

# Constitutional Warranties in Restriction of Freedom of Assembly as A Preventive Measures Covid-19 Virus Transmission

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**Abstract.** Constitutional guarantees for the basic rights of citizens have been contained in constitutional norms. The constitution in the context of human rights functions as an instrument that respects, protects, and guarantees the rights and freedoms of citizens. However, along with the development of conditions, certain things will limit the rights of citizens. The limitation of this right can be based on a wider public interest that the state must carry out as a security provider in all aspects of life. One of these limitations can be found in the restrictions imposed in response to the pandemic. The issue of freedom of assembly is increasingly critical concerning the Covid-19 Pandemic, which was declared a national disaster on April 13, 2020. As a result, every policy direction, both the Central Government, Regional Governments, and Ministries and State Institutions, must pay attention to policies for handling Covid-19.

**Keywords:** Guarantee; Government; Health

## 1 Introduction

The state—as it's obliged to bear the burden or be responsible for respecting, fulfilling, and protecting human rights for all its citizens. In the ideals of a democratic legal state, a state-run by a government organ has responsibilities and obligations in human rights. The constitutional guarantee of the basic rights of citizens is imprinted in the norms of the constitution. In the context of human rights, the constitution functions as an instrument of limiting and separating political authority/power to avoid arbitrariness and as an instrument that respects, protects, and guarantees the rights and freedoms of citizens. [1]

Through UN goal Number 217 (III), UN part states proclaim basic liberties esteems that have turned into "a typical norm of accomplishment for all individuals and all countries." As a proclamation or contract of the Universal Declaration of Human Rights (UDHR), it is just ethically restricting yet not yet juridical. For a lawfully restricting assertion to be expressed as a one-sided understanding. Indonesia has endorsed a few global basic liberties instruments restricting on nations that sanction them, one of which is the International Covenant on Civil and Political Rights.[2]

In the global setting, ensures for the satisfaction of common liberties are controlled in the Universal Declaration of Human Rights (UDHR), and the right to speak freely of discourse is contained in article 19, which states:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

In 1998, alongside the transformation, Law Number 9 of 1998 concerning Freedom of Expression of Opinion in Public was conceived. This regulation ensures opportunity of articulation in broad daylight, in particular opportunity of get together. In-Law Number 1998, what is implied by the opportunity to offer viewpoints is the right of each resident to offer his viewpoints orally, recorded as a hard copy, etc openly and dependably following the arrangements of the appropriate regulations and guidelines.[3] Then, at that point, "in broad daylight" is before many individuals, or others, remembering for a spot that can be visited and additionally seen by everybody. [4] The normative guarantee for freedom of expression is further contained in Article 2 point 1 (one), which mentions:

"Every citizen, individually or in groups, expresses an opinion as to the embodiment of democratic rights and responsibilities in the life of society, nation, and state."

However, the freedom to express opinions in public is not unlimited; there are five principles that must be considered when we express opinions in public, as regulated in Article 4 of Law Number 9 of 1998, these principles are:

- a. the principle of the balance of rights and obligations
- b. the principle of deliberation for consensus
- c. the principle of legal certainty and justice
- d. the principle of proportionality; and
- e. consensus principle.

The restriction on the right to freedom of assembly is not only regulated in Indonesian positive law but also regulated in international law as enshrined in the International Covenant on Civil and Political Rights (ICCPR), which authorizes the state to impose limitations on human rights when the state is in an actual emergency and threatens the life of a nation. As stated in Article 4 of the International Covenant on Civil and Political Rights as follows:

(1) In season of public crisis which compromises the existence of the country and the presence of which is formally broadcasted, the States Parties to the current Covenant might go to lengths disparaging from their commitments under the current Covenant to the degree rigorously expected by the exigencies of the circumstance, given that such measures are not conflicting with their different commitments under global regulation and don't include segregation exclusively on the ground of race, variety, sex, language, religion or social beginning.

(2) No criticism from articles 6, 7, 8 (passages I and 2), 11, 15, 16 and 18 might be made under this arrangement

In light of Article 4 of the ICCPR above, it gives legitimacy to the public authority to make limitations on common freedoms assuming the State is in a highly sensitive situation. As indicated by the European Court of Human Rights, a highly sensitive situation is what is happening of incredible emergency or crisis that influences the whole populace and is a danger to the existence of a coordinated local area.[5]

The issue of freedom of assembly is increasingly critical concerning the Covid-19 Pandemic, which was declared a national disaster on April 13, 2020.[6] The determination of the Covid-19 Pandemic is based on the high and increasing number of victims and property losses, the wide coverage of areas affected by the disaster, and causing broad socio-economic aspects in Indonesia.[7] As a result, in every policy direction, both the Central Government, Regional Governments, Ministries, and State Institutions must pay attention to policies for handling Covid-19.

This adds to various interpretations and problems at the grassroots related to handling the Covid-19 pandemic and the right to freedom of assembly of citizens guaranteed in the constitution. Various policies of alternating queuing and changing that are confusing and cause confusion and multiple interpretations are also factors that affect the right to freedom of assembly in Indonesia.[8] Beside the health context, the Covid-19 pandemic has worsened civil and democratic spaces in Indonesia. When the work of protecting human rights by civil society is reduced due to limited space for movement, the state's power is getting stronger.[9] Under the pretext of an emergency, the apparatus repeatedly ignores the fulfilment of civil rights and the provisions on reducing rights that apply. This can be seen from the increasing incidence of prohibition of freedom of assembly by the police, followed by the use of arbitrary articles in convicting perpetrators.[10]

Therefore, the regulation of restrictions on freedom of assembly and the resolution of the problems of freedom of assembly during the COVID-19 pandemic need to be studied more deeply in order to create a basis of knowledge and understanding within the community and law enforcement officials following the ideals of Pancasila and the 1945 Constitution of the Republic of Indonesia.

## **2 Literature Review**

### **1. Human Rights in Freedom of Association**

In the international context, guarantees for the fulfillment of human rights are regulated in the Universal Declaration of Human Rights (UDHR). Human rights declared through the Universal Declaration of Human Rights have a strong desire for human rights to be universally applicable. Therefore, a strong and rooted force is needed to become grounded, called a universal ideology. One of the human rights currently being discussed is the right to freedom of assembly. In the UDHR, the right to assemble is contained in article 20, which states:

- (1) Everybody has the privilege to opportunity of serene gathering and affiliation.
- (2) Nobody might be constrained to have a place with an affiliation.

Then the right to freedom of assembly is also regulated in the International Covenant on Civil and Political Rights, ratified through the UN General Assembly through Resolution Number 2200 A (XXI) on December 16, 1966, and took effect on March 23, 1976. Indonesia Number 12 of 2005 concerning the confirmation of the International Covenant on Civil and Political Rights, in article 21, which specifies:

“The right to peaceful assembly must be recognized. No restrictions may be imposed on the exercise of this right except those prescribed following the law and which are necessary in a democratic society in the interests of national security and public safety, or public order, the protection of public health or morals, or the protection of the rights and the freedoms of others.”

In the national context, the guarantee of human rights is regulated in the 1945 Constitution of the Republic of Indonesia, which guarantees natural rights that cannot be released or handed over to the community or government except by agreement. Natural rights in this context include the right to life (life), the right to own something (estate), and the right to freedom (liberte).[11] These rights are accommodated in the 1945 Constitution of the Republic of Indonesia due to an amendment that guarantees the protection of the human rights of Indonesian citizens. One of the human rights guaranteed by the 1945 Constitution of the Republic of Indonesia is the freedom of assembly and association regulated in Article 28E paragraph (3) which reads: "Everyone has the right to freedom of association, assembly and expression of opinion.”

The regulation of freedom of assembly is one of the human rights, which are the constitutional rights of Indonesian citizens. The provisions in the constitution emphasize that the state should protect, respect, promote and fulfill these rights. At the legal level, freedom of assembly is regulated in Article 24 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, which states that: "Everyone has the right to assemble, hold opinions, and associate for peaceful purposes."

Furthermore, the right to assembly is also regulated in Law Number 9 of 1998 concerning Freedom to Express Opinions in Public. The purpose of freedom of expression is based on the weighing section of the Law on Freedom to Express Opinions in Public to realize democracy in the life of society, nation, and state. The manifestation of freedom of expression is divided into various forms, as referred to in Article 1 point 1 of the Law on Freedom of Expression of Opinions in Public, namely:

"Freedom of expression is the right of every citizen to express thoughts orally, in writing, and so on freely and responsibly, following the provisions of the applicable laws and regulations."

Although there is no explicit term for gathering in the Law on Expressing Opinions in Public, there are terms and sentences that are directed at recognizing and guaranteeing the right to assembly, for example in Article 2 paragraph 1, which states:

"Every citizen, individually or in groups, expresses an opinion as to the embodiment of democratic rights and responsibilities in the life of society, nation, and state".

In addition, in chapter IV regarding the forms and procedures for the submission of Opinions in Public, Article 9 paragraph (1), namely:

"The form of expressing opinions in public can be carried out by:

- a. demonstration;
- b. march;
- c. general meeting; and or
- d. oration in public".

The arrangement in article 9 paragraph (1) regulates the submission of opinions held in groups. In line with that, Article 24 paragraph (2) of Law Number 39 of 1999 also reads:

"Every citizen or community group has the right to establish a Political Party, Non-Governmental Organization, or other organization to participate in government and state administration in line with the demands for the protection, enforcement, and promotion of human rights following the provisions of the legislation."

## **2. The Government's Obligation to Fulfill Health Service for the Public**

The right to the most noteworthy achievable norm of wellbeing is a common liberty perceived in worldwide basic freedoms regulation. The International Covenant on Economic, Social, and Cultural Rights, broadly thought to be the focal instrument of safeguarding the right to wellbeing, perceives "the right of everybody to the happiness regarding the most elevated feasible norm of physical and psychological well-being." It is vital to take note of that the Covenant gives emotional well-being, frequently disregarded, and actual wellbeing is equivalent thought. Resulting worldwide and territorial common freedoms instruments address the right to wellbeing in different ways. Some are of general application, while others address the basic freedoms of explicit gatherings, like ladies or kids.[12] Subsequent international and regional human rights instruments address the right to health in various ways, some having general application while others address the human rights of specific groups, such as women or children.

Satisfaction of the right to a solid life is an essential right that should be ensured in light of the fact that wellbeing is important for the essential necessities of each individual. A sound state of body and soul will empower each individual to do his exercises and works. Wellbeing is additionally important for the requirement for a prosperous life. This right is one of the fundamental privileges in wellbeing administrations. It has turned into an agreement in the Indonesian constitution that the right to wellbeing is an essential ideal for people. The essential way of thinking of ensuring the right to wellbeing as a basic liberty is the *raison d'etre* of human poise. Wellbeing is a principal right of each person.[13]

The International Covenant on Civil and Political Rights (ICCPR) obligates each State party to respect and to ensure all individuals within its territory and subject to its jurisdiction, the rights recognized in the Covenant. For sure, this means a State is dutybound to respect, protect and fulfill human rights of all individuals within in its territory and also under its jurisdiction, and it must do so without discrimination. Moreover, increasingly, the terms “within its territory and subject to its jurisdiction” are being interpreted in their disjunctive, rather than conjunctive sense, at least as concerns the State’s negative obligation to refrain from violating rights. Thus, the State is bound by international human rights law in relation to individuals outside of its territory but otherwise under its jurisdiction.[14]

Another significant instrument that characterizes and safeguards the right to wellbeing, aside from the ICESCR, is the World Health Organization's Constitution which characterizes wellbeing as a condition of complete physical, mental and social prosperity and not simply the shortfall of illness or ailment. The right to wellbeing is additionally revered in other worldwide basic freedoms instruments. The party legally bound in implementing human rights under international law is the state. In this context, the role and responsibility of the state is the most important thing in carrying out its constitutional obligations, namely pledging to recognize, respect, protect, fulfil and uphold human rights.[15] As the holder of human rights obligations, the state must realize the fulfilment of human rights for all citizens without exception. The realization of the fulfilment of human rights will create a just and prosperous society to reduce all forms of human rights discrimination problems that occur in Indonesia. [16]

National health service is a state effort to provide social protection, which has regulated the state's obligations in fulfilling the national health guarantee. National health service is a state program that aims to provide certainty of social protection and welfare for all people; in the concept of a Welfare State, the state is responsible for realizing the welfare of its people by intervening in the affairs of its citizens from human birth to human death so that it is likened to no one side of life. Citizens who are not interfered with by the government. Positive human rights say that the state is not an end in itself but is an institution created and maintained by the community to provide certain services. So, the community naturally has the right to these services, and the state is obliged to provide them.[17].

### **3 Results and Discussion**

Indonesia is an express that in view of the law where one component of law and order is the assurance of basic freedoms insurance for each person. The presence of assurance for basic liberties implies that the state can't act for arbitrary reasons to restrict the privileges and opportunities of each resident, particularly for common freedoms, which are delegated non-derogable privileges (basic freedoms that can't be decreased even in a crisis).

In any case, when the state is in a highly sensitive situation that undermines the existence of the country and has been proclaimed by the president, not everything basic freedoms can be

authorized, common liberties are named derogable privileges (freedoms that might be restricted in satisfaction in a crisis) which comprise of, the option to announce an assessment, the option to move, the option to gather, and the option to talk. Ensures for the satisfaction of basic liberties, which are sorted as derogable freedoms, can be restricted or postponed. [18]

If a country faces a threat that endangers its existence or sovereignty as an independent country or endangers the safety of its citizens, the country is considered to be able to take any action, regardless of the legality of the methods adopted. clear boundaries and measures that do not open up opportunities for abuse to occur to the detriment of the wider interests of humanity.[19]

As indicated by Alexander N. Domrin, there are different purposes behind pronouncing a highly sensitive situation in the laws of the world's nations, as did the German legitimate researchers, A Hamann and Hans-Ernst Folz, who isolated all crises into six or seven classes. A Hamann recognized a crisis as follows:[20]

1. Foreign invasion;
2. Public actions aimed at subversion of the constitutional regime;
3. Serious violations threaten public order and security;
4. Disaster,
5. Strikes and riots in important areas of the economy;
6. An important disruption in public services, and
7. Difficulties in the economic and financial fields

The general set of laws in all nations recommends exceptional measures to manage what is happening which is then alluded to as a crisis. There are dependably components that diminish, breaking point or freeze specific basic liberties in these crisis game plans. Notwithstanding, the decrease, impediment, or suspension of such common liberties should be: [21]

1. It is temporary
2. Intended for overcoming a crisis and
3. to return to normal conditions as usual in order to defend fundamental human rights.

The conditions for limiting and reducing human rights set out above are translated in more detail in the Siracusa Principles. This principle states that the limitation of rights must not harm the essence of rights. All limitation clauses must be interpreted expressly and are intended to support rights; this principle also emphasizes that restrictions on rights should not be enforced arbitrarily. Human rights restrictions can only be carried out if the following conditions are met.: [22]

1. Prescribed by Law
2. in a democratic society
3. Public Order
4. Public Health
5. Public Morals
6. National Security
7. Public Safety
8. Rights and freedoms of others or the rights or reputations of others

The state is allowed to choose how much and by what implies it will force limitations on basic liberties given that they meet the necessities set out in the pertinent provisions.[23] Nonetheless, it should be underscored that the circumstances for restricting common freedoms above are focused on basic liberties that are named derogable privileges (basic freedoms that can be restricted in their satisfaction in a crisis).

In accordance with the assertion of the President of Indonesia contained in the Presidential Decree (KEPPRES) in regards to the Designation of Non-Natural Disasters for the Spread of

Corona Virus Disease 2019 (COVID-19) as a National Disaster, expresses that Declare non-cataclysmic events brought about by the spread of Corona Virus Disease 2019 (COVID-19) as a public catastrophe. This is following the assessment of Alexander N. Domrin; in this manner, by and large, the Coronavirus pandemic can be supposed to be a catastrophe. Consequently, the Coronavirus pandemic can be utilized as the reason for restricting opportunity of get together. Moreover, it depends on the Siracusa Principles limitations on opportunity of gathering on the grounds of the COVID-19 pandemic have satisfied a few reasons:

1. Prescribed by Law
2. Public Order (ordre public)
3. Public Health
4. Public Safety

In positive law, restrictions on freedom of assembly as derogable rights or the rights of magnaesia can be limited as stated in the 1945 Constitution of the Republic of Indonesia Article 28J paragraph (2)

“In exercising their rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law for the sole purpose of ensuring the recognition and respect for the rights and freedoms of others and to ensure fair demands under considerations of morality, religious values, security, and public order in a democratic society.”

In addition, in Law Number 39 of 1999 concerning human rights, Article 73 states:

“The rights and freedoms regulated in this law can only be limited by and based on the law, solely to ensure the recognition and respect for human rights and the basic freedoms of others, morality, public order, and the nation's interests.”

Restricting opportunity of gathering as one of the public authority's means in managing the COVID-19 pandemic can be one of the limitations on basic freedoms. As to limitations on common liberties in opportunity of gathering emerges as a result of Law number 6 of 2018 concerning wellbeing quarantine. As well as emerging from the Health Quarantine Law, limitations on opportunity of gathering are managed in Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19) as an executing guideline of the Health Law.

In Article 4 paragraph (1) Government Regulation 21/2020 provides limitations on freedom of assembly which states:

(1) Large-Scale Social Restrictions at least include:

- a. school and workplace holidays;
- b. restrictions on religious activities; and/or
- c. restrictions on activities in public places or facilities.

Health quarantine must respect human rights and basic human freedoms. This is clearly stated in the Considering Section letter c of Law 6/2018 as follows:

“that as part of the world community, Indonesia is committed to making efforts to prevent public health emergencies that are troubling the world as mandated in international regulations in the health sector, and in carrying out this mandate, Indonesia must fully respect the dignity, human rights, basic freedoms of a person, and its universal application”

Furthermore, Article 2 letter f of Law 6/2018 has made sense of that wellbeing quarantine should be completed in light of the rule of public interest. What is implied by the standard of "public interest" is that in the execution of wellbeing quarantine, the public interest should be focused on over the interests of specific people or gatherings.

The presence of a wellbeing quarantine will surely restrict the development of individuals, particularly on opportunity of gathering. In any case, this is done to guarantee the strength of all

Indonesian residents so they are not tainted with the Covid-19 infection. Accordingly, it can't be arranged as an infringement of basic freedoms and is done intrinsically.

## 4 Conclusion

The constitutional guarantee of the basic rights of citizens has been stated in the constitutional norms. As conditions develop, certain things will limit the rights of citizens. The limitation of this right can be based on the wider public interest, which the state must implement as a giver of security in all aspects of life. The issue of freedom of assembly is increasingly critical concerning the Covid-19 Pandemic, which was declared a national disaster on April 13, 2020. The determination of the Covid-19 pandemic is based on the high and increasing number of victims and property losses, the expansion of the affected area, and the increasing socio-economic status aspects. Widely in Indonesia. As a result, every policy direction, both the Central Government, Regional Governments, as well as Ministries and State Institutions, must pay attention to policies for handling Covid-19.

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