

STATE RESPONSIBILITY FOR IMPLEMENTING LARGE-SCALE SOCIAL RESTRICTIONS TO COMMUNITIES AFFECTED BY COVID-19 IN SURABAYA CITY

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Abstract

There are significant numbers of the people of Surabaya City affected by the Government Regulation of Large-Scale Social Restrictions (PSBB), because they work in informal aspects, such as online motorcycle taxis and street vendors (PKL). Hence, it is necessary for the state to intervene in order to continue providing comfort for its citizens in the PSBB implementation. The purpose of this research is to show the responsibility of the state during the Covid-19 pandemic so as to provide social justice for the entire community. The empirical juridical research method was used to achieve the research objectives. The results of this study showed that the state's responsibility for the economic and social life of the community was designed by the founding fathers, carried out by the state under any conditions, be it normal conditions or abnormal conditions. The state was responsible for the economic and social life of the community, given the fact that there was a gap between the rich and the poor in the society. Because there were economically and socially vulnerable groups of people, the role of the state was needed to eliminate oppression by the rich to the poor. The state could use its discretionary authority as a form of implementing state responsibilities to the community in accordance with the laws and regulations.

Keywords: *Responsibility; Large-Scale Social Restrictions; Covid-19*

1. Introduction

Corona Virus Disease or known as Covid-19 became one of the global issues that the world have been facing until today.¹ Covid-19 which started in Wuhan, China then starting to spread through interaction between human and massively spread across countries and across continents.² Thus, Covid-19 has had such a big impact in various aspects of human life and is

¹ European Union, "Considerations Relating to Social Distancing Measures in Response to the COVID-19 Epidemic Scope of This Document Key Points" (Stockholm: European Centre for Disease Prevention and Control, 2020).

² Del Medico Bruno, *Coronavirus Covid-19*, 2nd ed. (Jakarta: Del Medico Bruno Editore, 2020).

already worldwide, so that almost the whole world feels the impact of Covid-19.³ The impact from Covid-19 is also perceived by Indonesia. In response to the Covid-19, Indonesia's Government has released several regulations, such as Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 Year 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease (Covid-19) Pandemic and/or in the Context of Facing Threats that Endanger the National Economy and/or Financial System Stability (hereinafter referred to as Perpu Number 1/2020), Government Regulation of the Republic of Indonesia Number 21 Year 2020 on Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19) (hereinafter referred to as PP Number 21/2020), Presidential Decree of the Republic of Indonesia Number 11 Year 2020 on the Determination of Public Health Emergency for Corona Virus Disease 2020 (Covid-19) (hereinafter referred to as Keppres Number 11 of 2020), Presidential Regulation Number 54 Year 2020 on Posture Changes and Details of the State Revenue and Expenditure Budget for the 2020 Fiscal Year as well as several regulations regarding/concerning Large-Scale Social Restrictions (PSBB) implemented by several regions.

The implementation of Large-Scale Social Restrictions (PSBB) are an effort to face and mitigate the impact of Covid-19. One of the regions implementing Large-Scale Social Restrictions is Surabaya. It is implemented based on the Decree of the Minister of Health Number HK.01.07/MENKES/264/2020 on Stipulation of Large-Scale Social Restrictions in the City of Surabaya, Sidoarjo Regency, and Gresik Regency, East Java Province in the Context of Accelerating the Handling of Corona Virus Disease (Covid-19), East Java Governor Regulation Number 18 Year 2020 on Guidelines for Large-Scale Social Restrictions in Handling Corona Virus Disease (Covid-19) in East Java Province, Governor of East Java Decree Number 188/202/KPTS/013/2020 on Enforcement of Large-Scale Social Restrictions in Handling Corona Virus Disease (Covid-19) in the City of Surabaya, Sidoarjo Regency, and Gresik Regency, as well as Surabaya Mayor Regulation Number 16 Year 2020 on Guidelines for Large-Scale Social Restrictions in Handling Corona Virus Disease (Covid-19) in the City of Surabaya.

The Large-Scale Social Restrictions (PSBB) implemented in Surabaya was a result of the increasingly massive Covid-19, proven by the status of the Covid-19 red zone obtained by the

³ Agus Rizal Ardy Hariandy Hamid, "Social Responsibility of Medical Journal: A Concern for COVID-19 Pandemic," *Medical Journal of Indonesia* 29, no. 1 (2020): 1–3.

City of Surabaya since March 27, 2020.⁴ The implementation of Large-Scale Social Restrictions (PSBB) in Surabaya has an impact on all lines of community life. One of the impacts is the economic impact, including unemployment because some informal work sectors have started laying off employees or close their businesses for fear of expanding the spread of the Covid-19 virus. Thus, it has an impact on the level of income and the fulfillment of the basic needs of the community. Apart from the economic impact on society, it also has an impact on aspects of public services and policies of the Surabaya's Government. One aspect of the Surabaya Government's policies that could potentially be affected by the existence of Covid-19, especially during the implementation of Large-Scale Social Restrictions (PSBB), is the state's responsibility in implementing PSBB for people affected by Covid-19 in Surabaya.

The implementation of the PSBB in Surabaya not only has an impact on restrictions on the interaction and movement of the people in Surabaya to reduce the number of Covid-19 spread but also has an impact on the fulfillment of the basic rights of the people, especially vulnerable communities in Surabaya. Article 22 paragraph (1) of the Mayor Regulation Number 16 Year 2020 on the PSBB Guidelines in Handling Covid-19 in Surabaya states "The Regional Government can provide cash assistance and/or non-cash assistance to affected communities in meeting their basic needs during the implementation of the PSBB." Constitutionally, the state shall fulfill the basic needs of the community not only for the affected communities, but also for all people in the city of Surabaya.

The fulfillment intended only for the affected community can be justified because the budget of Surabaya's Government is limited, in addition follow affirmative policy. Affirmative policies⁵ are policies that are discriminatory, but with the aim of protecting the weak and to achieve justice, especially economic justice. The number of people of Surabaya affected by the implementation of the PSBB were quite considerable because they work in informal aspects, such as online motorcycle taxis and street vendors (PKL), and it is important for the state to intervene in order to continue providing comfort for its citizens in the implementation of PSBB. The form of state intervention in this case is the responsibility of the state, especially the distribution of cash and non-cash assistance to affected communities in the city of Surabaya

⁴ Dian Kurniawan, "Surabaya Masuk Zona Merah Corona COVID-19, Polisi Tutup Sementara Dua Jalan" (Liputan6.com, 2020).

⁵ Hasim Hasim, *Dampak Covid-19 Dan Rekomendasi Terhadap Perikanan Tangkap Tradisional Dan Budidaya Di Indonesia* (Insan Cendekia Mandiri, 2021).

during the Covid-19 Pandemic. According to the introduction, this article discusses the issues related to what is the State's responsibility for the people affected by Covid-19 in Surabaya?

2. Method

This research was a legal research which methodologically identified the legal materials used.⁶ Apart from that, this research also highlighted the conditions of the people who lived around Surabaya and also identified a number of policies/programs/activities of the Surabaya City Government in which the research was conducted, namely policies/programs/activities directly related to the state's responsibility, especially the Surabaya City Government. This research was categorized as a type of research where the findings were not obtained through statistical procedures or other forms of calculation.

3. Results and Discussion

Emergencies, including disasters, the state of emergency can make the machine constitutional does not work according to the given direction by the constitution of a country.⁷ A "disaster" or "emergency" includes "any unusual events caused by natural causes or not natural that endanger the health, safety or resources of the residents of one or more cities in a Country."⁸ State of emergency comes from the government declaration made in response to an extraordinary situation is a fundamental threat to the country.⁹ This declaration may suspend the certain normal function of the government, be warned citizens to change their normal behaviors, or may authorize government agencies to implement emergency preparedness plans as well as limit or suspend civil liberties and human rights.¹⁰ Emergencies can be a period of serious crisis, such as external conflict, domestic rebellion, pandemic, war or natural disasters that affect the entire population or the whole population of the area in which the declaration applies and is a threat to an organized life of the community where the state was formed.¹¹ The state of emergency push the law action that empowers the government need to take action outside of standard

⁶ Hezron Sabar Rotua Tinambunan and Bagus Oktafian Abrianto, "Persoalan Dilematis Lembaga Perwakilan Daerah Dalam Sistem Ketatanegaraan Indonesia," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 10, no. 1 (2021): 67.

⁷ Michael Head, *Domestic Military Powers, Law and Human Rights: Calling Out the Armed Forces* (New York: Routledge, 2019).

⁸ Ibid.

⁹ Lawrence O. Gostin and James G. Hodge, "US Emergency Legal Responses to Novel Coronavirus," *JAMA* 323, no. 12 (March 2020): 1131.

¹⁰ Head, *Domestic Military Powers, Law and Human Rights: Calling Out the Armed Forces*.

¹¹ Bryan Rooney, "Emergency Powers in Democratic States: Introducing the Democratic Emergency Powers Dataset," *Research & Politics* 6, no. 4 (October 2019): 205316801989243.

procedure.¹² It is because of the urgency of the state of emergency can not be limited factually. The response of the executive against the urgency can not be made to conform to the norms of constitutional law that has been established previously.¹³ Thus, during the state of emergency, the executive shall be entitled to step beyond the boundaries of the constitution and take absolute power - even if it means the suspension of the entire legal order - to bring a state of emergency.¹⁴ The state of emergency contained in constitutional provisions can be interpreted as the strength of the norms creator given in the relevant bodies to act in accordance with the state of emergency.¹⁵ The existence of public emergency which threatens the life of the nation, and formally declared, would justify the declaration of a state of emergency.¹⁶ A state of emergency has two components: the legal framework consists of the constitution and the base of the legislature to the state of emergency, and operational framework that involves the organization structure and strategic plan to deal with the state of emergency.¹⁷ In other words, the legal framework must take into account operational requirements, and operational requirements should respect the framework of the law, including international law. If the state of emergency was announced, there should be a mechanism to protect the rights and freedoms of people who might be detained during such a period.¹⁸ In some cases, the conscription of citizens to help in order to manage the state of emergency. In addition, the state of emergency gives the authority to the citizens of eligible countries to help the efforts of emergency management as a volunteer. The government would have ordered residents to evacuate the affected areas. A state of emergency has implications for the ban or at least limit, traveling to, from or within the area affected by the emergency.¹⁹ A state of emergency to make goods and resources must be available for distribution to the affected areas and authorities imposed a curfew on the residents in the affected

¹² Christian Bjirnskov and Stefan Voigt, "Why Do Governments Call a State of Emergency? On the Determinants of Using Emergency Constitutions," *SSRN Electronic Journal* (2017).

¹³ Pierre Auriel, Olivier Beaud, and Carl Wellman, *The Rule of Crisis: Terrorism, Emergency Legislation and the Rule of Law* (Cham: Springer, 2018).

¹⁴ Shylashri Shankar, "The State of Emergency in India: Böckenförde's Model in a Sub-National Context," *German Law Journal* 19, no. 2 (May 2018): 197–218.

¹⁵ Bjirnskov and Voigt, "Why Do Governments Call a State of Emergency? On the Determinants of Using Emergency Constitutions."

¹⁶ Dennis G. Molinaro, *An Exceptional Law: Section 98 and the Emergency State, 1919-1936* (Toronto: University of Toronto Press, 2017).

¹⁷ Alan Greene, *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis* (New York: Bloomsbury Publishing, 2018).

¹⁸ M. Ehteshamul Bari, *States of Emergency and the Law: The Experience of Bangladesh* (Milton: Taylor & Francis, 2017).

¹⁹ Shankar, "The State of Emergency in India: Böckenförde's Model in a Sub-National Context."

areas.²⁰ The constitution or laws of a country usually describe the circumstances that may lead to a state of emergency, identify the procedures to be followed, and determine the limits on the power of the emergency can be invoked or rights may be suspended.²¹ In a state of emergency, the State must pay attention to the following principles: ²²1) **The principle of temporality**: this refers to the outstanding properties of the declaration of state of emergency; 2) **There are ‘extraordinary threat’**: the crisis must be present of the real, current, or at least briefly mention the danger to the community; 3) **Declaration**: the state of emergency should be declared publicly; this informs the citizens of the legal situation and reduce the possibility of a state of emergency *de facto*, that is, a situation in which countries restrict human rights without formally declared a state of emergency; 4) **Communication**: notification of the authority should be taken and carried out to provide clarification to the public; 5) **Proportionality**: the steps taken to fight the crisis must be proportionate to the gravity of an emergency situation; 6) **Legality**: human rights and fundamental freedoms during a state of emergency must respect the limits set by the relevant international instruments and national law; further, the state of emergency does not allow those in power to act in disregard of the principle of legality, where they are bound at all time.

In a state of emergency, legislation gives several ways to reduce or handle emergency conditions related to the spread of Covid-19, i.e. with Large-Scale Social Restrictions. Large-Scale Social Restrictions are stipulated in Article 1 number 11 of the Law of the Republic of Indonesia Number 6 Year 2018 on Health Quarantine, stating that Large-Scale Social Restrictions are a restriction on certain activities of the population in a region that is allegedly infected with the disease and/or contaminated in such a way as to prevent the possibility of spread of disease or contamination. In addition to Large-Scale Social Restrictions, there are also regulations of the Quarantine Region. Article 1 number 10 of the Law of the Republic of Indonesia Number 6 Year 2018 on Health Quarantine states that the Quarantine Region is the restriction of the population in a region, including the region of the entrance and its contents, allegedly infected with the disease and/or contaminated in such a way as to prevent the possibility of spread of disease or contamination.

²⁰ Greene, *Permanent States of Emergency and the Rule of Law: Constitutions in an Age of Crisis*.

²¹ Yoav Mehozay, *Between the Rule of Law and States of Emergency: The Fluid Jurisprudence of the Israeli Regime* (New York: SUNY Press, 2016).

²² John Reynolds, *Empire, Emergency and International Law* (Cambridge: Cambridge University Press, 2017).

Regulation related to the health emergency is regulated in Law Number 6 Year 2018 on Health Quarantine. The government set the status of the emergency public health related to the pandemic Covid-19 through Presidential Decree Number 11 Year 2020 on the Determination of the Emergency Public Health Corona Virus Disease 2020 (Covid-19). It was established by the government due to the massive number of casualties potentially or contracted Covid-19, and the growing number of people and areas affected by Covid-19 government based on the Presidential Decree Number 12 Year 2020 on the Determination of Disasters and Non-natural Spread of the Corona Virus Disease 2019 (Covid 19) as a National Disaster. The existence of the status of the emergency public health was also initiated by the government with the issuance of Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 Year 2020 on State Financial Policy and Financial System Stability for Handling the Corona Virus Disease (Covid-19) Pandemic and/or in the Context of Facing Threats that Endanger the National Economy and/or Financial System Stability. The issuance of the regulation is one of those associated with the government's efforts to set a different budget and can deviate the state budget (APBN) and regional budget (APBD) 2020 due to the status of the emergency public health related to Covid-19. The regulation was issued based on the mandate of the constitution, namely Article 22 of the 1945 Constitution of the Republic of Indonesia relating to the authority of the President as responsible for the governance of the highest to establish a Government Regulation in Lieu of Law in the particulars of the seriousness of the force.²³ In the aspect of the law of the state of emergency, the issuance of the regulation is actually based on a subjective assessment of the President.²⁴ This is because that the particulars of the seriousness of the force is subjective state emergency law (*subjectieve staatsnoodrecht*).²⁵ Therefore, as a *subjectieve staatsnoodrecht* and the holder of the highest responsibility of government in a presidential system, the President issue a regulation in order to deal with the particulars of the seriousness of the force in the form of Covid-19.

The emergence of Covid-19 as a new unknown origin disease has now become an incredible pandemic. The entire world felt trouble and sorrow arising from the presence of this pandemic. Coronavirus is a group of viruses that can cause disease in humans. Some types of

²³ Muhammad Syarif Nuh, "Hakekat Keadaan Darurat Negara (State of Emergency) Sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Hukum Ius Quia Iustum* 18, no. 2 (2011): 229–246.

²⁴ Ibnu Sina Chandranegara, "Pengujian Perppu Terkait Sengketa Kewenangan Konstitusional Antar-Lembaga Negara," *Yudisial* 5, no. 1 (2012): 1–16.

²⁵ Muhammad Rinaldy Bima, "Implementation of State of Emergency Within the Constitutional Law System in Indonesia," *Diponegoro Law Review* 4, no. 1 (2019): 405.

coronavirus can cause respiratory tract infections in humans, such as in a newly found type of virus that causes Covid-19. This pandemic gives a terrific impact on every human in every corner in the world.²⁶ Countries affected by the pandemic made various efforts to protect its citizens from this incident. Some of them institute/carry out lockdowns, quarantine area, or the like conducted by the government of Indonesia, namely by implementing Large-Scale Social Restrictions (PSBB) as efforts to accelerate the handling of Covid-19 and as the instrument to get a various responses from many people. However, all of those things are solely and as a solution to prevent this pandemic to more widespread.²⁷

Numerous attempts have been made to socialize regarding Covid-19. It begins with encouragement to maintain personal hygiene, keeps their distance, not be in contact with other people directly, and the motivation of other goods to help people become aware and not underestimate this disease.²⁸ The spread and dissemination of the disease are done in a wide variety of platforms, ranging from advertising on TV and in social media. The government of Indonesia appeals to social distancing, physical distancing, using a mask when on the move outside the home, washing your hands, and the slogan stay at home in order to prevent and desist the spread of Covid-19 also sets Large-Scale Social Restrictions (PSBB). Large-Scale Social Restrictions are not special things in the acceleration of the handling of the pandemic Covid-19. It is stipulated in Article 1 number 11 the Law of the Republic of Indonesia Number 6 Year 2018 on Health Quarantine. It defines Large-Scale Social Restrictions as a restriction on certain activities of the population in a region that is allegedly infected with the disease and/or contaminated in such a way as to prevent the possibility of spread of disease or contamination. Some regions in Indonesia have implemented the provisions of the Limitation of Large-Scale Social, including East Java, in which the City of Surabaya, Sidoarjo and Gresik Regency had participated from April 28, 2020 – May 11, 2020.

Large-Scale Social Restrictions implemented by the local government are expected to accelerate the handling of Covid-19. Every region could apply Large-Scale Social Restrictions if approved by the Minister of Health, based on Article 6 paragraph (1) of the Regulation of the Government of the Republic of Indonesia Number 21 of 2020 on the Limitation of Large-Scale

²⁶ WHO, "Pertanyaan Dan Jawaban Terkait Coronavirus," *WHO*, last modified 2020, <https://www.who.int/indonesia/news/novel-coronavirus/qa-for-public>.

²⁷ Iin Karita Sakharina, "Hak Atas Pangan Di Masa Pandemi Coronavirus Disease Covid-19," *Legislatif* 3, no. 2 (2020): 367–384, <https://journal.unhas.ac.id/index.php/jhl/article/view/10476>.

²⁸ Dinda Veska, "Kiat Pengasuhan Di Tengah Wabah Virus Corona (COVID-19)," *Unicef*, last modified 2020, <https://www.unicef.org/indonesia/id/coronavirus/kiat-pengasuhan-COVID-19>.

Social to expedite the Handling of the Corona Virus Disease 2019 (Covid-19). It states that the Enactment of the Large-Scale Social Restrictions proposed by the governor/regent/mayor to the minister in charge of government affairs in the field of health. It is confirmed in Article 3 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 9 Year 2020 on Guidelines for Large-Scale Social Restrictions to accelerate the Handling of the Corona Virus Disease 2019 (Covid-19), the Minister set Large-Scale Social Restrictions in a region based on the request of the governor/regent/mayor.

Policies taken by the government with the implementation of Large-Scale Social Restrictions with the approval of the Minister, in the end, it is possible to extend the bureaucracy, starting with a review by the applicant (certain area). The applicant then submits it to the minister to be reviewed whether it is feasible or not. This process takes a long time, and there may be a complicated procedure that must be undergone. On the other hand, in the absence of a definite method to be applied in each region, the Regional Government has its own method in handling Covid-19, meaning that the region is given free authority (*freies Ermessen*) to determine in what way the implementation of Large-Scale Social Restrictions. It rises different perceptions from each region. It can be seen at the beginning of the of Large-Scale Social Restrictions implementation in Greater Surabaya (Surabaya City, Sidoarjo Regency, and Gresik Regency). On the Main Street area of the Waru Roundabout, the direction to the Surabaya City, there is a long queue of motorbikes and vehicles to enter the Surabaya City area, in the opposite direction in Sidoarjo Regency, there is no queue to turn them back. It became a lively conversation on social media. Are they residents of Sidoarjo Regency so there is no similar queue? Or the Sidoarjo Regency government has its own perception regarding the implementation of Large-Scale Social Restrictions? Thus, can the implementation of this Large-Scale Social Restriction be effective? Many questions will arise because there are differences in the implementation of the policy. It reflects that the Government through its apparatus must have the capacity and integrity in handling Covid-19, not for imaging (politics). Providing assistance with a stamp or sign indicating identity, for example, should not have happened, since sincere cooperation is needed to resolve this pandemic. In the end, it is the community that is the determinant to realize the chain breaking of Covid-19 spread. With people who are aware of the dangers of Covid-19 and comply with the appeals or rules that have been set by the government, it will come true. It must be undergone seriously, considering that until the first week of the

implementation of Large-Scale Social Restrictions, morbidity or the addition of positive patients in the Surabaya area in particular is still high.

The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia emphasizes that the duties of the Indonesian state government²⁹ are: 1) Promoting the general welfare; 2) Educating the nation's life; 3) Participating in implementing world order based on freedom, eternal peace and social justice.

The first task of the Indonesian state government is advancing the general welfare indicates that the Indonesian state adheres to a material legal state system or better known as a welfare state.³⁰ As a consequence of this welfare state³¹, the Indonesian government must have a responsibility towards the community towards the field of community life in order to create welfare and social justice for all its people.³²

In terms of legal politics, the state's responsibility for the economic and social life of the community was designed by the founding fathers, carried out by the state under any circumstances, be it normal or abnormal conditions. The existence of the state's responsibility for the economic and social life of the community is because there is a gap between the rich and the poor. Because there are groups of people who are economically and socially vulnerable, the role of the state is needed so that there is no oppression by rich groups to the poor.³³ State responsibility is manifested in the form of the role of the state in order to realize social justice for all people.

Since the end of 2019, the world has been experiencing an unusual upheaval. The emergence of a new disease whose origins were previously unknown, has now become an extraordinary pandemic. The whole world is feeling the difficulty and grief that this pandemic has created. This pandemic is none other than the coronavirus pandemic. Coronaviruses are a group of viruses that can cause disease in humans. Several types of coronavirus can cause respiratory infections in humans. This new type of virus was discovered that can cause Covid-19 disease. This pandemic has had a devastating impact on every human being all around the

²⁹ Ade Fartini, "Hukum Dan Fungsi Negara Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *al-ahkam: Jurnal Hukum, Sosial dan Keagamaan* 14, no. 1 (2018): 11.

³⁰ Janpatar Simamora, "Tafsir Makna Negara Hukum Dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia," *Dinamika Hukum* 14, no. 3 (2014): 558.

³¹ Zulkarnain Ridlwan, "Negara Hukum Indonesia Kebalikan Nachtwachterstaat," *Fiat Justisia* 5, no. 2 (2014): 150.

³² Fheryal Sri Isriawaty, "Tanggung Jawab Negara Dalam Pemenuhan Hak Atas Kesehatan Masyarakat Berdasarkan Undang Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Ilmu Hukum Legal Opinion* 3, no. 2 (2015): 4.

³³ Umar Sholahudin, "Hukum Dan Keadilan Masyarakat (Analisis Sosiologi Hukum Terhadap Kasus Hukum Masyarakat Miskin ' Asyani ' Di Kabupaten Situbondo)," *Dimensi* 9, no. 1 (2016): 33.

world.³⁴ The countries affected by the pandemic are making various efforts to protect their citizens from this incident. Some have carried out lockdowns, regional quarantines, or as has been done by the Indonesian government by implementing Large-Scale Social Restrictions (PSBB) as an effort to accelerate the handling of Covid-19. All these things are solely to prevent this pandemic from widely spreading.³⁵

Various attempts were made to disseminate information about Covid-19. Ranging from an appeal to continue to maintain personal hygiene, keep a safe distance, and not make any direct contact with others, as well as other appeals to help people become more aware and not underestimate this disease.³⁶ This dissemination and outreach are carried out on various platforms, starting from advertisements on TV and social media. The Indonesian government, not only appeals to do social distancing, physical distancing, using masks when doing activities outside the home, washing hands, and the slogan stay at home, but also establishes Large-Scale Social Restrictions (PSBB). Large-Scale Social Restrictions are nothing special in accelerating the handling of the Covid-19 pandemic because they have been regulated in Article 1 number 11 of Law of the Republic of Indonesia Number 6 Year 2018 on Health Quarantine which states that Large-Scale Social Restrictions are restrictions on certain activities of residents in an area suspected of being infected with such a disease and/or contamination in such a way as to prevent a possible spread of disease or contamination. Several regions in Indonesia have implemented this Large-Scale Social Restriction, one of them is East Java, which include the City of Surabaya, Sidoarjo Regency and Gresik Regency that had participated from April 28, 2020 - May 11, 2020.

The Large-Scale Social Restrictions implemented by the local government are expected to accelerate the handling of Covid-19. Each region can apply Large-Scale Social Restrictions if it is approved by the Minister of Health. The Minister of Health has this authority based on Article 6 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 21 Year 2020 on Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19), stating that Enforcement of Large-Scale Social Restrictions is proposed by the governor/regent/mayor to the minister who holds government affairs in the health sector. This is confirmed in Article 3 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 9 Year 2020 on Guidelines for Large-Scale Social

³⁴ WHO, "Pertanyaan Dan Jawaban Terkait Coronavirus."

³⁵ Sakharina, "Hak Atas Pangan Di Masa Pandemi Coronavirus Disease Covid-19."

³⁶ Veska, "Kiat Pengasuhan Di Tengah Wabah Virus Corona (COVID-19)."

Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19), namely the Minister determines Large-Scale Social Restrictions in an area based on an application from governor/regent/mayor.

The role of the state is expected to be even more when the country is in a state of emergency and struggling to escape the Covid-19 pandemic that is currently hitting this country. Steps have been taken by the government in an effort to overcome the Covid-19 pandemic so that it will immediately disappear from the country. One of the government's efforts to overcome the Covid-19 pandemic is to issue Government regulations (PP) Number 21 Year 2020 on Large-Scale Social Restrictions (PSBB). PSBB is actually one of the policies taken by the Government, because according to Law Number 6 Year 2018, it is not the only policy instrument that can be taken by the Government. Therefore, the Government should not only issue a Government Regulations on PSBB, but also a Government Regulations on Regional Quarantine, Home Quarantine and Hospital Quarantine.

The reason that the PSBB is the only policy taken by the Government is that the Government wants to cope with the Covid 19 pandemic while maintaining the wheels of the country's economy to keep it running even though it is not optimal.³⁷ PSBB is very different from regional quarantine or better known as lock-down. If the Government adopts a regional quarantine policy, then the Government has responsibility to bear the cost of living not only for the people but also for livestock.³⁸

Regional quarantine is not taken by the Government because the Government must bear all the costs of living for the people and this is a burden to the state. Regional Quarantine is actually the most effective policy in dealing with a pandemic compared to PSBB. Because if the state implements a regional quarantine, all activities in an area must stop and people outside the area may not enter into the area that is under quarantine. Thus, the Government should have adopted a regional quarantine policy instead of PSBB. Regional quarantine is an effective policy proven by several countries, including Italy, which can suppress the spread of Covid-19. However, the decision made by the Government to do only PSBB cannot be blamed easily. In every decision making, there must be reasons. The reason for choosing PSBB over the area or region quarantine

³⁷ Aprista Ristyawati, "Efektifitas Kebijakan Pembatasan Sosial Berskala Besar Dalam Masa Pandemi Corona Virus 2019 Oleh Pemerintah Sesuai Amanat UUD NRI Tahun 1945," *Administrative Law and Governance Journal* 3, no. 2 (2020): 248.

³⁸ Wardatul Fitri, "Implikasi Yuridis Penetapan Status Bencana Nasional Pandemi Corona Virus Disease 2019 (COVID-19) Terhadap Perbuatan Hukum Keperdataan," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 9, no. 1 (2020): 81.

is because the government wants to save the macroeconomic sector, as well as the public health sector.

The proposal for PSBB submitted by regional governments that are quite widely affected by the Covid-19 pandemic must also go through the approval of the Minister of Health. Regional governments that are quite widely affected by the Covid-19 pandemic will be included in the red zone, which is the zone where the region experiences a high rate of Covid-19 transmission. Surabaya Raya, which includes the cities of Surabaya, Gresik, and Sidoarjo, submitted a PSBB proposal and was approved by the Minister of Health. The PSBB in the Surabaya Raya area was enforced three times. PSBB is not just an approval obtained by the Surabaya Raya Region from the Minister of Health, but the Surabaya Raya area is also given the authority to regulate PSBB guidelines through a Regional Head Regulation. Regional Head Regulations, both Mayor Regulations and Regent Regulations must also receive a review from the Central Government, in this case the Ministry of Home Affairs. If any substance of the Regional Head Regulation contradicts the statutory regulations, the Regional Head Regulation must be revised by the Regional Head.

Regulations regarding PSBB in Surabaya Raya, either in the form of Regent Regulations or Mayor Regulations, did not receive significant corrections from the Central Government. Therefore, the Surabaya Raya area can immediately implement the PSBB after obtaining approval from the Minister of Health. Article 22 of Mayor Regulation Number 16 Year 2020 concerning PSBB Guidelines in handling Covid 19 in Surabaya regulates the fulfillment of basic needs during the PSBB. Article 22 Regulation of Mayor Number 16 Year 2020 states:

- (1) Local governments can provide cash assistance and/or non-cash food assistance to affected communities in meeting their basic needs during the implementation of the PSBB.
- (2) Cash assistance and/or non-cash food assistance as referred to in paragraph (1) shall be provided in the form of staples and / or other direct assistance whose distribution mechanism is in accordance with the provisions of laws and regulations.
- (3) Determination of recipients of cash assistance and/or non-cash food assistance as referred to in paragraph (2) shall be determined in accordance with the provisions of laws and regulations.

In Article 22 paragraph (1) of Regulation of Mayor Number 16 Year 2020, the authority of the Regional Government in providing cash and non-cash assistance to affected communities is

discretionary. The discretionary authority in the article is seen in the formulation of the word “can”. Discretionary authority can be divided into two, which are freedom of action and freedom of interpretation.³⁹ Characteristics of freedom of action is if the article contains the word “can”. The formulation of the word “can” implies that administrative officials in exercising their authority are faced with two choices in accordance with the facts at hand. Meanwhile, freedom of interpretation implies that officials have the authority to interpret norms in obscure laws. The article also contains vague norms related to the formula “affected communities”.

The discretionary authority possessed by the Regional Government is a form of the implementation of state responsibility towards the community in accordance with statutory regulations. The choice of the PSBB policy taken by the Government and not the area/region quarantine, has the consequence that there is no obligation for the Government to bear the basic needs of the community. If there is a fulfillment of the needs of the community, it is not obligatory but more discretionary. With the enactment of the Regulation of Mayor Surabaya City in 2020, there is a clear legal basis for the Surabaya’s Government to meet the basic needs of affected communities. The people who are most affected by this PSBB policy are workers who work in the informal sector such as online motorcycle taxis. Fulfilling the basic needs of the affected community is surely with the hope that what is the right of the affected community reaches those who have the right.

4. Conclusion

With the enactment of the Regulation of Mayor Surabaya City in 2020, there is a clear legal basis for Surabaya’s Government to meet the basic needs of affected communities. In this Regulation of the Mayor, there is a discretionary authority that is owned by the Regional Government. The choice of the PSBB policy taken by the Government, not the area/region quarantine, signify that there is no obligation for the Government to bear the basic needs of the community. If there is a fulfillment of the needs of the community, it is not obligatory but more discretionary.

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³⁹ M. Syuib, “Kewenangan Hakim Menerapkan Diskresi Dalam Permohonan Dispensasi Nikah,” *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 2 (2018): 436.

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