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The Position of Ministerial Instructions in the Indonesian State Administration System on the Enforcement of Restrictions on Community Activities (PPKM)

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Abstract

This study discusses the position of ministerial instructions in the Indonesian constitutional system for the implementation of restrictions on community activities as a result of the widespread spread of the corona virus disease (Covid-19) in Indonesia. The government issues policies that limit community activities, as well as other directives. Although the policy is considered effective by the government, it must be in line with the prevailing laws and regulations in Indonesia. This research is a normative research that uses legal material collection techniques through library research methods and is described qualitatively. This study explains how the position of ministerial instructions in the Indonesian constitutional system, the legal basis for the Enforcement of Community Activity Restrictions (PPKM) to the legal politics of regulating the Enforcement of Community Activity Restrictions (PPKM). The conclusion of this study is that the PPKM policy is a formal policy that is flawed, because Article 8 paragraph (2) of Law Number 12 of 2011 is violated in the stipulation of legislation. Although there are formal defects in the training process, PPKM substantially has similar characteristics to PSBB, which is regulated in Law Number 6 of 2018 concerning Health Quarantine and Government Regulation Number 21 of 2020. So it can be said that the legal product for implementing PPKM does not conflict with the rules laid down above or above. Based on Law Number 2 of 2014 concerning Regional Government, health is not the absolute authority of the central government. Therefore, local governments have the authority to determine and enact regional regulations that specifically regulate PPKM.

Keywords: *The Minister's Instruction; Constitutional System; PPKM*

INTRODUCTION

PPKM is a policy which regulates restrictions on community activities. PPKM aims to limit interactions, associations and meetings between individuals to reduce the spread and transmission of Covid-19. However, before PPKM was issued by the government, there had been previous regulations issued by the government at the start of the pandemic, namely PSBB. The Covid-19 pandemic is a new experience for Indonesia in the modern democratic era. In an effort to reduce the number of infected patients, the government has selectively changed several existing guidelines, including large-scale social restrictions (PSBB). However, the implementation of the PSBB was considered ineffective in preventing the intensity of the spread and exposure of the virus, so the Government initiated the Implementation of Restricting Community Activities (PPKM) as stated in the instructions of the Minister of Home Affairs, The PPKM refers to propagation control called PPKM. The government implemented this policy for the first time through the Minister of Home Affairs' instruction No. 01 of 2021. The PPKM directive is considered by the government to be far more effective in ensuring that it can suppress the spread of the Covid-19 virus compared to implementing the PSBB.

Indonesia in 2021 is still struggling with the problem of the corona virus or Covid-19. Not only Indonesia, based on ISO 209 data in the world, other countries are also experiencing the same problem in efforts to prevent the spread of this pandemic. There have been many steps taken by the Indonesian government to stop the chain of the Covid 19 virus.¹ When several countries, such as Spain, France, Germany and Italy, implemented total area restrictions or lockdowns.² The Indonesian government often uses different terms in every policy it issues, both at the central and regional levels. The variations of these terms are adapted to the conditions and situations in the affected areas. These various conditions include large social restrictions (PSBB), regional social restrictions (PSBD), the transition from PSBB, namely the imposition of restrictions on community activities (PPKM).

As for the statement issued by the World Health Organization since March 11 2020, that Covid-19 is a pandemic, so the Indonesian government has issued several guidelines to combat its spread. The President of the Republic of Indonesia, Joko Widodo in Jakarta, made the spread of Covid-19 a national disaster on April 13, 2020 with Presidential Decree Number 12 of 2020 concerning Stipulation of Non-Natural Disasters. Previously, the President had also issued Presidential Regulation Number 11 of 2020 concerning the

¹Yang Cao, Ayako Hiyoshi, and Scott Montgomery, "COVID-19 Case-Fatality Rate and Demographic and Socioeconomic Influencers: Worldwide Spatial Regression Analysis Based on Country-Level Data," *BMJ Open* 10, no. 11 (2020),

² Kai Wang et al., "Modelling the Initial Epidemic Trends of COVID-19 in Italy, Spain, Germany, and France," *PLoS ONE* 15, no. 11 November (2020): Hal. 1-14

establishment of a Covid-19 health emergency. Given the large number of victims due to infection caused by international and domestic spread, all efforts are made by the government to ensure that the impact caused by the corona virus pandemic recovers soon. The government's sacrifice and cooperation with the people of Indonesia which lasted for 1 year and 4 months. Unknowingly this dangerous situation has brought extraordinary changes in personal life, the country, and even the world. Unplanned emergency changes can damage the economic system, starting from changes in the world of education through the introduction of online learning that used to be face-to-face, lifestyle changes by having to comply with health protocol recommendations, the implementation of WFH, not to mention administrative regulations in public services that run slowly.³

Currently Indonesia is trying to fight Covid 19, as seen from the high death rate caused by the virus and the increasing rate of Covid transmission in Indonesia. It can be seen in print media, online media and electronic media related to this Covid problem. Many victims have transformed both society and medical care, the government will soon implement guidelines that are more effective in handling this serious case. Regarding data that can be reported on July 6 2021, specific Covid 19 patients in Indonesia are 2,345,018, an additional day of 31,189 Aranang, 1,958,553 people recovered and one with 61,868 people died so the Indonesian government must act immediately. who took the Startie steps so that no more victims would fall.⁴

Regarding the strategic policy issued by the government, in addition to ending the COVID-19 vaccine program in each region of Indonesia, the government also issued an emergency policy aimed at suppressing the transmission of Covid-19 which was based on the Ministry of Home Affairs' Instructions to reduce the interaction of Covid-19 emergency community activities. PPKM in the Java and Bali Region (PPKM) in the Economic Sector whose activities were suspended during the Pandemic Period. This began to be implemented from 3 to 20 July 2021 in the elaboration of the Minister of Home Affairs' instructions to break the Covid chain which was carried out in Java to Bali. Considering that the number of victims continues to show an increase, while hospital facilities are still very limited, each leader of the Segara Provincial Government made instructions at the Ministry of Home Affairs, because Indonesia is currently in a period of emergency. So in this case it is expected to immediately respond to the specified directives.

³ Supriyadi, " Kebijakan Penanganan Covid 19 Dari Persepektif Hukum Profetik", Suloh Jurnal Program Studi Magister Hukum , Oktober, (2020). Hal 91-99.

⁴ <https://covid19.go.id/> diakses 6 Juli 2021

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METHOD

This research is classified as normative legal research, which uses a statutory regulation approach. This research was conducted by examining a statutory regulation in the regulation concerned with the legal case being handled. Library research with materials obtained from library materials, and library materials studied are classified as secondary data.⁶ Furthermore, the conceptual approach consists of views and doctrines that have developed in the science of law.⁷ The library material studied is basic data which in research science is classified as secondary data. Normative legal research uses secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection is through library research because it

⁵ <https://covid19.go.id/> diakses 19 september 2021

⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat* (Jakarta: RajaGrafindo Persada, 2006). 12-13

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta Timur: Prenada Media Group, 2019). 132

examines library materials. This legal study uses secondary data which is divided into primary, secondary and tertiary legal documents.

RESULT AND DISCUSSION

1. The Position of the Ministerial Instruction in the Indonesian State Administration System

Indonesia as a constitutional state based on paragraph 1 (3) of Article 1 of the 1945 Constitution has the absolute consequence that every government and politics must be carried out in a form or with clear legal products. In a rule of law state, the existence of ministers in a government cabinet is the prerogative of the president, which is mandated directly by law. In the doctrine and theory of state science which is based on law in essence states that law is "Supreme" and it is an obligation for state administrators and government to comply with applicable regulations (subject to the law). There is no absolute power above the law, everything is under the rule of law. So it can be said that arbitrary power and/or misuse of power should not be found in the rule of law concept.⁸ In his view, Mahfud MD gave an opinion regarding constitutional culture between the Old Order and New Order eras which illustrates the constitutional differences in the Old Order and New Order eras, namely that in the Old Order the constitutional ways were taken unconstitutionally while in the New Order it was done in ways constitutional even if there are no standard rules or there is a legal vacuum, the regulations are made in formal or constitutional ways.⁹

In the 1945 Constitution of the Republic of Indonesia it is clearly stated that Indonesia is a country that adheres to a presidential system in the flow of state government. So that the Minister is given the authority and responsibility to run the government according to its scope. This certainly means that the position of a minister is that of an assistant to the president in the executive power space through appointment and can also be dismissed at any time by the president. It is undeniable that in a presidential system the president is the highest responsible person for all policies made and implemented by government cabinet ministers. According to Satjipto Rahardjo that a minister as an extension of the president, every work he does will be assessed not only in terms of quantity but also quality, all of which are based on a "moral description".¹⁰

In implementing Community Activity Restrictions (PPKM), this policy is based on the provision of Minister of Home Affairs Instruction number 1 of 2021 concerning Implementation of Activity Restrictions in the framework of controlling the spread of COVID-19. However, what is emphasized in this study is how the position of ministerial

⁸ Sumali, 2003, *Reduksi Kekuasaan Eksekutif di Bidang Peraturan Pengganti Undang-undang (PERPU)*, Cetakan Kedua, UMM Press Malang, hlm. 11.

⁹ Moh. Mahfud MD, 1999, *Pergulatan Politik dan Hukum di Indonesia*, Gama Media, Yogyakarta, hlm. 17.

¹⁰ Satjipto Rahardjo, 2009, *Negara Hukum Yang Membahagiakan Rakyatnya*, Genta Publishing: Yogyakarta, hlm.93

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instructions is in the Indonesian constitutional system. When referring to Law Number 12 of 2011 concerning Formation of Legislation. Article 8 Paragraph (1) stipulates that the types of statutory regulations include regulations stipulated by the MPR, DPR, DPD, MA, MK, BPK, KY, BI, ministers, agencies, agencies, or commissions that are at the same level as statutory regulations. Or the government according to law, provincial DPRD, governor, district/city DPD, regent/mayor, member of city council or equivalent. In particular, Article 8 paragraph (1) Law no. 12/2011 states that only regulations of various state institutions, including ministers, can be classified as statutory regulations. So it can be said that ministerial regulations do not have a position as statutory regulations in the Indonesian constitutional system.

With regard to the provisions of Article 8 of Law Number 12 of 2011, only one Ministerial Regulation has this position. Meanwhile, ministerial instructions only apply as the lowest regulations. Political regulations, such as ministerial instructions, cannot be directly legally binding in their implementation, but still have legal relevance. According to Maria Farida, the instructions do not contain statutory regulations, because an order is always individual and concrete and there must be an organizational relationship between superiors and subordinates, while the nature of statutory regulations in statutory regulations is generally abstract in nature.¹¹ If a policy is a delegation or handover of responsibility to the Minister by the President as an extension of the president's hand in the government system, then this can be interpreted as a delegative authority. Maria Farida argued that Delegation is the delegation of authority to form statutory regulations carried out by higher statutory regulations to lower statutory regulations, whether the delegation is expressly stated or not.¹² The Indonesian constitutional system has developed since the enactment of the 1945 Constitution as the basis for Indonesian constitutionalism. These developments affect the structure of government institutions, including Ministries, which carry out leadership functions in the field of government.

Then referring to Law No. 6 of 2018 regarding health quarantine, this is the basis for issuing various derivative regulations, such as the implementation of the PSBB, etc. Meanwhile, the formation of all laws and regulations which are one of the steps to prevent the spread of Covid-19 must be formally based on Law no. 12 of 2011 concerning Formation of Legislation. It is important that in the process of planning to approval, there are no rules that contradict or conflict with other legal provisions. UU no. 6 of 2018 concerning Kekam health receipts, clearly explains the existence of individual enthusiasm in an area, which is explained as the source of the outbreak, including orders for isolation arrangements, regional quarantine, vaccination, etc. for the spread to stop the epidemic

11 Zaka Firma Aditya and Muhammad Reza Winata, "Rekonstruksi Hierarki Peraturan Perundang-Undangan Di Indonesia," *Jurnal Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 9, no. 1 (2018): Hal. 79-100.

12 Maria Farida Indrati, *Hal-Hal Khusus Dalam Perundang-Undangan*, Jakarta 2009, tanpa halaman

in Indonesia.¹³ However, the form of presenting pest prevention in the case of the current pandemic creates a new paradigm for the wider community. Such as the stipulation of the Enforcement of Large-Scale Social Restrictions (PSBB) in several important cities. The application of these guidelines is clearly the basis for a legal request, namely PP no. 1 of 2020 Large-Scale Social Restrictions under Corona Virus 2019 (COVID-19). These government regulations are implementing regulations of Law 6 of 2018.

In his view, Hans Kelsen argued that the legal system is a system that is likened to a tiered ladder. Spatially, Jimly Asshidiqie emphasized that one norm is related to another norm, if a norm regulates the actions of another norm, then the relationship between the two is referred to as a super and sub-ordinated relationship.¹⁴ This is what, according to Hans Kelsen, the legal system is better known as the theory of statutory hierarchy.¹⁵ Hans Kelsen explains that the unity of these norms is based on the fact that the creation of a lower norm is determined by another, which is higher, where the production is determined by a higher norm, and that this regressus ends with the highest. The basic norm which is the highest reason for the validity of the entire legal order, until finally there is no longer the highest norm which is the basis for the norms below it to apply.¹⁶ Hans Kelsen's view was reinforced by Maria Farida Indrati who said that basically the existence of every norm is always based on the application of a higher norm.¹⁷ Higher norms will always present other norms born from the highest origin norms. So that in the order of legislation in a legal system, it is necessary to pay attention to the position of the norms that form the basis for the presence of new norms originating from these highest norms.

At present, it is this clear legal position that all Indonesian constitutional actors must pay attention to in drafting and announcing health quarantine regulations. However, this article focuses more on a new type of social restraint, namely the imposition of restrictions on people's activities. Regarding regulations, guidelines and instructions regarding PPKM, which are explained in the Minister of Home Affairs Regulation number 1 of 2021. This instruction is a step initiated directly by the central government and is intended for all regional heads in Java-Bali. The instruction states that its implementation is based on

¹³ Ahmad Gelora Mahardika, "Problematika Yuridis Peraturan Pemerintah Nomor 21 Tahun 2020 Dalam Perspektif Ilmu Perundang-Undangan," *Al-Daulah: Jurnal Hukum Dan Perundang-Undangan Islam* 10, no. 46 (2020): Hal. 93-113.

¹⁴ Jimly Asshiddiqie dan M. Ali Safa'at, *Theory Hans Kelsen Tentang Hukum*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006), Hal. 110.

¹⁵ Sofyan Apendi, *Ketiadaan Peraturan Menteri Dalam Hierarki Peraturan Perundang-Undangan Nasional dan Implikasinya Terhadap Penataan Regulasi Dalam Sistem Hukum Nasional*, *Pakuan Law Review* Volume 07, Nomor 01, Januari-Juni 2021, Halaman 111- 126, Hlm.112

¹⁶ Hans Kelsen, *General Theory of Law and State*, Translated by Anders Wedberg, (Massachusetts: Harvard University Printing Office Cambridge, 2009), hlm.124.

¹⁷ Maria Farida Indrati, *Ilmu Perundang-Undangan: Jenis, Fungsi dan Materi Muatan*, (Yogyakarta: Kanisius, 2007), hal. 44.

the massive development of the Covid-19 pandemic on the islands of Java and Bali, and with a new variant of the Covid-19 virus, efforts are needed to fight and overcome the Covid-19 pandemic.¹⁸

2. Legal Basis for Enforcing Restrictions on Community Activities (PPKM) in Indonesia

As a legal status in which all forms of state action must be based on rules, the implementation of PPKM must also be based on the laws and regulations that apply in Indonesia. In connection with the theory of multiple calculations, it makes sense that legal norms have two faces, namely legal norms, which are in rules on the basis of standards; And it is also converted into base and source for the lowest standard.¹⁹ This is confirmed in the theory of norm levels according to Hans Kelsen, who explains that the theory is in relation to the level of legal standards (Stufenleiter) where Kelsen says "*that legal norms are tiered and layered in a hierarchy & arrangement, where a lower norm applies, is sourced, and is based on a higher norm, a higher norm applies, is sourced and is based on an even higher norm, and so on until it reaches a norm that cannot be traced further & and is hypothetical and fictitious. So that the rules are not pursued and are hypothetical and fictitious. The previous basic rules are often referred to as (grundnorm) or (ursprungnorm)*".²⁰

In relation to the theory mentioned above, the making of a set of rules which form the legal basis for PPKM must be based on the applicable laws and regulations. To find out the formal suitability of a legal regulation can be done by referring to Article 8 Paragraph (2) of Law no. 12/2011. There it is said that a legal regulation can be recognized and has binding legal force as long as it is ordered by a higher legal regulation or it can also be formed on the basis of an authorization.

To find out whether a regulation is formally flawed or not, one can look at the several things above based on two aspects, including:

- a) Rules are formed on the basis of higher rules.
- b) Rules are made by responsible officials.

The author then conducts an analysis of the legal basis for implementing PPKM at the central and regional levels.

a. Inmendagri number 1 of 2021 concerning the application of restrictions on community activities

Controlling the spread of COVID-19 in the national context, the legal basis for socializing PPKM with the implementation of restrictions is the activity of controlling the

¹⁸ Instruksi Menteri Dalam Negeri Nomor 01 Tahun 2021 tentang Pemberlakuan Pembatasan Kegiatan Masyarakat Untuk Pengendalian Penyebaran Corona Virus Disease 2019 (Covid19)

¹⁹ Ahmad Gelora Mahardika, "Simplifikasi Proses Pembentukan Undang-Undang Sebagai Upaya Pemenuhan Kebutuhan Masyarakat Atas Transportasi Online Di Era Disrupsi," *Diversi* 6, no. April (2020): Hal. 60.

²⁰ Ahmad Gelora Mahardika, "Politik Hukum Hierarki Tap MPR Melalui Amandemen Undang-Undang Dasar 1945," *Jurnal Legislasi Indonesia* 16, no. 3 (2019): Hal. 52.

spread of COVID-19. On the basis of the theory described by the author in the previous chapter, the guidelines basically do not meet the qualifications to be called regulations. Formally, the use of instructions from the Minister of Home Affairs as an instrument for implementing PPKM is different from Law No. 12/2011 which establishes statutory regulations.

b. SE Governor of Central Java Number: 443.5/0000429 As of 8/1/2021

The legal product used by the governor of Central Java is a circular letter. Belifantes' opinion is a form of political regulation and does not include legislation.²¹The existence of political regulations is certainly inseparable from the freedom of action of government officials. And all forms of policy regulation are nothing more than the scope of discretion in written form and issued externally. Political and legal regulations generally have similarities, as well as differences in form and format. Because of its location in the science of law, basic laws and regulations are included in the field of study of state administrative law, because these regulations were born from state power. Meanwhile, laws and regulations are part of the discussion of constitutional law because they are promulgated by the legislature. The similarities are in the form of a set of rules that are often equated with statutory regulations, such as preamble, legal basis, content consisting of articles, chapters and conclusions.²²

Concerning circulars issued by regional heads regarding the implementation of community activity restrictions. Policy evaluation must be in accordance with the characteristics of political regulation. Bagir Manan said a series of standard political characteristics:

- a) Regulations in the form of policies are not statutory regulations
- b) Testing and limiting principles of legislation may not be applied to policy regulations
- c) A policy may not be tested in a *wet-matigheid* way (the touchstone of statutory rules)
- d) A policy is made based on the *freies ermesen* function
- e) Testing of policy regulations emphasizes *doelmatigheid* (AAUPB test stone)
- f) In its implementation in the form of instructions, decisions, circulars, announcements, etc.²³

In terms of legal status, the Circular Letter of the Governor of Central Java is not included in the regulation, so it does not have general regulatory power. The initial purpose of forming a *beleidsregel* is to provide (guidelines or guidelines) to subordinate officials so that they can carry out their functions and duties smoothly.

²¹ Agus Ryanto, "The Existence and Legal Position of the Chief of Police Circular Regarding the Handling of Hate Speech," *Journal of Cahaya Justice* 3, no. 2 (2015): Pg. 1.

²² K. Haris, *Good Governance (Tata Kelola Pemerintahan Yang Baik) dalam pemberian izin oleh Pemerintah Daerah di Bidang Pertambangan*. *Jurnal Yuridika*. Vol. 30 No.1 Januari 2015. Hal. 67.

²³ Victor Imanuel W Nalle, "Kewenangan Yudikatif Dalam Pengujian Peraturan Kebijakan," *Jurnal Yudisial*, no. 23 (2013): Hal. 33-47.

c. KepGub East Java Number 188/7/KPTS/013/2021,

One of the legal bases for implementing PPKM in East Java Province is the Decree of the Governor of East Java No. 188/7/KPTS/013/2021 concerning Implementation of Restrictions on Community Activities to Combat the Spread of the Corona Virus. A legal product issued by the governor of East Java whose decisions are not regulations. There is a big difference between rules and decisions. Something can be said to regulate if the content of the decision is to arrange plural things and are generally the same. Meanwhile, decisions (*beschikkings*) mean something whose contents are intended to complement laws or to establish laws regarding a particular matter.²⁴ Based on Law Number 5 of 1986 concerning PTUN, a decision of a state administration official must meet the requirements, namely being specific, individual and legally binding and having legal consequences for an individual or legal entity. Because of the characteristics mentioned above, governor decrees basically do not have legal force to regulate, so that the formal use of decrees as PPKM regulations can be classified as a legally flawed legal product.

d. InGub Banten Number 1 of 2021,

As explained in the first point, instructions are basically not regulatory products. Therefore, InGub Banten edition 1 of 2021 concerning the imposition of restrictions on activities to combat the spread of the 2019 corona virus disease (Covid-19) in Banten Province cannot be formally classified as a regulation.

As the legal status of recirculation, all state actions must be based on law. Therefore, PPKM Directives can not only be considered efficiency and efficiency, but policies must be based on applicable laws and regulations. On the basis of "*lex superiori derogat lex inferioi*" that is, the lowest legal provisions cannot conflict with the highest rules. Therefore, the standards are contained in a series of provisions, because the PPKM right of defense policy may not conflict with the highest statutory regulations.²⁵ In addition, Article 15 paragraph 1 refers to regional regulation number 12, concerning the establishment of laws and regulations that laws and regulations cannot apply criminal sanctions. Based on these two things to see whether the PPKM configuration related to the configuration is relevant to the main aspects of legislation which can be based on two things, namely: Does not conflict with higher laws and regulations and Does not regulate criminal sanctions, both sanctions and fines outside of laws or regional regulations.

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²⁴ Pery Rehendra Sucipta, "*Kekuatan Hukum Kebijakan Pemerintah Daerah Dalam Menerbitkan Praesumptio Iustae Causa*," Jurnal Selat II, no. 1 (2014): Hal. 11.

²⁵ Paisol Buridian, "*Public Debatable Position of Woman as Witnesses in Marriage: The Perspective of Islamic and Constitutional Laws*," Italian Sociological Review 8, no. 3 (2018): Hal. 20.

Based on the two things above, the author will conduct an analysis of the regulations that apply to regulate PPKM, including:

1. Inmendagri No. 1 of 2021 concerning Enforcement of Activity Restrictions to Control the Spread of Covid-19, In the Minister of Home Affairs' instruction, they did not clearly stipulate the legal basis for its stipulation. However, on the first page there is a sentence indicating that "the steps taken by the central government and regional governments by issuing a series of regulations contained" in Articles 7 and 8 of Law Number 12 of 2011. As of Law Number 15 of 2019 concerning Amendments to Laws -Law 12 of 2011 concerning Formation of Laws and Regulations, even in the category of "laws and regulations" in the form of state regulations, presidential provisions, Ministerial Regulation, amended, Regional Regulations, and a number of guidelines, both in the form of instructions and roundups in the context of handling the Covid pandemic-19. The crime is part of the formality of the legislation or contains material substance.

Apart from these doubts, as shown by the sentence above, guidelines in the form of instructions are equated with government regulations or presidential decrees. Considering that based on Article 7 paragraph (1) of Law no. 30 of 2014 concerning governance, government policies are included in the category of decisions of TUN officials, not regulations. Baqir Manan agreed, stating that the instructions were in the policy, not the ordinance.²⁶ Therefore, the inclusion of circular letters and instructions in other regulations Article 8 paragraph (1) of Law Number 12 of 2011 is materially incorrect. In the second dictum of the Minister of Home Affairs Instruction which is the main rule regarding PPKM, it can be concluded, among others:

- a) Workplace restrictions by implementing Work From Home (WFH) of 75% and Work From Office (WFO) of 25%.
- b) Implementation of online learning activities
- c) For essential sectors related to community needs can operate 100%
- d) Restrictions on activities in restaurants and shopping centers
- e) Permit construction activity up to 100%
- f) Permit the operation of places of worship with a maximum of 50%

In principle, the PPKM subject matter is listed in article 59 paragraph 3 of Law Number 6 of 2018 Related to Health Quarantine which contains the Implementation of Restrictions on Community Activities (PPKM), including:

- a) School and Workplace Convention

²⁶ Ridwan HR, Despan Heryansyah, SHI., MH., and Dian Kus Pratiwi, SH., MH., "Perluasan Kompetensi Absolut Pengadilan Tata Usaha Negara Dalam Undang-Undang Administrasi Pemerintahan," *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): Hal.58.

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- b) Restrictions on religious activities
 - c) Restrictions on local activities or public institutions.

The restrictions set forth in the PPKM are in essence a further development of the PSBB as referred to in Law Number 6 of 2018 concerning Health Quarantine and Government Regulation Number 21 of 2020.

Another problem is the eight letter b dictum which states that the regulation directs regional heads to enforce mass violation laws or health protocols. Prosecution can be carried out, both criminal and administrative, as long as it is regulated in the relevant laws and regulations, the formation of which is based on an order or the establishment of a higher standard. Fundamentally, a ministerial instruction cannot be understood as a regulation, so a law enforcement order cannot be used as a legal basis for the regulations on which it is based. On this basis, according to the author of the instruction to the Minister of Internal Affairs, there is a formal flaw.

2. Circular Letter of the Governor of Central Java Number: 443.5/0000429 dated January 8, 2021, The legal basis for the shipment of PPKM Central Java Province is located in Central Java Guburr Tengah: 443.5 / 0000429 on January 8, 2021. This circular letter is not much different from the instructions Minister of Home Affairs. The difference is only in optimizing the local level such as Jogo Tonggo, RT/RW, Datawisma PKK and the Lidmates Task Force. One of the differences is that the Central Java Governor's circular letter is not the legal basis for the exercise. In addition, the Central Java Governor's Decree also ordered the implementation of the law.

3. Legal Politics in the Implementation of Restricting Community Activities in Indonesia

As a country governed by the rule of law, it means that no matter how bad the law is when the regulation is promulgated, the government and society must comply with the regulation. PPKM as a policy that is considered effective by the government in tackling the spread of the Covid 19 pandemic must be adjusted to the applicable laws and regulations, namely Law No. 6 of 2018 related to Kecaran health and Law No. 12 of 2011 relating to the stipulation of statutory regulations. In addition, PPKM is known as one of the common actions in Law number 6 of 2018, in relation to health sciences in this law there are several pest and disease preventions, including:

- a) Regional Quarantine
- b) Home Quarantine
- c) Hospital Quarantine
- d) Large Scale Social Restrictions

If the government wants to regulate PPKM, this can be done by including PPKM as an effort to deal with outbreaks in the Health Quarantine Law. This can be done by amending the Health Quarantine Law and the inclusion of PPKM as one of the steps to

deal with the outbreak. Second, the government's legal policy is instead of a Law (Perpu) which introduces Law no. 6 of 2018, in addition to giving power to the regions, implementing regulations in their respective regions in the form of regional head regulations (Pegub, Perbup or Perwali) to be stipulated. This is important because, in Article 8 (2) of Law Number 12 of 2011 concerning the formation of laws and regulations, the formation of implementing regulations must be based on other main provisions. Third, based on Law no. 23 of 2014 concerning Regional Government, Health issues are not included in the absolute authority of the Central Government. Based on Article 10 paragraph (1) of the Local Government Law, the absolute powers of the Central Government include: National Monetary and Fiscal, Justice, Security, Defense, Foreign policy, Religion.

It can be seen from a series of previous authorities, health issues do not contain the absolute authority of the central government. Therefore, local governments can issue regulations governing PPKM. Regional regulations are entirely at the provincial level, which can then be delegated to district/city governments to issue PPKM implementation standards in their respective regions.

CONCLUSION

PPKM or the implementation of restrictions on community activities is a central government policy measure to limit interaction, be it meetings between individuals or groups to reduce the spread and transmission of Covid-19. However, PPKM is not the term for the first social restrictions imposed by the Government. Previously, the government introduced another name since the start of the Covid-19 pandemic, namely PSBB. The Implementation of Restricting Community Activities (PPKM) is a variant of a new policy issued by the Government regarding the handling of the Covid-19 pandemic outbreak. Even though government policies are considered effective as legal status, all state actions must be based on applicable laws and regulations. Based on the researcher's analysis, the PPKM policy is a flawed formal policy, because Article 8 paragraph (2) of Law Number 12 of 2011 violated the stipulation of laws and regulations. Despite the formal defects in the training process, PPKM is substantially similar in characteristics to PSBB, which is regulated in Law Number 6 of 2018 concerning Health Quarantine and Government Regulation Number 21 of 2020. So it can be said that the legal product for implementing PPKM does not conflict with the rules set out above.

In essence, problems in the constitutional system can be surpassed by a number of legal policies that can be carried out by the government. First, by amending Law Number 6 of 2018 and implementing PPKM as a form of minimizing the spread of the plague, in addition to regional quarantine, hospital quarantine, regional quarantine or PSBB. Second, the Perpu issue to amend Law Number 6 of 2018 in terms of Health Quarantine when it was subjective to the implementation of PPKM Urgent to implement. Third, based on Law Number 2 of 2014 concerning Regional Government, health is not an absolute authority of the central government. Therefore, local governments have the

authority to determine and establish regional regulations that specifically regulate PPKM.

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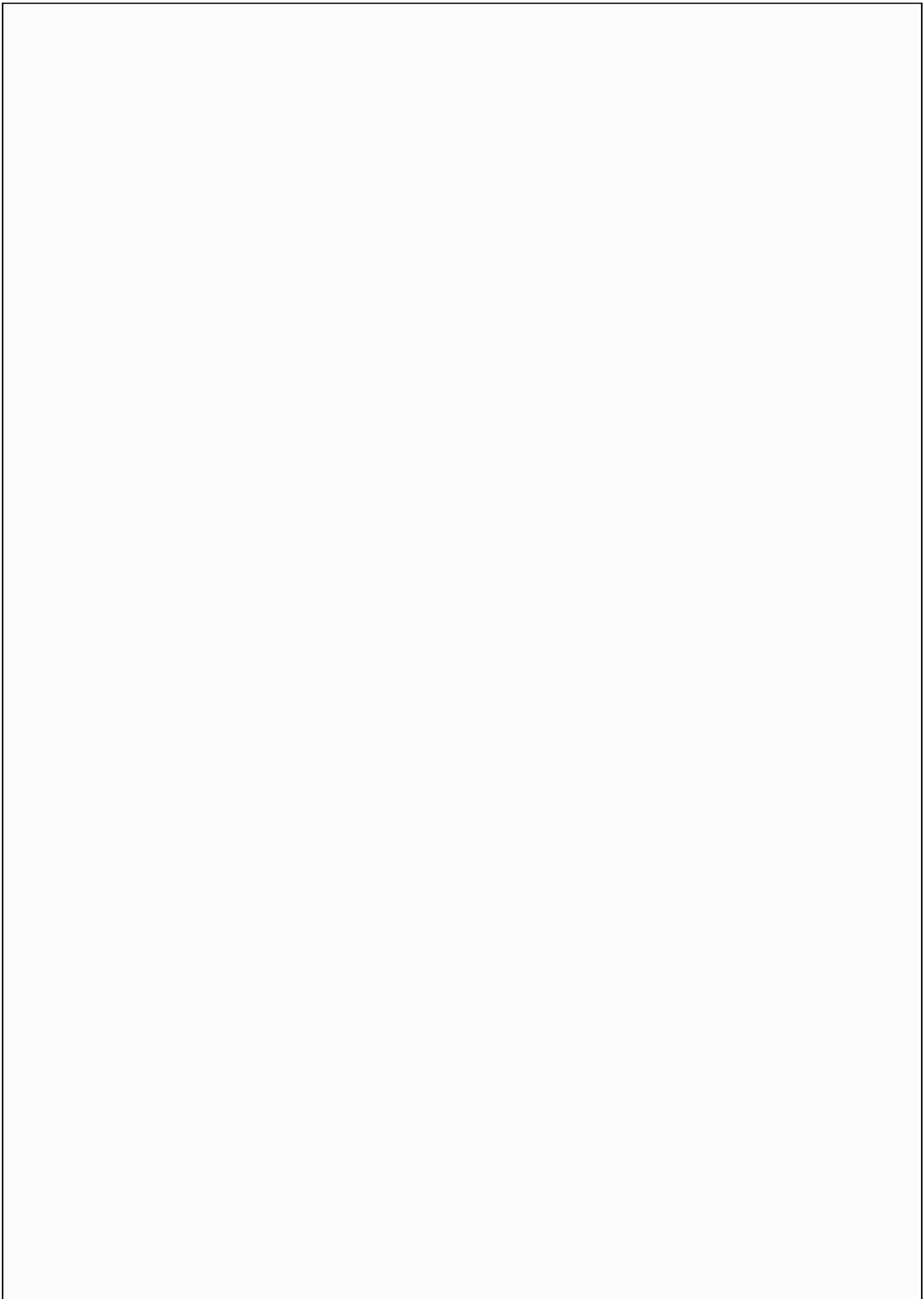
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