

## Research Article

## Optimizing Health Protocol Enforcement during the Covid-19 Pandemic

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## ABSTRACT

The effort of the prevention and countermeasures in order to break the chain of transmission of Corona Virus Disease 2019 (Covid-19), it needs to be done in an integrated and comprehensive manner from various aspects of governance, health, socio-cultural and economic aspects. As part of the state of public health emergencies and has been designated as a non natural disaster, the regional government has the authority to take preventive and countermeasures actions primarily in the enforcement of health protocol during the Covid-19 pandemic in accordance with statutory provisions. The research objective is to understand the enforcement of health protocols during the Covid-19 pandemic. The research method used is juridical-normative with a statutory approach and a conceptual approach to analyze problems qualitatively. The results and discussion concluded that The formulation of policies and formation of regional legal product that from the basic of legitimacy as well as the basic of legality to act for local governments in the effort to optimize the enforcement of protocols during the Covid-19 pandemic, certainly need to develop specific policy formulation models and become a reference for local governments in policy formulations and formulation regional legal product in the enforcement of the Covid-19 health protocol. Policy formulation and formation of regional legal product in the enforcement of the Covid-19 health protocol include, and a review of the stages of policy formulation

Keywords : Health Protocol; Covid-19 Pandemic; Policy Formulation.

## ABSTRAK

Upaya pencegahan dan penanggulangan guna memutus mata rantai penularan Corona Virus Disease 2019 (Covid-19) perlu dilakukan secara terpadu dan menyeluruh dari berbagai aspek baik penyelenggaraan pemerintahan, kesehatan, sosial budaya dan ekonomi. Sebagai bagian dari status keadaan kedaruratan kesehatan masyarakat dan telah ditetapkan sebagai bencana nasional non alam. Pemerintah Daerah berwenang melakukan tindakan-tindakan pencegahan dan penanggulangan utamanya dalam penegakan protokol kesehatan di masa pandemi Covid-19 sesuai dengan ketentuan perundangundangan. Tujuan penelitian untuk memahami penegakkan protokol kesehatan di masa pandemi Covid-19. Metode penelitian yang digunakan adalah yuridis-normatif dengan melakukan pendekatan perundang-undangan (statute approach) dan pendekatan konseptual (conceptual approach) untuk menganalisis permasalahan secara kualitatif. Hasil dan pembahasan menyimpulkan bahwa Perumusan kebijakan dan pembentukan produk hukum daerah yang menjadi dasar legitimasi sekaligus dasar legalitas bertindak bagi pemerintah daerah dalam upaya optimalisasi penegakan protokol kesehatan di masa pandemi Covid-19, tentunya perlu mengembangkan model formulasi kebijakan yang spesifik dan menjadi acuan bagi pemerintah daerah dalam perumusan kebijakan dan pembentukan produk hukum daerah dalam penegakan protokol kesehatan Covid-19. Formulasi kebijakan dan pembentukan produk hukum daerah dalam penegakan protokol kesehatan Covid-19 antara lain review kesesuaian dengan norma-norma hukum, dan review terhadap tahapan-tahapan perumusan kebijakan.

Kata Kunci : Protokol Kesehatan; Pandemi Covid-19; Formulasi Kebijakan.

## A. INTRODUCTION

The Central Government has designated the 2019 Corona Virus Disease Pandemic (Covid-19) as a National Disaster based on Presidential Decree No.11 of 2020 concerning the Determination of Public Health Emergencies for Corona virus Disease 2019 (Covid-19) and established Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona virus Disease 2019 (Covid-19). Prevention has begun but has not been maximized due to the lack of public support for government policies (Joharudin et al., 2020).

These various regulations and policies are constantly reviewed and studied in depth so that they are more effective in solving problems and do not worsen the situation in the midst of situations and conditions due to the Covid-19 pandemic which have an impact on all aspects of people's lives including public service duties, particularly by Regional Governments (Sodik, 2020).

The impact of the Covid-19 outbreak can be seen in almost all sectors of public life (Syafrida, & Hartanti, 2020). The Covid-19 pandemic has not only threatened human health but also affected the global economic downturn (Taufik, & Warsono, 2020).

The Covid-19 preventions and control policies must be placed on top priority in all government policies. Government policy or state policy from a legal aspect, in order to have a compelling binding power, must be stated in a certain form of law so that it can become the basis for the legality and legitimacy of government legal action and guarantees the basic

rights and legal position of citizens towards government. (het legaliteits beginsel beoogt de rechtspositie van de burger jegens de overheid te waarborgen) (Harijanti, 2015). Thus, every act or administrative action must be based on rules or 'rules and procedures' (regels) (Julyano, & Sulistyawan, 2019).

Taking into account the spread of Covid-19 which continues to increase from time to time and has implications for all aspects of life, efforts are needed to accelerate the response to Covid-19 with fast, focused, integrated and synergistic steps between government aid at the regional level, between the Provincial Governments and District/City, including the involvement of stakeholders and all levels of society (Telaumbanua, 2020).

Based on the results of analysis and evaluation from the Ministry of Home Affairs together with the Task Force for the Acceleration of Covid-19 Handling and the reports from Regional Governments on the spread of Covid-19 show an increase in the spread curve of the virus with an increase in positive numbers of being exposed to the corona virus (Covid-19) as a result of not maximizing application of health protocols that have not maximally reached the community massively and evenly (Yunus, Anggraeni, Dewi, & Rezki, 2019).

Maluku Province, with its regional characteristics as well as geographic level difficulties, is also an important factor in the effort to implement health protocols massively and evenly. The supervisory mechanism by government units at every level, from province, district and city to village/

kelurahan levels, has not been optimally synergized. Based on the results of the evaluation conducted by the Maluku Provincial Government together with the Covid-19 Acceleration Task Force of Maluku Province at least there are still a number of evaluation notes that need serious attention by the Regency/ City Government in Maluku, including: (1) Control of restrictions on people and the mode of transportation, especially in cross-regency/ city areas, have not been maximally implemented as regulated in Maluku Governor Regulation Number 15 of 2020; (2) the administrative management and implementation of the Covid-19 countermeasures protocol have not been optimally implemented, including the preparation of Standard Operating Procedures (SOPs) by the Regency/ City Government together with the Task Force for the Acceleration of Covid-19 Handling at the Regency/ City level; (3) the administrative documents related to the management of social assistance to the community have not been maximized, in which its implementation still creates a number of problems in the district / city area; (4) the organizers in strengthening work guidelines in line with the principle of 'prevention at the first level'. Integration of prevention and control should be organized to formulate and improve performance in efforts to prevent and control Covid-19 in accordance with factual conditions and realities by each district / city; (5) the steps and policies taken by district / city governments have not been maximally coordinated and synergized with the provincial governments'.

This is mainly related to the policies of the

central government which need to be further synchronized and coordinated by each Regional Government, especially in terms of the position of the Governor as the representative of the central government as meant in Law Number 23 of 2014. So that it can minimize various obstacles and problems in its implementation. including optimization of health protocol enforcement. Notes on evaluating the implementation of health protocols are very important for the Regional Government to formulate policies in the prevention and control of Covid-19 in Maluku.

This policy normatively, from the aspect of constitutional/ administrative law, needs to be written into a certain legal arrangement, including in the form of policy regulations. Referring to the background as described above, the legal issue which has become a fundamental problem is the "Enforcement of Health Protocols during the Covid-19 Pandemic". Therefore, this study was conducted using an academic, theoretical approach and examined the juridical aspects of a number of statutory provisions as well as a number of Covid-19 subscription protocols. This analysis and study are then expected to provide a guidance in the formulation of policy regulations in the efforts to prevent and overcome Covid-19. Then, the identifications of problems related to "Enforcement of Health Protocols during the Covid-19 Pandemic" are: How is the development of law enforcement theory and empirical practice of Health Protocol Enforcement during the Covid-19 Pandemic?; and What are the legislative arrangements related to the Enforcement of Health Protocols during the Covid-19 Pandemic Period in

Maluku Province?.

Government or state policy, in a legal approach to have a compelling binding power, must be set forth in a certain legal form. The form of legal regulation is in terms of the formation of statutory regulations including regional regulations. The Regional Regulation in its existence is part of the hierarchy of laws and regulations in Indonesia as referred to in the provisions of Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations as amended by Law Number 15 of 2019. In the construction of the Law Number 23 of 2014, the scope of regional policies with reference to Article 17 paragraph (1) includes Regional Regulations (Perda), Regional Head Regulations (Perkada) and Regional Head Decrees. In the case of regional policy formulation, local policy makers must pay attention to the division pattern of government affairs as well as the basis for delegation of authority, especially in the formation of regional regulations, both in the concept of delegation and attribution authority so that it does not cause legal consequences as referred to in the provisions of Articles 17 and 251 of Law Number 23 of 2014 (Aris, 2020). Monitoring or reviewing perda is increasingly relevant among the issues of decentralization and strengthening of regional legislative powers. Perda is one of the strategic instruments to achieve the goals of decentralization. On the other hand, the existence of perda is also an implementation of a representation system in policy formulation at the regional government level.

"...if local autonomy is not to produce a state

a airs bordering on anarchy, it must subordinated to national interest by means devised to keep its acon within bounds" (Huda, 2010)

Thus, the relationship between central and regional governments is a reciprocity mechanism and process between the elements of central and local government based on the general principles of good governance. The relationship arrangement of Central, Provincial and Regency / City Governments is a pattern of relationships created based on vertical, horizontal and diagonal relationships.



Figure 1 Chart of Governmental Division

These relationships may occur in the areas of deconcentration, decentralization, and medebewind as well as in the three regions, as shown in Figure 1 above.

Administrative law enforcement is a part of governing power (besturen), so the enforcement of state administrative law is subject to general principles (government law), i.e.: (i) the principle of legality (rechtmatigheid van bestuur); (ii) the principle of efficiency and effectiveness (doelmatigheid en doeltreffendheid); (iii) the principle of openness (openbaarheid van bestuur); and (iv) the principle of

planning (planmatigheid) (Hadjon, 1996). Administrative law enforcement instruments include two matters, supervision and enforcement of sanctions. Supervision is a preventive measure to force compliance, while the application of sanctions is a repressive one to force it (Berge, 2014). Sanctions are described as: "rules that determine the consequences of non-compliance or with norm violations" (associatedde sanctie wordt gedefinieerd als: "regels die voorschrijven welke gevolgen aan de niet naleving of de overtreding van de normen verbonden worden) (Dupont, & Verstraeten, 1990). These sanctions are used as a means of power that seeks to comply with norms, and these efforts are aimed at minimizing losses caused by violating norms (Widiarto, 2015). Romanian legal literature defines sanctions as "the sanction as a consequence of not observing a rule of conduct prescribed or sanctioned by the state (Fodor, 2007). Meanwhile, Henry Campbell Black formulates sanctions as "that part of a law which is designed to secure enforcement by imposing a penalty for its violation or offering a reward for its observance" (Black, 1979). Furthermore, Bryan A. Garner stated, the sanction (sanction) is "A penalty or coercive measure that results from failure to comply with a law, rule, or order (a sanction for discovery abuse)" (Garner, 1999).

This study is different from previous studies, in which the novelty in this study is to develop a specific policy formulation model and become a reference for local governments in policy formulation and the formation of regional legal products in enforcing the Covid-19 health protocol.

Based on the search results from various studies with the substance that is almost the same as our research, there are several studies that we can present in this paper as a comparison with this research. Adlin and Ali Yusri's research describes the factors that affect the mayor's ability to enforce a circular through government law enforcement on the parties to decide the spread of Covid-19 (Adlin, & Yusril, 2020). For the people of Indonesia, the weakness of the findings of law enforcement by the apparatus will determine the perception of the existence of law. Juwana (2006) shows that one of the reasons why this circular letter is difficult to enforce is due to the mayor's circular not containing sanctions for violators, the low level of public legal awareness, and central government politics.

Muh Hasrul's research focused more on the increase in the Covid-19 case which has had an impact on political, economic, social, cultural, defense and security aspects, as well as the welfare of the people in Indonesia, so it is necessary to accelerate the handling of Covid-19 in the form of Large-Scale Social Restriction measures in the context of suppressing the increasingly widespread of Covid-19 (Hasrul, 2020). These measures include the restrictions on certain activities of residents in an area suspected of being infected with Covid-19, including the restrictions on people and / or goods movement for a certain province or district/ city to prevent the spread of Covid-19. This research is different because it only discusses the legal aspects related to PSBB (Large-Scale Social Restriction).

Nur Rohim Yunus and Annisa Rezky's

research views the policies that the Indonesian government must take considering that Indonesia has experienced a condition in which public concern about Covid-19 is quite large so that a government policy is needed to carry out a lockdown as an effort to break the spreading chain of the Covid-19 virus (Yunus , & Rezky, 2020).

A research of Wesley G. Jennings and Nicholas M. Perez explains that the COVID-19 pandemic has also revealed several major obstacles to law enforcement related to communication, resource management, enforcement of public health restrictions, and changing patterns of crime and services. Based on the initial responses and obstacles during the COVID-19 outbreak, the focus of this research focused more on the direction of future responses to the pandemic to ensure the safety and security of police officers and the communities they serve (Jennings, & Perez, 2020).

The research results of Richard Alderman et al. focus on various legal actions taken by the government in preventing the Covid-19 virus with the purpose for the welfare of the people. Even though various policies have been taken by the government, there are still many people who are not aware of the impact of this virus, still do not comply with health protocols, and do not keep their distance. This causes the spread of the virus to become out of control. That is why strict enforcement of laws is needed so that people comply more with the rules (Alderman et al., 2020).

B. RESEARCH METHOD

The method used in this research was juridical-normative research using statute and conceptual approaches to qualitatively analyze the optimization of health protocol enforcement during the Covid-19 pandemic.

C. RESULTS AND DISCUSSION

1. Development of Law Enforcement Theory and Empirical Practices of Health Protocol Enforcement during the Covid-19 Pandemic.

In the legal theory of norms, a rule of law is considered valuable when it is based on its substance which has binding power (*verbindende kracht*) or obligatory character (*verplichtend karakter*). Everyone is obliged to comply with a rule of law considered valuable or very important for his social behavior. The evaluative enforceability of a rule of law is the nature of obliging it, its binding strength, or also its obligatory (a technical term for 'obliging nature') (Bruggink, & Sidharta, 2011). The three validities of rule of law that have been briefly mentioned above based on the view of JJH Bruggink demonstrated as shown in Figure 2 below:



Sumber: J.J. H. Bruggink, with bahasa: H. Arief Sidharta Refleksi Tentang Hukum – Pengertian-Pengertian Dasar Tentang Teori Hukum, Citra Aditya Bakti, Bandung, 2011

Figure 2. Scheme of Enforcement (Gelding)

Bruggink's view above when compared to the prevalence of mentioning the word 'enforceability' in

this paper is about law, which derives from the term and meaning of legal enforceability according to Gustav Radbruch, as follows: (i) normative or formal enforcement in other terms is juridical enforcement (*juristische geltung*). *Juristische Geltung* is defined as a law or regulation that has met formal requirements; (ii) factual or empirical validity in other terms is sociological validity (*soziologische geltung*). *Soziologische Geltung* means that the acceptance or validity of law in society is independent from the fact whether the legal regulation is formed according to formal requirements or not, in this case it looks more at the reality in society; (iii) evaluative enforceability in the other name is philosophical action ability (*filosofische geltung*). *Filosofische Geltung* means that a law has power when the law is in accordance with the ideals of law (*rechtsidee*) as the highest positive value (*uberpositiven Werte*: Pancasila, a just and prosperous society).

As previously stated, Maluku Province is one of the regions that do not implement Large-Scale Social Restrictions (PSBB). However, in an effort to prevent and overcome Corona Virus Disease 2019 (Covid-19), social/ physical distancing is applied, including self-quarantine and self-isolation. In line with that, the Maluku Provincial Government issued Governor Regulation Number 15 of 2020 concerning Restrictions on People and Mode of Transportation in Handling Corona Virus Disease (Covid-19) on Ambon Island, which was stipulated on April 21, 2020 by the Governor of Maluku. In the provisions of Article 2, it is stated that "this Governor Regulation is intended as a guide for implementing restrictions on the movement

of people and modes of transportation in the context of accelerating the handling of Corona Virus Disease (Covid-19) in Maluku Province". Furthermore, it is also stated in Article 3 that this Governor Regulation aims to (a) limit the movement of people in certain activities in suppressing the spread of Corona Virus Disease (Covid-19); and (b) limit the movement of transportation modes in reducing the spread of Corona Virus Disease (Covid-19).

Meanwhile, the scope of this Governor Regulation covers the restrictions on the movement of people; restrictions on the movement of transportation modes; rights, obligations and fulfillment of basic needs of the population during restrictions; Corona Virus Disease (Covid-19) management resources; monitoring, evaluation and reporting; and sanctions. However, in its implementation, this Governor Regulation has not been fully implemented properly and has become a guideline and/ or legal basis for Regency / City Governments in formulating policies as he implementation of the Governor Regulation. In other hand, the regulations related to law enforcement (sanctions) as referred to in Article 46 are felt to have not been able to provide legal certainty in law enforcement regarding the implementation of health protocols during the Covid-19 period. For legal certainty, it needs to be complemented with academic studies and the fulfillment of the requirements and prerequisites as stipulated in the laws and regulations governing Covid-19 Management. Starting from the results of the evaluation carried out by the Maluku Provincial

Government together with the Covid-19 Acceleration Task Force of Maluku Province, at least there are still a number of evaluation records that need serious attention by the Regency/ City Governments in Maluku, including; first, the control of the restrictions on people and transportation modes, especially in cross-regency/ city areas has not been maximally implemented as regulated in the Maluku Governor Regulation Number 15 of 2020; second, the administrative management and implementation of the Covid-19 countermeasures protocol have not been optimally implemented, including the preparation of the Standard Operating Procedures (SOPs) by the Regency / City Governments together with the Acceleration Task Force for Covid-19 Handling at the Regency/ City level; Third, the administrative documents related to the management of social assistance to the community have not been maximized, which in its implementation still causes a number of problems in the regencies/ cities; Fourth, the organizers strengthen the work guidelines in line with the principle of 'prevention at the first level'. The integration of prevention and control should be organized to formulate and improve performance in efforts to prevent and control Covid-19 in accordance with factual conditions and realities by each regency / city; and Fifth, the steps and policies taken by district/ city governments have not been maximally coordinated and synergized with Provincial Government policies. This is mainly related to the policies of the central government which need to be further synchronized and coordinated by each Regional Government, especially in terms of the

position of the Governor as the representative of the central government as stated in Law Number 23 of 2014 to minimize various obstacles and problems in its implementation including the optimization of health protocol enforcement. The Preparation of the Guidelines for the Enforcement of Health Protocols during the Covid-19 Pandemic is expected to become a General Guideline as the Legal Umbrella for policy making by District / City Governments, especially in Maluku Province.

In the current state of the corona virus pandemic, the direction of the government's legal policy is to provide health protection for all Indonesian people to achieve the highest degree of health for the development and improvement of Indonesia's human resources. This is the basic capital for the implementation of national development which is essentially the development of the whole Indonesian human being, including protection from disasters in the context of realizing public welfare based on Pancasila as mandated in the 1945 Constitution of the Republic of Indonesia. The Enforcement of Health Protocols during the Covid-19 Pandemic in Maluku Province, in fact, philosophically, to guarantee the right to protection of health services which is a human right must fully respect dignity, human rights, the basics of individual freedom, and universal application as one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people (Wadi, 2020). To achieve the enforcement of health protocols during the Covid-19 pandemic in Maluku Province, there is legal certainty and effectiveness in



overcoming the 2019 Corona Virus Disease (Covid-19) in Maluku Province.

Jeremy Bentham said that the purpose of law must be useful for society to achieve maximum happiness (Salman, 2010). For this reason, legal development must be used as a means of encouraging community reform, as expressed by Muchtar Kusumaatmadja (Mas, 2004). For this reason, the aspect of legal certainty plays a role in encouraging community reform in particular to face the current corona pandemic. De Beus and van Doorn state, "the presence of law as a scheme goes hand in hand with the stronger image of society as a structured and constructed life, which is called *de geconstrueerde samenleving*" (Rahardjo, 2010). The principle of legal certainty is a fundamental principle in the AUPB, because when later the AUPB is used as a test tool by judges in examining and deciding the cases of State Administration, the substance of the judge's decision must respond to the overall values of truth and justice from existing and valid laws. (written law and unwritten law) because the substance of the judge's decision must guarantee fair legal certainty. Phillippe Nonet and Philip Selznick state: "Responsive law, not sociology, was the true program of sociological and realist jurisprudence. The problems they addressed – the limits of formalism, the enlargement of legal knowledge, the role of policy in legal judgement – presumed a legal order that would undertake an affirmative responsibility for the problems of society" (Nonet, & Selznick, 1978).

Furthermore, the principle of legal certainty is stated in 6 (six) laws, i.e., the 2004 State

Administrative Court Law, the 1999 Anti KKN Law, the 2014 AP Law, the 2014 Regional Government Law, the 2009 PB Law, and the 2014 ASN Law. The explanations are as follows: first, the principle of legal certainty according to the 2004 PTUN Law refers to the explanation of the principle of legal certainty according to the 1999 Anti KKN Law; Second, the principle of legal certainty according to the 1999 Anti KKN Law is "the principle in a state of law that prioritizes the basis of statutory regulations, propriety and justice in every policy of State Administrators"; Third, the principle of legal certainty according to the 2014 AP Law is "the principle in a state of law that prioritizes the basis of statutory provisions, appropriateness, fairness, and justice in any government administration policy". This definition is almost the same as that in the 1999 Anti KKN Law, except the addition of the word "consistency". Fourth, the principle of legal certainty according to the 2014 Regional Government Law is "the principle in a state of law that prioritizes the foundation of statutory provisions and justice in every policy of state administrators". This definition is exactly the same as that contained in the 1999 Anti KKN Law. Fifth, the principle of legal certainty according to the 2009 PB Law is "guaranteeing the realization of the rights and obligations in the provision of services". The definition of the principle of legal certainty according to the 2009 PB Law is different from the four previous laws; legal certainty emphasizes the realization of the rights and obligations of citizens in the delivery of public services. Sixth, the principle of legal certainty according to the 2014 ASN Law is "in every ASN

policy implementation and management, prioritizing the basis of statutory regulations, propriety and justice.

In a sociological approach with the characteristics of authority and geographic difficulty level, Maluku Province has a number of problems and challenges in the framework of law enforcement. On the other hand, one of the social realities of the community with various aspects of life is the socio-cultural aspect and the order of cultural customary values which are still so strong and preserved in all aspects of the life of the Maluku community. This fact is one of the factors for how the optimizing of the enforcement of health protocols during the Covid-19 pandemic can run effectively and efficiently by involving active community participation and increasing resilience and social awareness.

The dynamics and development of Maluku people in preventing and overcoming Covid-19, especially in terms of enforcement of the Covid-19 Health Protocol, requires the need to form and/ or make changes to government policies through the preparation and formation of Regional Regulations in accordance with legal, religious, norms, social, and statutory regulations. Meanwhile, from the juridical approach, it is a consideration or reason that illustrates that regulations are formed to overcome legal problems or to fill legal gaps by considering existing rules which will be changed or revoked in order to guarantee legal certainty and a sense of public justice. The juridical basis concerns legal issues related to the regulated substance or material so that it is necessary to establish new laws and

regulations (Fitri, 2020). Normative or formal behavior in other terms is juridical (*juristische geltung*). *Juristische Geltung* is defined as a law or regulation that has met formal requirements. As a logical consequence of the principle of rule of law, every statutory regulation must have a logical, rational, systematic and hierarchical basis (hierarchical).

## 2. Rule of Law Concerning the Health Protocol in the Covid-19 Pandemic

In Maluku Province, the development of the spread of Covid-19 has begun to be detected since Sunday, March 22, 2020, through the statement of the Chairperson of the COVID-19 Handling Acceleration Task Force (GTPP) that the results of the laboratory sample examination showed that one of the two residents was Patient Under Supervision (PDP) in the isolation room of the Regional Hospital of Dr. M. Haulesy Ambon tested positive for the Corona virus, while the number of People Under Monitoring (ODP) in Maluku has skyrocketed. The number increased from 18 people the day before to 53 people spreading across 5 (five) regencies/ cities. The current data in Ambon City on May 31, 2020 shows that ODP + PDP + Positive cases were 229 people, while the total positive cases were 191 people, indicating a rapid spread and big.

Given the spread of the Covid-19 virus which continues to increase and expand in the Maluku province, especially in Ambon City on April 21 2020, the Maluku Provincial Government decided to establish the Regional-Scale Social Restrictions (PSBR) as a way to break the chain of spreading the Covid-19 through Maluku Governor Regulation

Number 15 of 2020 concerning Restrictions on the Movement of People and Mode of Transportation in Handling the Covid-19 virus on Ambon Island. The first day of the implementation of the PSBR in Ambon City was held on Monday, April 20, 2020. The implementation of the PSBR was carried out at a number of road points which were closely guarded by a joint team of the Transportation Agency, the Indonesian Armed Forces (TNI) and the Indonesian National Police (Polri). There were about eight points on the main road closely guarded by the joint team. The eight guard posts included a post on Jalan Ay Patty Gong Perdamaian, the post of jalan Rumah Sakit Tentara (RST), the post of jalan Talake PT Telkom, the post of jalan Tantai of the Hygienic Fish Market, the post of jalan kebun cengkih, the post of jalan jenderal sudirman JMP, the post of jalan dr Leimena of the Faculty of Fishery and Law of Universitas Pattimura.

The PSBR is carried out through the obligatory act of wearing a mask. For every motorist and car passenger as well as motorbike riders who pass by without wearing a mask, they will receive a warning. When they are still caught, they will be punished by giving blank ticket. The legal problem faced by this action is that the motorists who do not wear masks can be ticketed. In addition, in Law no. 6 of 2018 concerning Health Quarantine, there is no known regional scale social restriction (PSBR). In Article 49 Paragraph (1), it only regulates Home Quarantine, Regional Quarantine, Hospital Quarantine, and Large-Scale Social Restrictions (PSBB).

Health quarantine is carried out by observing

diseases and public health risk factors for transportation means, people, goods, and/ or the environment, as well as the responses to public health emergencies in the form of health quarantine measures (Hasrul, 2020).

In Law Number 24 of 2007, a state of disaster emergency is a condition determined by the Government for a certain period of time based on the recommendation of the Agency assigned the task of overcoming disaster. The state of emergency is established by the government. At the national level, it is determined by the President, at the provincial level by the governor, and at the district / city level by the regent / mayor. There are three types of disaster emergency status, i.e. emergency standby, emergency response and emergency to recovery. Emergency Alert Status is a situation when the potential threat of a disaster has led to a disaster which is indicated by the presence of increased threat information based on the early warning system in place and consideration of the impact that will occur in the community. Emergency Response Status is a condition when a disaster threat occurs and has disturbed the life and livelihood of a group of people/ community. The status of Emergency Transition to Recovery is a state when the threat of a disaster that occurs tends to escalate and/ or has ended, while the disruption of the life and livelihoods of a group of people/ communities is still ongoing (Alexander, 2013).

In an emergency relationship (state of emergency) related to the concept of constitutional/ administrative law, there are two legal concepts in it,

namely an emergency (Staate Noodrecht) and an emergency law enforcement (Nood Staterecht). Referring to these two concepts in a pandemic state or condition of Covid-19, our legal political construction on the one hand is included in the concept of an emergency, namely "public health emergency" and "Corona Virus Disease (Covid-19) as a National Disaster ". On the other hand, the handling of the Covid-19 Pandemic by the government is enforced with emergency law enforcement as seen from a number of regulations and Covid-19 subscription protocols issued by the Government to follow up on anticipation of the emergency of the Corona Virus Disease (Covid-19), in addition to a series of regulations that regulates the protection and prevention of infectious diseases, as follows: 1. Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia; 2. Law Number 4 of 1984 concerning Communicable Disease Outbreaks (State Gazette of the Republic of Indonesia of 1984 Number 20, Supplement to the State Gazette of the Republic of Indonesia Number 3273); 3. Law Number 24 of 2007 concerning Disaster Management (State Gazette of the Republic of Indonesia of 2007 Number 66, Supplement to the State Gazette of the Republic of Indonesia Number 4723); 4. Law Number 36 of 2009 concerning Health (State Gazette of the Republic of Indonesia of 2009 Number 144, Supplement to the State Gazette of the Republic of Indonesia Number 5063); 5. Law Number 6 of 2018 concerning Health Quarantine (State Gazette of the Republic of Indonesia of 2018 Number 128, Supplement to the State Gazette of the Republic

of Indonesia Number 6236); 6. Presidential Regulation Number 17 of 2018 concerning Implementation of Disaster Emergencies in Certain Conditions (State Gazette of the Republic of Indonesia of 2018 Number 34)

Referring to the above rules, in an effort to deal with this outbreak, the government has issued several regulations, namely: 1. Perpu Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and / or in the Context of Facing Threats That Endanger the National Economy and/ or Financial System Stability; which has been revised into Law Number 2 of 2020 concerning the Stipulation of Perpu Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and / or in the Context of Facing Threats That Endanger the National Economy and / or Financial System Stability; 2. Presidential Instruction Number 4 of 2020 concerning activity refocusing, budget reallocation and procurement of goods and services in the context of accelerating the handling of the 2019 Corona Virus Disease (COVID-19); 3. Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of the Handling of the 2019 Corona Virus Disease (Covid-19); 4. Presidential Decree Number 11 of 2020 concerning the Establishment of Public Health Emergency for COVID-19; 5. Presidential Decree Number 12 of 2020 concerning the stipulation of non-natural disasters for the spread of the 2019 Corona Virus Disease (COVID-19) as a

National Disaster; 6. Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the context of the Acceleration of the Handling of the 2019 Corona Virus Disease stipulated in Jakarta on March 31, 2020; 7. Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of the Handling of the 2019 Corona Virus Disease; 8. Presidential Decree Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of the Handling of the 2019 Corona Virus Disease (COVID-19); 9. National Police Declaration Number Mak / 2 / III / 2020 concerning Compliance with Government Policies in Handling the Spread of the Corona Virus (Covid-19); 10. Presidential Instruction Number 4 of 2020 concerning refocusing activities, budget reallocation, and procurement of goods and services in order to accelerate the handling of Covid-19; 11. Regulation of the Minister of Home Affairs Number 20 of 2020 concerning the acceleration of the handling of Covid-19 within Regional Governments; 12. Regulation of the Minister of Finance of the Republic of Indonesia Number 19 / PMK.07 / 2020 concerning the distribution and use of general allocation funds and regional incentive funds for the 2020 fiscal year in the context of overcoming Covid-19; 13. Regulation of the Minister of Finance of the Republic of Indonesia Number 23 / PMK.03 / 2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Outbreak; 14. Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning guidelines for restrictions in the context of accelerating the handling of Covid-19; 15. Decree of the Minister of Finance of the Republic of Indonesia Number 6 / KM.7 / 2020 concerning the distribution of special allocation funds for physical health in the context of prevention and/ or handling of Covid-19; 16. Instruction of the Minister of Home Affairs of the Republic of Indonesia Number 1 of 2020 regarding the prevention of the spread and acceleration of the Handling of the 2019 Corona Virus Disease within local governments; 17. Circular Letter of the Government Goods / Services Procurement Policy Institute (LKPP) Number 3 of 2020 concerning an explanation of the implementation of goods / services in the context of handling Covid-19; 18. Circular of the Government Goods / Services Procurement Policy Institute (LKPP) Number 5 of 2020 concerning procedures for carrying out qualification / clarification and negotiation on the selection of providers during the Covid-19 outbreak; 19. Circular of the Financial and Development Supervisory Agency (BPKP) Number SE-6 / KD2 / 2020 concerning review procedures by government internal control officials on the procurement of goods / services in order to accelerate the handling of Covid-19; 20. Circular of the Minister of Home Affairs Number 440/2622 / SJ concerning the Establishment of Regional Covid-19 Handling Acceleration Task Force; 21. Circular of the Ministry of Finance of the Republic of Indonesia Number S-247 / MK.07 / 2020 concerning the termination of the process of procuring goods / services for the physical Special Allocation Fund (DAK) for the 2020 fiscal year (apart from the health and education sectors; 22. Circular of the Ministry of

Home Affairs of the Republic of Indonesia Number 905/2622 / SJ regarding the termination of the physical Special Allocation Fund (DAK) procurement process for the 2020 fiscal year (apart from the health and education sectors; 23. Corruption Eradication Commission Circular Letter No 8 of 2020 concerning the Use of the Goods / Services Procurement Implementation Budget In the Context of Accelerating the Handling of the 2019 Corona Virus Disease (Covid-19) Related to the Prevention of Corruption Crime

Issuance of regulations in the context of handling the spread of Covid 19 is an effort to support the existence of Law Number 24 of 2007 which defines disease outbreaks as one of the non-natural disasters with the potential threats that need to be managed. For these regulations, the efforts currently being made are ( i) Social Distancing / Physical Distancing Policy; (ii) Protection for Health Workers as Front Guard; (iii) Large-Scale Social Restrictions (PSBB); (iv) Government transparency in handling the Covid-19 pandemic; and (v) the Validity of the Audit Result Data. To further support the 2019 Corona Virus Disease (Covid-19) prevention policy, a number of Guidelines and Protocols were issued, including: 1. Guidelines for Preparedness for Corona Virus Infection (Covid-19), as referred to in the Circular of the Director General of P2P Number: HK. 02.02 / II / 753/2020, dated March 26, 2020; 2. Guidelines for the Prevention and Control of Corona Virus Disease (COVID-19), dated March 27, 2020; 3. Self-Isolation Protocol in Handling Corona Virus Disease (COVID-19), as referred to in Circular Letter

Number HK.02.01 / MENKES / 202/2020, dated March 16, 2020; 4. Designation of a Referral Hospital for Certain Emerging Infectious Diseases, as referred to in the Decree of the Minister of Health of the Republic of Indonesia Number KH.01.07 / MENKES / 169/2020, dated March 10, 2020; 5. Laboratory Network for Corona Virus Disease of 2019 (COVID-19), as stated in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07 / MENKES / 182/2020, dated March 16, 2020; 6. Communication on the Management of the 2019 Corona Virus Disease (COVID-19) as referred to in the Circular of the Minister of Health Number HK.02.01 / MENKES / 199/2020, dated March 16, 2020; 7. Guidelines for Implementing Learning from Home during the Covid-19 Disaster Emergency; 8. Covid-19 Management Guidelines; 9. Health Protocol, Restriction Protocol, Education Area Protocol, Public Area Transport Protocol and Covid-19 Health Protocol and the Covid-19 Cross Sectoral Guidance Package Towards a "New Normal" Situation.

In line with the implementation of the Large-Scale Social Restrictions (PSBB) policy set by the Central Government, there are several notes in its implementation; First, there is a need for a detailed and comprehensive evaluation in each region (Province / Regency / City) related to the data on additional trends and / or reduction of new positive cases for the regions implementing the PSBB policy or not. With a detailed evaluation, the data and information will be obtained regarding the problems and constraints faced by each region. Second, from

the data on the implementation of PSBB, there are approximately 3 (three) Provinces and more than 19 (nineteen) Regencies / Cities that implement the PSBB. Therefore, for the regions (Provinces / Regencies / Cities) that do not implement PSBB, they carry out physical distancing strictly and implement health protocols in the daily life of the community, including in Maluku Province. Thus, it is necessary to have breakthroughs and innovations in the application and enforcement of health protocols with a model of limiting community activities according to the conditions of authority and the level of geographic difficulty as well as the social realities of the community in each region. Third, the management and governance in controlling the movement of people (including modes of transportation) should not be limited and / or trapped within the boundaries of government administration. In this context, the coordination and synergy between government units and the Task Force at the Provincial / District / City level is needed, and in other parts, the Governor as a representative of the central government can play a strategic role in efforts to supervise coaching so that all Covid-19 countermeasures can be implemented, running in an integrated manner and in synergy, especially in implementing health protocols during the Covid-19 pandemic, including those related to law enforcement efforts in accordance with applicable statutory provisions.

Maluku Province is one of the provinces that does not implement PSBB but instead implements Social Distancing (social restrictions) and Physical Distancing (physical restrictions) to cut the chain of

spread of Corona Virus Disease 2019 (Covid-19). In this case, of course, "community participation" in handling Covid-19 plays a very important role. The community can play a role not only as an object but also as a subject for handling Covid-19. The roles are based on prescriptions (provisions) and role expectations that explain what the individual must do in a certain situation (Sari, Sulistyani, & Pertiwi, 2020).

Community participation is basically a sincere willingness of the community to assist in handling disease activities that occur in their respective areas so that they spread (Michael, 2020). Covid-19 is not getting more widespread. Therefore, people with their own awareness carry out social / physical distancing, self-quarantine and self-isolation.

Participation in this case needs to be distinguished from mobilization which contains elements of coercion/ necessity, either by the government / authorities or by other parties with more power. The problems in the implementation of social/ physical distancing including self-quarantine and self-isolation in Maluku as a whole have not had an effect on prevention efforts.



Figure 3 Data of the Task Force of Maluku Province / Saturday, 30 May 2020

Regarding the 2019 Corona Virus Disease (Covid-19), based on the data from the Task Force for the Acceleration of Handling of Corona Virus Disease 2019 in Maluku, it was found that Ambon City was the area with the highest increase in positive cases, as can be seen in Figure 3 above.

As previously stated by considering the spread of Covid-19 which continues to increase from time to time and has implications for all aspects of life, efforts are needed to accelerate the response to Covid-19 with fast, focused, integrated and synergistic measures between government aids at regional level, between the Provincial and Regency / City Governments including the involvement of stakeholders and all levels of society. However, based on the results of analysis and evaluation from the Ministry of Home Affairs together with the Task Force for the Acceleration of Covid-19 Handling and reports from the Regional Government on the spread of Covid-19, they show an increase in the spread curve of the virus with an increase in positive numbers of being exposed to the corona virus (Covid-19) as due to the inadequate application of health protocols that have not maximally reached the community massively and equally.

Maluku Province, with its regional characteristics and geographic level difficulties, is also an important factor in the effort to implement health protocols massively and evenly. The supervisory mechanism by government units at every

level, at the provincial, district and city levels up to the Village / Kelurahan level, has not been optimally synergized. Based on the results of the evaluation conducted by the Maluku Provincial Government together with the Maluku Province Covid-19 Acceleration Task Force, at least there are still a number of evaluation records that need serious attention by the Regency / City of Maluku, as follows: first, controlling restrictions on people and modes of transportation especially in cross-regency / city areas has not been maximally implemented as regulated in Maluku Governor Regulation Number 15 of 2020. Second, administrative management and implementation of the Covid-19 countermeasures protocol have not been optimally implemented including the preparation of Standard Operating Procedures (SOP) by the Government of Regencies/ Cities together with the Task Force for the Acceleration of Covid-19 Handling at the Regency / City level. Third, the administrative documents related to the management of social assistance to the community have not been maximal in which its implementation still causes a number of problems in the district/ city area. Fourth, the organizers in strengthening work guidelines are in line with the principle of 'prevention at the first level'. The integration of prevention and control should be organized to formulate and improve performance in efforts to prevent and control Covid-19 in accordance with factual conditions and realities by each district / city. Fifth, the steps and policies taken by district/ city governments have not been maximally coordinated and synergized with Provincial Government policies.



This is mainly related to the policies of the central government which need to be further synchronized and coordinated by each Regional Government, especially in terms of the position of the Governor as the representative of the central government as stated in Law Number 23 of 2014. Then, it can minimize various obstacles and problems in its implementation. including the optimization of the enforcement of health protocols against the realities faced. It is necessary to regulate the enforcement of health protocols during the Covid-19 pandemic in Maluku Province through Regional Regulation instruments as also confirmed in the Circular of the Minister of Home Affairs Number 440/3160 / SJ regarding Optimization Implementation of the Implementation of the Health Protocol for the Management of Corona Virus Disease (Covid-19) throughout Indonesia, dated May 15, 2020. The main objective of the regulation in this case is the enforcements of health protocols and regulations during the Covid-19 pandemic. Therefore, it is expected that with the drafting of the intended Regional Regulations, local governments can further maximize the Covid-19 response process, especially in terms of law enforcement on the application of health protocols. The principle of proportionality provides a standard regarding the fairness of the "standard of reasonability" so that the criteria for determining the existence of the need or necessity become clearer which are formulated as justification for taking actions which are: (1) proportional, reasonable or in proportion; (2) so that the said action may not exceed reasonableness or equality; (3)

which becomes the justification for the act itself.

In such a concept, of course the regulatory directives for compliance with health protocols during the Covid-19 pandemic and law enforcement aim to provide legal certainty and within the framework of law enforcement in handling the corona virus disease (Covid-19) as also intended in the formulation of the provisions of Article 5 of Law Number 30 of 2014. Based on the formulation of the provisions of Article 28J paragraph (2) of the 1945 Constitution of the Republic of Indonesia: First, the concept of limitation in terms of enforcement of health protocols including the application of law (sanctions) must be established and / or regulated in a Regional Regulation; Second, the regulation on the enforcement of health protocols and the application of the law (sanctions) is based solely on the respect for the rights and freedoms of others in terms of obtaining guarantees of human rights and the legal basis for acting for the government; Third, for public order in a democratic society, in this case, it is related to the threat from the corona virus disease (Covid-19) itself (Setyawati, 2020).

Taking into account the spread of Corona Virus Disease 2019 (Covid-19) which was declared by the World Health Organization as a pandemic in most countries around the world, including in Indonesia, it shows an increase over time and has caused casualties and greater material losses, which have implications for social, economic and social welfare aspects.

In addition, the implications of the Covid-19 pandemic have had an impact on a slowdown in

national economic growth, a decrease in state revenues, and an increase in state spending and financing so that various government efforts are needed to save the national health and economy, with a focus on spending on social safety net, and the recovery of world economy, including for businesses and communities affected. Then, the implications of the Covid-19 pandemic have also had an impact on the deterioration of the financial system as indicated by the decline in various domestic economic activities so that it needs to be jointly mitigated by the Government and the Financial System Stability Committee (KSSK) to take anticipatory actions to maintain financial sector stability. For this reason, the Government and relevant institutions need to immediately take extraordinary policies and steps in order to save the national economy and financial system stability through various relaxation policies related to the implementation of the State Revenue and Expenditure Budget (APBN) in particular by increasing the spendings for health, social safety nets, and economic recovery, and strengthening the authority of various institutions in the financial sector.

Based on these considerations, President Joko Widodo (Jokowi) had issued a Government Regulation in Lieu of Law (Perpu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease Pandemic (Covid-19) and / or in the context of Facing Threats that Endanger the National Economy and / or Financial System Stability signed on March 31, 2020. In accordance with Article 27 of this Perpu, the costs incurred by the Government

and/ or KSSK member institutions in the context of implementing state revenue policies include the policies in the fields of taxation and expenditure. The state, including the policies in the field of regional finance, financing, financial system stability, and national economic recovery programs, are part of the economic costs of saving the economy from the crisis and not the state's loss. In relation with the preparation of the Draft Regional Regulation on "Enforcement of Health Protocols in the Covid-19 Pandemic Period" in Maluku Province in 2020, in terms of financing, of course, it is based on the financial policies as stated in Law Number 2 of 2020 concerning the Stipulation of Perppu Number 1 of 2020 concerning Policy State Finance and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and / or in the context of Facing Threats that Endanger the National Economy and / or Financial System Stability.

#### D. CONCLUSION

Moving on from the description and explanation as stated in the previous chapters, The Enforcement of Health Protocols during the Covid-19 Pandemic in Maluku Province is very important in the framework of optimizing health protocol enforcement policies during the Covid-19 pandemic in Maluku. In the framework for the formation and formulation of the policies and regional legal products related to "Enforcement of Health Protocols during the Covid-19 Pandemic in Maluku Province", it is necessary to pay attention to the procedures for establishing Regional Legal Products as regulated in Permendagri

(Regulation of the Ministry of Home Affairs) Number 120 of 2018 concerning Amendments to the Regulation of the Minister of Home Affairs Number 80 of 2015 concerning the Formation of Regional Legal Products, It is necessary to have active community involvement (public participation) in the process of drafting and forming the Draft Regional Regulation on "Enforcement of Health Protocols in the Covid-19 Pandemic Period in Maluku Province", as the fulfillment on the principle of transparency as mandated in the provisions of Article 96 of Law Number 12 of 2011 and provisions of Article 354 of Law Number 23 of 2014. The Task Force for the Acceleration of Handling Covid-19 is the leading sector along with regional officers related to the enforcement of health protocols in the pandemic period of Covid-19 in order to work together in the formulation and formation of the Draft Regional Regulation on the Enforcement of Health Protocols during the Covid-19 Pandemic in Maluku Province.

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