

JURIDICAL REVIEW LARGE-SCALE SOCIAL RESTRICTIONS IMPLEMENTED BY LOCAL GOVERNMENTS*

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Abstract

This research discusses the policy guidelines for implementing PSBB, which is one of the models used by the Government in handling Covid-19. The focus is on the legal issues related to the process of determining PSBB at the regional level. The paper uses a normative juridical approach to examine the proposed PSBB policy by the Local Government and its legal implications. The research finds that the proposed PSBB policy has limited the Local Government's ability to set PSBB at the regional level. The legal implications of imposing large-scale social restrictions at the regional level have resulted in a failure to realize the legal benefits of treating the Covid-19 pandemic as an emergency. The direction and legal implications of the proposed PSBB policy are discussed in detail in this paper.

Keywords: *Local Government; Covid-19; PSBB.*

INTRODUCTION

The state structure can be classified into two models, namely, unitary or federated, which differ significantly in terms of the concept of sovereignty. In a unitary state, there is only one sovereignty that rests with the state, whereas a state with a federation model has multiple sovereignties from different countries. These two concepts have been adopted by many countries worldwide, including Indonesia, which has a unitary state according to Article 1 paragraph (1) of the 1945 Constitution. The establishment of a unitary constitutional system in Indonesia designates the Central Government as the implementing organ authority responsible for carrying out government affairs (Mahmuzar, 2020). One of the principles of a unitary state is that state affairs are not divided between the central and local government, and the state government

affairs remain a unanimity (eenheid) (Ni'matul Huda, 2014). Consequently, under the concept of decentralization, the local government has a supporting role in assisting the Central Government in carrying out government affairs.

The implementation of decentralization in Indonesia has undergone a series of transformations from the old order regime to the present new order. This transformation is evident in the legal reform that governs regional governance, as reflected in the enactment of various laws such as Law No. 22 of 1999, Law No. 32 of 2004, and the current Law No. 23 of 2014. In this context, the Regional Government's implementation of governmental tasks plays a crucial role in stabilizing the Indonesian constitutional system. The Regional Government performs its tasks through the concept of decentralization,



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which is guided by the normative provisions of Article 18 paragraph (2) of the 1945 Constitution. This provision grants the regions, including provinces and regencies/cities, the right to manage their own government affairs based on the principles of autonomy and co-administration. The allocation of tasks based on the principle of autonomy and co-administration aims to enable regions to manage their regions independently without relying on the Central Government's intervention.

Philosophically, the delegation of governmental tasks from the Central Government to Regional Governments through the concept of decentralization is intended to fulfill the state's responsibility of protecting and prospering its people. This responsibility is stated in the fourth paragraph of the Preamble to the 1945 Constitution, which identifies the aim of forming the Indonesian state. One of the government's crucial responsibilities is ensuring the safety and well-being of its citizens in all regions. However, in practice, the implementation of a decentralized-based government system may not always align with reality. This is evident from the conflicts that persist between the actions of Regional Governments and the Central Government. These issues arise due to the quandary of implementing the decentralization of governmental tasks. In this millennium, there have been conflicts between the central and regional government actions in handling the Covid-19 virus.

Since December 2019, the Corona Virus has been rapidly spreading, originating from Wuhan, Hubei Province, China (Al-Fatih et al., 2020). The impact

of Covid-19 cannot be denied as a significant threat to humanity's survival on Earth. The virus has posed a serious threat to Indonesian citizens' lives, prompting the government to implement Large-Scale Social Restrictions (PSBB) as a handling model to deal with Covid-19. The implemented policy aims to emphasize the need to contain the spread of the corona virus, which continues to claim victims every day. A noteworthy aspect of the study material is the discussion of policy guidelines for determining PSBB implementation at the regional level. According to Article 6 paragraph (1) of PP No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Management of Corona Virus Disease 2019 (COVID-19)/PP PSBB, each regional head, including governors, regents, and mayors, must await approval from the Minister of Health to determine the PSBB itself. The mechanism for implementing Permenkes PSBB is stipulated in Permenkes No. 9 of 2020, which outlines guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Management of Corona Virus Disease 2019.

The Presidential Decree on the Declaration of the Corona Virus Disease 2019 (Covid-19) Non-Natural Disaster as a National Disaster, stipulates that every policy issued by the regional government must be approved by the central government, as per the third point. Nevertheless, the procedural implementation of Large-Scale Social Restrictions in each region is formed on a regular basis. However, given that the Covid-19 Pandemic is a public health emergency, it needs to be handled quickly

in accordance with the Presidential Decree on Health Emergencies. The right to protection of citizens for their survival is a constitutional right, as stated in Article 28 A of the 1945 Constitution. The state has a great responsibility in ensuring citizens' survival through the government, as per Article 28 I paragraph (4) of the 1945 Constitution.

The Indonesian government has prioritized the protection of citizens' health rights during the Covid-19 pandemic era. As noted by Kim Lane Scheppele, a state emergency requires responsive action to remove threats that endanger lives and restore the country. Therefore, it requires laws that do not normally apply (Widodo & Disantara, 2021). It is essential that legal policies during an emergency period are in accordance with their intended purpose. According to Gustav Radbruch, a legal norm requires three main validity criteria, namely justice, certainty, and benefit (Rismawati, 2015).

This paper draws on several previous articles to contextualize the topic of study and establish the originality of this journal writing. For example, the article titled "The Complexity of Regional Autonomy and the Concept of a Federal State in the Unitary State of the Republic of Indonesia" (Huda & Heryansyah, 2019) discusses the legal discourse on the tug-of-war of authority between the central and regional governments in various matters related to regional autonomy. This paper focuses on the central or regional government's authority in implementing Large-Scale Social Restrictions (PSBB) as an effort to combat the Covid-19 virus.

The study aims to identify efforts to overcome the debate over the authority of

the central and regional governments in implementing PSBB as a means of combating the Covid-19 virus. The article "Models of Emergency Arrangements and Indonesian Emergency Options in Facing the Covid-19 Pandemic" (Arsil & Ayuni, 2020) focuses on the emergency concept in policies used to deal with Covid-19, including health and economic quarantine. This paper only focuses on the emergency concept of the Regional Government's policy of imposing PSBB. Lastly, the article "Government Legal Politics in Handling the Covid-19 Pandemic from the Perspective of the Human Right to Health" (Kurniawan, 2021) examines the effectiveness of the government's comprehensive legal policies in protecting the health rights of Indonesian citizens and compares them with policies in other countries. In contrast, this paper focuses on the effectiveness of the PSBB provisions established by the Central Government for implementation by the Regional Governments. The research findings in this paper can be used to develop effective PSBB determination policies.

The article entitled "State Responsibility During the Covid-19 Pandemic" (Disantara, 2020) is focused on investigating state responsibility issues from economic and social perspectives, as well as formulating state accountability during future Covid-19 pandemics. In contrast, the authors of this paper focus on the effectiveness and potential risks of implementing the Large-Scale Social Restrictions (PSBB) regulations at the regional level, from the central government to the regional governments. The analytical review of this paper centers on the consequences of the regional

government's responsibility in implementing the PSBB determination policy. The research findings can explain the regional government's position in carrying out its responsibility in dealing with the Covid-19 pandemic through the implementation of PSBB regulations.

This paper aims to discuss the policy directions for imposing Large-Scale Social Restrictions on the regional governments, as well as the legal implications of this policy on the handling of Covid-19 at the regional level, based on comparative research descriptions. The main goal of this paper is to analyze and determine the direction and effectiveness of the PSBB policy in combating the Covid-19 pandemic. The identification in writing is supported by three proposed theories: the unitary state theory, the emergency state theory, and the legal validity theory. The research findings presented in this article can guide and influence the Regional Government's policy in establishing Regional Large-Scale Social Restrictions.

RESEARCH METHOD

The research method adopts a systematic research methodology aimed at advancing the fields of science, art, and technology by methodologically and consistently demonstrating the truth (Sodiq, 2021). To achieve this aim, the normative juridical research approach method was employed, which is commonly used in legal research and involves referencing applicable laws, regulations, and legal doctrinal theories (Putra & Setyawanta, 2020). The research data were presented in both analytical and descriptive forms, with each issue being scrutinized through grammatical or systematic interpretation grounded on

relevant legal doctrines and regulations, which were then compared to pertinent legal theories.

RESULTS AND DISCUSSION

1. Policy Directions for Establishing Large-Scale Social Restrictions on Regional Governments

Thorsen V. Kalijarvi emphasized the concept of a unitary state as a country that practices power centralization; in other words, power is held by the central organs of the government, and there is no division of powers given to the Central Government in the states (Huda, 2010). This indicates that in a unitary state, the Central Government holds the highest position in terms of implementing the state administration system. Indonesia is undoubtedly a unitary state, which is subject to review according to Article 1 (1) of the 1945 Constitution. The Founding Fathers of Indonesia emphasized the unitary state as the fundamental form of the Indonesian state in the 1945 Constitution, which defines the nature of the Indonesian state (Asshiddiqie, 2018).

The power of the government structure in the unitary state of Indonesia is not solely carried out by the Central Government. Instead, there is a delegation of power to its subordinates, namely the Regional Government. This delegation of power has been in place since the enactment of regional autonomy in the Indonesian constitutional system through Article 18, paragraph (1) of the 1945 Constitution.

The authority delegated to the Regional Government by the Central Government, as specified in Article 18, paragraph (2) of the 1945 Constitution,

aims to provide the Regional Government with independence in dealing with the affairs and needs of a region. Regional autonomy is considered a manifestation of democracy in the unitary state system, where the Regional Governments exercise vertical power distribution under the authority of the Central Government (Jati, 2012)

The foundation of the Regional Government for carrying out regional autonomy is based on the principle of autonomy and co-administration. The Law on Regional Government defines the principle of autonomy and other assisting duties. The recognition of the Regional Government in the Indonesian constitutional system through the 1945 Constitution is expected to enable them to become executors of government tasks capable of assisting the central government in solving all of the Indonesian state's problems. The key to implementing autonomy within a unitary state framework is to optimize the implementation of decentralization.

Theoretically, Shabbir Cherma and Rondinelli's rationality regarding the importance of decentralization in a unitary state conveys at least 14 points, which are (Nur Wijayanti, 2017):

1. Decentralization can be more effective than centralized planning.
2. Decentralization cuts across periodic bureaucratic lines.
3. Decentralization fosters a thorough understanding of meeting the needs of local communities.
4. Decentralization results in the optimal penetration of government programs.
5. Decentralization attracts political, cultural, and religious representations.
6. Decentralization increases the capacity of the government.
7. Decentralization improves government administration efficiency.
8. Decentralization can serve as a meeting place for central and regional divisions.
9. Decentralization can create a government structure for community participation.
10. Decentralization is an alternative capital for policy formation and oversight.
11. Decentralization fosters innovative, creative, and adaptable administration.
12. Decentralization establishes regional planning and management functions.
13. Decentralization fosters political stability and national unity.
14. Decentralization has the potential to increase the supply of goods and services in areas where purchasing and selling power is limited.

The coronavirus disease outbreak, which originated in the city of Wuhan, China, at the end of 2019, has become a global concern due to its rapid spread and the millions of deaths it has caused. The World Health Organization (WHO), the leading global health organization, declared COVID-19 (Coronavirus Disease 2019) a pandemic after it spread to 114 countries and resulted in 118,000 cases and 4,291 deaths. The virus eventually spread to Indonesia, with the first cases reported on March 2, 2020. On April 13, 2020, the Indonesian government declared COVID-19 a

national disaster due to its impact on the health of Indonesian citizens.

The government's first step in combating the Covid-19 virus is to impose Large-Scale Social Restrictions (PSBB). The philosophical basis for determining the implementation of PSBB, whether reviewed in Government Regulations or Permenkes, is to combat the spread of the Covid virus, which causes an increase in death rates and has the potential to threaten various aspects of the Indonesian people's lives, including political, economic, social, cultural, defense, security, and welfare. Each region can submit a PSBB stipulation by referring to several criteria that must be established. Firstly, the number of cases/deaths due to a significant and rapid increase in the spread of the disease in several regions. Secondly, there is an epidemiological link to similar events in other regions and countries, and thirdly, there is local transmission. These criteria are governed by Article 3 of the PP PSBB and Article 2 of the PSBB Permenkes. The data attached to the PSBB determination application for each region by the regional head, including Governors, Regents/Mayors, must include data as specified in Article 4 of the Minister of Health's PSBB Regulation, which includes an increase in the number of cases based on time, case distribution based on time, and local transmission events. The criteria and data specified are mandatory requirements for imposing Large-Scale Social Restrictions in each region.

According to Article 4 of the PP PSBB, the PSBB implementation includes, at a minimum, the closure of schools or workplaces, restrictions on

religious activities, and limitations on community activities in public places and facilities. Article 13 of the PSBB Minister of Health further specifies that the PSBB is intended to limit social/cultural activities, modes of transportation, and other activities related to defense and security.

The proposal to impose Large-Scale Social Restrictions must be submitted to the Minister of Health in accordance with the provisions of Article 6 of the PP PSBB. The procedures for determination as outlined in Part three in Article 7 of the PSBB Minister of Health include the following points: First, the formation of an Epidemiological Study Team and experts in politics, religion, security, economics, social, culture, and defense. Second, coordination of the study team with the Central Covid-19 Task Force to determine the Covid-19 Task Force's readiness to implement regional PSBB. Third, issuing the study team's report to the Minister within one day of receiving the proposal for PSBB implementation from each regional head.

In terms of law, Article 8 paragraph (1) of the Minister of Health's PSBB Regulation states that the time limit for making a decision on the PSBB proposal as a whole based on the Regional Government's proposal through the Regional Head is 2 (two) days after receiving the proposal for PSBB implementation in the regions. The Minister's decision on the proposed regional PSBB implementation, as stipulated in Article 8 paragraph (2), is also based on coordination with requesting a recommendation from the Head of the Task Force for the Center for the Acceleration of Handling Covid-19.

Based on the two interpretations of Article 8, it is clear that the Minister of Health's Decree, with the recommendation of the Head of the Covid-19 Task Force, plays a significant role in determining the decision on the proposed determination of PSBB implementation at the regional level. The central or regional government's implementation of governmental tasks is based on authority, duties, and responsibilities. In terms of implementing the government system, both central and regional governments have their respective roles in terms of carrying out their duties, authorities, and responsibilities based on government affairs as defined by applicable law. According to Article 9 paragraph (1) of the Regional Government Law, government affairs are divided into three (three) categories: concurrent and absolute government affairs, as well as general government affairs.

Absolute government affairs are those that are entirely carried out by the authority of the Central Government. Concurrent government affairs are the implementation of government affairs with both the central government and the regions sharing tasks. General government affairs are a type of government business that is conducted solely under the authority of the president. The primary role of local government in carrying out government tasks with a decentralized system is to implement concurrent affairs.

The proper implementation of the PSBB regulation in accordance with applicable law falls under the responsibility of the government. The central government holds the most

authority in making decisions regarding regional PSBB implementation. Regional governments are not authorized to impose PSBB without the approval of the Minister of Health or the Head of the Central Task Force for the Acceleration of Handling Covid-19. The PP PSBB and Permenkes PSBB derive their regulations from Law No. 6 of 2018 concerning Health Quarantine, which can be reviewed in the Preamble and Introduction sections of each legal regulation, as well as in point three of the Presidential Decree Designating Covid-19 as National Disaster. The Health Quarantine Law forms a part of the primary law that governs the implementation of various health quarantine models, such as lockdowns and PSBB. One of the primary reasons for establishing the Health Quarantine Law is to prevent emergency health problems that could endanger human safety. The rule of law was established based on Indonesia's commitment to comply with international treaties that safeguard the health rights of all world citizens. It also signifies Indonesia's commitment to upholding human rights as a country.

The implementation of health quarantine measures falls under the government's absolute authority, as stated in Article 11, paragraph (1) of the Health Quarantine Law. The central government is responsible for carrying out health quarantine duties based on factors such as the magnitude of the threat, available resources, effectiveness, and operational techniques, while also considering economic, social, cultural, security, and state sovereignty issues. In addition, Article 11, paragraph (2), part II, emphasizes that the central government,

as the executor of authority, can involve international organizations with multilateral relations as part of its coordination efforts.

The PSBB determination policy can be seen as a bureaucratic process that takes time to consider procedures and processes, which may exceed the stipulated time limit of one day due to various factors. The validation of data from the regional government to the central government had to comply with the conditions set out in PP PSBB and the PSBB Permenkes, which was deemed ineffective as the number of Covid-19 cases could not be estimated, leading to inefficient use of time. In areas experiencing a surge in daily cases, such as the red zone, the safety of citizens is a crucial aspect of the government's responsibility, particularly for the regional government.

Considerations regarding the Regional Level Task Force's readiness for handling Covid-19 in the process of applying for PSBB at the regional level can be seen as an indication of the Central Government's concern for ensuring that Regional Governments are able to effectively manage the autonomous regions they oversee. The inability of local governments to control the spread of the Covid-19 virus is not a valid reason, either logically or legally, as it is a priority for the government's tasks. It has been de facto established that Covid-19 is a national disaster, as stated in the Presidential Decree on Non-Natural Disaster Corona Virus Disease 2019, and can be interpreted as a state of emergency. Jimly Asshidiqie has identified the legal principles that underpin the administration of a state of emergency (Osgar S.

Matompo, 2014). The principle of declaration states that any country in a state of emergency must officially declare it to ensure public awareness.

1. The legality principle requires that any government action in an emergency be governed by law, with amendments made to the emergency declaration as necessary.
2. The communication principle stipulates that any action or policy taken in an emergency must be communicated to the public.
3. The provisionality principle emphasizes that the nature of the declaration is temporary, to prevent the abuse of power.
4. The proportionality principle requires that any government action taken during an emergency must prioritize balance and be necessary in addressing the threats.
5. The principle of intangibility asserts that under no circumstances, including emergencies, can all human rights be reduced or abolished.
6. The supervision principle mandates that all actions or decisions made during an emergency be based on democratic principles and the rule of law.

Based on the preceding theoretical analysis, the policy directive regarding the imposition of Large-Scale Social Restrictions (PSBB) on regional governments does not sufficiently prioritize the function of decentralization in government operations and the principle of proportionality in the implementation of PSBB at the regional level. The absence of the demonstrated decentralization function in the process of imposing PSBB is evidenced by the

lengthy permit application process specified in Article 8, Paragraph (1) of the Minister of Health's PSBB regulation, which is set at two days and is not in line with the rationale of the decentralization function, which aims to streamline the bureaucratic process. The policy underpinning the implementation of PSBB neglects the legal principle of declaring a state of emergency, which is intended to address the government's sluggishness in providing prompt actions required by the state or society in response to the threat of Covid-19. The policy of establishing the PSBB is believed to hinder the regional government's proportionality in achieving a decentralized function for addressing the Covid-19 pandemic.

The Regional Government is a government institution at the regional level that governs various matters and services based on the authority granted by applicable law. Therefore, the Regional Government should be vested with the same authority as the Central Government in establishing Large-Scale Social Restrictions (PSBB) in the regions, to reduce the bureaucratic process in managing the Covid-19 crisis. The Central Government should play a supervisory role over Regional Governments, to oversee the implementation of PSBB at the regional level. The delegation of extensive authority over PSBB provisions to Regional Governments is intended to realize regional independence, as enshrined in Article 18 paragraph (2) of the 1945 Constitution, in dealing with the Covid-19 pandemic.

Regional governments must apply the principle of proportionality in managing

the Covid-19 crisis by optimizing the function of decentralization. The decentralization function of local governments in implementing Large-Scale Social Restrictions can help focus the attention of the central government on managing the Covid-19 crisis. Given that the Covid-19 pandemic has claimed numerous lives, the solution must be swift and responsive.

2. Legal Implications of Imposing Large-Scale Social Restrictions to Control the Spread of Covid-19 at the Regional Level

The Covid-19 pandemic has been declared a national emergency in Indonesia, which was formalized through the issuance of a Public Health Emergency Decree. The main purpose of a Presidential Decree is to establish specific and legally binding norms in a conclusive and individual manner. In this context, the content of the Presidential Decree reflects the government's stance and approach in responding to and mitigating the effects of the Covid-19 virus outbreak that the Indonesian state is currently facing.

To tackle the Covid-19 pandemic, the Indonesian government has implemented PSBB as an initial health quarantine model. To achieve this, the government has formulated PSBB implementation policies in the form of Government Regulations and Minister of Health Regulations. In cases where it is necessary to implement PSBB in autonomous regions to control the spread of Covid-19, the rest of the government regulation policies and Minister of Health regulations can be implemented by the respective regions. However, due to the government's stipulated content for the

PSBB policy, the mechanism for determining the PSBB has become an ineffective bureaucracy, as the determination period and submission process take more than a day. As the PSBB policy is part of the government's absolute affairs, it does not grant regional governments independence in dealing with the Covid-19 problem. The implementation of absolute affairs in government duties places the Central Government's authority above that of the Regional Government. Therefore, the Central Government has sole responsibility for the administration of government affairs, rather than the Regional Government.

As previously discussed, Gustav Radbruch proposed that legal policy must consider three values of legal validity: justice, certainty, and expediency. Justice aims to achieve fairness and equality (Manullang, 2022). Legal certainty means that laws can be applied consistently in certain circumstances (Prayogo, 2016), while legal expediency refers to the value of legal benefits in achieving the objectives of legal purposes (Wijayanta, 2014). Considering these values, the priority scale of legal validity must be established in the context of developing the PSBB policy as a response to the Covid-19 pandemic.

In his research, Nabitatus explained that the three legal validity values have the same position, so it is necessary to establish a priority scale based on conscience (Sa'adah, 2018). Considering the Covid-19 pandemic situation, the PSBB determination policy prioritizes the value of benefit, the value of legal certainty, and the value of justice by paying close attention to one of the main

legal principles in an emergency, namely the principle of proportionality. The value of legal benefits being a priority scale in the policy for determining the PSBB proposal is intended to demonstrate that the law prioritizes the well-being of people in an emergency situation, specifically protecting and saving them from the threat of the Covid-19 pandemic. The legal principle involved in dealing with emergencies during a pandemic is to recall Cicero's doctrine. According to Cicero, the law must prioritize the safety of the highest-ranking people based on the principle of "salus populi suprema lex esto" (Susanto & Asmara, 2020). The value of expediency can also shape the Regional Government's attitude toward being critical and independent in managing the condition of areas affected by Covid-19 virus transmission. The development of PSBB stipulation rules with full beneficial values will encourage Regional Governments to take responsibility for managing the autonomous regions stipulated by applicable law.

The policy priority scale for the proposed establishment of PSBB ranks the value of legal benefits as the top priority, followed by the value of legal certainty, and finally, the value of justice. This reflects an example of effective rule of law that can support the government's proportional actions in dealing with the Covid-19 pandemic. In an emergency situation such as Covid-19, the value of justice is placed at the bottom of the priority scale of legal validity. This is because it is difficult to comprehend the value of justice in such situations, given that the law being enforced may not be the law as it should be. According to John

Rawls, the principle of justice is not always a question of freedom or equality, but also of being able to benefit everyone. Therefore, in the proposed PSBB policy as a response to the Covid-19 pandemic, the value of justice can be flexibly positioned in support of the value of benefits and legal certainty.

Based on the description above, imposing large-scale social restrictions on the spread of the Covid-19 virus at the regional level has resulted in the non-realization of the value of legal benefits in pandemic management policies. The reason for the lack of value in dealing with Covid-19 in the PSBB policy proposed at the regional level is due to a review of the legal substance that removes the function of decentralization in supporting the implementation of the legal principle of proportionality in an emergency state. The rules for establishing PSBB at the regional level must be responsive to provide enthusiasm for the Regional Government in breaking the chain of the Covid-19 virus's spread. Logically, the Regional Government has an accurate picture of region management because it is their stipulation in region management, as stipulated in Article 18 of the 1945 Constitution. The implementation of the PSBB is a form of community health quarantine. Article 4 of the Health Quarantine Law establishes the proportionality of the roles of the Central and Regional Governments in implementing Health Quarantine. Substantively, the technical regulations implementing PSBB requirements appear to place the Central Government as the ultimate authority in determining PSBB.

Conditional legal rules in an emergency situation allow for temporary

enforcement of separate rules and extraordinary measures. In the context of the state constitutional system, an emergency situation is defined as a dangerous condition that threatens public order and necessitates the state to act in an unusual manner or not in accordance with the laws that govern it (Prasetio, 2021). Based on this, the effort to develop a proposed policy for establishing PSBB based on the value of benefits is carried out by regulating the handling of the Covid-19 pandemic as a concurrent matter for local government and optimizing government officials' discretionary powers, instead of an absolute matter. According to the law, the responsibility of determining regional-scale PSBB, as stipulated in Article 11 paragraph (1) of the Health Quarantine Law, solely belongs to the Central Government. The goal of replacing absolute matters with concurrent matters is to align the Covid-19 pandemic health quarantine process with the principle of proportionality in an emergency. The importance of replacing these matters lies in reducing the risk of the Covid-19 virus spreading in each region.

Philipus M. Hadjon defines discretion as a form of governance involving two elements: the authority to decide autonomously and the interpretation of ambiguous laws (Mustamu, 2014). When the government faces a deadlock, ambiguous laws may create doubts about whether the laws are clear and exhaustive or offer some room for choice. Governmental deadlock refers to situations in which the government fails to solve a problem. As for discretionary powers, public officials may use them under certain conditions, as prescribed by

Article 24 of Law no. 30 of 2014 on Government Administration. These conditions are that the discretionary action should not contradict laws and regulations, should not cause conflicts, should be carried out in good faith, should abide by the General Principles of Good Governance (AUPB), and should serve discretionary purposes. The purposes for which discretion can be used relate to various issues. Firstly, emergencies when it is impossible to establish a written regulation in a timely manner; secondly, lack of or ambiguity in regulations; and thirdly, existence of rules underlying a regulation but with vague or multiple interpretations concerning its substance (Ridwan et al., 2018).

The significance of conferring discretion to Regional Governments with regard to the determination of Large Scale Social Restrictions (PSBB) is discernible in the provisions of Article 3 letter (c) of the Health Quarantine Law. This provision accentuates the implementation of health quarantine as a mechanism for fostering national resilience in the context of public health. The Article's explication is intended to furnish a mandate for both the Central and Regional Governments to engage in preventive measures to tackle public health issues and manage health risks originating from domestic and international mobility. In light of this, it is crucial to grant discretion to the Regional Government, specifically to the Governors, Regents/Mayors, through their government officials at the regional level, as a top priority to safeguard citizens during the Covid-19 pandemic. The provision of discretion serves as a shield against the detrimental impact of the

benefits engendered by the spread of the Covid-19 virus.

A country can be considered strong when it is able to ensure the well-being of its citizens through the implementation of the rule of law. According to Francis Fukuyama, a strong state is characterized by its ability to design and enforce policies that uphold the law in a transparent and safe manner (Saraswati, 2014). The Fukuyama Doctrine emphasizes the need to prioritize safety over the benefits of the state or society when enacting laws. In the context of the Covid-19 pandemic, laws and policies should prioritize the protection of citizens' health rights. As stated in the fourth paragraph of the Preamble to the 1945 Constitution, the government has an absolute obligation to protect Indonesian citizens and the nation. Rudini and Nurul argue that policymakers must pay attention to the primary purpose of the state, which is to protect its citizens, when implementing legal policies (Rado & Badilla, 2021). The other objectives of various legal policies related to the Covid-19 pandemic, including the PSBB, can be summarized in the phrase "protecting the entire nation," as stated in the fourth paragraph of the Preamble to the 1945 Constitution.

The regulations pertaining to Large-Scale Social Restrictions must be created using a simple model, not implemented on a regular basis, and delegated to local government officials, allowing for timely and efficient handling of Covid-19 by the Regional Government. This is in line with the recommendations of the Presidential Decree on the Determination of Public Health Emergencies due to the Corona Virus Disease 2019 (COVID-19). The

legal provisions governing the determination of PSBB must, at the very least, provide equal opportunities for the central and regional governments to collaborate and prevent the spread of the Covid-19 virus.

CONCLUSION

The present discourse suggests that the current policy direction for implementing Large-Scale Social Determination at the regional level, as stipulated by the PP PSBB and the PSBB Permenkes, has restricted the authority of the Regional Government to enforce PSBB at the local level. To mitigate this issue, it is recommended that the Regional Government be given broad authority to establish regional-level PSBB, which would reduce bureaucratic processes for periodic Covid-19 handling. Meanwhile, the Central Government should function as a supervisor to oversee the implementation of PSBB at the local level.

Moreover, the legal implications of imposing large-scale social restrictions to combat the spread of the Covid-19 virus have resulted in the failure to realize the value of legal benefits in the policy of prioritizing the Covid-19 pandemic as an emergency. Consequently, efforts are underway to develop a proposed policy for establishing a PSBB based on the value of benefits by regulating the handling of the Covid-19 pandemic from an absolute matter to a concurrent matter for local government officials, thereby optimizing their discretionary authority.

To this end, two recommendations are put forth. Firstly, legislators should improve or establish a new legal framework of PSBB regulations that prioritizes expediency to create effective

and consistent laws in the determination of PSBB at the regional level. Secondly, local governments should be given discretion, particularly in imposing large-scale social restrictions since dealing with Covid-19 must be quick, efficient, and deterrent-free to build national resilience.

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