

Implementation of Dynamic Governance Concept Through Discretion Policy in Facing the National Emergency of Covid-19 in Indonesia

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Abstract. The Covid-19 virus pandemic that is currently sweeping the world has had an impact on human life. Practically not a single country in the world was prepared for this catastrophe. In Indonesia, this situation calls for innovative policies from the government in facing the national emergency of Covid-19, so that services to the citizens are still fulfilled. This study aims to analyze the implementation of the concept of dynamic governance through discretion policy in facing the Covid-19 national emergency in Indonesia. This study uses a normative method with a statute approach and conceptual approach. The results of this study indicate that the application of the concept of dynamic governance in facing the national emergency of Covid-19 in Indonesia can be done through discretion policies by the government. The policy must be adaptive so that it is able to adapt to changing conditions that are very fast in the midst of the Covid-19 outbreak.

Keywords: Covid-19; Discretion Policy; Dynamic Governance

1 Introduction

The spread of the Covid-19 virus in Indonesia has shown a very significant increase. Since the President of the Republic of Indonesia declared Indonesia exposed to this virus, the number of people who have tested positive for the Covid-19 virus has reached thousands of people, with a fairly high mortality rate. The Government of the Republic of Indonesia has designated the Covid-19 virus pandemic as a national disaster through Presidential Decree No.12 of 2020 concerning the Designation of Non-Natural Disaster for the Coronavirus Disease 2019 as a National Disaster. The spread of the Covid-19 virus is referred to as a non-natural disaster, where non-natural disasters are disasters caused by non-natural events or series of events, including technological failures, failed modernization, epidemics, and disease outbreaks.

Based on Law Number 24 of 2007 concerning Disaster Management, there are five indicators related to national disasters, namely the number of victims, loss of property, damage to infrastructure and facilities, wide coverage of areas affected by the disaster, and the resulting socio-economic impacts. Regarding the spread of the Covid-19 virus, the number of victims and property losses incurred is increasing every day. The coverage of the affected

areas has also expanded in 34 provinces. Meanwhile, the socio-economic impacts that arise are not only in terms of health, but also the level of community income which has decreased.

The government has also taken various steps to prevent and handle this virus. In the context of preventing the spread of the virus so that it does not become more widespread, the government through Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerated Handling of Covid-19. This policy is considered by the government as the most appropriate form of policy according to the socio-economic and cultural conditions of Indonesia. Large-scale social restrictions are restrictions on certain activities of residents in an area suspected of being infected with a disease and / or contamination in such a way as to prevent the possibility of spreading disease or contamination. As in the Health Quarantine Law, Large-Scale Social Restrictions include school and work vacations; restrictions on religious activities; and / or restrictions on activities in public places or public facilities.

Basically, this large-scale social restriction is another form of physical distancing that the government has been calling for so far. The large-scale social restriction (PSBB) policy is an effort to strengthen the application of physical distancing to prevent the spread of the Covid-19 virus. Regarding the government's firm action, basically government officials have a strong legal basis to impose sanctions on people who still violate the government's appeal. The Health Quarantine Act regulates the existence of restrictions when there is a health emergency as is currently the case. Even in this law, criminal sanctions have been regulated for people who do not comply with the administration of health quarantine.

2 Method

The type of research used in this research is normative legal research by examining the provisions of the prevailing laws and regulations and legal principles. The approach used in this research is a statutory approach and a conceptual approach regarding the concept of dynamic governance. This study uses secondary data consist of primary and secondary legal materials. Primary legal materials consist of statutory provisions related to State Administrative Law and regulations related to the handling of the Covid-19 Pandemic outbreak. Secondary legal materials consist of literature in the form of books, journals and articles related to the issues to be discussed.

3 Results and Discussion

3.1. Dynamic Governance Concept

The state has mission, function and obligation to provide services to the community. Therefore, the government as the personification of the state is given the authority to take actions. According to Sadjijono, government action is any action or action taken by government equipment in carrying out government functions. 1 To achieve the goals of the state, public officials act according to their authority, including in carrying out legal actions, especially in the form of decisions that are administrative in nature as one of the juridical instruments in running the government.²

The dynamic development of society requires various public service innovations in order to fulfill society's needs more fully. Various concepts have also been discovered and

developed to answer these challenges. One of them is the concept of good governance or so-called good governance. Basically, this concept is the answer to various bureaucratic problems that seem convoluted, rigid, slow, static, which often lead to irregularities and even corruption, collusion, and nepotism. This is the reason why *good governance* is always juxtaposed with bureaucratic reform.

Good governance is very important in fulfilling maximum service. However, there are several criticisms of the concept of Good Governance, one of which was expressed by Farazmand that the concept of Good Governance is a concept formed based on imperialism and colonialism from developed countries.³ The complexity of the problems faced by every government from various countries today is an indication that the concept of good government and good policies alone is not sufficient to solve various problems faced by the community. More than that, the most important challenge in the millennial era is dynamic, cut across many decisions, involving the need for continuous learning, and rest on effective and rapid implementation.⁴ Therefore, a new concept was developed as a development of the concept of Good Governance which more shows the independence of a country, namely the concept of Dynamic Governance which aims to organize and manage the government to be better in fulfilling public services. In this case, the concept of Dynamic Governance encourages adjustments to changes that continue to occur to problems by looking at various points of view dynamically.

In general, the concept of Dynamic Governance that is currently known is the ability of the government to be able to adjust public service policies and programs and be implemented so that they have an impact on the long-term interests to be achieved.⁵ Dynamics itself is understood as a condition of the existence of various new ideas, new perceptions, continuous improvement, fast response, flexible adjustments and creative innovations.⁶ Thus, a dynamic government is a government that is able to adjust policies in the form of new ideas, new perceptions, and innovations in accordance with developments or changes in the situation in society. Dynamic governance also requires a fast and flexible response in line with the rapid development of society.

According to Neo and Chen, to achieve a sustainable development process and improve people's welfare, it is not enough just to apply the concept of Good Governance. Governance structures that are made within a certain period of time can become dysfunctional when the environment changes rapidly, so that good governance practices need to be more dynamic.⁷ Dynamic governance can increase the development and prosperity of a country, with adaptive adjustment patterns to the changing environment for various policies and can have positive implications not only for the government but especially for the welfare of society. Neo and Chen say that governance becomes dynamic when policy choices can be adapted to current developments in an uncertain and rapidly changing environment, so that various government policies and institutions remain relevant and effective in achieving long-term goals.⁸

Basically, the concept of dynamic governance focuses on two key factors, namely capabilities or capabilities, and culture, both of which will drive human resources and the process towards adaptive policy change. Regarding capabilities, there are three conceptualizations of capabilities that must be possessed by the government, namely Think Ahead, Think Again, and Think Across. These three abilities must be embedded and manifest in the strategy and policy process of the government so that there is a continuous process of learning, innovation and adaptation with change. Think Ahead's ability is the ability to analyze and identify the development of uncertain conditions in the future by looking at new opportunities and existing potential threats. The ability to Think Ahead involves several things, namely: a). explore and anticipate future developments that have a significant impact

on policy objectives; b). understand how these developments will impact the achievement of current goals and test the effectiveness of existing strategies, policies and programs; c). devise strategies that can be used to deal with emerging threats and maximize new opportunities; and d). influence key decision makers and stakeholders to consider emerging issues and engage them in strategic conversations about the response to be undertaken.⁹

Think Again ability is the ability to be able to assess and evaluate the performance, strategies, policies and programs that have been implemented, in order to obtain better results. The ability to think again involves several activities, namely: a). review and analyze actual performance data and understand feedback from the public; b). investigate the underlying causes of observed facts, information and behavior, either to meet or find out the missing targets; c). reviewing strategies, policies and programs whether they are working and functioning properly or not; d). redesigning policies and programs, either partially or completely so that performance can be improved so that goals can be achieved; and e). implementing new policies and systems so that people can be better served and enjoy meaningful results.¹⁰

Think Across ability, is the ability to cross traditional boundaries to think outside boundaries, including learning from the experiences of others, so that new ideas and innovations can be found that are appropriate to the conditions at hand. Think Across ability involves activities, namely: a). looking for new and interesting practices that have been implemented by others in dealing with similar problems; b). reflect on what the other party did, why and how that party did it, and lessons learned from that experience; c). evaluate what may apply to the local context, consider existing conditions and circumstances, and see if it is acceptable to the community; d). find connections between ideas and combinations of new ideas to create innovations for problems that arise; e). adjust policies and programs to suit the conditions and needs of the community.

Cultural factors are also an important factor in Dynamic Governance. Often, the culture of a country is forgotten and is always focused on the culture from outside which is considered the best thing to make a choice. Cultural values and local wisdom and habits are factors that influence people's behavior. This local wisdom will be manifested in norms which will ultimately play an important role in the process of change and adaptation of various policies.¹¹ For example, South Korea, which is a country that has produced many breakthroughs by making a culture of innovation become a habit in various state activities which are electronic based and supported by adequate infrastructure. Japan is also an example of a country that prioritizes cultural factors, namely the culture of shame, when an official is found guilty or failed, there is no doubt for them to resign from office.¹²

There is a major leveraging factor in developing the concept of dynamic governance, namely people who are capable of being filled by smart, agile, and agile people. In this case, the leadership quality needed is dynamic leadership with the ability to manage various elements in the midst of changes that occur continuously and quickly. Through this, leaders can make policies that are adaptive, relevant and carry out policy execution effectively.

The strength of the Dynamic Governance concept is that there is encouragement from the government to continue to develop knowledge through new ideas, and various innovations in making and implementing policies for changes that occur in society. However, this concept will be meaningless if there is still a corrupt bureaucracy, a broken system, nepotism and a lack of community involvement in overseeing government performance.¹³ In addition, influences that need serious attention are external environmental factors that will affect the government system, such as security issues, poverty, politics, which create uncertainty about change.

3.2 Discretion by Government Officials

The dynamics of the situation and conditions that are very fast have the consequence that laws and other written regulations are often left behind in anticipating developments that occur, both at the national and global levels. In this case, the legality principle alone is deemed insufficient for the government to be able to take a maximum role in providing services to various interests and needs of the wider and more complex society. At the level of State Administrative Law, government actions outside the provisions of written law can be justified with the intention that the legality principle at the operational stage can be implemented dynamically, effectively and efficiently.¹⁴ This is known as Ermessen's Freies or Discretion, where the existence of discretion is indispensable to complement the deficiencies and weaknesses of the legality principle. For a state with the Welfare State type, the application of the principle of legality alone is not sufficient to serve the complexities of society's problems amid the increasingly rapid development of the situation.

From an etymological point of view, Freies Ermessen in German comes from the word Frei which means free, free, unbound, and free people. Meanwhile, Ermessen means to consider, judge, suspect, judgments, and decisions. Thus Freies Ermessen can be defined as people who are free to consider, free to judge, free to guess, and free to make decisions.¹⁵ The term Freies Ermessen is equivalent to the word discretionair which means according to wisdom, and as an adjective means according to an authority or power which is not or is not entirely bound by law.¹⁶

Freies Ermessen or Discretion then used in the government sector as a means of providing mobile space for state administrative officials or agencies to take action without being fully bound by the law.¹⁷ Prajudi Atmosudirjo provides a definition of discretion as the freedom to act or take decisions from authorized and authorized state administrative officials according to their own opinion.¹⁸ SF Marbun and Mahfud MD expressed their views on Freies Ermessen, namely the legitimate authority to interfere in social activities in order to carry out tasks of public interest. Ermessen's freies also include making rules about things that have not been regulated, or implementing existing regulations in accordance with reality or what is also called discretionary power.¹⁹ In Article 1 number 9 of Law Number 30 of 2014 concerning Government Administration, it is stated that Discretion is a Decision and / or Action determined and / or carried out by Government Officials to overcome concrete problems faced in government administration in terms of laws and regulations that provide choice, not regulating, incomplete or unclear, and / or stagnation of government.

Discretion has a very important role in various aspects of government, especially in filling the blanks of written regulations, making rigid regulations more flexible and replacing outdated regulations. This is a form of adjustment to current conditions that is better and more beneficial to society. The element of independence in the sense of discretion implies that the scope and space of discretion are so wide. In addition, in discretion there is diversity in every decision and policy made and actions taken from one individual to another, from one organization to another, from one place to another, and even from one time to another.²⁰ Through discretion, the government can carry out its function dynamically in carrying out the public interest, so that in dealing with matters of an important and urgent nature for which there are no regulations, the government can act immediately. In this case the government can act directly on the basis of policy principles. ²¹

The logical consequence of discretion is in the field of legislation, in which the government has the authority to form laws and regulations. In this case, the government can

form laws and regulations without going through a legislative body. In addition, the government also has the authority to interpret a statutory regulation. This is in line with E. Utrecht's statement that discretion is defined as the transfer of authority of the legislative body to government agencies as a consequence of the concept of the welfare state.²² It can be seen that the implementation of discretion through government action can take the form of: a). establish statutory regulations under laws that are materially binding in general; b). issued concrete, individual and concrete *beschikking*; c). perform real and active administrative acts; and d). carry out judicial functions, especially in the case of administrative objections and appeals.²³

Although discretion gives the government the authority to make policy freely, there are restrictions on the exercise of discretion by the government. Sjahrin Basah stated that *Freies Ermessen* is the freedom to act within certain limits or the freedom to determine policies through state administrative actions that must be accounted for.²⁴ The limitation regarding discretion was also expressed by Hans J. Wolf that discretion should not be interpreted excessively as if a state administrative body or official may act arbitrarily or without any unclear basis or with individual subjective considerations.²⁵ In this case, the government is prohibited from taking actions outside the purpose of the authority given or acts against the law by the authorities, which actions can be prosecuted before a judge, either through the administrative court or the general court.²⁶

Several things that limit discretion are: a). the use of discretion must not conflict with the prevailing legal system; and b). the use of discretion is for public purposes only.²⁷ According to Muchsan, the implementation of discretion by government officials is limited by four things, namely: a). if there is a legal vacuum; b). freedom of interpretation; c). there is a delegation of legislation; and d). in order to fulfill the public interest.²⁸ As the legal basis for the implementation of administration in Indonesia, Law Number 30 of 2014 also provides the basis for regulating the implementation of discretion by government officials. Article 24 stipulates that Government Officials using Discretion must meet the following requirements: a). in accordance with the objectives of the Discretion as referred to in Article 22 paragraph (2); b). does not conflict with the provisions of laws and regulations; c). in accordance with the General Principles of Good Governance; d). based on objective reasons; e). does not create a conflict of interest; and f). done in good faith.

In the explanation of Article 23 letter d of Law Number 30 of 2014, it is stated that the use of discretionary powers by government officials can only be carried out in certain cases where the legislation provides options, the prevailing laws and regulations do not regulate it, the ambiguity of statutory regulations. so that there are multiple interpretations, as well as the stagnation of government, which concerns the lives of many people, such as natural disasters, epidemics, social conflicts, riots, defense and national unity. At the level of implementation, discretion must be in accordance with statutory regulations and according to general principles of good governance, including the existence of honesty, accuracy, purity is in purpose, balance, and legal certainty.

3.3 Discretion as a Form of Dynamic Governance in Facing the Covid-19 National Emergency in Indonesia

The Covid-19 pandemic that hit the whole world in early 2020 has brought big changes in various human lives. Globally, no country is ready to face the Covid-19 pandemic, as the legal system of a country. It is undeniable that the Covid-19 pandemic is a form of changing the situation that is very fast, which has paralyzed various community activities, both economic

and social life. This emergency situation requires handling in the form of prompt and precise policies from government officials in handling and preventing the spread of Covid-19 as well as services for various public interests. As it is known, the government's efforts in dealing with the Covid-19 outbreak are not only in terms of preventing and overcoming disease, but also how to meet people's basic needs.

The experience that has occurred in Indonesia since this pandemic spread to Indonesia is unpreparedness in handling the disease outbreak, and also unpreparedness in implementing services to the community. The administration of the government is busy with administration as a condition that must be met in taking action, especially those related to the use of the budget. This had an impact on a protracted handling policy and resulted in slow handling and prevention of Covid-19. In addition, services in other sectors to communities affected by this pandemic have also been very slow. This condition may be due to the caution of government administrators in making policies and worry that if they make the wrong policy they will face law enforcement officials.

Since announced at the first, that the Covid-19 pandemic has spread to Indonesia, the Government has issued various policies in the form of laws and regulations that allow the government to take further action. President Joko Widodo issued Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency for Corona Virus Disease 2019 which was then continued with Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease Pandemic stipulated by the House of Representatives as Law Number 2 of 2020. A number of matters are regulated in this regulation, including the implementation of policies in the field of regional finance, taxation, national economic recovery programs, state financial policies, and so on. In this regulation, there are five crucial points, namely: a). budget for handling Covid-19 amounting to IDR. 405.1 trillion; b). the health sector budget will be prioritized for the protection of health workers; c). related to social safety nets; d). stimulus for Micro, Small and Medium Enterprises; and e). non-fixal field in ensuring the availability of the goods needed. [29]

The Covid-19 pandemic is a very rapid change in conditions and situations currently hitting Indonesia. Based on the concept of Dynamic Governance, there are two main things that become the basis for policy making by the government, namely the ability and culture factors. In terms of capability, the Think Ahead component requires the government to be able to analyze and identify the development of uncertain conditions in the future due to the Covid-19 pandemic. This includes seeing various opportunities that can be used in efforts to prevent and announce Covid-19. The Think Again component demands that the government be able to assess and evaluate the performance, strategies and policies in handling Covid-19 that have been carried out so far. The Think Across component demands a government way of thinking that transcends boundaries including learning from the experiences of several other countries in handling and overcoming Covid-19.

The government can reflect the concept of Dynamic Governance through the application of Discretion as an inherent authority based on Law Number 30 of 2014 concerning Government Administration. In the national emergency situation of Covid-19, the government has issued various policies in various fields that are included in the category of Discretion in making laws and regulations, both in the form of Presidential Regulations, Government Regulations in Lieu of Laws, and Presidential Instruction. In general, the discretion issued by the government in handling the Covid-19 national emergency is related to state finances, health protocols, and public service mechanisms.

In State Finance, based on Perppu No.1 / 2020 which has been passed into law, the government has allocated a very large budget for Covid-19 countermeasures, reaching IDR 405.1 trillion consisting of IDR 110 trillion for the health sector, IDR 110 trillion for safety nets. social, IDR 70.1 trillion for incentives and stimulus for People's Business Credit, and IDR 150 trillion for financing the national economic recovery program.³⁰ In the non-fixed sector, to ensure the availability of goods that are currently needed, including industrial raw materials, the government has implemented several policies, namely simplifying the export-restricted ban, simplifying the import-limited ban, and accelerating the export-import process services through the national logistics ecosystem.³¹

Another form of discretionary policy issued by the government in the technical realm is Presidential Instruction Number 4 of 2020 concerning Activity Refocusing, Budget Reallocation, and Procurement of Goods and Services in the Context of Accelerating Handling of Corona Virus Disease 2019. These provisions include : a). Prioritizing the use of existing budget allocations for activities that accelerate the handling of Covid-19 by referring to the Covid-19 handling protocol at Ministries / Institutions / Local Governments and the operational plan for the acceleration of handling Covid-19 stipulated by the Task Force for the Acceleration of Handling Covid-19 ; b). Accelerate activity refocusing and budget reallocation through the budget revision mechanism and immediately submit budget revision proposals to the Minister of Finance according to his / her authority; d). Accelerate the procurement of goods and services to support the acceleration of handling Covid-19 by simplifying and expanding access in accordance with the law. ³²

In fact, to be able to accelerate the national emergency response to Covid-19, through the Decree No. 1 of 2020 which has been ratified as Law Number 2 of 2020 provides a guarantee to the government that all actions and / or decisions issued in handling the Covid-19 pandemic are related the costs incurred are not a loss to the state even though it results in the loss or reduction of state finances because they are used to save the economy from the crisis. Article 27 paragraph (1) states that the costs incurred by the Government and / or KSSK member Institutions in the framework of implementing state revenue policies include policies in the field of taxation, state expenditure policies including policies in the field of regional finance, financing policies, financial system stability policies and the national economic recovery program, is part of the economic cost to save the economy from the crisis and is not a loss to the state.

This provision is pure to provide a sense of security for government officials so that they are not caught in legal cases or criminalization after the Covid-19 pandemic which makes government officials afraid or hesitant to issue discretionary policies.³³ According to the government, the birth of this article cannot be separated from the experience in which policy makers are vulnerable to being sued in court if state losses are found. Repeatedly, the discretion taken by the Government to overcome the economic crisis at that time was questioned in the future, both by law enforcement officials and the Government's political opponents.³⁴ Therefore, the various policies taken to overcome the threat to the national economy in the current situation of the Covid-19 pandemic are not justified as a criminal act and not to harm state finances, because in this crisis situations, liquidity assistance provided by the government must be aimed at an economic cost. which of course is non-refundable.³⁵ The government wants to show that these actions are based on good faith to overcome the impact of the Covid-19 pandemic which will certainly result in a number of state expenditures that are unlikely to return.

Regarding discretion in the application of health protocols, the government has issued a policy in the form of Large-Scale Social Restrictions. It's just that the implementation of the

policy has encountered obstacles, especially in the regions, which basically have different conditions and situations. In the end, several local governments also exercised discretionary powers regarding the technicalities of implementing the PSBB by still referring to the established health protocols. For example, there is a space for the community to carry out various activities, both economic and social activities, while still implementing health protocols such as maintaining distance, washing hands, and wearing masks. Violation of this health protocol can be subject to sanctions, either in the form of fines or social sanctions.

Basically, the breakthrough made by the government through discretion in overcoming the impact of Covid-19 is something new, and can even have the potential to cause abuse for personal gain, especially related to the use of the state budget. Because it is related to the use of state finances that have the potential to be misused for personal gain, there are restrictions in which the provisions of Article 27 only apply to the KSSK member institutions, namely the Ministry of Finance, Bank Indonesia, the Financial Services Authority and the Deposit Insurance Corporation. In addition, the discretion issued by the Government also remains based on Law Number 30 of 2014 concerning Government Administration which contains requirements for discretionary making. One of the requirements that must be fulfilled in discretion making is that it is carried out in good faith and also in accordance with the General Principles of Good Governance. In Article 10 of Law Number 30 of 2014, it is stated that the General Principles of Good Governance include legal certainty, expediency, impartiality, accuracy, not to abuse authority, openness, public interest, and good service. This means that discretion in the implementation of Law Number 2 of 2020 can be implemented as long as it meets the discretionary requirements stipulated in Law Number 30 of 2014.

Another thing that needs attention related to discretion in the response to the national emergency of Covid-19 is supervision, both by the community and internally by the government itself. As it is known, public participation as a non-formal institution has a supervisory function over government institutions as a form of implementation of democratic principles. Internal government oversight is also very important, where government officials from the start must refer to the General Principles of Good Governance in issuing discretion. Law Number 30 of 2014 has also given the supervisory authority to the Government's Internal Supervisory Apparatus.

Based on the concept of Dynamic Governance, the discretion issued by the government requires good execution. The concept of Dynamic Governance in the national emergency response to Covid-19 will not be meaningful if there is still a corrupt bureaucracy, a broken system, nepotism and a lack of community involvement in overseeing government performance. In addition, people who have dynamic leadership qualities are needed with the ability to manage various elements amid the changes that have occurred as a result of the Covid-19 pandemic.

4 Conclusion

The Covid-19 pandemic has brought substantial changes to the human lives for Indonesian and demands a fast and appropriate policy as a solution in the response to the national emergency of Covid-19. The application of the concept of dynamic governance in this situation is carried out with discretion as the inherent authority of government officials. Through discretion, policies issued by the government are more adaptive, creative and innovative in overcoming the Covid-19 national emergency. The discretion made by the government is in terms of making laws and regulations in the form of Government

Regulations in Lieu of Laws, Presidential Regulations, Presidential Decrees, and Presidential Instruction. In general, the discretion issued by the government is related to the use of state finances, health protocols, and public service mechanisms based on Law Number 30 of 2014 concerning Government Administration. In order for discretion to run well, supervision is needed, both by the community as a balancing factor for the running of the state, as well as internal supervision of the government itself.

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