

## THE POTENTIAL OF HUMAN RIGHTS VIOLATIONS IN THE MANAGEMENT OF COVID – 19

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### ABSTRACT

*In principle, human rights must be upheld by anyone and at any time. Any policy that is contrary to these principles is a human rights violation, including efforts to deal with health emergencies due to the Covid -19 pandemic. If this is in conflict with this principle, then it is also a violation of human rights. The fact that happened during the covid period, is the number of policies issued by the government. including the Work from Home Protocol, Social Distancing, Social Restrictions on a Large Scale (PSBB), Enforcement of Rapi Test or swab test on Inter-regional routes. The many policies in this research focuses on the issue of potential human rights violations in the implementation of the PSBB policy for the spread of Covid-19, and the aim of this research is to analyze the potential human rights violations in the implementation of the PSBB policy. Research examines the meaning of limitation. From various opinions, the word limitation has different meanings, restrictions that are understood by the concept of not entering an area but people in that area still interacting, and restrictions that are understood that in an area the people have a distance to interact at all. This study uses a conceptual approach and a statutory approach which is the thought of an analysis of the Covid-19 pandemic phenomenon. The results show that several provisions in the implementation of the PSBB do have the potential to contain elements of human rights violations, therefore there is a need for improvement in policies so that the conclusion of this study states that there are potential human rights violations due to different perspectives on the meaning of restrictions in an area.*

Key words: Potential, Human Rights Violations, Management and Covid-19

### INTRODUCTION

Order in the Order of life, Policy and Law cannot be separated from one another. The constitution remains a legal product that at one time requires adjustments to the dynamics both national and international, both universal and particularistic based on 3 approaches, namely credibility and effectiveness, democracy and public involvement, trust, and accountability. Law is a product of policy, but policies must be contained by law. If law is a political product, then the character of the legal product changes if the political configuration that gives birth to it changes.<sup>1</sup> Throughout the history of the State of Indonesia there have been political changes alternating between a democratic political configuration and an authoritarian political configuration. In line with the configuration changes, the character of the legal product also changes. The thicker the legal content with the issue of power relations, the stronger the influence of the political configuration on the law.<sup>2</sup>

The year 2020, is a history of new phenomena that were born in the order of human life. Various countries feel drastic changes. The Covid-19 outbreak devastated all sectors of life, both the economic, education, social and so on. Starting from Wuhan China at the end of 2019, grounded quickly throughout the world, approximately 216 countries are exposed, the number exposed at the world level (216 countries) as of June 3, 2020 is 6.24 million people and 378,000 people died. The state of Indonesia at the same time amounted to 28,233 positive people, and 1698 people died. The impact of the Covid-19 pandemic spreads and spreads to various sectors in the world. The rapid spread of the virus caused the number of deaths to be so high, that until Tuesday, April 12, 2020 there were 14,749 positive cases, 3,063 patients recovered, and 1,007 patients died in Indonesia (Covid-19 Task Force, 2020). The mortality rate is increasing, but there are other impacts that are affected such as impacts on the social, political, cultural, economic and environmental sectors. Recently, negative issues have emerged in sectors such as social, political, economic, and cultural. Meanwhile, positive issues appear in the environmental sector.<sup>3</sup>

On March 11, 2020, WHO has declared and announced Covid-19 as a global pandemic, with recommendations for standard international protocols in the form of independent isolation (Stay at Home), Work from Home, Physical Distancing, and the use of masks; Decrease in human activity due to lockdown policies in several countries including Indonesia with the issuance of PP. 21 of 2020 concerning Large-Scale Social Restrictions has a positive impact on the environment. The environment is divided into two elements forming the ecosystem, namely the living environment (Biotic) and the environment of inanimate / non-living objects (Abiotic). Humans are included in biotic, but unfortunately the role of humans in a social life, namely society often provides domination, discrimination, and overexploitation of the surrounding environment.

<sup>1</sup> Moh. Mahfud MD., Politik Hukum Di Indonesia. Jakarta: Rajawali Pers, 2009, h. 373.

<sup>2</sup> Ibid.

<sup>3</sup> Amirullah dkk Wabah Corona, Dokter Spesialis Paru di Indonesia Cuma 1.106 orang, 2020, diakses dari <https://nasional.tempo.co/read/1322827/wabah-corona-dokter-spesialis-paru-di-indonesia-cuma-1-106-orang-pada-26-maret-2020>

Compared to other outbreaks that have occurred, the 2019 Corona Virus is the biggest disaster that has never been experienced before in the history of human civilization; All affected countries have responded quickly to the WHO standard protocol with additional policies that vary from country to country. Uncertainty, confusion, and emergencies caused by the Corona virus can be a stressor for many people. The uncertainty in knowing when the plague will end has made many groups of people, especially the middle to lower class, confused about their fate. Life that goes on as usual without a livelihood makes it difficult for them to make ends meet. The existence of the Corona virus that threatens everyone has the opportunity to become a stressor for most people, and the impact can be as severe as the impact if infected with the Corona virus itself.

European countries and America set a lockdown, while Indonesia, among others, issued a PP. No. 21 of 2020 to combat Covid-19. For the effectiveness of the Stay At Home and WFH protocols, all countries are closing down gathering places such as houses of worship, markets and even educational institutions, government and private offices as well as industry and employment, which has an impact on the global economic crisis as a source of new threats to welfare and safety of mankind, including Indonesia with the Restructuring of the 405 T State Budget (Perpu No.1 of 2020 concerning Government Regulation in Lieu of Law (Perpu) concerning State Financial Policy and Financial System Stability for Handling Pandemic Corona Virus Disease 2019 (COVID-19) and / or in the Context of Facing Threats that Endanger the National Economy and / or Financial System Stability as of March 31, 2020).

Philosophically, in the preamble to the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), it is called the values of Pancasila, including the 1st precept, namely God Almighty. In Islam, Q.S. Al-Baqarah verse 30 states that Allah wants to make humans as caliphs on earth. In several interpretations, the caliph has 2 (two) functions, namely the leader and the welfare of the earth. Therefore, law as a tool used to create order in society is not a barrier that can stop the pulse of life, such as the "stay at home" or "work from home" policy as was the case some time ago. As a result of Covid-19, the Indonesian economy is predicted to grow negatively by 0.4%, which is the worst scenario. The economic sector most affected by COVID-19 is the household sector.<sup>4</sup> The biggest problem in Indonesia today is the lack of awareness about the dangers of this virus in society. The government's appeal to minimize mobility and travel outside the home is difficult to implement in Indonesia.<sup>5</sup> This is because some workers have their respective responsibilities with the work in their office.<sup>6</sup>

So in dealing with the foregoing, the issue of this research is oriented to the policies given by the state to citizens in fact provide detrimental restrictions and create considerable losses to society. So, this manuscript raises an article with a focus on: The Potential of Human Right Violations in the management of Covid - 19.

Several approaches are used, especially by using analysis of legal cases that occur in society, especially on the impact of policies issued during the pandemic on the wider community, both in the aspect of human rights and in the philosophical aspect of the function of law as part of the regulation, not limitation.

## INTERNATIONAL LEGAL APPROACH

It is undeniable that in an environmental ecosystem there will be many interactions in the form of reciprocal relationships between living things or living things and their environment. Not without problems, these interactions have recently become a concern, especially between living things themselves (humans, animals, and plants). The focus of this discussion is on health issues that ultimately trigger zoonotic diseases that were raised to the surface after the presence of SARS, MERS, Ebola H5N1, H1N1 to NCov-2019 / SARS-Cov-2 attacked the global community.<sup>7</sup>

With regard to law enforcement, let us review from the beginning of the emergence of the virus in Indonesia. According to Article 154 of Law Number 36 of 2009 concerning Health, the Government of Indonesia is obliged to announce the areas that are the source of disease transmission to the public. This means that the government is obliged to disclose the types and spread of diseases that have the potential to be contagious or spread in a short time and mention the areas that are the sources of transmission. However, the fact is that the government was slow in disseminating information regarding the first case of Covid-19, namely that the official announcement was only made after a week since two patients were confirmed as positive for the SARS-Cov-2 virus and there was no notification of the domicile of the two patients.<sup>8</sup> This proves that the government seems hesitant in facing the global pandemic when previously it was too proud to anticipate the arrival of the virus in Indonesia.

<sup>4</sup> Susilawati, Falefi, R., & Agus P. (2020). Impact of COVID-19's Pandemic on the Economy of Indonesia. *B-udapest International Research and Critics Institute-Journal (BIRCI-Journal)*, 3 (2), 1155, DOI: <https://doi.org/10.33258/birci.v3i2.954>

<sup>5</sup> Yunus, N.R. & Rezki, A. (2020). Kebijakan Pemberlakuan Lock Down sebagai Antisipasi Penyebaran Corona Virus Covid-19. *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 7(3), 227-238, <https://doi.org/10.15408/sjsbs.v7i3.15083>

<sup>6</sup> Novida, I., Dahlan, D. & Huda, S. (2020). Pelatihan Pencegahan Wa-bah Pandemi Covid-19 dan Pembuatan Penyitansi Tangan yang Ekonomis. *Jurnal Masyarakat Man-diri*, 4 (2), 194, <https://doi.org/10.31764/jmm.v4i2.1949>

<sup>7</sup> Rebecca Onion, We've Had a Lot of Pandemics Lately. Have We Learned Anything From Them?, 2020, diakses dari <https://slate.com/human-interest/2020/01/coronavirus-outbreak-sars-swine-flu-viral-history.html> pada 17 Maret 2020

<sup>8</sup> Bayu Galih, NASIONAL SEPEKAN: Setelah Jokowi Umumkan Ada Virus Corona di Indonesia, 2020, diakses dari <https://nasional.kompas.com/read/2020/03/09/08074991/nasional-sepekan-setelah-jokowi-umumkan-ada-virus-corona-di-indonesia>. Pada 20 Maret 2020

But in discussing a problem, one cannot drag on discussing things that have happened and have gone astray. So it is better to improve in the future, the government must prepare further scenarios in handling Covid-19, especially to anticipate the predicted increase in the number of infections, that here the law must also be well enforced when handling it and can help prevent a similar outbreak in the future (futuristic). In law enforcement, several things must be done. In fact, this virus is not a virus in the danger category when looking at the death rate, which is far below SARS and MERS.<sup>9</sup> Therefore it does not necessarily make people panic, but people still have to take precautions together with the government and comply with all policies made in the face of national disasters. Because what needs to be suppressed is the spread and death rate caused by this virus. Either through the prevention movement by every citizen, the efforts made by health workers and through existing law enforcement mechanisms. The law must be able to provide the best solution for the community in the midst of the conflict, one of these conflicts is the Covid - 19 outbreak.

The shift in scope to cover international health emergencies (PHEIC) is one of the crucial reforms listed in the IHR 2005. WHO is the only institution that has the authority to declare and revoke PHEIC status, of course after considering information from state parties, decisions, advice from the Emergency Committee, principles, and scientific evidence, as well as an assessment of risks to human health, international distribution, and interference to international traffic.<sup>10</sup> The PHEIC status declaration raises awareness of "extraordinary events" which, firstly, cannot be resolved only at the national level, and secondly, have the potential to carry the risk of international spread. Furthermore, the authority to declare PHEIC status not only improves international response to global conditions, but also represents a special instrument in international organizations, considering that the PHEIC provides a single authority that has the potential to have far-reaching impacts.<sup>11</sup>

The legal order regulates the relationship between members of the international community to advance human dignity through the creation of peace and welfare of all mankind, within the framework of the United Nations (UN) world organization organization. WHO is a special agency of the United Nations since its establishment in 1948 according to its charter, it is responsible for all people to achieve the highest level of health that is most desirable.

In addition, the UN special agency has 5 main bodies, one of which is the Main Assembly (General Assembly) which plays an important role in every UN policy for the benefit of the international community. In the interests of international peace and safety that are under threat, for example, the United Nations cannot act under international law, until the general assembly passes a resolution on the recommendation of the Security Council. The WHO covid-19 protocol, which has gone global with all its impacts in overcoming outbreaks that threaten the safety of mankind, has so far never been brought into the United Nations to obtain legality through a Resolution in accordance with the UN Charter.

Indonesia has played a role by sponsoring the birth of the first UN Resolution on efforts to deal with covid on April 2, 2020, "Global Solidarity to Fight Covid-19", namely the importance of unity, solidarity and international cooperation in efforts to mitigate the global pandemic. Until now the United Nations has issued 2 Resolutions where the last resolution of 20 April 2020 is more on affirming the fundamental role of the UN system in coordinating the global response to controlling Covid, as well as acknowledging the crucial role of WHO. Apart from the aforementioned roles, Indonesia is currently chairing a "Foreign Policy and Global Health Initiative" forum with Brazil, France, and others to initiate and discuss health issues and multilateral political policies.

in fact, international law already has a mechanism for dealing with a global pandemic through the international organization WHO. As an international organization in the health sector, WHO has a big mandate and authority in handling pandemics, especially after the implementation of the 2005 International Health Regulation (IHR) framework. The operationalization of the IHR framework for handling previous pandemics such as H1N1 and Ebola Virus Disease to a certain degree has succeeded in strengthening the gap. -the gap that is owned by the 2005 IHR, both in terms of technical health and legal issues such as compliance with the WHO recommendations as a legal product that was born from the IHR 2005 framework mechanism. The Covid-19 pandemic has again raised questions about the transparency of the taking process. decisions within the WHO organization, as well as highlighting the issue of compliance of state parties with organizational decisions which, in turn, have implications for the success of a country in the pandemic resistance. Moreover, the IHR 2005 efforts to accommodate socio-economic and human rights issues have, in practice, still escaped the attention of the state parties when faced with a situation of global health emergencies. This ultimately leads us to the idea that, as an international legal framework, IHR 2005 cannot be considered a 'one size fits all' instrument capable of solving all the problems of dealing with the global health crisis.<sup>12</sup>

## THE LEGAL PHILOSOPHY APPROACH

The essence or meaning of law is seen from the history of the birth of the law. (Socrates, Plato and Aristotle) in the 4th and 3rd centuries BC. In principle, law is born along with the increasingly complex pulse of life, the relationship between humans in a social entity due to the increase in the number of humans or individuals, therefore, the essence of the existence of law is to "regulate"

<sup>9</sup> Kanavino Ahmad R, RI: Corona Tak Sangat Bahaya, Tingkat Kematian di Bawah MERS dan SARS, 2020, diakses dari <https://news.detik.com/berita/d-4927853/ri-corona-tak-sangat-bahaya-tingkat-kematian-di-bawah-mers-dan-sars> pada 26 Maret 2020

<sup>10</sup> asal 12 ayat (4) International Health Regulation (IHR) 2005.

<sup>11</sup> Ogdandy and Villarreal, International Law on Pandemic Response: A First Stocktaking in Light of the Coronavirus Crisis, 11.

<sup>12</sup> Sabrina Nadilla, KRISIS COVID-19: PERSPEKTIF HUKUM INTERNASIONAL TERHADAP PANDEMI, *Majalah Hukum Nasional* Volume 50 Nomor 2 Tahun 2020, <http://mhn.bphn.go.id/index.php/MHN/article/view/65/56>

the continuity of the complexity of the pulse of life in the relationship between humans and their environment, not to limit, let alone limiting. stop the beating complexity of life, even if for a moment unless there is a violation of the law in it.

Seeing the progress of the implementation of the PSBB up to now as of May 30, 2020 after the Idul Fitri 1441 H, most of the people are still doing homecoming. Especially those who left the capital to return to their respective hometowns in the context of homecoming, which has become a community culture since before the covid-19 pandemic. This is of course inviting mass concern, where the regulations that have been made by the government regarding the prohibition of delaying going home are violated by some people in the capital who have returned to their hometowns, as reported by the Kompas daily on May 3, 2020.<sup>13</sup>

The pandemic of the Covid-19 corona virus outbreak in Indonesia is predicted to last until the end of May 2020. The Covid-19 outbreak in Indonesia is counted for 91 days from February 29, 2020 to May 29, 2020, as determined by the Decree of the Head of BNPB No. 13A, year 2020 concerning the Extension of the Status of Certain Disaster Emergency Disaster Outbreaks of Corona Virus in Indonesia. This has resulted in a series of policies, circulars and government appeals, both regionally and centrally. To overcome social barriers, citizens must pay attention to the public, such as walking as far as one meter, from going public (shopping centers, theaters, stadiums, schools, houses of worship, government buildings, etc.), with masks, without touching, etc. The call for social distancing forces people to study from home, worship at home and work at home. The role of the community in dealing with the Covid-19 outbreak is very important to decipher the transmission of the virus. The Covid-19 pandemic that emerged during this period tested the country's social capital, love of the country and the country, respect for (vocation), and the public interest. and national treasures. Public participation on the shoulder of the road determines the effects of Covid-19. The willingness to stand up and face the Covid-19 outbreak together has led to several public initiatives. Almost Covid-19, causing anxiety. It is difficult to find disinfectants and hand masks, given the initiatives being taken by various groups of society to achieve this. Some do it for indoor use on campus, residential areas. Some have even shared them with the public. Community participation in the development of social security freely builds on Covid-19. Unity and the desire to do something to solve the problems that come together. All of this because of concerns about positive cases of Covid-19. The desire and desire to do something very important is born in many ways.

Therefore, the Stay at Home (WFH) protocol, which is then followed by the closure of places of worship, education places and mass production fields for each individual, is a cessation of the pulse of life or at least a limitation on the complexity of the pulse of human relations amid Covid. Even though Covid itself is part of the problem of the complexity of the pulse of life.

During the COVID-19 pandemic, the role of the National Police was emphasized more in the second sense because during the PSBB period, the National Police had a law enforcement function which was reaffirmed through the Chief of Police Decree No. Mak / 2 / III / 2020 concerning Compliance with Government Policies in Handling Corona Virus. This declaration was the National Police's initiative in supporting PP No. 21/2020 concerning PSBB and Permenkes No. 9/2020. A statement by the Indonesian police said that the national police fully support the government's policy on managing COVID-19 and have ended a series of riots in Indonesia by attacking the meeting. In addition, the police are also committed to dealing with potential crimes by implementing PSBB, such as street crimes, fighting officers, merchandise issues, and cyber-crimes. To support the prosecution aspect, the National Police conducted a contingency operation for Aman Nusa II 2020. This operation was in effect from 19 March to 17 April 2020. The operation period can be extended based on developments in the situation in the field (beritasatu.com). This working group consists of many sub-organs. First, the General Crimes Subsidiary (crime) is responsible for breaking down conventional crimes (theft, theft, natural disaster crimes, and quarantine health crimes). Second, Subsatga Ekonomi is responsible for managing and destroying food storage and medical equipment, stopping the export of antiseptics, raw materials for masks, personal protective equipment (PPE) and masks, and issuing drugs or medical equipment that do not meet standard / distribution requirements. Third, the Siberia Subsatgas has taken action against ring organizers and distributors related to the management of COVID-19.<sup>14</sup>

## CONCLUSION

1. The presence of Covid-19 has added to the complexity of the pulse of life which must be overcome, by regulating (law), not by limiting or stopping the pulse of human life (activity) in the form of Stay at Home;
2. The WHO standard protocol which has been worldwide contradicts the principles of international law as contained in the UN charter;
3. Even the protocol is contrary to the essence of the existence of a law which aims to regulate the complexity of the pulse of human life in order to achieve an orderly and just life;

## RECOMMENDATION

1. Urge the United Nations through its main agency so that WHO immediately stops the recommendation of the stay-at-home standard protocol, and encourages Indonesia's role to issue a new protocol under the umbrella of the UN Resolution as a guide for the international community in their normal activities amid the Covid pandemic, and to do their best to immediately find the covid vaccine.

<sup>13</sup> megapolitan.kompas.com, n.d.

<sup>14</sup> Franciscus Xaverius Wartoyo, PERAN NEGARA DAN MASYARAKAT DALAM MENGHADAPI COVID-19 DALAM PERSPEKTIF POLITIK DAN HUKUM, Jurnal Historis, Vol 5, No. 1 Tahun 2020, <http://journal.ummat.ac.id/index.php/historis/article/view/2434/pdf> . p. 41-47

2. Ask WHO and all its representatives in the world, especially in Indonesia together with the ministry of health and population to collect data on the number of people who died at a certain time in an area periodically before and after the Covid pandemic, because the potential for death is a necessity in every life.
3. Requesting WHO through MUPBB to issue a new protocol in addition to the use of existing masks, as a guide for mankind in their normal activities. Research to quickly find a vaccine is also urgent.
4. Fully support the new normal policy that is temporarily carried out by the government, and encourage people to immediately normalize people's lives as before without having to wait for the uncertainty of the disappearance of Covid-19 and strive to be able to ensure the health condition of every citizen whether or not.

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