

Elaboration of Government Policy in Pandemic Era: ASEAN and Indonesia's Local Regulation Comparative

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Abstract. The Covid-19 Pandemic has affected various government policies in many fields of social life governance. The aspects of criminal law, civil law, state administrative law, and constitutional law have experienced adjustment in order to achieve the state goal to stem the increase number of Covid-19 cases. In Indonesia, the national (central government) policies are often inconsistent with some policies that are implemented in local government level. It concretely resulted in difficulty of suppressing the increase number of Covid-19 cases throughout Indonesia. This paper would elaborate in more depth how the implementation of policies between the national (central government) and compare it to the practices carried out by some other countries in Asia. This research is a juridical normative research with comparative and statutory approach. The conclusion of this research is the important of elaboration between government policy in pandemic era that have 10 principles and local wisdom in each region. And then, the drafter of the government policy must be transparent for community and it can be revised according to the community needs. So, the elaboration of the government policy for the Covid-19 overcoming is not only for the government but also the community's welfare by empowering society in human dignity.

Keywords: ASEAN Comparative, government policy, pandemic era

1 Introduction

Indonesia has entered the period of one year being affected by the Corona Virus Disease (Covid-19) pandemic since March 2, 2020 [1]. However the overcoming of covid-19 is considered weak and the public is not fully compliant with implementing health protocols. According to the Head of the Mitigation Team for the Executive Board of the Indonesian Doctor Association (in bahasa it refers to *PB IDI*), there are four (4) main problems in overcoming Covid-19 in Indonesia, namely the regulations related to the national health system are not strong enough and synergistic; the national health system unpreparedness to deal with the Covid-19 pandemic situation; dependence of industry and health technology on foreign countries; and the unpreparedness, lack of awareness and non-compliance with the community in the face of Covid-19 pandemic situation [2]. Hence, in our opinion, it is important to elaborate government and local government policies in overcoming Covid-19.

The damage caused by COVID-19 has spread and has an impact throughout the world, including the Southeast Asian region. The countries affected by COVID-19 have carried out

various overcoming measures to improve security for their communities and countries in order to prevent the spread and control of COVID-19 in different ways and policies [3]. Some countries imposed lockdowns, community quarantines, stay-at-home orders, temporary business closures, and travel restrictions.

There has been a huge economic impact of Covid-19 in Asean as the decline of tourism flows, the air travel disruptions, weakening in consumer and business confidence, the job laid-off in many companies. World Health Organization (WHO) on March 11, 2020 declared COVID-19 a pandemic. The spread of COVID-19 throughout the world has resulted in casualties and material losses which have implications for social, economic and community welfare as the basis for the Task Force. The Government of the Republic of Indonesia stipulated Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Overcoming of Corona Virus Diseases 2019 (COVID-19) established the Task Force for the Acceleration of Overcoming of Corona Virus Disease 2019 (COVID-19) on March 13, 2020 [4]. to handle the the impact of covid-19.

WHO, which has designated COVID-19 as a global pandemic, requires countries to be responsive to it. Based on WHO data on June 4, 2020, 6.416.828 people were confirmed positive for infection, 382.867 died, and 216 countries were infected. The figures show that there has been a massive spread that has endangered the right to life and the right to health for all humans. For Indonesia until June 4, 2020, the positive number was 28.818, healed 8.892 people, and 1.721 died. This is the biggest impact of COVID-19 on human rights which makes the need for special overcoming of this public health emergency (health crisis)[5]. Globally, as of February 8 2021, there have been 105.805.951 confirmed cases including 2.312.278 deaths have been reported to WHO.

In Indonesia, as of 7 February 2020 1.157.837 cases have been confirmed, 949.990 recovers, and 31.556 reported died according to national information for covid.19 that is provided on covid19.go.id. Meanwhile, starting from early of this month, the government has implemented the vaccination program which prioritize healthcare workers and state organization leaders to get vaccinated. As of February 7 2021, the vaccination progress has reached the amount of 784.318 people for the first phase and 139.131 for the second phase of vaccination. The decision to prioritize healthcare workers doesn't mean that the government neglect the citizens. It is due to the hard responsibility of healthcare workers who should risk their life as a frontliners of covid-19 battling.

In china, the *lockdown* policy has strictly implemented since the first phase of Covid-19. This policy becomes a boomerang since it is imitated by some of ASEAN state members namely Singapore, Philippine, and Malaysia [6]. In this case, Indonesia took a win-win solution by regulating Large Scale Social Restriction (Pembatasan Sosial Berskala Besar, *hereinafter* PSBB) starting from April 1 2020. And also, there are only 2 constitutions in Asean state members that mention "welfare" to society explicitly. In Thailand known as public welfare in Article 36 the Constitution of the Kingdom of Thailand and Indonesia as welfare of mankind and social welfare in Article 28C paragraph (1), Article 31 paragraph (5), and Article 33 Indonesia's 1945 Constitution).

The government of Indonesia has enacted various regulations at the national level to overcome this pandemic, however as the constitutional system in Indonesia that allows local government to govern their region or area it is also possible for any local government leader to release self-regulating system that concern the battling of covid-19 from various perspective. To overcome the covid-19 pandemic requires integrated regulation concerning the healthcare system for citizens, the national economic recovery, the education system, the labour system that is covid-19 friendly, and many other specific condition.

Normatively, the amendment of Article 18 Indonesia 1945 Constitution has affected the relationship between national government body with local government. The state recognises and respects specific and particular local governments and recognises the indigenous people and its customary law as long as it exists and not contrary to the principle and the living law of Indonesia citizen that is ruled by law. It could be said that implicitly Indonesia has implemented the concept of asymmetrical decentralization. In the case of Covid-19 overcoming, this concept implies in the various type of local government regulation concerning covid-19 pandemic overcoming. There were some regions implement local wisdom policy which turned out working effectively. This paper would analyze how the local government regulation could be in line with the national level regulation and policy and compares how other country implement the state purpose to eliminate covid-19.

2 Results and Discussion

2.1 Regionalism in Coping with Covid-19 in Asia

Regionalism matters in order to overcome the spread of Covid-19. Public participation become an instrument to measure the integration or disintegration level of an area. Mansfield and Milner explained that an integration is possible to occur amongst complementary territory. [7] We can see European Union as an example that has a long history of interaction before integrated through economy cooperation.

According to ASEAN Brief Policy, these are several following policy recommendations that could be implemented to mitigate the impact of covid-19 pandemic:

- 1) mobilising available macro, financial, and structural policy tools;
- 2) Preserving the economy's productive capacity;
- 3) Keeping the supply chains going;
- 4) Leveraging on technologies and digital trade;
- 5) Strengthening the social safety nets;
- 6) Scaling-up regional pandemic responses;
- 7) Redoubling the resolve to advance regional integration.

The resistance towards lockdown policy in some countries (especially ASEAN member states), including restrains in the airport, harbour, indicates that many countries consider the importance of regionalism. Synergy and cooperativeness that is supported by inclusive development paradigm reflected that ASEAN state members wanted to save their regional cooperative and coworking. The increase of social interaction and cooperative can strengthen the integration amongst ASEAN state members. Nevertheless, the role of society (citizen) is required to support the government policies in safeguarding the regional integration. [8]

Japan reduces the spread of COVID-19 without being accompanied by a lockdown, according to a professor at Kanazawa University, Japan, Atsuro Tsutsumi, who stated that there are two keys to overcoming covid-19 in Japan, namely compliance with the Japanese community and implementation to avoid 3C, namely closed spaces, places crowded people or crowded places and things that cause close contact (close-contact settings). Japanese people seriously comply with the request of the Japanese Government not to go to the city and stay at home. [9] Japan from January 14, 2020 to July 23, 2020, there were 27,029 confirmed cases of COVID-19, of which 990 deaths.

Meanwhile in Indonesia, recorded from March 2, 2020 to July 23, 2020, there were 91.751 positive cases of COVID-19 with 4,459 deaths. This shows positive cases of COVID-

19 in Japan one third of the total confirmed cases in Indonesia. New Zealand and Vietnam have imposed a lockdown, but Japan can contain the spread of COVID-19 with the number of positive cases and deaths due to COVID-19 becoming smaller. Culturally, Japanese people are hygienic people, using masks has been actively practiced long before the COVID-19 pandemic broke out. The Japanese government also provides an early warning to avoid 3C, namely closed spaces, crowded places and things that cause close contact (close-contact settings). According to researchers at the Population Research Center of Indonesia Science Institution (Lembaga Ilmu Pengetahuan Indonesia, LIPI), Syarifah Aini Dalimunthe suggested that the strategy that was carried out by Japan was specific to Japanese society. This method is not necessarily suitable for all people in the world because of the differences in culture and customs that live in each society.

Today, there are 358 new confirmed cases and totally 24.104 cases in Thailand which means there is a significant increase from the data in last December 2020. But, last year Thailand successfully faced the pandemic through the government policy concerning health security system. Thailand is the only country in ASEAN deployed “universal precaution” in fighting against covid-19, the Centre for Covid-19 Situation Administration has centralized the entire anti-virus campaign to fight the virus. [10] Indonesia as one of the countries that seems to have doubts in overcoming Covid-19, because the policy making for PSBB on March 31, 2020 was not fast, which is almost 1 month since the positive case of Covid-19 was first announced on March 2, 2020.

PSBB seems to be implemented differently in every region, given the differences of opinion within the government, for example the Ministry of Health and the Ministry of Transportation in matters of motor vehicle passenger policy. The policy of prohibiting going home before the Eid al-Fitr celebration; however, public transportation is not prohibited from operating. Policies that can be said to be contradictory, namely going home are prohibited, but the economy must not stop spinning. Contradictions often occur, because there is no experience facing a pandemic situation due to COVID-19. The basic problem is that efforts to save COVID-19 have had a massive impact on the economic sector.

The regulations mentioned above is expected to implement the value of social welfare which require the stability of law, so that the state could develop local law to support the law development that is in line with the development of economy to achieve the social welfare itself. [11] The policy of governments should consider the basic principles of constitutional state that consist of: basic rights, the freedom of conscience and expression, privacy and social society rights, distributive, corrective and procedural justice, political, economic, equality before the law and openness. [12]

The fact that there is a market failure and government failure in implementing social welfare conclude that the involvement of state is very essential to do so. A welfare state has a strong relationship with various social policy in state law that includes strategic movements of the government in implementing social welfare in the form of social protection i.g social security whether it is an insurance or social safety nets. [13] We agree with the idea that is stated above regarding social welfare.

Social welfare in the Covid-19 handling refers to the essence of social welfare based on the fulfilment of human rights that is enacted in 1945 Indonesia Constitution that is elaborated with the regulation and living norms in Indonesia such as Article 1 number 1 Act Number 11 of Year 2009 concerning Social Welfare which regulate the fulfilment of material, spiritual, and social needs of citizen to have a proper life and be able to develop their life so that they are able to do the social function. It is in line with the Article 34 paragraph (2) of 1945 Constitution. Social welfare does not mean the state provide all the basic needs of community

but also providing social welfare for all Indonesia citizens by empowering society with human dignity.

We consider this action as a human relationship dignity, a condition when every citizen also has concern for other's welfare in various aspects of human life (economic, social, spiritual, material needs, persons with physical disabilities, mental disabilities, physical and mental disabilities, prostitutes, homeless people, beggars, former chronic disease sufferers, ex-convicts, former narcotics addicts, addiction syndrome psychotropic users, people living with HIV/AIDS, victims of violence, victims disaster, victims of trafficking in persons, neglected children, and children with special needs). We can see human relationship dignity in some activities such as: cooperative unit business, digital charity, NGO in humanity field, etc.

Constitutionally, those basic principles have been accommodated in Indonesia 1945 Constitution as follows:

- 1) the recognition of the rights to live and maintain life, stipulated on Article 28A 1945 Constitution;
- 2) the recognition of the rights to live properly, having a home to stay, and the rights to have healthy environment and the rights to access health service, stipulated on Article 28A section (1) 1945 Constitution.
- 3) the state is responsible for providing the healthcare facility and proper public facility, stipulated on Article 35 section (3) 1945 Constitution;

The policy and regulation that are enacted by the government should have implemented the values of Good Governance so that the government could safeguard the fundamental rights of citizens that is guaranteed by the Constitution. To guarantee the social and economic equity for citizens, policies and regulations should apply justice in an administrative system that prioritize the quality and accuracy of state administrative decisions. [14] Good governance in Indonesia is normatively regulated in the Act Number 30 the Year 2014 concerning Government Administration, Act Number 22 the Year 2014 concerning the Local Government and Act Number 28 the Year 1999 concerning the implementation of State that is Clean and Free from Corruption, Collusion, and Nepotism.

2.2 The Indonesian Government Regulations and Policies in Order to Cope with COVID-19 Pandemic

The government of Indonesia has determined the status of the Corona national disaster on March 14, 2020. The President has announced the alert and response status for non-natural disasters, based on the emergency status and the severity of the impact of Covid-19 in each region. Indonesia government has regulated several policies and regulations to overcome the spread of COVID-19, hereby some regulations enacted:

- 1) Act Number 2 of 2020 concerning the state Finance Policy and Financial System Stability to Overcome the Covid-19 Pandemic and in order to Face the threat that Harm the National Economy and Financial System Stability.
- 2) Government Regulation Number 21 of 2020 concerning Large Scale Social Restriction (hereinafter, PSBB) in order to Covid-19 Overcoming Acceleration.
- 3) Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Overcoming of Corona Virus Diseases 2019 (COVID-19) established the Task Force for the Acceleration of Overcoming of Corona Virus Disease 2019 (COVID-19)
- 4) Transportation Minister Regulation Number 18 of 2020 concerning the Transportation Control in Preventing the Spread of Covid-19 This regulation regulates any restrictions for cross-city travelling without any specific purpose that is beneficial for humanity.

- 5) Ministry of Health Regulation Number 9 of 2020 concerning Large Scale Social Restriction Guidelines in terms of Covid-19 Overcoming Acceleration.

Besides the regulations mentioned above, there are many specific regulations that have been enacted to overcome the impact of Covid-19. Most regulation would refer to Act Number 6 the Year 2018 concerning Health Quarantine because this regulation contains some basis for the healthcare management in the pandemic era. Some regulations that have been enacted in the national level consists of: 1) budget and procurement system; 2) civil servant management; 3) immigration; 4) financial service; 5) healthcare system; 6) judicial procedure; 7) taxes and customs; 8) government management; 9) industry and trade commerce; 10) transportation; 11) education; 12) labour; 13) health.

However, in fact there have been some flaws in the level of regulation implementation [15] as follows:

- 1) The denial from government concerning the Covid-19 issues;
- 2) Pandemic late response;
- 3) The pandemic overcoming focuses more on economic recovery than the issues overcoming itself;
- 4) There have been many policies that is not inline between the national government policy and local government policy;
- 5) Dynamic change on transportation and restriction policy;
- 6) The lack of preventive and promotive efforts in social community.

During Covid-19 pandemic, there have been many inconsistencies from the regulations and policies that were enacted by the government, as government regulation, presidential decree, minister regulation, mistrial decree, and circular letter. [16] Therefore, the government should have considered these for the sake of citizens' welfare: 1) enact the proper policies with a specific time whether it is middle term, short term, or long-term policies that do not make citizens confused when implemented; 2) good policies should have been consistent and do not arise new problematic issues; 3) make sure that anyone violate the regulation get the proper sanctions. This is in line with the government policy during implementation by observing 'what develops between the establishment of an apparent intention on the part of government to do something, or stop doing something, and the ultimate impact in the world of action'. [17]

Based on these three thoughts, we should take some steps as the elaboration that must be carefully considered by the government and local governments in making policies including overcoming Covid-19 policies, namely: (1) accuracy (properly) both the subject and the policy object, including the imposition of sanctions, (2) consistency; (3) establishment of clear intentions/objectives/intentions of the government or stop doing it when the policy is detrimental to society or not useful, and seeing the possible impact of the policy; and (4) achieved when it is in the interests of the community, so all of these policies are very close to the interests of many people or must be able to benefit the interests of many people, not a only few people.

This elaboration can be found in the purpose of establishing laws and regulations based on Act Number 12 of 2011 concerning the Formation of Legislation (Act Number 12 of 2011), which is to realize Indonesia as a constitutional state, the state is obliged to carry out national legal development which is carried out in a planned, integrated, and sustainable in the national legal system which guarantees the protection of the rights and obligations of all the people based on the 1945 Constitution. To fulfil the needs of society for good laws and regulations, it is necessary to make regulations regarding the formation of laws and regulations which are

carried out in a definite, standard, and standard way and method that binds all institution authorized to form laws and regulations.

Henceforth, following the Elucidation of Article 5 letter c of Act Number 12 of 2011 what is meant by "the principle of conformity between types, hierarchy, and content of content" is that in the Formation of Legislation, it must really pay attention to the appropriate content material according to the type and the hierarchy of Legislation. The word "really paying attention" can be interpreted as an elaboration of government policies in a planned, integrated and sustainable.

2.3 Local Government Regulations and Policies that Implement the National Government Policies.

The implementation of prevention and control of COVID-19 in several regions in Indonesia are based on the Instruction of the Minister of Home Affairs Number 4 of 2020 concerning Technical Guidelines for the Formulation of Regional Head Regulations in the Context of Implementing Health Protocols and Law Enforcement as Efforts to Prevent and Control Corona Virus Disease 2019 in designated areas on August 10, 2020. Some of the regulations are as follows:

- 1) Governor of Special Region Jakarta Regulation Number 3 the Year 2021 concerning the implementation rules of the Local Government Regulation Number 2 the year 2020 concerning the overcoming Covid-19. It is a new regulation that complement previous local government regulation that was used as the basis of covid-19 overcoming in Jakarta. It consists of 70 articles with sanctions such as social work and administrative fine of not more than 250,000.00 rupiahs. Strengthening local wisdom in Jakarta for the effectiveness of overcoming COVID-19 must involve organizations at the Neighbourhood Association (Rukun Tetangga/RT in Indonesia) and Society Association (Rukun Warga/RW in Indonesia) levels, namely Family Welfare Development (PKK), Youth Organization that Called Karang Taruna, and volunteers work in mutual help and continuously. [18]
- 2) Governor of South Sumatra Regulation Number 37 of 2020 concerning Guidelines for Adaptation of New Habits Towards a Productive and Safe Society in the Corona Virus Disease 2019 (COVID-19) Situation in South Sumatra Province. The South Sumatra Governor Regulation 37/2020 was enacted and came into effect on August 14, 2020, consisting of 36 articles. The provision is known as the Clean and Healthy Living Behavior (PSBB in Indonesia), which is the clean behavior of healthy living for the people in South Sumatra Province and the COVID-19's Adaptation of New Habits Towards a Productive and Safe Society (AKB-M2PA COVID-19) is a guideline in carrying out activities of daily life towards a productive and safe community COVID-19. For example, Aceh's people always prioritize religious values in solving problems including the COVID-19 pandemic by listening to advice from ulama as an obligation to be more effective in management of COVID-19 including socialization of rules and ways of management of COVID-19. In Kubang Gajah village, Payakumbuh, West Sumatera as a pilot village for zero COVID-19 that is orderly, independent, and cooperatively prevents the transmission of the COVID-19 virus. The community can also produce food raw materials (food self-sufficiency). [19]
- 3) Governor of East Kalimantan Regulation Number 48 of 2020 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as Efforts to Prevent and Control Corona Virus Disease 2019. The East Kalimantan Governor Regulation 48/2020 came into effect and was stipulated on August 24, 2020, consisting

of 17 articles. Sanctions that are quite unique for each individual who violates the health protocol are subject to social work, namely cleaning public facilities wearing a vest and having a Certificate of Violation (STBP);

- 4) South Sulawesi Governor Regulation Number 22 of 2020 concerning Guidelines for Implementation of Large-Scale Social Restrictions in Overcoming Corona Virus Disease 2019 in the Region of South Sulawesi Province. South Sulawesi Governor Regulation 22/2020 was enacted and came into effect on April 24, 2020, consisting of 31 articles. Provisions regarding efforts to prevent or handle the spread of COVID-19 do not have a special symbol (for example 3M or 4M) that makes it easier for the public to obey the rules. This provision regulates sanctions for violations of the PSBB implementation based on sanctions in accordance with the provisions of statutory regulations. Gorontalo community revive their ancestral heritage through *bele uto* in the form of *sarong* to cover their bodies from the entry of the Covid-19 virus. [20]
- 5) West Papua Governor Regulation Number 23 of 2020 concerning Implementation of Discipline and Law Enforcement of Health Protocols as Efforts to Prevent and Control Corona Virus Disease 2019 in the Regions

The West Papua Governor Regulation 23/2020 was enacted and came into effect from 10 September 2020, which consists of 12 articles. The provisions apply the 4 M (wearing masks, washing hands, keeping your distance, and avoiding crowds) for the subject of settings, among others:

- (1) Customary Law Community (MHA), namely: customary officials and members of the MHA;
- (2) Non-MHA communities, namely: individuals, business actors, managers, organizers or persons in charge of public places and facilities, land, sea and air travelers, and operators of land, sea and air transportation modes.

The obligation to implement and comply with health protocols for the subject of regulation, monitoring and evaluation, sanctions, socialization, institutions, and funding is regulated in the West Papua Governor Regulation. The imposition of sanctions is quite unique for the Customary Law Community in the form of customary and religious sanctions in accordance with the reality of the customary law that applies in each environment, while for individuals sanctions are imposed in the form of verbal or written warnings, social work, planting trees around coastal areas, forests, watersheds, and mountains; and an administrative fine of 25.000 rupiahs (twenty five thousand rupiahs) and for business actors, managers, organizers or people in charge of public places and facilities in the form of oral or written warnings, administrative fines of 250.000 rupiahs (two hundred and fifty thousand rupiah), temporary termination of business operations, and revocation of business licenses.

Speaking of the spread of covid-19, not only traveling on personal, group and business matters, working across countries can also be an effective spread of the pandemic to the countryside. The return of migrant workers from around neighbouring countries such as Malaysia to their respective villages is also potential for spreading. Departing from this big problem that is being faced, they want to participate in various efforts in rural North Sumatra, among others, socialization, education, awareness and facilitation of prevention tools and materials to anticipate the spread of the Covid-19 pandemic. They want to offer the North Sumatra Government and/or the authorities to handle Covid-19 in North Sumatra, by using their training center as a reference and even quarantine for infected people. Namely, the Sayum Sabah Training Center (TCSS), in Sayum Sabah Village, Sibolangit, Deli Serdang, and the Mangga Dua Integrated Animal Husbandry Training Center (PPPT), Mangga Dua Village, Tanjung Beringin, Serdang Bedagai. In North Sumatra, the governor has issued a Governor's

circular number 440/2666/2020, dated March 17, 2020 regarding increased awareness of the risk of transmitting Covid-19 infection. Some heads of districts and cities followed up this circular by prohibiting the gathering of more than 30 people in one event or activity.

AMAN and Walhi, non-governmental organization, issued a joint appeal for the Covid-19 pandemic. Rukka Sambolinggi, Secretary General of the Alliance for Indigenous Peoples of the Archipelago (hereinafter, AMAN) instructed all organizational instruments and indigenous communities to temporarily close access in and out of each customary territory. Various civil society groups are also demanding a lockdown on the Land of Papua considering that there are more than 300 tribes in Tanah Papua, mostly tribes with small populations that are vulnerable to extinction when dealing with Corona. So far, the community still relies on the customary health system because of the lack of infrastructure and a health service and medical care system from the government.

On small islands, where indigenous peoples live, it is also important to quarantine areas, such as Mentawai Island. Mentawai has closed access in and out of people, in order to anticipate Corona so as not to spread on this island. Abdon Nababan, Deputy Chairperson of the AMAN Council, said that it is important to support and promote the Mentawai Regency local lockdown. With the unexposed area quarantine, social and economic activities can take place locally. In some areas managed by the people, instructions have also been issued to maintain food availability and limit the traffic of people in and out of the village, "said Nur Hidayati, Executive Director of Walhi Nasional.

In the midst of this pandemic crisis, the private sector, which includes companies engaged in plantations and mining, has not shown concrete steps in line to support the government's efforts to deal with the virus. Even companies still carry out their normal activities. The attitude shown by the companies clearly does not support government policies in dealing with the Covid-19 pandemic. Companies operating in indigenous territories and managing the people to temporarily stop all activities to support efforts to stop the spread of Covid-19 in villages. [21] It turns out that each region has its own uniqueness in overcoming COVID-19 which has local wisdom by still adhering to the health protocol from WHO.

Thinking of Geoffard and Luchini that, 'time is not exogenous to the individual, it is elastic, and this will be influenced by the emotions and the person experiences'. [22] The local wisdom of each area comes from personal experience or a larger scope as the experience of the community when each community experiences the same situation. The passage of time causes every community experience to be elastic (flexible) and society and its habits become increasingly wise in dealing with problems in society, including the community responding to COVID-19. The local government will certainly handle and prevent the spread of COVID-19 with the habits of the local community through their respective local wisdom so that government efforts will be effective, by elaborating through policies that always comply with the health protocol from WHO.

During the Implementation of the New Normal Adaptation for the Productive and Safe Covid-19 Community Phase I in Papua Province, except for Jayapura City (August 3, 2020 to August 31, 2020). Opening of sectors with strict health protocols on social and religious activities, educational activities that are opened gradually and selectively, economic activities, transportation, office activities. The Papua Provincial Government will issue a Governor Regulation which regulates the limitation of community activities outside the home as well as the sanctions given and monitoring in their respective areas.

This kind of self-regulating system on local government is the implementation of asymmetrical decentralization. The implementation of asymmetric decentralization is not limited to the regular transfer of authority in the form of special transfer that is given to certain

regions. Asymmetrical decentralization becomes a solution and alternative of giving the authority to local government to regulate what is best and just for the citizen living in the region. [20] Furthermore, it will grow the independence of the governor so that welfare society could be provided. According to Jusuf Madubun, “asymmetric decentralization is a form of decentralization that was developed from the concept of decentralization itself, to distinguish it from symmetrical decentralization that has been force in many countries. [23] Theoretically, there are three (3) level of asymmetrical decentralization [24] that used to be implemented, namely:

- 1) political asymmetrical that usually occurs in a united state but regulate different rules for specific entity or society with a non-economic reason as politics, history, culture, etc;
- 2) administrative asymmetrical that can be different capacity and competence of Local Government in running the governance, there is also a specific communication way between national government and local government;
- 3) fiscal asymmetrical that is the most advanced asymmetric level and out of the development cost.

In fact, the substances of local government regulation that is a bit different from national policy is an political asymmetrical due to unique and specific condition on the region. Culture, willingness of the local government, and way of life of citizens could be the reason that asymmetrical occurred. Local governments are allowed to practise the asymmetrical decentralization in order to overcome the Covid-19 impacts based on the living law and socio-cultural that is held by the society. The local government plays an important role in deciding the best policy to be implemented in the region.

The government should recognize thoroughly the landscape problems, decide rapidly the relevant policy, and assure that the policy will be well implemented. Ganjar Pranowo, the governor of Central Java stated that the new normal lifestyle as health protocol that must be implemented in public space, public transportation in order to reduce the spread of Covid-19. [25] They should also elaborate the chosen policy made in local governments with the national regulation and policy that have been enacted by the government.

Theoretically the elaboration consists of five phase that are inception, elaboration, construction, transaction, and production. [26] This phase has some goals namely:

- 1) to produce a proven, architectural baseline for the substance of regulation;
- 2) to evolve requirements model to the “80% completion point”
- 3) to develop a coarse-grained project plan for the entire construction phase;
- 4) to ensure the critical tools, processes, standards, and guidelines have been put in place for the construction phase;
- 5) to understand and eliminate the high priority risks for the program.

Hence, the policy making in overcoming Covid-19 requires elaboration between the local government regulation and national policy in order to provide the best guidance and policy for the sake of the people’s welfare. Finally reflecting on the cooperation between New Zealand and ASEAN as partners to deal with the COVID-19 pandemic in the political, economic and socio-cultural fields through contributions in the provision and distribution of vaccines, the ASEAN COVID-19 Response Fund and building ASEAN economic resilience. [27] Indonesia must immediately strengthen food self-sufficiency and their local wisdom based on each region. Strengthening the region for national stabilization by empowering the community through social welfare in various fields of human life (strengthening food self-sufficiency, love for domestic products, creating local security together) to build strengthening by elaborating strategies for overcoming COVID-19 based on cooperation between Indonesia and ASEAN countries sustainably.

Society who have local wisdom, preserve and implement it in the development of everyday life, including managing the current spread of the Covid-19 virus as awareness. This situation is highly recognized and respected by the government and ASEAN countries through the ratification of international agreements, namely International Covenant on Civil and Political Rights (ICESCR) in economic, social and cultural rights (CESCR). [28] So, the existence of local wisdom from the community, regional regulations, and national level regulations need to elaborate it in the spirit of supporting communities with their changing environmental conditions due to the pandemic as a shared commitment (local communities, local governments, central government to ASEAN countries, even the world).

3 Conclusion

The effective elaboration to manage COVID-19 are distributed leadership, decentered authority, and collective accountability. There are three pillars of effective elaboration. Assess the degree to which these principles are consistent with the mission, values and operating culture of each partner organisation, for example in Indonesia is elaboration of local wisdom and local government policies. Identify potential impediments (for example, inconsistent understandings about what these principles mean in practice) or constraints (for example, the regulation framework within which partner organisations are obliged to operate) and possible solutions. [29] Based on this, the draft of local government policy can be elaborated with community wisdom, however, local governments must be open to any policies that will apply in society. And then, DeLeon calls it about little more than a comparison of the expected versus the achieved. [30]

Elaboration according to the Comprehensive Indonesian Dictionary is a persevering and careful task. Therefore, overcoming COVID-19 requires extraordinary and urgent steps from the central government including collaboration with all local governments spread throughout Indonesia and all Indonesian people based on attitudes and actions that support every policy of the central and local government.

Based on Article 6 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation as amended by Law Number 15 of 2019, the material content of the laws and regulations must reflect the principles of protection, humanity, nationality, kinship, nationality, diversity in unity, justice, equal position in law and government, order and legal certainty; and / or balance, harmony and harmony. Elaborating laws and regulations including local regulations diligently and carefully with due observance of the conditions that existed during the COVID-19 pandemic must fulfill 10 (ten) principles. The law elaborated on the COVID-19 pandemic conditions must: [31]

- 1) functions to provide protection to create public order;
- 2) reflect the protection and respect of human rights as well as dignity in proportion;
- 3) reflects the pluralistic nature and character of the nation while maintaining the principles of a unitary state;
- 4) reflects deliberation to reach consensus in every decision making;
- 5) always takes into account the interests of the entire territory and is part of the national legal system based on Pancasila and the 1945 Constitution;
- 6) taking into account the diversity of the population, religion, ethnicity and class, regional special conditions and culture in the life of the community, nation and state;
- 7) reflects fairness proportionally;

- 8) may not contain anything that is discriminatory based on background, among others, religion, ethnicity, race, class, gender or social status;
- 9) creating order in society by guaranteeing legal certainty; and
- 10) reflects balance, harmony and harmony between the interests of individuals, society and the interests of the nation and state.

Fulfilment of the principle of transparency in statutory regulations as stipulated in the Elucidation of Article 5 letter g is the formation of statutory regulations starting from planning, drafting, discussing, ratifying or stipulating, and enacting transparent and open in nature. Thus, all levels of society have the widest opportunity to provide input in the formation of laws and regulations. People who know the customs and have an interest in law have the right to know and provide information on the law's existence to adapt to the applicable law. Therefore, the preparation of laws and regulations based on their constituents' diligence and accuracy is essential for formulating extraordinary and urgent policies based on the ten principles of forming rules and regulations accompanied by openness to the public.

Indonesia must immediately strengthen food self-sufficiency and their local wisdom based on each region. Strengthening the region for national stabilization by empowering the community through social welfare in various fields of human life (strengthening food self-sufficiency, increase the use of domestic products, creating local security together) to build strengthening by elaborating strategies for overcoming COVID-19 based on cooperation between Indonesia and ASEAN countries sustainably.

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References

- [1] <https://covid19.go.id/berita/data-vaksinasi-covid-19-update-7-februari-2021>
- [2] Ade Nasihudi Al Ansori, "Satu tahun Covid-19 di Indonesia, IDI ungkap 4 masalah Pokok Penanganan Pandemi Corona", https://www.liputan6.com/health/read/4494865/satu-tahun-covid-19-di-indonesia-idi-ungkap-4-masalah-pokok-penanganan-pandemi-corona?medium=Headline&campaign=Headline_click_1 accessed March 12 2021.
- [3] Calvin, 2020, "Overcoming Covid-19 Related To Regional Security According To Asean Political-Security Community", *Lex Scientia Law Review*, Vol. 4 No. 1 May 2020, p. 19.
- [4] Time, "World Health Organizatio Declares COVID-19 a 'Pandemic'. Here's What That Means", *Time* (11 March 2020), <https://time.com/5791661/who-coronavirus-pandemic-declaration/>. In Herlambang P. Wiratraman, "Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?", *Journal of Southeast Asian Human Right*, Vol. 4 Issue 1 June 2020, p. 308
- [5] "Corona Virus Disease (Covid-19) Outbreak Situation," <https://www.who.int/emergencies/diseases/novelcoronavirus-2019> dan Gugus Tugas Percepatan Penanganan Covid-19, "Data Sebaran Covid-19 Di Indonesia," <https://covid19.go.id>. In Mei Susanto, Teguh Tresna Puja Asmara, *Ekonomi Versus Hak Asasi Manusia Dalam Penanganan COVID-19 Dikotomi atau Harmonisasi*, *Jurnal HAM*, Vol. 11 No. 2 August 2020, p. 302-303.
- [6] Ziyad Falahi & Poltak Nainggolan, "Regionalisme ASEAN dalam Merespon Pandemi Covid-19", *Info Singkat Bidang Hubungan Internasional*, Vol. XII, No.7/1/Puslit/April/2020.
- [7] Mansfield Edward. D & Hellen V Milner "The New Wave of Regionalism" *International Organization*, Vol. 53 3 Summer 2019 P. 589-627.

- [8] Bahagijo, Sugeng, Hamong Santono, dan Meina Oktiasari. 2019. Panduan Kemitraan Multipihak bagi Tujuan Pembangunan Berkelanjutan. Badan Perencanaan Pembangunan Nasional.
- [9] Dwi Murdaningsih, Cara Jepang Tekan Angka Covid-19 Tanpa Lockdown, <https://republika.co.id/berita/qdzfgc368/cara-jepang-tekan-angka-covid19-tanpa-emlockdownem>, accessed January 24, 2021.
- [10] Kavi Chongkittavorn, “7 Secrets of Thai Covid-19 Success”, <https://www.bangkokpost.com/opinion/opinion/1939416/7-secrets-of-thai-covid-19-success>, accessed February 10 2020.
- [11] [11] Leonard J. Theberge, “Law and Economic Development” *Journal of International Law and Policy*, Vol 9: p. 23.
- [12] Jacob Weinrib, “The Modern Constitutional State”, Queen’s Law Research Paper, Queen’s University Faculty of Law, 2015, p.183.
- [13] Elviandri et.al, “Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia”, *Mimbar Hukum*, volume 31 Nomor 2 Tahun 2019, p.255.
- [14] Ahmad Redi, et.al., ed, Segi Hukum terhadap Implikasi Covid-19 di Indonesia, Kencana, Indonesia, P.189.
- [15] Tri Astuti Sugiyatmi, “GAP Pada Aspek Legoslasi dalam Penanggulangan Covid-19” dalam Covid-19 dalam Ragam Tinjauan Perspektif”, MBRidge Press, 2020
- [16] Agus Pambagio, “Inkonsistensi Kebijakan Indonesia”, <https://kumparan.com/agus-pambagio/inkonsistensi-kebijakan-indonesia-1uoalZVwpTm/full>. Accessed on February 19 2021
- [17] P. John, *Analysing Public Policy*. London: Pinter, 1998, p. 266. In Michael Hill and Peter Hupe, *Implementing Public Policy: Governance in Theory and in Practice*, (London: Sage Publications, 2002), p. 7-8).
- [18] Desa Lidya Natalia, “Ketua Gugus Tugas Ingin PKK hingga karang taruna bantu cegah COVID-19”, <https://www.antaraneews.com/berita/1378174/ketua-gugus-tugas-ingin-pkk-hingga-karang-taruna-bantu-cegah-covid-19>, accessed April 15, 2021.
- [19] Audrey Santoso, “Tetap Nihil Corona, Kampung di Payakumbuh Ini Swadaya-Pakai Kearifan Lokal”, <https://news.detik.com/berita/d-5059333/tetap-nihil-corona-kampung-di-payakumbuh-ini-swadaya-pakai-kearifan-lokal>, accessed April 15, 2021
- [20] Rosyid A Azhar, Beleuto, Tradisi Lama Gorontalo yang dikenalkan pada Era New Normal, <https://regional.kompas.com/read/2020/06/24/22413201/beleuto-tradisi-lama-gorontalo-yang-dikenalkan-pada-era-new-normal>, accessed April 15, 2021).
- [21] Ayat S. Karokaro and Della Syahdini, April 6, 2020, Cara Mereka Antisipasi Virus Corona agar Wilayah Tak Tertular, <https://www.mongabay.co.id/2020/04/06/cara-mereka-antisipasi-virus-corona-agar-wilayah-tak-tertular/>, accessed on January 24, 2020.
- [22] Kadek Cahya, Susila Wibawa, “Penegasan Politik hukum Desentralisasi Asimetris dalam Rangka Menata Hubungan Pemerintah Pusat dengan Pemerintah Daerah di Indonesia”, *Administrative Law and Governance Journal*, Volume 2 Issue 3, August 2019, p. 404
- [23] Jusuf Madubun, Haedar Akib, “the Prototype of Asymmetric Decentralization in providing Public Services to Island Reas.” *Mediterranean Journal of Since*, vol. 8 No. 2 Maret 2017, p. 209
- [24] Veljanovski, A.M, “The model of Asymmetric Fiscal Decentralization in the Theory and the Case of Republic Macedonia”, 2010, *Iustinianus Primus Law Review* Vol. 1: 11. P.21.
- [25] Ganjar Pranowo, “Tantangan dan Inovasi Pemerintah Daerah dalam Penanganan Pandemi Covid-19”, 2020, <https://fisip.ui.ac.id/tantangan-dan-inovasi-pemerintah-daerah-dalam-penanganan-pandemi-covid-19/>
- [26] Scott W. Ambler, 2000, *The Unified Process Elaboration Phase. Best Practises in Implementing the UP*, (Kansas: CMP Books).
- [27] Benedikta Miranti Tri Verdiana, Kerja Sama ASEAN-Selandia Baru, Perkuat Arsitektur dan Pemulihan Ekonomi Pasca COVID-19, <https://www.liputan6.com/global/read/4514435/kerja-sama-asean-selandia-baru-perkuat-arsitektur-dan-pemulihan-ekonomi-pasca-covid-19>, accessed April 16, 2021.)
- [28] Triyana, Heribertus Jaka. National Wisdom and The ASEAN Human Rights Legal Regime, *Udaya Journal of Law and Culture*, Vol. 01 No. 1 January 2017, p. 50-51.

- [29] John R. Butcher and David J. Gilchrist, *Collaboration for Impact: Lesson from the Field*, Australia: Australian National University Press, 2020, p. 228]
- [30] DeLeon, P. (1999), "The missing link revisited: Contemporary implementation research", *Policy Studies Review*, 16 (3/4): (1999a: 330), p. 311–38. In Michael Hill and Peter Hupe, *Implementing Public Policy: Governance in Theory and in Practice*, (London: Sage Publications, 2002), p. 7-8.
- [31] ASEAN Policy Brief, Economic Impact of COVID-19 Outbreak on Asean, https://asean.org/storage/2020/04/ASEAN-Policy-Brief-April-2020_FINAL.pdf