



Ultimum Remedium in Law Enforcement of Large-Scale Social Restrictions in Indonesia during the Covid-19 Pandemic

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Abstract

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Abstract

The new variant of corona virus from Wuhan is indeed very infectious. The Covid-19 has shocked the world because it is so deadly and takes many lives. So this has a significant impact on each country. Indonesia, to tackle the spread of this virus, has also implemented several ways, namely by encouraging people to live clean and healthy lives, implementing the 5M (Wearing masks, Washing hands, Keeping a distance, Staying away from crowds, Limiting mobilisation and interaction) and imposing restrictions. The government's efforts are solely for the common good. However, it is undeniable the large-scale social restrictions or Pembatasan Sosial Berskala Besar (PSBB) implementation also has an unfavourable impact on the community because their movement is restricted. This indirectly also harms the people's economic movement. So there are still some people who violate this PSBB rule. This study was conducted to determine whether the ultimum remedium is applied in law enforcement for PSBB violations. The research will use qualitative research by collecting data and news analyzation. The study results show that the government applies criminal sanctions and fines as an alternative to deter people.



A. Introduction

Since the end of 2019, the world has been shaken by a virus known as covid-19. Coronavirus or covid-19 is a virus spreadable quickly. This virus first appeared in Wuhan, Mainland of China. Since the virus appeared, the world has been busy competing to overcome it. The virus is hazardous and deadly, causing many casualties. The total number of positive coronavirus cases in Indonesia as of November 2, 2021, has amounted to 4.24 million people who have contracted covid-19, and 143,000 people have died.¹ A pandemic is a disease or virus that quickly spreads and infects an area and causes many deaths.²

In order to tackling the covid-19 disaster in Indonesia, the government has implementing several ways, including quarantining residents who have just entered from areas prone to covid-19. The government encourage people to live clean and healthy. Implementing social distancing in order to reduce the chance of disease transmission.³ Encouraging people to live clean and healthy, wearing masks, washing hands, maintaining distance, avoid the crowds, limiting mobilisation and interaction⁴ because the right to health must be understood as part of the state's responsibility to fulfil various health facilities and services and the conditions for realising adequate and generally affordable health standards by all levels of society.⁵ And also implementing large-scale social restrictions or *Pembatasan Sosial Berskala Besar* (PSBB) which have been prescribed in Government Regulation No. 21 of 2020 concerning PSBB to accelerate the impact of handling covid-19.⁶ The action includes restrictions on the communities' certain activities from an area infected or suspected with covid-19⁷, this restriction also includes aspects of education and work, which caused some aspects should do online. Not only that but religious activities must also be temporarily suspended. This large-scale social restriction is an affirmation of the previous policy that we also know as Social Distancing.⁸ This PSBB takes place in areas indicated by the red zone.⁹

¹ SATGAS COVID-19, "Peta Sebaran Covid-19," Pemerintah Republik Indonesia, 2021, <https://covid19.go.id/peta-sebaran>.

² Sri Kardjati, Anna Alisjahbana, and J.A Kusin, *Aspek Kesehatan Dan Gizi Anak Balita* (Jakarta: Yayasan Obor Indonesia, 1985), <http://www.lontar.ui.ac.id/file?file=pdf/metadata-20098992.pdf>.

³ Brendon Sen-Crowe, Mark McKenney, and Adel Elkbuli, "Social Distancing during the COVID-19 Pandemic: Staying Home Save Lives," *The American Journal of Emergency Medicine* 38, no. 7 (2020): 1519–20, <https://doi.org/10.1016/j.ajem.2020.03.063>.

⁴ In Indonesia this is called "5M" translated in Bahasa Indonesia as *memakai masker, mencuci dengan dengan sabun dan air mengalir, menjaga jarak, menjauhi kerumumnan, dan mengurangi mobilitas*

⁵ Rico Mardiansyah, "Dinamika Politik Hukum Dalam Pemenuhan Hak Atas Kesehatan Di Indonesia," *Veritas et Justitia* 4, no. 1 (2018): 227–51, <https://doi.org/10.25123/vej.2918>.

⁶ Peraturan Pemerintah Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar dalam rangka mempercepat penanganan Covid-19

⁷ Marco Ciotti et al., "The COVID-19 Pandemic," *Critical Reviews in Clinical Laboratory Sciences* 57, no. 6 (2020): 365–88, <https://doi.org/10.1080/10408363.2020.1783198>.

⁸ Dwi Aditiya Putra, "PSBB Tak Berdampak Besar Ke Ekonomi Indonesia," *Liputan 6*, 2020, <https://www.liputan6.com/bisnis/read/4221693/psbb-tak-berdampak-besar-ke-ekonomi-indonesia>.

⁹ Septa Candra, "PSBB Dan Kesadaran Hukum Masyarakat," *Hukum Online*, 2020, <https://www.hukumonline.com/berita/baca/lt5eb5002b36e77/psbb-dan-kesadaran-hukum-masyarakat-oleh--sept-a-candra?page=2>.

The government provides PSBB as a policy during the pandemic, which aims for reducing the number of covid-19 cases. However, the rule is causing problems because all people should limit their activity, which harms the economic cycle of the community. Resulting in many people violating the rule. The government regulates a law that provides sanctions for violators of PSBB regulations to deal with this problem. The sanctions have the amount of variation, ranging from reprimand sanctions to criminal sanctions.¹⁰

The debate over the application of criminal sanctions for PSBB violators is still a big polemic among academics, practitioners and the public. This article will focus on how does the government provide policies for people who violate PSBB rules? Will giving hefty fines and criminal sanctions be effective in providing a deterrent effect?

B. Discussion

1. Government Policy in the Prevention and Eradication of the Corona Virus Pandemic.

Government in handling during the covid-19 virus pandemic as of March 31, 2020. The government has issued new policies named. President Decree No. 1 of 2020 Regarding Penetapan Kedaruratan Kesehatan Masyarakat Corona Virus Disease 2019 (covid-19), PP No. 21 of 2020 regarding Large-Scale Social Restrictions to Accelerate Handling of Corona Virus Disease 2019 (COVID-19). The implementation of these regulations is an effort of that Health Emergencies, which are health emergencies in the community, namely health events in our society that have started from the spread of infectious diseases that have caused public health hazards and have the potential to spread between regions or between countries.¹¹ One of the well-known media in Indonesia, also on March 30, 2020, reported on efforts to deal with the covid pandemic. The president will also plan to use a Government Regulation in Lieu of Laws in a civil emergency.¹² This refers to the Government Regulation in Lieu of Law No. 23 of 1959. However, many people disagree with this Perppu because the circumstance isn't suitable with the current conditions.¹³ The reality, nowadays, there are still many people who do not follow the government's recommendations. This is not the reason the situation forces them to not stay at home; it is because, in Indonesia, most people's occupations couldn't do at home, especially the people who work as blue-collar. Some micro-enterprises, such as street vendors, have an impact on the non-formal workers. Several previous studies have been carried out regarding this issue, including Wibowo Hadiwardoyo regarding the national economic loss due to PSBB. The results show that what is needed is the right policy, both in terms of location, time and procedure. If the PSBB can guarantee a break in the chain of transmission of Covid-19¹⁴, then the government should do it adequately and with the shortest possible time. Suppose the prolonged government restrictions and or implemented the rule in a particular location by considering the risk of economic stability. In that case, the policy couldn't implement well, and the losses will be even more significant for both the economy and society.¹⁵ The research conducted by Sylvia Hasanah Thorik regarding the effectiveness of PSBB in Indonesia on

¹⁰ Suhariyono AR, *Pembaruan Pidana Denda Di Indonesia* (Jakarta: Papas Sinar Sinanti, 2012).

¹¹ Arasy Pradana A. Azis, "Perbedaan Kedaruratan Kesehatan Masyarakat Dan Darurat Sipil," Hukum Online, 2020, <https://www.hukumonline.com/klinik/detail/ulasan/lt5e859c3f90187/perbedaan-kedaruratan-kesehatan-masyarakat-dan-darurat-sipil/>.

¹² Danu Damarjati, "Penjelasan Soal Darurat Sipil Yang Akan Diambil Jokowi Untuk Lawan Corona," Detik.com, 2020, <https://news.detik.com/berita/d-4958409/penjelasan-soal-darurat-sipil-yang-akan-diambil-jokowi-untuk-lawan-corona>.

¹³ Rahmadya Trias Handayanto and Herlawati Herlawati, "Efektifitas Pembatasan Sosial Berskala Besar (PSBB) Di Kota Bekasi Dalam Mengatasi COVID-19 Dengan Model Susceptible-Infected-Recovered (SIR)," *Jurnal Kajian Ilmiah* 20, no. 2 (May 26, 2020): 119–24, <https://doi.org/10.31599/jki.v20i2.119>.

¹⁴ Murat Yildirim and Fatma Solmaz, "COVID-19 Burnout, COVID-19 Stress and Resilience: Initial Psychometric Properties of COVID-19 Burnout Scale," *Death Studies*, 2020, 1–9, <https://doi.org/10.1080/07481187.2020.1818885>.

¹⁵ Wibowo Hadiwardoyo, "Kerugian Ekonomi Nasional Akibat Pandemi Covid-19," *Baskara: Journal of Business and Entrepreneurship* 2, no. 2 (2020): 83–92, <https://doi.org/10.24853/baskara.2.2.83-92>.

dealing with the Covid-19 pandemic. This study indicates that the implementation of PSBB is believed to be the most effective way to reduce the rate of transmission of the Covid-19 pandemic.¹⁶ We can see this in the various steps taken by the government both at the central and regional levels by recommending or urging the public to limit activities in specific sectors, including pressing the public to postpone activities that invite a lot of people. On the other hand, this condition has almost stopped daily life, trade and other economic activities.¹⁷ In implementing this lockdown, there needs to be cooperation between the government and the community to realise social welfare and public health without limiting religion, circles, and professions.¹⁸

2. Sanctions for Violation of Law Violation of PSBB

The threat of criminal sanctions against violators of large-scale social restrictions or *Pembatasan Sosial Berskala Besar* (PSBB) regulations that have been regulated in various kinds of laws, including Law no. 4 of 1984 concerning Communicable Disease Outbreaks, Law No. 6 of 2018 concerning Health Quarantine and Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in terms of accelerating the handling of Corona Virus Disease. The provisions of Article 93 of the Quarantine and Health Law are explicit. The threat of criminal sanctions is a maximum of one year and or a maximum fine of one hundred million rupiahs. In contrast, Article 218 of the Criminal Code explains maximum imprisonment of four months and two weeks or a maximum fine of nine thousand rupiahs for anyone making the crowd was reprimanded three times by the authorities.¹⁹ Governor Regulation No. 79 of 2020 concerning the Application of Discipline and for Enforcement of the rule of law as an effort to prevent and control covid-19 in Jakarta. This regulation stated that repetitive offenders are subject to a penalty of five hundred thousand rupiahs. A twice violation is subject to a fine of seven hundred and five tens of thousands of rupiah and can be punished for up to three times above a fine of one million rupiahs.²⁰ Places of business that have committed continuous and repeated violations. Progressive regulatory sanctions can also apply to business actors. The first warning may be subject to a fine of fifty million rupiahs, for the second time a fine of one hundred million rupiahs, and for the third time and so on may be subject to a progressive fine of one hundred and fifty million rupiahs.

In general, what is meant by law enforcement in the form of values elaborating the rules to establish, maintain, preserve the environment and peace? Therefore, in law enforcement, it is not only carrying out laws and regulations.²¹ In the opinion of Bardan Nawawi, in essence, law enforcement is the concept of the protection of human rights and the upholding of justice and integrity in all regulations and norms of the order of people's lives.²² This is reinforced by the existence of Article 4 of Law Number 39 of 1999 concerning Human Rights, where human

¹⁶ Tundung Subali Patma et al., "The Impact of Social Media Marketing for Indonesian SMEs Sustainability: Lesson from Covid-19 Pandemic," *Cogent Business & Management* 8, no. 1 (2021), <https://doi.org/10.1080/23311975.2021.1953679>.

¹⁷ Sylvia Hasanah Thorik, "Efektivitas Pembatasan Sosial Berskala Besar Di Indonesia Dalam Penanggulangan Pandemi Covid-19," *Jurnal Adalah: Buletin Hukum Dan Keadilan* 4, no. 1 (2020): 115–20, <https://doi.org/10.15408/adalah.v4i1.15506>.

¹⁸ Nur Rohim Yunus and Annissa Rezki, "Kebijakan Pemberlakuan Lockdown Sebagai Antisipasi Penyebaran Corona Virus Covid-19," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 7, no. 3 (2020): 227–38, <https://doi.org/10.15408/sjsbs.v7i3.15083>.

¹⁹ Yunus and Rezki.

²⁰ CNN, "Rincian Sanksi Denda Warga Dan Pengusaha Selama PSBB Jakarta," CNN Indonesia, 2020, <https://www.cnnindonesia.com/nasional/20200914092029-20-546075/rincian-sanksi-denda-warga-dan-pengusaha-selama-psbb-jakarta>.

²¹ Muhammad husein Maruapey, "Penegakan Hukum Dan Perlindungan Negara," *Ilmu Politik Dan Komunikas* 7, no. 1 (2017): 1–19, <https://doi.org/10.34010/JIPSI.V7I1.329>.

²² H Asep et al., "PENEGAKAN HUKUM TERHADAP PENYELENGGARAAN PELAYANAN PUBLIK," *Jurnal Wawasan Hukum*, vol. 31, April 13, 2014, <http://ejournal.sthb.ac.id/index.php/jwy/article/view/85>.

rights are rights inherent in human beings that are fundamental as a form of grace from God Almighty that must be respected and protected by humans. Respecting and maintaining this becomes a shared responsibility and obligation between individuals, governments, and countries.²³ But more than that, the legal protections for the people against government actions are based on human rights.²⁴ But more than that, Developments in terms of the concept of criminal law, according to Muladi, namely a way out regarding alternative sanctions from criminal sanctions that will lose independence to criminal penalties.²⁵ There is also the *Ultimum remedium* principle which is a principle that exists in legal science. The definition of the *ultimum remedium* principle is to put criminal law as the last choice of law.²⁶ The *Ultimum remedium* concludes that punishment is expected to be the last resort in legal cases. If there is a case or case that can be used by deliberation, kinship, negotiation, mediation, it is possible to do this first.²⁷ The understanding of general-abstract legal norms has reached its point of view. The ideals of law have become staats fundamental norm, namely the pyramid of Pancasila as legal ideals.²⁸ The main thing is minor criminal acts or criminal acts that can be subject to imprisonment of approximately one year in prison. *Fiat justitia ruat coelum* (Justice is upheld even though the sky is falling) is the basis for law enforcement in society during the covid pandemic.²⁹ But problems began to arise in line with the implementation of the PSBB. Can the fulfilment of the rights of justice seekers be fulfilled? While if a trial is held, it will be precarious for the spread of the coronavirus. And if the trial is postponed, it can affect the rights of justice seekers due to the unclear status and fate of justice seekers.³⁰ During this pandemic, law enforcement in the judiciary is carrying out innovations and adjustments to the three issues of justice seekers, namely, delays, affordability, and integrity issues.³¹

A fine is a legal obligation for a person or corporation that legally violates the covid-19 PSBB to atone for the mistake by paying a sum of money as stipulated in the law or related regulations. In the context of implementing criminal sanctions for PSBB violators, the state, in this case, is the government that must act quickly and decisively when there are violations in the number of prevention and eradication of the covid-19 coronavirus pandemic by imposing a fine as an alternative sanction. But what about the poor and severely affected by the economy during the pandemic.³²

Indonesia is a country that aims to realise the sense of humanity and a sense of justice, which in reality is a form of protection, a form of welfare. A form of intelligence and participation in realising an order and the ideals of world peace.

²³ Reko Dwi Salfutra, "Hak Asasi Manusia Dalam Perspektif Filsafat Hukum," *Jurnal Hukum Progresif* 12, no. 2 (2018): 2146–58, <https://doi.org/10.33019/progresif.v12i2.977>.

²⁴ Ila Fatilina, "Perlindungan Hukum Terhadap Hak Asasi Manusia," *Jurnal Dinamika Hukum* 25, no. 14 (2019): 44–53, <http://riset.unisma.ac.id/index.php/jdh/article/view/4218/3754>.

²⁵ AR, *Pembaruan Pidana Denda Di Indonesia*.

²⁶ Salman Luthan, "Asas Dan Kriteria Kriminalisasi," *Jurnal Hukum Ius Quia Iustum* 16, no. 1 (2009): 1–17, <https://doi.org/10.20885/iustum.voll6.iss1.art1>.

²⁷ Universitas Indonesia, "Ultimum Remedium: Antara Prinsip Moral Dan Prinsip Hukum," [ui.ac.id, 2019, https://www.ui.ac.id/ultimum-remedium-antara-prinsip-moral-dan-prinsip-hukum/](https://www.ui.ac.id/ultimum-remedium-antara-prinsip-moral-dan-prinsip-hukum/).

²⁸ Muhtadi Muhtadi, "Penerapan Teori Hans Kelsen Dalam Tertib Hukum Indonesia," *FIAT JUSTISIA: Jurnal Ilmu Hukum* 5, no. 3 (2014): 293–302, <https://doi.org/10.25041/fiatjustisia.v5no3.75>.

²⁹ H.R Otje Salman, *Filsafat Hukum (Perkembangan & Dinamika Masalah)*, cet. 4 (Bandung: Refika Aditama, 2010).

³⁰ Agus Joharudin et al., "Panic Syndrom Covid-19: Penekanan Terhadap Kebijakan Yang Diberikan," *Jurnal Perspektif* 4, no. 1 (2020): 44–53.

³¹ M.J Rifqi, "Perkembangan Dan Pemanfaatan Teknologi Informasi Pengadilan Agama," *Jurnal Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 7, no. 1 (2020): 70–83, <http://journal.uin-alauddin.ac.id/index.php/al-qadau/article/view/13935/8883>.

³² Anne-Marie Brook, K.Chad Clay, and Susan Randolph, "Human Rights Data for Everyone: Introducing the Human Rights Measurement Initiative (HRMI)," *Journal of Human Rights* 19, no. 1 (2020): 67–82, <https://doi.org/10.1080/14754835.2019.1671176>.

C. Conclusion

To reduce the spread of the coronavirus pandemic. The Government establishes Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions. Implementing sanctions for any violators. The government applies criminal sanctions and fines as an alternative to make the community deterrent. Still, it is necessary to underline that it is better not to be fined and use alternative sanctions and the *ultimum remedium* principle. Written warnings or social sanctions in the form of cleaning public facilities. The reasons are humanity, protecting the weak and reducing people's struggles, especially those greatly affected in all walks of life due to covid-19.

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