

Integration of Enforcement Large-Scale Social Restriction (PSBB) Policies Based on the Restorative Justice System Approach

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Abstract. The coronavirus outbreak (Covid-19 or SARS-CoV-2) which emerged at the end of 2019 had so many impacts on society. Responding to the entry of the outbreak in Indonesia, the government issued various policies to prevent the spread of Covid-19. The Large-Scale Social Restriction Policy (PSBB) is at the forefront of limiting people's mobility in their daily lives. According to this situation, the government issued a health protocol through Government Regulation No. 21 of 2020 concerning PSBB and PSBB Guidelines. The rules stated society to understand and to comply with the health protocols and carry out a physical distancing. This study uses a qualitative methodology with an empirical literature approach. The approach is carried out by collecting data in the form of government policy documents related to research. This research shows that enforcing PSBB policy faced challenges both in term of the regulation themselves and the recovery factor after the violations of the PSBB policy. The implementation of the PSBB policy often collides with different situation of each region. The presence of a restorative justice system approach in enforcing the PSBB policy is expected to be able to overcome these various of obstacles. Especially as an intermediary system among the interests of the government, society, and law enforcement. The objectives of this research to provide a whole picture of the various regulation of PSBB policies in overcoming the spread of Covid-19 in Indonesia.

Keywords: Covid-19, PSBB, Restorative Justice System

1 Introduction

Corona Virus Disease 2019 (Covid-19 or SARS-CoV-2) has been officially declared by the World Health Organization (WHO) on January 30th, 2020, as a very dangerous disease and threatens the international health [1]. On March 11th, 2020, WHO officially declared Covid-19 as a global pandemic, after Covid-19 spread to 118 countries and infected more than one hundred thousand people [2]. Almost every country, including Indonesia, faces the real threat of transmission and spread of the Covid-19 disease. Following up on the pandemic situation, on March 31st, 2020, the Indonesian government issued Presidential Decree No. 11 of 2020 concerning the Determination of the Corona Virus Disease 2019 (Covid-19) Public Health Emergency (hereinafter referred to as Presidential Decree No. 11 of 2020). It is stated that the spread of Covid-19 has an extremely deadly nature and has a profound impact on the economy, society, culture, politics, defence and security, and the welfare of the community. Based on data

from the Committee for Handling Covid-19 and National Economic Recovery, Indonesia confirmed 1,775,220 Covid-19 cases with a death toll of 49,328 people [3].

This situation requires the Indonesian government to move quickly in tackling the spread of Covid-19. One of the points that became the basis for the issuance of Presidential Decree 11 of 2020 is the provisions stipulated in Indonesia Law Number 6 of 2018 concerning Health Quarantine [4] (hereinafter referred to as the Health Quarantine Act). The legal provisions in the Health Quarantine Act state that Health Quarantine is an effort to prevent and prevent the entry and exit of diseases and/or public health risks that have the potential to cause public health emergencies. Public Health Emergency itself is a public health incident of an extraordinary nature characterized by the spread of infectious disease and has the potential to spread across regions or countries.

This provision is complemented by regulatory policies related to Large-Scale Social Restrictions (PSBB), namely a limitation of certain activities for residents in a certain area suspected of being infected with a disease and/or contamination. The purpose of these restrictions is to prevent the possible spread of the disease or contamination. Responding to Covid-19 and based on the authority given by the Health Quarantine Act, the government issued Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19) (hereinafter referred to as Government Regulation No. 21 of 2020). It is stated that the implementation of PSBB in a region is based on epidemiological considerations, the magnitude of the threat, effectiveness, resource support, technical operations, political, economic, social, cultural, and defence-security considerations [5].

Based on these provisions, a technical issue is needed to be able to run the PSBB in an area that has been infected or contaminated by an infectious disease, in this case, Covid-19. Moreover, the implementation of the PSBB in an area includes school and work vacations, restrictions on religious activities, and restrictions on activities in public places or public facilities. Thus, it is clear that the readiness of each region to be able to implement the PSBB is very diverse and creates its problems.

Various kinds of regional regulations are then issued by each Regional Government to carry out the PSBB in their region. There are at least 26 district/city level regulations which are derivatives of provincial-level regulations governing the enforcement of PSBB in their regions. Based on these data, it is found that various kinds of differences between local regulations. These differences are quite complex considerations in dealing with the Covid-19 pandemic situation in Indonesia.

The community as the subject who implements the PSBB cannot avoid various kinds of changes in carrying out their daily activities. Changes that have occurred due to the presence of Covid-19 and the implementation of the PSBB have also resulted in the types of violations committed by the community. Violations of these regulations have made efforts by the central and regional governments to stop the spread of Covid-19 facing serious challenges. Various kinds of criminal sanctions are regulated and implemented in the hope that the community will obey the PSBB. However, the application of these criminal sanctions needs to be further analysed if it is based on the continuing rate of the spread of Covid-19 in Indonesia.

The purpose of this research is to integrate various kinds of PSBB policy enforcement efforts by using the *restorative justice system* approach as a way of restoring changes in situations and conditions experienced by the community, especially in resolving violations that have occurred. Therefore, this research also shows the various types of local regulations that exist as well as several examples of cases and sanctions that can be applied to restore the situation and condition of the community.

2 Research Methods

Legal research is a scientific activity based on methods, systematics, and certain thoughts, which aim to study one or several phenomena of certain laws by analyzing them. This study uses a qualitative methodology with an empirical literature approach, is descriptive in a normative juridical manner. The research uses primary data in the form of related laws and local government regulations. The secondary data in the form of compilation of regional policies concerning PSBB and analyzed using a comparative law approach. The research uses supporting data in the form of legal literature both national and international. Problem-solving in this study uses a statutory approach, a case approach, and a conceptual approach.

3 Results and Discussion

3.1 Integration of Enforcement Formulas of Large-Scale Social Restriction (PSBB) Policy

The presence of Presidential Decree No. 11 of 2020 and PP No. 21 of 2020 is an important sign of the start of the regulation and implementation of PSBB policies in fighting the spread of Covid-19 in Indonesia. Community participation is an important factor in fighting this global pandemic. It is hoped that the presence of this policy regarding PSBB is expected to be able to implement the community as well as possible for the sake of mutual safety [6]. Article 2 of the Health Quarantine Act explicitly regulates that one of the principles for implementing Health Quarantine is for the public interest. Furthermore, article 59 of the Law on Health Quarantine stipulates that the objective of implementing the PSBB as an implementation of Health Quarantine is to prevent the spread of disease that is happening between people in a certain area.

As for the implementation of the PSBB as an effort to prevent a Public Health Emergency [7] at least includes school and work vacations, restrictions on religious activities, and/or restrictions on activities in public places or facilities. Of course, these restrictions are carried out by taking into account basic human needs, educational needs, work productivity, and human rights in performing one's religious duties.

These regulations are then translated into various kinds of regional government regulations of PSBB in their regions. At least, there are 8 kinds of regional regulations at the provincial level, which regulate the PSBB. The regional regulations cover areas in DKI Jakarta, Sumatera, Java, Sulawesi and Kalimantan.

No	Regional Government	Regional Legal Regulatory
1	DKI Jakarta	DKI Jakarta Governor Regulation Number 33 of 2020 as amended in the DKI Jakarta Governor Regulation Number 88 of 2020 DKI Jakarta Governor Number 79 of 2020
2	West Sumatera	West Sumatera Governor Regulation Number 20 of 2020
3	South Sumatera	South Sumatera Governor Regulation Number 37 of 2020
4	Gorontalo	Gorontalo Governor Regulation Number 15 of 2020
5	West Java	West Java Governor Regulation Number 30 of 2020
6	East Java	East Java Governor Regulation Number 18 of 2020

7	South Kalimantan	South Kalimantan Governor Regulation Number 66 of 2020
8	Riau	Riau Governor Regulation Number 55 of 2020

The various regional regulations at the provincial level are then translated into 26 district/city level regional regulations, namely Tangerang City, Tangerang Regency, South Tangerang City, Pekanbaru City, Makassar City, Tegal City, Banjarmasin City, Tarakan City, Surabaya City, Sidoarjo District, Gresik District, Malang City, Batu City, Malang District, Palangkaraya City, Buol District, Banjar District, Barito Kuala District, Banjar Baru City, Palembang City, Prabumulih City, Kampar District, Pelalawan District, Siak District, Bengkalis District, and Dumai City.

These various regional regulations then regulate what activities need to be limited during the validity period of the PSBB in the region. These restrictions include:

- a. Restrictions on the implementation of the teaching and learning process.
- b. Restrictions on work processes in the workplace/office.
- c. The implementation of religious activities in places of worship.
- d. Restrictions on activities in public places/public facilities.
- e. Restrictions on social and cultural activities.
- f. Restrictions on the use of transportation modes for movement.

The government's strategic (both central and regional) to implement these restrictions is an effective strategy to break the chain of spreading Covid-19. However, these arrangements are not completely harmonious between regions.

Each region that implements the PSBB fully agrees to implement 100% learning from home and be carried out online, carry out work from home or work at home, and completely cease religious activities in houses of worship. However, not fully local governments agree on the limit on the number of people allowed to carry out activities in public places/public facilities.

As many as 90% of the regions that implemented the PSBB prohibited activities with many more than 5 people in public places or public facilities. Meanwhile, the rest, Kota Palembang City and Prabumulih City, chose 4 people as the maximum allowance for activities in public places or public facilities. In addition, 90% of regions prohibit or cease socio-cultural activities that cause crowds, such as politics, sports, entertainment, academics, and culture. However, 3 regions only set restrictions, not prohibitions.

Concerning restrictions on the mode of transportation for movement, as many as 87% of regions have temporarily suspended the movement of people and/or goods, except for movements in vital sectors such as health and basic human needs. The remaining 13% of regions chose to impose a curfew on the use of transportation modes for the movement of people and/or goods, except for vital sectors as already stated.

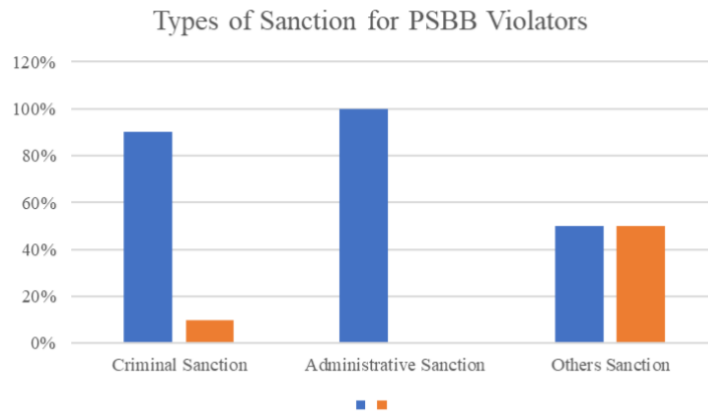
The problem in the formulation of the PSBB policy is not only limited to the formulation that is regulated in every statutory regulation but is also closely related to the level of compliance and legal awareness of the community. Roscoe Pound in his theory of *law as a tool of social engineering puts law as a tool to be able to reform or engineer society*. In this case, the PSBB policies exists to shape the society in adjusting their daily lifestyle (new normal) to fight Covid-19.

Breaking the chain of the spread of Covid-19 in Indonesia is a serious challenge for all elements of society, government, and law enforcement officials. Covid-19 has been a shocking effect not only on the health sector but also on the economic, social, political, legal, even technology, and defence-security sectors. The legal rules that must be implemented by the community, the pros and cons of public opinion on government policies, the level of compliance

and legal awareness of the community, as well as sanctions and law enforcement processes, are indicators of the successful implementation of PSBB policies [8].

Differences in regulations between regions are evidence of the variety of community situations faced by the government. The principles of humanity, benefits, protection, justice, non-discrimination, public interest, integration, legal awareness, and state sovereignty serve as guidelines for the government in efforts to prevent the spread of Covid-19. However, the implementation of the PSBB with differences that occur, proves that the government has difficulty in implementing these principles. Moreover, when talking about law enforcement for violators of the PSBB policy and the sanctions that have been applied.

At least, 8 provincial-level regional regulations and 26 district/city level regional regulations regulate 3 types of sanctions, namely criminal sanctions, administrative sanctions, and other sanctions in the form of social sanctions. However, based on the data obtained, as many as 10% of regions that implement the PSBB do not regulate the imposition of criminal sanctions. Meanwhile, all regions regulate the application of administrative sanctions, and only 50% of regions do not regulate other sanctions. This can be seen in the following chart:



Source: Results of Basic Research of “Formulating Models of Criminal Actions For Violation of Health Protocols in time of the Covid-19 Pandemic” [9].

Based on this data, 10% of regions choose not to impose criminal sanctions in their PSBB policy and only regulate administrative and other sanctions. Referring to the provisions of Article 10 of the Criminal Code, the criminal sanctions that can be applied are in the form of principal and additional penalties. The main punishment, in this case, can be in the form of imprisonment, imprisonment, or a fine. Administrative sanctions can be in the form of administrative fines or the closure of business permits. Meanwhile, other sanctions can be in the form of social sanctions and other disciplines by the provisions of laws and regulations.

For example, in the Regulation of the Governor of DKI Jakarta No. 79 of 2020 concerning the Implementation of Discipline and Law Enforcement of Health Protocols as Efforts to Prevent and Control Corona Virus Disease 19 (hereinafter referred to as the DKI Jakarta Governor Regulation No. In addition to the people who commit violations, the regulation also regulates sanctions for business actors who violate the provisions of the PSBB. These sanctions are in the form of a temporary closure of business premises and administrative fines [10]. Furthermore, article 93 of the Law on Health Quarantine also regulates imprisonment and fines for any person (person or corporation) who does not comply with the administration and/or

obstructs the implementation of Health Quarantine. In contrast to the DKI Jakarta region, which applies administrative fines progressively on violators, the East Java region only applies the same sanctions as in general. These sanctions are in the form of verbal, written warning, forced dissolution of activities, social work, or administrative fines [11].

These two examples are clear evidence of gaps between legal regulations in each region in shaping and enforcing PSBB policies. It should be emphasized that the law enforcement process is not only burdened by law enforcement officers but also needs to be a serious concern of the government. The integration of law enforcement between regions will make it easier for the community to accept and respond to the PSBB policy. The Central Government needs to reconsider various kinds of regional regulations. The policies taken need to consider the effectiveness and compliance and legal awareness of the community. Thus, law enforcement that is harmonious between regions will be created and the community will be able to respond to the PSBB policy for the common interest.

3.2 Implementation of Restorative Justice System in Enforcement of PSBB Policy

The use of various types of sanctions seems to be a solution to various kinds of social and legal phenomena that occur in society. Especially in facing the global Covid-19 pandemic. Policy after policy stipulated in the implementation of PSBB in a region becomes a serious problem when there are so many violations. Imposing criminal sanctions is too excessive considering the situation of prisons in Indonesia which is already overcapacity. This was proven when the Ministry of Law and Human Rights issued an assimilation and integration program related to efforts to prevent and control the spread of Covid-19 in prisons [12].

Considering that the Covid-19 pandemic is a situation that greatly affects every aspect of social life, then breakthroughs need to be considered by the government in enforcing the PSBB policy. Local governments have presented various kinds of creative efforts. For example, in the South Tangerang area, Banten, violators of health protocols were sentenced to pray at a special tomb for the Covid-19 body. Furthermore, East Jakarta applies a coffin penalty in addition to fines and also cleans public facilities [13]. The various kinds of efforts are expected to be able to provide a deterrent effect for violators and become an example for others to think a thousand times before committing an offense.

The existence of creative punitive breakthroughs as part of other sanctions is the initial awareness of the government in enforcing the PSBB policy as well as applying administrative fines. This government awareness is the embryo of understanding that the application of sanctions is a tool used to restore conditions that have been injured by the existence of these violations. Thus, the framework for applying sanctions to violators needs to be based on the philosophy of life of the Indonesian nation, namely balance, harmony, and harmony between social and individual life [14].

The Restorative Justice System has been recognized by Indonesia through Indonesia Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. *The Restorative Justice System* is a system of justice enforcement that is based on restoring situations that have been violated and provides an opportunity for offenders to correct their mistakes [15]. Restorative justice views crime as more than breaking the law, it also causes harm to people, relationships, and the community. So a just response must address those harms as well as the wrongdoing. If the parties are willing, the best way to do this is to help them meet to discuss those harms and how to bring resolution. Other approaches are available if they are unable or unwilling to meet. Sometimes those meetings lead to transformational changes in their lives [16].

At least, Indonesia recognizes 3 kinds of ways to uphold justice, namely retributive justice, rehabilitative juvenile, and restorative justice. Each of these systems can be described as follows:

Retributive Justice	Rehabilitative Justice	Restorative Justice
Rooted in punishment	Rooted in the rehabilitation of the offender	Rooted in the reparation of harm
Focuses on the offense	Focuses on “fixing” the offender	Focuses on the relationship between perpetrators and victims
Zero tolerance	Uses therapeutic or medical treatment to prevent future criminal acts	Ask offenders to ‘make right’ their offense

The restorative justice system itself puts forward its theoretical framework in solving these 3 big questions, namely: *What is the nature of the harm resulting from the crime? What needs to be done to “make it right” or repair the harm? Who is responsible for this repair?* Law enforcement is no longer focused on: *Who did it? What laws were broken? What should be done to punish or treat the offender?* (retributive justice system). Rather, it focuses on how to fix the situation and how the perpetrator can correct his mistakes. So that concerning violations of the PSBB policy, it can prioritize law enforcement processes based on a restorative justice system.

The application of the restorative justice system in enforcing the PSBB policy will certainly bring more benefits considering that the public also understands the importance of working together to break the chain of the spread of Covid-19. These restorative justice system as an enforcing method towards violation will have a positive impact to the community. The perpetrator can work to restore and increase awareness of the importance of PSBB policies. However, the various factors that have been described are a challenge for the government, society, and law enforcement officials to be able to socialize and increase public awareness and compliance with the PSBB policy. Applying old methods that are retributive to offenders will certainly not have a positive impact and will be even more counter-productive.

4 Conclusion

The coronavirus outbreak (Covid-19 or SARS-CoV-2) which emerged at the end of 2019 had an impact on every aspect of social life, be it economically, socially, culturally, politically, law, technology, and defence security. This situation requires the Indonesian government to move quickly in tackling the spread of Covid-19. Presidential Decree No. 11 of 2020 and PP No. 21 of 2020 is the answer to breaking the chain of the spread of Covid-19. There are at least 8 regions at the provincial level and 26 regions at the district/city level that implement the PSBB. The various regional regulations indicate that there are differences in addressing the maximum allowable crowd size and the absence of understanding in prohibiting mass gathering activities. Furthermore, the types of sanctions imposed on violators of the PSBB policy are still retributive with administrative fines. The factor of restoring the situation and correcting the mistakes of the offenders has not become a priority for the government and law enforcement officials. Although various other kinds of sanctions in the form of creative action sanctions were also presented to provide an example to society. Restorative justice systems can be a solution to the rampant

violations committed by the community. The application of the restorative justice system in enforcing the PSBB policy will bring more benefits considering that the public also understands the importance of working together to break the chain of the spread of Covid-19.

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