

JURIDICAL ANALYSIS OF STATE FINANCIAL POLICIES IN HANDLING THE COVID-19 PANDEMIC

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Abstract

The purpose of this study is to legally analyze the country's policy in dealing with the COVID-19 pandemic. Qualitative research methods use a library study approach. Primary data sources consisting of applicable laws and regulations, and secondary data resources in the form of textbooks because textbooks contain the basic principles of legal science. Data collection techniques include documentation and observation, and data analysis using data triangulation. The conclusion in this study is that in the system of the division of power in Indonesia contained in the Constitution of 1945 as the constitution of the state, the President is empowered to establish rules that hierarchically have the same level as the law, known as the government regulations in the place of law (Perppu). Perppu's presence is also widely regulated in countries that implement a presidential system. Furthermore, Perppu's provision must be based on the existence of a temporary emergency. The category of urgent concern is the president's authority. In addition, the legislator can accept or reject Perppu as a law, a rule of law, or a definitive law. Perppu is the legislative authority to accept or reject perppu.

Keywords: authority, prerogative, compelling urgency

INTRODUCTION

The Covid 19 virus outbreak (SARS CoV-2) is a new type of virus that is infecting countries around the world. Common symptoms experienced by people infected with this virus are fever, runny nose, dry cough, shortness of breath, and difficulty breathing. The virus originated in the city of Wuhan, China and is thought to have been transmitted from animals to humans, spreading rapidly until it reached Indonesia. The virus pandemic disaster emergency status was declared from February 29, 2020 to May 29, 2020 by the Government of Indonesia. This virus has spread rapidly throughout Indonesia, it is known that on June 28, 2020 Indonesians who are positive for Covid-19 amounted to 54,010 with the number of patients who died as many as 2,754 people and the total number of recoveries reached 22,936. WHO and the government issued a policy to temporarily stop all activities outside the home such as work and school.

The impact of Covid-19 affects various sectors of life such as the manufacturing sector, transportation sector, social sector, food sector and the economic sector of course. This happened due to the implementation of the *physical distancing* policy and the PSBB (Large-Scale Social Restrictions) policy which resulted in hampered economic activities. Most of the economic sectors were affected, resulting in sluggish economic conditions in the country. Various problems arise such as economic slowdown, state revenue, increased financing and spending and other economic problems, so that the government must make efforts by taking steps and policies to save economic conditions and financial system stability.

The President has issued various laws, regulations and policies, including Presidential Decree Number 7 of 2020 on the Task Force for the Acceleration of COVID-19 Handling, Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions (PSBB) in the Context of Accelerating the Handling of COVID-19, Presidential Decree Number 11 of 2020 on Determining the Status of Public Health Emergencies, as well as Government Regulation in Lieu of Law Number 1 of 2020 on State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic, Presidential Regulation Number 54 of 2020 on Changes in the Posture and Details of the 2020 State Budget and finally Presidential Decree Number 12 of 2020 on Determining the Non-Natural Disaster of the Spread of COVID-19 as a National Disaster. Furthermore, Perppu No. 1 of 2020 which has been enacted by the House of Representatives became Law No. 2 of 2020.

The policies issued by the President are the implementation of the governmental power possessed by the President according to the 1945 Constitution of the Republic of Indonesia, which is formulated in Article 4 paragraph (1). As a consequence, the President carries out state duties to achieve the state's goal of improving the welfare of the people as mandated in the Preamble of the 1945 Constitution.

The duties of the President are further regulated in Articles 33 and 34 of the 1945 Constitution which form the basis for the implementation of the constitutional duties of the state/government, which are then delegated to his aides and other government officials. In realizing the welfare of the people, the President and government officials are given the freedom of action to overcome concrete problems faced in the administration of government.

The policies taken by the President in handling the Covid-19 Pandemic have received a lot of criticism because they are considered to prioritize economic stability over public health, and are considered to open opportunities for corruption. State financial policies in handling the Covid-19 pandemic are needed because there is an urgent condition that cannot be delayed that must be carried out by government officials in the form of providing medicines, medical devices, health infrastructure, human resources both health and non-health workers, and other activities related to handling the Covid-19 pandemic. Therefore, to find out the extent to which state financial policies have been utilized in handling the Covid-19 pandemic.

According to Julian Aldrin Pasha, the government needs to prioritize between the economic sector and the health sector. Because according to the facts on the ground, *social distancing* can prevent the spread of the covid-19 virus but also have an impact on the domestic economy. The economic and health sectors are always related to policies issued by the government to deal with the impact of the Covid-19 pandemic, therefore a regulation or policy must be analyzed more deeply to ensure whether it is right on target to the community or not.

Perppu Number 1 of 2020 focuses more on the financial sector rather than the economic sector needed to overcome Covid-19. For example, the economic sector should be prioritized for the procurement of medical equipment. The focus of the discussion that is more inclined to the financial sector and the handling of the impact of an unclear pandemic raises speculation that whether the policy is indeed to overcome the pandemic (Aulawi, 2020) or for other interests

RESEARCH METHODS

This research is a type of normative juridical legal research, namely research that has an object of study on legal rules or rules. Normative legal research examines legal rules or regulations as a system building related to a legal event (Aulawi, 2020). This research is conducted with the intention of providing legal arguments as a basis for determining whether an event is right or wrong and how the event should be according to the law.

This research was conducted with several approaches. With this approach, researchers will obtain information from various aspects regarding the issues that are being tried to find answers. The approaches used include *Statute Approach* and *Conceptual Approach* (Nelvitia Purba, 2021).

The data used includes primary data sources consisting of applicable laws and regulations, and secondary data sources in the form of textbooks because textbooks contain basic principles of legal science. In this research, secondary data sources used are books written by influential jurists and legal journals (Juliani, 2020).

The data collection and analysis technique is document study (literature study). Document study is a means of collecting materials through written legal materials by using *content analysis*. By reviewing primary and secondary legal materials related to the research and recording the necessary things and arranged systematically which have relevance to the subject matter .

RESULTS AND DISCUSSION

Division of Power in Indonesia

The constitution (*ground norm*) of the Indonesian state, contained in the 1945 Constitution, has undergone several changes (amendments) to adapt to the times and the needs of the state. According to Article 1 paragraph (1) of the 1945 Constitution, it is determined that the Indonesian state is a Unitary State in the form of a Republic. Furthermore, in paragraph (3), it is determined that the Indonesian state is a state of law (Abdulqader & Assalmani, 2021)

To realize the conception of the rule of law, a legal order is needed. The implementation of the legal order, the constitution regulates 4 (four) state organs, namely:

1. People's Consultative Assembly (MPR)
 - a. Institutionalization

The MPR consists of members of the House of Representatives (DPR) and the Regional Representatives Council (DPD) through general elections (see Article 2 paragraph (1)).
 - b. Authority
 - 1) Amending and enacting the Constitution
 - 2) Inaugurate the President and Vice President
 - 3) Dismiss the President and Vice President during their term of office (vide Article).
2. Executive Board

The President holds the power of state government (executive). In carrying out the functions of state government, the President is assisted by state ministers, whose nomenclature is regulated by law. In addition, based on the mandate of a law, an independent state agency can be formed that carries out certain government administration functions (executive family), but is not part of the government.
3. Legislative Body

Before the 1945 Constitution was amended, there was only 1 (one) legislative body/agency. After the amendment, the legislative body is divided into 2 (two), namely:

 - a. House of Representatives, The House of Representatives has several functions, namely:
 - 1) legislative function (lawmaking) together with the executive body, budget function and supervisory function
 - 2) Regional Representative Council

The Regional Representative Council has a legislative function together with the executive body on certain draft laws.
4. Judiciary

The judiciary has the authority to oversee the enactment of laws and their implementing regulations and to enforce the law by exercising the function of judicial power. As with the legislative body, the existence of the judiciary before the amendment of the 1945 Constitution which was originally only known as one body / institution, then after the amendment, the judiciary was divided into 2 (two), namely:

 - a. Supreme Court

The Supreme Court is the judicial body at the cassation level and its subordinate judicial bodies, which include the general court, religious court, military court, state administrative court. The Supreme Court is also authorized to examine laws and regulations under the law against the law.
 - b. Constitutional Court (MK)

The Constitutional Court has the authority to review laws against the constitution, decide disputes over the authority of state institutions, decide on the dissolution of political parties and dispute the results of general elections (Kumala, 2020).

Based on the division of power divided into 4 (four) organs above, in the MPR and legislature, the legal products produced are institutional legal products, while in the executive and judiciary a position is held by someone. The person who is given the position is known as an official. So an official is someone who is given a certain position and authority by the rule of law.

Legal Position of Perppu in the Hierarchy of Laws and Regulations

Legal norms in a country are very necessary, this is intended to create a safe, peaceful and orderly society. In Indonesia, legal norms have levels, starting from higher to lower regulations (Hasbullah, 2022). The highest regulation, namely the 1945 Constitution of the Republic of Indonesia, functions as a *staat fundamental norm*, meaning that as a formal legal reference if there is a difference with the regulations below, the regulation can be submitted for *judicial review to be annulled*. At this level, the regulations below are laws. This level is known as hierarchy, in regulations better known as legislation. Hierarchy theory is a theory of the legal system introduced by Hans Kelsen which states that the legal system is a ladder system with tiered rules (Putri et al., 2023). The relationship between norms that regulate the actions of other norms and these other norms can be referred to as super and subordinate relationships in a spatial context.

The hierarchy of laws and regulations in Indonesia is regulated in Article 7 of Law Number 12 of 2011 in conjunction with Law Number 15 of 2019 concerning the Formation of Laws and Regulations (hereinafter referred to as P3 Law) from the highest to the lowest, including 1) Constitution of the Republic of Indonesia Year 1945; 2) Decree of the People's Consultative Assembly; 3) Law / Government Regulation in Lieu of Law; 4) Government Regulation; 5) Presidential Regulation; 6) Provincial Regional Regulation; and 7) Regency/City Regional Regulations. Based on point 4), it can be seen that laws and government regulations in lieu of laws (perppu) have an equal position.

In principle, the authority to form laws rests with the House of Representatives (DPR) or the Regional Representatives Council (DPD), but according to Article 22 of the 1945 Constitution, it turns out that the President is also given the authority to form regulations that are hierarchically at the level of the law, if a matter or a compelling urgency occurs.

The regulation in question is a Government Regulation in Lieu of Law (Perppu for short). Although Perppu hierarchically has the same position as the law. However, the validity of Perppu is only temporary or emergency, because in a country that adheres to a presidential system of government such as Indonesia, it gives the President the authority to take the necessary actions to overcome the emergency (Redi & Adrian, 2022).

Regarding the source of obtaining authority, every government action is required to be based on legitimate authority, and is obtained through three sources, namely: attribution, delegation, and mandate. The authority of attribution is conceptualized through the division of state power by the basic law. The authority of delegation and mandate, although both are obtained through delegation, but the authority derived from delegation and mandate is different.

Prajudi Atmosudirjo, explains that authority is what is called "formal power", power that comes from the power granted by the Constitution, legislative power (given by law) or from administrative executive power.[12] Every official who exercises state power is authorized to determine, implement and enforce compliance with the law, especially in a welfare state, so that the state has the right to interfere in almost all areas of people's lives (Soemarwi & Ndruru, 2022).

No matter how good a person is, power must always be regulated and limited. In Bagir Manan's view, the President's power to enact government regulations in lieu of laws (Perpu) is a special authority in the legislative field. Meanwhile, the right to participate in the process of making laws, Government regulations, and Presidential regulations is a reasonable authority. In this case, the President of the Republic of Indonesia based on the 1945 Constitution has the right to approve draft laws (RUU) into laws (UU), establish government regulations in lieu of laws (Perpu), government regulations, and Presidential Regulations (Bustami et al., 2021).

Because the President's authority in establishing perppu is a special authority, the real role of legislators (in this case the DPR or DPD) is still needed to: 1) conduct strict supervision in determining the existence of a state of emergency (*recognizing an emergency*); 2) establish the power to overcome the emergency (creating the powers to deal with it); 3) monitor the implementation of government authority (executive) to overcome the abnormal situation; 4) investigate various irregularities or abuse of authority in the state of emergency; 5) if necessary declare the end of the state of emergency or ask the President to declare the end of the emergency.

Category of Force Majeure

The declaration of a state of emergency is an extraordinary and special set of state institutions and powers, to eliminate the emergency or imminent danger in the shortest possible time, in accordance with general and ordinary laws and regulations. The essential elements must be: 1) the existence of a state danger that deserves extraordinary measures; 2) Ordinary, common and customary institutions are inadequate to respond to and cope with the danger; 3) Extraordinary powers are granted by law to the state government to quickly end the emergency danger, returning to normal life; 4) The extraordinary powers, and the emergency constitutional law are for a temporary period only, until the emergency is deemed no longer dangerous (Mahardika, 2020).

The notion of compelling urgency contains emergency or "emergency" which gives the President the authority to enact Perpu or so-called emergency laws according to the 1949 RIS Constitution and the 1950 UUDS, or *emergency legislation* according to constitutional provisions in several other countries.

The state of danger referred to in Article 12 of the 1945 Constitution can indeed be one of the reasons for the fulfillment of the requirement of a compelling urgency according to Article 22, but it does not always originate from the state of danger in Article 12 of the Constitution. The definition of danger can be interpreted as a threat that comes from outside or a threat that comes from within (Hamrany et al., 2020).

Contextually, Article 22 of the 1945 Constitution related to Perpu is a provision that has been maintained in several amendments to the 1945 Constitution. In the sense that although the amendment of the 1945 Constitution has taken place successively in 1999 to 2002, this article by the representatives of the people still reads as the original text and does not participate in the amendment process in the sound of the article. This means that all Indonesian presidents refer to the same constitutional norm in issuing Perpu and by using the same reason, namely "compelling urgency".

AALF van Dullemen states that there are four requirements for emergency constitutional law, namely: 1) The existence of the state depends on the emergency measures taken; 2) The action is necessary because it cannot be replaced by another action; 3) The action is temporary; 4) When the action is taken, parliament cannot be real and serious (Yustiyanto, 2022). For Dullemen, these four conditions must apply cumulatively.

Muh. Yamin argues that whether or not there is an urgent situation is assessed at the discretion of the government (Maulidia & Prima, 2021). This means that an urgent situation can arise at any time if the government considers a situation to be in a precarious and compelling atmosphere. In unusual or abnormal circumstances, norms that are also special in nature apply which require separate arrangements both regarding the conditions, procedures for enactment and procedures for ending it, as well as things that can or cannot be done by the government in a state of emergency so as not to provide opportunities for abuse of authority contrary to the basic law.

The 1945 Constitution gives a very large power to the President, because Perpu can be stipulated by the President himself which has the same hierarchy or degree or validity as the law. Thus, by issuing a Perpu, the President can change or revoke an ordinary law enacted by the President together with the DPR. Of course, the president's power requires supervision from the DPR so that it is not misused.

The Urgency of Covid-19 Pandemic

The occurrence of the Covid-19 Pandemic that has hit all countries in the world, including Indonesia, so that the President considers that this has met the category of a compelling urgency, so that the President as Head of State and Head of Government issued Perppu Number 1 of 2020 in order to maintain state financial stability and stability for handling the Covid-19 pandemic in order to face threats that endanger the national economy.

The need for quick action to be taken by the government and related institutions in making decisions or policies to save and restore the domestic economy and a stable financial system. By increasing spending in the health sector, social safety nets and in the field of economic recovery. Through relaxation policies related to the state budget in order to save and restore the domestic economy and a stable financial system and strengthen the authority of institutions in the financial sector. Given that the whole world is also struggling to deal with the Covid-19 pandemic, this situation can be considered a category of compelling urgency, so the President has the right to stipulate government regulations as an alternative to law (Dewi, 2020).

The head of the executive power is referred to as "*the sovereign executive*", who is considered to have prerogative rights when the state is in a state of emergency. "*The sovereign executive*" is actually the holder of the power to exclude the application of *ordinary laws*, as Carl Schmitt said, "*sovereignis he who decides upon the exception*". According to him, to deal with emergencies that threaten the safety of the state, liberal democracy can only survive by appointing a dictator who will

impose emergency powers that allow *"everything justified that appears to be necessary for a concretely gained success"*(Utami, 2021). With the state of emergency in place, all actions become justified solely for the sake of concretely gained success.

Broadly speaking, the content of the Perppu can be grouped into several fields, namely state financial policy, taxation and financial and business system stability policies which can be grouped into 5 (five) points, namely 1) Setting the budget for handling COVID-19 at IDR 405.1 trillion; 2) The health sector budget will be prioritized for the protection of health workers, especially the purchase of PPE, the purchase of medical equipment such as test kits, reagents, ventilators, etc., and also for upgrading referral hospitals including the Athlete's Village, as well as for incentives for doctors, nurses, and hospital personnel, as well as for compensation for the death of medical personnel, and handling other health problems; 3) Social safety net, the government allocates PKH 10 million KPM. There is also a basic food card, whose recipients were raised to 20 million with benefits increasing by IDR 200 thousand for 9 months. In addition, the Pre-Employment Card fund was raised to Rp 20 trillion to cover around 5.6 million informal workers, micro and small business actors. Beneficiaries receive a post-training incentive of IDR 600,000, with training costs of IDR 1 million. This budget is also allocated for a 3-month electricity fee exemption for 24 million 450VA electricity customers, and a 50 percent discount for 7 million subsidized 900VA customers. There are also additional housing incentives for the construction of MBR housing up to 175 thousand and logistical support for basic food and basic needs of IDR 25 trillion; 4) Economic stimulus for MSMEs and business actors, will be prioritized for the exemption of Income Tax 21 for workers in the processing industry sector with a maximum income of IDR 200 million, for the exemption of import VAT for taxpayers then import for export purposes. Especially for small and medium industries in 19 specific sectors, and will also be used for a reduction in income tax rates by 25 percent for taxpayers then import for export purposes, especially small and medium industries in certain sectors; 5) The non-fiscal sector in ensuring the availability of goods currently needed, including industrial raw materials, the government is carrying out several policies, namely simplifying limited restrictions (lartas) on exports, simplifying limited restrictions or lartas on imports, and accelerating export-import process services through the national logistic *ecosystem* (Gunawan, 2020).

Enforceability and Testing of Perppu

According to Bagir Manan, in this case, the adage "revoked by equal or higher legislation does not apply." (hidayat fahrul, 2023) "Perppu is not revoked by (similar) Perppu because: 1) The revoking Perppu must meet the requirements of a compelling urgency, while the existing Perppu needs to be revoked or changed into a law because there is no longer a compelling urgency; 2) The Perppu that is made must also be submitted to the DPR, namely the Perppu on the revocation of Perppu, which is not practical.

To overcome the above difficulties, any Perppu should be revoked by law. So, whether the Perppu will be approved as a law or will be revoked must be submitted to the DPR in the form of a Bill and given the form of a law. By using this authority, the President can unilaterally revoke a law that is still in force or regulate a matter that should be stipulated by law (Ampow et al., 2021). Given that, in the first instance, there is no other office with the authority to test whether there is a true emergency or whether there is an emergency.

As mentioned earlier, the 1945 Constitution has undergone several amendments. In the third amendment enacted on November 9, 2001, a branch of judicial power was established called the Constitutional Court (MK) which is regulated in Article C24 of the 1945 Constitution. Based on Article 24C paragraph (1) of the 1945 Constitution, it is determined that "the Constitutional Court has the authority to hear ... to test laws against the Constitution (Nelvitia Purba, 2021)". Because Perppu hierarchically has the same degree as the law, testing Perppu is one of the powers of the Constitutional Court. As an implementation of the mandate of Article 24C of the 1945 Constitution, Law Number 24 of 2003 concerning the Constitutional Court was established.

Perppu creates legal norms and as a new legal norm will be able to cause: 1) new legal status; 2) new legal relations, and 3) new legal consequences. The legal norm is born since the Perppu is enacted by the President and the fate of the legal norm depends on the approval of the DPR to accept or reject the Perppu legal norm, however, before the DPR's opinion to reject or approve the Perppu, the legal norm is valid and applies like a law.

However, the constitutional mandate contained in Article 24C of the 1945 Constitution does not expressly authorize the Constitutional Court to examine Perppu. Any addition or perhaps even reduction in the authority of state institutions, including the authority of the Constitutional Court, must be expressly determined in the 1945 Constitution through amendments. In other words, the Constitutional Court does not have the authority to test Perppu (Juliani, 2020). The authority to test Perppu lies with the legislator to accept or revoke the Perppu.

The Court is authorized to test laws that stipulate or accept Perppu against the 1945 Constitution. In other words, the object of the test is the law, not the Perppu (Aulawi, 2020). Which is the application of the principle of legality in Article 24C of the 1945 Constitution which regulates one of the authorities of the Constitutional Court is to test the law against the basic law.

CONCLUSIONS

Compelling urgency can be defined as a state of emergency that requires an extraordinary and special set of state institutions and authorities, to in the shortest possible time eliminate the emergency or threatening danger, into life according to general and ordinary laws and regulations. Compelling urgency can be subjectively interpreted by the President to resolve a problem or legal need. This is a characteristic of the presidential system adopted by many other countries in the world, including Indonesia. However, the criteria of Compelling Urgency must at least fulfill the element of emergency to overcome a problem that threatens life and or property, nation and state that is massive and or a legal problem that threatens the applicable legal system.

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