

**THE EXISTENCE OF CIRCULAR LETTER IN INDONESIA
STATE LAW STUDY ON CIRCULAR LETTER NUMBER: 21
/SE/SATGAS/2021 CONCERNING GUIDELINES FOR
IMPLEMENTATION OF COMMUNITY ACTIVITIES
RESTRICTIONS LEVEL 2 IN PEKANBARU CITY**

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ABSTRACT

The existence of circulars in the Indonesian legal state is part of the policy regulations as further elaboration, both technically and administratively. The method used in this paper is normative legal research. The presence of Circular Number: 21 /SE/SATGAS/2021 concerning Guidelines for the Implementation of Level 2 Community Activity Restrictions (PPKM) in Pekanbaru City is a form of: Implementing the Instruction of the Minister of Home Affairs Number 44 of 2021 and Instruction of the Governor of Riau Number 198/INS/HK /2021 and the form of a pandemic emergency condition to limit the massive spread aimed at the Head of Pekanbaru City Government/Private /BUMN/BUMD Institutions, Heads of Regional Apparatuses in the Pekanbaru City Environment, Heads of Private Offices/Associations/Entrepreneurs, Heads of Sub-City Heads/Lurah Pekanbaru and Pekanbaru City Community.

Keywords: Government, Policy Regulation, Circular

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INTRODUCTION

The world was shocked by the outbreak of a disease caused by a virus called Corona or known as Covid-19 (Corona Virus Disease-19). Where hundreds of thousands of people are exposed to this virus around the world, even this virus has claimed hundreds of thousands of lives. The transmission of this virus is very fast and it is difficult to detect people who are exposed to it because the period of Covid-19 symptoms is approximately two weeks, which is the cause of the number of victims.

Where this covid has an impact on various sectors of life such as the economy, social, including education, both in Indonesia and globally.¹

In addition, the impact that has caused many humans to adapt to many new changes that are currently partially felt. Some people find it difficult to adapt to this 'new' environment. Anxiety is one example of the impact. The anxiety it generates doesn't just result in one other behavior during a pandemic. Anxiety can be characterized by the emergence of feelings of fear and caution or alertness that is not clear and unpleasant, this anxiety is also a response to whatever is happening. Threats in front of the eyes trigger the arrival of fear that comes from the environment and does not cause conflict for individuals. While anxiety comes from within, is unclear or causes conflict for the individual. Anxiety is a response to certain situations that are considered threatening and are normal things that occur accompanying the development or change of new or unprecedented experiences.²

The policy will also give implications for the local government that does not have the legitimacy to implement that rule. Therefore, that can contain sanctions to ensure the Laws and Regulations of the Area. Moreover, contrary to some laws and regulations and in the name of human rights. It will injure the joints of the existing law. The form of limitation of human rights only by act, without any rules on it and which should not be in the form of a local regulation but is contrary to human rights.³

The government has implemented very strict policies to break the chain of the spread of Covid-19, to anticipate the transmission of the virus, the government has issued various policies. Social distancing is the right choice in implementing policies to prevent the spread of Covid-19 so that it does not spread again. The emergency conditions due to Covid-19 within the framework of a unitary state are not only the responsibility of the central government, but also the roles and responsibilities of local governments. This is important for local governments to innovate policies for handling the Covid-19 pandemic without overriding policies that have been issued by the central government. Regional governments assist and support the implementation of the handling of Covid-19 in their respective regions while still referring to the rules that have been issued by the central government. With the surge in positive cases of Covid-19, the government decided to enforce the PSBB policy and then changed it to PPKM. Philosophically, PPKM is a policy that has substance related to limiting community social activities with the aim of silver goals to reduce social crowds and the ultimate

¹ *Ib* Hasniar Basri Dkk, *Polemik Covid-19 & Perubahan Sosial*, (Sulawesi Selatan: IAIN Parepare Nusantara Press, 2020). p. 2-3

² Shafira Rizky Dkk, *Potret PPKM Dalam Kehidupan Masyarakat Indonesia*, (Klaten Lakeisha, 2021). p. 2.

³ Eka N.A.M. Sihombing and Cynthia Hadita, "Administrative Measures Problems in Medan Mayor Regulation Number 11 of 2020 Concerning Health Quarantine in the Accelerated Handling of Covid-19," *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* 549, no. 11 (2021): 444-452.

goal of reducing the number of Covid-19 charts in Indonesia.⁴ This policy slightly loosened the operations of a number of sectors. For example, office capacity becomes 50 percent, mall operations are re-opened with limited number of visitors and hours.⁵ Of course, every policy issued by the government must contain legal certainty so that it can be trusted by the public. Therefore, the local government of Pekanbaru City issued Circular Number: 21/Se/Satgas/2021 concerning Guidelines for the Implementation of Level 2 Community Activity Restrictions (PPKM) in Pekanbaru City. Considering that Indonesia is a state of law, of course, the existence of a circular letter must be known, which the author will discuss further in the discussion.

METHOD

This research is a normative research. Normative legal research itself is legal research conducted by examining library materials or secondary data.⁶ The nature of this research is descriptive-analytic, which is an attempt to collect and compile data, then analyze and interpret it.⁷ In the sense that the author describes and explains related to the existence of a circular letter in the Indonesian legal state, the study of circular letter number: 21 /Se/Satgas/2021 concerning Guidelines for the Implementation of Restrictions on Community Activities (PPKM) Level 2 in Pekanbaru City.

DISCUSSION

The Existence Of Circular Letters In The State Of Indonesian Law Study Of Circular Letter Number: 21 / Se/ Satgas/2021 Concerning Guidelines For Implementation Of Level 2 Community Activity Restrictions (PPKM) In Pekanbaru City

Government is all affairs carried out by the state in carrying out the welfare of the people and the interests of the state. Government in a broad sense consists of executive, legislative and judicial institutions. Meanwhile, government in a narrow sense only consists of executive institutions, which take care of the implementation of the wheels of government. The legislature is in charge of making laws and regulations. The judiciary is in charge of administering justice. There are several governments, namely village government, sub-district government, district/city government, provincial government and central government. The duty and obligation of the government is to realize national development goals based on the goals of the Republic of Indonesia. This is stated in the 4th paragraph of the Preamble to the 1945 Constitution, which is to protect the entire Indonesian nation and the entire homeland of

⁴ Pradikta Andi Alvat, *Simulakra Hukum Diskursus Teoritik Dan Empirik*, (Guepedia, 2021). p. 49.

⁵ Zahry Vandawati Chumaida Dkk, *Penanganan Pelayanan Kesehatan di Masa Pandemi Covid-19*, (Surabaya: CV. Jakad Media Publishing, 2021). p. 51.

⁶ Salim HS dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis dan Desertasi*, (Jakarta : PT Raja Grafindo, 2013), p. 12.

⁷ Winarno Surahcmad, *Pengantar Penelitian Ilmiah, (Dasar, Metode, Teknik)*, (Bandung: Tarsito, 1990), p.139-140.

Indonesia, promote public welfare, educate the nation's life and participate in carrying out world order based on independence, eternal peace, and social justice.⁸

Government expert and architect of decentralization, Ryaas Rasyid divides seven main functions of government. First, to ensure the security of the country from all possible attacks from outside, and to prevent rebellion. First, to ensure the security of the state from all possible attacks from outside, and to prevent internal rebellions that could overthrow the legitimate government through violent means; Second, maintaining involvement with the occurrence of disagreements among the community members, ensuring that any changes that occur in society can take place peacefully; Third, ensure the implementation of fair treatment for every citizen without distinguishing any status behind their differences. This guarantee of justice continues to be guaranteed through court decisions, where maximum efforts are made to prove the truth and where the constitution and applicable laws are interpreted and applied fairly and impartially and where disputes can be reconciled; Fourth, carry out public works and provide services in areas that are impossible for the government to do; fifth, make efforts to improve social welfare; helping the poor and supporting disabled, elderly and neglected children; accommodate the homeless to the sector of productive activities and the like; establish economic policies that benefit the wider community, such as controlling the rate of inflation, encouraging the creation of other jobs that directly guarantee the improvement of the economic resilience of the state and society; seventh, establish policies for the maintenance of natural resources and the environment such as water, land and forests.⁹

The duties and authorities to carry out the general welfare as stated above are tasks that are imposed on the shoulders of the government. The imposition of a very heavy task by itself resulted in the scope of the government's duties getting wider. In relation to the provision of welfare, the government does not only serve as a guardian of order and security, as is the task of the government in a formal legal state. The government is also involved in the social, economic, and so on which were originally the affairs of each individual. In a welfare law state, the function of government is dual because on the one hand the government is the ruler, but on the other hand it also functions as a public servant. Public service is a term commonly used to mean services provided by the government to its citizens (citizens), also directly through the public sector or through private sector budgeting provisions.¹⁰

Basically, authority is divided into several parts, namely binding authority and free authority. Bound authority is the authority given by law to government organs to act in accordance with what has been determined by law, while free authority is the authority given by law to the government so that it can act other than what is specified

⁸ Slamet, *Kekuasaan Pemerintahan*, (Tangerang: Loka Aksara, 2019). p.1

⁹ Fathur Rahman, *Teori Pemerintahan*, (Malang.: UB Press, 2018.), p. 6.

¹⁰ Nurmah Semil, *Pelayanan Prima Instansi Pemerintah: Kajian Kritis pada Sistem Pelayanan Publik Di Indonesia*, (Jakarta: Kencana, 2018), p. 1.

in the law as long as does not conflict with the law on public order and decency.¹¹ In the case that the logical consequence is that the policies set by administrative officials must be carried out consistently (obediently). To enforce the principle of consistency in the policies of state administration officials who are free, it is necessary to put them in a formal form or a certain format commonly called policy regulations.

Policy regulations (beleidsregel), were born due to laws with a higher hierarchy only discussing something of a basic nature, thus to implement these regulations further elaboration both technically and administratively is needed so that this is where space is needed for policy regulations. In addition, policy regulations (beleidsregel) can also fill legal voids in emergency situations to suit the interests and needs of the community. The reason that justifies the use and determination of policy regulations (beleidsregel) by the government lies in the space of consideration (beoordelingsruimte) given by the legislature to government officials in taking the initiative in determining the behavior of public law with the nature of regulating, determining, or acting positively in terms of solving problems in implementation. government The existence of policy regulations is closely related to free authority (vrije bevoegheid) which is a facility to provide opportunities for state administrative bodies to act without being obliged to be fully bound by the law. However, this discretion does not appear to oppose the principle of legality in the implementation of government. This provides broad opportunities for the state to issue regulations as long as the regulations have a positive impact on society.¹²

Bagir Manan stated "With the existence of these policy regulations, compliance with state administration actions will be guaranteed and for every event that contains equality, legal certainty, and actions can be trusted because they are based on certain regulations." This means that if the policy of a free state administration official is set out in a policy regulation, every member of the public can easily find out so that everyone who meets the requirements has the opportunity and opportunity to obtain the benefits that may be obtained from the policy.¹³

In addition, policy regulations are not statutory regulations. This is because the institutions that make policy regulations do not have the authority to make laws and regulations (wetgevende bevoegdheid). The form of policy regulations is not directly legally binding, but has legal relevance. The formation of policy regulations (beleidsregel) is based on the existence of a beoordelingsruimte (consideration room) in order to take public legal actions of a regulatory nature given by lawmakers to government officials or agencies on their own initiative. This initiative is in the form of

¹¹ Filmon Mikson Polin, *Memahami Hukum Acara Tata Usaha Negara*, (Malang: Media Nusa Creative, 2016), p. 10.

¹² Firdaus Arifin, *Pengujian Peraturan Kebijakan Dalam Sistem Peradilan Di Indonesia* (Jurnal Litigasi, Volume 22 Nomor 1, Tahun 2021), p. 138.

¹³ Hotma P. Sibuea, *Asas Negara Hukum. Peraturan Kebijakan & Asas-Asas Pemerintahan Yang Baik*, (Jakarta: Erlangga, 2010), p. 104.

positive concrete actions to solve government administration problems faced at certain times that require regulation.¹⁴

According to Jimly Asshiddiqie, in practice in Indonesia, policy regulations can be made in the following forms:

- a. Circular letter;
- b. Warrant or instruction;
- c. Work manual or manual;
- d. Implementation instructions;
- e. Technical instructions;
- f. Guide book or "guidance" ;
- g. Terms of reference or terms of reference;
- h. Work design or project design.

The Pekanbaru City Government issued a policy regulation in the form of a Circular Number: 21 /SE/SATGAS/2021 concerning Guidelines for the Implementation of Level 2 Community Activity Restrictions (PPKM) in Pekanbaru City. According to David Pollard, Neil Parpworth and David Hughes, a circular is basically a letter from the government to its subordinate agencies or officials that contains guidelines on the implementation of the function of laws and regulations. Circulars generally provide non-judicial suggestions and guidelines or guidelines on certain issues to develop provisions as regulated in laws and regulations. Circulars make instructions or requirements to take a certain action.

The presence of Circular Letter Number: 21 /SE/SATGAS/2021 concerning Guidelines for the Implementation of Level 2 Community Activity Restrictions (PPKM) in Pekanbaru City is a form of:

1. Implementing the Instruction of the Minister of Home Affairs Number 44 of 2021 concerning the Enforcement of Restrictions on Community Activities at Level 4, Level 3, Level 2, and Level 1 and Optimizing the Command Post for Handling Corona Virus Disease 2019 at the Village and Sub-District Levels to Control the Spread of Corona Virus Disease 2019 in Sumatra, Nusa Tenggara, Kalimantan, Sulawesi, Maluku and Papua regions;
2. The implementation of the Riau Governor's Instruction Number 198/INS/HK/2021 concerning the Extension of the Application of Micro-Based Community Activities at the District, Village/Kelurahan Levels to the Level of Rukun Warga (RW), Neighborhood Units (RT) with the potential to transmit COVID-19, need to be joint efforts to break the chain of spread of COVID-19;
3. Form a pandemic emergency condition to limit the massive spread aimed at the Heads of Government/Private/BUMN/BUMD Institutions in Pekanbaru City, Heads of Regional Apparatuses in Pekanbaru City, Heads of Private Offices /Associations/

¹⁴ Ni Luh Gede Astariyani dan Bagus Hermanto, *Paradigma Keilmuan Dalam Menyoal Eksistensi Peraturan Kebijakan Dan Peraturan Perundang-Undangan: Tafsir Putusan Mahkamah Agung*, (Jurnal Legislasi Indonesia, Volume 16 Nomor 4 Tahun 2019), p. 436.

Entrepreneurs, Heads of Sub-districts/Headers of Pekanbaru City and the people of Pekanbaru City.

Thus, the existence of circulars in the Indonesian legal state is part of the policy regulations as further elaboration, both technically and administratively.

Embodiment Of The Indonesian Rule Of Law With Laws And Regulations

The state is an organizational form of society or a group of people who have the power to regulate relations by maintaining order and setting the goals of common life. The existence of a state, like an organization in general, is to make it easier for its members (the people) to achieve their common goals or ideals. This shared desire is formulated in a document called the constitution, which includes the values that are upheld by the people as members of the state. As a document that includes shared ideals, the constitution is the highest legal document in a country. Therefore, the constitution also regulates how the state is managed. This constitution is referred to as the Basic Law.¹⁵

Soekanto in Hadita (2020) Power has a very important role because it can determine the fate of millions of people. Both the bad power must always be measured by its usefulness to achieve a goal that has been determined or realized by the community first.¹⁶

In the constitution, Indonesia is a state of law (Rechtstaat), not a state of power (Machtstaat). It contains an understanding of the recognition of the principle of the rule of law and the constitution. The adoption of the principle of separation and limitation of power according to the constitutional system regulated in the Constitution, the existence of guarantees for human rights in the Constitution, the principle of an independent and impartial judiciary that guarantees equality of every citizen under the law, and guarantees justice for everyone. including the exercise of authority by those in power. In the understanding of the rule of law, the law holds the highest command in the administration of the state. In accordance with the principle of the rule of law, and not of man, which is in line with the nomocratie, namely the power exercised by law, nomos.¹⁷

In such an understanding of the rule of law, there must be guarantees that the law is built and enforced according to democratic principles, because the principle of the rule of law and the rule of law itself basically comes from the sovereignty of the people. Therefore, the principle of the rule of law should be built and developed according to the principles of democracy or popular sovereignty. Laws should not be made, enacted, interpreted and enforced with an iron fist based on mere power. The

¹⁵ Muh Nur El Brahim, *Bentuk Negara dan Pemerintahan RI*, (Bekasi: Aranca Pratama, 2011), p.1.

¹⁶ Cynthia Hadita, Regional Autonomy Political Politics Of Regional Liability Reports To Regional Representatives In The Implementation Of Local Government, *Nomoi Law Review*, Volume 1, Issue 1, May 2020, p. 92.

¹⁷ *Ibid.*

principle of the rule of law should not be enforced by ignoring the democratic principles regulated in the Constitution. Therefore, it is also necessary to emphasize that sovereignty is in the hands of the people which is carried out according to the Constitution which is balanced with the affirmation that the Indonesian state is a legal state with sovereignty of the people or democracy. The relationship between the rule of law and democracy cannot be separated. Democracy without rule of law will lose its form and direction, while law without democracy cannot be separated. Democracy without the rule of law will lose its form and direction, while law without democracy will lose its meaning.¹⁸ The law itself is a very important instrument for human life because legal norms are useful for regulating human behavior in order to create peace.¹⁹ Legal norms can be in the form of a written regulation, namely statutory regulations.

Legislation can be understood as part of a social contract (social contract) which contains the rules of the game in the nation and state. And the only regulation made to provide certain limitations on the course of government. Legislation is a written regulation established by a state institution or authorized official and binding in general. National legislation is a statutory regulation that applies in the territory of a country, such as the state of Indonesia. So, national laws and regulations are rules made by authorized state institutions to be obeyed by all citizens and the national scope. Therefore, the laws and regulations apply to all Indonesian citizens without exception.²⁰

There are several types of laws and regulations according to Indonesia's positive legal system, starting from the highest degree, namely the basic law of the state, to the lowest degree, according to the systematic order or hierarchy of laws and regulations. The types of laws and regulations in Indonesia, according to the positive legal system for the formation of laws and regulations, are formed based on the authority granted by law, so that they are not only qualified hierarchically, but also legally recognized as statutory regulations. formed by state and government institutions.²¹ The hierarchy of laws and regulations is regulated in Law Number 12 of 2011 concerning the Establishment of Legislation Article 7 paragraph (1), namely:

1. 1945 Constitution
2. TAP MPR
3. Law/Perppu
4. Government Regulation
5. Presidential Regulation
6. Regional Regulations

¹⁸ Ridwan HR, *Hukum Administrasi Negara*, Cet 6, (Jakarta: PT. Raja Grafindo Persada, 2006), p. 88.

¹⁹ Bayu Dwi Anggoro, *Buku Ajar Ilmu Perundang-Undangan*, (Jember: UPT Penerbitan Universitas Jember, 2021), p. 21.

²⁰ Laurensius Arliman Simbolon, *Ilmu Perundang-Undangan Yang Baik Untuk Negara Indonesia*, (Yogyakarta: Deepublish, 2019), p. 1.

²¹ Nurul Qamar, Farah Syah Rezah, *Ilmu Dan Teknik Pembentukan Peraturan Perundang-Undangan*, (Makassar : CV Social Politic Genius, 2020), p. 3..

- a. Provincial Regulation
- b. District/city regulations

Bagir Manan stated that the function of legislation consists of two functions, namely internal functions and external functions.²² The functions will be explained as follows:

1. Internal function

This function is more related to the existence of the legislation referred to in the legal system. Internally the laws and regulations to carry out the functions:

- a. Law creation;
- b. Legal updates;
- c. Integration;
- d. Legal certainty

2. External functions consist of:

- a. Change function;
- b. Stability function;
- c. convenience function.

The embodiment of the rule of law in Indonesia with sources of statutory regulations, namely: first, as a plague/funnel to provide guidance in carrying out democracy in accordance with the desired goal, namely people's sovereignty; second, as a controller of the balance of democracy so as not to go too far; third, As a manifestation of the implementation of democracy by upholding the people, they are the owners of sovereignty; fourth, as the implementation of the rule of law because one of the sources of Indonesian law is legislation so that the effectiveness of its application can be measured; fifth, As a legal basis for the government in carrying out its authority so that it is not absolute to the people; sixth, laws and regulations regulate the rights and obligations of the people, so that the people can fight for these rights and obligations and get justice for their struggles; seventh, as a forum for solving problems both individually, in groups and in the community; ninth, as the implementation of all people are equal before the law so that the guilty can be prosecuted without exception; tenth, the legal basis for the implementation of regional autonomy.

CONCLUSION

The formation of policy regulations (*beleidsregel*) is based on the existence of a *beoordelingsruimte* (*consideration room*) in order to take public legal actions of a regulatory nature given by lawmakers to government officials or agencies on their own initiative. This initiative is in the form of positive concrete actions to solve government administration problems faced at certain times that require regulation. The existence of a circular letter in the Indonesian legal state is a form of policy regulation as a further elaboration, both technically and administratively. The presence of Circular Number: 21

²² Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan*, (Jakarta: Sinar Grafika, 2017), p. 21.

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