

Legal Study on The Enforcement of Restrictions on Public Activities (PPKM) As A Force Majeure Over Covid-19 Measures

¹ Heru Setiyowati, ² Efridani Lubis

^{1,2} Universitas Islam As-Syafi'iyah, Indonesia

E-mail: efridani@yahoo.com

Abstract

Corona Virus Disease 19 (Covid-19) has spread throughout all over the world, Indonesia has also has a devastating impact on many sectors and fields, including its economy, therefore, the Government must provide protection to the public in order to prevent and settle Covid-19 cases in accordance with the mandate of the 1945 Constitution. Certain steps which have been taken by the government were by its policy on the implementation for the Enforcement of Restrictions on Public Activities (PPKM). Nevertheless, this taken policy turned out to have a very large socio-economic impact on the public. Objective of this study is to determine as well as analyze socio-economic impact of the PPKM policy in Indonesia in a juridical perspective. This study uses a qualitative approach with a literature study method. Qualitative data analysis. The results on this study show that government policies by implementing PPKM have a very large impact in socio-economic sectors. Certain restrictions on carrying out activities on large scale will be automatically affected in increasingly difficult economic conditions with the cessation of most economic activities. The PPKM policy has also had an impact on the interaction of social relations. Restrictions on certain activities and interactions between individuals have become social problem due to boredom and tiredness that hit while following the provisionson PPKM Policy where one must stay at home. Another problem and issue is the increase number of poor people, which significantly increases number of beggars, gutter children, and homeless, so it is very likely to increase number of people with mental disorders. The divorce rate has the potential to increase due to the emergence of problems in the household due to the economic crush. Increasing unemployment rate will automatically increase crime rates. The economic and social impacts mentioned above are certainly a challenge for the government in evaluating the policies implemented so that it can impede people's conditions getting worse.

Keywords: PPKM, Pandemic, Force Majeure

I. INTRODUCTION

As we know at the very early of 2020, Covid-19 became a world health problem. This case began with information from the World Health Organization (WHO) on December 31, 2019 which stated that there were cluster cases of pneumonia with unclear etiology in Wuhan City, Hubei Province, China. This covid case continued to grow until there were reports on many deaths and spread outside China. On January 30, 2020, WHO declared Covid-19 a PHEIC (Public Health Emergency of International Concern). On February 12, 2020, WHO officially designated this novel coronavirus disease on humans as Coronavirus Disease (Covid-19). On March 2, 2020, Indonesia has reported 2 confirmed cases of Covid-19. On March 11, 2020, WHO has declared Covid-19 a pandemic.

In response to Covid-19 cases, President of the Republic of Indonesia, Joko Widodo, has made and issued a Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (Covid-19) as National Disasters as the legal basis for force majeure. We can pay further attention to the first point of Presidential Decree Number: 12 of 2020 concerning Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as National Disasters. Nonetheless, the first point of Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (Covid-19) as a National Disaster stipulates that non-natural disasters caused by the spread of Covid-19 as the national disasters.

Based on the ministerial Instruction from the Minister of Home Affairs with Number 15 of 2021 concerning Emergency Implementation of Restrictions on Public Activities of the Corona Virus Disease 2019 for Java and Bali Regions. This emergency measure was a guideline and elaboration of the directives of the President of the Republic of Indonesia which was valid from July 3 to July 20, 2021. Moreover, on July 20, from the speech of President Jokowi on the Emergency PPKM was extended until July 25, 2021.

This Covid-19 issue disrupts various fields and sectors including health, socio-culture, education and socio-economics, it can be seen from the health aspect, the impact of the Covid-19 pandemic has relatively higher number of positive cases and deaths due to Covid-19. WHO states that for approximately 17 months since the first infection case in Wuhan, China, Covid-19 has become an epidemic in more than 220 countries with 160 million positive cases and 31 million deaths. The high number of positive cases of COVID-19 has made many resources owned by the government, both central and regional, to be concentrated on handling Covid-19. As a consequence, health services for other than Covid-19 have been hampered. In addition, the decline in health services is also influenced by attitude of health service users who were worried to access other health services.

The outbreak of the COVID-19 pandemic has also changed many values on social and cultural of the public which have an impact on changing people's mindsets, views, and attitudes in their everyday life. Always wearing a mask, diligently washing hands with soap, having hand sanitizer ready, keeping their distance, avoiding crowds, avoiding physical contact with other people, and implementing various health protocols have become habits.

If we see from economic sector that was very noticeable and easy to see is the fall off of household consumption or the weakening of the public's buying power at large, until now, people have experienced very significant decline in their buying power. PPKM which continues with various tightening regulations and also rules which hindering people from doing many economic activities and coupled with tightening regulations in various sectors on PPKM's rules have an influence on the ups and downs on the economic sector, a tight implementation of PPKM makes it difficult to carry out certain activities in a fishery, in particular on agreements or contracts. With the Covid-19 outbreak, many debtors argued that there was a default due to the Covid-19 so that Covid-19 was used as an excuse and a tool for force majeure.

Deputy of the Ministry of Finance, Suahasil Nazara states at least there are certain reasons on which the government chooses to conduct the Implementation of Community Activity Restrictions (PPKM) in the midst of Covid-19 compared to lockdowns like other countries. "So there was indeed a very serious debate, but the essence of what happened from the two was restriction on economic activity," said Suahasil in an online discussion in Jakarta, Saturday (31/7/2021). Suahasil argues the main reason for implementing

PPKM is that the layers of society in Indonesia are very diverse, such as there are certain groups of people who are poor or vulnerable and also the rich, there are also groups of people living in urban and rural areas, with different economic abilities.

Force majeure has been regulated by Article 1244 Burgerlijk Wetboek (BW) and Article 1245 of BW. Nevertheless, force majeure has been regulated in BW, BW does not provide the meaning of force majeure itself. Article 1244 of BW stipulates that if there is a legal reason for that, debtor must be punished to compensate for costs, losses and interest if he cannot prove that it was not or not at the right time to carry out the engagement, due to an unforeseen event to being accountable to him, all of that even if bad faith is not on his side. Then, Article 1245 of BW stipulates that it is not necessary to replace any loss and interest costs, if due to compelling circumstances or due to an accidental event, debtor is unable to give or do something that which is required to do or give, or because of the same things he has committed any prohibited acts.

Nonetheless, BW does not provide a solid definition on force majeure, author defines force majeure as a condition that makes a debtor is unable to carry out his liable or obligations to its creditor(s), due to events that are against his will. For example: Covid-19, earthquake, fire, flood, and others. Based on its nature, force majeure has 2 types, namely an absolute force majeure and a relative force majeure. Absolute force majeure is a situation where a debtor is completely unable to carry out his liability to its creditor(s), due to earthquakes, floods, and so on.

As for relative force majeure, the obstacles that occur are only temporary or provisional. therefore, a relative force majeure does not cause the agreement to be canceled, but only to the extent that it is suspended. For economic impact caused by Covid-19, he argues that force majeure that has occurred is relative or temporary. However, the way out that can be taken is to re-negotiate the agreement. "This means that liability reinstates when force majeure situation ends,"

From Presidential Decree with Number 12 of 2020 concerning Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (Covid-19) as National Disasters, Covid-19 can be declared as a force majeure event. However, with Presidential Decree with Number 12 of 2020 concerning Determination of Non-Natural Disasters Spreading Corona Virus Disease 2019 (Covid-19) as National Disasters, debtors cannot postpone or cancel the agreement. In contract laws, one of the most important principles is known. The principle in question is the principle of binding power of its agreement (Pacta Sunt Servanda). This principle means that the parties who make the agreement must carry out the agreement. In this principle, agreement of the parties is binding as is law for any parties who made it.

Notwithstanding the position of the parties are equal with the legislator, there are a fine difference. The difference lies in validity of product created. Product created by the legislator is in form of laws, with all processes and procedures applicable and binding universally and abstractly. Meanwhile, agreement which is the product of parties has limited its validity for parties only and by making the agreement, parties intend to take solid and concrete actions.

The Pacta Sunt Servanda principle as specified above, both parties only carry out the agreement according to the agreement clauses. The parties may not carry out the agreement outside the agreement clauses. In

general, the provisions on force majeure are stated in the agreement clause by describing what events are included in force majeure.

With elaborating any events are included in force majeure clause of an agreement, the parties can postpone or cancel the agreement itself. Thus, if the parties categorize Covid-19 as a force majeure in the agreement clause, however, one of the parties can postpone or cancel the agreement.

II. LITERATURE REVIEW

1. Legal Certainty

Legal certainty must have legal regulatory efforts in legislation made by the authorized and authoritative parties so that the rules have juridical aspects that can guarantee that legal certainty functions as one of the rules that must be obeyed.

Legal certainty according to Jan Michil Otto defines as the possibility that in certain situations:

- 1) some rules are clear, consistent, and easy to obtain and recognized because of (the power of) the state.
- 2) The ruling agency, namely the government, applies the rule of law consistently and also obeys it.
- 3) Citizens principally conform their behavior and actions to the existing rules.
- 4) Independent and impartial judges consistently apply the rule of law as they resolve legal disputes.
- 5) Judicial decisions are concretely carried out.

Normative legal certainty is where regulations are made and legislated clearly because they regulate logically and clearly. What is meant is that it does not cause doubt and becomes a system of norms that is not messy which can lead to conflicts between norms, this legal certainty determines where the law must be clear and its application must be clear.

Legal certainty is a justice that contains guarantees and norms that uphold justice, in order to be a rule that will be obeyed, law enforcement must be severe in order to get the function as desired. According to Gustav Radbruch, legal certainty and legal justice are mutually influencing parts of the law. He argues that legal certainty is that legal certainty must be seen and considered, and must be maintained so that the order and security of the country are still in law enforcement and protection. It is not only positive law that must be obeyed but the values in the norms must also be implemented so that people understand one another and create justice and happiness.

2. Force Majeure

Force majeure means a situation that occurs after the agreement is made which will prevent the debtor from achieving his performance. which in this case means that the debtor cannot expect the occurrence of something earlier when the agreement is made. Force majeure also occurs as a result of unforeseen events that can occur due to things beyond the debtor's power, which can be used as an excuse to be released from the obligation to pay compensation.

There are also opinions of experts related to force majeure, which include the following:

- 1) According to Subekti, Force Majeure is a reason to be released from the obligation to pay compensation.
- 2) According to Abdulkalir Muhammad, Force majeure is a condition of non-fulfillment of performance by the debtor due to an unexpected event that the debtor could not have expected at the time of making the agreement.
- 3) According to Setiawan, force majeure is a situation that occurs after an agreement has been made that prevents the debtor from fulfilling his obligations, for which the debtor is not to blame and does not have to bear the risk and does not consider it at the time the agreement is drafted. The whole reason was before the debtor neglected to fulfill his obligations at the time the situation arose.

Meanwhile, from R. Subekti, the conditions for a situation to be said to be Force Majeure are as follows:

- 1) The situation itself is beyond the power of the debtor and forces;
- 2) The situation must be a situation that cannot be known at the time the agreement is made, at least the risk is not borne by the debtor.

In the Civil Code, it can be detailed as follows: The incident that causes the occurrence of force majeure must be an event that was unforeseeable at the time of making the agreement;

- 1) This incident cannot be accounted for by the debtor;
- 2) The incident causing the Force Majeure must be beyond the fault of the debtor.
- 3) The parties are not in a state of bad behavior
- 4) If Force Majeure occurs, the contract is void and it is as if there had never been an engagement;
- 5) In the event of Force Majeure, both parties may not claim compensation, but because the contract in question becomes void, in order to maintain the fulfillment of the elements of justice, the provision of restitution is still possible;
- 6) The risk resulting from Force Majeure passes from the creditor to the debtor from the time the goods are delivered.

In general contracts, Force Majeure includes:

- 1) Natural disasters, such as: floods, earthquakes, fires, and hurricanes;
- 2) State of war;
- 3) Riots;
- 4) Government policies in the financial or monetary and economic fields that exclusively affect work applications.

In the event of Force Majeure such that the contents of this agreement cannot be implemented, either in whole or in part, it does not mean that the agreement automatically becomes void but generally all losses incurred will be resolved in consultation by both parties.

III. METHODOLOGY

This research uses normative juridical research, using a statutory approach and conceptual approaches. This research uses secondary data in the form of laws and regulations related to research issues as primary legal

materials and secondary legal materials obtained from literature/books, journals, articles, and information from electronic media that support this research. The data collection is obtained through a literature study and the data analysis method used is normative qualitative which relies on laws and regulations as positive legal norms supported by other secondary data results. While the research specifications used are descriptive and analytical.

I. RESULT AND DISCUSSION

1. Enforcement of Restriction on Public Activities (PPKM)

Prior to the implementation of leveled PPKM, the government had implemented several policies in order to respond to the spread of Covid-19, including PSBB, PPKM, Micro PPKM, Emergency PPKM, leveled PPKM.

1.1. Social Restrictions on Large-Scale (PSBB)

PSBB is the first restriction policy issued by the government. This policy was first implemented in Jakarta on April 10, 2020 and underwent several extensions and this policy ended on July 2, 2020. Apart from Jakarta, many regions have also implemented this PSBB policy.

a. Transitional PSBB

Transitional PSBB is a policy issued in order to respond a decline in economic activity that occurred during PSBB. This policy was chosen by the government to prevent economic conditions from getting worst and the government was to create a new normal or commonly called the new normal. The Transitional PSBB policy was first implemented in Jakarta in June 2020. Transitional PSBB was marked by various easing of community activities and worship sites, office activities, and shopping centers were re-opened. Transitional PSBB only lasts until September 2020 because in that month, the conditions for the spread of Covid-19 was got worse and has made the government to re-implement PSBB strictly. In October, the government was implemented again Transitional PSBB due to current condition was considered to be improving and this policy lasted until January 17, 2021.

b. The Enforcement of Restrictions on Public Activities (PPKM)

PPKM is a policy to limiting community activities which was issued by the government in order to respond to the current situation on spread of Covid-19, which at that time worsened once more. PPKM was implemented in many areas and it was valid from January 11, 2021 to February 8, 2021.

c. Micro-PPKM

Micro-PPKM is a continuation of PPKM policy that has been implemented by the government. Micro-PPKM was implemented by targeting relatively smaller areas, such as Rukun Tetangga (RT) and Rukun Warga (RW) areas. In Micro-PPKM, areas are divided into four colored zones,

namely green, yellow, orange, and red. Micro-PPKM was effective from 9 February 2021 to 25 July 2021.

d. Emergency/Provisional PPKM

Provisional PPKM is a policy to restricting public activities that issued by the government due to worsening condition of Covid-19 spreading. Provisional PPKM was in effect from 3 July 2021 to 25 July 2021.

e. Leveled PPKM

Leveled PPKM was a policy that is currently still being implemented by the government in response to spread of Covid-19. In leveled PPKM, the government divides various regions with levels 1 to 4 during current Covid-19 pandemic in accordance with conditions of spread of Covid-19 in its respective area. This policy has been effective since July 26, 2021.

Rules and regulations in the workplace during leveled PPKM are as follows:

1. The implementation for non-essential sector offices is no longer 100% work from home, however, they can start carrying out WFO which is divided into 2 different shifts.
2. Health protocols are tightened for those who work in offices.
3. For sectors related to basic needs shall be 100% operating, but with more stricter operating hours, capacity and health protocols
4. For those working in the construction sector, operations are allowed with stricter health protocols
5. For those who work in education sector, teaching and learning activities are carried out by online
6. For those who work in food and beverage sector, restaurants may be open, but for dine-in shall only 50% of its capacity
7. Restaurants, shopping centers, and malls are operated until 20.00 local time.

In addition to the above regulations, the government has also implemented several new regulations. As of August 31, 2021, the banking sector which includes insurance, pawnshops, futures exchanges, pension funds, and financial institutions can operate with a maximum capacity of 50% staff for locations related to public services. Moreover, a maximum capacity of 25% is also applied to office administration services to support financial operations. Capital markets, information and communication technology such as cellular operators, data centers, internet, post, media, non-quarantine handling hotels can operate with a maximum capacity of 50% staff. Those of you who have needs in malls and shopping centers are now also required to show an official second vaccination certificate in the PeduliLindung application for screening purposes. However, the malls or shopping centers will only allow you to enter if the visitor capacity is still below 50%.

The implementation on policy for restrictions on public activities (PPKM) turned out to be less effective due to the public felt that they had not fully received legal protection for the policies made by the government. The government has not been able to guarantee and ensure, in particular for the lower middle class to be able to meet their basic needs (Aprista, 2020). Fhatoni (2020) stated that the longer the implementation of the PPKM policy, the income of micro, small and medium enterprises (MSMEs) will decrease as well.

The weakened economic experienced by this country is reflected in relatively low tax revenues. According to data from the Ministry of Finance, as of April 2020, tax revenue growth was negative 3.1% (yoy) or IDR 376.67 trillion (only 30% from APBN target). The main sectors that are dominantly contributing to tax revenues, such as trade, construction and real estate, mining, as well as transportation and warehousing, shaken. Nevertheless, some other sectors were still growing, such as financial services and insurance due to these sectors were still operating during the Covid-19 pandemic.

closure on plants and factories, industry and business actors will significantly reduce activity and production capacity which economically will certainly have a devastated impact on the company's revenue. This occurs at all levels of the business world from large multinational companies, medium enterprises to small and micro levels or informal workers.

On the other hand, the company's fixed cost operating expenses remain, such as paying employee salaries, paying health insurance contributions and labor insurance, paying business entity taxes and personal employee taxes, paying for electricity and so on because companies are prohibited from not paying employee wages, or to dismissing their employees during PPKM. The business world has suffered a devastated direct and crushing blow due to this pandemic.

The Covid-19 pandemic not only has certain devastated impacts on its production activities, however, it also has resulted in a weakening ability to employ employees so that without proper mitigation of the economic sector, the worst scenario in the business world is very likely to occur. Business actors have limited financial capacity to maintain their business and pay their employees' wages so that the wave of layoffs was very likely to occur. The threat of a spike in the unemployment rate is expected to rise sharply.

Due to decreased production activities, the volume of trade systematically decreases which in turn will reduce state revenues from tax and customs sectors. Similarly, micro-enterprises and informal sectors such as home industry and culinary businesses experienced tragic impact of losing their production activities because they had to be stopped and even closed-down. Informal workers who were an economically vulnerable group of people will lose their income and eventually fall into a group of poor people, so it is not surprising that the prediction of poor people quantity will be multiplied.

1.2. Juridical Study during PPKM in Covid-19 Pandemic as a *Force Mejeure*

Force Majeure (*overmacht*) is a condition where debtor fails to fulfill his liabilities or obligations to its creditor due to events that are beyond his/her control, for example due to earthquakes, landslides, epidemics, riots, wars, and so on. This term in Indonesia is also known as *force majeure*.

This term in French language, *force majeure* literally means "greater power". In general, a number of events can be classified as *force majeure* as long as it occurs unexpectedly, occurs outside control of the parties involved, and cannot be avoided.

Normally, *Force majeure* clause is provisioned in every contract. The existence of *force majeure* is useful in order to anticipate things that may occur in future and potentially cause conflict between the parties involved. As a consequence, debtor can be released from claims for losses due to *force majeure*.

The following is a quote on provisions regarding *force majeure* which is regulated in Article 1244 of Civil Code and Article 1245 of Civil Code as follows:

Article 1244

"If there is a reason for force majeure, whereas a debtor must be punished to compensate for any costs, losses, and interest if he cannot prove that it was not or not at the right time to carry out in an agreement or contract, due to an unforeseen event, nor can he be held accountable, all of that even if bad faith is not on his side."

Article 1245

"There is no reimbursement for any costs, losses, and interest, if due to compelling circumstances or due to coincidences, a debtor is prevented from giving or doing something that is required, or performing an act that is prohibited for him".

In these provisions, there shall be 5 things that cause debtors to be unable to compensate for costs, losses and interest, are as follows:

1. An unexpected event occurred (excluded from basic assumptions in producing a contract)
2. Events that occur cannot be accounted for by debtor
3. Events that occur beyond debtor's default
4. Events that occur beyond involved parties' default
5. Debtor has no bad intention or bad will whatsoever

Force Majeure is oftenly experienced in form of landslides, floods, hurricanes, volcanic storms, epidemics, states of war, riots, rebellions, terrorism, sabotage, military coups and others. According to KBBI, *force majeure* is known as *keadaan kahar*. In French dictionary, it has a differ meaning which defines *force majeure* as greater power. This clause must be included in any major agreements in order to anticipate events or things that can occur and have a potential to become a conflict for parties concerned. *Force majeure* cannot be separated into an addendum.

a. Legal Basis in the Enforcement of PPKM

If you examine the legal basis in dealing to a pandemic outbreak in Indonesia. It can refer to Act Number 6 of 2018 pertaining to Health Quarantine. This is the legal basis for the issuance of various derivative rules such as implementation of PSBB, and so on. Moreover, legalization on every statutory regulation which is one of the steps in preventing spread of Covid-19 must be based on Act Number 12 of 2011 pertain to Establishment of Legislation. This is a paramount issue, so that in the draft process until ratification of each regulation shall not contradict or conflict with other laws and regulations.

Basically, Act Number 6 of 2018 pertaining to Health Quarantine is relatively clear that there shall be some restrictions for individuals to entry and exit to a region that has been declared as a source of an outbreak, including also regulating orders for isolation, regional quarantine, vaccination and so on to stop the spread of this pandemic in Indonesia. However, the form of representation of efforts to overcome the outbreak in this pandemic case creates a new paradigm in the wider community. For example, in the implementation of Large-Scale Social Restrictions (PSBB) which were implemented in a number of big cities in Indonesia. The implementation of social restrictions has a clear legal basis for its application, namely PP No. 1 of 2020 Large-Scale Social Restrictions in Order to Accelerate Handling of Corona Virus Disease 2019 (Covid-19). The Government Regulation is the implementing regulation of Law Number 6 of 2018 concerning Health Quarantine.¹ However, representation measures in order to overcome the outbreak in this pandemic case has created a new paradigm in the public at large. For example, in implementation of Large-Scale Social Restrictions (PSBB) which were implemented in a number of big cities in Indonesia. The implementation of social restrictions has a clear legal basis for its application, namely Government Regulation Number 1 of 2020 on Large-Scale Social Restrictions in Order to Accelerate Handling on Corona Virus Disease 2019 (Covid-19). This Government Regulation is to implementing regulation of Act Number 6 of 2018 pertaining to Health Quarantine.

This clear legal position that currently needs to be considered for every stakeholder in any Indonesian state administration in order to compiling and enacting any regulations related to health quarantine. These guidelines and instructions regarding PPKM were contained in the Ministry of Home Affairs with Number 1 of 2021. This instruction was a step that was directly initiated by the Central Government and addressed to all Regional Heads in Java-Bali. The Instruction states that its implementation shall be based on massive development of the Covid-19 pandemic on islands of Java and Bali, and with new variant of the Covid-19 virus, efforts to control the Covid-19 pandemic shall be needed.

b. Material Aspects of Stipulating Regulations on PPKM

¹ Ahmad Gelora Mahardika, "Juridical Issues on Government Regulation Number 21 of 2020 in Legislation's Perspective," *Al-Daulah: Journal on Islamic Law and Legislation* 10, no. 46 (2020): 93–113.

As a state of law (*rechstaat*), all government actions must be based on statutory regulations. Therefore, PPKM policy cannot only be seen for its effectiveness and efficiency, however, its policy must be based on any applicable laws and regulations. Based on principles of statutory regulations, that is to say *lex superiori derogat lex inferi*, or a lower statutory regulation may not conflict to its higher regulations. Moreover, norms contained in certain regulations that form legal basis to implement PPKM must not conflict with its higher laws and regulations.

In addition, referring to Article 15 paragraph (1) from Act Number 12 of 2011 pertaining to Establishment of Legislations, it is stated that laws and regulations apart from laws and regulations are not allowed to apply criminal sanctions. Based on these two issues, to comprehend whether the regulation related to PPKM is relevant to material aspects from the legislation that can be said to be good according to writer, it shall be based on two principles as follows:

1. Shall not conflict with its higher laws and regulations;
2. Shall not regulate any criminal sanctions, either imprisonment or fines beyond any Acts or other Regional Government Regulation;

c. Formal Aspects on Legal Basis for Implementation of PPKM

Referring to theory of *das doppelte rechstanilitz*, which means that legal norms have two sides, namely legal norms shall be originated and based on any norms that higher from it; and it also becomes its legal basis as well as source for the norms that lower from it. This is confirmed in Hans Kelsen's theory on norm hierarchy, which also put forward his theory on legal norm hierarchy (*stufentheori*), where Kelsen argued that legal norms are hierarchied and layered in a hierarchy of any structures, where a norm that lower norms shall apply, sourced, and be based on its higher norms, while higher norms shall apply, sourced and be based on even its higher norms, and so on until a norm that cannot be explored any longer and has hypothetical and fictitious in its character. Therefore, basic rules above are often referred to as "*grundnorm*" or "*ursprungnorm*".

Which means that referring to theories above, formation of regulations that form legal basis for PPKM must be based on any applicable laws and regulations. In order to examine formal conformity in any statutory regulation, this can be done by using Article 8 paragraph (2) from Act Number 12 of 2011 as its legal reference. In this paragraph, it is said that a statutory regulation can be recognized and has binding legal force as long as it is ordered by a higher statutory regulation or it can also be formed based on competence.

Therefore, among number of matters mentioned above, in order to find out whether a regulation is formally flawed or else, it can be examined from two legal aspects as follows:

1. Regulations shall be stipulated based on its higher regulations;
2. The regulation shall be drafted by any authorized officials;

d. Legal Standing on the Ministerial Instructions in the Indonesian State Administration System

I Gede Pantja Astawa contends that what can be said as state regulations (*staats regelings*) or decisions in large understanding (*besluiten*). Decisions in a large understanding (*besluiten*) can be divided into 3 (three) classes as follows:

1. *Wettelijk regeling* (statutory regulations), for example the Constitution, acts, laws, government regulations in lieu of laws, government regulations, presidential regulations, ministerial regulations, regional regulations, and others;
2. *Beleidsregels* (policy regulations), for example instructions, circulars, announcements and others;
3. *Beschikking* (stipulation), for example decrees or others.

In its classification as policy regulations, instructions can be further divided into two types. Firstly, these instructions shall be made and applied to policy regulators themselves. And secondly, the type of instruction or policy regulation that is made and applied to administrative bodies or its officials who are subordinate to any policy makers. While the substance of each policy shall be basically equal. It is containing implementation guidelines to technical instructions in the form of other general rules.²

If we refer to Act Number 12 of 2011 pertaining to Establishment of Legislation. Article 8 paragraph (1) states that types of laws and regulations include regulations passed by MPR, DPR, DPD, MA, MK, BPK, KY, BI, Ministers, government agencies, institutions, or commissions at same levels that established by law or the Government by order of laws and regulations, Provincial House of Representatives, Governors, Provincial Senators/DPD, head of Regency or Municipality, Village Head or its equivalent.

As stated in Article 8 paragraph (1) from Act Number 12/2011 concretely that what can be categorized as statutory regulations are only any regulations issued by various government/state institutions and one of them is the minister. Thus, it can be ascertained that the Ministerial Instruction does not have a legal standing as a statutory regulation in Indonesian constitutional. Referring to provisions contained in Article 8 from Act Number 12 of 2011, it is only a Ministerial Regulation has this legal position. Moreover, the Ministerial Instruction shall only apply as a policy regulation. In its implementation, policy regulations, for example, Ministerial Instructions cannot be directly legally binding, however it still contain legal relevance. According to Maria Farida, it does not include statutory regulations, this is due to its instruction is always for individual, concrete and there shall be an organizational relationship between superiors and

² Sadhu Bagas Suratno, "Formation of Policy Regulations Based on General Principles of Good Governance," E-Journal Lentera Hukum, no.3 (2017): 164
<https://doi.org/10.19184/ejhl.v4i3>.

subordinates, while nature of legal norms in laws and regulations is general, abstract, and applies continuously.³

1.3. PPKM as a Force Majeure in Covid-19 Measures

Law is a crystallization of core values contained in the public, however, laws which reflect these values are usually described as two side of coins, but not infrequently in conflict. These values include order and tranquility, legal certainty and comparability, public interest and individual interests. The lack of harmony and harmonization between these values described the public will of course interfere with its legal purpose and course of the law enforcement process itself.⁴

The Indonesian government is extremely serious in preventing and controlling Covid-19, it is proven that if the public does not follow any rules and regulations on health protocol, the Government will provide strict law enforcement through criminal sanctions, this shall be contained in Articles 92, 93, 95 from Act Number 6 of 2018 pertaining to Health Quarantine that "*any individual who does not comply with the implementation of health quarantine so as to cause a public health emergency shall be sentenced to 1 year imprisonment and or a maximum fine of one hundred million rupiah*", there will be a criminal threat sanction for make a crowd or cluster around and it is subject to Article 14 Paragraph (1) from the relevant Act. Act Number 4 of 1984 pertaining to Outbreaks of Infectious Diseases that "*Obstructing the Implementation of Plague Management, is punishable by 1 year imprisonment*". As is also the case in Article 212 of Criminal Code which can be sanctioned with imprisonment. If any individual refuses or opposes the apparatus or officials in carrying out its task to preventing Covid-19, they will be sanctioned in accordance with criminal act contained in Articles 212, 216 and 218 of Criminal Code.

Law is a means of social control that contains elements of orders, obedience, prohibitions, threats, habits and public customs.⁵ Law and morality are an absolute necessity, so that the implementation of legal compliance is a paramount.

During Covid-19 pandemic, legal and moral obligations shall be non-negotiable due to it will have an impact on reducing transmission. Adherence in correctly wearing masks, keeping a distance and staying away from crowds are a very essential requirement at this time. Eventually, morality will correlate to justice and social welfare. This prosperity can be seen from increasingly healthy society and ever growing economy. If we quoted from Reza A.A. Wattimena says on moral values that people who have touched by reality as it will really come to realization that everything in this universe is one and equal. Any individual is a part of everything. There is no separation. There is only unity and interdependence to each other. Moreover, one will not do evil to others. One will

³ Zaka Firma Aditya and Muhammad Reza Winata, "Reconstruction of the Hierarchy of Legislation in Indonesia," *Journal on State of Law: Building Laws For Justice And Welfare* 9, no. 1 (2018): 79–100, <https://doi.org/10.22212/jnh.v9i1.976>

⁴ Sutrisno, Endang. 2015. *Anthology, Law & Globalization*. Second Edition. Jakarta: In Media

⁵ Hart, H.L.A. 2018. *Konsep Hukum*, Translated from *The Concept of Law*. Bandung: Nusa Media.

not hurt anything and anyone, due to one is fully aware, that one is everything, and everything is any individuals. There is no such thing as a personal ego that apart from the universe and everything in it. This is a new morality. It is no longer based on orders, appeals, rewards or punishments, however on the natural mental attitude of humans which is based on an understanding on reality. An individual shall no longer runs away from reality, however, to embraces that reality in his heart and mind. This is called as true love. People who live in this way will bring happiness to the world around them.⁶

Self-consciousness is not a conceptual formulation that can be discussed with any languages or concepts, however it is something that experienced directly, with no explanation whatsoever. When an individual realizes this, and one shall undergo a fundamental change of self-consciousness, which means also a change of behavior, and a fundamental change of his whole life.

The government, in this case, law enforcers who executes the laws and order, of course has a clear goal as stated in Outbreak Laws, Health Quarantine Laws and Presidential Instructions as well as the Ministry of Home Affairs on regulations of Emergency PPKM, and the public shall always obey or comply with any policies stipulated by the government.

The impact on Covid-19 case was as stated by the President's speech on July 20 that based on data obtained, there was a decline and the hospital occupancy rate decreased, "*...but alhamdulillah (thanks to God), we should be grateful, after Emergency PPKM was implemented, it can be seen from data, the addition of cases and the occupancy of beds in Hospitals are on the decline.*" The President further stated that the Emergency PPKM will begin to open gradually on July 26, 2021. The government promises to ease the burden for public by allocating additional social protection amounting to 55.21 trillion Rupiah as cash assistance, for basic food assistance, internet quota assistance and electricity subsidies as well as providing incentives for one million micro-enterprises amounting to IDR 1.2 Million.

Legal compliance by public is a tangible manifestation on its legal awareness, when Emergency PPKM is very effective and correlates with the decline cases of Covid-19 pandemic. The government in implementing law enforcement of health protocols during Emergency PPKM aims to improve the health and welfare for public, so that it has an impact on values on public's law compliance.

One of study team member, Cahyani Widi, revealed that Emergency PPKM has succeeded in increasing activities of the people in East Java for housing areas by 2.71%. Meanwhile, in Central Java, West Java, and Baten, Emergency PPKM only succeeded in increasing community activities in housing areas by less than 1%.⁷

⁶ Wattimena, Reza A.A. 2016. "About Human.": 1–226. <https://www.paigeeworld.com/u/pinja>.

⁷ <https://www.ugm.ac.id/id/berita/21389-peneliti-ugm-efektivitas-ppkm-darurat-jawa-bali-sangat-bervariasi>

Nevertheless, by Emergency PPKM, community activities in workplace also appear to have decreased significantly. However, not all provinces experienced a decline, as happened in Central Java Province. Activities of the people of Central Java at work actually increased by 0.57%.

A number of entrepreneurs from various industries said that if the Restriction on Public Activity (PPKM) were extended once more, there would be more layoffs and employees being laid off without pay (unpaid leave).⁸

Chairman of the Association of Indonesian Ceramic Industries (Asaki) Mr. Eddy Suyanto states that the worst scenario if emergency PPKM was extended again until August 2021, as many as 20,000 workers were threatened with being laid off without salary. This condition was similar to the implementation of the PSBB in early 2020 due to production capacity fell to only 30 percent.

The Covid-19 pandemic struck Indonesia in March 2020. The government imposed PPKM which had an impact on people's lives and livelihoods. Economic activities experienced obstacles, in particular non-formal businesses and that related to make the masses gathered. Impact of prolonged Covid-19 pandemic in married life is also very influential, especially in terms of income and economy of each household. Many family heads were laid off during this pandemic as a result of reduced company operating hours and decreased public consumption.

Based on data released by the Ministry of Manpower, there were 2.8 million workers who were directly affected by Covid-19 pandemic. It consists of 1.7 million formal workers who have been laid off and 749.4 thousand more have been laid off. However, unfortunately companies that terminate their job relationship argued on "*force majeure*" clause. This reason has become a matter of debate among workers and experts who dispute on the reason can *force majeure* be accepted or not to terminate job relations during the Covid-19 pandemic.⁹

In the midst of Covid-19 pandemic, it really has an impact on job termination and layoffs. According to the Ministry of Manpower of the Republic of Indonesia which was updated until May 27, 2020 where data was gathered from results of data collection conducted by the Ministry of Manpower as well as from BPJS Ketenagakerjaan, it was recorded that almost 1,800,000 million workers in Indonesia were affected by Termination of Employment (PHK).

Due to the implementation of PPKM caused an economic decline, so that many individuals were unable to fulfill their liabilities and obligations in a previously, mutually agreed agreement, the implementation of PPKM has an impact on closing transportation access, resulting in delays in delivery and receipt of goods, even to the point of not being able to fulfill a contract or agreement,

⁸<https://www.cnnindonesia.com/ekonomi/20210721125940-92-670232/dampak-ppkm-darurat-diperpanjang-versi-pengusaha>

⁹ Juaningsih, I. N. (2020). Policy Analysis on Layoffs for Workers During the Covid-19 Pandemic in Indonesia. Laws and Justice Bulletin, 4(1), 189–196.

because PPKM is a government's legal product that must be obeyed, complied and implemented so that this is as the legal basis for any individuals to make PPKM a *force majeure*.

II. CONCLUSION

Based on the study described above, it can be concluded that the application of the policy of implementing restrictions on public activities (PPKM), can be used as the legal basis for *force majeure*, because we know that PPKM explains that there shall be restrictions for individuals to entry and exit to a region/area that has been declared a source of outbreaks, including regulations to restrict and conduct isolation, regional quarantine, vaccination and so on in order to break the spread of outbreaks, this greatly affects in fulfilling any agreements or contracts, and PPKM has limited mobility and socio-economic activities beside to PPKM itself. And it is a compulsory to be complied, implemented and obeyed by all individuals.

The implementation of Restrictions on Public Activities (PPKM) is a variant of a new policy issued by the Government in context of dealing with the Covid-19 pandemic outbreak. As a state of law, although the policy is considered effective by the government, all government actions should be based by any applicable laws and regulations. PPKM materially has characteristics similar to PSBB as regulated in Act Number 6 of 2018 pertaining to Health Quarantine and Government Regulation with Number 21 of 2020. Nonetheless, a number of legal basis to implement implementing PPKM do not conflict materially with its higher laws and regulations.

In essence, certain problems and issues in the state administration system can be overcome by a number of legal policies that can be carried out by the Government. First, by making changes to Act Number 6 of 2018 and to make PPKM as one of ways in order to deal with this outbreaks apart from regional quarantine, hospital quarantine, regional quarantine or PSBB. Second, the issuance of a Government Regulation in lieu of laws to amend Act Number 6 of 2018 pertaining Health Quarantine, in the event that the implementation of PPKM is subjectively urgent to be implemented. Third, based on Act Number 2 of 2014 pertaining to Regional Government, health shall not a absolute competence from the Central Government. Nonetheless, any local governments have competence to make any regional regulations that specifically regulate PPKM.

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