

LEGAL AND INSTITUTIONAL ASPECTS OF THE FINANCIAL SECTOR IN HANDLING THE COVID-19 PANDEMIC

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Abstract

The COVID-19 pandemic has negatively impacted economic conditions, health, and social activities of the community. This study elaborated on two things. First, the legal aspects of handling the COVID-19 Pandemic. Second, it outlines the aspects of institutions involved in handling the COVID-19 Pandemic. The results of this study show that the legal aspects of the Government in dealing with the COVID-19 Pandemic are through Law No. 2 of 2020. In this regulation, at least two main things are regulated, namely the legal protection of members of the Financial System Stability Committee (KSSK) from lawsuits in exercising their authority and exceeding the deficit limit of 3 percent of GDP, furthermore, regarding institutions involved in handling the COVID-19 Pandemic, it is necessary to strengthen institutions. In this case, the institution in question is included in the KSSK members, because of its large authority in handling the Pandemic, especially for national economic recovery, as well as large state budget allocations. The strengthening efforts that can be done are First, amendments to Law No. 2 of 2020, especially regarding the protection of the KSSK against claims and exemptions from state financial losses. Second, the issuance of a PERPPU on supervision and reporting of financial responsibility for handling the COVID-19 pandemic. Through these institutional strengthening efforts, it is hoped that the handling of the Pandemic, especially in the context of national economic recovery, can run optimally.

Keywords: *legal aspects, institutional aspects, COVID-19 pandemic*

I. INTRODUCTION

Corona Virus Disease (COVID-19) is an infectious disease caused by the corona virus. The virus first appeared in Wuhan, Hubei Province, China in late 2019. Then the virus continued to spread and develop to 227 countries in the world. In Indonesia, COVID-19 cases were found on March 2, 2020 in 2 people and continued to experience a surge in cases until 4,258,560 on November 5, 2021, and 143,918 deaths. The widespread transmission of COVID-19 in many countries, prompting the World Health Organization (WHO) to designate it as a pandemic.

The existence of the COVID-19 Pandemic has an impact on various aspects of human life. In particular, on the economic aspect, the pandemic caused many negative impacts. First, an increase in the poverty rate. Based on BPS data, during the 2021 Pandemic period of March 2020-March 2021, the number of poor people has increased. In March 2020, the number of poor people was 26.42 million people, but in March 2021 the number increased to 27.54 million people.¹ Second, the increase in the unemployment rate. Based on BPS data, as of August 2021, the number of unemployed people caused by the COVID-19 pandemic reached 1.82 million people. This finding is also strengthened by the Bappenas study, which states that the pandemic caused the population to fall into poverty by 55 percent.²³

On a more personal economic note, the vulnerability of the population to fall into poverty due to the pandemic is characterised by several things. The SMERU Institute study stated that during the Pandemic, three out of four residents experienced a decrease in income, 1 in 2 formal workers switched to the informal sector, one in two residents did not have enough savings, and 9 out of 10 businesses were affected by the pandemic.⁴

In addition, the impact of the pandemic on the economic sector also has an impact on financial system stability. This condition is influenced by various government policies in preventing the transmission and spread of COVID-19, which has resulted in disrupted economic activity, both from the demand and supply sides. As a result, the level of volatility rose sharply, which showed that public and investor confidence fell. From January to March 2020, capital outflows from the Indonesian financial market reached IDR 145.28 trillion. Then another pandemic impact is the sharp decline in commodity prices of goods and the economic recession that occurred in Indonesia during 2020.

To this impact, the government has been trying to overcome preventing and overcoming the worse impact of the COVID-19 pandemic. On the one hand, the decline in economic activity has an impact on reducing the income of the community and the business world, which also has implications for the decline in state income. However, on the other hand, the need for government spending has also increased to finance various stimulus programs needed to contain the impact of the pandemic. In 2020, state spending reached IDR

¹ Central Bureau of Statistics, *Calculation and Analysis of Indonesia's Macro Poverty in 2021* (Jakarta: Central Statistics Agency of the Republic of Indonesia, 2021), p. 11.

² Central Bureau of Statistics, *The State of Employment of Indonesia August 2021* (Jakarta: Central Statistics Agency of the Republic of Indonesia, 2021), p. 2.

³ Ministry of Social Affairs of the Republic of Indonesia, *Dynamics and Strategies for Poverty Reduction of the Ministry of Social Affairs of the Republic of Indonesia* (Jakarta: Ministry of Social Affairs of the Republic of Indonesia, 2021), p. 2.

⁴ *Ibid.*, p. 6.

2,540.4 trillion, but state revenues only reached IDR 2,233.2 trillion. In this regard, in 2020 the country experienced a deficit of IDR 307.2 trillion.⁵

In particular, in the context of handling the COVID-19 pandemic and National Economic Recovery (PEN), in 2020 the country spent IDR 575.8 trillion. The budget is allocated to several clusters, namely (a) health of IDR 62.7 trillion; (b) social protection of Rp216.6 trillion; (c) support for MSMEs amounting to Rp112.3 trillion; (d) corporate financing of IDR 60.7 trillion; (e) business incentives of IDR 58.4 trillion; and (f) priority programs of Ministries/Institutions (K/L) and Local Government amounting to Rp65.2 trillion.⁶⁷

The legal framework for the implementation of handling the COVID-19 Pandemic and PEN by the Government is regulated by three regulations: First, the Decree of the President of the Republic of Indonesia No. 11 of 2020 concerning the Determination of a COVID-19 Public Health Emergency; Second, Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of COVID-19; and Third, Government Regulation in Lieu of Law (Perppu) No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and/or In Order to Face the Threat of Endangering the National Economy and/or Financial System Stability as promulgated through Law No. 2 of 2020 (Law 2/2020). Specifically, this paper discusses in greater depth the legal aspects of handling the COVID-19 Pandemic, which is regulated in Law 2/2020.

Research related to the legal aspects of handling the COVID-19 Pandemic has been conducted by at least three previous researchers. First, Marulak Pardede (2021) examined the existence of various laws and regulations related to the handling of COVID-19 clashes with each other, disharmony and synchronization both horizontally and vertically.⁸

Second, Julaidin and Henny Puspita Sari (2020) discussed the issuance of several regulations for handling the COVID-19 Pandemic is intended to support the existence of Law No. 24 of 2007, such as social distancing policies, protection for health workers, and PSBB (emergency health measures). In

⁵ Ministry of Finance, Republic of Indonesia, "The 2020 state budget," *Kemenkeu.go.id*, accessed 29 December 2021, <https://www.kemenkeu.go.id/apbn2020>.

⁶ Ministry of Finance, Republic of Indonesia, "The Realization of the PEN Program in 2020 Reached IDR 575.8 Trillion," *Kemenkeu.go.id*, July 15, 2021, accessed December 29, 2021, <https://www.kemenkeu.go.id/publikasi/berita/realisasi-program-pen-tahun-2020-capai-rp575-8-triliun/>.

⁷ Pande Putu Oka Kusumawardani et al, *Tax Expenditure Report 2020* (Jakarta: Ministry of Finance of the Republic of Indonesia, 2021), p. 4.

⁸ Marulak Pardede, "Legal Aspects of Health Quarantine and Consumer Protection in Overcoming the COVID-19 Pandemic," *De Jure Journal of Legal Research*, Vol. 21, No. 1 (2021): 41.

addition, the research explored how the government also directs handling through law enforcement, especially violators of health protocols.⁹

Third, Supriyadi (2020) argued that the policies made by the Government to deal with the COVID-19 pandemic have several problems, ranging from not being on target for the distribution of social assistance, overlapping distribution of social assistance, and the vulnerability of abuse of authority because protection is not prosecuted criminally or civilly if there is impropriety in using the budget.¹⁰

Based on the three previous studies, it can be seen how this study departs from the earlier research. First, the author focuses on the legal aspects of handling the COVID-19 Pandemic. In this case, it is related to the formation process, to its implementation. Second, the author focuses on the institutional aspects that deal with the COVID-19 Pandemic. Third, the author focuses on the human rights protection during the COVID-19 Pandemic.

II. PROMULGATION OF LAW 2/2020

On March 31, 2021, President Joko Widodo issued a Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and/or In Order to Face Threats That Endanger the National Economy and/or Financial System Stability (hereinafter, PERPPU 1/2020). Then after going through the legislative process, on May 12, 2020, PERPPU was approved by the House of Representative of the Indonesian Republic (DPR) to become Law No. 2 of 2020 (Law 2/2020). During the submission of the Bill on the Determination of PERPPU 1/2020, Minister of Finance Sri Mulyani Indrawati explained that the PERPPU was issued to overcome the threat of COVID-19 in the health, economy, and finance sectors. Through PERPPU, the government and other relevant authorities can implement *extraordinary actions* necessary to maintain the stability of the financial sector.

Meanwhile, in letter c of the Consideration of Law 2/2020, it is stated that the COVID-19 Pandemic has implications for serious harm to the financial system, precipitated by a decrease in domestic economic activity. Therefore, joint mitigation efforts are needed between the Government and the Financial System Stability Committee (KSSK) to take forward looking measures in order to maintain financial sector system stability. Further, in letter c of the

⁹ Julaidin and Henny Puspita Sari, "Legal Policy In the Midst of Handling the Corona Virus Disease (COVID-19) Outbreak," *Unes Law Review*, Vol. 2, No. 4 (2020): 369.

¹⁰ Supriyadi, "Policy for Handling COVID-19 from a Prophetic Legal Perspective," *Sulob Journal of Master of Law Study Program*, (2020): 107.

Consideration of Law 2/2020, the Government needed to take extraordinary policies to save the national economy. This is done with various relaxation policies related to the implementation of the state budget, especially directed at increasing spending on the health sector, spending on social safety nets, economic recovery, and strengthening the authority of various financial sector institutions. Therefore, PERPPU 1/2020 was issued, which later was codified under Law 2/2020.

Given these considerations, according to the government, there are two purposes for issuing PERPPU 1/2020 as amended by Law 2/2020. First, as a legal basis for the Government in setting extraordinary policies and measures in the field of state finance and the financial sector, in the context of handling health, humanitarian, economic, and financial crises due to the COVID-19 Pandemic. Second, as a form of anticipation in efforts to deal with the COVID-19 Pandemic and/or its impact in the form of threats that endanger the national economy and/or financial stability.¹¹

Meanwhile, the House of Representatives that originally wrote PERPPU 1/2020 into Law 2/2020, states that there are four reasons underlying its promulgation. The basis for the promulgation is because the substance of PERPPU 1/2020 regulates the handling of COVID-19, social assistance, economic stimulants for MSMEs and cooperatives, and anticipation of financial system stability.¹²

III. PERPPU 1/2020 PUBLISHED IN AN EMERGENCY SITUATION

Article 22 paragraph (1) of the 1945 Constitution states that in the event of an emergency, the President has the right to enact government regulations in lieu of laws. In this regard, the constitution has given emergency powers to the President to form a legal product equivalent to legislation in situations of crunch or very urgent circumstances. The Constitutional Court (MK) in its Decision Number 003/PUU-III/2005 stated that the “coercive crunch” is a subjective right of the President. The President’s subjective assessment of the situation then becomes objective, if approved by the House to be enacted into law.

¹¹ Ministry of Finance, “DPR Passed Perppu No.1/2020 into Law Because It Meets the Requirements of Legal Products,” *Kemenkeu.go.id*, May 12, 2020, accessed December 13, 2021, <https://www.kemenkeu.go.id/publikasi/berita/dpr-sahkan-perppu-no12020-jadi-undang-undang-karena-sudah-memenuhi-syarat-syarat-produk-hukum/>.

¹² “The House of Representatives Passed Perppu Number 1 of 2020 into Law,” *Dpr.go.id*, May 12, 2020, accessed December 13, 2021, <https://www.dpr.go.id/berita/detail/id/28732/t/DPR+Sahkan+Perppu+Nomor+1+Tahun+2020+Jadi+UU>.

In its development, the phrase a “Coercive Crunch” was further interpreted by the Constitutional Court in Decision No. 138/PUU-VII/2009. In the Constitutional Court Decision, there are three parameters that must be met as a whole (cumulative) to determine a condition said in a situation of compelling crunch so that it requires the existence of a PERPPU, including:

- 1) when there is an urgent need to resolve legal issues expeditiously under the Law;
- 2) The required Act does not yet exist so that there is a legal vacuum or inadequacy of the Act that currently exists; and
- 3) a condition of a legal vacuum that cannot be overcome by means of making an Act in an ordinary procedural manner which takes a considerable amount of time whereas the urgent circumstances need certainty to be resolved.

The preamble to Law 2/2020 which was originally PERPPU 1/2020, in the General Explanation section, it is stated that the regulation has met three parameters as a coercive crunch regulated in 138/PUU-VII/2009. The precarious (urgent) condition that caused the Government to establish PERPPU was the COVID-19 Pandemic which was never suspected to have previously spread so rapidly among Indonesians. Then, due to the pandemic causing a health crisis, paralysing business activities, reducing state revenues, and increasing spending on spending needs was also never expected before.¹³

Another precarious condition that supported the need to issue PERPPU 1/2020 is the need for an additional budget to finance a deficit that can exceed a maximum of three percent of Gross Domestic Product (GDP). Whereas in Law No. 17 of 2003 concerning State Finance it has been affirmed that the limit of the state financial deficit should not be more than three percent of GDP.¹⁴

In addition, institutions that regulate the financial sector need to be strengthened on a legal and institutional basis, so that in carrying out actions have a strong legal basis, strong authority and are protected from disturbances or lawsuits from various parties who are not in good faith. Okeh therefore, institutional strengthening of the Financial System Stability Committee (KSSK) and all members of the Financial System Stability Committee (KSSK) needs to be carried out immediately to prevent and overcome the financial system crisis that can be caused by the COVID-19 Pandemic.¹⁵

¹³ Siti Nurhalimah, “Questioning the Crunch and Impunity Article in the Corona Perppu,” *Journals’ Is*, Vo. 4 No. 1 (2020), hlm. 38.

¹⁴ *Ibid.*, p. 39.

¹⁵ Currently, Presidential Decree Number 24 of 2021 has also been issued concerning the Factual Determination of the Corona Virus Disease Pandemic 2019 which among others emphasizes that the pandemic is still happening factually and direction to implement policies in the financial sector based on Law 2/2020 and other related regulations.

IV. EMERGENCY CONSTITUTIONAL LAW DURING THE COVID-19 PANDEMIC

A necessity, a country does not always run the constitutional system normally. In certain situations, the state is faced with threatening situations, such as human beings (*natuurlijke person*) facing a situation of danger (*noodtoestand*). In a threatening situation, the state is given the right to self-defense (*noodzakelijke verdediging*), that is, to impose emergency constitutional law (*staatsnoodrecht*).

Jimly Asshiddiqie defines the state of emergency as a state of danger that suddenly threatens general order, demanding action in ways that are not customary according to the usual rule of law applicable under normal circumstances. A country would not be perfect if it did not provide for everything under the law, and provided the means and vehicles to overcome every emergency to lay out its laws as it should.¹⁶¹⁷

In the Indonesian context, the concept of a state of emergency is enshrined in Article 12 of the 1945 Constitution. If you look at the *original intent* of Article 12 of the 1945 Constitution, the provision gives the authority to suspend the law in a constitutional emergency. In this case, the President may declare the existence of a state of emergency, thereby changing the character of the normal state system to an emergency. Further arrangements regarding the requirements for the implementation, elimination, and legal consequences of the implementation of emergencies in Article 12 of the 1945 Constitution are regulated in Law No. 23 of 1959 concerning State of Emergency.¹⁸¹⁹

According to Tom Ginsburg and Mila Versteeg, almost 90 percent of countries in the world have regulated the situation of the country in a state of emergency in its constitution. According to him, a country established in an emergency situation of government policy may get out of the framework of the constitution which under normal circumstances is not carried out, as well as regulated claustrophobic restrictions on its use. However, the state in an emergency is vulnerable to abuse for political interests and personal interests, because of the great power in the Government without optimal supervision.²⁰

In Indonesian, the policy chosen by the government is to avoid hastily declare a state of emergency, as is possible in Article 12 of the 1945 Constitution. The Indonesian government chooses to use existing ordinary laws governing public health emergencies or disasters, which are regulated in Law No. 6 of

¹⁶ Agus Adhari, "Structuring Economic Threats as Part of a State of Danger In Indonesia," *Dialogia Iuridica: Journal of Business and Investment Law* (2020). p. 35.

¹⁷ Asshiddiqie, *Emergency Constitutional Law* (Jakarta: PT. Raja Grafindo Persada, 2007), p. 85.

¹⁸ *Ibid.*, p. 98.

¹⁹ Rizki Bagus Prasetyo, "COVID-19 pandemic: Perspectives on Emergency Constitutional Law and Human Rights Protection," *Scientific Journal of Legal Policy*, Vol, 15, No. 2 (2021), p. 333.

²⁰ *Ibid.*, p. 334.

2018 on Health Quarantine (hereinafter, Law 6/2018) and Law No. 24 of 2007 on Disaster Management (hereinafter Law 24/2007). This is evidenced by the establishment of a health emergency through Presidential Decree No. 11 of 2020 and a non-natural disaster emergency status through Presidential Decree No. 12 of 2020.

In addition to using existing legal instruments, in the context of handling COVID-19, the Government also issued Law 2/2020. However, neither Law 2/2020 nor Law 6/2018 and Law 24/2007 are implementers of Article 12 of the 1945 Constitution. Other than that the regulation does not refer to Article 12 of the 1945 Constitution.

Based on the determination of the state of emergency and its handling procedures regulated in the above provisions. There are two prerequisites for the implementation of these provisions. First, the implementation of the state of emergency should not prejudice the human rights of citizens who are substantial and non-derogable rights, as stated in Article 28I of the 1945 Constitution. The guarantee of the prohibition of reducing basic rights in emergency situations is affirmed in Article 4 paragraph (2) of Law Number 12 of 2005 concerning ratification of the International Covenant on Civil and Political Rights.

Second, there is no limited duration of emergencies. A state that is designated an emergency, it is necessary to also set a time limit for the applicability of the status. This is because emergencies can suspend the applicability of the constitution and guarantees against human rights, so it needs to be limited so as not to be misused.

In Indonesia, the determination of the status of health emergencies and non-natural disaster emergencies in force in Indonesia does not contain the period of its enforceability. Article 10 of Law 6/2018 only regulates the government's authority to determine and terminate health emergencies. Even under Article 1 number 19 of Law 6/2018, it is stated that disaster emergencies can be determined for a certain period of time. However, there is no limit to this certain period of time, as well as the obligation of the government to set the limit.

This differs from the practice of establishing a state of emergency in other countries. In Spain, the imposition of emergencies is carried out on the basis of a clear measure of a certain time. In which, Spain has carried out several extensions of the state of emergency under the constitution starting from March 14, 2020. Moreover, referring to the Indian constitution, the establishment of a state of emergency is limited to a period of one month and can be extended with the approval of parliament. Based on this, in the future it is necessary to make improvements in terms of constitutionality for the

determination of emergency status. This is with an amendment of the relevant law and the choice of a mechanism for determining the state of emergency.²¹²²

V. PROTECTION OF HUMAN RIGHTS OF CITIZENS IN THE COVID-19 PANDEMIC SITUATION THROUGH LAW 2/2020

The COVID-19 pandemic is not just a health emergency, but also a “social crisis, economic crisis, and human crisis that eventually becomes a human rights crisis.” During the COVID-19 Pandemic, there were several rights of citizens that were not met or violated, due to the policy of limiting community social activities. In this case, the non-fulfillment of the implementation of a human right that is not included in a ²³non-derogable right can be possible, if it is for the benefit of many people.

However, there is an exception for non-derogable human rights, as stipulated in Article 4 of Law No. 39 of 1999 concerning Human Rights (HAM Law), which reads:

“The right to life, the right not to be tortured, the right to personal freedom, mind and conscience, the right to religion, the right not to be enslaved, the right to be recognised as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive law are human rights that cannot be diminished under any circumstances and by anyone.”

For this reason, the government is trying to fulfill the human rights of citizens as well as possible in a Pandemic situation. The existence of PERPPU 1/2020 which became Law 2/2020 is a form of the government’s efforts to ensure the fulfillment of citizens’ rights in a pandemic. The rights implicitly guaranteed in Law 2/2020 include:

1. Right to Health

The right to health referred to as *Human Right to Health* or *Right to Health* is the right most closely aligned with the right to life which is fundamental

²¹ “Spain Declares State of Alarm in Madrid to Slow Spread of Coronavirus,” *Xinhuanet.com*, October 9, 2020, accessed December 29, 2021, http://www.xinhuanet.com/english/2020-10/09/c_139428934.htm.

²² Article 352 clause (4) UUD India: Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

²³ António Guterres, “We are all in this Together: Human Rights and COVID-19 Response and Recovery”, United Nations, published 23 April 2020, <https://www.un.org/en/un-coronaviruscommunications-team/we-are-all-together-human-rights-and-COVID-19-response-and>.

(*non-derogable*), as has been affirmed in Article 28H paragraph (1) of the 1945 Constitution. The right to health, has been guaranteed in various statutory provisions. Article 4 of Law No. 23 of 1992 concerning Health states that everyone has the same right to obtain an optimal degree of health. Meanwhile, Article 28H of the 1945 Constitution affirms that everyone has the right to obtain health services.

In addition, Article 12 paragraph (1) of the International Covenant on Economic, Social and Cultural Rights which has become Law No. 11 of 2005 has also mandated the state to recognise everyone to enjoy the highest attainable standards for physical and spiritual health. Against this, measures taken by the state also included the prevention, treatment, and supervision of epidemic, endemic, occupational and other occupational diseases. Therefore, the government must make efforts to ensure the fulfillment of the right to health for citizens.

In this case, the implementation of the right to health must satisfy four principles, namely 1) availability, 2) accessibility, 3) acceptance, and 4) quality, as required in General Comment No. 14 of the UN Committee economic, social and culture rights – UN, Geneva 25 April – 12 May 2000. If a country violates any of these principles, then the state is considered negligent and/or ignorant of its obligations.

In particular, through Law 2/2020, efforts are made to ensure the fulfillment, protection, and respect of the right to health for citizens. Articles 2 and 3 of Law 2/2020 emphasise that in the context of handling the COVID-19 pandemic, budget adjustments are made to ministries/institutions and local governments, both by prioritising the use of budget allocations for certain activities (refocusing), changes in allocations, to the use of APBD/APBN. As a result, in 2020, funds of IDR 87.5 trillion can be allocated for the cost of handling COVID-19, the details of which are as follows:²⁴

- a. Health protection measures (APD, test kit, reagent, ventilator, hand sanitizer, dll);
- b. Health facilities and infrastructure, including upgrading 132 referral hospitals for handling COVID-19 patients, including Wisma Atlet;
- c. HR support;
- d. Incentives for central and regional medical personnel (a total of IDR 5.6 trillion, consisting of incentives for medical personnel in the central region of IDR 1.9 trillion and incentives for medical personnel in the regions of IDR 3.7 trillion);
- e. Death compensation for health workers; and

²⁴ “Ministry of Finance COVID-19 Response: The Latest Information,” *Kemenkeu.go.id*, accessed December 13, 2021, <https://www.kemenkeu.go.id/covid19>.

- f. Contribution subsidy for tariff adjustments for Non-Wage Earners and Non-Workers according to Presidential Regulation 75 of 2019.

In addition to this financing, the government also allocated a healthcare budget to cover the cost of treating COVID-19 patients from doctor's fees to the repatriation of bodies if the patient dies. Then the government also provides various facilities for exemption and reduction of tax rates for the delivery of goods/services in the health sector, as well as honors for health workers. These things are a form of the government's commitment to overcome the COVID-19 pandemic and ensure the fulfillment of the right to healthcare through budget allocation for the health sector.

2. Right to Work

Everyone has the right to work and a decent livelihood for humanity (Article 27 paragraph (2) of the 1945 Constitution). With regard to the right to work, there are other interrelated rights. First, the right not to be deprived of his work unjustly, as stipulated in Article 6 of Law No. 12 of 2005 concerning ratification of the Covenant on Civil and Political Rights (Law 12/2005). Secondly, the right to fair and decent working conditions. In this case, workers in carrying out their profession are entitled to a decent minimum wage that can meet the needs of workers and their families, the right to adequate working hours and rest, and the right to safe and healthy working conditions, including the prevention of disease transmission in the workplace.

The right to work is essential to the realisation of other human rights. In addition, through the exercise of the right to work becomes an integral or inherent part of human dignity. Through work, a person can maintain a standard of living for himself and his family. However, the existence of the COVID-19 pandemic, caused the right to a person's work to be violated and not fulfilled.

The existence of the COVID-19 pandemic, impaired the right to work, these include First, the rampant termination of employment. Based on data from the Ministry of Manpower of the Republic of Indonesia, there are 29.4 million workers who have been laid off during the pandemic. The existence of the pandemic is the reason for companies to lay off workers. As a result, workers lose income and livelihood for themselves and their families.²⁵²⁶

For this impact, the government through Law 2/2020 seeks to help workers who have experienced layoffs. Although it is not explicitly stated, article 1

²⁵ Danang Triatmojo, "Ministry of Manpower: 29.4 Million Workers Affected by the COVID-19 Pandemic, Laid Off Until Laid Off," *Tribunnews.com*, March 27, 2021, accessed 6 January 2022, <https://www.tribunnews.com/bisnis/2021/03/27/kemnaker-294-juta-pekerja-terdampak-pandemi-COVID-19-di-phk-hingga-dirumahkan>.

²⁶ Yenny Silvia Sari Sirait et al, *Workers Strangled by Pandemic* (Jakarta: LBH Jakarta, 2021), p. 45.

paragraph (3) of Law 2/2021 stipulates the state budget which is carried out in the handling the COVID-19 pandemic and/or threats to the national economy and/or financial system stability. Through its derivative rules in the Minister of Finance Regulation No. 114 / PMK.05 / 2021 concerning Amendments to the Minister of Finance Regulation, Finance Number 43/Pmk.05/2020 Concerning the Mechanism for Implementing the Budget on the Burden of the State Budget in Handling the Corona Virus Disease Pandemic 2019, the Government distributed Wage Subsidy Assistance (BSU) for workers. The existence of BSU is expected to prevent layoffs caused by the COVID-19 pandemic, where each worker will get wage assistance of IDR 1 million which can be used for daily necessities.²⁷

In addition, during the COVID-19 pandemic in 2020, the Government also launched a pre-employment card program with a budget of IDR 10 trillion for two million participants. The participants of this activity are young job seekers (fresh graduate), as well as workers who experience layoffs. Participants who can go through the process of learning expertise digitally, are entitled to obtain a certificate of competence, and pocket money. This is expected to improve the competence of Indonesian workers, as well as help them in difficult situations due to the Pandemic.

VI. ABSENCE OF DEFICIT LIMITS

The existence of the COVID-19 pandemic has forced a significant increase in the state budget deficit. This happened because state spending has exceeded state revenue. As of September 2021, state revenues reached IDR 1,354 trillion. Meanwhile, state spending, especially for handling COVID-19, reached IDR 1,806.8 trillion. In this case, the budget deficit reached IDR 383.2 trillion or 2.74 percent of GDP. This amount tends to be smaller when compared to the budget deficit in 2020. Based on records from the Ministry of Finance, as of September 2020, the budget deficit reached IDR 681.4 trillion or 4.41 percent of GDP.

It should be understood, Article 12 paragraph (3) of Law No. 17 of 2003 concerning State Finance (State Finance Law) has affirmed that in the event that the state budget is in deficit, it is limited to a maximum of 3 percent of GDP. The existence of restrictions on the country's budget deficit figures has caused the maximum mismanagement of efforts to deal with COVID-19, where state income has been reduced and at the same time spending has

²⁷ "Prevent layoffs, Government Launches Wage Subsidy Assistance for Workers," *Kominfo.go.id*, July 21, 2021, accessed December 13, 2021, <https://kominfo.go.id/content/detail/35867/cegah-phk-pemerintah-luncurkan-bantuan-subsidi-upah-bagi-pekerja/0/berita>.

experienced a large budget overrun. Therefore, in Article 2 paragraph (1) letter a of Law 2/2021, it is stipulated that the Government has the authority to set a limit on the budget deficit exceeding 3 percent of GDP during the COVID-19 handling period and/or face threats that endanger the national economy and/or financial system stability until the end of the 2022 fiscal year. Furthermore, from 2023, the deficit will again be at the highest 3 percent of GDP.

Even if it is reasonable for the handling of COVID-19, the provision that the possibility of a deficit of more than 3 percent has reaped resistance in the community. In the contra community, considering the existence of this provision eliminates the role of the DPR in regulating state finances from 2020-2023. Where, the formulation of Article 2 paragraph (1) letter a of Law 2/2021 gives the Government the power to freely regulate the policy of implementing state finances. It should be, based on Article 15 paragraph (2) of the State Finance Law, the draft state budget should be discussed together with the DPR. In practice, concerns about the loss of the role of the DPR budgeter in the draft state budget did not occur. The House of Representatives is involved in the discussion of the State Budget Bill submitted by the Government for approval.²⁸

In addition, the rejection of the provision was due to the non-regulation of the state budget deficit limit to GDP. This creates uncertainty as well as the vulnerability of a deficit that is too large, so that it will have an impact on the country's fiscal condition in the long term after 2022. The impact if the government fails to control the deficit to below 3 percent in 2023, namely disrupted fiscal sustainability. This is because the interest burden on the principal debt and interest on debt owned by the state will continue to increase, and fiscal space is also limited. Therefore, the government's strategic efforts are needed to control the state budget deficit so that it can return below 3 percent in 2023.²⁹

VII. ESTABLISHMENT OF LAW NO. 2/2020

Formally, PERPPU 1/2020, which later became Law 2/2020, has several records in the process of its formation. First, the non-involvement of the Regional Representative Council (DPD) in the discussion process to determine

²⁸ "The government together with the Banggar DPR agreed to bring the 2022 State Budget Bill to the Plenary Meeting of the DPR," *Kemenkeu.go.id*, September 28, 2021, accessed December 16, 2021, <https://www.kemenkeu.go.id/publikasi/berita/pemerintah-bersama-banggar-dpr-sepakat-membawa-ruu-apbn-2022-ke-rapat-paripurna-dpr/>.

²⁹ Muhamad Wildan, "It's a Risk If the Budget Deficit Doesn't Return Below 3 percent of GDP," *Ddtc.co.id*, April 28, 2021, accessed December 16, 2021, <https://news.ddtc.co.id/ini-risiko-jika-defisit-anggaran-tidak-kembali-di-bawah-3-pdb-29488>.

whether the PERPPU can be approved into law or not. In fact, as stated in Article 23 paragraph (2) of the 1945 Constitution, the State Budget Bill was submitted by the President for discussion with the DPR with due regard to the Regional People's Representative Assembly (DPD).

Furthermore, dpd involvement is also related to the substance of PERPPU 1/2020 which contains state budget policies to be implemented in the regions, so that it is in accordance with the function of DPD to be involved in the discussion of laws related to regional autonomy, central and regional relations, formation, expansion, and merger of regions; management, natural resources and other economic resources, as well as central and regional financial balance, as formulated in Article 65 paragraph (2) of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations as amended by Law No. 15 of 2019 (Law 12/2011).

Second, discussion meetings that are held virtually have the potential to not be attended concretely by members of the House of Representatives. The pandemic has encouraged the modernization of the use of technology to support human needs in various aspects, including in the discussion of laws in the DPR. In connection with the establishment of a public health emergency, the DPR changed its work pattern to online / virtual.³⁰

Against PERPPU 1/2020, the plenary meeting on May 4, 2020 was held virtually. It is also included in the level 1 and 2 talks. The implementation of the virtual meeting cannot be ascertained to meet the quorum, to be able to make approval decisions. Members may log in for simply absence, then log out to do other activities. It could also be that members log in, but do not follow the course of the meeting to the fullest. This condition hinders optimal policy making, because of the missed delivery of his views and voices regarding a formulated policy. Moreover, the discussion of PERPPU 1/2020 in Law 2/2020 tended to be fast, so it is questionable the optimal involvement of each member to be involved in the plenary meeting until it is finally agreed to be approved.

VII.A. METHODS OF OMNIBUS LAW FORMATION

Legislation is an important element in the legal state. This is because laws and regulations are a means to achieve national development goals. In addition, legislation is also a tool for the Government to take its actions, including solving existing problems.

One of the techniques for drafting legislation is the omnibus method. By definition, the Omnibus according to Audrey O. Brien (2009) was a bill that

³⁰ Marselinus Gual, "Rules for virtual meetings in the House," *Alinea.id*, April 8, 2021, accessed December 16, 2021, <https://www.alinea.id/infografis/aturan-rapat-virtual-di-dpr-b1ZLo9thY>.

included more than one aspect that is combined into one law. Meanwhile, according to Barbara Sinclair (2012), omnibus bills are a complex rulemaking process and their completion takes a long time because they contain a lot of material even though the subject, issues, and programs are not always related.³¹

Law 2/2020 is a law drafted using the omnibus method. This is because it contains several articles of various existing laws, to be amended, added, or repealed. The articles of Law 2/2021 relating to other laws include:

Table 1:
Comparison of Provisions Related to Law No. 2/2020

Article in Law 2/2020	Articles in the previous Law	Information
The government has the authority to set a limit on the state budget deficit above 3 percent of GDP until 2022 (Article 2 paragraph (1) letter a)	The state budget deficit is limited to no more than 3 percent of the state budget (Article 12 paragraph (3) of the State Finance Law)	Change conditionally
Changes in posture and/or details of the State Budget for the implementation of handling COVID-19 are regulated through Government Regulations (Article 12 sentences (2))	The change in the posture of the current year's state budget was discussed jointly between the Government and the House of Representatives (Article 183 paragraph 4 of Law No. 14 of 2004)	Modified
The authority of local governments to prioritize the use of budgets for certain activities, changes in allocations, and the use of regional budgets (Article 3)	Law No. 33 of 2004 on Financial Balance Between the Central Government and Regional Governments; Law No. 23 of 2004	Modified
Adjustment of the income tax rate of domestic taxpayers and permanent establishments (Article 5 paragraphs (1) & (2))	Domestic income tax rates and BUT have been regulated in Law No. 36 of 2008 concerning Income Tax	Modified
Tax treatment in Trading activities through Electronic Systems (Article 6 paragraph (1))	Unregulated	Add
Extension of time for the implementation of taxation rights and obligations (Article 8)	The timing of the implementation of taxation rights and obligations has been regulated in Law No. 28 of 2007	Modified
The Minister of Finance who is authorized to provide customs facilities for goods handling COVID-19 (Article 9)	Law No. 17 of 2006 concerning Customs does not regulate the authority of the Minister of Finance to provide customs facilities for handling COVID-19	Added
Implementation of the national economic recovery program (Article 11)	Law No. 20 of 2019 concerning the 2020 State Budget; Law No. 19 of 2003 concerning SOEs; Law No. 7 of 2009 on LPS	Modified

³¹ Paul Aluk Fajar Dwi Santo, "Understanding the Idea of Omnibus Law," *Binus.ac.id*, October 03, 2019, accessed December 16, 2021, <https://business-law.binus.ac.id/2019/10/03/memahami-gagasan-omnibus-law/>.

Table 1:
Comparison of Provisions Related to Law No. 2/2020 (Continued)

Article in Law 2/2020	Articles in the previous Law	Information
Financial system stability policy under the conditions of the COVID-19 Pandemic (Article 14)	Law No. 9 of 2016 concerning Prevention and Handling of Financial System Crises	Added
Authority and implementation of additional policies by Bank Indonesia for handling COVID-19 (Article 16)	Not specifically regulated by the authority and implementation of BI policies in the context of handling COVID-19 (Law No. 23 of 1999 concerning BI)	Added
Authority and implementation of additional LPS policies for handling COVID-19 (Article 20)	Not regulated by the authority and implementation of LPS in the COVID-19 situation (Law No. 7 of 2009 concerning LPS)	Added
Authority and implementation of additional OJK policies for handling COVID-19 (Article 23)	Not regulated by the authority and implementation of the OJK in the COVID-19 situation (Law No. 21 of 2011 concerning OJK)	Added
Cannot be prosecuted criminally or civilly by members of the KSSK, Ministry of Finance, BI, OJK, LPS who have good faith in carrying out their duties (Article 27 paragraph (2))	Not specifically regulated in the Law of each Institution	Added

Based on this table, Law 2/2020 has an impact on the provisions in other laws. Before that, it should be noted that the preparation of Law 2/2020, which was carried out quickly, caused a lack of public participation, as mandated by Article 96 of Law No. 12 of 2011 concerning the Establishment of Laws and Regulations. In fact, there are many changes and additions to the provisions in Law 2/2020 related to the rights and obligations of the community.

Furthermore, it's important to analyse the impact of Law 2/2020 on the implementation of other laws. First, the increased authority of several institutions. Based on Law 2/2020, institutions consisting of BI, OJK, LPS, Ministry of Finance, which are members of KSSK have been given special authorities in the COVID-19 Pandemic situation. In general, the special authority is to provide financing facilities to the public, as well as maintain financial conditions in the COVID-19 Pandemic situation.

Second, proving the elements of state losses in corruption crimes. The formulation of Article 27 paragraph (1) of Law 2/2020 states that the costs incurred by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state fiscal policies including policies in the field of regional finance, financing policies, financial system stability policies, and national economic recovery programs, are part of the economic costs to save the economy from the crisis and are not considered state losses.

This formulation can be said to be in accordance with the concept of state losses in Article 1 number 22 of Law No. 1 of 2004, concerning the State Treasury (State Treasury Law). That the costs incurred by the Government and/or member institutions of the KSSK, do not necessarily become state losses, unless it can be proven that there is an unlawful act when incurring these costs. In the event that these costs are indicated by corruption, in addition to needing to be proven unlawfully obtained, it is also necessary to prove their implications to benefit oneself, others, or a corporation. The formulation of Article 27 paragraph (1) of Law 2/2021 is intended to allow the government and/or KSSK member institutions make policies and not be afraid of being suspected of harming state finances, thus causing the Budget for handling COVID-19 not to be absorbed optimally. Even though the handling of COVID-19 needs to be done immediately in an emergency condition.

Third, the implementation of tax administration. Through Law 2/2020, an adjustment was made to the income tax rate for domestic entities and permanent establishments (BUT) from 25 percent to 20 percent. The Government also taxed trading activities through an electronic system (PMSE), which had not previously been taxed. This collection is carried out to create an equality of tax treatment (level playing field) between conventional business actors and digital business actors. Through pmse taxation regulated in Law 2/2020, the tax base for state income has increased, which in November 2021 reached IDR 3.92 trillion.³²

In addition, the policy is expected to create a level playing field between domestic and foreign digital business actors. Law 2/2020 also stipulates adjustments to the extension of the time for the implementation of rights and the fulfillment of tax obligations, because the existence of COVID-19 causes business activities to be disrupted, which has implications for fulfilling tax obligations.

VII.B. Legal Aspects of Article 27 paragraph (2) of Law 2/2020

The provisions of Article 27 paragraph (2) of Law 2/2020 stipulate that members of the KSSK, Secretary of the KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, as well as the Deposit Insurance Corporation, and other officials, relating to the implementation of government Regulations in Lieu of this Law, cannot be prosecuted either civilly or criminally

³² "PMSE Tax Deposit is Almost Rp 4 Trillion," *Kontan.co.id*, 18 November 2021, accessed 16 December 2021, <https://insight.kontan.co.id/news/setoran-pajak-pmse-hampir-rp-4-triliun#:~:text=KONTAN.CO.ID JAKARTA,2021 percent20Rp percent203 percent2C19 percent20triliun.>

if in carrying out their duties based on good faith and in accordance with the provisions of the regulations legislation.

Through this article, the KSSK consisting of 4 institutions in carrying out their duties in good faith and in accordance with laws and regulations cannot be prosecuted civilly or criminally. In terms of criminal law, acts carried out in good faith and in accordance with the law, can be justified. Because a person's actions can be punished not only based on evil deeds (*actus reus*), but also based on the existence of his evil intentions (*mens rea*). In addition, based on Article 50 of the Criminal Code also provides that a person who commits an act to carry out the provisions of the law, is not convicted. Similarly, as stipulated in Article 51 paragraph (1) of the Criminal Code, which states that a person who commits an act on the orders of the office given by an authorised higher authority, then the person is immune from conviction.

In addition, when referring to the content of the law, similar arrangements for Article 27 paragraph (2) of Law 2/2020 have also been widely carried out. This is as stipulated in Article 48 paragraph (1) of Law No. 9 of 2016 concerning Prevention and Handling of Financial System Crisis (Law 9/2016), which stipulates that unless there is an element of abuse of authority, members of the KSSK and officials or employees of the Ministry of Finance, BI, OJK and LPS cannot be prosecuted, either civilly or criminally for the implementation of functions, duties, and authority under the PPSK Law. Similar provisions are also contained in Article 22 of Law No. 11 of 2016 concerning Tax Amnesty (Law 11/2016), which regulates ministers, deputy ministers, employees of the Ministry of Finance, and other parties related to the implementation of tax amnesty, cannot be indicted, sued, investigated, investigated, or prosecuted, both civilly and criminally if in carrying out their duties based on good faith and in accordance with the provisions of laws and regulations.

Based on the provisions in some of these laws, it is known that legal protection for government officials in exercising their authority is not a new substance, but an arrangement that has existed so far. The existence of this provision aims to provide certainty to the holders of authority under the laws or orders of the state, that they cannot be blamed when carrying out their duties and authorities under applicable law.

VII.C. Aspects of State Administrative Law 2/2020

In State Administrative Law (HAN), the issuance of PERPPU 1/2020 which later became Law 2/2020 is a constitutional discretion owned by the President based on Article 22 paragraph (1) of the 1945 Constitution. In this regard, discretion is taken to overcome the problem of the compelling crunch due to the COVID-19 Pandemic which requires immediate treatment. The purposes

of using the discretion of government Officials including the President based on Article 22 paragraph (2) of Law No. 30 of 2014 concerning government Administration (Government Administration Law), include:

- a. launching the administration of government;
- b. filling in legal vacancies;
- c. providing legal certainty; and
- d. addressing the stagnation of government under certain circumstances for the benefit and public interest.

Furthermore, with regard to the HAN aspect, Article 27 paragraph (3) of Law 2/2020 states that all actions including decisions taken under PERPPU 1/2020 are not the object of a lawsuit that can be filed with the state administrative court. This exception is also related to Article 27 paragraph (2) of Law 2/2020, which in essence as long as the relevant officials carry out their duties based on good faith and in accordance with the provisions of the laws and regulations, they cannot be prosecuted civilly or criminally.

In this case, the intention of good faith refers to the Explanation of Article 24 letter f of the government Administration Law, namely decisions and/or actions that are determined and/or carried out based on the motives of honesty and based on the General Principles of Good Governance (AUPB). The AUPB is based on Article 10 of the government Administration Law, namely:

- a. Legal certainty;
- b. Expediency;
- c. Impartiality;
- d. Meticulousness;
- e. Not abusing authority;
- f. Openness;
- g. Public interest; and
- h. Good service.

Therefore, in carrying out their duties for handling the COVID-19 pandemic, government Officials also need to be guided by AUPB.

VII.D. Criminal Law Aspects of Law 2/2020

In the formulation of Article 27 paragraph (2) of Law 2/2020, it is stated that members of the KSSK, the Ministry of Finance, Bank Indonesia, the Financial Services Authority, as well as the Deposit Insurance Corporation, and other officials, related to the implementation of this Law, cannot be prosecuted either civilly or criminally if in carrying out their duties based on good faith and in accordance with the provisions of laws and regulations. This prosecution exception is in accordance with the aspect of criminal law, where

a person who commits an act to implement the provisions of the law is not known as a criminal, as affirmed by Article 50 of the Criminal Code (KUHP).

In addition, the prosecution exception is also in accordance with the criminal removal basis in Article 51 paragraph (1) of the Criminal Code, which states any act to carry out the order of office given by the competent authority, is not punishable.

In fact, even if an act intended in Article 27 paragraph (2) of Law 2/2020 does not meet the basic requirements for criminal removal in Article 50 and Article 51 paragraph (1), it can also be tested with the doctrine of *mens rea*, to assess whether an act has an error in one person or not.

The doctrine of *mens rea*, which comes from the English criminal law which reads “*actus non facit reum, nisi mens sit rea*” which means that an act cannot make people guilty unless it is done with malicious intent. Regarding the problem of evil intentions, although it is difficult to measure, this element can be detected from the mental attitude or inference. It is proven that unlawful acts committed by a person can also prove their guilt. Therefore, the criminal aspect in Article 27 paragraph (2) of Law 2/2020 can be justified, because the act consists of an eraser basis and must be absolutely certain of the existence of *mens rea*.

VII.E. Aspects of Civil Law 2/2020

Still related to Article 27 paragraph (2) of Law 2/2020, where relevant officials cannot be prosecuted criminally or civilly if in carrying out their duties based on good faith and in accordance with the provisions of laws and regulations, this is also in accordance with civil aspects. In this case, a civil suit is interpreted as a lawsuit. As for lawsuits in civil matters, they are principally divided into two, Unlawful Acts (PMH) and defaults.

In simple terms, the difference between the two, if the plaintiff's PMH needs to prove that there are laws and regulations or the rights of other people or other institutions that are violated so that losses arise. Whereas in default, the plaintiff must prove a violation of the agreement.

In the context of Law 2/2020, the most suitable subject of civil disputes to be sued is PMH, because Law 2/2020 does not regulate the existence of a certain agreement and contains various government policies during the COVID-19 pandemic. The legal basis for PMH is in Article 1365 of the Civil Code (KUHP) which states that “any act that violates the law and brings harm to another person, obliges the person who caused the loss because of his fault to compensate for the loss.”

Based on this article, there are 4 (four) conditions that must be met in a PMH lawsuit, namely unlawful acts, errors, losses, and causality between unlawful acts and losses. If any of these conditions are not met, the lawsuit will be rejected.

In the case of Law 2/2020, in Article 27 paragraph (2) even if it is emphasised that the actions of certain officials cannot be prosecuted criminally or civilly, but if you pay close attention, it happens if the actions are carried out in good faith and in accordance with the provisions of the laws and regulations. Meanwhile, if the plaintiff can prove the four conditions of the PMH lawsuit, and the relevant officials do not exercise their authority in good faith and in accordance with the laws and regulations, then a lawsuit can be made.

In theory, the lawsuit against the government is also known as *Onrechtmatige Overheidsdaad*. According to Sjachran Basah, what is meant by *onrechtmatige overheidsdaad* is an act that is intentional or not, which violates the laws, formal regulations in force and also propriety in society, which should be obeyed by the ruler who causes harm to the affected.³³

Meanwhile, Paul Effendi Lotulung stated that *onrechtmatige overheidsdaad* is an administrative suit consisting of 2 main petitions. First, the cancellation of a decision of a government body or official on the basis of violations of applicable laws and violations of the AUPB. Second, a lawsuit for material or immaterial damages on the basis of the actions of the governing body or officials that caused the loss.³⁴

Technically, the implementation of *onrechtmatige overheidsdaad* has been regulated in Supreme Court Regulation No. 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and the Authority to Adjudicate Unlawful Acts by Government Agencies and /or Officials (*Onrechtmatige Overheidsdaad*) (PERMA 2/2019). In Article 1 number 4 of PERMA 2/2019, *Onrechtmatige Overheidsdaad* is a dispute in which it contains a claim to declare invalid and/or void the actions of government officials, or does not have binding legal force along with compensation in accordance with the provisions of laws and regulations.

The existence of PERMA 2/2019, allows every citizen to file a lawsuit for government action (*Onrechtmatige Overheidsdaad*) in writing to the state administrative court. In Article 5 paragraph (3) of PERMA 2/2019, it is stated that if the lawsuit is granted, the court can require government administrative officials to carry out government actions, not to carry out government actions, and to stop government actions. In addition, if the lawsuit is granted, it can also be accompanied by a rehabilitation charge and/or compensation.

³³ Wet Sjachran, Existence and Benchmarks of administrative justice agencies in Indonesia, (Bandung: Alumni, 2985), p. 238.

³⁴ Paulus Effendie Lotulung, Welcoming the Ratification of the Draft Law of the Republic of Indonesia on Government Administration, Paper presented at the Technical Guidance Event for the Administrative Court – Supreme Court of R.I. on January 9, 2009 which was attended by all T.U.N. Supreme Court Judges, T.U.N. High Court Chairmen, P.T.U.N. chairmen and T.U.N. Secretaries/ Clerks throughout Indonesia in Jakarta, p. 2.

In Indonesia, the existence of Law 2/2020 which regulates the handling of the COVID-19 pandemic and efforts to stabilize the financial system, then if the policy is contrary to laws and regulations and contrary to the general principles of good governance, then the public can sue it to the TUN court so that it is canceled and gets compensation.

VIII. INSTITUTIONAL STRENGTHENING OF THE FINANCIAL SECTOR

Acemoglu and Robinson mentioned that institutions are the most important source that determines a country/nation to fail or advance its economy. Countries whose institutions are well established or inclusive tend to perform well in the economy. The country is characterized, among other things, by the existence of a secure institution of private ownership rights, an unbiased legal system and the widespread provision of public services. In order to handle the impact of the COVID-19 pandemic in the financial sector, the government realizes how important an institution called KSSK is. The government together with the KSSK carried out various anticipatory actions³⁵ (forward looking) to maintain the stability of the financial sector. In particular, regarding the KSSK institution, its members consist of four institutions with their respective functions and roles, namely the Minister of Finance (Menkeu) who acts as the fiscal authority and state treasurer, the Governor of Bank Indonesia (BI) as the monetary and payment system authority, the Chairman of the Board of Commissioners of the Financial Services Authority (OJK) as the regulator and supervisor of financial services, and the Chairman of the Board of Commissioners of the Deposit Depository Institution (LPS) as a deposit guarantee and banking resolution.

During the COVID-19 pandemic that hit Indonesia, the existence of the Financial System Stability Committee had an important role in maintaining financial system stability. This is shown by the 2 (two) authorities of the KSSK, which are regulated in Article 15 paragraph (1) of Law 2/2020. First, holding meetings face-to-face or using technology to formulate and determine measures for financial system stability issues. Then second, establish a scheme for providing support by the government to deal with the problems of financial service institutions and financial system stability that endangers the national economy.

Based on this authority, the KSSK has an important role in the context of national economic recovery. Therefore, the KSSK is given “protection” to not

³⁵ Acemoglu and Robinson, as quoted in Yustika, Ahmad Erani, *Institutional Economics*, Erlangga, Jakarta, 2013, p. 20. More on Institutional Economics, see Claude Menard et.al. *Handbook of New Institutional Economics*, Springer, The Netherlands, 2005.

be prosecuted either civilly or criminally if in carrying out its duties it is based on good faith and in accordance with the provisions of laws and regulations, as regulated in Article 27 paragraph (2) of Law 2/2020. In addition, actions including decisions taken by the KSSK based on Law 2/2020 are also not the object of a lawsuit that can be filed through the State Administrative Court (TUN).³⁶

In addition, strengthening each member of the KSSK is also important, to strengthen the legal basis and authority of the institution. For example, Bank Indonesia is given the authority to purchase government Bonds in the primary market and is authorised to provide special liquidity to banks experiencing liquidity difficulties. The Financial Services Authority (OJK) is given the authority to issue a credit restructuring policy to save the national economy/banking and the Deposit Insurance Corporation is also given the task of helping to maintain financial system stability. In relation to credit restructuring, the Financial Services Authority issued POJK No. 11/POJK.03/2020 concerning National Economic Stimulus which was extended with POJK No. 48/POJK.3/2020 until 2023.³⁷

Until the end of July 2021, the government/OJK has carried out a credit restructuring of IDR 778.9 trillion with a total of five million debtors. In relation to the Government Deposit Insurance Corporation, it issued Government Regulation No. 33 of 2020 concerning the Implementation of the Authority of the Deposit Insurance Corporation in the Context of Implementing Measures to Handle Financial System Stability Problems. Based on this government role, LPS can exchange data and examine Banks under Intensive Supervision with the OJK. LPS can also sell government bonds to Bank Indonesia and can place their funds in banks that are experiencing liquidity difficulties.³⁸

The aforementioned “protection” provisions are intended to maintain the independence and professionalism of policymakers, prevent excessive hesitation and fear of the consequences that arise in the future if policies are taken that are not popular with some circles. However, this provision is also a vulnerability to fraud, abuse, and corrupt practices, because there is a lack of supervision and accountability with authority. In fact, the authority mandated in Article 15 paragraph (1) of Law 2/2020 to the KSSK is so large, along with the allocation of the state budget to be managed by the KSSK.

Therefore, in order to strengthen the performance of institutions incorporated in the KSSK, it is necessary to make several alternative

³⁶ Article 27 paragraph (3) of Law 2/2020

³⁷ Article 16 paragraph (1) letter c and b of Law No. 2 of 2020.

³⁸ Financial Services Authority. Press Release: Maintaining Economic Recovery Momentum, OJK Extends Credit Restructuring Relaxation Until March 2021. Downloaded on January 14, 2022

strengthening efforts. First, amending Law 2/2020, especially regarding the protection of the Financial System Stability Committee against claims and exemptions from state financial losses. Through this amendment, there will be an open mechanism for public supervision and related institutions on KSSK policies, especially in the context of financial system stability during the Pandemic. Indonesia should learn from the pattern of handling disasters that have occurred in Indonesia but were corrupted by relevant officials, such as in the Aceh tsunami and the Palu earthquake. This is due to the opportunity and lack of supervision.³⁹

Second, the issuance of a PERPPU on supervision and reporting of financial responsibility for handling the COVID-19 pandemic. The amount of authority and budget allocation for handling the COVID-19 pandemic in its arrangements is not accompanied by supervision and reporting of financial accountability. The formulation of Article 13 of Law 2/2020 only regulates the government that reports the use of the budget in the implementation of financial policies in the Central Government's Financial Statements. However, in these provisions and Law 2/2020 in general, there is no element of supervision and reporting of financial accountability and the role of each financial supervisory institution in supervising the emergency budget. Therefore, it is necessary to have a PERPPU regarding financial supervision and accountability for handling the COVID-19 pandemic. Where under normal circumstances there have been arrangements regarding it, but in an emergency like today, there needs to be specific provisions that clearly regulate the supervision and reporting of financial responsibility for handling the COVID-19 pandemic. The PERPPU at least contains the roles and functions of financial supervisory institutions, such as the Financial Audit Agency, the Financial and Development Supervisory Agency, and the Inspectorate to supervise the implementation of the COVID-19 handling budget.

IX. THE IMPORTANCE OF FINANCIAL SYSTEM STABILITY

The various efforts formulated in Law 2/2020 are none other than the aim of maintaining the stability of the financial system, which has been affected by the COVID-19 pandemic. The stability of the financial system is based on the role of a financial intermediary. This relates to the function of the bank, which supplies liquidity/finance to all economic activities. With the funds distributed, investment and production activities that eventually open up jobs can run. Furthermore, such activities can improve the economy of

³⁹ "Corruption and Disaster," *Antikorupsi.org*, January 22, 2019, accessed December 29, 2021, <https://antikorupsi.org/id/article/korupsi-dan-bencana>.

the working people, as well as the government for tax revenues from those activities. Profits are also obtained by entrepreneurs or companies, who make a profit over the production process they carry out. Thus, the running of financial intermediaries, then state revenues from taxes and people's needs can run well. However, this cannot work if the financial system is not running stable, because the allocation of funds is not running well.

An important lesson from economic instability occurred in the financial crisis of 1998, because in addition to requiring high costs (IDR647 trillion) to recover, it also took a very long time to restore public confidence in the financial system. An unstable financial system is prone to turmoil that disrupts the economy.

In general, it can be said that the instability of the financial system can result in the emergence of some unfavorable conditions such as:

- a. The transmission of monetary policy does not function normally so monetary policy becomes ineffective.
- b. The intermediation function cannot run as it should due to improper allocation of funds, thus hindering economic growth.
- c. Public distrust of the financial system will generally be followed by panic behavior of investors to withdraw their funds, thus encouraging liquidity difficulties.
- d. The high cost of saving the financial system in the event of a systemic crisis occurs.
- e. The non-running of a reliable, fast and efficient payment system.

On the basis of the above conditions, efforts to avoid or reduce the risk of possible financial system instability are very necessary, especially efforts to avoid such large losses again.

X. CONCLUDING REMARKS

Based on the description above, it can be concluded that the legal aspect used by the government in dealing with the COVID-19 pandemic is Law No. 2 of 2020, which was previously PERPPU No. 1 of 2020. The regulation was issued due to the situation of "compelling crunch", because the country was in a state of emergency due to COVID-19 that hit Indonesia.

Through Law No. 2 of 2020, at least two things are regulated. First, the policy aspect. Through Law No. 2 of 2020, the government regulates efforts to deal with the COVID-19 pandemic, ranging from increasing spending on the health sector, refocusing the budget refocussing mechanisms of Ministries/Institutions/Local Governments, social safety nets, economic recovery, to strengthening the authority of several institutions.

Second, in terms of institutions. Through Law No. 2 of 2020, the government regulates the legal protection of KSSK members not to be prosecuted criminally or civilly in carrying out their duties in good faith and in accordance with laws and regulations. In addition, KSSK members also cannot be sued through the state administrative court for their administrative decisions/policies.

In addition, Law No. 2 of 2020 also regulates various additional authorities exercised by Bank Indonesia, LPS, and OJK as an effort to deal with the COVID-19 Pandemic within the framework of national economic recovery. However, against this additional authority, it is prone to abuse, because it cannot be prosecuted criminally or civilly, and is sued administratively for the performance of its duties. In fact, the allocation of the state budget decided by these institutions is very large. Therefore, it is necessary to strengthen these institutions, namely by abolishing the provision of institutional protection so that they cannot be prosecuted criminally or civilly, as well as administrative lawsuits in Law No. 2 of 2020. In addition, it is also necessary to abolish the provision regarding not state losses for the costs incurred by the institution concerned in dealing with the COVID-19 pandemic.

Further, reinforcement is also carried out in two ways. First, amendments to Law No. 2 of 2020, especially regarding the protection of the KSSK against claims and exemptions from state financial losses. Second, the issuance of a PERPPU on supervision and reporting of financial responsibility for handling the COVID-19 pandemic. Through these institutional strengthening efforts, it is hoped that the handling of the pandemic, especially in the context of national economic recovery, can run optimally.

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