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COVID-19 PANDEMIC IN PERSPECTIVE OF THE STATE OF DANGER OF CONSTITUTIONAL LAW

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Abstract
Covid-19, which attacked Indonesia at the end of 2019, made the situation even more threatened, to limit the spread of Covid-19 and to overcome various countries issued several policies, especially Indonesia. The policies issued by the government are in the form of PSBB, to other policies contained in the Presidential Decree. However, through existing policies, the government tries to interpret that the crisis caused by the Covid-19 virus is not in the form of an emergency condition where it arises due to security barriers. This is strengthened without the operationalization of emergencies according to Article 12 of the 1945 NRI Constitution.

Keywords: Covid-19, PSBB, Emergency

INTRODUCTION

There was one case of the virus throughout the history of 2009 that had occurred, at which time in China the World Health Organization announced the status of the virus to be a pandemic. The name for the pandemic that has appeared in the world is influenza A (HINI), in all regions, namely in several countries influenza, there is continuous transmission (Masrul, et al, 2020: 1).

A pandemic has finally been given a classic definition of a person-to-person disease that spreads rapidly. Defined in such a way as a pandemic is like an epidemic that in all regions of the world occurs, as well as in a very large area to cross international boundaries (Masrul, et al, 2020: 1).

Some large countries at the time towards the end of 2019 were faced by a difficult situation, where the virus outbreak that was indicated to be rapidly contagious attacked by many countries, the system that this virus attacked in the human body was the human respiratory system. This virus outbreak is thought to have originated in a city in China, namely Wuhan, this outbreak is known as the corona virus or covid-19. At the beginning of its emergence, this virus could quickly be transmitted, making the public and the government confused, not only that even at that time an antiviral vaccine that could provide full treatment to patients could not be found.

Because vaccines that can recover infected patients up to 100% cannot be appeared, various countries have begun to implement preventive measures so that the spread of this rapid virus can be controlled. Various methods applied are in the form of closing access for social mobilization of the community, as well as implementing regional quarantine or what is often termed "lockdown" so that human physical interaction is limited in several European,

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American, and Asian countries so that the virus does not continue to be transmitted (Widnyana et al,2020:1-2).

Basically, this virus in its direct spread is indeed very influential on a person's health condition, but some countries that have implemented anticipation, of course, the impact felt by the world community in its survival, especially in the wider socioeconomic field. With the existence of social and physical distancing as anticipatory measures implemented, of course, it greatly affects income in the economic sector which is declining and certainly has an impact on society and the state. Not a few budgets that must be negotiated by the state as a form of overcoming and treating patients exposed to this Covid-19 case, while many people whose jobs are limited in time until they lose their jobs due to this virus (Widnyana et al,2020: 2-3).

Indonesia is a country that is exposed to and affected by the Covid-19 virus, where there are not a few cases, the spread is accelerating and cannot be handled immediately. The increasingly severe cases are spreading to almost all regions in Indonesia. Death cases that continue to increase to reach thousands of people, which of course must get serious enough attention so that the spread of positive cases does not get wider (Widnyana et al,2020:3).

As a country of law based on the rule of law in implementing policies implemented in every form of handling a problem, a painstaking consideration is needed to be able to take appropriate action during a pandemic. The application of a policy and the impact that will certainly be caused by the application of a rule must be well considered, so as not to cause a large turmoil between the goals, objectives, and implementation processes in the community (Widnyana et al,2020:3).

RESEARCH METHOD

Legal research generally has its purpose, the purpose of which is to try to find a decipherment of an emerging legal issue, with a new purpose in order to obtain a description of what should be carried out on the issue discussed (Marzuki, 2010: 74).

The type of research that is realized is normative juridical which in its study focuses on the application of rules or norms in positive law, especially in relation to legal alignment. The approach applied is in the form of a statutory approach. Where this approach is an approach that is realized by reviewing various laws that have a relationship with legal issues that are handled, namely by paying attention to the harmony between one law and another and with the Constitution.

Meanwhile, in order for an analysis to be clarified, another approach is also applied, namely the conceptual approach, where insights and doctrines - the doctrine of legal science are more emphasized in this approach. The relationship between this approach and research is that various doctrines and expert views are linked to the concept of Emergency Constitutional Law (Prasetio, 2021: 330).

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In order to solve a legal issue, normative legal research is applied in carrying out data collection. Data collection in this study is realized with various legal sources in the form of primary legal materials included in literature studies as well as laws and regulations in which there are arrangements regarding an emergency in Indonesia.

Meanwhile, in order for the sources in the research to be properly equipped, it should be supported by secondary legal material that can present a description more than primary legal material which includes publications about the law such as books, legal journals, legal dictionaries and news that have legal relevance in this study.

All legal materials that have been obtained are then combined and then based on their categorization the legal materials are systematically elaborated and analyzed qualitatively considering that the data obtained are qualitative.

RESULT AND DISCUSSION

State of Danger In The Perspective Of Administrative Law

Emergency is a term known in state administrative law, where a special treatment of the condition or situation is required known as Staatsnoodrecht in the study of constitutional law, which literally means "State of Emergency" or in the same term as Noodtoestand. In the broad perspective within the Staatsnoodrecht also includes Nood Staatsrecht which means "Emergency Constitutional Law" where it is subjective and unwritten, while the Staatsnoodrecht in a narrow perspective or better understood with the "State of Danger"/ Staat van Beleg with an objective and written nature. Thus, Staatsnoodrecht when viewed from a narrow scope means a written Objective Emergency, while Nood Staatsrecht is an unwritten subjective emergency (Bimasakti,2021:11).

Constitutional law basically has the doctrine of an emergency or a state of danger, which is generally divided into two major parts, namely staatsnoodrecht (emergency which in this case has a written nature or geschreven) and Noodstaatsrecht (emergency which in this case is of an unwritten nature or ongeschreven) (Bimasakti,2021:11).

Emergencies in this case, namely:

1. Emergencies (Staatsnoodrecht) or Noodtoestand

Staatsnoodrecht in this case is used to manifest Staatsnoodrecht / State of Emergency (Noodtoestand) which is a state of danger / Staat van Beleg in the narrow sense. In the Staatsnoodrecht which is in the scope of a narrow sense, the state of emergency is experienced by the factual state of his country. The dangers indicated are not based solely on restrictions on state security, but the internal stability of the state is also subject to danger.

Emergencies are also known as State of Emergency in countries that apply English such as the United States. While known as Staat van Oorlog en van Beleg (SOB) in Dutch law. The next is known as the State of Danger in Indonesian positive law.

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The staatsnoodrecht doctrine was adopted as a state of danger in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 NRI Constitution), precisely in Article 12. The nature of the state of danger can be known under the provisions in Article 12 of the 1945 NRI Constitution is a geschreven staatsnoodrecht (Written Emergency) because the entire condition and its consequences are required to be regulated through law (written law).

Staatsnoodrecht in the determination of its conditions is objective, which in this case is due to the condition of this Staatsnoodrecht by the central government, namely the President of the Republic of Indonesia must be determined in accordance with the conditions as regulated by law. So that if referring to Article 12 of the 1945 NRI Constitution, it can be studied that if by law or regulations in lieu of laws have not been regulated regarding it, then in this case the president does not have the authority to determine the state of danger because it is bij de wet (by law).

Bij de wet arrangements have the concept that it is required to be regulated in a special law on the subject. Therefore, in the narrow sense, Staatsnoodrecht is defined as a written Objective Emergency, because the conditions must always be established by law (written), while they are objective because in this case the president must be bound by the clauses of the conditions specified in the law.

Regarding the current state of danger, it is regulated by law Number 23 Prp. of 1959 concerning the State of Danger as it has been amended twice, namely the last time is by law Number 52 Prp. of 1960 (Statute Book of the Republic of Indonesia of 1960 Number 170, Supplement to Statute Book Number 2113) (hereinafter referred to as perppu State of Danger) (Bimasakti, 2021:12-15).

2. Emergency Constitutional Law (Nood Staatsrecht)

There are two Dutch Phrases that are literally composed in Nood Staatsrecht, namely the word Nood and the phrase Staatsrecht. Where Nood means emergency and Staatsrecht means Constitutional Law. Thus the two phrases are merged into a terminology namely Nood Staatsrecht which means Constitutional Law which is enforced in an Emergency. In Nood Staatsrecht the state of emergency is experienced by a state of law (HTN).

Later by the 1945 NRI Constitution, the Nood Staatsrecht was described as " a compelling crunch". Where this doctrine is adopted by the NRI Constitution, especially in Article 22 paragraph (1). It can be seen on the basis of the article that the nature of the coercive crunch as Nood Staatsrecht is an unwritten emergency and is entirely left to the subjective considerations of the president. So that in this case it can be used a source of law in the form of conventions or constitutional customs.

Policies Regarding the Covid-19 Emergency in Emergency Constitutional Law

At the beginning of the emergence of Covid-19, there were various policies implemented by the government so that the chain of transmission of Covid-19 could be broken and not last

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long and cause more and more casualties. The policies implemented by the government take various forms such as large-scale social policies (hereinafter referred to as PSBB).

Policy theoretically is a set of decisions that political stakeholders realize in order to achieve the goals achieved, including methods to achieve an intended goal (Hermawan & Herman, 2020: 331).

Where this PSBB is a procedure in limiting certain activities carried out by the community in an area that is suspected to have been infected with the disease, including those that have been contaminated so that the possibility of spreading the disease can be prevented.

In addition to the PSBB, there are regulations made by the government to reduce the number of the COVID-19 virus, starting from Government Regulations in Lieu of Laws, Government Regulations, to Presidential Decrees.

The laws created by the framers of the laws, at first will not be able to guess that the laws that have been produced can provide a solution to the problems that will come to a future way. The problem that comes can be in the form of a situation that can bring serious danger to the country.

In order for this to be anticipated, usually various legal instruments have been prepared by a country, which are specifically designed to deal with the possibility of this happening. The arrangement was created both in its constitution and in ordinary legislation.

There are three options that are generally realized by various countries in resolving the Covid-19 crisis, namely in the first option, a state of emergency is imposed by the state which as the state of emergency is stated in its constitution. In this option, there is a weakness, namely the granting of large powers without being balanced with great supervision. That way this first option is very likely to be misappropriation, especially for a political need. In Indonesia, this option resembles the state of danger clause contained in Article 12 of the 1945 Constitution (Prasetio, 2021: 334).

In contrast to this second option, which arises from a view that half of human rights are not absolute. However, it does not rule out the possibility that the right may be limited, as long as it is carried out through a reasonable means and legally authorized. There is an abundance of state constitutions in which there are no rules specifically regulating emergency conditions whose causes come from health crises. Hence an emergency need not be activated by being based on the constitution. The granting of something to the government, namely extraordinary power, through ordinary laws is something that is emphasized in this option (Prasetio, 2021: 335). As for the third option, it puts priority on controlling Covid-19 tensions through new legislation. The state placed this option in a possibility whereby the legal needs were desired to provide a response to the crisis.

In reality, there are many countries without a regulation that is able to specifically regulate the various complexities caused by Covid-19. However, this option certainly has its drawbacks, namely that a new legislation will be formed in a very limited situation where it is

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in the midst of a crisis, resulting in limited aspirations and control from the public. That way this option is very capable of handing over power to the ruler at large (Prasetio, 2021: 335).

If the legal policy regarding the enforcement of Covid-19 in Indonesia is related to the existing options, it can be seen that ordinary laws are preferred by the government to be applied in eradicating the Covid-19 pandemic, where the ordinary laws are realized into Law Number 6 of 2018 and Law Number 24 of 2007.

The reflection of this policy is the realization of the status of a Public Health Emergency through Presidential Decree Number 11 of 2020 and Non-Natural Disaster Emergencies through Presidential Decree Number 12 of 2020.

Then through existing policies, the government tries to interpret that the crisis caused by the Covid-19 virus does not include emergency conditions caused by security disturbances. This is strengthened by the issuance of emergencies that are not contained in Article 12 of the 1945 Constitution. Furthermore, the government also issued new legal instruments in addition to using the Law, namely with the issuance of Perppu 1 of 2020 so that legal interests as long as the handling of Covid-19 can be fulfilled. That way the state of emergency that was previously issued is the same as this Perppu, where Article 12 of the Constitution is not involved as the foundation in its formation. Therefore, this Perppu cannot be said to be an emergency Perppu but is just an ordinary Perppu (Prasetio, 2021: 336).

The perppu has now been legalized into Law Number 2 of 2020. That way the enactment of the law is like an ordinary law, in general its applicability is the same as other laws, namely it does not only apply for a certain period of time as well as the emergency perppu (emergency law), but applies permanently. The applicability of Law Number 2 of 2020 raises a number of problems in the constitution, because when viewed from the purpose of the establishment of the Law, which was originally Perppu 1 of 2020, it is limitedly intended for and during the handling of Covid-19. If the Covid-19 problem has ended, then the various provisions contained in Law Number 2 of 2020 will definitely not be determined relevantly anymore. Then the provisions in the Law when viewed in terms of substance there are many provisions that are canceled in other laws. In addition, the existence of immunity granted in the provisions of Article 27 for government officials actually ignores the principle of equality before the law which has been strictly mandated by the constitution (Prasetio, 2021: 337).

CONCLUSION

At the end of 2019, Indonesia was affected by a very dangerous virus, because it was indicated to attack the respiratory tract, besides that it could also spread widely in a short time, even taking an infinite toll. The virus is the Covid-19 virus. Seeing the situation getting worse, the government began to implement various policies in dealing with this virus and prevent it from spreading more widely. The policies implemented by the government include PSBB, to other regulations such as Perppu, PP to Keppres. Other policies are realized in the form of Presidential Decrees. Then through existing policies, the government tries to interpret that the crisis caused by the Covid-19 virus is not an emergency condition caused by security disturbances.

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