

The Power of Ministerial Regulation in Handling COVID-19 in Indonesia

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The Power of Ministerial Regulation in Handling COVID-19 in Indonesia

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Abstract.

This study tries to discuss the strength of ministerial regulations in responding to the Covid-19 pandemic in Indonesia. Through legal research methods, this article is expected to be able to contribute to the field of legal science, especially in the context of legal science on the rules of determining laws and regulations, as well as responding to legal reforms during and after the Covid-19 pandemic in Indonesia. The approach used in this study is a conceptual approach and is analyzed using the prefix method to find new arguments against the current factual conditions. The results of this study show that ministerial regulations in responding to the Covid-19 pandemic in Indonesia have validity, bonding, and efficacy. On this basis, implementation of ministerial regulations during the Covid-19 pandemic has binding legal implications and legal force.

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Keywords: power, ministerial regulations, Covid-19

1. INTRODUCTION

The end of 2019 to the beginning of 2022 is a marker of the emergence of new virus variants that have also changed human life patterns. The virus, commonly known as Corona Virus Disease 2019 or Covid-19, is rumored to have originated in Wuhan, China [1]. Since it first appeared in China at the end of 2019, Indonesiaseems to be less serious in responding to the spread of Covid-19 [2]. Thus, in the first case detected in March 2020, Indonesia then changed its policy direction in overcoming Covid-19 which had received the label of a global pandemic at that time [3].

Various ways were then carried out by the Indonesian Government to respond to the Covid-19 pandemic, ranging from issuing regulations [4], easing tax payments [5]. Protecting the rights of workers [6], delaying the holding of local elections [7][8], conditionally releasing prisoners to reduce the population of prisoners in prisons [9], as well as various other policies [10]. Various steps have been taken by the Indonesian

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government to prevent the transmission of Covid-19 from spreading further and continue to restore the situation, both from the economic and socio- social sectors.

Unfortunately, the policies taken by the Indonesian government are sporadic, so many of the policies taken are not based on the rules of laws and regulations, but based on needs and egos between Ministries or State institutions only. The author notes that, apart from the Law, the government also issues various regulations at the central and regional levels, such as Government Regulations in Lieu of Laws (Perppu), Government Regulations, Presidential Regulations and Regional Regulations.[11]

Apart from regulations in accordance with the hierarchy of laws and regulations mentioned above, the Government also issues Presidential Decrees, Presidential Instructions, Ministerial Instructions, Ministerial Regulations, Ministerial Circulars, Letters Joint Decrees, Bank Indonesia Regulations, KPU Regulations, Governor's Regulations, Regent Regulations, Mayor's Regulations and several regulations, circulars and instructions of a technical nature and set. In fact, it should be, although the nomenclature is a Regulation, it has not met the legal rules as regelling which is regulatory and only limited to decisions or *beschikking*. In addition to these basic rules, other problems that arise are related to their practicality, binding power and usability.

Not only that, the regulations that were sporadically made, sometimes deviated from the rules in the formation of negotiating regulations, such as the discovery of Regional Head Regulations (both in forms of *Pergub*, *Perwali* and *Perbup*) which regulate criminal sanctions and fines [12], the existence of Ministerial Instructions (especially those related to *PSBB* and *PPKM*) that "force" the public to obey [13], when in fact it only meets the rules of *beschikking* or the decisions of state officials, as well as other issues.

Based on these concerns, the author then tried to analyze the strength of the Ministerial Regulation in responding to the Covid-19 pandemic in Indonesia. Through legal research methods, this article is expected to be able to contribute in the field of legal science, especially in the context of legal science on the rules of determining laws and regulations, as well as responding to legal reforms during and after the Covid-19 pandemic in Indonesia.

2. METHODOLOGY/MATERIALS

The approach used in this study is a conceptual approach and is analyzed using the prefix method to find new arguments against the current factual conditions.

3. RESULTS AND DISCUSSIONS

3.1. Regulations to Respond to Covid-19 in Indonesia

As mentioned above in the introduction, the Government of Indonesia issued various regulations to respond to the transmission of Covid-19. The author maps out these various rules in the following table,

TABLE 1: Forms and Types of Regulations in Responding to the Covid-19 Pandemic.

No	Types of Regulation	Regulatory Identity
1	Law	Law Number 24 of 2007 concerning Disaster Management
		Number 6 of 2018 concerning Health Quarantine
		Law Number 2 of 2020 concerning the Establishment of Government Regulations in Lieu of Law (Perppu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic
		Law Number 6 Of 2020 Concerning the Establishment of Government Regulations in Lieu of Law Number 2 of 2020 Concerning the Third Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 Concerning the Election of Governors, Regents, and Mayors into Law
2.	Government Regulation in Lieu of Law (Perppu)	Perppu Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In Order to Face Threats that Endanger the National Economy and/or Financial System Stability
		Perppu Number 2 of 2020 concerning the Third Amendment to Law Number 1 of 2015 concerning the Establishment of Government Regulations in Lieu of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors into Law
		Government Regulation of the Republic of Indonesia Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19)
4	Presidential Regulation	Presidential Regulation Number 33 of 2022 concerning Third Amendment to Presidential Regulation Number 99 of 2020 concerning Procurement of Vaccines and Vaccination Management on Framework for Handling the Corona Virus Disease Pandemic 2019 (Covid-19)
		Presidential Regulation Number 54 of 2020 concerning Changes in Posture and Details of the State Budget for fiscal year 2020
5	Local Regulations/Bylaws	Banten Provincial Regulation Number 1 of 2021 concerning Corona Virus Disease Management - 19
		Provincial Regulation of the Special Capital Region of Jakarta Number 2 of 2020 concerning Corona Virus Disease 2019 Mitigation
		Bekasi Regency Regional Regulation Number 2 of 2021 concerning the Prevention and Control of Corona Virus Disease 2019
		Pekanbaru City Regional Regulation Number 5 of 2021 concerning Community Protection and the Spread of the Impact of Corona Virus Disease 2019
6.	Presidential Decree	Presidential Decree Number 24 of 2021 concerning The Determination of the Factual Status of the Corona Virus Disease 2019 (COVID-19) Pandemic in Indonesia

TABLE 1: (Continued).

No	Types of Regulation	Regulatory Identity
7.	Ministerial Regulation	<p>22 Regulation of the Minister of Health Number 23 of 2021 concerning the Third Amendment to the Regulation of the Minister of Health Number 10 of 2021 concerning the Implementation of Vaccination in the Context of Overcoming the Corona Virus Disease 2019 (COVID19) Pandemic</p> <p>Regulation of the Minister of Transportation Number PM 25 of 2020 concerning Control of Transportation During the Eid Al-Fitr Homecoming Period of 1441 Hijri in the Context of Preventing the Spread of Corona Virus Disease 2019 (COVID-19).</p> <p>Regulation of the Minister of Transportation Number PM 18 of 2020 concerning Transportation Control in the Context of Preventing the Spread of Corona Virus Disease 2019 (COVID-19)</p> <p>Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19)</p> <p>Regulation of the Minister of Health Number 7 of 2020 concerning Amendments to the Regulation of the Minister of Health Number 51 of 2014 concerning the Entry of Medical Devices through a Special Access Scheme Mechanism</p> <p>13 Regulation of the Minister of Home Affairs Number 20 of 2020 concerning the Acceleration of Handling Corona Virus Disease 2019 in the Local Government Environment</p> <p>8 Regulation of the Minister of Finance of the Republic of Indonesia Number 23 / Pmk.03 / 2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Outbreak</p>

Source: Author database, 2022

In addition to those contained in the table above, from the www.covid19.go.id website page, there are also forms and types of regulations to respond to Covid-19, such as: Presidential Instruction, Circular Letter (at most Circular Letters issued by the Director General), Ministerial Instructions (most Instructions of the Minister of Home Affairs), Ministerial Decrees (most Decrees of the Minister of Health), Decrees Together as well as the MUI Fatwa.

3.2. The Strength of Ministerial Regulation in Responding to Covid-19 in Indonesia

Various Ministerial Regulations were made by the Government to respond to the Covid-19 pandemic in Indonesia. In this article, the author identifies at least 7 Ministerial Regulations that can be used as material for research studies. Here are 7 Ministerial Regulations and their legal consequences;

Based on the analysis in the table above, it can be concluded that the Ministerial Regulation in responding to the Covid-19 pandemic in Indonesia has a very extraordinary

TABLE 2: Legal Consequences of Ministerial Regulations in Responding to the Covid-19 Pandemic in Indonesia.

No.	Identity of Ministerial Regulation	Identity of Ministerial Regulation
1	Regulation of the Minister of Health Number 23 of 2021 concerning the Third Amendment to the Regulation of the Minister of Health Number 10 of 2021 concerning the Implementation of Vaccination in the a. Become the basis for mass vaccination of the community, even up to booster vaccines (third doses of vaccines) Context of Overcoming the Corona Virus Disease 2019 (COVID-19) Pandemic	Become the basis for mass vaccination of the community, even up to booster vaccines (third doses of vaccines) Data as of June 22, 2022, 12.5 million Indonesians have received the vaccine [14]
2	Regulation of the Minister of Transportation Number PM 25 of 2020 concerning Control of Transportation During the Eid AlFitr Homecoming Period of 1441 Hijri in the Context of Preventing the Spread of Corona Virus Disease 2019 (COVID-19).	Became the basis for the ban on Eid home coming in 2020 During the 15 days of the ketupat operation carried out by the National Police, approximately 35,945 vehicles turned around and were prohibited from going home [15]
3	Regulation of the Minister of Transportation Number PM 18 of 2020 concerning Transportation Control in the Context of Preventing the Spread of Corona Virus Disease 2019 (COVID-19)	Become the basis for the implementation of antigen/PCR swab tests and quarantine for travelers Making the transportation industry sector, both land, sea and air, experience a decrease in occupancy, and even bankrupt
4	Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19)	Become the target of PSBB enforcement, and continue with PPKM (which is further regulated through the Instruction of the Minister of Home Affairs) It has an impact on economic growth, people's purchasing power and productivity.
5	Regulation of the Minister of Health Number 7 of 2020 concerning Amendments to the Regulation of the Minister of Health Number 51 of 2014 concerning the Entry of Medical Devices through a Special Access Scheme Mechanism	Become the basis for the distribution permit of 23 types of medical products, such as masks, PPE and so on [16] Impact on increasing imported medical device products
6	Regulation of the Minister of Home Affairs Number 20 of 2020 concerning the Acceleration of Handling Corona Virus Disease 2019 in the Local Government Environment	Became the basis for the postponement of local elections in several regions Accelerating the direction of movement and tactical steps for local governments to respond to Covid-19
7	Regulation of the Minister of Finance of the Republic of Indonesia Number 23 / Pmk.03 / 2020 concerning Tax Incentives for Taxpayers Affected by the Corona Virus Outbreak	Become the basis for delaying the payment of certain types of taxes for taxpayers affected by Covid-19 Tax relaxation aims to encourage the economic climate so that inflation and other adverse impacts do not occur

Source: Author Database, 2022

selling power, binding power and usability ordinary to society. Validity arises or exists if the legal norm is formed by a higher norm or by the institution authorized to form it [17]. Of course, in the context mentioned above, Ministerial Regulations made by several Ministries, get the mandate of their formation from higher regulations, such as from the constitution or law. Meanwhile, bonding is interpreted as the binding force of a legal

norm. Clearly, the a fore mentioned Ministerial Regulation has an extraordinary binding force on the community in accordance with its purpose. Meanwhile, efficacy is defined as the usefulness or benefit produced by a legal norm. The benefits can be felt, for example, through tax relaxation, ease of importing medical devices, postponement of regional elections and so on.

4. CONCLUSION ANDRECOMMENDATION

Based on the discussion above, it can be concluded that the Ministerial Regulation in responding to the Covid-19 pandemic in Indonesia has validity, bonding, and efficacy. On this basis, the implementation of ministerial regulations during the Covid-19 pandemic has binding legal implications and legal force. Thus, the author believes that the Ministerial Regulation has extraordinary practical, technical and pollutive strength in overcoming the Covid-19 pandemic in Indonesia.

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