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Administrative The Impact of The Covid-19 Pandemic on Administrative Law Policies and Practices in Indonesia: A Review of Constitutional Governance and Administrative Reform

Bambang Sumeidi

Department of Law, Faculty of Law, Universitas Nasional, South Jakarta, Jakarta, Indonesia,
bambangsumeidi.unas@gmail.com

Corresponding Author: bambangsumeidi.unas@gmail.com

Abstracts: The COVID-19 pandemic has prompted the Indonesian government to enact various emergency measures that have significantly impacted the practice of Administrative Law. Under these circumstances, the government is required to act swiftly while upholding the principles of the rule of law, particularly legality, accountability, and constitutionality. This study aims to analyze the implementation of emergency policies from an Administrative Law perspective, particularly regarding legality, administrative discretion, and public policy accountability. The method used is normative legal analysis employing legislative, conceptual, and comparative approaches. The research findings indicate that emergency policies are not yet fully consistent with the principles of administrative law. The study identified regulatory inconsistencies, an expansion of discretionary power without adequate oversight, and a lack of policy transparency. Furthermore, emergency policies also face challenges in maintaining a balance between effectiveness and constitutional compliance. This study concludes that there is a need to strengthen the principle of legality, limit discretion, enhance accountability, and strengthen constitutional oversight to achieve good governance.

Keywords: Administrative Law, Emergency Policies, Legality, Discretion, Accountability

INTRODUCTION

The COVID-19 pandemic, which has been spreading since early 2020, has not only triggered a global health crisis but has also evolved into a multidimensional crisis affecting nearly every aspect of national life. In Indonesia, these impacts have been significant not only in the health and economic sectors but also in social stability, governance effectiveness, and the resilience of the national legal system. In this context, the law is required to function not merely as a static normative framework, but as a dynamic instrument capable of responding to social changes swiftly and adaptively. This perspective aligns with Kusumaatmadja's philosophy, which positions law as a tool for social engineering, ensuring that the law remains relevant to the needs of the times.

As the complexity of issues arising from the pandemic has increased, the Indonesian government has taken various strategic steps by enacting emergency policies enshrined in

various legal instruments, such as Government Regulation No. 1 of 2020 and Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions (PSBB) (Peraturan Pemerintah Nomor 21 Tahun 2020 Tentang Pembatasan Sosial Berskala Besar., 2020). These policies are essentially a manifestation of the need for swift action in a crisis. However, as emphasized by Marzuki, every public policy must still be built on a foundation of systematic and rational legal analysis to avoid deviating from applicable legal norms.

Within the framework of Administrative Law, government actions, whether under normal or emergency conditions, cannot, in essence, be separated from the fundamental principles that govern them. In this regard, it emphasizes that administrative law serves a fundamental function in controlling the government's exercise of power. (Sulistiyowati, 2026). Therefore, even when the state is in a state of emergency, every administrative action must still be grounded in the principles of legality, legal certainty, and accountability as manifestations of the rule of law.

However, upon closer examination, governance practices during the pandemic reveal dynamics that are not entirely consistent with this normative framework. In many cases, the policies adopted actually reveal inconsistencies in norms and overlapping authorities between the central and local governments. This situation reflects a gap between the ideal norm (*das sollen*) and empirical reality (*das sein*), as articulated by Soekanto, in which laws formulated are not always implemented as intended in practice.

Furthermore, from the perspective of the rule of law, the supremacy of law should remain the primary foundation for all government actions, without exception, even in emergencies. This aligns with the views of Jimly Asshiddiqie, who emphasizes that the principle of the rule of law must not be set aside under any circumstances. Thus, emergency policies must not be understood as operating outside the scope of legal control; rather, they must remain within the framework of constitutionality and be subject to legal scrutiny.

Amid demands for swift decision-making, the exercise of administrative discretion has become an unavoidable tool. Discretion gives government officials the flexibility to act when existing laws have not yet established adequate regulations. However, this freedom is not unlimited. Sulistiyowati emphasizes that administrative discretion must remain within the bounds of the law and be subject to the principles of accountability and proportionality. (Sulistiyowati, 2026). In other words, discretion is not a justification for acting arbitrarily, but rather a mechanism of flexibility that remains bound by the objectives of the law itself.

At the empirical level, the exercise of discretion during the pandemic has actually given rise to various new issues, particularly regarding accountability and transparency. Research conducted by Santoso reveals policy inconsistencies between the central and local governments, while Martino identifies weaknesses in the implementation of public administration policies. (Santoso, 2020). These findings are further reinforced by a study by Jiwantara and Arifin, which indicates that policy innovations at the local level are often not accompanied by adequate legal certainty, thereby potentially creating uncertainty for the public.

In this context, it is important to reaffirm that the principle of legality remains the cornerstone of Administrative Law. Manan asserts that every governmental action must have a clear legal basis and cannot be justified if it contradicts the principle of legality. (Manan, 2004). On the other hand, Khairudin cautions that legal flexibility in emergencies must be balanced with effective oversight to prevent the abuse of power.

As time has gone on, the COVID-19 pandemic has also provided an opportunity to reflect on the need to reconstruct the paradigm of Administrative Law. In this regard, Sulistiyowati put forward the idea of the importance of constitutionalizing public policy, namely, ensuring that every policy, including emergency policies, has a strong constitutional

basis and is legally justifiable. (Sulistyowati, 2025). This approach is crucial in maintaining a balance between the need for policy effectiveness and the protection of citizens' rights.

Additionally, another equally important issue is the overlap of regulations in pandemic response policies. Rosadi highlighted that this phenomenon not only hinders policy effectiveness but also creates legal uncertainty that directly impacts the public. (Rosadi, 2021). Therefore, systematic efforts are needed to strengthen regulatory harmonization and improve coordination among government agencies.

In this context, the COVID-19 pandemic has not only tested the state's capacity to manage crises. Still, it has also provided an opportunity to reflect on the effectiveness of Indonesia's administrative law system, particularly in maintaining a balance between policy flexibility and adherence to the principles of the rule of law. This demonstrates that the legitimacy of government actions during emergencies is largely determined by the extent to which such policies remain within legal boundaries and are constitutionally accountable.

Furthermore, based on the issues outlined above, this study aims to analyze the implementation of emergency policies from an Administrative Law perspective, particularly regarding legality, the exercise of administrative discretion, and accountability in governance during the COVID-19 pandemic.

The research questions in this study are as follows:

1. How was the government's implementation of emergency policies during the COVID-19 pandemic assessed in light of the principle of legality under Administrative Law?
2. How was administrative discretion exercised in these emergency policies, and what are its legal boundaries?
3. What is the level of accountability and consistency in the government's policies regarding the handling of the COVID-19 pandemic?

METHOD

This study is a normative legal study that analyzes legal norms, legal principles, and legislation related to government policies in addressing the COVID-19 pandemic. This approach is used to assess the consistency between emergency policies and the principles of Administrative Law. The approaches used in this study include the statutory, conceptual, and comparative approaches. The statutory approach involves analyzing various relevant regulations, such as Government Regulation No. 1 of 2020 and Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions (PSBB) (Peraturan Pemerintah Nomor 21 Tahun 2020 Tentang Pembatasan Sosial Berskala Besar., 2020). The conceptual approach examines the principles of legality, administrative discretion, and accountability, while the comparative approach serves as a benchmark for assessing state administrative practices in other countries.

The types of legal materials used include primary, secondary, and tertiary. Primary legal materials include laws and regulations; secondary legal materials consist of books, scientific journals, and expert opinions; and tertiary legal materials consist of legal dictionaries and other supporting documents. The method used to collect legal materials involved a literature review, in which various relevant sources were examined. Subsequently, the legal materials were analyzed qualitatively using a normative analysis method to assess the alignment between legal norms and government policy practices during the COVID-19 pandemic.

RESULTS AND DISCUSSION

The COVID-19 pandemic has prompted the Indonesian government to implement various emergency policies that directly impact the practice of administrative law (Marzuki, 2016). Under normal circumstances, government administrative actions are constrained by strict legal procedures and the principle of legality, which serves as the cornerstone of governance. However, in emergencies, a paradigm shift occurs, prioritizing the speed and

effectiveness of policies above all else. This shift indicates a relaxation of existing legal norms, although such flexibility must not undermine the role of law as a mechanism for controlling power (Sulistyowati, 2026).

In practice, emergency policies implemented during the pandemic reveal inconsistencies in the application of legal norms. Various studies in the Law Journal indicate a policy disharmony between the central and local governments, leading to legal uncertainty. This situation aligns with Soerjono Soekanto's view that the success of the law is determined not only by legal norms but also by enforcement factors and public legal awareness. (Soekanto, 2007). Thus, the COVID-19 pandemic has not only been a health crisis but has also tested the resilience of the State Administrative Law system in maintaining consistency between legal norms and practice.

In applying the principle of legality, emergency policies face significant challenges. The principle of legality requires that every government action have a clear legal basis. (Jiwantara et al., 2021). However, the need for a rapid response is often not matched by adequate regulations. In practice, the government tends to adopt a pragmatic approach in formulating emergency policies, which can raise legal issues, particularly when the policies lack a strong legal basis or are open to multiple interpretations. Sulistyowati emphasizes that the principle of legality must be understood substantively, not merely in terms of the existence of a formal legal basis, but also in terms of alignment with legal objectives and the value of justice. (Sulistyowati, 2025)

Furthermore, Bagir Manan asserts that the principle of legality is non-negotiable in a rule-of-law state, meaning that every government action must possess clear legal legitimacy. From a constitutional perspective, Bivitri Susanti (2021) also emphasizes that the exercise of emergency powers must remain within constitutional limits to avoid undermining the rule of law. (Susanti, 2021). Various studies in the Law Journal also indicate that pandemic policies in Indonesia frequently face legal challenges due to regulatory overlaps and policy inconsistencies across institutions.

On the other hand, the exercise of administrative discretion is a logical consequence of emergency conditions that demand flexibility in decision-making. Discretion gives government officials the leeway to act when positive law does not provide adequate guidance. From Sulistyowati's perspective, administrative discretion is a legitimate instrument, but its use must remain within legal boundaries and be subject to the principle of accountability. (Sulistyowati et al., 2024). Thus, discretion is not unlimited freedom, but rather an authority that must be accounted for.

However, in practice during the pandemic, the exercise of discretion was often not accompanied by adequate oversight mechanisms, thereby potentially leading to abuse of power, particularly in decision-making related to public policy and budget management. Bagir Manan emphasizes that discretion must be exercised cautiously and must not conflict with the principles of the rule of law. At the same time, Soerjono Soekanto explains that weak oversight can lead to deviations in the implementation of the law. (Manan, 2004; Soekanto, 2007).

From a comparative perspective, S. Kimura demonstrates that countries like Japan can maintain a balance between discretion and accountability through a transparent, law-based administrative system. (Kimura, 2019) This serves as an important lesson for Indonesia in managing administrative discretion more effectively.

Accountability is a core principle of good governance. In the context of emergency policies, accountability is a critical issue given the broad scope of the government's authority. Sulistyowati emphasizes that accountability must be integral to every administrative action, particularly in the exercise of discretion. (Sulistyowati et al., 2024). Without accountability, public policies risk losing their legitimacy in the eyes of the public.

However, in practice, policy accountability during the pandemic still reveals various shortcomings. Various publications in the Law Journal indicate that transparency in policy-making and budget management has not been optimal. Furthermore, Soerjono Soekanto emphasizes that compliance with the law is greatly influenced by public legal awareness and the quality of law enforcement (Soekanto, 2007). Therefore, accountability is not only related to regulation but also to implementation.

Bagir Manan also emphasized that accountability is a logical consequence of the rule of law, meaning that every government action must be subject to administrative and legal scrutiny. (Manan, 2004). This underscores the urgent need to strengthen accountability and transparency in the implementation of emergency policies. Furthermore, the COVID-19 pandemic has underscored the need for reform in Indonesia's administrative law system. (Jiwantara & Arifin, 2021)

In this context, a new approach is needed that can accommodate policy flexibility without sacrificing the fundamental principles of the rule of law. Sulistyowati proposed the concept of the constitutionalization of public policy, which entails ensuring that every government policy has a clear constitutional basis and is legally justifiable. (Sulistyowati et al., 2023)

Furthermore, Bivitri Susanti emphasizes the importance of limiting emergency powers to prevent deviations from the principles of the rule of law. At the same time, Bagir Manan asserts that strengthening the principle of legality must be a top priority in administrative law reform. Various studies in the Law Journal also indicate that regulatory harmonization is necessary to avoid policy overlap and enhance legal certainty. (Santoso, 2020)

From a comparative perspective, S. Kimura demonstrates that a transparent, law-based system of public administration can maintain a balance between flexibility and accountability. (Kimura, 2019). This can serve as a reference in formulating administrative law reforms in Indonesia. Thus, the post-pandemic reconstruction of administrative law must be directed toward strengthening legal certainty, enhancing accountability, harmonizing regulations, and reinforcing oversight mechanisms in government conduct.

CONCLUSION

Based on the overall results of this study's analysis, it can be affirmed that the emergency policies adopted by the Indonesian government during the COVID-19 pandemic have had significant implications for the dynamics of State Administrative Law. In times of crisis, the state faces a dilemma between the need for speed and effectiveness in policymaking and the obligation to maintain compliance with the fundamental principles of the rule of law.

First, from a legal perspective, this study finds that emergency policies have not fully reflected strong normative consistency. Although various regulations have been formally enacted, in practice, there are still inconsistencies, multiple interpretations, and overlapping policies. This condition indicates that the principle of legality has not been optimally implemented in both its formal and substantive dimensions. This finding reinforces Soerjono Soekanto's view regarding the gap between *das sollen* and *das sein* in legal practice.

Second, the use of administrative discretion during the pandemic has become an unavoidable instrument in ensuring policy effectiveness. However, this study shows that the exercise of discretion has not been fully placed within an adequate control framework. From Sulistyowati's perspective, discretion should be positioned as a mechanism of flexibility that remains subject to legal principles and accountability. When strong supervisory mechanisms are absent, the potential for abuse of power becomes increasingly significant.

Third, from an accountability perspective, transparency and responsibility in public policy during the pandemic still face various challenges. Weak coordination among institutions and limited access to public information have become factors that hinder the realization of good

governance principles. In this regard, Bagir Manan emphasizes that accountability is a logical consequence of the rule of law that cannot be ignored.

Fourth, from a constitutional perspective, emergency policies still pose challenges to maintaining the balance between the expansion of governmental authority and the protection of the rule-of-law principles. Bivitri Susanti emphasizes that the use of emergency powers must remain within constitutional limits to prevent the abuse of power.

Fifth, from a comparative perspective, administrative practices in other countries, as examined by S. Kimura, demonstrate that transparent and law-based management of discretion can be key to maintaining the balance between flexibility and accountability. This indicates that Indonesia still has room for improvement in its State Administrative Law system.

Therefore, it can be concluded that the main problem in the implementation of emergency policies during the pandemic lies in the lack of optimal integration among the principles of legality, discretion, accountability, and constitutionality. In this context, Sulistyowati's perspective becomes highly relevant as a primary framework in emphasizing the importance of controlling governmental power through systematic and accountable legal mechanisms.

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