



# THE EFFECTIVENESS OF THE INSTRUCTION OF THE MINISTER OF INTERNATIONAL AFFAIRS NUMBER 15 YEAR 2021 CONCERNING IMPLEMENTATION OF LIMITATIONS ON CORONA VIRUS DISEASE EMERGENCY COMMUNITY ACTIVITIES 2019 IN JAVA AND BALI

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**Abstract:** *This paper will discuss the post-implementation of the Instruction of the Minister of Home Affairs Number on the PPKM policy, which regulates operational restrictions. What is discussed is the position of these regulations in the Indonesian legal system and considerations in human rights values. This paper aims: to provide an understanding to the public that the importance of paying attention to the legal position of a regulation issued by a government agency is an effort so that the public is not blind to the law and to know about the effectiveness of the regulation. The primary data of this paper is the instruction of the Minister of Home Affairs Number 15 of 2020 regarding PPKM, While the secondary data legal materials in this study were obtained from library materials related to the problem. The position of the Minister of Home Affairs Instruction No. 15 of 2021 regarding PPKM has strong legal force even though the Ministerial Instruction is not part of the Hierarchy of Laws Then Regarding PPKM policies carried out by the government in accordance with rights values Human rights are universal, visibility, interdependence, and inalienable. In the context of the implementation of the fulfillment of the rights to freedom, the right to move, the right to work, the right to social security must be based on the principles of universality, equality and non-discrimination. Other than that,*

**Keywords:** *Instructions from the Minister of Home Affairs, PPKM, Human Rights*

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## I. INTRODUCTION

The agency under the auspices of the United Nations which is engaged in the health sector, namely the World Health Organization, has determined the status of Corona Virus Disease-19 / Covid-19 as a pandemic. The argument is, the spread of covid-19 is so fast to all countries in the world. Based on data released by

Worldmeters (12/3/2020) it was confirmed that 121 countries were exposed to COVID-19. Along with the passage of time, the number of positive corona patients has increased every day in various countries. In the midst of the Covid-19 pandemic that is being faced, the state must be present in dealing with the problems it is facing for the safety of the lives of its citizens. Because basically, the right to life is a basic right for every human being that must be respected and guaranteed by the state, this is as emphasized in article 22 of the Universal Declaration of Human Rights (UDHR). *“Everyone as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic social and cultural rights indispensable for his dignity and the free development of his personality”*. Meaning: Everyone, as a member of society, has the right to social security and has the right to the realization of economic, social and cultural rights which are indispensable for the dignity and free growth of his person, through national efforts as well as international cooperation, and in accordance with the regulations and each country's resources. The right to social security of the labia is further emphasized in Article 9 of the Economic, Social and Cultural Covenant "The State Parties to the presentnet Covenant recognize the right of everyone to social security, including social insurance". Meaning: The countries participating in this agreement recognize the right of everyone to social security, including social insurance. Then,<sup>1</sup> Not only that, the state constitution also guarantees the existence of social security for its citizens which is embodied in Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This means that the government has the responsibility to pay attention to and provide guarantees in accordance with the constitutional mandate.

In this way, the fulfillment of economic rights, the state as the holder of the responsibility to fulfill, respect, and protect must be active or often referred to as positive rights. That is, the rights that exist within the scope of the economic, social and cultural covenants can be fulfilled if the state is not limited in the implementation of its responsibilities, if the state is not active in carrying out its duties and responsibilities then the rights and freedoms in the covenant will be difficult to fulfill or large. unlikely to materialize at all.

The massive spread of Covid-19 has forced each country to immediately issue policies in order to deal with the problem. Different countries have different policies because basically each country has a different way of dealing with the problems it is facing. The city of Wuhan in China is the initial gateway as the first center of the spread of Covid-19 in the world. The impact of being exposed to

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<sup>1</sup> Constitution of the Republic of Indonesia.

Covid-19 for infected individuals is that they will experience mild respiratory problems that can cause death. On that basis, the government swiftly intervened to handle cases of the COVID-19 pandemic through the making of the Policy for the Enforcement of Community Activity Restrictions (PPKM) as stated in the Instruction of the Minister of Home Affairs No.<sup>2</sup>This instruction was made as a form of the function of the Minister of Home Affairs in carrying out his duties. On the basis of following up on the direction of the President of the Republic of Indonesia and to complete the implementation of the Instruction of the Minister of Home Affairs regarding Limiting Micro-Based Community Activities and optimizing the Covid-19 Handling Post at the Village and Sub-District Levels, the regulation was made and then enforced on July 3, 2021.

In handling Covid-19, there are many government policies that are felt to be made without considering the existing social realities. Based on data from the Task Force for the Acceleration of Handling Covid-19, the cumulative number of positive cases of Covid-19 until Friday (17/7) reached 83,310. With that number, Indonesia is ranked 26th in the world based on Worldmeters data. The increasing number is basically caused by various aspects. For example, after the issuance of the policy, many public actions were taken as a response to the policy. Such as the form of mass action carried out by students because they felt that the policy was made without thinking about the fate of the people, for example the father of fried rice who generally sold his wares after 20 o'clock. 00 WIB feels disadvantaged because of this policy, because people are forced to stop carrying out social activities, especially buying and selling transactions at 20.00 WIB. effectively because it remembers the goal of the country itself, namely the welfare of its people. So we need an idea or steps that can be taken in order to optimize government policies in accordance with the social realities that exist in the community. so the author wants to raise a problem regarding how the government's policy in dealing with covid-19, has it been running effectively because it remembers the goal of the country itself, namely the welfare of its people. So we need an idea or steps that can be taken in order to optimize government policies in accordance with the social realities that exist in the community. so the author wants to raise a problem regarding how the government's policy in dealing with covid-19, has it been running effectively because it remembers the goal of the country itself, namely the welfare of its people. So we need an idea or steps that can be taken in order to optimize government policies in accordance with the social realities that exist in the community.

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<sup>2</sup> Instruction of the Minister of Home Affairs Number 15 of 2021 concerning the Implementation of Restrictions on Emergency Community Activities for Corona Virus Disease 2019 in the Java and Bali Regions

Based on the formulation of the problem above, several problems are formulated as follows:

1. What is the position of Ministerial Instruction regulations in the Indonesian legal system?
2. How is the effectiveness after the implementation of the PPKM Policy regarding the operational time of buying and selling for the community and consideration of human rights values?

This research is a normative legal research with a description-analysis approach. Research materials that will be used in this study include secondary data and primary data. Secondary data is data that comes from library materials, while the primary data is the Instruction of the Minister of Home Affairs no. 15 of 2020. The data obtained in library research are secondary data in the form of rules or norms, legal principles, legal rules, and legal systematics. While the secondary data legal materials in this study were obtained from library materials related to the problem, which were contained among others in primary legal materials, secondary legal materials, and tertiary legal materials. The method of collecting data in this library research is by referring to documented materials.

## **II. DISCUSSION**

### **The position of regulation of Ministerial Instructions in the statutory system Indonesia**

Indonesia as a legal state adheres to the principles of Good Governance or good governance. In implementing a good government system, the president cannot carry out his own state duties, because an agency was formed to assist his duties in running the wheels of government, the agency is the ministry. According to the Law of the Republic of Indonesia Number 39 of 2008 concerning State Ministries, Article paragraph 1, the Ministry is a government apparatus in charge of certain affairs." Then, the Ministry is led by a State Minister. According to Article 1 paragraph 2 of Law number 39 of 2008 concerning State Ministries<sup>3</sup>, the Minister is the Assistant to the President who leads the ministry. So it is clear that the Minister is an assistant to the president in carrying out the state in accordance with their respective fields, one of which is the Minister of Home Affairs (Mendagri). The Minister of Home Affairs (Mendagri) is one of the ministries established by the President in accordance with the Constitution of the Unitary State of the Republic of Indonesia Article 17 paragraph 1 "The President is assisted by state ministers", Article 2 "Ministers are appointed and dismissed by the President" and article 3 "The Ministers lead government departments". In addition, the establishment of the Ministry of Home Affairs is also regulated in the Law of the State Ministry number 39 of 2008 concerning the Ministry of State Article 4

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<sup>3</sup> Law of the Republic of Indonesia Number 39 of 2008 concerning State Ministries

paragraph 2 C "Government Affairs of the Government in the context of sharpening coordination, and synchronization of Government programs. In dealing with the spread of Covid-19, President Joko Widodo gave directions to the Minister of Home Affairs, Tito Karnavian, to issue several policies. The policy is in the form of Instructions Related to PPKM (Implementation of Restrictions on Community Activities) which are regulated in the Instruction of the Minister of Home Affairs Number 15 of 2021, Inmendagri Number 24 of 2021 concerning PPKM Level 3 and Level 4 in the Java-Bali region, Inmendagri number 25 of 2021 concerning PPKM Level 4 in Sumatra, Kalimantan, North Sulawesi, Nusa Tenggara, Maluku, and Papua. And finally, the Minister of Home Affairs Number 26 of 2021 concerning PPKM Level 1, Level 2, Level 3 and also regulates the Optimization of the Covid-19 Handling Post at the Village/Output Level. In dealing with the spread of Covid-19, President Joko Widodo gave directions to the Minister of Home Affairs, Tito Karnavian, to issue several policies. The policy is in the form of Instructions Related to PPKM (Implementation of Restrictions on Community Activities) which are regulated in the Instruction of the Minister of Home Affairs Number 15 of 2021, Inmendagri Number 24 of 2021 concerning PPKM Level 3 and Level 4 in the Java-Bali region, Inmendagri number 25 of 2021 concerning PPKM Level 4 in Sumatra, Kalimantan, North Sulawesi, Nusa Tenggara, Maluku, and Papua. And finally, the Minister of Home Affairs Number 26 of 2021 concerning PPKM Level 1, Level 2, Level 3 and also regulates the Optimization of the Covid-19 Handling Post at the Village/Output Level.

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- a. the 1945 Constitution of the Republic of Indonesia;
- b. Decree of the People's Consultative Assembly;
- c. Laws/Government Regulations in Lieu of Laws;
- d. Government regulations;
- e. Presidential decree;
- f. Provincial Regulations; and
- g. Regency/City Regional Regulations.

If you look at the hierarchy of laws above, the Ministerial Instruction is not included in the hierarchy of laws. Although not listed in the Hierarchy of Laws and Regulations, the Instruction still has binding legal force because it is in accordance with Article 8 paragraph 1 of Law Number 12 of 2011 concerning Legislation which states that " *Types of laws and regulations other than those referred to in*

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<sup>4</sup> Permatasari, D. (2021, 07 31). <https://kompaspedia.kompas.id/baca/infografik/kronologi/policy-covid-19-dari-psbb-to-ppkm-four-level> Kompaspedia.Kompas.ID. Accessed 08 15, 2021,

article 7 paragraph (1) include regulations stipulated by the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, the Supreme Court, the Constitutional Court, the Financial Audit Board, the Judicial Commission, Bank Indonesia, the Minister, institutions, or commissions at the same level established by law, the Provincial People's Representative Council, the Governor, the Regency/Municipal People's Representative Council, the Regent, the Mayor, the Village Head or the equivalent." <sup>5</sup>Then the legal force of regulations that are not from Article 7 paragraph 1 of Law number 12 of 2011 concerning Legislation is affirmed in Article 8 paragraph 2 of Law Number 12 of 2011 concerning Legislation which reads "Legislation as referred to in paragraph (1) its existence is recognized and has binding legal force as long as it is ordered by a higher Legislation or is formed based on the Authority".<sup>6</sup> So, the Minister's Instructions here can be categorized as *Beleidsregel* or Policy Regulations. Policy regulations are a free legal product set by state administration officials in carrying out government duties, the existence of policy regulations is a result of the free authority possessed by the government or can be referred to as discretion.<sup>7</sup>

The Policy Regulations that have been formed are entered into a certain format so that they can be applied to all citizens. The policy regulations were first coined by the Dutch which were interpreted as follows "een bij besluit vastgestelde algemene van belangen, de vaststelling van fietsen of de uitleg van wettelijke voorschriften bij het gebruik van een bevoegheid van een bestuursorgaan" which means "a decision that is determined as a general rule, is not a written regulation that is binding on the general public, with regard to the balancing of various interests, the determination of facts or an explanation of written regulations regarding the use of the authority of government organs".<sup>8</sup> Based on the above definition, several points can be drawn as follows:

1. Policy regulations are formed by government officials or agencies.
2. Policy regulations can be in the form of circulars, instructions, and others of the same kind which can be in the form of orders, instructions, appeals, notifications.
3. Policy Regulations apply to government agencies/officials that stipulate these policy regulations and all agencies/officials within their jurisdiction.

According to Albertjan Tollenaar, policy regulations are a breakthrough in solving problems stemming from the principle of legality that result in inefficiency and ineffectiveness in decision making in a society that is undergoing rapid

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<sup>5</sup> Law of the Republic of Indonesia Number 12 of 2011 concerning Legislation

<sup>6</sup> *Ibid.*

<sup>7</sup>Eric, Wening A, Legal Protection for the issuance of Policy Regulations (*Beleidsregel*). p.475

<sup>8</sup> *Ibid*

change.<sup>9</sup>Policy regulations cannot change or contradict the law because in essence, Policy regulations only function as operational assistants in carrying out government tasks. Policy regulations can also be called “shadow laws” or pseudo-legislation. Bagir Manar further mentioned the characteristics of policy regulations as follows:

1. Policy Regulations are not Laws and Regulations;
2. The principle of limitation and testing of laws and regulations cannot be applied to policy regulations;
3. Policy regulations cannot be tested wetmatigheidly, because there is no legal basis for making such policy regulations;
4. Policy regulations are made on the basis of Freies ermessen and the absence of the relevant administrative authority to make laws;
5. The examination of policy regulations is more left to doelmatigheid and therefore the touchstone is the general principles of good governance;
6. In the implementation of policy regulations, it can be in the form of several things such as decisions, instructions, circulars, announcements and so on.<sup>10</sup>

Policy regulations can also be used as an instrument to fill a legal vacuum in an emergency situation, in this context it can mean the COVID-19 pandemic situation.

### **Effectiveness of Post-Enforcement of PPKM Policy Regarding Operational Time of Buying and Selling for the Community and Consideration of Human Rights Values.**

Human rights ideas and norms are the result of the evolution of thought and efforts to create life and world order so that the labia are honorable and dignified.<sup>11</sup> Human Rights are a set of rights that are owned by humans because of their nature as humans created by God Almighty and is a gift given by God Almighty that must be respected, appreciated, and upheld and protected by the state, law, government and by every element of society for the creation of a civilized human life order.<sup>12</sup>

From the explanations contained in the Universal Declaration of Human Rights, we can understand that in essence human rights are something that is very important for life and civilization. Human rights have values that must be contained in them which must be universality, namely human rights are universal where the validity of these rights includes all humans from all races, religions, ethnic groups, positions, social, and so on. The value of indivisibility and interdependence is that

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<sup>9</sup> Victor Imanuel W.Nalle, Position of Policy Regulations in Government Administration Law. p.10

<sup>10</sup> Eric, Op.Cit. p.476

<sup>11</sup>Eko Riyadi, Human Rights Law: International, Regional and National Perspectives (Depok: Rajawali Pers.), p.10.

<sup>12</sup>See Article 1 paragraph (1) of Law Number 39 of 1999 concerning Human Rights (Republic of Indonesia, 1999).



human rights should not be divided in their entirety. All human rights are related and dependent on each other and cannot be achieved by anyone and under any circumstances (inalienable).<sup>13</sup>

What we understand is that every form and model of rights continues to evolve as a form of creation of human civilization itself.<sup>14</sup> One of the results of the creation of human civilization is the ICESCR (International Convention on Economic, Social, and Cultural Rights) in 1996 which Indonesia has ratified into Law No. 11 of 2005 concerning Ratification of the ICESCR (International Covenant on Economic, Social Rights, and Culture).

ICESCR is an international human rights instrument which is considered as customary international law. Through this instrument, countries that recognize its existence try to always be committed to realizing human rights, including in the economic, social and cultural aspects, of all people through the ratification of several international human rights treaties that regulate socio-economic rights.<sup>15</sup> In this covenant, the recognized rights are economic, social and cultural rights where these rights are basic needs and include basic human rights that must be fulfilled.<sup>16</sup> One of the articles that the author pays attention to in this covenant is Article 9 which explains that countries that are in this agreement are required to fulfill the rights of every human being to social security, including social insurance", meaning that the participating countries of this agreement recognize that not everyone will receive social security, including social insurance.

Through the ratification of the international covenant, Indonesia has an obligation to fulfill the rights contained therein, especially in the fulfillment of social security. Because basically, long before ratifying the international covenant, Indonesia has asserted itself that in the opening of the fourth paragraph of the 1945 Constitution of the Republic of Indonesia, the goal of the Republic of Indonesia is to always be committed to advancing the general welfare "and then to form an Indonesian State Government which protects the entire Indonesian nation and the entire homeland of Indonesia and to advance the general welfare. ....". In addition, social security is so important that it is emphasized again in Article 34 paragraph 2 of the 1945 Constitution which explains "The state develops a social security system for all the

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<sup>13</sup> Cecep Hidayat, Human Rights, Delivered during the Human Rights material, Faculty of Social and Political Sciences, University of Indonesia.

<sup>14</sup> Dwi Sulisworo, Tri Wahyuningsih, Baehaqi Dikdik, Human Rights, (2012 Non-Conventional Learning Grants), p.3.

<sup>15</sup> Ilias Bantekas and Lutz Oette, International Human Rights Law and Practice (Cambridge: Cambridge University Press,) p. 18.

<sup>16</sup> Manisuli Ssenjajo, Social and Cultural Rights in International Law (2nd edition) (Oxford: Hart, 2016), p. 18.

people and empowers the weak and incapable in accordance with human dignity".<sup>17</sup>

On July 2, 2021, the Indonesian government tried to overcome the problems that occurred due to the increasing spread of covid-19 by issuing the Minister of Home Affairs Instruction Number 15 of 2021 concerning the Enforcement of Restrictions on Emergency Community Activities for Covid-19 in the Java and Bali Regions or what can be called a policy. PPKM<sup>18</sup>. PPKM is one of the policies issued by the government as a form of government to break the chain of the spread of COVID-19 in Indonesia. These efforts can be successful if discipline in many aspects, social life of the community.

In the Instruction of the Minister of Home Affairs No. 15 of 2020 in the third point explains that the implementation of activities in the buying and selling sector which includes supermarkets, traditional markets, grocery stores and supermarkets is limited to operational activities until 20.00 local time. This means that after the specified hours, it is no longer allowed to carry out economic activities, especially buying and selling. Even though in the eighth point, the Minister of Home Affairs gave instructions to the Governor, Regent and Mayor to accelerate the process of distributing social assistance sourced from the APBD. One of the social assistances provided by the government is the Village Fund Direct Cash Assistance.

When observed, the policy of limiting operational time, in terms of human rights, is nothing but a limitation on the right to move freely within the territory/internal state (the right to move freely within the territory of the state), which is guaranteed in Article 13 paragraph (1) The Universal Declaration of Human Rights (UDHR) and Article 12 Paragraph (1) of the International Covenant on Civil and Political Rights which Indonesia has ratified with Law no. 12 of 2005, and Article 27 Paragraph (1) of Law no. 39 of 1999 concerning Human Rights. The right to freely move within the territory/internal of the country is categorized as a right that can be limited (limitation) on condition that it is determined by law in order to protect national security and public order, public health or morals,<sup>19</sup>The logical

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<sup>17</sup> See Article 34 paragraph 2 of the 1945 Constitution

<sup>18</sup> Instruction of the Minister of Home Affairs Number 15 of 2020 concerning the Enforcement of Restrictions on Community Activities

<sup>19</sup>See Article 12 Paragraph (3) of Law no. 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights (Republic of Indonesia, 2005). The Siracusa Principles issued by the United Nations in 1984 also state that restrictions on the movement of people can be carried out by the government based on clear national laws, generally applicable, not arbitrary and made democratically. See American Association for the International Commission of Jurists, *Siracusa Principles: on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (New York, 1985).

consequence is that economic activity, namely buying and selling in a day can only be carried out until the limit of 20.00 WIB, this also causes everyone who earns a living above the specified time to stop working, even though in article (6) of the International Covenant on Human Rights Economic, Social and Cultural Rights (The Covenant On Economic, Social and Cultural Rights) which Indonesia has ratified through Law no. 11 of 2005 and Article 23 paragraph (1) of the Universal Declaration of Human Rights (UDHR), both of which state the right of everyone to have the right to choose a job as an aspect to fulfill economic needs.

In the regulation stated in the regulation regarding the PPKM policy, the Government is responsible for meeting basic needs for people affected by the PPKM policy, especially because of the operational restrictions where the Minister of Home Affairs gives instructions to the Governor, Regent, Mayor to carry out the process. Speeding up the distribution of Village Fund Cash Direct Assistance, this is a form of attention and respect for Human Rights in the social form of the Right to Social Security as stipulated in Article 22 of the UDHR and Article 9 of the International Covenant on Economic, Social and Cultural Rights. So basically the policy has fulfilled the values of human rights, namely that the right to freedom, the right to move, the right to work and the right to social security are an inseparable and interdependent entity and these rights apply to all people without any differences, even if they have race, religion, ethnic group, social position and so on. All of the rights mentioned above are interrelated and dependent on each other, so that if one right is affected, the other rights are automatically affected as well. Thus the PPKM policy has fulfilled the values of human rights, related to economic and socio-cultural rights to social security, applicable to all (universal) humans and without discrimination, which means that everyone without distinction based on anything gets their rights in accordance with statutory provisions. - applicable invitation.

### **III. CONCLUSION**

From the research above, it can be concluded that the Ministerial Instruction is not part of the Legislative Hierarchy as stated in Law Number 12 of 2011 concerning Legislation Article 7 paragraph 1. However, the Minister's Instruction is implicitly stated in Article 8 paragraph 1 of the Law. Law Number 12 of 2011 concerning Legislation which states that regulations in forms other than the statutory hierarchy are still recognized and binding as long as they are still in effect. Then the results of the second research are PPKM policies carried out by the government in accordance with human rights values, namely: *universal, visibility, interdependence, and inalienable*. Based on the description of the discussion and the conclusions that have been submitted, the suggestion that can be submitted is the need for socialization from the Government regarding the PPKM policy due to

Covid-19 which has a human rights paradigm, while still providing proportional knowledge regarding the position of Ministerial Instructions in the Indonesian Legal System. In the context of the implementation of the fulfillment of the rights to freedom, the right to move, the right to work, the right to social security must be based on the principles of universality, equality and non-discrimination. Other than that,

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