The Indonesian Government’s Inconsistency in Handling The Covid-19 Pandemic

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Abstract
A clear legal umbrella is a basis for the effectiveness of a policy, including in dealing with the Covid-19 pandemic. However, the inconsistency of the legal umbrella in giving birth legal uncertain, and the public becomes confused. This research aims to critique the Indonesian government's attitude in dealing with the Covid-19 pandemic, which began in early 2020 due to the legal umbrella's inconsistency in enforcing different and ineffective legal sanctions at the central government and local governments. The research method used is normative research with a statutory approach. In contrast, the research results will be explained in a descriptive-qualitative way. This research shows that the government considers the Covid-19 pandemic a non-natural disaster and does not lockdown. Meanwhile, the legal umbrella used is the health quarantine law, which requires implementing public health emergencies, almost the same as lockdowns. On the other hand, the Large-Scale Social Restriction (PSBB) policy has a legal basis for a health quarantine law, while the Covid-19 pandemic situation is a non-natural disaster that should refer to the disaster management law. Furthermore, other results also show ineffective enforcement of legal sanctions, such as criminal sanctions in regional head decisions that cannot be enforced because PSBB only includes administrative sanctions. In conclusion, the inconsistency of the legal umbrella in dealing with the Covid-19 pandemic is very detrimental to the community due to limited human rights, which can lead to legal uncertainty and public distrust of the government.

Keywords: Covid-19; Disaster; Disease Outbreak; Legal Umbrella Inconsistency.

Introduction
In the past, various types of viruses or disease outbreaks have been experienced by humans and many countries; of diseases communicable black death in Europe to the continent asia.1 Also diseases of malaria struck the premises, Batavia at the time.

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that still be a colonial Dutch in the seventeenth century. So in fact in the context of history, no matter new, never several times occurred with the type of outbreaks of disease are different. All of outbreaks of diseases transmitted it, who can resist only the science of knowledge, not a shaman or a talisman that used humans as customs traditions we especially among tribes Bugis and Makassar or tribes more.

In the Covid-19 context, the data from World Health Organization (WHO) only just to recognize the stages of an outbreak of diseases transmitted from scale sporadic up to be a pandemic of standard size number of patients, the extent of the area and escalation of transmission with total of confirmed cases is 172.630.637 cases with total death is 3.718.683 cases. Starters and deployment of Covid-19 pandemic from the world can be seen on the 30th December, 2019 at Junyintan Hospital in Wuhan, China was found patients stay disease were then known by Covid-19 and in a quick few provinces in China have been infected with a virus such.

The outbreak then spread to Europe and America to the continent of Asia and Africa in period of two months. Then on 11 of March 2020, WHO immediately announced that Covid-19 an outbreak transmitted by categories of pandemic (meaning stage of the highest of the danger of a disease communicable) and Indonesia a week later at 17 of March 2020 President Jokowi announced as a national non-natural disaster.

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6 Adekunle Sanyaolu, [et.,al], “Global Pandemicity of COVID-19: Situation Report as of June 9, 2020” (2021) 14 Infectious Diseases: Research and Treatment.[1178633721991260]. China in December 2019. This cluster quickly spread across the globe and led the World Health Organization (WHO
7 Riyanti Djalante and others, “Review and Analysis of Current Responses to COVID-19 in Indonesia: Period of January to March 2020” (2020) 6 Progress in Disaster Science.[100091].
As a non-natural disaster, the Indonesian government established a Covid-19 Eradication Task Force (Satgas) led by the chairman of the National Disaster Management Agency (BPBN), namely Lieutenant General TNI, Moni Monardo, in March 2020. Then, covid-19 is considered a non-natural disaster based on Law no. 24 of 2007 concerning Disaster Management.

Compared to what other countries have done, such as China, which has implemented a lockdown in several areas such as Wuhan City by isolating everyone to stay at home and forbidding everyone to do activities outside the home without exception. The United States has also implemented a lockdown in 23 states during the beginning of the Covid-19 pandemic. Likewise, neighboring countries, such as Malaysia, also implemented a one-month lockdown in early 2020.

Some examples of these countries consider the Covid-19 pandemic to be a disease outbreak that must be broken by the chain of transmission by implementing a lockdown. Although the decision to lock down generally causes an economic recession, it is a temporary thing. Meanwhile, during the lockdown period, the relevant government provided assistance to its citizens by directly distributing aid in the form of food and necessities of life to each of its citizens’ homes. This is clearly a good form of State responsibility in fulfilling human rights to survive,

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9 Undang-Undang Republik Indonesia Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana 2007.
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including during the Covid-19 pandemic.\textsuperscript{15}

The Indonesian government has done different things by not doing a lockdown. The Indonesian government since March 2020 has imposed Large-Scale Social Restrictions (PSBB) in several areas.\textsuperscript{16} This policy is much different from the lockdown because people’s mobility can still be carried out even though the number is very limited for the sake of basic needs and medicine. In addition, during the PSBB policy, the government did not provide assistance to the community, while the negative economic impact of the Covid-19 period made the community suffer greatly.\textsuperscript{17}

On the other hand, some parties voiced that the Covid-19 pandemic is considered a disease outbreak, as the WHO calls it. If the government officially announces that the Covid-19 pandemic is a disease outbreak, then the follow-up must be done health quarantine.\textsuperscript{18} This quarantine is in principle the same as the lockdown policy, which already has a legal umbrella, namely Law Number 6 of 2008 concerning Health Quarantine jo. Decree of the Minister of Health of the Republic of Indonesia Number 612/MENKES/SK/V/2010 concerning Guidelines for the Implementation of Health Quarantine in Handling Public Health Emergencies Troubling the World.\textsuperscript{19} If this is done, the government is obliged to assist citizens due to health quarantine to avoid the Covid-19 outbreak.

Seeing the Indonesian government chose to regard the Covid-19 pandemic as a non-natural disaster made many citizens suffer. As a result, the human rights dimension of the community has been violated due to the PSBB policy.\textsuperscript{20} It causes


\textsuperscript{17} ibid.[35].a month before PSBB (2 March 2020 – 9 April 2020.

\textsuperscript{18} Rela Rizki Pratwi, Hasrina Nurlaily and Demi Artha, “Analisa Yuridis Penetapan Covid 19 Sebagai Kedaruratan Kesehatan Masyarakat Ditinjau Dari Peraturan Perundang-Undangan Di Indonesia” (2020) 1 Journal Inicio Legis.[12].


PSSBB implementation without any assistance from the government as mandated by the Universal Declaration of Human Rights, which has been ratified in Law Number 39 of 1999 concerning Human Rights.\footnote{Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia 1999.} As a result, many people are trapped in debt, their businesses go bankrupt, and they have difficulty surviving due to economic uncertainty.\footnote{Abitassha Az Zahra Nano Prawoto, Eko Priyo Purnomo, “The Impacts of Covid-19 Pandemic on Socio-Economic Mobility in Indonesia” (2020) VIII International Journal of Economics and Business Administration.[57].}

The government’s inconsistency causes this in dealing with Covid-19. The beginning of this problem was a legal umbrella that did not match the Indonesian government’s assumption that Covid-19 was a non-natural disaster. Meanwhile, the PSBB is based on the Law on Outbreaks of Diseases, which obliges establishing a public health emergency and implement a lockdown.

The research results and criticism in this paper aim to be material for future research by policymakers so that more human rights of every citizen can be fulfilled during the Covid-19 period. Therefore, it is important to criticize the policies taken by the government. Criticism can be in the form of questions, namely:

1. How are the legal inconsistencies in handling the Covid-19 pandemic?
2. How are legal sanctions enforced during the Covid-19 pandemic in Indonesia?

This research is normative research with a statutory and critical review approach.\footnote{Brenda Marshall, [et.,al], \textit{Qualitative, Quantitative, and Mixed Methods Research Designs} (Fifth Edit, SAGE Publications Inc 2018).[214].} Therefore, the research results will be explained descriptively-qualitatively by looking at various regulations and facts during the Covid-19 period in Indonesia from March 2020 to May 2021.\footnote{W Lawrence Neuman, \textit{Social Research Methods: Qualitative and Quantitative Approaches}, vol 30 (Seventh Ed, Pearson Custom Library 2002).[76].}

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In the context of international human rights instruments, ICCPR put on civil and political rights that emphasize the right with the diction “Rights to/of “ like
rights to life, freedom of association, and others. It is also often referred to as the negative rights in the sense that the fulfillment of rights. If the state minus or does not actively interfere in the rights in question, it must provide protection and respect. It is explained in Article 1 Paragraph (3) of the International Covenant on Civil and Political Rights (ICCPR).\(^{25}\)

On the other hand, with regard to economic, social and cultural rights, the state must be actively involved in it because their fulfillment is closely related to the activeness of the state in carrying out its obligations. To fulfill the right to health or free from (freedom from) virus Covid-19 only be perceived and fulfilled if the state is present therein. Without it, Covid19 will be difficult to overcome and control.

Therefore, here there is a relationship strong between the rights of rights of human with the state. Where the rights of human as the theory and concepts adopted enter into the constitution of the country even if the country that is the state totalitarian. Rights as human beings and creatures of God with freedom and the right to life when incorporated into the constitution becomes an obligation the state not only the implementation in the constitution of the country such but also the instrument of international state had promised (treaty) will carry out the rights of humans are.

Since the beginning of Covid-19 entry into Indonesia in February 2020, besides a lot of comments that are not productive and simplify Covid-19 like comment some officials of government, also hesitant in determining the status of law Covid-19 this from want to assign the status of emergency civilian, then into emergency health and become a non-natural national disaster emergency. Determination of the status is very important to see it in an objective and realistic because it would result in the law on acts, management, finance and responsibility of the state as well as the enforcement of the law.

The Indonesian government decided by assessing the Covid-19 outbreak as a non-natural disaster. Furthermore, the government assisted the Covid-19 Task Force

\(^{25}\) International Covenant on Civil and Political Rights (ICCPR) 1976.
led by the National Disaster Management Agency (BNPB) in March 2020. However, such a state or government has taken some significant steps in the prevention and control of Covid-19 to formulate a protocol of health that emphasizes the “3M” (wear masks, wash hands and keep distance) even when this plus more with the term “5M” to add: Away from the crowd and limit mobility.

The following are forms of inconsistency that occurred during the Covid-19 pandemic in Indonesia:

1. Inconsistency of the Legal Umbrella Used

   Indonesia’s government established Covid-19 as a non-natural disaster through Law No 24 of 2007 concerning Disaster Management. So the government formed a Covid-19 Task Force led by the Head of the National Disaster Management Agency (BNPB) in March 2020, guided by Law Number 24 of 2007 concerning Disaster Management. However, in its implementation, the government issued a policy through presidential decree number 21 of 2020 regarding Large-Scale Social Restrictions (PSBB) based on Law No. 4 of 1984 on Infectious Disease outbreaks and Law No 6 of 2018 on Health Quarantine.

   As a state of law, the legal umbrella as the basis of all policies is crucial. For example, if the government stipulates that the Covid-19 pandemic is a non-natural disaster, then it is appropriate to use the basis of Law Number 24 of 2007 concerning Disaster Management led by the chairman of BNPB. Meanwhile, according to researchers, the PSBB policy based on Law No. 4 of 1984 concerning Infectious Disease outbreaks and Law No 6 of 2018 concerning Health Quarantine can be applied if the government determines the Covid-19 pandemic as an infectious disease outbreak and establishes a health emergency troubling the world, such as implementing a lockdown.

   On its way, the Covid-19 task force was again changed to a Covid-19 Handling Committee in July 2020 consisting of the Policy Committee, Chief Executive,
and Task Force through Presidential Decree No. 82 of 2020. However, again, researchers saw no firmness from the government in responding to the Covid-19 suppression because this committee only focuses on economic recovery without looking at what legal umbrella is used.

In addition, institutions are responsible, be submitted to the National Agency for combating disasters (PNPB) already entirely under umbrella ruling, but the implementation also frequently changes and at least had three times the change that is now called the “Committee” in addition to handling Covid19 also recovery of the economy. Two different interests, Covid19 prohibits the mobility of people’s movements while the economic sector requires high mobility in the context of economic movement.

2. There is a Conflict of Policymaking

The Ministry of Health is the authorized institution in a disease outbreak, such as the Covid-19 pandemic. Therefore, the 5M rules and health protocols are basic tasks carried out by the ministry of health, while other sectors should only be supporting elements. However, the government’s inaccuracy in taking a stance by forming a Covid-19 Handling Committee that seems to focus on economic recoveries, such as putting aside the interests of public health. As a result, the Minister of Health is not practical because the Minister, particularly the Minister in the economy, such as industry, remains to want the wheel economy moving so that the rush in the industry sectors still enter work though limited.

On the other hand, the policies between the central and regional governments. The local government wants to implement a lockdown policy while the central government does not want to. The regional government is more focused on preventing the spread of the coronavirus by implementing a lockdown. The local government considers lockdown a solution as other countries have implemented it, such as China and Malaysia. Meanwhile, the central government does not want to

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lockdown because the economic sector will be paralyzed. It illustrates the direction of government policies that are more towards the economy than public health.

Another contradictory example is the policy of the tourism ministry, which opens tourist objects within a short distance, as stated in the 2021 Covid-19 Handling Task Force Circular. This policy deliberately invites a crowd of people who can become new suspects of Covid-19 transmission, even though the location range is local. Meanwhile, on the other hand, the government has also implemented restrictions on the mobility of domestic travelers (PPDN), which resulted in the prohibition of going home activities.

The facts of the conflict of policies that occurred were none other than caused by an inconsistent legal umbrella. As a result, at the implementation stage, there is legal uncertainty and uncertainty. In the end, people who become victims, such as the right to go home, the right to worship, and so on are limited. This can be avoided if the government firmly considers that the Covid-19 pandemic is an infectious disease outbreak, not a non-natural disaster.

**Enforcement of Sanctions during the Covid-19 Pandemic**

In the Covid-19 context, taking Law of disaster to wear Act outbreaks of disease and quarantine health lies in the fulfillment of the rights of human in persons amid disaster mainly the responsibility of the state to replace the loss of citizens countries due to Covid-19, which can be said as a result of negligence or not anticipated state in dealing with disease outbreaks which resulted in a loss for the citizens of his country.

Sanctions in the implementation of PSBB in the Health Quarantine Law are in administrative sanctions, not criminal sanctions. Although the Law on Quarantine regulates crimes, it is more intended for those who deliberately fight against the

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28 *ibid.*
enactment of this situation, especially the situation of the lockdown policy, such as imposing fines in the province of Jakarta or the form of social work sanctions and for business people in the form of business license revocation.

Suppose we arrange the sanctions regarding the implementation of PSBB both in government regulations and in the following Presidential Instruction. In the Presidential instruction related to the enforcement of the Covid-19 Law, it is clear that the sanctions consist of:

1. Verbal warnings or written warning;
2. Social work;
3. Administrative fines; or
4. Suspension or temporary closure Business operations.

The researcher agrees that the regulations under the law must not have criminal provisions, as Professor Andi Hamzah’s opinion. When the law under the law has criminal provisions, there will be legal uncertainty because the reference for criminal sanctions is the Criminal Code (KUHP) and equivalent laws. As a result, it can be seen that in this case, there is the ineffectiveness of regulation such as the Decree of the Governor of Jakarta Number 107 of 2021 concerning Restrictions on Micro-Based Community Activities (PPKM), which has criminal provisions, but cannot be enforced.

Likewise with other regions, such as Makassar Mayor Regulation Number 22 of 2020 concerning the Implementation of Large-Scale Social Restrictions (PSBB) in Makassar City, which has criminal sanctions. This regulation states that PSBB has criminal sanctions that Satpol PP will enforce following applicable regulations. The statement is very hanging because if we look at the basis for this PSBB is Presidential Regulation No. 21 of 2020, then the legal umbrella is the Infectious Disease Outbreak Law, but on the one hand, the government is adamant not to carry out public health emergencies, such as the Lockdown.

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29 Andi Hamzah, *Hukum Acara Pidana Indonesia* (Edisi kedua, Sinar Grafika 2019).[89].  
On the other hand, the weakness of this regulation has an impact in the form of stipulating Covid-19 as a state emergency in the form of a disaster emergency, which can result in government actions in the name of emergencies taking actions and policies that are contrary to democratic values and human rights. For example, the legal immunity for state administrators in financial sector policies such as the 1998 crisis gave birth to many corruptors in the BLBI case.\(^{32}\)

It was included in the matter of policies between departments and central and regional governments or between provinces and districts/cities and the determination of sanctions from administrative sanctions turning into criminal acts that are not under the stipulated regulations.

**Conclusion**

The Covid-19 pandemic is an emergency that must be handled appropriately. Proper handling must start from a legal umbrella that is used consistently so that the implementation phase will be effective and efficient. However, the attitude of the Indonesian government with the assumption that the Covid-19 pandemic is a non-natural disaster on the legal basis of the Health Quarantine Law is very out of sync. As a result, many people’s human rights are restricted due to the PSBB, PPKM, PPDN policies, the prohibition of going home, while on the other hand, the government allows economic activities to run, such as the opening of tourist attractions which can become a boomerang later.

Determination of the status of Covid-19 as a Non-Natural National Disaster is irrelevant to reality since an infectious disease outbreak is under Law Number 4 of 1984 and Law Number 6 of 2018 concerning health quarantine. With the status of “Emergency State,” it is necessary to observe and criticize the possibility of the birth of “Constitutional Authoritarian” under the pretext of being an emergency.

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but destroying the order of democratic values and human rights. The application of Article norms that do not refer to the Legal umbrella “Disaster” but uses Articles in the Health Quarantine Law is not the primary reference. Therefore, this research suggests that governments in every country take correct and consistent policies from the start so that the stages of implementing rules and enforcing legal sanctions can be carried out optimally.

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