

The Validity of Rector's Circular Letter on the Covid-19 Pandemic

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Abstract : This study aims to analyze the relevance of the 'health emergency' status to the existing legal theory and condition as well as to identify the validity of the Circular Letter of the Rector of State Universities. To this end, this study applied the statute and conceptual approach. The study was conducted by inventorying primary and secondary legal materials to obtain a proper and critical review of the legal issues under study. The results showed that the determination of the 'health emergency' status by the government was inappropriate due to the uncertainty of the regulations issued by the government to determine the current condition. Thus, the status of the COVID-19 pandemic is a 'legal emergency' status. Further, the Rector's policy through the Circular Letter is valid judicially, sociologically, and philosophically. The determination of the 'legal emergency' status can be done by issuing a Perppu without a 'state of emergency' from the President. Finally, it is suggested to firstly get an approval from the Ministry of Education and Culture regarding the issuance of the Rector's Circular Letter. Besides, further study is needed as this study was conducted during the COVID-19 pandemic.

Keywords: Circular Letter; Health Emergency Status; State Administration Law.

Keabsahan Surat Edaran Rektor Perguruan Tinggi dalam Pandemi Covid-19

Abstrak : Tujuan dari penelitian ini adalah untuk menganalisa relevansi status 'darurat kesehatan' dengan teori hukum dan kondisi yang ada dan keabsahan atas Surat Edaran Rektor Perguruan Tinggi Negeri. Metode yang digunakan dalam penelitian ini adalah statute approach dan conceptual approach. Penelitian dilakukan dengan menginventarisasi bahan hukum primer dan sekunder, guna mendapatkan kajian yang seyogianya dan telaah kritis terkait isu hukum. Hasil penelitian menyatakan penetapan status darurat kesehatan oleh pemerintah kurang tepat, dikarenakan tidak menentu-nya peraturan yang dikeluarkan oleh pemerintah untuk menetapkan kondisi saat ini. Sehingga, status pandemi COVID-19 merupakan status darurat hukum. Kebijakan rektor melalui Surat Edaran adalah absah secara aspek yuridis, sosiologis, dan filosofis. Penetapan darurat hukum cukup dilakukan dengan menerbitkan Perppu tanpa pernyataan darurat dari Presiden. Saran peneliti adalah di perlukan persetujuan pada *Kementerian Pendidikan* dan Kebudayaan terkait terbitnya Surat Edaran Rektor, dan dibutuhkan penelitian lebih lanjut dikarenakan penelitian ini dilakukan pada masa COVID-19 yang bersifat temporal.

Kata Kunci: Surat Edaran; Darurat Kesehatan; Hukum Administrasi Negara

INTRODUCTION

World Health Organization has designated Corona Virus Disease 2019 (COVID-19) to be a Global Pandemic and Public Health Emergency of International Concern (PHEIC) due to the massive growth of positive cases of COVID-19 in several countries.¹ As the Presidential Decree (Keppres) No. 7 of 2020 on the Task Force for the Acceleration of Corona Virus Disease 2019 (COVID-19) Handling *jo* the Presidential Decree (Keppres) No. 9 of 2020 on the Amendment to Presidential Decree No. 7 of 2020 on the Task Force for the Acceleration of Corona Virus Disease 2019 (COVID-19) Handling has no legal certainty in the handling of COVID-19 cases for approximately three weeks after the first positive COVID-19 case was confirmed in Indonesia, the President of the Republic of Indonesia then issued Presidential Regulation (Perpres) No. 52 of 2020 on the

¹ Wendy E. Parmet and Michael S. Sinha, "Covid-19 — The Law and Limits of Quarantine," *New England Journal of Medicine*, 2020.

Establishment of Observation and Containment Facilities in the Handling of Corona Virus Disease 2019 (COVID-19) and other Emerging Infectious Cases in Galang Island, the City of Batam, Riau Islands Province; Presidential Regulation (Perpres) No. 54 of 2020 on the Revision of Allocation and Details in the Income and Expenses of the State Budget (APBN) 2020; Presidential Instruction No. 9 of 2020 on Refocussing of Activities, Reallocation of Budget, and Procurement of Goods and Services to Accelerate the Handling of COVID-19; and a package of a very principal regulations in the handling of COVID-19, namely Presidential Decree (Keppres) No. 11 of 2020 on the Declaration of National Public Health Emergency, Government Regulation (PP) No. 21 of 2020 on Large-Scale Social Restriction in the Effort of Accelerating Covid-19 Handling as a follow-up to Article 15 paragraph (2) and Article 56 of Law No. 6 of 2018, and Government Regulation in Lieu of Law No. 1 of 2020 (Perppu No. 1/2020) on State Finance Policy and Financial System Stability in the Handling of Covid-19 Pandemic and/or in response to Dangerous Threats to the National Economy and/or the Stability of Financial System. By implementing this package of regulation, the government tries to emphasize that the country is in an emergency. Yet, the actions taken by the government are not clear. Hence, a basic question arises; is the state emergency the same as the health emergency of Covid-19 in Indonesia?

COVID-19, which has been designated as a national non-natural disaster through Presidential Decree No. 12 of 2020 on the Determination of Non-Natural Disasters of Corona Virus Disease 2019 (COVID-19) Spread as a National Disaster, requires various mitigation efforts undertaken by the government, including the appeals for applying social and physical distancing following WHO protocol that must be done by the community. These two policies undeniably affect various aspects of life, including national education as it can be seen from the issuance of Circular Letter of the Directorate General of Higher Education (Dirjen Dikti) of the Ministry of Education and Culture No. 302/E.E2/KR/2020 concerning the Learning Period of Educational Programs. This Circular gives an appeal to Higher Education to monitor and assist students' learning from home. Besides, it also gives authority to university leaders to take principal steps related to the scope of education units based on the existing conditions.

This appeal was responded positively by universities, including Universitas Negeri Surabaya (Unesa). Unesa then issues a policy concerning the replacement of undergraduate thesis with scientific articles. As stated in Circular Letter of the Rector of Universitas Negeri Surabaya No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya.² Unesa claimed that this policy was carried out to implement the physical distancing policy in its institution.³ Besides, this policy is only valid during the COVID-19 pandemic so that if the COVID-19 pandemic has subsided, then the student graduation requirement scheme will return to the previous mechanism.⁴ However, can this policy be legally justified? Hence, this paper discusses two main issues, namely the problems in determining national health emergency status in the handling of COVID-19 and the validity of the Circular Letter issued by the Rector of Universitas Negeri Surabaya.

RESEARCH METHODS

² Windy Goestiana, "Imbas COVID-19: Mahasiswa Unesa Tak Perlu Bikin Skripsi, Diganti Artikel Ilmiah," *Kumparan.Com* accessed on April 19, 2020 from <https://kumparan.com/beritaanaksurabaya/imbaspandemi-covid-19-mahasiswa-unesa-tak-perlu-bikin-skripsi-diganti-artikel-ilmiah-1t9PiV6GG8K>.

³ Ibid.

⁴ Tomy Hermawan, "Dampak Pandemi Corona, Unesa Keluarkan Kebijakan Pengganti Skripsi, Data Boleh Ambil Di Internet," *Surya.Co.Id*, accessed on April 19, 2020 from <https://surabaya.tribunnews.com/2020/04/02/dampak-pandemi-corona-unesa-keluarkan-kebijakan-pengganti-skripsi-data-boleh-ambil-di-internet>.

This legal study applied the statute and conceptual approach. Basically, a legal study aims at finding the truth of coherence, namely whether legal rules are in line with legal norms, whether norms in the form of commands or prohibitions are in line with legal principles, and whether one's actions are in line with legal norms or legal principles.⁵ Simply put, a legal study aims at finding a prescription or what should be done.⁶ This legal study used primary and secondary legal materials.⁷ Here, an inventory of legislation relating to the legal issues under study was carried out⁸. The legal materials were then analyzed by using legal reasoning and deduction method.⁹

RESULTS AND DISCUSSION

A. Problems in Determining Health Emergency Status in the Handling of COVID-19

Is it possible if the existence of a pandemic is used to determine a 'health emergency' status as regulated in Presidential Decree (Keppres) No. 11 of 2020 on the Declaration of National Public Health Emergency? To answer this question, it is needed to firstly look at the definition of the term 'emergency'. An emergency is an abnormal or difficult situation that lasts and occurs suddenly; an urgent situation that lasts for a short time. Hence, if a state is in an emergency, it will apply a state of emergency or commonly referred to as *staatsnoodrecht* or Emergency HTN. According to Mahfud MD,¹⁰ in the state administration theory, there are emergency laws that are 'constitutionally objective' and 'extraconstitutionally subjective'. The constitutional objective (there are rules and criteria) is related to Article 12 of the 1945 Constitution of the Republic of Indonesia due to massive threatening physical movements. Meanwhile, the extraconstitutionally subjective (based on the subjective consideration of the authorities and there are no rules) is related to Article 22 of the 1945 Constitution of the Republic of Indonesia which gives authority to the president to make regulations in compelling urgency. An emergency is a situation where a state is faced with the threat of life and death so that it requires a responsive action that cannot be justified under normal circumstances according to the principles adopted by the state.¹¹ Further, according to Dullemen,¹² there are four requirements for a valid state emergency law, namely: (a) it must be clear that the highest interests of the state are at stake; the existence of the state depends on the emergency action carried out; (b) the action is urgently needed and cannot be replaced by other action; (c) the action is temporary (valid once or in a short time to normalize the situation); and (d) when an action is taken, parliament cannot meet in real terms. In Indonesia, the state emergency law does not recognize the term 'emergency', but it recognizes two other terms, namely the 'state of emergency' and 'urgency'.¹³ The basic provisions on the 'state of emergency' are stated in Article 12 of the 1945 Constitution of the Republic of Indonesia that "the President may declare a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law". The conditions and consequences of the 'state of emergency' must be first met so that the president may declare a 'state of emergency'. An inaccuracy in choosing a state emergency law for the urgency of COVID-19 is far more dangerous than COVID-19 itself. Hence, the government should simply

⁵ Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed. Jakarta: Kencana, 2017.

⁶ Fradhana Putra Disantara and Dicky Eko Prasetyo, "The Little Vatican: Optimalisasi DWIPA (Desa Wisata Pancasila) Sebagai Upaya Meningkatkan Harmonisasi Sosial Dan Toleransi," *Law, Development & Justice Review* 3, no. 1 (2020): 42–56, <https://ejournal2.undip.ac.id/index.php/lj/article/view/7640>.

⁷ Fradhana Putra Disantara, *Pelimpahan Wewenang Yang Dilakukan Oleh Kepala Daerah*, Surabaya, 2019.

⁸ Marzuki, *Penelitian Hukum: Edisi Revisi*.

⁹ Marzuki, *Penelitian Hukum: Edisi Revisi*.

¹⁰ Moh. Mahfud MD, *Hukum Tak Kunjung Tegak*, Bandung: Citra Aditya Bakti, 2007.

¹¹ Kim Lane Scheppele, "Law in a Time of Emergency: States of Exception and the Temptations of 9/11," *Journal of Constitutional Law*, 2004.

¹² AALF van Dullemen, *Staatsnoodrecht En Democratie*, Alphen aan den Rijn: N. Samson NV, 1947.

¹³ Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, Jakarta: Raja Grafindo Persada, 2008.

use a *Perppu* because, from the perspective of the state emergency law, the current condition (the COVID-19 pandemic) is a 'legal emergency'. Besides, the current government policies are unclear; whether quarantine, large-scale social restriction, or other policies. The character of a state emergency law is abnormal because an abnormal state emergency causes the government to not use the normal legal approach.¹⁴ Therefore, in its implementation, the emergency policy of COVID-19 is problematic due to the inaccuracy of the regulations issued by the government to determine the current condition. The 1945 Constitution of the Republic of Indonesia describes that the enactment of *Perppu* does not require a state of emergency from the President.

State emergency law is a series of authorities carried out extraordinarily and exclusively for the shortest possible time to shift a state of emergency into ordinary life under general and ordinary legislation.¹⁵ Meanwhile, according to Asshiddiqie,¹⁶ state emergency law is a law that applies in unusual or extraordinary circumstances so that it is different from the law that applies in usual or normal circumstances. Therefore, as preventive and repressive handling of the COVID-19 pandemic, the government should simply use a *Perppu* as a state emergency law. In the perspective of state emergency law, to anticipate authority abuse and injustice due to legal uncertainty, the government should use emergency law that meets the check and balance criteria for the special authority of the president as the ruler.

B. The validity of the Circular Letter of the Rector of Universitas Negeri Surabaya No. B/17447/UN38/HK/01.01.2020 on the Management of Undergraduate Thesis at Universitas Negeri Surabaya

The COVID-19 pandemic occurring in Indonesia has a wide impact in all aspects of life, including higher education. This condition leads the Directorate General of Higher Education (Dirjen Dikti) of the Ministry of Education and Culture to issue Circular Letter No. 302/E.E2/KR/2020 concerning the Learning Period of Educational Programs. The Circular gives an appeal to PTN with Legal Entity (PTN-BH) and PTN with Public Service Agency (PTN-BLU) to monitor and assist students' learning from home. It is important to note that the Circular Letter No. 302/E.E2/KR/2020 concerning the Learning Period of Educational Programs is a form of policies issued by the government aiming at *aar buiten gebracht schriftelijk beleid*.¹⁷ However, the Circular is not accompanied by the authority given by the government to formulate regulations.¹⁸ A Circular referred to as *pseude-wetgeving* or *beleidsregel* can be considered as regulation because pseudo legislation contains a policy determined by the administration itself.¹⁹

The Circular Letter No. 302/E.E2/KR/2020 concerning the Learning Period of Educational Programs must be a concern for all PTNs, including Universitas Negeri Surabaya. The Circular Letter gives an appeal to Higher Education to monitor and assist students' learning from home, including the students' final assignment in which its method and schedule are adjusted to local status and conditions. As a response, one of PTN-BLU, namely Universitas Negeri Surabaya, issued Circular Letter of the Rector of Universitas Negeri Surabaya No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya. The Circular Letter allows students to write scientific articles as many as 10-15 pages as a replacement of

¹⁴ Sonya Claudia Siwu, "Hukum Darurat Negara Di Indonesia", Universitas Brawijaya, 2018.

¹⁵ Herman Sihombing, *Hukum Tata Negara Darurat Di Indonesia*, Jakarta: Djambatan, 1996.

¹⁶ Asshiddiqie, *Hukum Tata Negara Darurat*.

¹⁷ Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, Yogyakarta: Gajah Mada University, 1994.

¹⁸ *Ibid.*

¹⁹ A.D. Belinfante and Boerhanoeddin Soetan Batoeah, *Pokok-Pokok Hukum Tata Usaha Negara*, Jakarta: Bina Cipta, 1983.

undergraduate thesis due to the current COVID-19 pandemic.²⁰ Then, can it be legally justified? It should be noted that the policy to replace the thesis writing with scientific articles is also carried out by Universitas Negeri Padang.²¹ This policy is even intended for S1 to S3 students. The basis of the policy is a form of preparedness to deal with the spread of the Corona Virus and an effort to maintain the smooth of the lectures at Universitas Negeri Padang.²² Besides, the policy of eliminating thesis amid the COVID-19 pandemic is also carried out by IAIN Kudus.²³ The Decree of the Rector of IAIN Kudus No. 759 of 2020 concerning guideline for appointment, guidance, or approval for thesis examination in an emergency of Covid-19 states that, in terms of completing the final assignment both undergraduate thesis and post-graduate thesis, the students are encouraged to change the field method into the literature study.²⁴ The Decree contains three stipulations, namely the appointment, guidance, or approval for thesis examination which applies during the Covid-19 emergency period as determined by the government.²⁵ In the same vein, Universitas Muhammadiyah Purwokerto (UMP) also took a similar policy in terms of the final assignment where undergraduate students can replace the thesis writing with scientific works, technological works in the form of research, or literary works.²⁶ The policy was taken by UMP as a reflection of UMP's commitment to implement physical distancing amid the COVID-19 pandemic.²⁷ Then, what about the existence of Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya? This issue can be reviewed from several perspectives, namely juridically, sociologically, and philosophically.

Judicially, the validity of a norm can be seen based on higher provisions (stufenbau theory). The theory is intended to arrange a hierarchy of norms so that it is multi-layered and tiered.²⁸ The hierarchy allows a legal system to have a pyramid structure, starting from the most abstract to the most concrete.²⁹ In this theory, a legal system is realized by all laws and regulations made and enacted based on powers that are directly or indirectly granted by basic norms.³⁰ Article 23 of Government Regulation No. 4 of 2014 concerning the Implementation and the Management of Higher Education states that state universities are given the authority to manage the academic field by establishing operational and educational policy norms that include; deciding academic requirements for students to be accepted, developing a curriculum of study programs, conducting learning processes, conducting an assessment of learning outcomes, etc. This Article gives authority to state universities as legal entities or public service agencies, especially the Rector, to lead the management of learning. This provision is in line with Article 7 of the Regulation of the Minister of Research, Technology, and Higher Education No. 15 of 2016 concerning the Organization and Work

²⁰ Fitria Madia, "Mahasiswa Kesulitan Di Tengah Wabah Corona, UNESA Tiadakan Skripsi," *IDN Times Jatim* accessed on April 19, 2020 from <https://jatim.idntimes.com/news/jatim/fitria-madia/mahasiswa-kesulitan-di-tengah-wabah-corona-unesa-tiadaan-skripsi/full>.

²¹ Rahmadhani, "Imbas Corona, UNP Ganti Penulisan Skripsi Dengan Karya Ilmiah," *Kompas.Com* accessed on April 19, 2020 from <https://regional.kompas.com/read/2020/04/07/15172191/imb- corona-unp-ganti-penulisan-skripsi-dengan-karya-ilmiah>.

²² *Ibid.*

²³ Afina Izzati, "Corona Masih Melanda, IAIN Kudus Imbau Tugas Akhir Mahasiswa Ganti Studi Pustaka," *Nu.or.Id*, accessed on April 19, 2020 from <https://www.nu.or.id/post/read/118777/corona-masih-melanda--iain-kudus-imbau-tugas-akhir-mahasiswa-ganti-studi-pustaka>.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Agung Sangsoko, "UMP Izinkan Mahasiswa Ganti Skripsi Dengan Karya Tulis," *Republika.Co.Id* accessed on April 19, 2020 from <https://republika.co.id/berita/q8b98r313/ump-izinkan-mahasiswa-ganti-skripsi-dengan-karya-tulis>.

²⁷ *Ibid.*

²⁸ Hans Kelsen, "The Pure Theory of Law and Analytical Jurisprudence," *Harvard Law Review*, 1941.

²⁹ Hans Kelsen, *General Theory of Law and State*, New Jersey: The Lawbook Exchange, 1999.

³⁰ Hans Kelsen, "On the Basic Norm," *California Law Review*, 1959.

Procedure of Universitas Negeri Surabaya stating that the Rector as referred to in Article 6 letter a has the task of leading the implementation of research, education and community service as well as fostering educators, education staffs, and students. Practically, Circular Letter of the Rector of Universitas Negeri Surabaya No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya is an implementation of the duties of the Rector granted by the Minister of Research, Technology, and Higher Education as part of the implementation of education. Besides, until now, there is no regulation regulating the obligation for the thesis as a final assignment. The undergraduate thesis is only an optional of the final assignment, not an obligation. Thus, Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya can be justified by the law so that it binds to all of the University's units.

By looking at the conception of Logmenn, a rule of law is valid when there needs to be a relationship between a condition and its legal consequences. Government Regulation No. 21 of 2020 encourages all parties to carry out social distancing and physical distancing, including universities. It is important to note that, in the face-to-face learning process, it is almost impossible to not make physical contact. In fact, one of the causes of the massive spreads of COVID-19 is physical contact. Hence, the basis of the issuance of Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya is to implement government policy. Thus, this Circular has a strong connection with the policies issued by the government. Besides, the replacement of thesis with scientific articles on the basis of physical distancing is also in line with Article 33 Paragraph (2) Letter p of the Regulation of the Minister of Research, Technology, and Higher Education No. 79 of 2017 concerning the Statute of Universitas Negeri Surabaya stating that Universitas Negeri Surabaya has the obligations to maintain the security, safety, health, and order of the campus as well as to ensure the implementation of the Tri Dharma activities in higher education. Therefore, as a form of maintaining health as well as ensuring the implementation of the Tri Dharma activities conducted by students, the issuance of the policy to replace the thesis with scientific articles by Universitas Negeri Surabaya can be justified.

The issuance of this Circular Letter is in line with the conception conveyed by Logemann stating that the state is seen as an organization consisting of various interrelated functions that form the state as a whole.³¹ This Circular also supports government policy, namely Large-Scale Social Restriction (PSBB). Further, Scholten's conception states that an 'organization' has a regulation that governs the relationship between institutions as well as the rights and obligations of each institution.³² The issuance of Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya is a realization of the Rector's obligation to carry out the function of implementing higher education during the COVID-19 pandemic. The implementation of this function is also based on Article 8 letter (a) of the Regulation of the Minister of Research, Technology, and Higher Education No. 15 of 2016 concerning the Organization and Work Procedure of Universitas Negeri Surabaya.

Further, the policy taken by Universitas Negeri Surabaya is based on Circular Letter of the Directorate General of Higher Education (Dirjen Dikti) of the Ministry of Education and Culture No. 302/E.E2/KR/2020 concerning the Learning Period of Educational Programs. Reviewing from the theory of State Administrative Law, the government is one of the legal subjects having rights and obligations so that the government can also take concrete actions as well as legal actions.³³ Concrete action is an action taken by the government that does not cause legal consequences as it has no

³¹ J.H.A Logemann, *Over De Theorie Van Een Stelling Staatsrecht*, Jakarta: Saksama, 1954.

³² L. E., "W. Riphagen, De Juridische Structuur Der Europese Gemeenschap Voor Kolen En Staal. Universitaire Pers Leiden 1955, 49 Blz., F2,90.," *Netherlands International Law Review*, 1956.

³³ Hadjon, *Pengantar Hukum Administrasi Indonesia*.

connection with the legislation. Meanwhile, legal action is a unilateral action taken by the government that results in legal relations so that the action must not contain everything that causes the law to become invalid. Basically, Circular Letter does not have legal consequences as it is not an element of the legislation. Thus, Circular Letter is only a concrete act of the government.

Circular Letter is not a legal action because, in its concept, Circular Letter is not listed in the legislation. Circular Letter is commonly in the form of appeals, such as an official memorandum, announcement, guideline, and other similar terms. In terms of its substance, viewing from the writing format, Circular Letter must be considered a letter, not a binding regulation. However, the substance of the Circular Letter should be an explanation of the existing legislation or the results of legal products that are in the level of legislation. Thus, it makes the recipients of authority to easily take action. Although Circular Letter is intended to the public, it is not generally binding and does not cause legal consequences.

Then, does the Rector have the authority to replace theses with scientific articles? In this regard, Article 23 of Government Regulation No. 4 of 2014 gives attributive authority to the Rector as leader of the university to manage everything in the academic field and to establish various norms as a form of operational policy. In its implementation, the Rector as the leader of higher education can refer to the Regulation of the Minister of Research, Technology, and Higher Education No. 15 of 2016 concerning the Organization and Work Procedure of Universitas Negeri Surabaya. According to H. D. van Wijk & Willem Konijnenbelt,³⁴ attributive authority is a new authority given to a party by a formal authority, usually a state institution, which is based on relevant regulations and legal principles. This type of authority cannot be delegated before it is determined by other rules whose nature is related to the scope of authority.³⁵ In practice, the Rector has the function and authority in the administration of higher education, including issuing Circular Letters.

Further, can the Rector's action be considered discretion? It is important to note that discretion is divided into two, namely free-discretion and bound-discretion.³⁶ In free-discretion, the law establishes boundaries so that the state administration is free to make any decision as long as it does not exceed the boundaries.³⁷ Meanwhile, in bound-discretion, the law establishes several alternatives to be chosen by the administrative officials.³⁸ In terms of Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya, the Circular is included in the free-discretion because the Rector issued the Circular after the 'health emergency' status has been determined. Besides, the policy to replace the thesis is not found in any rules relating to the legislation. Thus, the action is judicially accepted by being based on the relevant legislation.

Sociologically, this phenomenon can be viewed from the theory of recognition stating that the rules apply as they are accepted or approved by the community.³⁹ PSBB is a means to prevent the spread of COVID-19 in Indonesia. However, the stipulation of PSBB will lead to various excesses, one of which is the non-functioning education process. The issuance of the Circular Letter is an effort to support the existence of community life, especially students. Besides, PSBB does not only try to

³⁴ H.D. van Wijk and Willem Konijnenbelt, *Hoofdstukken van Bestuursrecht*, ed. Ron van Male and H.D. van Wijk, Alphen aan den Rijn: Wolters Kluwer Nederland B.V., 2014.

³⁵ Gemeente Rotterdam, "Beleidsregels En Ontheffingenbesluit Ontheffingen Milieuzone Rotterdam 2016, Wijziging 1 [Besluit]," *Gemeentebld* 55682,2016.

³⁶ S. Prajudi Atmosudirjo, *Hukum Administrasi Negara*, Jakarta: Ghalia Indonesia, 1994.

³⁷ Tri Mulyani, A Heru Nuswanto, and Endah Pujiastuti, "Kajian Normatif Mengenai Penggunaan Discretionary Power Bagi Pejabat Pemerintah Dalam Upaya Meningkatkan Kualitas Penyelenggaraan Pemerintahan," *Hukum dan Masyarakat Madani*, 2017.

³⁸ Erwin Hidayat Edy Kurniawan and Amalia Diamantina, "Penggunaan Diskresi Oleh Pejabat Publik Menurut Undang-Undang No 30 Tahun 2014 Tentang Administrasi Pemerintahan," *Jurnal Hukum Media Bhakti*, 2019.

³⁹ Soerjono Soekanto and Purnadi Purbacaraka, *Perihal Kaidah Hukum*, Bandung: Citra Aditya Bakti, 1993.

keep students away from the COVID-19 but also to help and encourage the stability of the psychological and physical condition of the students amid the COVID-19 pandemic. In the context of PSBB, the safety of citizens and the right to life are inseparable from one another.

Completing thesis writing is a long process. Here, students are encouraged to make various observations requiring them to go out of their homes. Besides, if the data needed for discussion is obtained through direct interviews, it will be very risky amid the COVID-19 pandemic. During the research process, the students may indirectly and inadvertently make contact with the speaker or hold objects that are not sterile. Besides, this is also related to the financial condition of each student. Certainly, amid this pandemic, the wheels of the economy cannot run optimally so that it will affect the fulfillment of family needs. Ironically, several employees are laid off due to the COVID-19 pandemic.

In this case, the Minister of Finance of the Republic of Indonesia predicts that, in the worst-case scenario, the percentage of Indonesia's economy will plummet by 4.7%.⁴⁰ The condition will certainly affect the students, less or more, as they need money while collecting data. Practically, the policy of replacing a thesis with a scientific article is very helpful for the students' psychological, physical, and economic condition amid this pandemic. Psychologically, the replacement of a thesis with a scientific article will provide convenience for students. If the students feel stressed amid this pandemic, it will affect their immune. During this pandemic, the students may obtain data from verified and validated sources on the internet. Further, the Rector of Universitas Negeri Surabaya states that the assessment of scientific articles will be carried out by supervisors without passing through the stages of examination.⁴¹ However, the policy is only valid during the COVID-19 pandemic so that if the COVID-19 pandemic has subsided, then the student graduation requirement scheme will return to the previous mechanism.

Philosophically, the implementation of this policy must be based on the ideals of the law as the highest positive value.⁴² According to the conception of the mind declared by Rudolf Stammler, the ideal of law is everyone's construction of mind which is a necessity to direct the law to the ideals desired by the community.⁴³ Philosophically, students want a guarantee, especially in the aspects of expediency and welfare. Both aspects grow and develop in the community value system and social order.⁴⁴ Although it is only pseudo legislation, Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya will certainly have a positive impact considering the current situation and condition, especially for students. In addition to responding to the appeal of the Circular Letter issued by the Directorate General of Higher Education, Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya represents the desire of the students. Besides, Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya contains values based on the ideals of the legal norms.

⁴⁰ Aud/Agt, "Sri Mulyani Sebut Ekonomi 2020 Bisa Turun Ke 4,7 Persen," *Cnnindonesia.Com* accessed on April 19, 2020 from <https://www.cnnindonesia.com/ekonomi/20200225194336-532-478071/sri-mulyani-sebut-ekonomi-2020-bisa-turun-ke-47-persen>.

⁴¹ Wijayanto, "Physical Distancing, Unesa Hapus Kewajiban Skripsi Mahasiswa Diganti Penulisan Artikel Ilmiah," *Radar Surabaya* accessed on April 19, 2020 from <https://radarsurabaya.jawapos.com/read/2020/04/03/186930/physical-distancing-unesa-hapus-kewajiban-skripsi-mahasiswa>.

⁴² Soerjono Soekanto, *Beberapa Permasalahan Hukum Dalam Kerangka Pembangunan Indonesia* (Jakarta: Yayasan Penerbit Universitas Indonesia, 1974).

⁴³ Walter L. Moll and Rudolf Stammler, "The Theory of Justice," *Harvard Law Review*, 1926.

⁴⁴ Paul Pierson, "The New Politics of the Welfare State," *World Politics*, 1996.

CONCLUSION

Health emergency status determined through the Presidential Decree (Keppres) No. 11 of 2020 is the Government's effort to address technical issues of the COVID-19 pandemic. However, the determination of this status has no clarity; whether it stands as the 'state of emergency' or 'urgency'. Hence, the most appropriate status of the handling of the COVID-19 pandemic is a 'legal emergency', not a 'health emergency'. In practice, the determination of a 'legal emergency' status can be done by issuing a *Perppu* without a state of emergency from the President.

COVID-19 undeniably affects various aspects of life, including education. In order to prevent the spread of COVID-19, the Directorate General of Higher Education (Dirjen Dikti) of the Ministry of Education and Culture of the Republic of Indonesia issues Circular Letter No. 302/E.E2/KR/2020 concerning the Learning Period of Educational Programs. The Circular gives an appeal to Higher Education to monitor and assist students' learning from home, including the students' final assignment in which its method and schedule are adjusted to local status and conditions. As a response, one of PTN-BLU, namely Universitas Negeri Surabaya, issued Circular Letter of the Rector of Universitas Negeri Surabaya No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya. The policy is taken following the social distancing and physical distancing policies determined by the government. Basically, the Circular is legally valid, bearing in mind that there are no binding norms in the hierarchy of the legislation regarding thesis as a final assignment. Besides, the policy is in line with the Regulation of the Minister of Research, Technology, and Higher Education No. 79 of 2017 concerning the Statute of Universitas Negeri Surabaya and the Regulation of the Minister of Research, Technology, and Higher Education No. 15 of 2016 concerning the Organization and Work Procedure of Universitas Negeri Surabaya. Sociologically, the policy of replacing a thesis with a scientific article is very helpful for the students' psychological, physical, and economic condition amid the COVID-19 pandemic. Philosophically, the Circular Letter No. B/17447/UN38/HK/01.01.2020 concerning the Management of Undergraduate Thesis at Universitas Negeri Surabaya contains values based on the ideals of the legal norms, namely expediency and welfare.

SUGGESTION

Based on the analysis, the suggestion proposed by the researcher is that the Rector should firstly get an approval from the Ministry of Education and Culture to be used as a reference for the issuance of the Circular Letter. It is because there is a legal vacuum in the field of Higher Education. The Regulation of the Minister of Education and Culture should also regulate the thesis issue as the final assignment. Moreover, further research is needed as the present study has shortcomings or is temporal.

REFERENCES

- Asshiddiqie, Jimly. *Hukum Tata Negara Darurat*. Jakarta: Raja Grafindo Persada, 2008.
- Atmosudirjo, S. Prajudi. *Hukum Administrasi Negara*. Jakarta: Ghalia Indonesia, 1994.
- Belinfante, A.D., and Boerhanoeddin Soetan Batoeah. *Pokok-Pokok Hukum Tata Usaha Negara*. Jakarta: Bina Cipta, 1983.
- Disantara, Fradhana Putra. *Pelimpahan Wewenang Yang Dilakukan Oleh Kepala Daerah*. Surabaya, 2019.
- Dulleman, AALF van. *Staatsnoodrecht En Democratie*. Alphen aan den Rijn: N. Samson NV, 1947.
- Hadjon, Philipus M. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada University, 1994.
- Kelsen, Hans. *General Theory of Law and State*. New Jersey: The Lawbook Exchange, 1999.

- Logemann, J.H.A. *Over De Theorie Van Een Stelling Staatsrecht*. Jakarta: Saksama, 1954.
- Marzuki, Peter Mahmud. *Penelitian Hukum: Edisi Revisi*. 13th ed. Jakarta: Kencana, 2017.
- MD, Moh. Mahfud. *Hukum Tak Kunjung Tegak*. Bandung: Citra Aditya Bakti, 2007.
- Pierson, Paul. *The New Politics of the Welfare State*. World Politics. 1996.
- Wijk, H.D. van, and Willem Konijnenbelt. *Hoofdstukken van Bestuursrecht*. Edited by Ron van Male and H.D. van Wijk. Alphen aan den Rijn: Wolters Kluwer Nederland B.V., 2014.
- Soekanto, Soerjono, and Purnadi Purbacaraka. *Perihal Kaidah Hukum*. Bandung: Citra Aditya Bakti, 1993.
- Soekanto, Soerjono. *Beberapa Permasalahan Hukum Dalam Kerangka Pembangunan Indonesia*. Jakarta: Yayasan Penerbit Universitas Indonesia, 1974.
- Sihombing, Herman. *Hukum Tata Negara Darurat Di Indonesia*. Jakarta: Djambatan, 1996.
- Siwu, Sonya Claudia. *Hukum Darurat Negara Di Indonesia*. Universitas Brawijaya, 2018.

Journals

- Disantara, Fradhana Putra, and Dicky Eko Prasetyo. "The Little Vatican: Optimalisasi Dwipa (Desa Wisata Pancasila) Sebagai Upaya Meningkatkan Harmonisasi Sosial Dan Toleransi." *Law, Development & Justice Review* 3, no. 1 (2020): 42–56. <https://ejournal2.undip.ac.id/index.php/lj/article/view/7640>.
- Edy Kurniawan, Erwin Hidayat, and Amalia Diamantina. "Penggunaan Diskresi Oleh Pejabat Publik Menurut Undang-Undang No 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Jurnal Hukum Media Bhakti* .2019.
- Gemeente Rotterdam. "Beleidsregels En Ontheffingenbesluit Ontheffingen Milieuzone Rotterdam 2016, Wijziging 1 [Besluit]." *Gemeentebld* 55682 .2016.
- Kelsen, Hans. "On the Basic Norm." *California Law Review* .1959.
- Kelsen, Hans. "The Pure Theory of Law and Analytical Jurisprudence." *Harvard Law Review* .1941.
- L. E. "W. Riphagen, De Juridische Structuur Der Europese Gemeenschap Voor Kolen En Staal. Universitaire Pers Leiden 1955, 49 Blz., F2,90." *Netherlands International Law Review* .1956.
- Moll, Walter L., and Rudolf Stammler. "The Theory of Justice." *Harvard Law Review* .1926.
- Mulyani, Tri, A Heru Nuswanto, and Endah Pujiastuti. "Kajian Normatif Mengenai Penggunaan Discretionary Power Bagi Pejabat Pemerintah Dalam Upaya Meningkatkan Kualitas Penyelenggaraan Pemerintahan." *Hukum dan Masyarakat Madani* .2017.
- Parmet, Wendy E., and Michael S. Sinha. "Covid-19-The Law and Limits of Quarantine." *New England Journal of Medicine* .2020.
- Scheppele, Kim Lane. "Law in a Time of Emergency: States of Exception and the Temptations of 9/11." *Journal of Constitutional Law*, 2004.

Websites

- Aud/Agt. "Sri Mulyani Sebut Ekonomi 2020 Bisa Turun Ke 4,7 Persen." *Cnnindonesia.Com*. Last modified 2020. Accessed April 19, 2020. <https://www.cnnindonesia.com/ekonomi/20200225194336-532-478071/sri-mulyani-sebut-ekonomi-2020-bisa-turun-ke-4-7-persen>.
- Goestiana, Windy. "Imbas COVID-19: Mahasiswa Unesa Tak Perlu Bikin Skripsi, Diganti Artikel Ilmiah." *Kumparan.Com*. Last modified 2020. Accessed April 19, 2020. <https://kumparan.com/beritaanaksurabaya/imbas-covid-19-mahasiswa-unesa-tak-perlu-bikin-skripsi-diganti-artikel-ilmiah-1t9PiV6GG8K>.
- Hermawan, Tomy. "Dampak Pandemi Corona, Unesa Keluarkan Kebijakan Pengganti Skripsi, Data Boleh Ambil Di Internet." *Surya.Co.Id*. Last modified 2020. Accessed April 19, 2020.

- <https://surabaya.tribunnews.com/2020/04/02/dampak-pandemi-corona-unesa-keluarkan-kebijakan-pengganti-skripsi-data-boleh-ambil-di-internet>.
- Izzati, Afina. "Corona Masih Melanda, IAIN Kudus Imbau Tugas Akhir Mahasiswa Ganti Studi Pustaka." *Nu.or.Id*. Last modified 2020. Accessed April 19, 2020. <https://www.nu.or.id/post/read/118777/corona-masih-melanda--iain-kudus-imbau-tugas-akhir-mahasiswa-ganti-studi-pustaka>.
- Madia, Fitria. "Mahasiswa Kesulitan Di Tengah Wabah Corona, UNESA Tiadakan Skripsi." *IDN Times Jatim*. Last modified 2020. Accessed April 19, 2020. <https://jatim.idntimes.com/news/jatim/fitria-madia/mahasiswa-kesulitan-di-tengah-wabah-corona-unesa-tiadakan-skripsi/full>.
- Rahmadhani. "Imbas Corona, UNP Ganti Penulisan Skripsi Dengan Karya Ilmiah." *Kompas.Com*. Last modified 2020. Accessed April 19, 2020. <https://regional.kompas.com/read/2020/04/07/15172191/imbac-corona-unp-ganti-penulisan-skripsi-dengan-karya-ilmiah>.
- Sangsoko, Agung. "UMP Izinkan Mahasiswa Ganti Skripsi Dengan Karya Tulis." *Republika.Co.Id*. Last modified 2020. Accessed April 19, 2020. <https://republika.co.id/berita/q8b98r313/ump-izinkan-mahasiswa-ganti-skripsi-dengan-karya-tulis>.
- Wijayanto. "Physical Distancing, Unesa Hapus Kewajiban Skripsi Mahasiswa Diganti Penulisan Artikel Ilmiah." *Radar Surabaya*. Last modified 2020. Accessed April 19, 2020. <https://radarsurabaya.jawapos.com/read/2020/04/03/186930/physical-distancing-unesa-hapus-kewajiban-skripsi-mahasiswa>.