

Implementation Of Criminal Law For Communities That Conduct Activities Outside The Home During The Covid-19 Pandemic In Indonesia

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ABSTRACT

The Covid-19 pandemic has become a very dangerous infectious disease with so many deaths globally. Through the National Disaster Management Agency, the government then coordinates to suppress disasters resulting from the Covid-19 pandemic by implementing social distancing and physical distancing policies. But unfortunately, there are still many violations among the public in following this policy, such as going out of the house carelessly when there are restrictions. Therefore, it is necessary to have a policy from the government against violators of this regulation. This research will use a statute approach and a conceptual approach. The study results found that the Indonesian government had made various efforts to prevent the spread of Covid-19 and implemented different new laws to prevent the spread of Covid-19. Several government policies that support this effort are the implementation of work from home, social distancing, etc. Finally, there are also criminal sanctions given to people who are not in line with government policies through article 212, article 216, and article 218 of the Criminal Code.

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I. Introduction

Covid-19 or 2019-nCoV or SARS-CoV-2, better known as the coronavirus, has become a hot topic in early 2020. This coronavirus was known since the end of December 2019 in Wuhan City, Hubei Province, China. Coronavirus attacks the human respiratory tract and spreads very quickly to other humans (Sharma et al., 2020).

In anticipation of preventing the transmission of the virus, the public is recommended to implement the following.

1. Wash your hands with soap and water for at least 20 seconds every time you move.
2. Using a mask every time you go outside or in public places, health masks are prioritized for sick people.
3. Drink more water, even though you are not thirsty, but still drink water and try not to dry your throat.
4. Get enough rest reduce staying up if it's not too important.
5. Do not touch your eyes, nose, and mouth with dirty hands, wash your hands first to touch these areas.

This coronavirus is very dangerous and has spread throughout the world, making the World Health Organization (WHO) set the status of transmission of this coronavirus as a pandemic. Data as of March 27, 2020, based on the world meter, the total number of coronavirus cases in the world is 542,530 cases, deaths are 24,369 cases, and 126,257 cases have recovered (Ren et al., 2020).

As for Indonesia itself, the government has determined the status of the coronavirus to be a non-natural national disaster referring to Article 7, paragraph 2 of Law No. 24 of 2007 concerning Disaster Management (from now on referred to as the Disaster Management Law). The data on Covid-19 cases for the State of Indonesia total 1,046 cases, deaths 87 cases, 46 patients have recovered, 913 cases are still being handled and monitored (Amerilis & Kurniawan, 2021).

Coronavirus can be spread through various media and survive for some time on that medium, namely:

1. Air (3 hours)
2. Copper (4 hours)
3. Aluminum (2-8 hours)
4. Surgical/medical gloves (8 hours)
5. Cardboard/cardboard (24 hours)
6. Iron/stainless steel (2-3 days)
7. Timber (4 days)
8. Glass (4 days)
9. Paper (4-5 days)
10. Plastic (2-3 days) (Wißmann et al., 2021)

The government enforces a policy of social distancing, working from home, studying from home, or being better known to the public as “only doing activities at home”. Such enforcement may not always be effective and relevant, especially for certain fields like hospitals, factories, pharmacies, markets, online motorcycle taxi services, and restaurants. People who work in these fields still have to make work trips to contract and transmit this coronavirus.

People who are forced to work must still follow the standards for preventing coronavirus transmission. In contrast, people who are more fortunate to be able to work or study from home are required to stay at home, leaving the house only for very urgent needs such as buying sufficient basic needs for their family members and even so, you must follow the procedures to prevent the spread of the coronavirus (Ahmed et al., 2020).

But in reality, people still find it difficult to understand the dangers of the coronavirus and underestimate it by assuming life and death are in God's hands without thinking about the risks if the coronavirus infects their family members. This perception has finally made many people go to shopping centers or other crowded centers, hold religious events, hold weddings, and various other activities that can be postponed.

These things show that government policies related to social distancing are not being implemented seriously by certain groups and make other people nervous. Therefore, the Indonesian National Police issued a Letter of Intent to the Head of the Indonesian National Police with Number Mak/2/III/2020 dated March 19, 2020, which the National Police Chief General Drs signed. Idham Azis, M.Si on Compliance with Government Policies in Handling the Spread of the Corona Virus (Covid-19) (Williams et al., 2020).

Criminal sanctions given to people who do not follow government policies are stipulated in Articles 212, 216, and 218 of the Criminal Code (referred to as the Criminal Code). The definition of a criminal is to show sanctions in criminal law. Regarding criminal sanctions on the community, it raises questions about whether the rule of law in Indonesia is weak. It is difficult for people to comply with government policies during the COVID-19 pandemic regarding the law on disasters in Indonesia.

II. Method

To find the desired results, the research will be carried out using normative juridical methods. Then the research will use a statute approach and a conceptual approach. This approach can be implemented by conducting a literature study of various laws and regulations, scientific journals, or other literature that is still related to the existing discussion themes.

III. Result and Discussion

A. Disaster Management by the Government

The Disaster Management Law describes this non-natural national disaster as a disaster not caused by nature but due to epidemics, disease outbreaks, failed technology, and failed modernization. The President of Indonesia has determined that Covid-19 is a dangerous and deadly virus, so the community must cooperate in complying with government policies by staying at home.

According to Coppola and Maloney, disaster management is divided into four important parts, namely:

1. Mitigation, reduce the risk of harm that occurs.
2. Preparedness, preparing the community to be willing to help others during a disaster by using various tools or equipment to increase their ability to survive and minimize financial and other risks.
3. Response, includes actions that need to be taken to reduce the impact of disasters.
4. Recovery means repairing, reconstructing, and rebuilding what has been damaged or lost as part of the disaster and ideally reducing the risk of the same mess in the future (Muktaf et al., 2020).

In view of disaster management, the Indonesian government is currently implementing three important parts: mitigation by implementing social distancing. Preparedness is carried out by urging the public not to stockpile or buy up basic materials, masks, hand sanitizers, personal protective equipment (in the future referred to as PPE) so that everyone can have these needs a policy to stay at home during the pandemic. Response, the government has prepared the Jakarta ASEAN Games athletes' guesthouse as a hospital and can be used from March 23, 2020, to accommodate and treat people who are positive for the coronavirus, patients under surveillance (starting now referred to as PDP).

The planting of Pancasila in the second and fifth precepts teaches that the government and the people as citizens of the State of Indonesia must be just and civilized human beings and be able to apply justice to the entire community so that during the COVID-19 pandemic, the central government, regional governments, and all citizens must mutually work together to reduce the spread of the coronavirus, so that disaster victims do not increase. Jimly Asshiddiqie said, "... Indonesia is a welfare state which idealizes the nature of state interventionism in the dynamics of the people's economy, solely for the benefit of the welfare of the people" (Tisnanta et al., 2017).

Meanwhile, Yudi Latif stated that the Indonesian state should take over the economy and social welfare roles. The welfare state model implemented by Indonesia combines the extensive role of the state in achieving social welfare (universal welfare state) with segmented social security accompanied by a family network (social insurance welfare state) (Endarto et al., 2021).

In harmony with the National Disaster Management Agency in collaboration with local governments in preventing the spread of covid-19 for the benefit of the community by analyzing and mapping areas exposed to the coronavirus, as well as going directly to the field to conduct counseling, spraying disinfectants in public places which are traversed by many people such as bus terminals, airports, train stations, offices, as well as spraying the streets of residents' houses in each sub-district, as well as providing handwashing facilities complete with water and soap on every road to the location of public transportation and disinfectant booths in a public area such as offices, shopping centers that the public can use.

The public's lack of understanding of this dangerous coronavirus has made the government change one of its policies, namely from social distancing to physical distancing. This change is expected to make the community more aware that what is needed in this disaster management is to maintain a distance of one to two meters between humans, not break the friendship between families, neighbors, and communities.

A letter of notification from the police will be applied by the police in every territory of the State of Indonesia and the criminal sanctions. Rony Saputra explains that two streams discuss criminal acts with criminal responsibility, namely:

1. Monoistic flow, in a crime, there is accountability.
2. Dualistic flow, criminal acts are not included in the issue of accountability because criminal acts only refer to the prohibition of a deed (Saputra, 2015).

The monoistic school is adopted by Simons, who explains criminal acts (*strafbaar feit*) in the sense of "een strafbaar gestelde, onrechtmatige met schuld verband staande handeling van een toerekeningsvatbaar persoon", which contains the following elements:

1. Human actions (positive or negative; doing or not doing or letting);
2. Threatened with a criminal (*strafbaar gesteld*);
3. Against the law (*onrechtmatig*);
4. Done by mistake (*met schuld in verband staand*);
5. By a person who is capable of being responsible (*toerekeningsvatbaar persoon*) (Tallgren, 2002);

So from the five elements, it can be said that this monoistic school sees that when someone is guilty, they will be immediately punished.

Moeljatno embraced the dualistic flow. According to Moeljatno, there is a separation of understanding of criminal acts (criminal act) and criminal responsibility (criminal responsibility or criminal liability) (Zakaria, 2019). According to the dualistic view, when a person is proven guilty of a criminal act, they will not simply be found guilty. Still, there must be evidence beforehand whether that person can be held criminally responsible for the crime he has committed.

B. Implementation of Laws Preventing the Spread of the Covid-19 Pandemic

Article 212 of the Criminal Code explains that "anyone who resists by using violence to an official who is on duty legally will be given a maximum imprisonment of one year and four months or a maximum fine of four thousand five hundred rupiahs" (Yulianti et al., 2019). Whoever is referred to in the Criminal Code is an individual (private). Officials who are on duty legally in the case of the coronavirus are the police who are on duty in conducting socialization or directly appealing to the public.

Article 216 paragraph (1) of the Criminal Code stipulates: "Whoever deliberately disobeys orders or requests made according to the law by an official whose job is to supervise something, or by an official based on his duties, as well as whoever deliberately prevents, hinders or thwarts the actions of to carry out the provisions of the law by one of these officials, he is threatened with a maximum imprisonment of four months and two weeks or a maximum fine of nine thousand rupiahs" (Widowati et al., 2021).

Judging from the construction of the article, Article 216 of the Criminal Code can also be used for positive corona patients, PDP, people under surveillance (after this referred to as ODP) who are not cooperative or even dishonest when observed. In tackling the COVID-19 pandemic, the Government needs valid and complete data on the spread to determine the steps that must be taken to anticipate the increase in the number of infected patients.

These observations are carried out by medical personnel as an early warning disaster emergency response to prevent a wider spread following the procedures in Article 6 in conjunction with Article 7 of the Disaster Management Law. Article 6 of the Disaster Management Law explains that the government's responsibility for disaster management is carried out by:

1. Reducing disaster risk.
2. Protect the community from the impact of a more severe disaster.
3. Recovery from disasters.
4. In this case, ensuring the fulfillment of community rights, patients affected by the coronavirus and those who are healthy, in a fair manner (Louw et al., 2019).

Meanwhile, Article 7 of the Disaster Management Law explains the government's authority in dealing with disasters by:

1. Establish disaster management policies. The government enforces social distancing, physical distancing, work from home, a study from home.
2. Establish the status of a non-natural national disaster because the corona virus pandemic caused this disaster.
3. Carry out a cooperation policy with other countries, agencies, or international parties. In this case, the government has requested assistance from the Chinese state, namely medicines and medical equipment, to overcome the PPE shortage in hospitals with medical personnel and other workers who handle Corona-positive patients.
4. Using technology in the form of Covid-19 rapid test kits by ordering them to health agencies abroad and distributed to various red zones or the most positive corona population.
5. Control goods, especially basic materials, masks, hand sanitizers, to the public so they don't stockpile. This effort is still ineffective, considering that there are still many shortages of goods on the market (Radjab & Fuady, 2021).

Koeswadji explained that the main objectives of the punishment were:

1. To maintain order in social life (dehandhaving van de maatschappelijke orde);
2. To repair the losses suffered by the community as a result of the crime (het herstel van het door de misdaad onstane maatschappelijke nadeel);
3. To correct the perpetrators of the crime (verbetering vande dader);
4. To destroy criminals (onschadelijk maken van de misdadiger);
5. To prevent crime (tervoorkonning van de misdaad) (Budiono et al., 2018)

Article 218 of the Criminal Code stipulates "whoever when the people come together intentionally does not leave immediately after being ordered three times by or on behalf of the competent authority, is threatened for participating in a group with a maximum imprisonment of four months and two weeks or a maximum fine of nine thousand rupiahs" (Setyawati, 2020). The police, in this case as the authorized party, carry out patrols to crowded places to appeal, conduct socialization, or even disperse crowds at tourist attractions, shopping centers, cafes, food stalls or restaurants, internet cafes, etc.

According to Bilher Hutahaean, in his research, he used the relative theory or doel theory/utilitarian theory to apply criminal sanctions. The punishment is not to retaliate against the perpetrators of the crime but has certain useful purposes. So, according to this theory, the basis of criminal justification lies in the purpose of punishment itself (Rofiq et al., 2019). There are several opinions regarding the purpose of the crime, namely:

1. The purpose of the crime is to pacify the restless society because a crime has occurred as a result.
2. The purpose of the crime is to prevent crime, which can be distinguished into general prevention and special prevention.

While general prevention (generale preventie) is based on the idea that the crime is intended to prevent anyone from committing a crime (Yuningsiha et al., 2020).

What is referred to in this theory can be seen from the government's efforts in tackling non-natural national disasters. Criminal sanctions are given to reduce the spread of the coronavirus in various regions in Indonesia.

According to Sholehuddin, the purpose of giving criminal sanctions are:

1. To provide a deterrent and deterrent effect. Deterrence here means keeping criminals away from the possibility of repeating the same crime. Deterrence aims to remind and scare potential criminals in the community from committing crimes.

2. To provide rehabilitation. Purpose theory considers punishment to achieve reform or rehabilitation of criminal offenders. The hallmark of this view is that punishment is a process of social and moral treatment for a convict to re-integrate into society properly.
3. Sentencing is carried out as a vehicle for moral education or a reform process. Therefore, in the sentencing process, criminal actors are assisted in realizing and admitting the guilt they are accused of (Sholehudin, 2020).

The application of this crime is also supported by Muladi and Barda Nawawi's explanation regarding the relative theory, namely that crime is not just to retaliate or reward people who have committed a crime (Priambudi et al., 2022). Criminal law has certain useful purposes. This theory is also often referred to as the utilitarian theory. So the basis for justifying the existence of a crime lies in its purpose. The punishment is imposed not because people commit crimes (*quia peccatum est*) but so that people do not commit crimes (*nepeccetur*)

The COVID-19 pandemic has disrupted the economic conditions of many countries globally and caused financial losses for daily workers who have lost their income due to the implementation of rules related to activities from home. It was also found that employees had to experience layoffs because they suffered heavy losses. This pandemic is a serious problem that must be handled with good cooperation from the government and the community.

The Organization for Economic Cooperation and Development (OECD) has captured the Indonesian government's commitment to producing quality legislative products as an effort by Indonesia to improve people's welfare and maintain domestic political stability (Prakasa et al., 2021). So it can be said that the rule of law in Indonesia as regulated in legislation is not weak because the Indonesian government is trying to improve the quality of its regulations for the welfare of society.

IV. Conclusion

By law, Indonesia already has rules and regulations governing disaster management. The government has also made every effort to implement the applicable laws and regulations with preventive measures. Socialization through various media channels is carried out to anticipate problems during non-natural national disasters, the COVID-19 pandemic.

The government has carried out all forms of disaster management, social distancing policies, physical distancing, work from home, a study from home are things that must be obeyed by the community so that this disaster will no longer cause death in large numbers so that the spread of the pandemic does not expand.

During this pandemic, criminal sanctions, as required in Article 212, Article 216, and Article 218 of the Criminal Code, can indeed be imposed on people who have not complied with government policies. Some of the provisions of the article are also one of the solutions to increase community compliance. It is hoped that by implementing these criminal sanctions, the public will no longer underestimate the dangers of COVID-19. Every citizen has the right to receive protection for the safety of their life, so it would be better if the community respected each other by staying at home to minimize the spread. People who are forced to work must comply with the Covid-19 transmission prevention policy with existing protocols.

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