

**Implementation of Community Activities Restrictions During The Covid-19
Pandemic in Criminal Law Perspective**

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Abstrack: *Minister of Transportation Regulation Number 25 of 2020 on Transportation Control during the Idul Fitri Homecoming Year 1441 Hijri in the context of Preventing the Spread of COVID-19. This Regulation of the Minister of Transportation Number 25 of 2020 regulates the transportation system during the Large-Scale Social Restrictions (PSBB) implementation, especially related to the 2020 Idul Fitri Homecoming. The formulation of the problem in this study: first, how could the elements of actions be categorized as violations of criminal law norms? second, could the violation of the prohibition of homecoming be categorized as a violation in the criminal law?. The purpose of this study is to find out that violations of the homecoming ban have met the elements that can be categorized as violations of criminal law norms. The research method used normative legal research for this research and used the Theory of Legal Effectiveness for the theory. This study concludes that: First, an act that can be categorized as a violation of criminal law, then there must be elements of a criminal act, both from a theoretical and legal point of view. Second, that the Ministerial Regulation (Permen) cannot contain criminal provisions.*

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Introduction

This research is motivated by the author's academic anxiety that arose as a result of the issuance of the Minister of Transportation Regulation Number 25 of 2020 on Transportation Control During the Eid Al-Fitr 1441 H Homecoming Season in the context of Preventing the Spread of COVID-19, where the issuance of this Minister of Transportation Regulation caused turmoil for and against the Indonesian people. Those who are pro with the issuance of the Minister of Transportation argue that the homecoming ban set by the government is very appropriate for it is believed to be able to

prevent the spread of the COVID-19 virus. The rules for eliminating the 2021 Lebaran homecoming are enforced since "direct" gatherings in the community may trigger physical contact that increases the potential for COVID-19 transmission, particularly in the family. Moreover, the majority of the homecomers' target places are the homes of their parents or older relatives. In addition, government data shows that the mortality rate for COVID-19 patients is dominated by the elderly. The older a person is, the less likely it is to recover from illness. Moreover, the activity of forgiving each other during Eid could still be carried out by Muslims through the means of communication technology. Meanwhile, those who are against the issuance of this Minister of Transportation Regulation argue that the homecoming ban will actually result in the people's economy to be worse for the money circulation is at its peak when homecomers return to their hometowns. However, even though the author observes the behavior of the community since the issuance of this Minister of Transportation Regulation to its implementation as well as the impact of the implementation of this homecoming ban, the author more specifically analyzes the homecoming ban regulated in this Minister of Transportation Regulation in the perspective of criminal law.

The implementation of law in daily lives has an essential meaning, for the purpose of the law lies in the implementation of the law (Syahrani, 2013). The law shall be implemented and enforced. Law enforcement does not signify the mere execution of legislation, nevertheless, enforcement of the law contains values in accordance with the 1945 Republic of Indonesia Constitution and Pancasila (Soekanto, 2013).

The law enforcement factors, or the individuals who create or apply the law, The legal factors themselves, the facility factors, or facilities that support law enforcement, the community factors, or the setting in which the law applies or is applied, and the cultural factors, or the works, creations, and preferences that are based on human nature in the association of life, are the factors that have an impact on law enforcement (Wahyudi et al., 2019). In reality, these five factors are interconnected because they define law enforcement at its core and serve as a yardstick for its efficiency.

The government has announced policies for the restriction of transportation during the Eid homecoming time due to the COVID-19 virus's spread throughout this country's many regions. These policies were released by the Minister of Transportation. By establishing a national ban on homecoming, the government is attempting to contain and disperse the COVID-19 virus. The ban is outlined in the Transportation Minister's Regulation No. 25 of 2020 on Transportation Control During the Idul Fitri Homecoming Year 1441 Hijri in the Context of Preventing the Spread of COVID-19. Researchers examined whether or not the homecoming ban was violated by this Minister of Transportation Regulation from the standpoint of criminal law.

Minister of Transportation Regulation Number 25 of 2020 regulates the transportation system during the implementation of Large-Scale Social Restrictions (PSBB), especially regarding 2020 Idul Fitri Homecoming. In addition, the regulation prohibits the use of all modes of transportation for

the 2020 Idul Fitri Homecoming transportation, both land, sea, air, rail transportation, and vehicles. Private and public transportation for the wider community, for example public transportation, particularly planes, buses, trains, passenger cars, crossing transportation for lakes, rivers, and the sea, as well as private vehicles, particularly motorbikes and cars. However, several types of transportation, particularly Vehicles for the Leaders of the State High Institutions of the Republic of Indonesia, are exceptions. The prohibition on the use of transportation is applied to vehicles that leave and/or enter in areas such as: the Red Zone of COVID-19, PSBB areas, and in agglomeration areas that have been established by PSBB, such as for example, Greater Jakarta. The regulation has sanctions ranging from receiving warnings and reprimands to giving fines for users of private vehicles carrying passengers with the aim of going home. The phase of sanctions are as follows: 1. 24 April-7 May 2020 will be given a warning and directed to return (turn back) to the origin of the trip 2. From 7 May-31 May 2020 are directed to return and may be subject to fines or other sanctions in accordance applicable provision. Meanwhile, the phases for the implementation of the Minister of Transportation Regulation Number 25 of 2020 are: 1. 24 April-31 May 2020: Prohibition for the land and crossing sectors; 2. 24 April -15 June 2020: Prohibition on rail transportation; 3. 24 April-8 June: Prohibition for ship transportation, and 4. 24 April-1 June 2020 Prohibition for air sector transportation (Suprpto, 2020).

According to Minister of Transportation Regulation Number 25 of 2020, there are pros and cons to the prohibition of homecoming. According to Refly Harun, the prohibition is against human rights, for on the basis of the 1945 Constitution and the Law of the Republic of Indonesia Number 39 of 1999 on Human Rights in Article 27 paragraph (2) states that every Indonesian citizen possesses the freedom to leave and enter the territory of the Republic of Indonesia, in compliance with the laws and regulations. On contrary to Refly Harun, State Administrative Law expert at the University of Nusa Cendana (Undana), Johannes Tuba Helan argues that there are no human rights violations in prohibition of homecoming issued by the government. According to Helan, the policy is a form of implementing the responsibility of the state or government for the safety of its people. The enactment of these regulations aims to protect human rights for citizens, particularly the right to life and the right to health (Rosyida, 2020).

In Indonesia, all the rules are contained in the laws and regulations. In Law Number 12 of 2011 on the Establishment of Legislations, ministerial regulations are not included in the order of laws and regulations in Indonesia. Ministerial regulations are made to implement higher regulations

The higher regulations that form the basis for the formation of the Minister of Transportation Regulation Number 25 of 2020 is noticeable on the basis of considering of the Minister of Transportation Regulation. The law directly in relation to the basis for the formation of the Regulation of the Minister of Transportation Number 25 of 2020 is Law Number 6 of 2018 on Health Quarantine.

Based on Law Number 12 of 2011, criminal provisions cannot be contained in a ministerial regulation. Therefore, the Regulation of the

Minister of Transportation Number 25 of 2020 may not contain provisions for criminal sanctions. The criminal sanctions referred to by the Minister of Transportation Regulation Number 25 of 2020 are criminal sanctions regulated in Law Number 6 of 2018. The sanctions imposed for violations of the prohibition of homecoming refer to Article 93 of Law Number 6 of 2018 on Health Quarantine which articulates: "Everyone who does not comply with the implementation of the Health Quarantine and/or obstructs the implementation of the Health Quarantine causing a Public Health Emergency shall be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah)." This article is possible to be imposed on any person who does not obey or hinder with the execution of health quarantine, including those who violate the provisions of the Regulation of the Minister of Transportation Number 25 of 2020.

Criminal sanctions in criminal law aim to improve the behavior of the perpetrator himself, create a deterrent effect and not commit crimes, besides that it also aims at the benefit of society itself (Sukmawijaya, 2019). According to Teguh Prasetyo, criminal law aims to: a. scare everyone not to do bad deeds (classical tradition); b. educate people who have committed crimes to be good people and be accepted back into the life of their environment (modern stream (Prasetyo, 2015).

Based the background information provided above, there are several problems that will be studied in this research are as follows: First, how could the implementation of Minister of Transportation Regulation Number 25 of 2020 overcome the spread of COVID-19? Second, could the violation of the prohibition of homecoming be categorized as a violation in the criminal law?. The purpose of this research is to find out that violations of the homecoming ban have met the elements that can be categorized as violations of criminal law norms.

Research Method

The normative legal research method is used. Normative case studies are used in normative law research in the shape of products of legal behavior, particularly law studies. Doctrinal legal research, often known as library research, is another name for the normative legal research approach. It is known as "doctrinal law research" since it exclusively focuses on written regulations; as a result, it is extremely closely tied to libraries because this normative legislation will need secondary data from such facilities. The type of approach used is a statutory approach and a case approach, where the author uses the Criminal Code (KUHP), Law Number 6 of 2018 on Health Quarantine as the primary legal material in this study. The secondary legal material in this study is the The prohibition is regulated in the Minister of Transportation Regulation Number 25 of 2020, Decree of the Minister of Transportation Number 116 of 2020 on Extension Period Minister of Transportation Regulation Number 25 of 2020.

The theory used in this study is the Theory of Sociological Jurisprudence. Sociological jurisprudence examines law not only in the study of regulations but also looks at the effects of law and the workings of law

(known as *law as a tool of social engineering*). According to sociological jurisprudence, a good law must be in line with the law that exists in society. According to this theory, living law is distinct from positive law. Eugen Ehrlich, a well-known character in this field, contends that a new positive legislation will only be effective if it incorporates or complies with existing social rules (Rasjidi & Sidharta, 1989). Another figure, Roscoe Pound, who issued a theory that law is a tool for social engineering, also recommends that social sciences be utilized for the advancement and development of legal science. The use of the social engineering paradigm emphasizes the effectiveness of the law, that is generally neglected in traditional legal studies which place more emphasis on the structure and rational consistency of the legal framework. By paying attention to the effectiveness of the law, the attention of legal studies becomes wider and goes beyond traditional studies which only emphasize issues of legality and legitimacy. Discussing the effectiveness of the law is only implemented with a sociological approach, particularly observing the interaction between law and its social environment. Law is not seen as a sterile institution, but is always tested for its presence and its works from the results and consequences it causes in the life of the wider community (Rasjidi & Sidharta, 1989).

Discussion and Results

The Elements of the Act Could be Categorized as a Violation of Criminal Law Norms

The term criminal act comes from the term known in Dutch criminal law, namely *strafbaarfeit*. The term also applies to the WvS of the Dutch East Indies (KUHP). But there is no official explanation of what is meant by *strafbaarfeit*. Therefore, jurists are trying to give it that meaning and term, however, until now there has been no uniformity of opinion about what is meant by *strafbaarfeit* (Chazawi, 2007).

The existence of differences in terms in giving meaning to *strafbaarfeit* is certainly in jurists we have certain reasons. Purnadi Purbacaraka, for example, uses the term criminal event on the grounds that a *delik* besides being tangible as an act can also take the form of an event or events that must be accounted for harming other parties (Lisi, 2007).

S.R Sianturi used *delik* as a criminal offence. To be clear, Sianturi gave the following formulation: "A criminal act is as an act in, place, time, and certain circumstances that are prohibited (or required) and threatened with a criminal offense by law are unlawful, and with mistakes made by a person (who is responsible)" (Ilyas, 2012). According to Moeljatno, criminal acts are acts prohibited by a rule of law accompanied by threats in the form of criminal acts (Kansil, 2004).

Criminal Code which is the parent of the regulation criminal law in Indonesia still distinguishes criminal acts become crimes and offenses (Supriyadi, 2015). The division is based on differences principal. The Criminal Code places the crime in the Second Book and offenses in the Third Book (Purwanti, 2018). Offences are "Wets Delicten" i.e. acts whose legal nature can only be known after the existence of a statute stating so. A crime

is "Recht Delicten" that is, an act that although not specified in the law as a criminal act, is perceived as "Onrecht" as an act contrary to the legal system (Rahma, 2017).

Andi Hamzah argued that in the Dutch WvS 1886 and the Indonesian WvS (KUHP) 1918, the division of offenses against Crimes and Violations theoretically made a difference. Crimes are often considered as legal offenses; an object must be seen as an object that must be punished before it is regulated in law. Meanwhile, violations, or what is often referred to as statutory offenses, are categorized as offenses for they are stated in the law (Hamzah, 2014). Andi Hamzah also explained regarding the type of crime, there is no essential difference between Crime and Violation. It is only violation have never been subject to criminal threats (Rasjidi & Sidharta, 1989).

Lamintang, in the *Dasar-Dasar Hukum di Indonesia* states that generally people only know their actions are violations that are against the law, therefore they can be punished, particularly after the act is declared prohibited by law (Lamintang, 2013). Then, there is no provision for a complaint as a condition for prosecution of violations (Lamintang, 2013). According to Wirjono Prodjodikoro, violation has a definition: "*overtredingen*" or violation is an act that violates something and is in relation to the law, in other words, an act against the law (Prodjodikoro, 2013).

Meanwhile, Bambang Poernomo stated that the violation is *politic-on recht* and crime is *crimineel-on recht*. *Politic-on recht* is an act that disobeys the prohibitions or requirements determined by the state authorities (Poernomo, 2012). In the criminal law legislation system, criminal acts are classified into two, particularly crimes and violations. The two terms do not have a clear difference in terms since they are both offenses and actions that could be punished. The division of criminal acts is carried out because according to *Memorie van Toelichting* (at WVS in the Netherlands) it is a basic division (principle), that the division of crimes into crimes and violations is based on differences, particularly legal offenses and statutory offenses (Samidjo, 2015).

A statutory offense is an act that is contrary to what is expressly stated in the criminal law, whether it is contrary to the legal awareness of the people. The Indonesian Criminal Code (KUHP) distinguishes between crimes and violations. All forms of crime are contained in book II of the Criminal Code, while violations are contained in book III of the Criminal Code which are distinguished in principle, particularly: Crimes have a heavier penalty than violations, particularly in the form of corporal punishment (prison) with a longer period, attempts to commit crimes are punished, while for violations Attempts to commit an offence are not punished, and the grace period for the crime is longer than the offense. Different elements of the violation include there are actions that are contrary to the legislation, and actions that have legal consequences. Legislation and government play an important role in different fields of regulation of daily life in a nation and state. Socio-economic processes and order that are regulated in social life are no longer left to the free forces in society (Samidjo, 2015).

The government seeks to increase its influence on society with the tools at its disposal, one of which is criminal law. Initiative that can be made to declare an act that is prohibited and threatened with a criminal must be formulated in advance in the legislation. When an act has been declared as a crime, therefore, the community is immediately considered to recognize it and at the same time shall adjust its behavior according to what is stipulated in the regulation. However, it is not enough in criminal law to be limited to formulating criminal acts on legal norms as a form of policy. However, in formulating a criminal provision in legislation, both in criminal law and in administrative law, it must be formulated properly, therefore, as not to experience difficulties in its implementation.

One of the basic problems in criminal law is matters relating to the issue of criminal acts. This is where the problem of determining actions is discussed, such as how it is prohibited and threatened with punishment for those who do it. This is closely related to the problem of formulating a crime in a statutory regulation. Fundamentally, formulating a criminal act in laws and regulations is a tough and difficult job. The matter that must be formulated is not a concrete event, but the formulation is able to cover everything, therefore, there is no action that escapes the formulation in all circumstances. In general, the provisions for being convicted consist of three parts, particularly: (1) the formulation of the crime, (2) qualifications, and (3) sanctions. However, not always the three parts are contained together in a statutory provision. There are times when the formulation of a crime is nothing more than a qualification.

In formulating a criminal act in the laws and regulations, it is a matter of regulating the obligations of individuals not to commit (or the obligation to commit) a certain act. The substance of the law causes this to have a primary place. On the one hand, these obligations are interpreted as orders not to commit acts that are prohibited by criminal law. Remmelink argued that as a law that contains orders, criminal law has a unique characteristic (Remmelink, 2013). This is especially evident when an act is declared a crime. Everyone is ordered to be able to avoid actions that lead to criminal acts. Thus, prohibitions with criminal threats against certain actions can be categorized as setting certain obligations for members of the community.

Criminal acts are formulated for a single maker (individual). This is noticeable from the formulations of criminal acts in each article listed in the Criminal Code. The subject of criminal law is a human (person). Gray states that a person is a subject "person is a subject of legal rights and obligations. Apart from humans, they cannot be held criminally responsible. This is based on the sentence '*hij die*' or 'whoever' in each article in the Criminal Code. Although in its development, criminals can also be imposed on non-humans, such as legal entities (corporations) (Loqman, 2012).

Based on the provisions of Article 1 paragraph (1) of the Criminal Code requires the perseverance of criminal acts only on the basis of a statutory provision (*nullum delictum nulla poena sine praevia lege poenali*). Even though in the draft KUHP this principle is somewhat distorted, the determination of criminal acts based on statutory regulations is still the core

of these provisions. Thus, 'nullum crimen sine lege' and 'nulla poena sine lege' are the primary principles of legality, therefore, deviations from them can be avoided as far as possible (Hiariej, 2014).

A criminal act contains a formulation of all prohibited acts and is threatened with a criminal offense whoever commits it (Moeljatno, 2009). Both the formulation of the prohibition of an act and the criminal threat for the cause is subject to the principle of legality, whereas, both must be stipulated in the legislation.

The enforcement of criminal provisions is the entry into force of a criminal act from the time or after the provisions of the criminal act are promulgated by the authorities. The formulation of criminal provisions in laws and regulations cannot be separated from the principle of legality. Therefore, an act that can be punished must be based on the law, cannot be applied according to the retroactive principle, the formulation of the crime must be clear (*lex stricta*), and it is not allowed to use analogies. Based on the principle of '*nullum delictum*' this fully guarantees the rights and independence of the individual. Individuals are given a guarantee that they will not be punished for committing an act that was not prohibited before.

On the other hand, the formulation of a criminal offense serves to protect material criminal offenses legally and as a ratio of the principle of legality. However, in formal criminal procedural law, the formulation of a crime has another function as evidence. Where in formal criminal law, to declare someone has committed a crime, the formulation of a crime is the content of the law that must be proven by the public prosecutor. Thus, everything listed in the formulation of a criminal offense must be proven on the basis of the rules of criminal procedure law.

As in other civil law countries, criminal acts in Indonesia are formulated in codification in general. However, there are no provisions that regulate the guidelines and criteria in formulating criminal acts in the criminal legislation so far. This has resulted in different formulations of criminal acts that contain things outside the characteristics of the act and sanctions for the act. In this case, the formulation of different crimes, especially those outside the Criminal Code, is not consistently in accordance with the structure of criminal acts and the theory of separation between criminal acts and criminal responsibility.

Several legal experts in his book, Roeslan Saleh, have different opinions regarding elements of criminal acts, including: (Hamzah, 2014).

- a. According to Moeljatno, elements of criminal acts include elements of actions, which are prohibited (by the rule of law), criminal threats (for those who violate the prohibition).
- b. The elements of criminal acts according to R. Tresna include acts that are contrary to the laws and regulations, so that punishment is carried out.
- c. According to Vos, elements of criminal acts, including human behavior, are threatened with punishment in the laws and regulations.

- d. The elements of criminal acts according to Jonkers who adhere to the understanding of monism, include acts against the law and responsible mistakes.
- e. Elements of criminal acts according to Schravendijk, include behavior, contrary to legal conviction, threatened with punishment, committed by the person blamed.

Violation of the Prohibition of Homecoming as a Violation in Criminal Law

The government has officially prohibited people from homecoming on Idul Fitri in 1441 Hijri. The prohibition is based on the Regulation of the Minister of Transportation Regulation Number 25 of 2020, which is enforced from April 24, 2020. The travel ban was implemented to stop the spread of COVID-19. Previously, the government had performed a large-scale social restriction (PSBB) policy in several cities and regencies. The prohibition of homecoming aims to strengthen PSBB policies in many regions.

Previously, the prohibition of homecoming applied to ASN, TNI, Polri, and BUMN employees only. However, based on government data, President Joko Widodo stated, there are 24% of people who insist on homecoming. If homecoming is carried out with people moving between cities and provinces, as anticipated the figure of 24% is a large number. Therefore, the government imposed a prohibition on homecoming for all levels of society (Wicaksono, 2020).

Article 2 of the Minister of Transportation Number 25 of 2020 declares that the temporary prohibition on the utilization of land transportation applies to transportation facilities with the aim of entering and/or exiting the PSBB area; the red zone of COVID-19; and agglomerations designated as areas implementing PSBB. Those who violate this prohibition will be subject to sanctions in accordance with the laws and regulations (JDIH, 2020).

In people's routines, the implementation of the law has an essential definition for the purpose of the law consists in the implementation of the law (Syahrani, 2013). The law must be implemented and enforced. Law enforcement does not signify the implementation of legislation, however, it includes values in compliance with Pancasila and the 1945 Constitution of the Republic of Indonesia. The law enforcement factors are: (Syahrani, 2013).

First, the legal factor itself, particularly the law in a sense of material, written regulations that are generally accepted and provided by central and regional authorities.

Second, law enforcement factors that shape and apply the law. The term "law enforcement" has a comprehensive scope, for it contains those who are involved directly and indirectly in the law enforcement.

Third, the factor of facilities or facilities that become supporters in enforcing the law. These facilities or facilities include, among others, skilled and educated human resources, excellent organization, adequate equipment, sufficient finances, and others.

Fourth, community factors, particularly the area or environment where the law applies. Law enforcement derives from the community, and has the aim of achieving peace in society. Society has influence in law enforcement.

Fifth, cultural factors, particularly the work, creativity and refinement which are based on human initiative in social life. Fundamentally, cultural factors are closely related to community factors.

These five factors are closely associated for they are the nature of law enforcement and become a standard for the effectiveness of law enforcement (Syahrani, 2013).

Furthermore, there are five factors with an influence in enforcing the law to analyze the prohibition of homecoming policy.

First, Legal Factor

Minister of Transportation Regulation Number 25 of 2020 is carried out through a temporary prohibition on the utilization of transportation facilities. In Minister of Transportation Regulation Number 25 of 2020, sanctions are regulated. Article 6 of the Minister of Transportation Regulation Number 25 of 2020 regulates sanctions to be provides in phases for vehicles leaving and/or entering the area mentioned in Article 2, particularly:

- a. vehicles leaving and/or entering on 24 April 2020 - May 7, 2020 are directed to return to the origin of the trip; and
- b. vehicles leaving and/or entering on 8 May 2020 - 31 May 2020 are directed to return to the origin of the trip and are subject to sanctions in accordance with the laws and regulations.

Sanctions from these provisions apply to vehicles that violate the prohibition. In Indonesia, all rules are regulated in laws and regulations. In Law Number 12 of 2011 on the Establishment of Legislation, regarding the order of laws and regulations in Indonesia, ministerial regulations (Permen) are not included in it. The purpose of making Permen as a rule to implement higher regulations.

The foundation is Minister of Transportation Regulation Number 25 of 2020, which can be used as a guide to expose the Minister of Transportation's higher rules. The Law No. 6 of 2018 on Health Quarantine serves as the legal foundation for the creation of the Minister of Transportation.

The Ministerial Regulation is not permitted to contain criminal provisions, according to Budi Setiyadi, Director General of Land Transportation for the Ministry of Transportation. Therefore, provisions for criminal penalties may not be included in Minister of Transportation Regulation Number 25 of 2020. The criminal penalties mentioned by the Minister of Transportation's Order No. 25 of 2020 are those covered by Law No. 6 of 2018 (Katadata, 2020).

According to Article 93 of Law Number 6 of 2018 on Health Quarantine, those who disobey the law or interfere with the implementation of the quarantine in order to create a public health emergency may be punished with a maximum of one year in prison and/or a fine of Rp 100,000,000,000.

The article above is possible to affect anyone, including people who violate the provisions of Minister of Transportation Regulation Number 25 of 2020. For this reason, it is the duty of the apparatus to enforce criminal law.

In ensuring order, legal certainty, and legal protection in this era of globalization, the apparatus seeks to enforce the law, if the different dimensions of legal life always maintain harmony between civil moralization based on values in a civilized society. The enforcement of criminal law as a criminal justice system is a must for it is a process of activities that includes different parties in the framework of achieving the objectives (Reksodiputro, 2013).

Second, Law enforcement Factor

Law enforcement has a narrow meaning as the Indonesian National Police (Polri). The National Police has the task of supervising traffic regulation in implementing a temporary prohibition on the utilization of land transportation with the assistance of the Indonesian National Army (TNI), in accordance with the implementation of Minister of Transportation Regulation Number 25 of 2020. Monitoring of traffic regulation at the time of the imposition of the prohibition of homecoming is also carried out by the Land Transportation Management Center or Unit Port Operators, for water transportation facilities, in accordance with Article 7 paragraph (1) of the Minister of Transportation Number 25 of 2020.

Traffic access between regions is restricted when the prohibition of homecoming is enforced. The government has prepared road traffic restrictions on access to or from the area. At each access, there will be a check point or checkpoint for people to leave or enter, especially in the Jakarta, Bogor, Depok, Tangerang, and Bekasi (Jabodetabek) areas. In addition, at several points the Police have set up isolation posts. Considering the vast area and the number of inspection sites, it takes quite a lot of human resources (Reksodiputro, 2013).

Third, Facilities Factor

Separation posts and checkpoints are needed that are closely guarded by officers such as the National Police and the TNI for the implementation of the prohibition of homecoming. This creates obstacles in its implementation. Due to the vast territory of Indonesia, homecoming vehicles can pass through the rat route which makes it impossible to be a checkpoint and isolation post, especially in areas located on the island of Java. They travel through unsupervised paths or shortcut road since the main routes are heavily guarded by officers. Therefore, the role of local governments in locations that are alternative routes for travelers is needed to supervise travelers who pass through the shortcut road.

Fourth, Community and Cultural Factor

Homecoming during Eid has become an annual tradition in Indonesia. People celebrate Idul Fitri by gathering with family. Many people are forced to spend their savings to be able to "homecoming" and risk the safety of taking public transportation for Idul Fitri. Such community culture makes them carry out different ways in order to escape the surveillance of officers. Many people remain unaware of the transmission of COVID-19 which can endanger residents in their villages. Therefore, the central government and regional governments need to keep reminding the public about the dangers of COVID-19 transmission and closing the area from travelers.

The factors that influence law enforcement in the implementation of the prohibition of homecoming are closely related. And it requires coordination between government, apparatus, and local government.

Conclusion

Different kinds of government initiatives in overcoming the spread of COVID-19, starting from implementing regulations for the Enforcement of Community Activity Restrictions (PPKM Emergency), accelerating COVID-19 vaccinations in achieving a group immune system, continuing to encourage the application of 3T (testing, tracking, and treatment), to monitoring the rate of spread of new variants of the Corona virus and preparing a longer-term health resilience plan. The government also issued Minister of Transportation Regulation Number 25 of 2020 with the aim of overcoming the spread of COVID-19 even though in its implementation it received a lot of criticism and opposition from the society. However, even though this Minister of Transportation Regulation is not a popular policy, it has been proven to have been able to suppress the spread of COVID-19.

Minister of Transportation Regulation Number 25 of 2020 which prohibits people from returning home to celebrate Eid al-Fitr has violated criminal law for in this Minister of Transportation it imposes criminal sanctions on citizens who return home to celebrate Eid al-Fitr, where this criminal sanction refers to Law Number 6 of 2018 Article 93 on Health Quarantine which punishes everyone who does not comply with the implementation of Health Quarantine and/or obstructs the implementation of Health Quarantine so as to cause a Public Health Emergency to be sentenced to a maximum imprisonment of 1 (one) year and/or a maximum fine of Rp. 100,000,000. 00 (one hundred million rupiah). Legal products in the form of Ministerial Regulations are prohibited from containing criminal provisions as regulated in Law Number 12 of 2011 on the Establishment of Legislation. Therefore, Minister of Transportation Regulation Number 25 of 2020 may not contain provisions for criminal sanctions.

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