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Policy in the Era of Pandemic: Is Government's Legal Culture Affecting?

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Abstract

During the era of pandemic, the government was required to formulate policies that could protect its citizens from the spread of the pandemic, and also all the effects that were present because of it. Unfortunately, the Government is too late to take steps to anticipate the spread of Covid-19 Pandemic in Indonesia. And as the consequence, various policies are implemented, ranging from general policies to policies in the implementation technical level. As a result, several policies have been ignored by the community, ranging from the provisions of the Large-Scale Social Restrictions regulated through Government Regulations, to the technical provisions concerning restrictions on the travel of people in the context of acceleration of handling Covid-19. Social reality shows that the policies taken by the Government have not been successfully obeyed by the Indonesian people. Through Foucault's theory of power relations, it can be stated that the Government has lost its power during the Covid-19 Pandemic, because regulation as a reflection of the Government's power has not been demanded by the public. An interesting problem is, it turns out that the legal culture that lives in the community is not the cause of these neglection, but the legal culture of the Government itself in determining various policies during the pandemic is the main cause.

Keywords: Covid-19 Pandemic; legal culture; policy.

Abstrak

Di dalam masa pandemi, pemerintah dituntut untuk dapat mengeluarkan kebijakan yang melindungi warga negara dari penyebaran pandemi berikut segala dampaknya. Namun nampaknya Pemerintah terlambat mengambil langkah untuk mengantisipasi penyebaran Pandemi Covid-19 di Indonesia. Konsekuensinya ialah, berbagai kebijakan ditetapkan, mulai dari kebijakan yang bersifat umum sampai dengan kebijakan dalam tataran teknis implementatif. Alhasil, satu-persatu kebijakan diabaikan oleh masyarakat, mulai dari ketentuan Pembatasan Sosial Berskala Besar yang diatur melalui Peraturan Pemerintah, sampai ketentuan teknis mengenai pembatasan perjalanan orang dalam rangka percepatan penanganan Covid-19. Realitas sosial menunjukkan bahwa kebijakan yang diambil Pemerintah belum berhasil ditaati oleh masyarakat Indonesia. Melalui teori Foucault soal relasi kuasa, dapat dinyatakan bahwa Pemerintah telah hilang kuasanya di masa Pandemi Covid-19 ini, karena regulasi sebagai refleksi kuasa Pemerintah telah tidak diminati untuk ditaati oleh masyarakat. Permasalahannya yang menarik ialah, bukan soal budaya hukum dari masyarakatnya, tetapi budaya hukum dari Pemerintah itu sendiri untuk menetapkan berbagai kebijakan di masa pandemi.

Kata kunci: Pandemi Covid-19; budaya hukum; kebijakan.

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Introduction

Year 2020 is the period of bleak for some countries in the world including Indonesia, being attacked by the pandemic Covid-19. Various problems arose, causing panic from the public side and the government side. Since this outbreak attacked the few countries in the world, the Indonesian government happened to be relaxed about this extraordinary inci-

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dent. The absence of a policy that was formed as a preventive measure in dealing with an outbreak that could potentially enter Indonesia was the beginning of an emergency like today.

The government which should be at the forefront of protecting the entire nation and its people, has apparently not been responsive in issuing several policies to deal with emergencies caused by the pandemic Covid-19. In fact, the consequences of Covid-19 emergency are not only in the health sector, but also in other sectors such as the labour sector, trade and the service sector (Hermansyah, 2020). However, instead of forming policies that can improve the situation, the government chose to form policies that are considered unplanned and even tend to be controversial.

Some of the controversial policies that were present in the midst of the pandemic, such as Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policies and Financial System Stability for Handling the Covid-19 Pandemic, which are considered to have articles that degrade people's rights because they give immunity to state administrators, Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the context of the Acceleration of Handling Corona Virus Disease 2019 (Covid-19), which ultimately is not effectively enforced in each province because considered to have no explicit substance.

The policies that formed are considered too shallow cause only touch the surface of the problem and not address the root of the problem. The policies that formed during this pandemic are allegedly not having a strong basis and are not directly proportional to the conditions that should be handled. Which in the end gave birth to an indifferent attitude from the community towards the policies that had been formed?

Referring to Foucault's theory of power relations, it can be stated that the government has lost its power due the bad legal culture that the government has. The legal culture that lives in the ranks of the rulers is considered to be inversely proportional to the legal culture that lives in society, so that it has implications for the loss of the obedience of the community to policies formed by the government.

Legal culture itself is defined by Lawrence M Friedman as a pattern of knowledge, attitudes and behaviour of a group of people towards a system, which later on these patterns can determine the extent to which a system can be enforced in its society (Friedman, 1975). Legal culture is divided into two types, first, Internal Legal Culture, namely the legal culture of citizens who carry out legal duties and act as state administrators. Second, External Legal Culture, namely the legal culture of society in general/society at large (Lev, 1980). One of the fatal mistakes in law enforcement in Indonesia is the focus of the state to build a legal culture that is present from its people, and tends to ignore the legal culture that lives in the government. In fact, if we look back, the legal culture that is owned by the community must be directly proportional to the legal culture that is owned by the lawmakers. This is important so that the legal products produced by legislators have the power to be obey by the people.

One of the legal cultures of policy makers today is an egocentric nature which continues to be used as a guide in their action. The excessive sense of ownership of the authority possessed by political actors makes them deny the principles of openness and efficiency in forming policies and shaping regulations. The loss of depth of analysis on conditions requiring legal protection is also the cause of the sporadic growth of regulations and policies.

In this article, the author found the social reality which states that the loss of the spirit of government policies in the eyes of the community is the result of a bad legal culture which used by the government in shaping every public policy. Not determining the priority scale is also an old character of policy makers, so that many policies formed during this pandemic are not aimed at controlling the pandemic itself, but only exist as a solution to the respective tendencies in the government.

Research Problems

When the policies have been formed by the Government, but still unable to encourage public behaviour to comply, this is a reflection of the validity of the policy itself and its relationship to government power. So far, the focus of statutory regulations has always been on the public as a regulated address, so that changes in their behaviour become a benchmark for the validity of legal norms in statutory regulations. In fact, the legal culture of the Government to establish a policy in the form of legislation is what determines the validity of a legal provision in the legislation. Therefore, this paper describes an analysis of the problem of how the legal culture of the government is in determining policies to overcome the Covid-19 pandemic

Research Method

The questions that arise in this paper are answered using an anthropological approach, but due to the pandemic situation, this approach is carried out normatively based on secondary data. Secondary data used is based on primary, secondary and tertiary legal materials.

Through these materials, the researcher obtained data which was then analysed qualitatively. However, because it is based on secondary data, only assumptions that need to be proven empirically using primary data are obtained. With an anthropological approach based on primary data, answers will be obtained regarding the legal culture of the government when establishing policies, especially for overcoming emergencies, such the pandemic situation.

Discussion

Legislation as a Form of Public Policy

Looking at the concept of legislation as stated in Article 1 number 2 Law Number 12 of 2011 as amended by Law Number 15 of 2019 concerning the Formation of Legislation, it can be interpreted that legislation are "written regulations which contains generally binding legal norms established or stipulated by state institutions or authorized officials through procedures stipulated by statutory regulations. " This means that there are no unwritten laws and regulations.

This understanding cannot be equated with policy regulations. Even though it is called a regulation, this policy regulation does not always have to be written and binding in general (Kurniawan, 2017). Sometimes, an understanding of laws and regulations with policy regulations and even the policy itself is not clearly interpreted. The result is the exchange of concepts often occurs in the world of practice, like what should be levelled with policy regulations is then so-called to be policy. For example, the matter of Norms, Standards, Procedures and Criteria which should be contained in policy regulations (Ministerial Decrees or Ministerial Instruction and even Circular Letters) is forced into legislation, and what is set forth in the instructions is also known as legislation instead of as a policy regulation.

In fact, the concept of policy (without - regulation -) can be used to describe both, namely legislation with policy regulations. This can be seen from the theoretical understanding given by James P. Lester, that policy - public - is "a process or series of government policies or activities designed to solve public problems, whether they are real or planned." (*ibid*)

One more policy concept that relevance to this paper is given by Carl Friedrich. Policy is defined as "a direction of action proposed by a person, group or government in a certain circle that provides obstacles and opportunities to policies. proposed to use and overcome in order to achieve a goal or realize a specific goal or purpose. " (Winarno, 2011)

From this understanding, it can be stated that policies are government actions, both written and concrete actions to achieve certain goals and overcome certain problems. Thus, the concept is clear from the (public) policy that can include government actions, both those set forth in written legislation or not. This means that everything that decided and agreed upon by the Government is a policy that cannot be denied by the Indonesian people. This is because the policy has been agreed upon by the policy makers as the bearer of the people's mandate to run the government according to the 1945 Constitution of the Unitary State of the Republic of Indonesia.

Based on this understanding, legislation is actually included in the government's (public) policy package to direct an action or behaviour, for community groups and even the government itself with the intention of solving public problems or to encourage the achievement of common goals.

It is said so, because in its formation, based on the meaning of legislation, it is formed by a state institution or authorized official. The establishment or stipulation is aimed to achieve certain goals. The goal is to solve problems or meet legal needs. This is inferred from the definition given by the Law Number 12 of 2011, as amended through

Law Number 15 of 2019 regarding academic paper as a manuscript result of legal study and research which will be the basis of the argument for setting a problem through Law as a solution to these problems or fulfilment the legal needs (UU 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan). Therefore, through written legislation, the direction of action from the Government should be clear to solve a certain problem or to achieve certain goals. Then in the formation of policies in the form of legislation, it should be based on a study which states that there are important public problems that cannot be resolved unless the establishment of regulation is reached.

The Influence of Legal Culture on Legal Politics

Legal Politic is the policy of state administrators regarding indicators that serve the criteria for punishing something, which includes the formation, implementation and enforcement of laws (Wahjono, 1986). Legal Politic also defined by Moh Mahfud MD as a legal policy official lines about the law that will be enforced either by the new law or as the replacement of the old law, in order to achieve the objectives of the state (MD, 2009).

Legal Politic is an important element in a rule of law's country like Indonesia because it contains the direction, scope and objectives of positive law. The Legal Politic is important for building the legal culture of Indonesian society, so that goals can be achieved. This is because the legal culture has the huge influence in developing the legal system which contained by values that live in the community and the government (Arief, 2009).

Therefore, the development of a legal culture is an important aspect to consider in determining the legal politics, because the end of this legal politics is the development of the legal system. If the legal culture aspects of the development the legal system are not considered, it is feared that will pose a risk to the effectiveness and efficiency of the development the legal system through the substance of policies, in the form of legislation. Thus, legal politics are believed to be able to influence one another, because policies which are the product of legal politics will be determined by the substance and the actor's behaviour which come and influenced by the legal culture.

Currently, Indonesian legal politics is very difficult to monitor, especially in a pandemic condition which always brings fluctuating situations. The lack of clarity in Indonesia's legal politics is caused by the behavior of policy-making actors who are unable to determine the priority scale in shaping policies. The lack of determining the priority scale is proven during a pandemic like this, the government not only did not provide wide space for public policies specifically made for handling pandemics, but also did not focus on discussing regulations that should not be a priority in an uncertain state. Such as the omnibus law draft on creating work and the draft law on the state ideological direction.

The weakness of the legal politics that Indonesia has is also illustrated by its sporadic policies whose presence actually creates new problems in the regulatory and policy order. The problems that arise also diverse, ranging from ministerial policies that collide with one another, such as the Regulation of the Minister of Health Number 9 of 2020

concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) which regulates the prohibition of motorcycle operations, with the aim of transporting passengers, which is in substance contrary to the Regulation of the Minister of Transportation Number 18 of 2020 concerning Control of Transportation in the Context of Preventing the Spread of Corona Virus Disease 2019 (COVID-19) which states that motorbikes for the purpose of carrying passengers are allowed by implementing health protocols.

Then there are also problems in policies whose substance is not in line with the needs of the community in dealing with this pandemic, such as Law Number 2 of 2020 concerning Stipulation of the government regulations in lieu of laws Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic, which in fact focuses on distributing funds from the government side. Furthermore, this law also considered contained articles that degrade people's rights because it gives freedom to state administrators regarding the use of funds during a pandemic.

The low quality of the policies formed by the government during the pandemic was caused by the pattern of policy formation that used a "wholesale" system. The government feels the need to make a package of policies in a short time without paying attention to quality on the grounds due the legal vacuum. This can happen because Indonesia does not have adequate regulations and policies to handle unpredictable situations.

With the patterns of policy formation that have become part of the legal culture of the government as elaborated above, the public cannot be blamed if they think that the government is simply aborting its obligation to form the policies. As a result, the policies that were born could not be implemented and even drew criticism from various levels of society.

Analyzing the Government's Legal Culture in Forming Policies during the Pandemic

Legal culture that is understood through an anthropological approach is an attempt to create social order. This effort is carried out with social control. One of the instruments to exercise social control is laws and regulations which are part of policy. The field of anthropology considers that legal culture cannot be separated from empirical conditions, so that law as an instrument of social control is indeed formulated to be characterized by local wisdom that is owned by a particular area (T.O, 1985).

Therefore, although legal transplantation has a strong tendency to be carried out in the development of a national legal system, the national identity as a character of ideas and concepts in the formation of legal norms for the development of a national legal system must be highlighted in a dominant position (Purwadi, Sulistyono, Firdausi, 2015). This means that in the midst of pressure for the concept of a foreign legal system in Indonesia, a legal culture characterized by Indonesian local values must be able to excel in the formation of the legal system in Indonesia, so that the gap between values can be

minimized. Thus, legal culture must be understood as values, thoughts and expectations of the rules or norms in the social life of society (Purba, 2017).

Today, policies that are formed reflect the legal culture that lives among the actors who make it. This is in line with the statement conveyed by Charles Linbolm, that in understanding the policy formulation process we need to understand the actors involved or the actors in the policy formation process, both official and informal actors (Bintari, Pandiangan, 2016). The Government has the responsibility to embody the law in action from the law in the book. This shows that what happens in society becomes a prioritized element for the formation of the national legal system. Legal culture in Indonesia is not an easy problem, because the pluralistic society in Indonesia. Therefore, it is necessary to strengthen the legal culture to build policies in the form of laws and regulations. The pattern of policy formation that is always guided by the needs and social values that live in society is a necessity that is expected to be realized.

Legislation is a form of policy as an instrument to become the basis for government legal action and concrete action. As a form of policy, laws and regulations must be interpreted as a series of activities to solve public problems. One of the public problems and has become an emergency situation since March 2020 is the Covid-19 pandemic. Since the Covid-19 pandemic outbreak, the Government has formed various policies in addition to preventing the wider transmission of Covid-19 and accelerating treatment, the government also claims that policies in the form of laws and regulations taken are also to anticipate the impact of Covid-19 transmission, especially for the economic sector.

Since experiencing the Covid-19 pandemic, the Head of the National Disaster Management Agency has determined the status of certain conditions, by forming a Decree of the Head of the National Disaster Management Agency Number 9.A. Year 2020 concerning Determination of the Status of Certain Disaster Emergency Conditions for Corona Virus Outbreaks in Indonesia which is valid for 32 days from 28 January-28 February 2020. Extended by Decree of the Head of the National Disaster Management Agency Number 13.A Year 2020 concerning the Extension of the Status of Certain Disaster Outbreaks in Indonesia which is valid for 91 days from 29 February-29 May 2020.

Accelerating the handling of certain emergency status of disease outbreaks due to the corona virus in Indonesia, the President formed Presidential Decree No.7 of 2020 concerning the Task Force for the Acceleration of Handling Coronavirus Disease (COVID-19) by appointing the National Disaster Management Agency as the coordinator. This Presidential Decree is stipulated based on the recommendation of the Head of the National Disaster Management Agency through the Decree of the Head of the National Disaster Management Agency which is also stipulated by referring to Law Number 24 of 2007 concerning Disaster Management, and Presidential Regulation Number 17 of 2018 concerning Implementation of Disaster Management in the State Certain. Through this Presidential Decree, it was emphasized that the implementer of national disaster management caused by the Covid-19 pandemic was the Task Force for the Acceleration of Handling Covid-19 by synergizing between ministries/agencies and local governments.

With this stipulation, there are technical consequences that must be fulfilled by the Government regarding the determination of national disaster status based on Government Regulation Number 21 of 2008 concerning Disaster Management.

After the President determined the status of an emergency, the President formed the Government Regulation Number 21 of 2020 concerning in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19). Concurrent with Large-Scale Social Restrictions that, the President formed Government Regulation in Lieu of Law Number 1 of 2020 on State Finance Policy and Financial System Stability for Handling Corona Virus Disease Pandemic 2019 (COVID- 19) and/or in the Framework Facing Threats Endangers Economy National and/or Financial System Stability. Government Regulations of Large-Scale Social Restrictions that comes as implementing regulations of Law Number 6 of 2018 on Health Quarantine. However, from some discourse compiled, Government Regulations of Large-Scale Social Restrictions has limited material content, and are not qualified **enough to carry out a predetermined through Law concerning the Health Quarantine.**

Likewise, Government Regulation in Lieu of Law Number 1 of 2020 whose zeal is to regulate the stimulus in the net provision of social safety for the people who cannot afford when faced with a pandemic situation. Instead of dealing with the risks that befall the economy due to the Covid-19 pandemic, Government Regulation in Lieu of Law Number 1 of 2020 is considered to have problems in its content because in the viewpoint of various circles it only benefits businessmen and officials who are given legitimacy to take action such determined through Government Regulation in Lieu of Law Number 1 of 2020. On April 3, 2020, the President formed the Presidential Regulation Number 54 of 2020 on Posture Changes and details State Budget of 2020. This Presidential Regulation is a follow-up to Government Regulation in Lieu of Law Number 1 of 2020 Number 1 of 2020 which has currently been ratified as Law Number 2 of 2020. Based on this Presidential Regulation, the budgets of several ministries are cut by Rp. 97, 42 trillion (Kedubes RI di Brussels, <https://kemlu.go.id/brussels/id/news/6349/kebijakan-pemerintah-republik-indonesia-terkait-wabah-covid-19>, diakses 7 Agustus 2020).

Besides having Law Number 6 of 2018 concerning Health Quarantine, Indonesia currently also has Law Number 2 of 2020 to deal with pandemics. In addition, the Central Government and Regional Governments have issued various policies, both in the form of laws and regulations and stipulations to deal with the Covid-19 pandemic situation. Of course, this policy was issued by the Government, in addition to legitimizing the actions of the Central and Regional Governments in handling Covid-19, as well as to provide protection and fulfilment of citizens' human rights during Large-Scale Social Restrictions. However, from this policy, various problems arise, and the number of cases infected with the virus is increasing day by day.

From the study of the Indonesian Forum for the Environment, it was found that there was a lack of a human rights perspective in determining policies during the Covid-19 pandemic, which caused riots over policies to tackle the COVID-19 pandemic outbreak in Indonesia. The Indonesian government has not really made efforts to fulfil the rights to

health of citizens, for example by eliminating and increasing the number of COVID-19 tests without commercialization at high rates for citizens to access, reducing the fees for Social Security Administering Bodies for class 1, equalizing the provision of social assistance (Walhi, <https://www.walhi.or.id/pemerintah-indonesia-harus-menyudahi-kehidupannya-dalam-penanggulangan-wabah-pandemi-covid-19>, diakses 8 Agustus 2020).

Even the absence of a legal basis is one of the problems in overcoming the COVID-19 pandemic outbreak in Indonesia. Until now, there has been no implementing regulation from Law Number 6 of 2018 concerning Health Quarantine. The government has instead formed a Government Regulation related to Large-Scale Social Restrictions, which of course are still limited and not in accordance with the material capacity of the content of the Government Regulation. This shows that the policies taken by the Government, including laws and regulations, are partial and not integrated. The impression given is that the Government in overcoming the COVID-19 pandemic outbreak is not using the right approach in a series of activities to solve public problems, such as the Covid-19 pandemic. No wonder, if the results show less effective in society.

The ineffectiveness of a policy, including regulations, shows how successful the development of the previous national legal system was, because the people were patterned to control themselves in a social order. If a policy has not been effective, then the legal culture has not been able to develop properly, so that extra efforts (such as the application of sanctions) are needed to increase the level of awareness to build a legal culture.

In addition, this ineffectiveness shows the reality as theorized by Michel Foucault about power relations and strategies between humans. According to Foucault, the ability to determine rules and not depend on outside power shows the existence of power. The power is formed because of relations, so that real power is not a transferable property. Through power one can see fixed boundaries between one another. It appears that there is a mechanism or strategy that gives emphasis. However, the emphasis is not repressive and non-dialectical, but through regulation and construction.

The power that seems less demonstrated by the Government when determining policies during the Covid-19 Pandemic, so there is less visible boundaries and emphasis between what should be done and what cannot be done and the subjects. Such regulations are not able to optimally construct the things that need to be done by the community during the Covid-19 pandemic, as one solution to resolve this emergency. Caused by the legal culture of the community and the Government in responding to emergency situations.

The need for economic fulfillment is the main reason for not complying with regulations as a means/ instrument of social control during the Pandemic. This happens because the policy of providing social assistance provided by the Government is not evenly distributed, while the necessities of life continue. The weak understanding of the institutionalized legal culture like this makes regulation as a policy instrument ineffective.

The government as a policy maker in the form of regulations or laws and regulations, also shows weak legal politics, so that the direction of the formation of the national legal system is not well framed in terms of substance, structure and legal culture. As a policy maker, the legal culture possessed by the Government must be in the form of stability in understanding plural public problems, so that policies produced by the Government are systematically read as a series of activities to achieve certain goals.

So far, the political art of law that is carried out by the Government has continuously been patterned sporadically without understanding the fundamental problems that become real public problems. This results in the policies taken unable to solve the real problem, and the goals achieved can be said to be false goals. This assumption is supported by many overlapping laws and regulations, causing problems, both in the bureaucracy and for public services, as well as the submission of judicial reviews to the Constitutional Court and the Supreme Court.

Conclusion

The legal culture of the government in establishing policies to overcome the Covid-19 pandemic shows weak legal politics, so that the direction of the formation of the national legal system is not well framed, in terms of substance, structure that will appear to have failed in the legal culture. So far, the political art of law that is carried out by the Government has continuously been patterned sporadically without understanding the fundamental problems that become real public problems. This shows that the legal culture of the Government in determining policies is not well institutionalized. This results in the policies that are taken is unable to solve the real problem, and the goals achieved can be said to be false goals.

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