

THE ROLE OF LAW IN THE CONCEPT THEORY OF JUSTICE
TO REBUILD NATION'S ECONOMY IMPACT OF COVID-19 OUTBREAK IN INDONESIA¹

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Info Artikel

Masuk: 20 - 06 - 2020

Revisi: 31 - 07 - 2020

Diterima: 28 - 02 - 2021

Terbit: 28 - 02 - 2021

Keywords:

Role of Law, State
Economy, Impact of
COVID-19 outbreaks

Kata kunci:

Peran Hukum,
Perekonomian Negara,
Dampak wabah COVID-19

P-ISSN: 1412-310X

E-ISSN: 2656-3797

DOI : 10.33061

Abstract

This study aims to obtain information about the role of law in efforts to develop the country's economy due to the Covid-19 outbreak in Indonesia which is reviewed based on Theory of Justice. The research method used is statute approach, the method of data collection through literature studies and qualitative normative data analysis techniques. The results of the study indicate that Indonesian government has taken extraordinary policies and steps in the context of saving the national economy and financial system stability through various relaxation policies relating to the implementation of the State Budget (APBN), especially by increasing spending on health, spending on social safety net, economic recovery, and strengthen the authority of various institutions in the financial sector. However, an oversight of the implementation of the policy is needed so that it is in accordance with the principles based on the General Principles of Good Governance to create justice for equality before the law.

Abstrak

Kajian ini bertujuan untuk memperoleh informasi tentang peran hukum dalam upaya membangun perekonomian negara dampak wabah Covid-19 di Indonesia yang ditinjau berdasarkan *Theory of Justice*. Metode Penelitian yang digunakan adalah metode pendekatan undang-undang (*statuta approach*), metode pengumpulan data melalui studi kepustakaan dan teknik analisa data normatif kualitatif. Hasil kajian menunjukkan bahwa pemerintah Indonesia telah mengambil kebijakan dan langkah-langkah luar biasa dalam rangka penyelamatan perekonomian nasional dan stabilitas sistem keuangan melalui berbagai kebijakan relaksasi yang berkaitan dengan pelaksanaan Anggaran Pendapatan dan Belanja Negara (APBN) khususnya dengan melakukan peningkatan belanja untuk kesehatan, pengeluaran untuk jaring pengaman sosial (*social safety net*), dan pemulihan perekonomian, serta memperkuat kewenangan berbagai lembaga dalam sektor keuangan. Namun diperlukan suatu pengawasan atas implementasi kebijakan tersebut agar sesuai dengan prinsip berdasarkan Asas-Asas Umum Pemerintahan Yang Baik sehingga tercipta keadilan atas persamaan kedudukan dimuka hukum (*equality before the law*).

¹ This Article is Compiled on May 2020.

INTRODUCTION

Indonesia is a country by law². In the field of economic development it can be analogous that the economic process in Indonesia is based on the law, not only based on mere economic considerations. The synergistic relationship between law and economics according to JM Keynes is "*The outstanding faults of the economic society in which we live are its failure to provide for full employment and its arbitrary and equitable distribution of wealth*"³. Prioritizing the role of law in nation development, the legal position as a tool of social engineering becomes even greater. In various developing countries, state regulations on the economy in the particular, state support for new industries are seen as necessary to increase economic growth, the law uses the power of the state to regulate economic performance to encourage desired social and economic goals⁴.

Indonesia is being hit by a pandemic coronavirus (COVID-19) outbreak. The government has adjusted the 2020 economic growth scenario to 2.3 percent, lower than the 2020 state budget target of 5.3 percent. The weakening of domestic economic performance has an impact on increasing the government spending burden, the budget deficit in 2020 is expected to widen to 5.07 percent. In addition, tax revenue is projected to decrease Rp 403.1 trillion from the state budget target⁵. Global economic uncertainty continues to this day and amidst such pessimism, COVID-19 seems to add pressure to the world economic conditions that lead to a state of recession⁶.

The legal basis for handling COVID-19 based on the 2 (two) Laws, namely Law No. 4 of 1984 on Infectious Disease Outbreaks (Law No. 4/1984) and Law No. 6 of 2018 on Health Quarantine (Law 6/2018). In supporting the implementation at the technical level at early government policy, the Government has established Government Regulation (PP) No. 21 of 2020 on Large-Scale Social Restrictions in order to Accelerate the Handling of Covid-19, Presidential Decree No. 11 of 2020 concerning the Determination of Public Health Emergency Covid-19 (Presidential Decree 11/2020), in the field of economy issued a legal basis that provides additional funds for the handling of the coronavirus pandemic with a value of Rp 405.1 trillion sourced from the Remaining Budget More (SAL), perpetual funds and accumulated perpetual funds of education, state-controlled funds with certain criteria, funds managed by the Public Service Agency (BLU), and funds derived from the reduction of State Capital Investment in State-Owned Enterprises (SOEs), which are used for a number of stimulus in health, social, economic and other strategic areas⁷ with details of Rp 75 trillion for the health sector , Rp 110 Trillion for social safety net, Rp 70.1 Trillion for tax incentives and stimulus of People's Business Credit, and Rp 150 Trillion for national economic recovery program, the regulation is a Government Regulation Replacement Law No. 1 Year 2020 on State Financial Policy and Financial System Stability for The Handling of Corona Virus Disease Pandemic 2019 (COVID-19) and/or in Order to Face Threats That Endanger the National Economy and/or Financial System Stability (Perppu 01/2020) passed by the Dpr Budget Agency on May 04, 2020, which will be discussed into Law at the Plenary Meeting on May

² Mahkamah Konstitusi Republik Indonesia, 2008, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Mahkamah Konstitusi Republik Indonesia, p. 4

³ Satjipto Rahardjo, 2003, *Sisi-sisi Lain dari Hukum di Indonesia*, Jakarta: Kompas, P. 21

⁴ David M. Trubek dan Alvon Santos, 2006, *The New Law an Economic Development: A critical Apraisal*, P.6

⁵ Dwi Hadya Jayani, April 30th 2020, "*Ancaman Krisis Ekonomi Akibat Covid-19*", on the website: <https://katadata.co.id/infografik/2020/04/30/ancaman-krisis-ekonomi-akibat-covid-19>. Accessed on May, 11th 2020

⁶ Yose Rizal Damuri, 2020, *Mengukur Dampak COVID-19 Pada Pertumbuhan Ekonomi dan Perdagangan Indonesia 2020*, Jakarta: Center For Strategic and International Studies, CSIS Commentaries DMRU-015, 26 Maret 2020, P. 8

⁷ Devi Suhaila, 6 April 2020, "*Ini Daftar Kebijakan Keuangan Negara dalam Perppu No.1 Tahun 2020*", on the website: <https://www.kemenkeu.go.id/publikasi/berita/ini-daftar-kebijakan-keuangan-negara-dalam-perppu-no1-tahun-2020/>, Accessed on May, 11th 2020

12, 2020⁸, which then stipulated on Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease Pandemic 2019 (COVID19) and / or in the context of Facing Threats that Endanger the National Economy and / or Financial System Stability to become Law.

Looking at the issues above, the author examines how the role of the law implemented by the Indonesian government in deciding policies in the economic sector to maintain national stability caused by the COVID-19 pandemic outbreak.

PROBLEMS

1. How is the government's policy in protecting the economy in the face of the crisis due to the covid-19 pandemic outbreak in Indonesia?
2. How is the role of law in rebuilding the economy in indonesia after the covid-19 pandemic is reviewed from the theory of justice ?

RESEARCH METHOD

This research uses normative legal research method by examining data obtained from library research including books and related laws and regulations. The approach in the research is using statute approach. The data used in this study is a type of secondary data as well as binding legal materials obtained through the study of documents on library materials with data collection techniques through library research⁹, after the data is collected, then the next step is to analyze and interpret the data. The techniques or methods used in analyzing data are descriptively analytical¹⁰.

DISCUSSION

1. GOVERNMENT POLICY IN PROTECTING THE ECONOMY IN FACING THE CRISIS CAUSED BY THE COVID-19 PANDEMIC OUTBREAK IN INDONESIA

At the early policy in order to handle the COVID-19 pandemic, the government chose the Large-Scale Social Restriction policy option¹¹, which is to restrict the activities of certain residents in an area suspected of being infected with disease and/or contaminated in such a way as to prevent the possible spread of disease or contamination. In an effort to restore the economy the government has established a Replacement Government Regulation Law No. 01 of 2020 on State Financial Policy and Financial System Stability for the Handling of the Corona Virus Disease Pandemic 2019 (COVID-19) and/or in order to Deal with Threats That Endanger the National Economy and/or Financial System Stability implications of the Corona Virus Disease pandemic 2019 (COVID-19) (Perppu 01 Year 2020).

⁸ Syamsul Azhar, 6 Mei 2020, "*Sah, Perpu Nomor 1/ 2020 disepakati menjadi Undang-Undang*", on the website: <https://nasional.kontan.co.id/news/sah-perpu-nomor-1-2020-disepakati-menjadi-undang-undang>, Accessed on May, 10th 2020

⁹ Prasetya Irawan, 2006, *Penelitian Kualitatif dan Kuantitatif untuk Ilmu-ilmu Sosial*, Jakarta: FISIP UI, P. 17

¹⁰ Suharsimi Arikonto, 1993, *Prosedur Penelitian Suatu Pendekatan Praktis*, Jakarta: Rineka Cipta, P. 65

¹¹ Republic of Indonesia, Law of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine, State Gazette of 2018 Number 128, TLN. Year 2018 Number 6236, Article 1 number 11.

In the Perppu 01 Year 2020, there are several policies carried out by the Government¹², among others in the field of taxation and the National Economic Recovery Program that can be implemented through the Inclusion of State Capital, the placement of funds and / or government investments, and / or guarantee activities with the scheme set by the Government. The government has determined that the costs in order to cope with the impact of COVID-19 are not state losses as stated in Article 27 paragraph (1) perppu 01 Year 2020:

"The costs that have been incurred by the Government and/or KSSK member institutions in the framework of the implementation of state revenue policies including policies in the field of taxation, state spending 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 crisis and are not state losses."

There is an article that states that all policies carried out in connection with Perppu 01 Year 2020 is not the object of a lawsuit of State Administration (TUN), as in Article 27 paragraph (3) Perppu 01 Year 2020 the following:

"All actions including decisions taken under the Government Regulation Replacement Act are not the object of a lawsuit that can be filed with the state administrative judiciary."

In line with Perppu 01 Year 2020, the Government has also issued Presidential Instruction No. 4 of 2020 dated March 20, 2020 on Budget Refocusing and Procurement of Goods and Services in order to Accelerate The Handling of Covid-19, Regulation of the Minister of Finance of the Republic of Indonesia No. 210/PMK.02/2019 dated December 31, 2020 concerning Procedures for Budget Revision of Fiscal Year 2020, Regulation of the Minister of Home Affairs of the Republic of Indonesia No. 20 of 2020 concerning The Acceleration of Corona Virus Disease 2019 Handling in The Local Government Environment.

2. THE ROLE OF THE LAW IN REBUILDING THE ECONOMY IN INDONESIA AFTER THE COVID-19 PANDEMIC REVIEWED FROM THEORY OF JUSTICE

As stated by Satjipto Rahardjo, the law serves as a protection for human interests, and therefore the law must be implemented¹³. Thomas Aquinas affirmed that in an economic context, the function of the law is to strive for the welfare of all mankind. The function in question is as a framework in the form of guiding regulations, providing sanctions guidelines and tools for the brand of social life. The object is all aspects of human life in his economic life¹⁴.

According to a study conducted by Burg's on law and development, there are 5 (five) elements that must be developed so that the law does not impede the economy, namely: stability, predictability, fairness, education, and special development abilities of the lawyer.

Burg's suggests that the first and second elements above are a requirement for the economic system to function. Stability serves to accommodate and avoid competing interests.

¹² Republic of Indonesia, Government Regulation in Lieu of Law Number 01 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (COVID-19) Pandemic and / or in the Context of Facing Threats Endanger the National Economy and / or Financial System Stability , State Gazette of 2020 Number 87, TLN Number 6485

¹³ Neny Sri Imaniyati, 2009, *Hukum Bisnis Telaah Tentang Pelaku dan Kegiatan Ekonomi*, Yogyakarta: Graha Ilmu, P. 40

¹⁴ Gunarto Suhadi, 2002, *Peranan Hukum Dalam Pembangunan Ekonomi*, Yogyakarta: Universitas Atmajaya, P. 27

The prediction is the need to be able to predict the provisions related to the economy of a country¹⁵.

In economic development will greatly affect the development of law and economic development that both will not run to the maximum without being based on good legislation. Legal arrangements are closely related to development in general and especially for economic development¹⁶.

David M. Trubek stated that the "rule of law" is very important for economic growth and will have a broad impact on the "reform" of economic systems around the world, which is based on the theory of what is needed for development and how the role of law in economic change¹⁷. The broader concept of The Rule of Law is Theory of Justice which is John Rawls's criticism of the concept of Rule of Law.

The shortcomings in the concept of Rule by Law is that if interpreted as law for the benefit of the government, then the law can be used as a tool of power by the ruler to perform actions outside of justice and the act is legalized because the act is regulated by the Law.

John Rawls affirms his view of justice that populist justice enforcement programs should pay attention to two principles of justice, namely: First, giving equal rights and opportunities to the most widespread basic freedoms as wide as equal freedom for everyone. Second, it is able to reorganize the socioeconomic inequalities that occur so as to provide reciprocal benefits. The principle of difference demands that the basic structure of society be regulated in such a way that the gap in prospects gets the main things of welfare, income, authority reserved for the benefit of the most disadvantaged people. This means that social justice must be fought for two things: First make corrections and improvements to the condition of inequality experienced by the weak by presenting empowering social, economic, and political institutions. Second, each rule must position itself as a guide to develop policies to correct the injustices experienced by the weak¹⁸.

John Rawls presents three maca truths for the principle of justice, among others¹⁹:

1. If a principle is able to explain our moral judgments and decisions are really considered about what is fair and unfair, then that principle is acceptable.
2. If according to our moral decisions a principle is chosen under the conditions suitable for election, then the principle of justice is acceptable.
Two reflection above are the principles and conditions under which the chosen principles should lead us to renew our moral considerations.
3. On the basis of the third truth Rawls developed Kant's idea of autonomous actors, i.e. a sign of rationality a principle can be a principle for everyone.

In developing a model of a fair society structure, Rawls focuses primarily on the institutional makeup of society that will meet the principle of difference. In society there is personal ownership of capital and some natural resources. The allocation branch is used to maintain a free market system, the stability branch puts forward decent employment, the

¹⁵ Leonard J. Theberge, "Law and Economic Development, *Journal of International Law and Policy*", Vol. 9, 1980, P. 232 on Adi Sulistiyono dan Muhammad Rustamaji, 2009, *Hukum Ekonomi Sebagai Panglima*, Sidoarjo: Masmedia Buana Pustaka, P. 20

¹⁶ Djuhaendah Hasan, 2008, *Fungsi Hukum Dalam Perkembangan Ekonomi Global*, Bandung, P. 23

¹⁷ David M. Trubek, 2002-2003, *ELRC Annual Report : "Law and Economic Development : Critiques and Beyond"*, presented at the Harvard Law School Spring Conference, April 13th -14th, 2003, P.1

¹⁸ Effendy, 2014, *Teori Hukum dari perspektif kebijakan, perbandingan, dan harmonisasi hukum pidana*, Ciputat: Gaung Persada Press Group, P. 79

¹⁹ John Rawls, "Kantian Constructivism in Moral Theory", *The Journal of Philosophy*, LXXVII, September 1980, P. 515 - 572

transfer branch guarantees the minimum income of the community either with family guarantees or special guarantees for the sick or unemployed, or more systematically by providing additional gradual income, the distribution branch is tasked with maintaining fairness in the division with tax means and adjustment of property rights demanded based on the principle of justice²⁰.

Based on the above theory, in order to channel stimulus amounting to, based on the principle of Theory of Justice that can be done by the Government of Indonesia in Tackling the Impact of the COVID-19 Outbreak in accordance with Perppu 01 Year 2020 can be done as follows:

1. Clearly establish the technical scheme of budget distribution flow for affected sectors, namely health, social and economic as mentioned above.
2. The central government in coordinating the allocation of funds must use the latest data validity test, which can be done by updating the data by the local government.
3. Strengthening the supervisory function by the legislature, which concentrates on the technical distribution of budgets in the strategic sector, the funds must be allocated with valid and up-to-date data in order to be on target.
4. Strengthening the supremacy of law enforcement by the Judiciary, considering the amount of stimulus funds in order to avoid all possible moral hazards, although in Article 27 paragraph (3) Perppu 01 Year 2020 states that all policies can not be done state administrative lawsuits, but if the implementation of the policy is not in accordance with the principles based on the General Principles of Good Governance is still required control mechanisms in order to create justice for equality before the law in accordance with Article 27 paragraph (1) constitution 1945.

CONCLUSION

The Government of Indonesia has taken extraordinary policies and measures in order to save the national economy and financial system stability through various relaxation policies related to the implementation of the State Budget (APBN) especially by increasing spending on health, spending on social safety net, and economic recovery, as well as strengthening the authority of various institutions in the financial sector. The role of law in economic development will be very influential both will not run to the maximum without being based on good legislation, but if interpreted as law for the benefit of the government, then the law can be used as a tool of power by the ruler to perform actions outside justice and the act is legalized because the act is regulated by the Law.

Synergy between state institutions is required in overseeing the implementation of the State Financial Policy and Financial System Stability for the Handling of the Covid-19 Pandemic in order to comply with the Theory of Justice principle, namely social justice in accordance with the fifth precept of Pancasila, namely Social Justice for All Indonesians. As the regulation and theory studies conducted above, in order to effectively boost the country's economy, especially towards indonesia's economic recovery after the COVID-19 pandemic, a mechanism of validity of budget allocation data and integrated monitoring mechanisms are required.

²⁰ John Rawls, 1973, *A. Theory of Justice*, London: Oxford University, P. 45

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