

The Legal Politics of Immigration: Restrictions on Foreign Citizens in Indonesia During the COVID-19 Pandemic

^{a,*}Mustika Putra Rokan.

^aLegal researchers and legal practitioners, Rokan & Co. Lawyers.

*corresponding author, email: mustikaputrarokan@gmail.com

 <https://doi.org/10.56128/jkih.v3i2.294>

ABSTRACT

The COVID-19 pandemic, which began in Wuhan, China, in late 2019, has had global repercussions, including in Indonesia, particularly in the immigration sector. The policy of Large-Scale Social Restrictions (PSBB), deemed ineffective, prompted the Indonesian Government to introduce the Enforcement of Restrictions on Community Activities (PPKM) as an alternative in combating the spread of the virus. This article explores the legal politics of immigration during the emergency PPKM period of the COVID-19 pandemic in Indonesia using a normative juridical approach and literature research. Although PPKM is not explicitly regulated, it poses legal-political challenges and requires adaptation in the immigration legal system. The article also discusses the development of immigration law substance from Law No. 9/1992 to Law No. 6/2011, as well as the political-legal implications regarding the restriction of foreigners in Indonesia during PPKM. The need for legal consistency and policy adjustment in responding to pandemic challenges, as well as legal-political options that the government can take to strengthen the legal basis of PPKM and respond to changes in the immigration system, is also highlighted. Some recommended steps include changes to the Law, issuing Government Regulation in Lieu of Law (Perpu), and enhancing the role of Regional Governments in regulating PPKM in accordance with their authority.

Keywords: COVID-19, PPKM, legal politics, immigration, Indonesia.

ABSTRAK

Pandemi Covid-19, Mulai Dari Wuhan, China, Pada Akhir 2019, Berdampak Global, Termasuk Di Indonesia, Khususnya Di Sektor Imigrasi. Kebijakan Psbb Yang Dianggap Kurang Efektif Mendorong Pemerintah Indonesia Memperkenalkan Ppkm Sebagai Alternatif Dalam Mengatasi Penyebaran Virus. Artikel Ini Menjelajahi Politik Hukum Keimigrasian Selama Ppkm Darurat Pandemi Covid-19 Di Indonesia Dengan Menggunakan Pendekatan Yuridis Normatif Dan Penelitian Kepustakaan. Meskipun Ppkm Tidak Diatur Secara Eksplisit, Hal Ini Menimbulkan Tantangan Politik Hukum Dan Membutuhkan Adaptasi Dalam Sistem Hukum Keimigrasian. Artikel Juga Membahas Perkembangan Substansi Hukum Keimigrasian Dari Uu No. 9/1992 Ke Uu No. 6/2011, Serta Implikasi Politik Hukumnya Terhadap Pembatasan Warga Asing Di Indonesia Selama Ppkm. Perlunya Konsistensi Hukum Dan Penyesuaian Kebijakan Dalam Menanggapi Tantangan Pandemi, Serta Opsi Politik Hukum Yang Dapat Diambil Oleh Pemerintah Untuk Memperkuat Dasar Hukum Ppkm Dan Menanggapi Perubahan Dalam Tatahan Keimigrasian Juga Disorot. Beberapa Langkah Yang Direkomendasikan Termasuk Perubahan Undang-Undang, Penerbitan Perpu, Dan Peningkatan Peran Pemerintah Daerah Dalam Mengatur Ppkm Sesuai Dengan Kewenangannya.

Kata Kunci: Covid-19, Ppkm, Politik Hukum, Keimigrasian, Indonesia.

Article History

Received: September 22, 2021 --- Revised: Mei 14, 2023 --- Accepted: June 07, 2023

1. Introduction

Covid-19 first emerged in China, particularly in the Wuhan region, at the end of 2019 and has caused a global pandemic. This virus suddenly became a frightening specter for the entire world. In early December, the World Health Organization (WHO) issued a warning to the world that Covid-19 had been declared a Public Health Emergency. As Covid-19 began to spread in Wuhan, the WHO firmly instructed countries worldwide that this virus had the potential to be a significant source of rapid transmission. The transmission of this

virus among humans occurred quickly and extensively. The spread of Covid-19 was remarkably rapid. On March 11, 2020, the World Health Organization declared Covid-19 a global pandemic. In Indonesia, Covid-19 began to enter in March 2020 (Muhammad, et.all, 2021).

When the coronavirus epidemic emerged, it caused various levels of symptoms ranging from mild to severe. Coronavirus Disease (COVID-19) is a new type of virus that had not been previously identified in the human body. Common symptoms of COVID-19 typically appear within a range of 2 days to 2 weeks after infection. Common symptoms include fever, cough, and shortness of breath. In some cases, symptoms can progress to pneumonia and acute respiratory distress, which can lead to kidney failure and even death. COVID-19 in Indonesia has shown a significant increase in the number of infected people (Kemenkes RI, 2020).

The spread of the Corona virus in Indonesia has led to an increase in the number of cases of symptoms and/or deaths, spreading across all parts of the country and its regions, impacting various aspects of life such as socio-cultural, economic, defense, and security. The significant impact of the coronavirus is being felt in various regions. One of the sectors affected and felt is the immigration sector, especially in law enforcement and surveillance. As protectors and guardians of the nation's sovereignty, the primary duty of the immigration sector is to serve citizens and ensure national security.

The Covid-19 pandemic marks a new experience for Indonesia in the era of modern democracy. In an effort to reduce the number of infections, the Government has explored various available policies within the law, one of which is the Large-Scale Social Restrictions (PSBB). However, the implementation of PSBB was deemed ineffective in handling this outbreak. Therefore, the Government proposed the Enforcement of Community Activity Restrictions (PPKM), referred to as PPKM, aimed at controlling the spread of Covid-19 through the Ministry of Home Affairs Instruction. This policy was first implemented by the Government through the Ministry of Home Affairs Instruction No. 01 of 2021 concerning the Enforcement of Activity Restrictions to Control the Spread of Covid-19. The Government believes that the PPKM policy is much more effective in curbing the spread of the Covid-19 virus compared to PSBB (Mahardika & Saputra, 2021).

Moreover, services for foreigners should ideally operate as usual before the Covid-19 pandemic, albeit with different health protocols in place. This is crucial to ensure that both Indonesian citizens and foreigners are served safely and efficiently in terms of immigration services that must remain controlled. Immigration must continue to fulfill its role as a development facilitator and guardian of sovereignty. Sovereignty is paramount to the existence of a nation, and one way to uphold it is through law enforcement against all Indonesian citizens and foreigners within the country. However, due to the Covid-19 pandemic, immigration faces greater challenges in implementation, surveillance, and law enforcement against foreigners due to the impacts caused by this outbreak.

As a *Rechtsstaat* (Rule of Law) state, which according to Friedrich Julius Stahl, one of its characteristics is "Government based on rules," it is only proper that all actions of the Government embodied in legal products, whether regulations or decisions, must be formulated based on proper methods. This is important to ensure that their implementation is free from defects, both formally and materially (Said, 2015).

The PPKM policy is one of the strategies to combat the Covid-19 pandemic, yet it lacks clear legal standing. This is because the phrase "Implementation of Activity Restrictions for Controlling the Spread of the Epidemic" is not included in Law No. 6 of 2018 concerning Health Quarantine. The law only recognizes the terms Large-Scale Social Restrictions (PSBB), Home Quarantine, Area Quarantine, and Hospital Quarantine. Consequently, the implementation of PPKM has the potential to conflict with several regulations. However, this hypothesis needs further examination. Therefore, this article is drafted with the aim of examining the Legal Immigration Policy regarding Restrictions on Foreigners Entering Indonesian Territory during Covid-19 Pandemic.

2. Metode

This article is a normative research, characterized by prescriptive analysis. The research approach employs both legislative and conceptual approaches. It is based on primary, secondary, and tertiary legal resources obtained through literature review techniques and document study data collection tools. After gathering the data, it is further analyzed qualitatively.

3. Result & Discussion

A. Legal Position of the Implementation of Community Activity Restrictions

If we look at the legal basis for combating pandemic outbreaks in Indonesia, we can refer to Law No. 6 of 2018 concerning Health Quarantine. This law serves as the foundation for various derivative regulations, such as the implementation of PSBB and other policies. Formally, the formulation of every legislation, which is one of the steps in preventing the spread of Covid-19, must be based on Law No. 12 of 2011 concerning the Formation of Legislation.

This is important so that in the process of drafting and ratifying each regulation, it does not contradict other laws and regulations. Law No. 6 of 2018 concerning Health Quarantine has clearly outlined the restrictions on the entry and exit of individuals from areas deemed as sources of outbreaks. The law also regulates actions such as isolation, regional quarantine, vaccination, and other measures to stop the spread of outbreaks that occur in Indonesia (Mahardika & Saputra, 2021).

However, in this pandemic scenario, the form of representation in combating the outbreak has created a new paradigm in society. For instance, the implementation of Large-Scale Social Restrictions (PSBB) in several major cities in Indonesia. The implementation of social restrictions has a clear legal basis, namely Government Regulation No. 1 of 2020 concerning Large-Scale Social Restrictions in Accelerating the Handling of the Corona

Virus Disease 2019 (Covid-19). This Government Regulation serves as the implementing regulation of Law No. 6 of 2018 concerning Health Quarantine..

A clear legal position like this is crucial for every stakeholder in the Indonesian government to develop and establish regulations related to health quarantine. However, this article will focus more on one new type of social restriction, namely the Enforcement of Community Activity Restrictions (PPKM). Regarding regulations, guidelines, and instructions related to PPKM, they are outlined in Minister of Home Affairs Instruction Number 1 of 2021. This instruction is directly initiated by the Central Government and addressed to all Regional Heads in Java and Bali. The instruction is based on the widespread Covid-19 pandemic situation in Java and Bali, and considering the presence of new variants of the Covid-19 virus, efforts are needed to control this pandemic. Based on the analysis conducted, PPKM is implemented in several areas in Java and Bali with various forms of regulations, ranging from Governor's Circulars, Governor's Decisions, and others, to derivative regulations at the District/City level.

B. The development of immigration law substance

In terms of the substance of immigration law, there have been several developments in the principles of immigration law policy from Law No. 9/1992 to Law No. 6/2011. Both laws adhere to the principle of selective policy (Manan, 1996).

In terms of entry and exit of individuals to and from the territory of Indonesia, it is based on the aspect of benefit to national interests. This is in line with the view that state control, in the name of sovereignty, to accept or refuse the entry of foreigners is philosophically based on the effort to fulfill obligations to citizens. However, there are differences in emphasis, where the selective policy in Law No. 9/1992 emphasizes the principle of national security.

Meanwhile, in Law No. 6/2011, this principle is placed alongside the principle of human rights. This indicates that the framers of Law No. 6/2011 sought a balance between the principle of selective policy and the principle of human rights. In addition to the removal of bans on Indonesian citizens (WNI), Law No. 6/2011 also corrects or revises various provisions that were previously not in line with or did not accommodate general human rights values. For example, in terms of protection for victims of human trafficking and trafficking, regulation of detention periods, and the rights to employment for certain foreigners residing in Indonesia.

The regulation concerning immigration areas at each immigration checkpoint allows for strict immigration checks to prevent or address various immigration violations. Furthermore, Law No. 6/2011 also clearly regulates the reasons for rejecting visa applications, unlike Law No. 9/1992, which only provides general criteria for visa issuance as previously explained. The clear reasons for rejecting visa applications in Law No. 6/2011 provide better legal certainty, especially for applicants, unlike Law No. 9/1992, which relies more on substantive reasons for visa rejection through implementing regulations.

In terms of the presence of foreigners in Indonesia, the stringent supervision of foreigners is also reflected in Law No. 6/2011, such as the requirement for certain foreigners to have a sponsor. The sponsor is responsible for the presence and activities of the sponsored foreigner while they are in Indonesian territory and is obliged to report any changes in civil status, immigration status, and address. Law No. 6/2011 places foreign sponsors within the framework of administrative supervision that was previously absent in Law No. 9/1992.

C. Immigration Law Policy on Restricting Foreigners to Indonesian Territory During Covid-19 Pandemic

In this article, legal politics is explained as policies related to law or policies within the realm of law, which encompass the direction of law, forms of law, the substance of law, and the scope of legal politics. The direction of law refers to the goals that aim to be achieved or realized, while the form of law includes various types of legislation, and the substance of law refers to the content regulated within a legal framework (Soemantri, 2014).

According to Bintan R. Saragih, as quoted in the work of Sri Soemantri (2014), the legal direction, particularly in the form of legislation, can be reflected in the considerations (considerations) and general explanations of a legal regulation, especially laws. Regarding the scope of legal politics, Sri Soemantri emphasizes that it is related to the limits of legal politics, both to *ius constitutum* (existing law) and *ius constituendum* (law to be established).

In this context, the scope of legal politics in a country encompasses the laws that apply within its territory as well as the laws that may be formed or planned in the future. Specifically, M. Iman Santoso (2004) emphasizes that in the context of Indonesian immigration law, immigration legal politics involve values and value choices reflected in immigration legal norms, which are used to regulate the inflow and outflow of people within the Republic of Indonesia and the supervision of foreigners within Indonesian legal jurisdiction. These values and value choices aim to achieve the goals intended within immigration legal norms. The choices regarding these values specifically include the principles of immigration legal politics that form the basis for immigration legal norms. Furthermore, M. Iman Santoso (2004) asserts that “immigration functions can be linked to sovereignty theory because this theory is the basis for immigration functions.”

Based on these foundations, the state has the authority to determine permits for its citizens to travel abroad and the conditions thereof. Additionally, the state also has the authority to determine entry permits and provisions regarding the residence of foreigners within its territory.

The PPKM, considered an effective policy by the government in addressing the Covid-19 pandemic, should be adjusted in accordance with existing legislation, such as Law No. 6 of 2018 regarding Health Quarantine and Law No. 12 of 2011 regarding the Formation of Legislation. Ministerial Instructions, as the legal basis for regulations, are not considered legislation as defined in Law No. 12 of 2011 regarding the Formation of Legislation. Furthermore, the PPKM, as one of the measures to combat the pandemic, is not specified in Law No. 6 of 2018 concerning Health Quarantine. This law mainly includes several

measures to address pandemics, such as Regional Quarantine, Home Quarantine, Hospital Quarantine, and Large-Scale Social Restrictions (PSBB) (Hamzah & Yudianto, 2020).

If the government wishes to regulate PPKM, the step that can be taken is to include PPKM as one of the measures to combat pandemics in the Health Quarantine Law. This can be achieved by amending the Health Quarantine Law and incorporating PPKM as one of the measures to combat pandemics.

Furthermore, the legal political step that the Government can take is to issue a Government Regulation in Lieu of Law (Perpu) amending Law No. 6 of 2018 and delegating authority to regional governments to enact implementing regulations at the local level, such as Regional Regulations (Pergub, Perbup, or Perwali). This is important because, according to Article 8 paragraph (2) of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, the formation of implementing regulations must refer to higher regulations. Furthermore, based on Law No. 23 of 2014 concerning Regional Governments, health issues are not the absolute authority of the Central Government. According to Article 10 paragraph (1) of the Regional Government Law, the absolute authority of the Central Government includes matters such as Foreign Policy; Defense; Security; Justice; National Monetary and Fiscal; Religion.

Based on the aforementioned authorities, health issues are not within the absolute jurisdiction of the Central Government. Therefore, Regional Governments essentially have the authority to issue Regional Regulations (Perda) governing PPKM. These regulations can be applied at the provincial level, and then the authority can be delegated to District/City Governments to issue implementing regulations in the form of Regent Regulations or Mayor Regulations. This will serve as the legal basis for the implementation of PPKM in their respective regions. Looking ahead, the implementation of the PPKM policy by Regional Governments will become more flexible and responsive to local conditions and the needs of the local community in facing the Covid-19 pandemic. With Regional Regulations governing PPKM, Regional Governments have greater control in adjusting Covid-19 mitigation strategies according to the dynamics and characteristics of their regions. Furthermore, delegating authority to the district/city level allows for more detailed and effective adjustments in implementing PPKM measures based on the real conditions on the ground. This is expected to enhance the effectiveness and efficiency in handling the pandemic and reduce its negative impacts on social, economic, and public health aspects overall.

4. Conclusion

In addressing the issues of the national governance system related to handling the Covid-19 pandemic, several legal-political steps can be taken by the Government. Firstly, amendments to Law Number 6 of 2018 are necessary to include PPKM as one of the strategies for combating the pandemic, aligning with measures such as regional quarantine, hospital quarantine, or PSBB. Secondly, the Government can issue Government Regulation in Lieu of Law (Perpu) to amend Law Number 6 of 2018 if urgently needed to implement

PPKM. Furthermore, considering that health is not within the absolute authority of the Central Government but can be delegated to Regional Governments according to Law Number 2 of 2014 concerning Regional Government, Regional Governments have the authority to formulate Regional Regulations specifically governing PPKM, which can then be effectively implemented at the local level. Thus, these steps are expected to enhance flexibility, responsiveness, and effectiveness in handling the Covid-19 pandemic, as well as reducing its negative impacts on society as a whole. Coordination between the Central Government and Regional Governments in drafting regulations and implementing policies is key to jointly addressing future public health challenges.

References

- Abdul Rauf Alauddin Said, 2015. "Pembagian Kewenangan Pemerintah Pusat - Pemerintah Daerah Dalam Otonomi Seluas - Luasnya Menurut UUD 1945," *Fiat Justisia Jurnal Ilmu Hukum*, 9.4.
- Ahmad Gelora Mahardika, dan Rizky Saputra. 2021. "Kedudukan Hukum Pemberlakuan Pembatasan Kegiatan Masyarakat Dalam Sistem Ketatanegaraan Indonesia." *Legacy: Jurnal Hukum dan Perundang-Undangan* 1.1.
- Guy S. Goodwin Gill. 1978. *Internasional Law and Movement of Persons Between States*, Oxford: Clarendon Press.
- H.R.T. Sri Soemantri M. 2014. *Hukum Tata Negara Indonesia Pemikiran dan Pandangan*, Bandung: Remaja Rosdakarya.
- Hamzah and Yusdianto, 2020. "Information on Corona Virus Disease-19: Between the Public's Right and State's Interests," *Journal of Advanced Research in Law and Economics*, 11.3.
- Kemkes RI. 2020. *Pedoman dan Pencegahan Coronavirus (COVID- 19)*. Jakarta: Kementerian Kesehatan RI.
- M. Iman Santoso. 2004. *Perspektif Imigrasi Dalam Pembangunan Ekonomi dan Ketahanan Nasional*, Jakarta: UI Press.
- Muhammad, Fachryza Muhammad Faiz Febriandana, dan Yofan Gusti Pratama. 2021. "Analisa Penegakan Hukum dan Pengawasan Keimigrasian pada Kasus Masuknya Warga Negara China Ditengah Masa Pandemi Covid-19." *Jurnal Ilmiah Universitas Batanghari Jambi* 21, no. 3.
