

Suprema Lex Esto Principle and its Implementation

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Abstract: The *Suprema Lex Esto* principle is debated when applied as a rationale in the implementation of Government Regulation instead of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic, the discretion of handling COVID-19 and its impact using the basis of this principle raises a prohibition to make cases or crimes if problems arise. All state expenditures in the field of handling Covid 19 which function to protect the public cannot be said to be state losses. From this background, the problem arises How is the Implementation of the *Suprema Lex Esto* Principle during the COVID-19 emergency in Indonesia? This research has an object of law research, so this research is juridical research. Because the focus of the study is on the Application of the *Suprema Lex Esto* Principle during the Covid 19 Emergency, this includes juridical methods in a broad sense, so the approach method used is the empirical method.

Keywords: *Suprema Lex Esto*, Supreme Law, COVID-19.

INTRODUCTION

The *Suprema Lex Esto* principle is an adage first coined by the ancient Roman philosopher Marcus Tullius Cicero (106-43 BC) in his book "*De Legibus*". The adage means that the safety of the people is the highest law. In later developments, Cicero's principle turned out to develop in a direction that should not be and was widely misinterpreted, by placing the goal of people's safety without relying on laws and constitutions but rather relying on the character of the policies of those who have power. This led to the rise of dictatorial governments in the history of European countries in the past.

During the COVID-19 pandemic, the government called for this principle in taking rescue actions for people who were severely affected by COVID-19. The *Suprema Lex Esto* Principle is echoed in a series of prevention against the widespread impact of COVID-19 so that each government agency and state institution regulate how employees work and serve the community in a special and limited manner. The use of technology in carrying out services is prioritized to replace direct services which are usually the main thing.

Minister of Finance Sri Mulyani at the launch of the 2021-2022 Stranas Corruption Prevention Action in Jakarta on April 13, 2021, stated that the criminal act of corruption committed during the pandemic is a very extraordinary crime. Prevention of criminal acts of corruption is very necessary for all state institutions. The occurrence of criminal acts of corruption during the COVID-19 emergency in Indonesia seems to illustrate

that so far educational measures, prevention, and prosecution of the emergence of criminal acts of corruption have not made a mark on the perpetrators. Integralism was not built at all during the period of concern, on the contrary, the benefits involving the perpetrators continued to be built.

Apart from the emergence of shortcomings and advantages in the application of the *Suprema Lex Esto* principle, the application of this principle in the prevention and protection of society during the COVID-19 period in Indonesia is considered quite good by the world. Slowly but surely for about two years, the government implemented prudence to protect the community in 2023 the conditions were lifted. And life has returned to normal. From the description above, the problem arises: how is the *Suprema Lex Esto* principle implemented during COVID-19 in Indonesia?

RESEARCH METHODS

This research uses an empirical juridical approach, with analytical descriptive research specifications. Because this research seeks to describe the Application of the *Suprema Lex Esto* Principle in the COVID-19 Emergency, this includes juridical methods in a broad sense, so the approach method used is the empirical method. then this research uses the Research and Development (R&D) analysis method.

DISCUSSION

At the beginning of 2019 until 2022 the whole world experienced an extraordinary phenomenon in the form of a very dangerous and horrifying virus attack, not a single country was able to stem the breeding of this virus so that it did not enter the territory of one country. This virus became known as Covid 19. Corona virus or

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dineal with the name Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) is a new virus that infects the respiratory system of infected people, this virus is known as Covis 19. The extraordinary attack of this virus has an impact on the birth of new habits that cover all humanity in the world, in Indonesia it has completely changed the forms of habits that occur in daily life habits, as well as habits in the world of education and the world of justice.

In the WHO report on August 30, 2020, there were 24,854,140 confirmed cases of Covid 19 worldwide. Indonesia occupies the 19th largest position, with a total of 1,919,547 cases, 1,751,234 successfully cured and 53,166 deaths. These numbers continue to increase if the spread of the Covid-19 virus is still on earth.

The dangers arising from this virus are felt by mankind in almost all parts of the world. The health impacts that arise are commonly referred to as clinical manifestations. The emergence of clinical manifestations of the impact of covid-19 and government policy strategies that consider this virus outbreak to be a national epidemic outbreak.

The conditions faced by Indonesia in dealing with this national pandemic are carried out very carefully and seriously, considering the vast territory of Indonesia which has areas spread from Sabang to Marauke with conditions separated by many seas, mountains, and areas that often cause their own difficulties to be reached.

The strategies pursued by the government in Indonesia are divided into three in the health circle, namely in the form of promotive, preventive, and curative to deal with the spread of the COVID-19 virus. In addition, in the economic field, the government also enforces a social safety net to help citizens get through the economic crisis.

In the Social Handling Network Program, the government issued Presidential Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic. the government actually contains more financial policy arrangements between the center and the regions, financial system stability, tax policy, national economic recovery and so on. While the Social Safety Net is only mentioned a little and only in the form of an article that states that village funds can be used for Direct Cash Assistance (BLT) to the poor at

the village level and acceleration programs for handling Covid-19.

Apart from these provisions, it turns out that there are provisions of the Article that raise deep questions in the community. The provision is in the provisions of Article 27 Government Regulation in Lieu of Law Number 1 of 2020 which reads:

- 1) Costs that have been 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 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 of saving the economy from crisis and do not constitute state losses.
- 2) KSSK members, KSSK Secretary, KSSK secretariat members, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, and the Deposit Insurance Corporation, and other officials, related to the implementation of this Government Regulation in Lieu of Law, cannot be prosecuted either civilly or criminally if in carrying out their duties are based on good faith and in accordance with the provisions of laws and regulations.
- 3) All actions including decisions taken under this Government Regulation in lieu of Law are not the object of a lawsuit that can be filed with the state administrative court.

In the provisions of Paragraph (1), it is stated that all expenditures made do not constitute state losses. The norm contained in Article 1 paragraph 22 of Law No.1 Year 2004 implies that not all conditions of reduced money, securities, and state property are declared as state losses. The condition must be the result of an illegal act to be categorized as a state loss.

The provisions of Article 27 paragraph (1) seem to want to legitimize that any costs incurred by the government / KSSK are not state losses, then what if the costs incurred by the Government and / or KSSK member institutions in the context of implementing the policy cause a real loss as a result of illegal acts, of course the emphasis contained in the article gives the widest possible authority in incurring costs in carrying out the policy as intended. And of course it raises the

possibility of misappropriation in its implementation, which results in state losses.

State loss is one of the elements of the crime of corruption, it must be the implication of unlawful acts that benefit oneself or another person or a corporation or the state loss is due to unlawful abuse of authority with the aim of benefiting oneself or another person or a corporation. By interpreting that all costs incurred by the Government / KSSK are not state losses, it will eliminate one of the important elements in the crime of corruption, as regulated in Article 2 paragraph (1) of the Anti-Corruption Law which reads: "*Every person who unlawfully commits an act of enriching himself or herself or another person or a corporation that may harm state finances or the state economy...*". However, the emphasis contained in Article 27 paragraph (1) seems to protect the Government /KSSK if there is an abuse of authority in carrying out its duties. The government seems to want to deny that in running the wheels of government Indonesia has three axes of power namely the executive, legislative, and judiciary by checking and balancing each other.

The issuance of Government Regulation in Lieu of Law is due to urgent matters that require concrete action so that regulations are issued that are able to accommodate every government policy, but do not deny other powers, there needs to be a clear reference content in the formation of Government Regulation in Lieu of Law.

The granting of immunity in Article 27 paragraph (2) is the same as the granting of immunity in Article 50 of the Criminal Code which reads: "*that a person who performs an act to implement the provisions of the law, shall not be punished.*"

The granting of immunity is not absolute, if it is based on good faith and applicable laws and regulations, it cannot be prosecuted, but it does not legitimize the position of immunity granted, if it is proven to commit a criminal offense in the implementation of the policy, the prosecution can be carried out against the act.

According to the dualistic school, it is determined that the requirements for criminal imposition include unlawful acts (*actus reus*) and the element of fault of the maker (*mens rea*), if the *actus reus* has been fulfilled then prosecution can be carried out, the public prosecutor can proceed to the trial stage, namely the evidentiary process, related to *mens rea* will be proven

at trial as a basis for imposing a verdict by the judge. This provision is an embodiment of the principle of no punishment without fault (*geenstrafzonderschuld*). The granting of immunity is aimed at the legal protection of government officials in exercising their authority but does not necessarily make government officials immune to positive law.

During the COVID-19 period, it turned out that several cases were found that caused huge losses, one of which is currently of concern to the KPK is corruption that occurred at the Ministry of Social Affairs in the form of alleged corruption in the distribution of social assistance rice in 2020. Alleged corruption is not only in this case, but there are also several others that have not yet entered the investigation.

The most prominent case is the arrest of Maritime Affairs and Fisheries Minister Edhy Prabowo through a sting operation on November 25, 2020. Edhy was arrested at Soekarno-Hatta Airport when he had just returned from a working visit to the United States. Not only Edhy, dozens of other people were also caught in the operation in different locations. After that, the KPK named a total of seven suspects in the alleged lobster seed export bribery case. Sometime after the arrest, on December 5, 2020, Minister of Social Affairs Juliari P. Batubara was also caught in a corruption case. In fact, the case that ensnared Juliari was directly related to the pandemic, namely the alleged bribery of social assistance for handling the COVID-19 pandemic for the Jabodetabek area in 2020. The naming of Juliari as a suspect was the aftermath of a sting operation held by the KPK.

Indonesian Corruption Watch (ICW) in its 2020 Year-End note, provides notes on the Corruption that occurred during the handling of Covid 19 in the early years of covid 19, Transparency of information on handling Covid-19 is crucial. However, this is not reflected in the procurement of goods and services for handling Covid-19, both in terms of budget, health care, and distribution of social assistance. In terms of the budget, the information presented by the government on the website portal of the Indonesian Ministry of Finance is not detailed. In ICW's monitoring of the procurement of goods and services for the handling of Covid-19 health, the planning information entered on the Ministry of Health's website is incomplete. The names of the procurement packages are too general, and the package specifications are unclear, making it difficult to indicate the form of procurement in question. The procurement method

chosen was not in accordance with the requirements. In the distribution of procured goods both for health care and to reduce economic impact, data is a major problem. Data on the needs according to the situation in the field and data on the recipients of the distribution of goods have been repeated reports received by ICW, even resulting in death. In the distribution of types and quantities of health material equipment such as PPE, masks, hazmat sets, PCR machines, a very unequal gap was found between needs and realization. As a result, at the beginning of the pandemic, there were 61 health workers who died due to lack of health material equipment. For the distribution of social assistance, there were problems with inaccurate targeting of social assistance recipients, cuts / reductions / extortion, and social assistance not according to needs so that some social assistance was given to other people and even sold. The invalidity and outdated Integrated Social Welfare Data as the basis for providing social assistance is a condition that must be addressed immediately. From the results of ICW monitoring, there were 239 citizen complaints about the distribution of social assistance in 13 regions in Indonesia.

Circular Letter of the Government Goods / Services Procurement Policy Agency Number 3 of 2020, regulates the explanation of the implementation of the procurement of goods and services in the context of handling Covid-19. In it, there are two alternative requirements that must be met by medical equipment provider companies, namely, having provided similar goods and services or being registered in an electronic catalog. ICW apparently noted that in this case there were allegations of unlawful acts committed by the National Disaster Management Agency, especially those related to the provisions, or the appointment of medical equipment, the alleged loss that arose was 169 billion Rupiah.

The existence of Government Regulation in Lieu of Law Number 1 of 2020 with its article 27, which is essentially based on the *Suprema Lex Esto* principle, and prioritizes the interests of the people as the number one thing, apparently cannot completely negate the interests of law enforcement. The interests of the people are the main consideration, however, when the implementation of these provisions is carried out with the intention of benefiting oneself or one's group, the law will still carry out its duties.

The values of integrity are a very important part to be attached to everyone, so that when carrying out this task it will become a demand and become a path that

will lead humans to walk correctly and minimize the emergence of the desire to be corrupt. Education and cultivation of integrity values must be instilled at an early age and continued throughout life. Thus, the values of anti-corruption behavior become part of every human being at the time of stepping.

The application of the *Suprema Lex Esto* principle that underlies the government in handling Covid 19 in Indonesia is considered inappropriate by Jimly Asshiddiqie. The principle of '*Salus Populi Suprema Lex Esto*' or '*Safety of the People is the Supreme Law*' can only be used when the government declares a state of emergency. Meanwhile, currently, the government is not implementing the emergency status during handling the pandemic. This principle must be read based on the application of Article 12 of the 1945 Constitution. This article regulates the provisions regarding states of emergency, which reads: "The President declares a state of danger. The conditions and consequences of a state of danger are stipulated by law,"

Outside of this provision, the government is prohibited from violating the 1945 Constitution, currently, several laws that are the basis for the Government to handle Covid-19, none of which provide the status of an emergency as permitted by Article 12 of the 1945 Constitution, thus the government has no right to violate the Constitution under the pretext of handling a pandemic.

CONCLUSION

The implementation of the *Suprema Lex Esto* principle during COVID-19 in Indonesia was not fully implemented as expected by the Government. The high expectations that the Government wants the interests of the people affected by COVID-19 cannot directly eliminate the emergence of an awareness of policy managers to be able to have integrity. Anti-corruption behavior which should be the main basis for carrying out the task of handling COVID-19 is suspected to still not be implemented properly.

RECOMMENDATION

State administrators or policyholders should really be able to understand all actions taken, actions taken must have references based on propriety, objectivity, and transparency, so that they can be accounted for.

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