

THE STATE'S RESPONSIBILITY IN THE WELFARE OF PEOPLE AND ECONOMIC RECOVERY IN THE FACE OF COVID-19 FROM THE PERSPECTIVE OF LAW AND HUMAN RIGHTS

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Abstract: *The Covid-19 pandemic was taking place in almost all countries around the world. Along with the increasingly vigorous government strategy in tackling the spread of the corona virus that was still endemic until now, the government had started to enforce the Large-Scale Social Restrictions (PSBB) with the signing of Government Regulation (PP) No. 21 of 2020 about PSBB which was considered able to accelerate countermeasures while preventing the spread of corona that was increasingly widespread in Indonesia. The research method used was normative prescriptive. The government put forward the principle of the state as a problem solver. The government minimized the use of region errors as legitimacy to decentralization. The government should facilitated regional best practices in handling the pandemic. Thus, the pandemic can be handled more effectively. The consideration, the region had special needs which were not always accommodated in national policies. The government policy should be able to encourage the birth of regional innovations in handling the pandemic as a form of fulfilling human rights in the field of health. Innovation was useful in getting around the limitations and differences in the context of each region. In principle, decentralization required positive incentives, not penalties. Therefore, incentive-based central policies were more awaited in handling and minimizing the impact of the pandemic.*

Keywords: *Covid-19, Human Rights, Welfare State, Government.*

The Introduction

As already known, the influx of the Covid-19 began around 2020, precisely in March last year. It made Indonesia in an uproar and resulted in large-scale changes all aspects of life. With these conditions, it made the entire populations, not only in Indonesia but around the world also felt the impact, one of the impacts that most affect the national security system was in terms of economic, so far the number of cases of covid-19 in Indonesia around 1,758,898 were confirmed, 88,439 were in the treatment process, and about 1,621,572 were declared cured and about 48,887 were declared dead (A. Joharudin, 2020: 44-53). From the data above, it is clear that until now the situation of Indonesia has not actually improved, and this is very worrying because so many rules in terms of national security regarding the current conditions which if in terms of humanity, it can be said to be very contradictory.

In practice, almost all countries have begun to enact policies on health security; starting from Isolation, quarantine, and social restrictions in an effort to prevent large-scale transmission of the virus, such policies ultimately

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greatly affect the economic system in the state. The health crisis caused by Covid-19 has brought the world into economic recession (Thorik, S. H.,2020:115-120). The world economy is bearing the burden of the economic slowdown as an impact of Covid-19 (NR.Yunus,2020:227-238). From the statement, it can be said that the world is currently experiencing an economic crisis which begin with the destruction of defenses in the health system. Including developing countries, namely Indonesia. The crisis which has occurred in various countries are not only occur at this time but also this crisis had occurred in 1997/1998 (Asian economic crisis) and 2008 (global economic crisis).

Coronavirus is a large family of viruses that cause mild to moderate infections of the upper respiratory tract, such as flu. Many people are infected with the virus, at least once in their lives. However, some types of coronavirus can also cause more serious diseases, such as Middle East Respiratory Syndrome (MERS-CoV) (Eman Supriatna,2020:555-567), Severe Acute Respiratory Syndrome (SARS-CoV) and Pneumonia. This disease is an infectious disease caused by the recently discovered coronavirus. Most people who contract Covid- 19 will experience mild to moderate symptoms and will recover without special treatment (Mile Parwanto,2020:1-2).

Indonesian law plays an important role in various aspects of social and state life. One of them is in the field of health, health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to Pancasila and the 1945 Constitution of the Republic of Indonesia. In realizing the optimal level of health for everyone, which is part of welfare, legal support is needed for the implementation in the field of health. The right to optimal health will be stronger if its claim is justified by associating it with the right to life, the right to life is equivalent with the right to optimal health (Majda El-Muthtaj,2009);45).

The right to health can be found in national instruments in article 28H section (1) and article 34 section (3) of the amendments to the 1945 Constitution, article 9 of the constitution No. 39 of 1999 about Human Rights and article 12 of the constitution No. 11 of 2005 about Ratification of the Covenant on Economic, Social and Cultural Rights.

In article 9 Further regulated in the constitution No. 36 of 2009 about Health section (1) of the constitution about Health states that "everyone is obliged to participate in realizing, maintaining, and improving the health status of the community as high as possible". Section (2) emphasizes that "the obligation as referred to section (1) the implementation includes individual health, public health efforts, and health-oriented development."

Research Methods

The type of study was legal research of normative prescriptive, which according to Peter Mahmud Marzuki that a legal research aimed to study the purpose of law, values of justice, validity of the rule of law, legal concepts, and legal norms (Peter Mahmud Marzuki, 2010:22). The research according to Peter Mahmud Marzuki was conducted to produce arguments, theories, or new concepts as a prescription in solving the problems faced. The arguments here were made to give a prescriptive about whether true or not according to the law to the facts or legal events of the research results. Furthermore,

according to Peter Mahmud Marzuki, legal issues in the legal dogmatic space arose when; first, the parties to the litigants or those involved in the debate present different or even contradictory interpretations of the regulation text because of the ambiguity of the regulation itself; second, there was a legal vacuum; and third, there were different interpretation of the facts. Through academic research, it was expected that the results will be obtained to be applied for the purposes of legal practice. Judges as dispute breakers were highly recommended to refer to the results of legal research academically because the resulting decisions will be used as a study material as well.

The study in this dissertation was intended to conduct an assessment of the rules, law concepts, doctrines and norms related to the policy practice for handling COVID-19 from the perspective of economic and human rights. The method used in this study was a research on legal principles conducted on the rules of law, it was the benchmark for appropriate behavior. The study was conducted mainly on primary legal materials and secondary legal materials as long as the material contains the rules of law. Research on legal principles was a philosophical study, therefore legal principles was an ideal element of law. The study in this dissertation was intended to conduct an assessment of legal principles conducted on the rules of law in connection with every rule of law containing the rules of law where there were articles that only provide limitations as was commonly found in the chapter on general provisions of legislation.

Discussion and Results

State Responsibility In The Welfare Of People

The welfare of people is the most important thing for every state, because if the state has not been able to prosper its people, then the state can not be said to be independent and advanced. Basically a state is formed a state other than territory, sovereign government and recognition of other countries, namely people or residents. And a country has not been said to be successful if the people or residents do not get their rights. The state responsibility to its people must be carried out because the people play an important role in the growth of a country. Similarly, the welfare of people has been formulated in Pancasila, in the 5th principle that social justice for all Indonesian people, it is an important point in the sustainability of the country. A right is an authority to accept or do something that should be accepted or done. Rights and obligations are inseparable, going into opposition because rights and obligations are often unbalanced. In the 1945 Constitution on article 28 states that the right of citizens to form associations, assemble, express opinion by oral or written, and so on, the conditions will be regulated by law. Not only that, the rights and responsibilities of the state to its people are also one of them in the economic field, and the right to a decent livelihood itself. So, if there is a public interest in the economic field is not fulfilled then it is the responsibility of the state to help them. Talking about responsibility does not mean that everything must be the state which bears it because whenever we demand the fulfillment of responsibilities, rights and obligations, the people also have the same thing for their country. But what is happening today, the country is in a bad condition, because the whole world is also getting the impact of the current condition. That is the emergence of a

new virus in this era of globalization which is very shocking to the world community, this virus is known as Covid-19. The virus came from China and now it is spreading throughout the world. This impact eventually accompanied Indonesia in the case of the economic crisis, which greatly harmed the nation's economic growth. Thus, many experts said that it is not only health which has an impact but all sectors of life, resulting in the decrease of human rights today.

As an agency (tool) of the community, it means that the State has the responsibility to maintain order, security and comfort in people's lives. The state is responsible for resolving conflicts when conflicts occur in society. Here it is stated that the State has the responsibility to maintain order, security and comfort in people's lives, it means that the State's responsibility is to achieve the welfare of the people. These goals are the same as the goals of the Welfare State (Miriam Budiardjo, 1986:38).

The state is the first and main actor responsible for achieving the promise of prosperity to the people (Mahatma Gandhi, 2005:12). Based on the responsibilities of the Welfare State and the democratic State, the welfare of the people is the main goal (Darmawan T, 2006:23). Responsibility is a condition of having to bear, bear responsibility, bear all things, or give responsibility and bear the consequences of that responsibility. Responsibility always revolves around the awareness to do, the willingness to do and the ability to do something (Supartono, 2005:145).

The Economy In Current Legal View

The Economic, Social, and Cultural Rights contained in ICESCR are rights that have economic, social, or cultural nature, where those rights are related to the realization of basic human needs and include subsistence rights or basic rights. Thus, the International Covenant on Economic, Social, and Cultural Rights can be seen here as well as the right to health that becomes a unity of economic rights.

The right to health is a fundamental human right which is seen from the perspective of human dignity, the State must ensure that all people will be treated equally and respectfully by those involved in health care and protection. Meanwhile, the fulfillment of economic rights is also an effort to fulfill human dignity itself, because without the ability in the economic field, human beings will not be able to defend life and compete equally with other human beings.

The Relationship Of The Economic Crisis With Human Rights

Human rights ideas and norms are the result of an evolution of thought and efforts to create a more honorable and dignified life and world system. 18 human rights are a set of rights inherent in the nature of human existence as a creature of God Almighty and is His gift that must be respected, upheld and protected by the state, law, government, and everyone for the honor and protection of human dignity.

It shows that how important human rights are to human life and civilization. It must be understood that every form and model of rights continue to develop evolutionarily as a form of creation of human civilization itself. One of the evolutions of modern human rights is the birth of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in

1966 which has been ratified by Indonesia in the constitution No. 11 of 2005 on the ratification of ICESCR (International Covenant on Economic, Social, and Cultural Rights).

The right to health is fundamental in human rights which is seen from the perspective of human dignity, the State must ensure that all people will be treated equally and respectfully by those involved in health care and protection (Bahder Nasution Johan, 2017:33). Meanwhile, the fulfillment of economic rights is also an effort to fulfill human dignity, because without the ability in the economic field, human beings will not be able to defend life and compete equally with other human beings. From those, it can be seen that efforts to fulfill the right to health and the right to the economy is a unity that is the responsibility of the state and society simultaneously. Thus, the health policy to overcome Covid-19 is a form of fulfilling human rights in the field of health. Likewise, economic policy during Covid19 is actually a form of fulfilling human rights as well. Hence, the conflict between economics versus human rights is a misleading dichotomy. Why is that? This is because human rights have the principle of indivisibility, interdependent, interrelated and inalienable (Silpa Hnoatubun, 2020:146-153).

Examining more specifically, the economic crisis cannot be separated from the issue of human rights, because the magnitude of the economic impact can also affect the pace of the course of a human nature. The spread of Covid-19 has greatly affected all aspects of life. Health reasons due to the Covid-19 pandemic finally made the decision to restrict the movement of people in the form of social restrictions or quarantine, as is only natural, related to the preventing a wider spread. Therefore, when the social restrictions and quarantine policies are taken, the state must provide guarantees for every citizen to continue to fulfill their basic rights, especially the right to be free from hunger.

In the regulation of constitution No. 6 of 2018 on Health Quarantine which gives responsibility to the Government to meet basic living needs for people who are in home quarantine, regional quarantine, and hospital quarantine is a policy that is said to be in accordance with fulfilling the principles of human rights. Because it is impossible to quarantine for the sake of health protection, but other basic rights are not fulfilled. Nevertheless, the regulation in constitution No. 6 of 2018, it seems that it is still based on the assumption of public health emergency conditions are local/regional, not up to national or even international such as Covid-19. Therefore, the fulfillment of responsibility for basic needs for everyone at the time of quarantine policy is still within an affordable corridor and can be implemented by the Government (Yuliana:2020,187-192).

The problems arising from the current Covid-19 pandemic make some people wonder, due to uncertainty about when will Covid-19 end (Aditya Susilo, 2020:76). Meanwhile, the resilience of the nation's economy is very limited, so it can be a big problem which is not only for the poor, but also for big employers, because PSBB policy is quite limited, so there are many large-scale terminations of employment (PHK). And in 2021, PSBB policy is still applied in each region which there has not achieved enlightenment. The state has suffered a lot of losses, especially in 2021 it was declared that Covid-19 had mutated and brought its latest virus which more deadly. So many victims have occurred, how many unemployment caused by large-scale

terminations of employment (PHK) (A.H.Efendi, 2020:39-49).

Then, when referring to Article 8 of the Health Quarantine Law, the central and regional governments are still responsible for ensuring that all lines of community life needs are met during the implementation of PSBB, especially medical needs and food needs. Government responsibilities are also contained in the Health Quarantine Act. In terms of handling the COVID-19 pandemic, Article 4 of the Health Quarantine Law has given the responsibility of both the central government and local governments to protect public health from diseases and/or health risk factors for everyone who is feared to cause a public health emergency which is carried out through health quarantine. Furthermore, Article 6 of the Health Quarantine Law also provides responsibility for the central government and local governments for the readiness of all necessary resources during the implementation of health quarantine. Therefore, everyone has the right to take responsibility from the government during the COVID-19 pandemic.

In essence, the responsibility of the state must remain loyal to the community both in normal and abnormal conditions, as is the case in the COVID-19 pandemic. This responsibility is prioritized on community lines affected by the COVID-19 pandemic and government policies in handling COVID-19. If viewed from the perspective of PSBB considerations, the central and regional governments should continue to carry out massive socialization in order to improve aspects of community discipline in complying with existing regulatory signs. The central and local governments must as soon as possible identify areas and subjects that have the potential to contract COVID-19. Then, strict action is needed by the state apparatus against parties who violate the provisions of existing regulations. Furthermore, it is necessary to optimize the COVID-19 Task Force from the lowest level (RT/RW) to the highest level.

Paragraph IV of the 1945 Constitution of the Republic of Indonesia states that the aim of the state is to protect the entire Indonesian nation and the entire homeland of Indonesia. 'Protecting' at this time can be concreted as the implementation of state responsibility to protect the public from the COVID-19 pandemic. This responsibility applies to all people both within the country and abroad. The responsibility of the state is also contained in Article 28 H of the 1945 Constitution of the Republic of Indonesia, which states that the state is obliged to fulfill health services (Article 28 H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia), and is obliged to fulfill social security for all citizens. society (Article 28 H Paragraph (3) of the 1945 Constitution of the Republic of Indonesia). The state must be responsible for providing adequate health service facilities in handling COVID-19 (Article 34 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia). Therefore, the implementation of the PSBB policy must pay attention to the fulfillment of social security and health services for the community. Furthermore, from a human rights perspective, everyone has the right to enjoy the highest attainable standard of physical and mental health during the COVID-19 pandemic. Countries should take primary responsibility for preventing, treating and controlling the COVID-19 pandemic.

The aspect of government responsibility can also be seen from the aspect of international law. The draft Articles on the Responsibility of State

for Internationally Wrongful Acts from the International Law Commission states that there are two criteria for the meaning of the phrase "Internationally Wrongful Acts" (Distefano, 2019: 701), namely that the act must be linked to the state based on international law and constitute a violation of international obligations carried out by a country. So, when viewed in international law, the wrong actions that have been carried out by the government must be accompanied by responsibility. Such wrong actions can be in the form of intentional acts or negligence.

The parameter of the "Internationally Wrongful Acts" is that no special mental condition is required in connection with the violation of the main obligations of the state, only the most important state actions are measured by the International Law Commission regardless of any intention (Suthar et al., 2018). The establishment of an emergency status in a country can make the government override the rights and obligations that apply under normal conditions (Gostin & Hodge, 2020: 1331).

The state's responsibility can be said to be right if the injury is caused and is deemed to have originated from an international wrongdoing by a country (Broberg, 2020). In determining the 'right' or 'wrong' of a state action, it is necessary to identify a series of omissions or wrongful actions committed by a country whether it has become a substantial factor causing losses during the COVID-19 pandemic or not. Thus, during the COVID-19 pandemic, an action from the government can be said to be "Internationally Wrongful Acts" when the government's actions actually result in exacerbate the COVID-19 pandemic. The international legal framework provides obligations for states that violate international law to make full reparation for losses caused by wrongful acts internationally. The government must take legal action in accordance with the most specific international legal rules in regulating infectious diseases and public health, namely the International Health Regulations 2005.

A country's respect for the 2005 International Health Regulations is essentially aimed at preventing, protecting, controlling and providing a public health response to the spread of the COVID-19 pandemic. When viewed from Article 16 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 as ratified by Indonesia with Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights, the Indonesian government has responsibility to do everything necessary to pursue the prevention, treatment and control of the COVID-19 pandemic. As a non-natural disaster, the state's responsibility for the COVID-19 pandemic is contained in Article 6 of the UUPB, namely being responsible for protecting the community from the impact of disasters, being responsible for guaranteeing the fulfillment of the rights of communities and refugees affected by disasters fairly and in accordance with minimum service standards, responsible for the recovery of conditions from the impact of disasters.

Local governments also have a responsibility in handling COVID-19. Based on Article 8 of the UUPB, during the COVID-19 pandemic the government must provide guarantees for the fulfillment of every person and refugee who has been affected by the COVID-19 pandemic in accordance with minimum service standards. Furthermore, local governments also provide community protection for the impacts caused by COVID-19. The government

is also responsible for reducing COVID-19 risk and integrating COVID-19 risk reduction with development programs. Then, in the economic aspect, the government is also responsible for allocating the handling and handling of COVID-19 in the available APBD. The government should have imposed a regional quarantine as a follow-up to the public health emergency status. In fact, Article 56 of the Health Quarantine Law gives responsibility to the government for the necessities of life for people and food for livestock during the period of regional quarantine. Of course, this is different from Article 4 PP PSBB. By not giving the government the obligation to give responsibility, the current government policy shows that the government is 'half-hearted' in ensuring the basic needs of the population. The government only prioritizes aspects of good faith, without the obligation to meet the primary needs of the community. Actually, regional quarantine can be carried out by the government if the government is careful in managing aspects of financial planning.

The central government and local governments can refocus and reallocate the budget. This is done to cut the discourse on spending by various institutions at the central and regional levels that are not a priority during the COVID-19 pandemic, so that they can be allocated to handling COVID-19. The PSBB policy reflects that the current government's main priority is the public health aspect. However, other aspects of life also need to be considered, considering that aspects of human life are related to one another. For this reason, the central government and regional governments are expected to 'embrace' relevant stakeholders who are also affected by the COVID-19 pandemic. This can be done by the government by buying farmers' crops, collaborating with Micro, Small and Medium Units (UMKM) to make personal protective equipment independently, and so on. This reflection can reflect that the state is really present in society. However, seeing the problems that have occurred, the government should stipulate a health emergency status with the option of a lockdown (regional quarantine) option. This is because the PSBB option seems to give the government a 'grey' position, because the government is not obliged to bear all lines of people's lives, especially the primary needs of the community.

On the other hand, the PSBB option also 'releases' the government's obligation to bear all the impacts that occur if a health emergency is imposed with the option of a lockdown (regional quarantine) option. However, the state's responsibility related to the protection of the principal rights of human beings should still be carried out. This must be considered considering that the responsibility of the state is a constitutional right of every citizen which has been stated in the 1945 Constitution of the Republic of Indonesia. Then, how to re-enforce the state's responsibilities in times of emergency or during a pandemic in the future?

The solution is that an Umbrella Act is needed regarding the determination of the emergency period. This is due to the existence of Law/Prp/No. 23 of 1959 is not relevant to these conditions. Moreover, the presence of the Constitutional Court Decision No. 138/PUU-VII/2009 gives a new color in terms of the constitutional law of national emergency, namely 'forced urgency' has been included in the category of legal emergency (Disantara & Prasetio, 2020a). If you look at the phenomenon of the COVID-19 pandemic, it can still be seen that many people (who feel the extraordinary

impact of the COVID-19 pandemic) have not received protection. Therefore, the presence of the Umbrella Act is very important, considering the need for regulations that can represent all the aspirations of the community. On the other hand, the umbrella act is a form of the government's moral responsibility to provide legal protection to the community. This Umbrella Act will become formal legitimacy in handling a pandemic or outbreak if it occurs again in the future.

On the other hand, various regulations issued during the COVID-19 pandemic is only limited to trying to fulfill the constitutional aspects that have been stated in the formulation of Articles 12 and 22 of the 1945 Constitution of the Republic of Indonesia. However, the phenomenon that occurs is disharmony between one legislation and another. Not only emphasizing the rights and obligations of the government in an emergency, the umbrella act will later become a guideline and orientation for the laws and regulations under it, including the laws and regulations that have content related to umbrella acts. Furthermore, the existence of principles and principles in The umbrella act will be the 'estuary' for the laws and regulations under it as an empirical implementation. The fundamental legal framework in the umbrella act is expected to minimize disharmony between various related laws and regulations. On the other hand, the umbrella act is one of the strategic steps in the aspect of implementing regulations that are adapted to evolving conditions. The Umbrella act related to the legal emergency status is expected to be able to answer public doubts about the perceived legal uncertainty in the laws and regulations that have been issued by the government during an emergency, as is the case today.

The uncertainty is not only in terms of terminology in the norms of legislation, but the orientation or purpose of the formation of the umbrella act must be explained in expressive verbis. The general description of the umbrella act should be explained in detail to provide additional information. On the other hand, explaining holistically will minimize misinterpretation by readers and state officials. Therefore, the structure and quality of norms in the umbrella act must comprehensively accommodate all legal emergencies. When it comes to state responsibility, umbrella acts can provide a systematic standard for the form of state accountability in times of legal emergency. This responsibility must be interpreted essentially, so that the norm of government responsibility as a state administrator is not just black and white. Accountability is one form of crystallization of the protection of human rights during the COVID-19 pandemic. This is the basic principle of the state's demand to respect, protect, and fulfill the human rights of every person. During the COVID-19 pandemic, the state must be present by providing excellent service to the health aspect of the community. In fact, the state must prepare strategic steps to overcome potential crises on all fronts. The protection of the security of the public is also one of the mirrors of the state's responsibility. This is noteworthy considering the very open emergence of horizontal and vertical conflicts between communities.

Conclusion

The Covid-19 pandemic had caused crises and emergencies that belong to the welfare emergency. The nature of the Covid-19 emergency was not only for health, but also for the economy simultaneously as a result of not being passively discovered, when will the Covid-19 pandemic ended. The State responsibility in the welfare of the state today was clearly questionable, how the state sought to save its people. Therefore, for the whole community, please pay more attention to the health of yourself first, because the state was also risking its independence to improve the welfare of its people.

Suggestions

Based on the description of the discussion and the conclusion which had been submitted, the advice given was the need for certainty in health and economic policies due to Covid-19 which was encrusted with human rights, while still prioritizing health because of course the crisis faced was a health crisis. In order to implement the fulfillment of the right to health, including economic rights, it must be based on the principles of universality, equality and non-discrimination. In addition, it was also needed to monitor every policy that was often taken unilaterally which eventually made the public speculate.

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