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Validity of Instructions the Minister of Home Affairs of the Implementation of Restrictions for Community Activities Covid-19 Emergency in Indonesia

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Abstract

This study aims to test the validity of the discretionary legal product in the form of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions in Indonesia. This research is a normative legal research. The results of the study show the validity of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, based on the fact that the Ministerial Instruction as a form of policy regulation was born from the free authority (discretion) owned by the government. So in the context of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions in terms of its formation, it must refer to the provisions contained in Article 24 of Law Number 30 of 2014 concerning Administration. Government, based on the results of this study, this is not fulfilled.

Keywords: *Validity; Discretion; Covid 19*

Introduction

In the last 2 (two) years, the condition of countries in various parts of the world has experienced a disaster with the variant of the Covid-19 virus which has penetrated throughout the world since 2019 until now, where the number of sufferers is increasing. Covid-19 is a virus that causes an infectious disease caused by the acute respiratory syndrome coronavirus 2 (serever acute respiratory syndrome coronavirus 2 or SARSCoV-2). Covid-19 is a new type of virus that was discovered in Wuhan, Hubei, China in 2019.

The negative effects that are often caused by the spread of Covid-19 include industry, education, trade, economy, tourism and so on. Along with the impact and the increasing number of fatalities, the government has made strategies and policies to prevent the spread and transmission of Covid-19. As a country that makes law as the supreme commander (supremacy of law), the policies taken by the government must be based on applicable legal provisions. Likewise, in terms of implementing policies in

an effort to prevent the spread of the Covid-19 virus disease in the community, namely by implementing Large-Scale Social Restrictions (PSBB). However, the policies that have been implemented have not escaped criticism from practitioners, politicians, academics and the general public.

In its development, various legal products have been issued by the government (either the Central Government or Regional Governments) to contain the spread of Covid 19, the most recent of which is the regulation related to the Enforcement of Restrictions on Community Activities (hereinafter abbreviated as PPKM). This regulation regarding PPKM is applied through a legal product in the form of Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions. The instruction is addressed to all Regional Heads (both Governors, Mayors and Regents) in the Java and Bali Island domains to be then applied to the community, simply in the form of the Minister of Home Affairs Instruction Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Territory. In Java and Bali, the application is carried out by Regional Heads on the islands of Java and Bali.

The implications of the implementation of the Minister of Home Affairs Number 15 of 2021 by Regional Heads on the islands of Java and Bali have a direct impact on the community, for example: First, the closure of shopping centers and trade centers so that they have a direct impact on the community's economy. Second, the implementation of teaching and learning activities (Schools, Universities, Academies, Places of Education/Training conducted online, Third, places of worship (mosques, prayer rooms, churches, temples, temples and pagodas as well as other public places that function as places of worship) closed, and so on which essentially limits the movement of people. As it is known that legal products in the form of Government Instructions are very closely related to policy regulations or better known as discretion. In this case the author refers to Jimly Ashidiqie's view which states that several policy regulations or discretion, including: 1) circulars, 2) warrants or instructions; 3) work guidelines or manuals, 4) implementation instructions (juklak), 5) operational/technical instructions (juknis), 6) instructions, 7) announcements, 8) guidebooks (guidance), 9) terms of reference or Terms of Reference (TOR), and 10) work design or project design.

Based on this view, it can be said that the Instruction of the Minister of Home Affairs in the form of Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions can be categorized as policy or discretionary regulations. The concept of discretion itself cannot be separated from Freies ermessen's doctrine or terminology, namely related state administrative officials or institutions formulating a policy in the form of "juridische regels" such as guidelines, announcements, circulars and announcing the policy. Freies ermessen is a concept or facility that allows administrative bodies or officials to move or take action without being fully bound by the laws and regulations. The granting of Freies ermessen is actually a consequence of the adoption of the concept of a welfare state. The elements of Freies ermessen in the conception of the rule of law are: 1. Freies ermessen is intended to carry out public service tasks, 2. Freies ermessen is an active attitude of state administration officials, 3. Freies ermessen as the attitude of the action was taken on his own initiative, 4. Freies ermessen as an attitude of action aims to solve important problems that arise suddenly, 5. The attitude of these actions can be accounted for to God Almighty as well as to the law.

According to this theory, Government Instructions are classified as beleidsregel which must also be subject to the principles of establishing good laws and regulations. In addition, it must also comply with the principle of making good policy regulations (beginselen van behoorlijke regelgeving). Policy regulations that bind the public will cause problems if they do not comply with the principles of establishing laws and regulations, both formal and material principles. The question is whether the government's discretionary legal product in the form of an Instruction from the Minister of Home Affairs is the basis for regulation that has a direct impact on the basic rights of the community. As it is known

that the limitation of the basic rights of the community must be carried out through the procedure for the formation of legislation which in its formation involves the People's Representative Council or Regional People's Representative Council as a representation of the community, then the legal provisions that are allowed to limit the basic rights of the community are products law in the form of Laws (UU) or Regional Regulations (Perda).

However, if examined from the hierarchy of laws and regulations, Government Instructions are recognized in the legal system in Indonesia, this can be seen in Article 8 paragraph (1) of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislations as referred to in Article 8 paragraph (1) of the Law of the Republic of Indonesia Number 12 of 2011 amended by Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Establishment of Legislation, which states that:

> Types of Legislation other than those referred to in Article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Supreme Audit Agency, the Judicial Commission, Bank Indonesia, the Minister, agency, institution, or commission of the same level established by law or by the Government on the orders of the Act, the Provincial People's Representative Council, the Governor, the Regency/City Regional People's Representative Council, the Regent/Mayor, the Village Head or the equivalent..

The article above is the basis for the legitimacy of the position of Government Instructions or various other policy regulations in the Indonesian legal system, especially after the promulgation of Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as the Government Administration Law). The Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions is the legal material used because this legal product is the last legal product used in limiting community activities which includes a prohibition on exercising rights to activities. economy, right to worship. Meanwhile, the Instruction of the Minister of Home Affairs Number 03 of 2022 concerning the Implementation of Restrictions on Community Activities at Level 3, Level 2, and Level 1 Corona Virus Disease 2019 in the Java and Bali Regions did not do this and only carried out restrictions. Based on this, the problem raised in writing this article is "How is the validity of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions?".

Research Methods

The type of research in this research is normative juridical, namely the process of finding a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. With regard to the normative legal research method, the technique of collecting legal materials used is document study or literature study. The approach used in this research is the statutory approach, the conceptual approach. It is carried out using a deductive analysis technique by examining the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions with Law Number 30 of 2014 concerning Government Administration.

Discussion

As it is known that ministerial instructions as a form of policy regulation are born from the free authority (discretion) owned by the government. The making of policy regulations does not have a firm basis in the 1945 Constitution and formal laws either directly or indirectly. This means that policy

regulations are not based on the authority to make laws and therefore do not include statutory regulations. Policy regulations are a kind of shadow law of statutes or laws. Therefore, this regulation is also known as pseudo-wetgeving (pseudo legislation) or spigelrecht (shadow law/mirror).

According to Jimly, it is called a policy because it cannot be formally called or it is not in the form of an official regulation. For example, a circular letter from a minister or a Director General addressed to all levels of civil servants who are within the scope of his (internal) responsibility can be stated in the form of an ordinary letter, not in the form of an official regulation, such as a ministerial regulation. However, its contents are regulatory (regeling). So in the context of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions. If you want to see the basis for the validity of the authority to form the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, refer to the provisions contained in the Government Administration Law which regulates discretion and doctrine. -the doctrine of the experts.

However, the question is whether the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, which is one form of discretion in its formation, is in accordance with the Government Administration Law and the doctrines on discretion. As it is known, the most classic legal instrument for implementing government administration in order to create a just and prosperous society is the State Administrative Law (HAN). To achieve the goals of governance, the bureaucracy becomes an effective tool in carrying out state management.

The legal issue of the bureaucracy that is currently a problem is the intersection of the validity principle (wetmatigheid) and discretion (pouvoir discretion) of state officials (executive). Indeed, discretionary power lies in the power to carry out positions held by public officials. Power that gets very large political support will give birth to a strong government. In a welfare state, a strong government is indeed needed in order to bring the people towards a better welfare improvement. But history also records that. A strong government also has the potential to give birth to acts of state administrators that harm the community by abuse of authority or the exercise of excessive discretion.

Discretionary power is a type of power to use authority based on the initiative of officials. This power is given by law with the intention that officials can carry out their duties properly. In this condition, positions are prone to be abused, because along with carrying out public policies, it is easy to have the intention to attract personal or group benefits. The use of discretion has special conditions, so that in exercising its authority, officials do not act arbitrarily.

There are several legal experts who provide a definition of discretion including S. Prajudi Atmosudirjo who defines discretion as freedom to act or make decisions from authorized state administration officials according to their own opinions. Furthermore, he explained that discretion is needed as a complement to the principle of validity, namely the legal principle which states that every act or act of state administration must be based on the provisions of the law. However, it is not possible for the Law to regulate all kinds of position cases.

Discretion or policies in accordance with the Government Administration Law are decisions and/or actions that are determined and/or carried out by government officials to overcome concrete problems faced in the administration of government, expedite the administration of government, and provide legal certainty when the laws and regulations that provide choices do not provide rules. incomplete, unclear, and/or due to government stagnation. Its purpose is to fill legal voids and promote public benefit and interest.

Discretion or policy can only be exercised by authorized government officials. Government officials in making discretion are expected to remain in harmony or in accordance with the final goals that have been set and there must be a sine quo non condition that underlies the discretion made. The condition sine qua non is at least the absence and/or lack of clarity of a regulation that will be used to solve problems that arise in a state of urgency and coercion. Discretion at the implementation level must be in accordance with the rules of the law. The measure of discretion is according to the general principles of good governance and is based on the provisions of the legislation, including: honesty (fair-play), accuracy (zorgvuldigheid), purity in goals (zuiverheid van oogmerk), balance (evenwichtigheid), certainty law (rechts zekerheid). Specifically, the scope of discretion in accordance with Article 23 of the Government Administration Law, is: 1. based on the provisions of laws and regulations that provide a choice of decisions and/or actions; 2. because the laws and regulations do not provide rules; 3. because the laws and regulations are incomplete or unclear; and 4. because of the stagnation of government for wider interests. Article 24 of the Government Administration Law also requires that discretion: 1. be in accordance with the purposes of discretion as referred to in Article 22 paragraph (2); 2. does not conflict with the provisions of laws and regulations; 3. in accordance with the General Principles of Good Governance (AUPB); 4. based on objective reasons; 5. does not create a conflict of interest; and 6. done in good faith.

The discretionary requirements as referred to in Article 24 of the Government Administration Law are not without reason, it is required that discretion should not be misinterpreted that Government Officials can freely issue decisions and/or actions of their own free will without being based on corridors that must be obeyed, namely in the public interest, within the limits of its jurisdiction, and does not violate the AUPB. Every authority in a state of law does not recognize the existence of an independent authority. Authority (including binding authority) always has limitations that are dictated by laws and regulations.

Based on the discretionary requirements as referred to in Article 24 of the Government Administration Law, of the 6 (six) discretionary requirements regulated in Article 24 of the Government Administration Law, in this case the author will describe and describe the validity or validity of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning The implementation of the Corona Virus Disease 2019 Emergency Community Activity Restrictions in the Java and Bali Regions uses 4 (four) conditions stipulated in Article 24 of the Government Administration Law, which are as follows:

1. Purpose of Discretion in Accordance with Article 22 Paragraph (2) of the Government Administration Law

In a modern legal state, laws and regulations are expected to be able to "walk in front" to lead and guide the development and change of society. Maria Farida stated that in a state based on modern law, the main purpose of the formation of laws is no longer to create codification of the norms and values that have settled in society, but the main purpose of forming a regulation is to create modifications or changes. in community life. Yuliandri stated that the "legal policy" as outlined in the law became a means of social engineering, which contained policies that the government wanted to achieve, to direct the public to accept new values. Meanwhile, Hattu stated that in a modern legal state, it is necessary to establish laws and regulations that function as instruments to provide, regulate, limit and supervise the implementation of the duties and authorities of the Government and guarantee the rights of the people.

Regarding discretion by government officials, the purpose or legal policy of a legal product in the form of discretion taken can be seen as stated in Article 22 Paragraph (2) of the Government Administration Law, namely every use of Government Official's Discretion aims to: a. expedite the administration of government; b. fill legal voids; c. provide legal certainty; and D. overcoming the stagnation of government in certain circumstances for the benefit and public interest.

Regarding the purpose of establishing a legal product, the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, where in mid-2021 the Minister of Home Affairs issued an Instruction of the Minister of Home Affairs Number 15 of 2021 concerning Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, in which the circular contains policies regarding the implementation of restrictions on emergency community activities for Corona Virus Disease 2019 in the Java and Bali Regions.

The policy itself is actually based on the direction of the President of the Republic of Indonesia who instructs to implement the Corona Virus Disease (COVID-19) Emergency Community Activity Restrictions (PPKM) in Java and Bali in accordance with the criteria for the level of the pandemic situation based on the assessment and to complete the implementation of the Minister of Home Affairs Instruction. Government regarding the Limitation of Micro-Based Community Activities and optimizing the COVID-19 Handling Command Post at the Village and Sub-District Levels to Control the Spread of COVID-19.

Regarding the implementation of the Minister of Home Affairs Number 15 of 2021, the Regional Heads in Java and Bali have a direct impact on the community, for example: First, the closure of shopping centers and trade centers so that they have a direct impact on the community's economy. Second, the implementation of teaching and learning activities (Schools, Universities, Academies, Places of Education/Training conducted online, Third, places of worship (mosques, prayer rooms, churches, temples, temples and pagodas as well as other public places that function as places of worship) closed, and so on which essentially restricts the movement of people, or in simple language, the implementation of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Imposition of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions directly limits and negates aspects of people's basic rights or human rights.

So based on the direction and purpose of the government's discretion in the form of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, it is not or has not complied with the discretionary requirements regulated in Article 24 of the Government Administration Law which requires that the purpose of discretion is aimed at: a. expedite the administration of government; b. fill legal voids; c. provide legal certainty; and D. overcome the stagnation of government in certain circumstances for the benefit and public interest. Where is the purpose of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions in order to "Control the Spread of Covid-19". So the question is which part of the argument in Article 22 of the Government Administration Law is in accordance with the purpose of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, namely to control and spread Covid 19?

To borrow the view of Hans Kelsen, which states that law is a hierarchy of normative relationships, not a causal relationship and its essence lies in "what should exist (ought)" and "what is (is)" (Sollen und sein). Therefore, Kelsen's study of law is the legal norm, its elements, their interrelationships, the legal order as a whole, its structure, the relationship between different legal orders, and the unity of law in a pluralistic positive legal order. Legal reality is a phenomenon that is more designed as “the positiveness of law”, and in this case Kelsen clearly distinguishes between “emperical law and transcedental justice by excluding the letter from specific concerns.”

Law is not a manifestation of a "superhuman authority", but is a social technique based on human experience. Consequently, the basis of a law or its "validity" is not in meta juris principles, but in a juris

hypothesis, namely a basic norm determined by "a logical analysis of actual juris c thinking". Thus, Kelsen does not speak of the law as reality. in practice, but law as a scientific discipline, that is, what happens to law in practice is different from what is studied in legal science, which only studies positive legal norms, not ethical, political, or sociological aspects that can appear in legal practice.

As described above, that the value of the validity of a law lies in its conformity with other norms, especially basic norms. In this connection it can be explained that the basic norms can be divided into two, namely, static norms and dynamic norms. Static norms are norms that already have validity, so that the entire contents of these norms are adhered to and applied in individual and social life. Each content of these norms has a binding and coercive power, because it comes from a specific basic norm, has a validity that is believed to be and is seen as the highest (final) norm. The nature of status, because these norms have a general meaning that can be used in forming special norms. Meanwhile, dynamic norms are the formation of certain basic norms because they are not found in static norms, because of social developments, but are not associated with social reality. If social development has the will to realize a new norm, then its formation is still based on basic norms.

This means that the establishment authority is in accordance with the provisions contained in the basic norms. A norm is part of a dynamic system, if the norm has been created in a manner determined by the basic norm. The description above shows that a legal norm is valid, because it is made according to a method determined by another legal norm, and other legal norms are the basis for the validity of that legal norm. The relationship between legal norms that regulate the formation of other norms with other norms as the relationship between "superordination" with "subordination" or "superior with inferior norms" which shows the level or hierarchy of norms. The norm that determines the formation of other norms is the norm of a higher degree, and vice versa, the norm that is formed is of a lower degree. In this relationship, the relationship between higher norms and lower norms is a hierarchical norm relationship. The consequence is that a lower norm is not justified in conflict with the one above it.

Thus, a legal entity is a series of hierarchical relationships between norms that are not hierarchically contradictory to one another. Norms as a unit of values that live in society have coercive power, and are enforced, when these norms have been placed as statements of will, both statements of individual wills and statements of the will of legislators. The statement of will is realized either in the form of a legal transaction or in a law which contains elements of an order or obligation to be obeyed (validity) and implemented (effectiveness). This shows that every legal norm has an element of coercion, both on the side of compliance and on the side of its application, and for this an element of sanctions is introduced. The meaning of the validity of legal norms is that every material containing legal norms has binding and coercive power for certain legal subjects in carrying out every legal act. Meanwhile, the effectiveness of legal norms is in terms of the application of legal content by an organ that has the authority to implement a legal norm. If there is a case of violation of a legal norm, and the organ is unable to provide sanctions, then the legal norm can be said to be ineffective. Therefore, according to Kelsen, the validity and effectiveness of the law are two different things, namely validity is more concerned with the normative aspect, and effectiveness is more related to the process of applying norms.

Therefore, the provisions stipulated and contained in the government's discretion in the form of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions are no longer in line with the principle of legal effectiveness which at least in Substance matters must be designed properly, following the procedures for the formation of good laws (law making processes). It is not without reason that a legal norm must be formed and designed properly, it has a correlation with law enforcement itself. As Berndard L Tanya & Theodorus Y Parera put it:

"The substance of the law is the starting point of the law enforcement process (guidelines for law enforcement officers in carrying out the task of applying the law), so the quality of a rule of law to a certain degree will determine the process of its enforcement in law enforcement".

Meanwhile, the basis for the validity of a norm is always from the norm, and not from facts. The search for the basis for the validity of a norm is not from reality but from other norms that are the source of the birth of the norm. Therefore, a norm whose validity can only be obtained from higher norms, Kelsen calls "basic norms". The basic norm functions as a reference for every norm formation, so that the basic norm is also the main source and is a binder between different norms, in forming a normative order. In this view, if a norm is included in a certain norm system, the validity of that norm can be tested by the basic norm.

The positive law school developed by Hans Kelsen was also developed by John Austin. According to Austin the law is; "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him". In principle, positive law provides an affirmation that, first, a state legal system applies because it gets its positive form from an institution of power; second, the law is only seen from the formal form, so that the formal legal form is separated from the material law form; and thirdly, legal content is recognized as existing, but not as material for legal science.

So to borrow Kelsen's view, the government's discretion in the form of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions no longer fulfills the meaning of the intended legal validity, where a rule is said to have validity lies in in conformity with other norms, especially basic norms. In this connection it can be explained that the basic norms can be divided into two, namely, static norms and dynamic norms. Static norms are norms that already have validity, so that all of the contents of these norms are adhered to and applied in individual and social life, in this case the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions does not in accordance with the discretionary requirements as stipulated in the Government Administration Act.

2. Does Not Conflict with The Provisions of the Laws and Regulations

It is not without reason that the concept of discretion should not conflict with laws and regulations, considering that discretion (freies ermessen) is the government's obligation in a welfare state, in which the main task of the government in a welfare state is to provide public services or seek welfare. for citizens. The discretion that exists in Indonesia appears simultaneously with the assignment of tasks for the government to implement and realize the goals of the Indonesian state. Discretion is exercised by the administrators of the state in matters of: 1) The absence of laws and regulations governing the in concreto settlement of a problem that requires an immediate settlement; 2) The laws and regulations which are the basis for acting by government officials provide complete freedom.

The logical consequence is that if there are clear statutory regulations, discretion cannot be exercised, and state administration must be based on the clear statutory provisions. Likewise, for a statutory norm which is still considered vague and hinders the administration of the state, the discretionary policy must not straddle the main provisions of the norm.

Meanwhile, in the context of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions. At first glance, the basis for the issuance of discretion in the form of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions is based on an order from the President of Indonesia. Even though talking about policies for

handling infectious disease outbreaks, the basic arrangements have been regulated in Law Number 6 of 2018 concerning Health Quarantine, where in the regulation there is no terminology regarding "Enforcement of Restrictions on Emergency Community Activities", in Law Number 6 of 2018 Regarding Health Quarantine, some of the terminology used in the Law is Large-Scale Social Restrictions, Home Quarantine, Regional Quarantine, and various obligations that must be carried out by the Government and the community for the application of the 3 (three) types of terminology in an effort to control the outbreak of the infectious disease by still have to fully respect the dignity, human rights, basic freedom of a person.

If studied using the views of Lon Fuller, who introduced the following eight principles or principles of legality: 1) The legal system must contain regulations, meaning that it cannot contain only ad hoc decisions; 2) The regulations that have been made must be announced; 3) Regulations may not apply retroactively; 4) Regulations are arranged in an understandable formula; 5) A system must not contain rules that conflict with each other; 6) Regulations must not contain demands that exceed what can be done; 7) Rules should not be changed frequently; 8) There must be consistency between the promulgated regulations and their daily implementation. So the formation of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions is not in accordance with Lon Fuller's view, precisely at point 5 (five) in the principles of legality which requires that a legal system does not may conflict with one another.

In the concept of good law formation, if studied through the aspect of legal effectiveness, as one of the requirements for a rule or legal norm to be effective, then a legal norm must be designed properly. The opinion that the author uses about the effectiveness of the law is the view expressed by Howard and Mummers. The two experts put forward eight conditions for the law to be effective. The eight conditions are presented below.

a. The law must be well designed, the fixing rules must be clearly formulated and can be understood with certainty. Without clear standards like this, it is difficult for people to know what is actually required, so the law will not be effective.

b. The law, where possible, should be prohibitive, not mandatory. It can be said that prohibitor laws are generally easier to implement than mandatory laws.

c. The sanctions imposed by the law must be commensurate with the nature of the law being violated. A sanction that may be appropriate for one purpose may be deemed inappropriate for another.

d. The severity of the sanctions imposed on the violators should not be too heavy. Sanctions that are too severe and disproportionate to the type of violation will cause a reluctance in the hearts of law enforcers (especially the jury) to apply the sanctions consistently to certain groups of people.

e. The possibility to observe and investigate acts that are prescribed by law must exist. Laws made to prohibit actions that are difficult to detect, certainly cannot be effective. That is why the law wants to control people's beliefs or the beliefs of people are unlikely to be effective.

f. Laws that contain moral prohibitions will be much more effective than laws that are not in harmony with moral rules, or are neutral. We often encounter laws that are so effective, that it seems as if their presence is no longer needed, because these unwanted actions have also been prevented by moral forces and social norms. However, there are also laws that try to prohibit certain actions, such as the prohibition of tax arrears. Such a law is clearly less effective when compared to a law that contains moral understanding and views in it.

g. In order for the law to be effective, those who work as law enforcers must carry out their duties properly. They should promulgate the law widely. They must interpret it uniformly and consistently, and as much as possible in line with the sound of interpretation that may also be attempted by the affected community members. Law enforcement officers must also work hard and tirelessly to investigate and prosecute violators.

h. Finally, for laws to be effective, a minimal socio-economic standard of living must exist in society. Also, in this society, more or less public order must be easily maintained.

Therefore, the provisions stipulated in the government's discretion in the form of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions are no longer in line with the principle of legal effectiveness which at least in terms of substance must be well-designed, in this case the minister's instruction is contrary to the law above which in the end creates confusion and legal uncertainty. It is not without reason that a legal norm must be formed and designed properly, it has a correlation with law enforcement itself. In this case, there are also concerns, as it is known that a law that is not qualified will be prone to deviations in a pathological structure. According to him, the legal pathological seeds have started since a regulation was initiated. Very often, the making of a rule of law is driven by a momentary emotional reactive attitude without considering its relevance and significance in the wider context. Plus, sometimes the making of academic drafts is often carried out in a hurry and is only considered a legal drafting project, even though the content of the rules is much broader and richer that requires careful review and must involve as many relevant experts as possible.

In fact, some of the regulations that we currently have are copypaste from the regulations of other countries without paying attention to the real conditions and the overall context of the issues being regulated. Because the law is not only a building of rules but also a building of values and ideology. As a result of an immature and incomprehensive legislative process, it will give birth to defective regulations (substance pathology). The symptoms of substance pathology can be found in discriminatory and unfair regulations, the formulation is not firm (non lex carta) so that there are multiple interpretations, contradictions and can also overlap with other regulations (either equal or higher).

3. In Accordance with the General Principles of Good Governance.

Discretion is a very important and fundamental phenomenon, especially in implementing a public policy. With discretion, it is hoped that with the existing conditions a maximum result or goal can be achieved. This also coincides with the concept of a Welfare State adopted by Indonesia. Another factor is the weakness and limitations of laws and regulations faced by the Government. Although granting discretion to the government is a must in a legal state, the use of discretion is not without limits. This means that there are elements that determine whether discretion can be enforced by government officials, namely: a. Intended to carry out public service tasks; b. It is an active attitude of the state administration; c. The attitude of action is intended to solve important problems that arise suddenly; d. Existing law is unclear or does not regulate this issue; e. Such actions are in accordance with the Principles of Good Governance.

Based on the explanation above, one of the signs in the use of discretion and in making government policies must be based on the General Principles of Good Governance (AAUPB), in particular the principle of prohibiting the abuse of authority and arbitrary principles. In other words, government policies will be categorized as deviant policies if they contain arbitrary elements. The function of the general principles of good governance in the administration of government is as a guide or guide for the government or state administration officials in the context of good governance. In this connection, Muin Fahmal stated that the general principles of proper governance are actually signs for state administrators in carrying out their duties. These signs are needed so that actions remain in accordance with the real legal objectives.

The relationship between AAUPB and the act of discretion can be explained through a theory of function in law and society. According to this theory, AAUPB is an argument for the main actors in administrative law when they have to take decisions/actions. These principles help provide the best possible interpretation in society, assist in maintaining/supervising a policy so that it is legitimized in a society which at the same time has demands for fairness and justice. With regard to discretion, as a form of authority that is not fully bound by regulations as described above, both theoretically and in practice, government opens up opportunities for abuse of power. Abuse opens the faucet to conflicts of interest between government officials and the public who are harmed by the abuse of authority. Therefore, to measure whether government actions are in line with the principle of the rule of law or not, it can be assessed using the AUPB parameter.

Therefore, the deviation in the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, apart from the fact that there have been regulations at the level of the law that regulates the prevention of infectious disease outbreaks, namely Law No. Law Number 06 of 2018 concerning Health Quarantine. The Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions also deviates from various regulations above which can be said to be a deviation from the General Principles of Good Governance (AAUPB), where AAUPB can be compared to as traffic signs and travel guidelines in order to facilitate government relations, namely between the government and the governed or citizens. AAUPB is then used as the basis for evaluation and administrative efforts, as well as as an unwritten legal norm for government actions. In its development, AAUPB has the following important meanings and functions:

a. For state administration, it is useful as a guideline in interpreting and implementing statutory provisions that are vague, vague or unclear. Apart from that, at the same time limiting and avoiding the possibility of state administration using freies ermessen / carrying out policies that far deviate from statutory provisions. Thus, the state administration is expected to avoid acts of onrechtmatige daad, detournement de pouvoir, abus de droit, and ultravires.

b. For citizens, as justice seekers, AAUPB can be used as a basis for a lawsuit as stated in Article 53 of Law no. 5 of 1986.

c. For TUN Judges, it can be used as a tool to test and cancel decisions issued by TUN bodies or officials.

d. AAUPB is also useful for legislative bodies in drafting a law.

At first glance, the basis for the issuance of discretion in the form of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions is based on an order from the President of Indonesia. Even though talking about policies for handling infectious disease outbreaks, the basic arrangements have been regulated in Law Number 6 of 2018 concerning Health Quarantine, where in the regulation there is no terminology regarding "Enforcement of Restrictions on Emergency Community Activities", in Law Number 6 of 2018 Regarding Health Quarantine, some of the terminology used in the Law is Large-Scale Social Restrictions, Home Quarantine, Regional Quarantine, and various obligations that must be carried out by the Government and the community for the application of the 3 (three) types of terminology in an effort to control the outbreak of the infectious disease by still have to fully respect the dignity, human rights, basic freedom of a person.

4. Good Faith in the Application of Discretion.

The principle of good faith is used to avoid acts of bad faith and dishonesty that may be carried out by one of the parties, both in making and implementing agreements where this principle actually wants to teach that in social life in the midst of society, parties who are honest or have good intentions should be protected and vice versa. dishonest parties, should feel the bitter taste of dishonesty. Wirjono Prodjodikoro is of the opinion that good faith is needed because the law cannot cover future conditions. He stated that:

> There is no fruit of perfect human actions. Because the regulations mentioned above are only made up, by human beings only, then none of the regulations are perfect. These regulations can only cover circumstances where at the time the regulations were formed, the possibility was known. It was only later that it turned out that there were circumstances which had the possibility also been known before, of course or if they were included in the regulatory environment. In situations like these, it appears that the honesty factor of the interested parties is important.

Although the principle of good faith is understood as one of the important and influential principles in contract law, there is no comprehensive definition that can explain the meaning of good faith itself. Ridwan Khairandy argues that one of the problems in the study of good faith is the abstraction of its meaning, so that different understandings of good faith arise. Good faith does not have a single meaning, and until now there is still a debate about what good faith actually means.

In the context of discretion, the good faith contained in a discretionary policy can be measured through the above requirements, in the context of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions it can be said that it does not meet the elements in the discretionary requirements in Article 24 of the Government Administration Law, especially in terms of good faith in the formation of discretion, because they are contrary to the above regulations and also do not have a clear purpose as stated in Article 22 Paragraph (2) of the Government Administration Law..

Conclusion

Based on the research that the author did, it is known that the validity of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions, is based on the fact that the Ministerial Instruction as a form of policy regulation was born from free authority (discretion) owned by the government. So in the context of the Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions in terms of its formation, it must refer to the provisions contained in Article 24 of Law Number 30 of 2014 concerning Administration. Government, based on the results of this study, this is not fulfilled.

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