19 have been discussed among human rights lawyers and also at the United Nations High Commissioner for Human Rights (UN High Commissioner for Hu-man Rights). The debate and concern over the limitation of human rights is not something without reason and has no basis, because an act that limits the exercise and enjoyment of hu-man rights can open an opportunity for abuse of power or abuse of authority that goes beyond the limits of emergency regulations as a form of emergency constitutional law of executive power as an implementation of statutory regulations and achievements that go beyond the limits of executive power. Two things about the COVID-19 pandemic and the response or action against it from each country put human rights being tested and affected by it.

The actions that have been taken by the government by limiting these human rights, it can be answered that the effectiveness of the law is still far from being effective, how to en-force the law and the awareness of law enforcers, law implementers and law makers them-selves. As Roscoe Pound, one of the socio-legal experts, said that the quality of justice from a law is determined more by law enforcers who enforce the substance of the law itself rather than the substance of the law that law enforcers enforce. Being an important indicator of the enforcement of the law, it depends more on how law enforcers implement positive law to create justice, benefit and legal certainty, rather than the material substance or norms of the law enforced by these law enforcers. Regulations regarding restrictions on the right to move set and enforced by the government are in accordance with international and national law, be-cause the COVID-19 pandemic is in the category of emergency constitutional law based on dangerous conditions and matters of urgency. However, as we have understood and agreed together, that basically positive law and empirical law are always contradictory, *das sein* and *das sollen* are always contradictory, because law enforcement is very far from the element of justice.

D. CONCLUSION

Indonesia also got an impact of the COVID-19 virus pandemic which has spread throughout the world and Indonesia has also imposed restrictions on human rights, namely the right to move, as one of the emergency constitutional legal steps to respond to dangerous situations and matters of urgency. as one of the emergency constitutional legal steps to respond to dangerous situations and matters of urgency. The Indonesian government has set restrictions on the right to move for the community through various policies and if it is traced to the implementation of restrictions on community activities so that the spread of COVID-19 can be overcome, starting from the implementation of PSBB, Transitional PSBB, Emergency PPKM, 4 Level PPKM. PPKM 4 This level is determined based on the adjustment indicators set by the government, namely the Minister of Health by referring to the guidelines that have been made and set by the World Health Organization (WHO). All these policies have the same function and purpose, namely, to overcome the spread of the COVID-19 virus by limiting the freedom of movement of its citizens, so that mitigation of the spread of COVID-19 can be achieved.

With the empirical legal facts related to the imposition of restrictions on the right to move as a human right guaranteed in international and national law, its legal effectiveness is questioned. So that it can be answered that the policies that the government has made, and set are still far from being effective in law, how is law enforcement and awareness of law enforcers, law implementers and law makers themselves. As Roscoe Pound, one of the socio-legal experts, said that the quality of justice from a law is determined more by law enforcers who enforce the substance of the law itself rather than the substance of the law that law enforcers enforce. Being an important indicator of the enforcement of the law, it depends more on how law enforcers implement positive law to create justice, benefit and legal certainty, rather than the material substance or norms of the law enforced by these law enforcers. Regulations regarding restrictions on the right to move that are set and enforced by the government are in

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accordance with international and national law, because the COVID-19 pandemic is included in the category of emergency constitutional law based on dangerous conditions and matters of urgency, all governments spread across the globe. the whole world applies the same settings. However, as we have understood and agreed together, that basically positive law and empirical law are always contradictory, *das sein* and *das sollen* are always contradictory, because law enforcement is very far from the element of justice.

The implementation of restrictions on one of the human rights that fall into the category of derogable rights, namely the right to move (freedom of movement) as a response and action to the COVID-19 pandemic that has been imposed by the Indonesian government is in accordance with the provisions on human rights restrictions and laws. emergency state administration, because in fact the covid-19 pandemic is included in the category of emergency constitutional law and meets matters of urgency based on danger and emergency conditions, this step has become a simultaneous step throughout the world to respond to the covid-19 pandemic, which -Each country has special arrangements in each of its governments.

However, what becomes a legal issue and legal problem itself is in the sociological aspect of the law, how is the effectiveness of the law itself, which law enforcers should be able to implement and enforce the law as well as the content and substance of the law itself in order to achieve substantive justice, so that it can accommodate the interests of citizens, it is also related to the enforcement of guarantees for the protection, respect and fulfilment of human rights, which in this context are affected by the covid-19 pandemic. The government must carry out its functions and authorities more as mandated by the constitution, so that it is in accordance with what is expected by a justice law.

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