

LIABILITY FOR STATE FINANCIAL MANAGEMENT AND FULFILLMENT OF THE CONSTITUTIONAL RIGHT TO HEALTH IN AN EMERGENCY

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Abstract

Responding to the Covid-19 pandemic and other threats to the national security, the Indonesian government issued a government regulation in lieu of Act No. 1 of 2020 concerning State Financial Policy and Financial System Stability. This article aims to measuring an ideal model of state financial liability in an emergency. The research is normative-juridical or known as doctrinal legal research. The results show that the liability for state finances during an emergency in the context of accelerating disaster management in order to realize good governance must be seen as an integral part of implementing a law-based state system, so that the actions taken are legal actions by state officials or government, because freedom is exercised not for personal gain but still within the framework of the essence of the interests of the citizens as a whole and as a form of responsibility from the state. The main objective is to accelerate disaster management, by prioritizing the health, safety and welfare of the community.

Keywords: Constitutional Rights; Right to Health; State Liability; State Financial

1. INTRODUCTION

The concept of a welfare state, state or government must be able to act to solve various aspects and problems that affect the lives of its citizens, and in its authority, the government must always stand within the applicable laws and regulations.¹ In addition, the government is given the freedom to do and act, these actions include policies with the aim of public interest for solving concrete problems in the administration of government.²

The president in his capacity as head of government has the authority to handle state finances for the benefit of the state. In a methodological perspective, state finance is defined as an action that includes all processes starting from policy formulation, decision-making, and state financial liabilities, and ends with administration (*drafting*). Objectively, state government administration includes all policies, operations, and legal relations related to ownership and control.³

Responding to the Corona Virus Disease 2019 (Covid-19) pandemic and other threats to national security, the Indonesian government issued a government regulation in lieu of Act No. 1 of 2020 concerning State Financial Policy and Financial System Stability, for handling the pandemic, and/or in order for dealing with threats that endanger the national economy or financial system stability. Covid-19 has had an impact on various lives such as slowing national economic growth, reduced state revenues, and increased state spending to deal with the

pandemic. Therefore, real and serious work is needed from the government in managing health care and restoring the economy, by focusing on spending on public health management, social safety nets, and economic recovery of affected communities up to small and medium business groups.

Economic recovery must involve all sectors of the business, especially businesses that touch the economy of the middle and lower classes who are feeling the impact of the pandemic. With the government's budget refocusing policy, in which the government shifts the budget for activities and development expenditures to expenditures for health needs and handling Covid-19 and the basic needs of the community, it is hoped that this can immediately assist in the economic recovery in the community.

Problems arise when procuring goods and services during a pandemic, where all staple goods to medical devices are difficult to obtain, even though there is but the price is too high, even the price is unclear because there is a monopoly and hoarding of basic necessities and medical devices. The consequences arising from the obscurity of the prices of these goods is that it is difficult for Commitment Making Official (CMO) as officials appointed according to the provisions to carry out the procurement process in preparing Self-Estimated Prices (SEP) in procuring goods and services. With uncertainty and price spikes for types of goods, the CMO in making Self-Estimated Prices (SEP) is prone to being found by examiners.

Such conditions are very likely to be exploited by certain parties, both by goods and services procurement officials, CMO, Financial Managers, even business actors who deliberately play with market prices to reap personal profits during a pandemic, and on the other hand the Supreme Audit Agency or the Inspectorate General is not open to seeing the phenomena that occur in the field due to price volatility and the existence of monopoly in the business sector by certain companies to take advantage.

Likewise, there is no regulation that clearly regulates the limit on the value of the unit price of types of goods which is the standard price made by the government, causing the CMO to be prone to being made suspects in the process of procuring goods and service. As described in the background, the legal issue of this research appears, namely the concept of liability for financial management during the Covid-19 pandemic in realizing good governance. This study aims to provide legal certainty and protection for Commitment Making Officials and financial management in the procurement of goods and services services during a pandemic.

2. METHODOLOGY

The research is normative-juridical or known as doctrinal legal research. It is aimed at written regulations or other legal materials.⁴ the author used a statutory approach as well as interviews. This paper applied the qualitative method and conceptual, historical, as well as comparative approach through a literature review to examine the issue discussed.

3. RESULTS AND DISCUSSION

3.1. State Financial Management and Liability: Measuring an Ideal Model of State Financial Liability in an Emergency

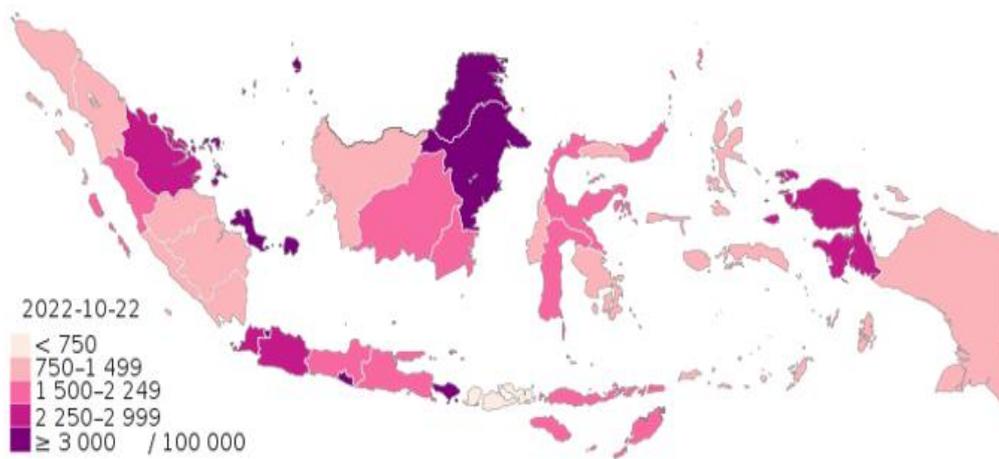
Law functions as a regulator of social interaction in the communities. In the settings, there are instructions on what to do, what can be done and what can not be done with the aim that everything goes well and orderly. In this position of orderly society, the law becomes a means to realize social justice, and it is hoped that the law can provide benefits for the life of society and the state. Protected people are safe and comfortable.

Law can also function as a driving force for development that can bring the community more advanced and prosperous, if the standard of living of the people increases then their thinking power and intellectual abilities will also increase, which will become more critical in terms of social control of the community, the community can know their rights and obligations constitutionally.

In abnormal conditions as determined by the president must be based on statutory regulations, thus the application of the law is also carried out in an abnormal or unusual way. Emergency Constitutional Law is a legal system that is carried out in circumstances that are not normal or unusual or can be called a state emergency. This abnormality is very broad in dimensions, starting from the state of war which creates chaos for the government and the dangers which threaten the life and body of the people which are very numerous and widespread. However, until the situation appears to be normal, in order to carry out certain urgent matters, certain government tasks, in certain areas, and in certain fields, one is forced to deviate from the applicable legal rules. This situation does not pose a threat of danger at all. However, doing so will result in violation of the law.⁵

The definition of emergency must be precise, meaning that the scope and limits must be clear so that there is no abuse of authority by the authorities or the Government who has the right to follow up on this matter. Because in these circumstances, the state can take any action including limiting the rights and obligations of its own citizens.⁶ If an abnormal situation occurs, it must be faced and overcome and the consequences must be overcome with the aim of returning the country to normal conditions.⁷

Graphic 1: Covid-19 Pandemic in Indonesia Cases per 100,000 Population by Province



Source: Secondary Data as of 7 June 2023

Graphic 2: Covid-19 Deaths Cases by Province in Indonesia



Source: Secondary Data as of 7 June 2023

Implementation of government in abnormality to overcome emergencies that occur with various policies. Policy (discretionary) in the sense of state administrative law consists of a related policy in the form of regulation of the duties and powers of the state apparatus. However, in any country there are no duties and powers of the state apparatus which will stop when there is an action that has no regulation, such as an emergency.⁸ Under abnormal conditions, the state/government apparatus has what is called discretion, a discretion or *beleid* that is free in carrying out these duties and authorities or active discretionary. Active

discretionary, either in oral or written form is issued in an emergency or abnormal condition, handling urgently and quickly.

Handling emergency conditions, for example the Covid-19 which has increased and spread almost uncontrollably and crosses regions and countries accompanied by the number of cases and/or or a large number of deaths. This rapid increase has an impact on all aspects of community and state life, including political, economic, social, cultural, defense and security aspects, as well as public welfare, so it is necessary to accelerate the handling of Covid-19 in the form of actions to limit the movement of people in the context of suppressing the spread of Covid-19.

The state in the context of government has functions, including providing a sense of security and order to its people, the state must also guarantee prosperity and welfare and ensure justice for all people.⁹ The state as a social organization that organizes government will face many problems faced in the life of the nation and state, both political, legal, economic, religious, health, social and cultural problems domestically but abroad that must be resolved. When combined with the concept of a welfare state, the duties and functions of government consist of various kinds of governmental actions, which are based on general decisions or provisions related to their authority to regulate continuity in the life of the nation and state.

Non-natural disasters such as Covid-19 that are experienced by Indonesia and even the entire world community have had an impact on all aspects of people's lives and have changed the new order of life in the world. In this matter, there is nothing to blame for the occurrence of this emergency condition, all elements must work hand in hand in handling it. Handling it cannot only be carried out by the government, but must be supported by all levels of society. The community needs a healthy and normal life, while the government, with its many limitations, needs the support of the community to obey and be disciplined in complying with all the regulations set by the government. Here emerge the rights and obligations of both the state and society, society must comply with disciplinary rules and strict health protocols, while the state guarantees a prosperous life, gets a good and healthy environment for all its people based on the constitution.¹⁰

Also, the right of community to health is a human right that is recognized and regulated in various international instruments. With regard to constitutional protection of the right to health, it is contained in article 28H paragraph 1 of the 1945 Constitution, which reads "everyone has the right to live in physical and spiritual prosperity, to have a place to live and to get a good and healthy living environment and has the right to obtain health services." It shows that the right to public health is protected by the constitution as constitutional rights.

Regarding to the handling of Covid-19, the government has taken steps to protect its citizens, starting from the stipulation of Presidential Decree No. 12 of 2020 to policies related to limiting people's space for movement to vaccination. In the vaccination program carried out by the government, there are many pros and cons, one of the legal issues is related to the implementation of vaccinations for the community, whether this vaccination is a right or obligation that must be carried out by the community.

If we examine it in relation to article 5 paragraph 1 of Act No. 36 of 2009, it does give everyone the right to determine their own health services for themselves, but if it is juxtaposed with the context of the rules for handling epidemics, especially during the Covid-19 pandemic, there are two other rules to determine whether vaccines are a right or a duty of society.¹¹ By declaring the state in a state of emergency, the implementation of the regulation uses emergency constitutional law. Andrey Weywood said that the state of emergency is “*a declaration by government through which it assumes special power, supposedly to allow it to deal with an unusual treath*”. In various literatures, emergency constitutional law is also called *staatsnoodrecht* or state emergency law.¹²

There are also other legal principles related to emergencies, namely the principle of *salus populi suprema lex*. This principle implies the safety of the people is the highest law. Mahfud MD emphasized that “safety is higher than the Constitution”.¹³ To exercise constitutional rights and freedoms, it must also be accompanied by awareness of constitutional obligations and responsibilities in order to respect the rights and freedoms of others. If these rights and freedoms conflict with the rights and freedoms of other people, then what is sought is substantial truth and justice.

From several expert’s opinions above and based on statutory provisions that protect citizens from various threats both from within and outside the country and to provide guarantees for safety and welfare is something that must be done by the state.¹⁴ From the point of view of state science, one of the characteristics of the state is coercion. The state has the power to coerce and can even use violence. This coercive nature is aimed at achieving state goals or national consensus. Regarding the implementation of vaccinations by the government, this as an example of an existing country, can force its citizens to obey and comply with health protocols. This is aimed at the goals of the state as stated in the preamble to the 1945 Constitution, namely to protect the entire Indonesian nation and all of Indonesia’s bloodshed. The link is protecting the nation and state from the spread of Covid-19.

In the context of discretion, if the community feels that their interests have been harmed by the discretionary decision, the community can submit an objection to the official who issued the discretionary decision. Furthermore, the official who issued the discretionary decision is obliged to answer it. If the public, whose interests have been harmed, are still dissatisfied with the answer given by the official who issued the discretionary decision, then the public can submit an administrative appeal to the direct superior of the official who issued the discretionary decision, and the direct superior of the official who issued the discretionary decision must also respond on the administrative appeal filed. Administrative efforts that can be taken by the community must be included implicitly in discretionary decisions. When the boss directly from the official who issued the discretionary decision agrees with the objections of the public, then the discretionary decision is ordered to be revoked, but if the direct superior of the Official issuing the discretionary decision does not agree with the public’s objections, the public can file a lawsuit with the State Administrative Court.¹⁵

The context of moral values in the general principles of good governance as the basic values of a good model, especially related to the principle of accountability, it means that the administrator of this policy authority will not abuse their power and will not act arbitrarily and if the policy goes according to this principle, then of course it will be in accordance with the mandate of the Government Administration Law, which formulates limits on policy actions taken, that government officials in taking policy steps during an emergency must consider objectives based on statutory regulations. And the general principles of good governance.

Based on the limitations on the actions taken indicate there are signs for the use of legal action with reference to the general principles of good governance, particularly the principle of prohibition against abuse of authority (*detournement de pouvoir*) and the principle of arbitrary prohibition (*willekeur*). Which means that legal action from a policy during an emergency will be referred to as an act of abuse of authority or power if an element of arbitrariness is found in the operational implementation of the decision, if the action is contrary to the principle of public interest.¹⁶

Abuse of authority can be tested on the principle of speciality (*specialiteitsbeginsel*), the principle that determines that authority is given to organs of government with a specific purpose. If there is a deviation from the purpose given authority this considered as an abuse of authority. And then arbitrary can be tested on the principle of rationality or appropriateness (*redelijk*). A policy can be categorized as containing *willekeur* elements if the policy is manifestly unreasonable or unreasonable (*kennelijk onredelijk*).¹⁷

Thus, every decision is discretionary which is based on the main principles of the general principles of good governance, it will be known that this decision has been carried out based on a good mechanism and model of the exercise of authority given. For this reason, the good values contained in the general principles of good governance can at the same time become a test mechanism for the implementation of legal action during an emergency for a government that is implementing good governance in accordance with the general principles of good governance.

4. IMPLICATIONS AND RECOMMENDATIONS

In essence, liability for state finances during an emergency in the context of accelerating disaster management in order to realize good governance must be seen as an integral part of implementing a law-based state system, so that the actions taken are legal actions by state officials or government, because freedom is exercised not for personal gain but still within the framework of the essence of the interests of the citizens as a whole and as a form of responsibility from the state. The main objective is to accelerate disaster management, by prioritizing the health, safety and welfare of the community.

Acknowledgments

The authors acknowledge all contributors involved in this study. The authors declare no conflict of interest and no research funds or grants received.

Declaration of Interest

Authors declare there are no competing interests in this research and publication.

Notes

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