



THE ESTABLISHMENT OF REGIONAL LEGAL PRODUCTS IN HANDLING OF 2019 CORONA VIRUS DISEASE (COVID-19) IN AMBON CITY

Victor Juzuf Sedubun¹, Yohanes Pattinasarany², Vica Jillyan Edsti Saija³

^{1, 2, 3}. Department of Constitutional Law and State Administrative Law, Law Faculty of Pattimura University, Ambon, Maluku, Indonesia.

Abstract

One of the efforts taken by the government and local governments including Ambon City, Maluku Province in spreading and accelerating the handling of Corona virus Disease 2019 (Covid-19) is through large-scale social restriction measures. One of the restrictive measures referred to by regional governments is the establishment of regional legal products. However, the formation of regional regulatory products must still be guided by the principles of establishing statutory regulations and the procedures for establishing legislation as regulated in Law Number 12 of 2011 concerning the Formation of Legislative Regulations as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 Year 2011 concerning the Establishment of Legislation.

The results of the research show that the formation of Maluku Governor Regulation Number 15 of 2020, and Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 as regional legal products, to prevent the spread of the Covid 19 pandemic does not fulfill the principles of democracy and instrumental principles, in addition to the principles formal (the principle can be implemented, the principle of utility and efficiency, the principle of clarity of formulation, and the principle of openness) in Article 5 and the principle of substance in Article 6 (legal order and certainty; and balance, harmony and harmony) as regulated in Law Number 12 Year 2011 as amended by Law Number 15 of 2019.

Keywords: Formation of Regional Legal Products, Handling Covid-19, Ambon City.

A. Background

Corona virus Disease 2019 (abbreviated as Covid-19) used by the World Health Organization (abbreviated as WHO) is a disease that was not known before the outbreak in Wuhan, the capital of Hubei Province in the People's Republic of China, since December 2019.¹ The spread of Covid-19 that has attacked The city of Wuhan in China has become a pandemic as a result of its massive spread and in a short time more than 200 countries in the world have been exposed to Covid-19, including all provinces in Indonesia.

The condition of the Covid-19 pandemic received serious attention from the government through various efforts to prevent, overcome and suppress the spread of Covid-19. The government is demanded to immediately take quick and appropriate steps in handling Covid-19 to overcome and reduce the number of its spread which has resulted in the number of deaths continuing to increase and

¹ <https://www.who.int/indonesia/news/novel-coronavirus/qa-for-public>. 20 April 2020.

spread and have an impact on political, economic, social, cultural, defense, security and welfare aspects of the people in Indonesia.

One of the efforts taken by the government is large-scale social restrictions in order to prevent the possible spread and accelerate the handling of Covid-19 through the enactment of Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona virus Disease 2019 (Covid-19), furthermore abbreviated as PP Number 21 of 2020).

The existence of Government Regulation Number 21 of 2020 is the basis for the government and local governments to take preventive measures and handle the spread of Covid-19 at the central and regional levels through large-scale social restriction measures in order to increase the spread of the Covid 19 pandemic. Regions can carry out large-scale social restrictions or restrictions on the movement of people and goods to reduce the spread of the Covid-19 pandemic in their respective regions.

One of the restrictions by local governments is through the formation of regional legal products. However, the formation of regional regulatory products by the local government in an effort to overcome and suppress the spread of the Covid-19 pandemic must still adhere to the principles of establishing laws and regulations and the procedures for establishing legislation as regulated in Law Number 12 of 2011 concerning the Formation of Law legislation (hereinafter abbreviated as Law Number 12 of 2011) as amended by Law Number 15 of 2019 concerning Amendments to Law Number 12 of 2011 concerning the Formation of Laws and Regulations (Law Number 15 of 2019), in addition to statutory regulations other legislation that gives authority to government administrative bodies / officials to form laws and regulations based on regional needs and interests in the face of the Covid-19 pandemic.

However, the formation of Maluku Governor Regulation Number 15 of 2020 concerning Restrictions on the Movement of People and Mode of Transportation in Handling Corona Virus Disease 2019 (Covid-19) on Ambon Island, hereinafter abbreviated as Governor of Maluku Number 15 of 2020 and Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 is the basis for implementing restrictions on community activities in dealing with the spread of Covid-19 on Ambon Island and Maluku province in general, it seems that it is not yet in accordance with the principles of establishing legislation, so there are various criticisms to the point of efforts to refuse society to enforce the regulations. the rules referred to. In fact, the formation of a Governor Regulation or a Mayor Regulation is part of statutory regulations that are part of the government's efforts (bestuur) to control (structure) the people.

Based on the description on the background above, the problem raised to be analyzed in this study is whether the formation of the Maluku Governor Regulation Number 15 of 2020, Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 and their amendments are in accordance with formal principles and substantial principles. the formation of laws and regulations? In accordance with the substance of the legal issues to be studied in this research, the nature of this research is empirical law, namely a study that primarily examines positive legal provisions and legal principles as well as realities in practice in the field.

B. DISCUSSION

Formal Principles and Substantial Principles for the Formation of Regional Legal Products in Maluku During the Covid-19 Pandemic

1. Formal Principles of Establishing Legislation

Legal principles have an important meaning for the formation of law, the application of law and the development of legal science. For the formation of law, legal principles provide an outline of the provisions that need to be contained in the rule of law. Regarding the principles of the formation of statutory regulations, there will be opinions from several experts who discuss the principles in the formation of legislation, including IC van der Vlies, and A. Hamid S. Attamimi, who share the principles the formation of laws and regulations in two categories, namely formal principles and substantial principles.

I.C. van der Vlies divides the principles of forming proper regulations (beginselen van behoorlijke regelgeving) into formal principles and material principles as contained in his book

Het Wetsbegrijp en Beginselen van Behoorlijke Regeling.² The formal principles are divided into five³, namely:

a. Principle of Clear Goals (beginsel van duidelijke doelstelling);

This principle consists of three levels, namely First, a general policy framework for regulations to be made; Second, the specific objectives of the rules to be made; and Third, the purpose of the various parts of the regulation ". Goals must be clearly visible at all three levels. Furthermore, van der Vlies explained that in order to be able to clearly state the objectives to be achieved, legislators first need to provide an adequate description of the real conditions to be overcome by a regulation. Furthermore, it is necessary to state what changes by means of the regulation are intended to occur in the existing real situation and it must be described how the provisions in the regulation will give rise to these changes. In this description it is necessary to include an overview of the good and the bad. It makes sense that the regulator is familiar with the existing situation it wants to change. In formulating the objectives of laws and regulations, there are several methods that can be used. First, stated generally. Second, stated instrumentally. What is essential for the principle of clear objectives is a clear description of the interests involved in the regulation to be issued and a description of how these interests are compared with one another. So it is clear in what way the regulators will serve the public interest.⁴ "

b. Principles of Appropriate Organ/Institutions (beginsel van het juiste orgaan);

This principle, according to van der Vlies, requires that an organ provides an explanation that the making of a certain regulation is in its authority, and that an organ, especially a legislator, gives reasons why it does not carry out the regulation of a certain material by itself but assigns it to other organs. This principle is a logical continuation of the principle of clear objectives. If one day it is clear what to do, then we will see who should do it. This principle is aimed at exercising the division of authority as constitutionally established in law and jurisprudence. The essential material should be contained in the lower regulations, and so on. What is by its nature falls within the jurisdiction of the lower bodies must be regulated by the body itself. The allocation of authority to the lower organs must also be carried out in such a way that the allocated tasks are real, there is good coordination and there is a connection with other tasks of the organs concerned. "⁵

c. Principle of the Need for Regulations (het noodzakelijkeheids beginsel);

This principle grows because there are always alternatives or alternatives to solve a government problem. The deregulation principle being developed in the Netherlands and the simplification and economical principle (soberheid), in the formation of laws and regulations, indicate the possibility of alternatives in the regulatory sector. This principle is also related to the principle of clear objectives. According to van der Vlies, if the goal is clearly formulated, the next problem is whether the goal must be achieved by making a regulation.

Furthermore, van der Vlies explained that "... is the regulation urgent (urgent) to be made, and if so, in what form should it be made. When it comes to making laws and regulations, the government is expected to propose alternatives to the DPR. One of the things that must be avoided in determining urgency is not to overlook all problems. What this means is that the authorized organ / institution should not always assume that the resolution of various problems must be resolved by establishing statutory regulations. This is to avoid excessive impression. "⁶

d. Implementable Principles (het beginsel van uitvoerbaarheid);

Regarding this principle, it is seen as a form of effort to enforce the relevant laws and regulations. There is no point in a law that cannot be enforced. Apart from the government, the

² Maria Farida Indrati Soeprapto. Legislative Science, its Basics and Formation. The Eleventh Printing. Canisius. Yogyakarta. 2006. h. 196.

³I.C. van der Vlies. Het Wetsbegrijp en Beginselen van Behoorlijke Regeling. 'S-Gravenhage. Vuga. 1984. h. 186. As quoted by A. Hamid S. Attamimi. The Role of Presidential Decrees of the Republic of Indonesia in State Administration (An analytical study of Presidential Decrees with Regulatory Function in the Pelita I-PELITA IV Period). Dissertation. University of Indonesia. Jakarta. 1990. h. 330. In Maria Farida Indrati Soeprapto. Ibid. h. 196-197

⁴I.C. van der Vlies. Wetgeving Handboek. Translated by Linus Doludjawa with the title: Handbook of Drafting Laws and Regulations. Directorate General of Legislation, Ministry of Law and Human Rights of the Republic of Indonesia. Jakarta. 2005. h. 258-259

⁵ Ibid. h. 266.

⁶ Linus Doludjawa. Books, op.cit. h. 271. See also Yuliandri. Principle, op.cit. h. 142.

community also hopes that there will be a guarantee (garantie) that the results or consequences of a statutory regulation will be achieved. The public will be disappointed if it turns out that these regulations cannot be properly enforced. According to van der Vlies, regarding guarantees regarding the implementation of the material content of a statutory regulation. These guarantees include, among other things, adequate social support, adequate facilities for an organ or service that will implement a regulation, sufficient financial support and appropriate sanctions.⁷

e. Consensus Principle (het beginsel van consensus);

van der Vlies argues that it is necessary to make efforts to have a consensus between the parties concerned and the government regarding the making of a regulation and the content of the regulation. In this principle appears an important principle of parliamentary democracy: a person or legal entity should not be burdened with an obligation without the prior consent of them or their representatives.⁸

This opinion was also quoted by A. Hamid S. Attamimi in his dissertation which stated that, in contrast to the Netherlands, in Indonesia, the Principle of the Right Organ / Institution (beginsel van het juiste orgaan) needs to be linked to the content material and types of laws and regulations. invitation.⁹ The contents of the statutory regulations are integrated with the authority of each organ / institution that forms the type of legislation concerned. Or it could be the other way around, the authority of each said organ / institution determines the content of the legislation. Furthermore, it is said that what is meant by consensus is "..., there is 'agreement' of the people to carry out their obligations and suffer the consequences of the relevant laws and regulations. This is because the formation of laws and regulations must be considered as a first step towards achieving goals that are 'mutually agreed' by the government and the people. It is known to the people about the consequences it will cause and the background and objectives to be achieved. This can also be done by disseminating the draft legislation to the public prior to its formation. "

A. Hamid S. Attamimi shares the formal principles for the formation of appropriate laws and regulations as follows:

- a. the principle of clear objectives;
- b. the principle of the need for regulation;
- c. the principles of the right organ / institution;
- d. the principle of proper load material;
- e. the principle of workability; and
- f. principles can be recognized.

The formation of regional legal products, especially in Maluku during the Covid-19 pandemic, with the issuance of the Maluku Governor Regulation Number 15 of 2020, Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 must also be guided by the formal principles of establishing statutory regulations, as van der Vlies and A. Hamid S. Attamimi views above. In addition, the formation of the Maluku Governor Regulation Number 15 of 2020, Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 also guided the formal principles of forming statutory regulations as regulated in the provisions of Article 5 of Law Number 12 of 2011 in conjunction with Law Number 15 In 2019, which regulates the formal principles for the formation of laws and regulations as follows:

In forming Legislation, it must be carried out based on the principles of the formation of good laws and regulations, which include:

- a. clarity of purpose;
- b. appropriate forming institutions or officials;
- c. suitability between types, hierarchy and content;
- d. can be implemented;
- e. efficiency and efficiency;
- f. clarity of formulation; and
- g. openness.

In accordance with the elucidation of Article 5 of Law Number 12 Year 2011 stipulates that what is meant by "the principle of clarity of objectives" is that any formation of laws and regulations must have clear objectives to be achieved. What is meant by "the correct institutional

⁷ Ibid. h. 272

⁸ Ibid. h. 280

⁹ A. Hamd S. Attamimi in Yuliandri. Principle, op.cit. h. 141

principle or official forming" is that every type of statutory regulation must be made by the competent state institution or official forming the legislation. These statutory regulations can be canceled or null and void if they are made by unauthorized state institutions or officials. What is meant by "the principle of conformity between types, hierarchy, and content of content" is that in the formation of statutory regulations, the appropriate content material is in accordance with the type and hierarchy of statutory regulations. What is meant by "the principle of enforceability" is that any formation of laws and regulations must take into account the effectiveness of these laws and regulations in society, both philosophically, sociologically, and juridically. What is meant by "the principle of efficiency and efficiency" is that every statutory regulation is made because it is really needed and useful in regulating the life of the community, nation and state. What is meant by "the principle of clarity of formulation" is that each statutory regulation must meet the technical requirements for drafting statutory regulations, systematics, choice of words or terms, as well as clear and easy to understand legal language so as not to cause various interpretations in its implementation. What is meant by "principle of openness" is that in the formation of laws and regulations starting from planning, preparation, discussion, ratification or stipulation, and enactment are transparent and open. Thus, all levels of society have the widest opportunity possible to provide input in the formation of laws and regulations.

2. Substantial Principles for the Formation of Legislation

Regarding material principles, van der Vlies divides them into five, namely correct terminology and systematics principles (het beginsel van duidelijke terminologie en duidelijke systematiek); recognizable principles (het beginsel van de kenbaarheid); the principle of equal treatment in law (het rechtsgelijkheidsbeginsel); the principle of legal certainty (het rechtszekerheids-beginsel); and principles of law enforcement according to individual circumstances (het beginsel van individuele rechtsbedeling). The explanation of each of these principles is as follows:

- a. Principles of Correct Terminology and Systematics (het beginsel van duidelijke terminologie en duidelijke systematiek);
a rule must be clear, both the words used and the structure... concern about the possibility of breaking the rules through existing gaps often leads to the use of very complex sentence structures which, according to the author, are capable of covering all the possibilities that might occur. A rule must not only be clear sentence by sentence, but the system should be clear and logical. Readers hope that there will be arguments that are well organized in a law and will read the law in that way. " Furthermore, van der Vlies explained that clear laws and regulations can be achieved in various ways. One can want maximum clarity of every rule; one can also directly relate the desired clarity to the material and expertise of the parties to which the regulation is concerned.¹⁰
- b. Recognizable Principles (het beginsel van de kenbaarheid);
A rule must be known by everyone who needs to be aware of that regulation. A regulation which the interested parties do not know will lose its purpose: it does not create equality and legal certainty nor does it create an arrangement.¹¹ A. Hamid S. Attamimi, agrees with this principle, especially if the statutory regulation burdens the community and people with various obligations. The principle which states that everyone is considered to know laws and regulations needs to be guided by recognizable principles.
- c. The Principle of Equal Treatment in Law (het rechtsgelijkheids-beginsel);
"The principle of legal equality is the basis of all laws and regulations. Anything that is considered important by all parties concerned, should as far as possible be arranged jointly with the parties concerned, through their representatives and arranged as far as the material allows for that, in the same way for the parties. Rules may not be addressed to a certain group chosen at will, in a regulation regulation there can be no arbitrary distinction. In addition, the impact arising from a regulation must not cause inequality (discrimination), and in the relationship between a regulation and another regulation, there is no difference (contradiction). "¹²

¹⁰ Ibid. h. 187.

¹¹ ¹¹ A. Hamd S. Attamimi in Yuliandri. Asas, *op.cit.* h. 149.

¹² Linus Doludjawa. Buku. *Op.cit.* h. 292.

- d. Principle of Legal Certainty (het rechtszekerheidsbeginsel);
The principle of legal certainty requires that reasonable expectations (expectations) be respected, in particular this means that regulations must contain an appropriate form of norms, that regulations are not changed without adequate transitional rules, and that regulations should not be imposed retroactively without urgent reasons. This principle was originally given another name, namely the principle of expectations which basically must be fulfilled (het beginsel gerechtvaardigde verwachtingen gehonoreerd moeten worden), which is a specialization of the general principle of legal certainty. " In the principles of good governance, the principle of legal certainty is also the basis for making and implementing public policies. Therefore, every public policy and statutory regulations must always be formulated, stipulated and implemented based on institutionalized standard procedures and are known to the general public, and there is room to evaluate them.¹³
- e. Principles of Implementing Law in Accordance with Individual Circumstances (het beginsel van individuele rechtsbedeling);
This principle intends to provide specific solutions to certain matters or circumstances so that laws and regulations can also provide solutions apart from general problems, as well as for specific problems. Furthermore, it is said that although this principle provides a good condition in dealing with individual problems and events, this principle can nevertheless eliminate the principle of certainty on the one hand and the principle of equality on the other, if it is not carried out in full balance. Therefore, this principle should be placed on the parties implementing / enforcing the relevant laws and regulations themselves.

The opinion of van der Vlies was subsequently used by A. Hamid S. Attamimi in explaining the principles of the formation of laws and regulations in Indonesia. A. Hamid S. Attamimi then added several principles in accordance with the life style of the nation and state in Indonesia, namely:

- a. Ideals of Indonesian Law;
- b. Principles of a State Based on Law and the principles of Government Based on a Constitutional System;
- c. other principles.

Thus the principles for the proper formation of Indonesian legislation will follow the guidelines and guidance provided by:

- a. The ideal of Indonesian law which is none other than Pancasila (the precepts in this case act as ideals (idee), which act as "guiding stars");
- b. State Fundamental Norms which are also none other than Pancasila (Precepts in this case apply as norms);
- c. (1) the principle of a state based on law which places the law as a distinctive regulatory tool within the virtue of law (der Primat des Rechts);

(2) The principles of governance are based on a constitutional system which places laws as the basis and limits for the implementation of government activities. The principles for the formation of appropriate laws and regulations include:

- a. the principle of clear objectives;
- b. the principle of the need for regulation;
- c. the principle of proper organ / institution and content material;
- d. the principle of workability;
- e. recognizable principles;
- f. the principle of equal treatment in law;
- g. the principle of legal certainty;
- h. principles of law enforcement according to individual circumstances.

Furthermore, Maria Farida Indrati Soeprapto¹⁴ stated that if following the division regarding the existence of formal principles and material principles, then A. Hamid S. Attamimi divides the material principles for the proper formation of laws and regulations into:

¹³ Joko Widodo. Good governance (Analysis of the Dimensions of Accountability and Bureaucratic Control in the Era of Decentralization and Regional Autonomy). Human Scholar. Surabaya. 2001. h. 29. See also Eddi Wibowo, et al. Understand Good Government Governance & Good Corporate Governance. YPAPI. Yogyakarta. 2004. h. 61-62. In Yuliandri. Ibid. h. 150.

¹⁴ A. Hamid S. Attamimi. The Role of Presidential Decrees of the Republic of Indonesia in State Administration (An analytical study of Presidential Decrees with Regulatory Function in the Pelita I-PELITA IV Period). Dissertation. University of Indonesia. Jakarta. 1990. h. 344-345. In Maria Farida Indrati Soeprapto. Ibid. h. 197-198.

- a. principles in accordance with the Ideals of Indonesian Law and Fundamental State Norms;
- b. principles in accordance with the Basic Law of the State;
- c. principles in accordance with the principles of a Law Based State;
- d. principles in accordance with the principles of Government Based on the Constitutional System.

By referring to the principles of proper formation of Indonesian laws and regulations, we can expect the creation of good laws and regulations that can optimally achieve objectives in legal development in the Republic of Indonesia. Law Number 12 of 2011 regulates the principles that serve as guidelines in preparing the content of legislation, the substantial principles referred to in Article 6 of Law Number 12 of 2011 states that:

- (1) The contents of the Legislation must reflect the principles of:
 - a. protection;
 - b. humanity;
 - c. nationality;
 - d. kinship;
 - e. archipelago;
 - f. Unity in Diversity;
 - g. justice;
 - h. equal position in law and government;
 - i. legal order and certainty; and / or
 - j. balance, harmony and harmony.
- (2) In addition to reflecting the principles as intended in paragraph (1), certain Legislation may contain other principles in accordance with the legal field of the relevant Legislation.

Elucidation of Article 6 of Law Number 12 of 2011 in relation to each of the above principles states as follows: What is meant by "principle of protection" is that every material contained in statutory regulations must function to provide protection to create public order. What is meant by "humanitarian principle" is that every material contained in laws and regulations must reflect the protection and respect for human rights as well as the dignity and worth of every citizen and population of Indonesia. What is meant by "the principle of nationality" is that every material contained in the legislation must reflect the character and character of the diverse Indonesian nation while maintaining the principles of the Unitary State of the Republic of Indonesia. What is meant by "principle of kinship" is that every material contained in the legislation must reflect deliberation to reach consensus in every decision making. What is meant by "the principle of nationality" is that every material contained in the laws and regulations always takes into account the interests of the entire territory of Indonesia and the content of laws and regulations made in the regions is part of the national legal system based on Pancasila and the Constitution of the Republic of Indonesia. 1945. What is meant by "the principle of unity in diversity" is that the material contained in statutory regulations must take into account the diversity of population, religion, ethnicity and class, regional and cultural conditions in the life of the community, nation and state. What is meant by "the principle of justice" is that every material contained in statutory regulations must reflect justice proportionally to every citizen. What is meant by "the principle of equal position in law and government" is that any material contained in statutory regulations may not contain anything that is discriminatory based on background, among others, religion, ethnicity, race, class, gender, or social status. What is meant by "the principle of legal order and certainty" is that every material contained in statutory regulations must be able to create order in society through a guarantee of legal certainty. What is meant by "the principle of balance, harmony and harmony" is that each material content of legislation must reflect balance, harmony and harmony between the interests of individuals, society and the interests of the nation and state.

Meanwhile what is meant by "other principles in accordance with the field of law of the relevant laws and regulations", among others:

- a. in Criminal Law, for example, the principle of legality, the principle of no punishment without guilt, the principle of guiding prisoners, and the principle of presumption of innocence;
- b. in Civil Law, for example, in contract law, among other things, the principle of agreement, freedom of contract, and good faith.

Regional legal products, especially in Maluku, which were formed in abnormal circumstances, during the Covid-19 pandemic, have issued the Maluku Governor Regulation Number 15 of 2020,

Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 must also be guided by formal principles the formation of laws and regulations, as van der Vlies and A. Hamid S. Attamimi views and the provisions of Article 6 of Law Number 12 of 2001 in conjunction with Law Number 15 of 2019 above.

Maluku Governor Regulation Number 15 of 2020 was issued to reinforce and provide a clear legal basis for the previously implemented PSBR policy to overcome the spread of the Covid-19 pandemic. Maluku Governor Regulation Number 15 of 2020 which was signed by the Head of the Legal and Human Rights Bureau of the Regional Secretariat of Maluku Province, and is effective since April 21, 2020, in the draft of the Maluku Governor Regulation which has been widely spread in the community there are several regulations that deviate from the principle of forming legislation. invitation.

The content of the Maluku Governor Regulation Number 15 of 2020 when compared to the title becomes out of sync. In statutory theory, the title of statutory regulation must clearly describe the content of which is regulated in the regulated legislation. This discrepancy is due to the title of Governor Regulation Number 15 of 2020, Limiting the Movement of People and Mode of Transportation in Handling Corona Virus Disease 2019 (Covid-19) on Ambon Island, while the content material not only regulates restrictions on movement of people and modes of transportation, but also includes regulations regarding :

- a. temporary suspension of the teaching and learning process in schools and / or other educational institutions;
- b. restrictions on work processes in the workplace;
- c. restrictions on religious activities;
- d. restrictions on activities in public places or facilities, and
- e. restrictions on social and cultural activities.

The restrictions as stipulated in the content of the Maluku Governor Regulation Number 15 of 2020, are similar to the contents of Large-Scale Social Restrictions that have been approved to be enforced in other regions. This similarity can be observed by comparing with the Regulation of the Governor of the Special Capital Region of Jakarta Number 33 of 2020 concerning Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in the Province of the Special Capital Region of Jakarta (Pergub DKI Jakarta Number 33 of 2020) which signed by the Head of the Legal and Human Rights Bureau of the DKI Jakarta Provincial Secretariat and effective April 9, 2020, can be compared in table 1 below.

Table

Comparison of the contents of the Maluku Governor Regulation Number 15 of 2020 with the DKI Jakarta Governor Regulation Number 33 of 2020

	Maluku Governor Regulation Number 15 Year 2020	DKI Jakarta Governor Regulation Number 33 Year 2020
Title	Restrictions on the Movement of People and Mode of Transportation in Handling Corona Virus Disease 2019 (Covid-19) on Ambon Island	Implementation of Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (Covid-19) in the Province of the Special Capital Region of Jakarta
Legal Basis	<ol style="list-style-type: none"> 1. Law Number 4 of 1984 concerning Outbreaks of Communicable Diseases (State Gazette of the Republic of Indonesia of 1984 Number 20, Supplement to State Gazette of the Republic of Indonesia of 1984 Number 3723); 2. Law Number 20 of 1958 concerning Stipulation of Emergency Law Number 22 of 1957 concerning the Establishment of the Maluku Swantara Region (State Gazette of the Republic of Indonesia of 1957 Number 79) As Law (State Gazette of the Republic of Indonesia of 1958 Number 61, Supplement to the State Gazette of the Republic of Indonesia Number 1617); 3. Law Number 29 of 2007 concerning the Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2007 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 4744); 4. Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244, Supplement to the State Gazette of the Republic of Indonesia Number 5587) as amended several times, the latest by Law Number 9 of 2015 concerning the Second Amendment to Law Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2015 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 5679); 	<ol style="list-style-type: none"> 1. Law Number 4 of 1984 concerning Outbreaks of Communicable Diseases (State Gazette of the Republic of Indonesia of 1984 Number 20, Supplement to State Gazette of the Republic of Indonesia of 1984 Number 3723) 2. Law Number 29 of 2007 concerning the Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2007 Number 93, Supplement to the State Gazette of the Republic of Indonesia Number 4744); 3. Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244, Supplement to the State Gazette of the Republic of Indonesia Number 5587) as amended several times, most recently by Law Number 9 of 2015 concerning the Second Amendment to Law Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2015 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 5679); 4. Law Number 6 Year 2018 concerning Health Quarantine (State Gazette of the Republic of Indonesia Year 2018 Number 128, Supplement to State Gazette of the Republic of Indonesia Number 6236); 5. Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) (State Gazette of the Republic of Indonesia of 2020 Number 91, Supplement to the State Gazette of the Republic of Indonesia Number 6487); 6. Regulation of the Minister of Health Number 9 of 2020 concerning

	<p>5. Law Number 6 of 2018 concerning Health Quarantine (State Gazette of the Republic of Indonesia of 2018 Number 128, Supplement to the State Gazette of the Republic of Indonesia Number 6236);</p> <p>6. Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) (State Gazette of the Republic of Indonesia of 2020 Number 91, Supplement to the State Gazette of the Republic of Indonesia Number 6487);</p> <p>7. Regulation of the Minister of Health Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID19) (State Gazette of the Republic of Indonesia of 2020 Number 326)</p>	<p>Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) (State Gazette of the Republic of Indonesia of 2020 Number 326);</p>
Restrictions	<p>Article 8</p> <p>a. temporary suspension of the teaching and learning process in schools and / or other educational institutions;</p> <p>b. restrictions on work processes in the workplace;</p> <p>c. restrictions on religious activities;</p> <p>d. restrictions on activities in public places or facilities, and</p> <p>e. restrictions on social and cultural activities</p>	<p>Article 5 paragraph (4)</p> <p>a. implementation of learning in schools and / or other educational institutions;</p> <p>b. activities working in the workplace;</p> <p>c. religious activities in houses of worship;</p> <p>d. activities in public places or facilities;</p> <p>e. social and cultural activities; and</p> <p>f. movement of people and goods by means of transportation.</p>

Source: processed by the research team

The restriction arrangements in Article 8 of the Maluku Governor Regulation Number 15 of 2020 according to the title, there should be no need to regulate the temporary suspension of the teaching and learning process at schools and / or other educational institutions, restrictions on the work process at work, restrictions on religious activities, restrictions on activities in place or facilities. general and restrictions on social and cultural activities, but it is sufficient to only regulate restrictions on the movement of people and modes of transportation, as in the restriction arrangements in Article 5 paragraph (4) letter f of the DKI Jakarta Governor Regulation Number 33 of 2020.

Another very real similarity is the legal basis for the consideration given as stated in number 3, namely: 'Law Number 29 of 2007 concerning the Government of the Special Capital Region of Jakarta as the Capital of the Unitary State of the Republic of Indonesia (State Gazette of the Republic of Indonesia of 2007 Number 93, Supplementary State Gazette of the Republic of Indonesia Number 4744)' whereas the Pergub in question is the Maluku Pergub, not the DKI Jakarta Pergub. Although then another draft has been circulated which has been 'deleted', the number 3 has a given consideration.

With the formation of the Maluku Governor Regulation Number 15 of 2020, Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 and their amendments, it can be seen that the regulations formed do not meet the "principles of order and legal certainty" and "principles of balance, harmony, and harmony".

C. Closing

Based on the discussion that has been carried out, it can be concluded that the formation of the Maluku Governor Regulation Number 15 of 2020, Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 do not meet the principles of democracy and instrumental principles, in addition to the formal principles (the principle can be implemented, the principle utility and efficiency, the principle of clarity of formulation, and the principle of openness) in Article 5 as well as the substantial principle in Article 6 (legal order and certainty; and balance, harmony and harmony) as regulated in Law Number 12 of 2011 as amended by Law Number 15 2019. For this reason, the Maluku Provincial Government and the Ambon City Government must have good intentions to revoke the Maluku Governor Regulation Number 15 of 2020, Perwali Ambon Number 16 of 2020 and Perwali Ambon Number 18 of 2020 because they are not in accordance with formal principles and substantial principles. the formation of laws and regulations.

REFERENCE

- A. Hamid S. Attamimi. *The Role of Presidential Decrees of the Republic of Indonesia in the Administration of the State (An analytical study of Presidential Decrees with Regulatory Function in the PELITA I-PELITA IV Period)*. Dissertation. University of Indonesia. Jakarta. 1990.
- Joko Widodo. *Good governance (Analysis of the Dimensions of Accountability and Bureaucratic Control in the Era of Decentralization and Regional Autonomy)*. Human Scholar. Surabaya. 2001. h. 29. See also Eddi Wibowo, et al. *Understand Good Government Governance & Good Corporate Governance*. YPAPI. Yogyakarta.
- Maria Farida Indrati Soeprapto. *Legislative Science, its Basics and Formation*. The Eleventh Printing. Canisius. Yogyakarta. 2006.
- I.C. van der Vlies. *Het Wetsbegrijp en Beginselen van Behoorlijke Regeling*. 'S-Gravenhage. Vuga. 1984.
- *Wetgeving Handboek*. Translated by Linus Doludjawa with the title: *Handbook of Drafting Laws and Regulations*. Directorate General of Legislation, Ministry of Law and Human Rights of the Republic of Indonesia. Jakarta. 2005.