

Constitutional Court and Legal Certainty Covid-19 Pandemic Status

Ery Satria Pamungkas
{alit.astiari@gmail.com}

Substitute Registrar at the Constitutional Court of the Republic of Indonesia

Abstract. Since WHO announced that the Covid-19 virus had entered a pandemic period, the international community has made various policy adjustments to overcome this. The impact of the policy to stop the infection from spreading is felt all over the world, including in Indonesia. This underlies Indonesia to ratify In respect of Law No. 1 of 2020 Governing State Monetary Policies and Banking Device for Managing the Corona Virus Disease (COVID-19) Epidemic and Threats to the Economic Affairs and Welfare, the court has published a rule. The System of Finance Becomes a Law (Perppu 1/2020), which was subsequently enacted as Law Number 2 of 2020. This Law then became the basis for changes to various economy and government administration policies. Some citizens then submitted a request to the Judge for a reassessment of the statute in light of the constitution Act. From several requests for judicial review of the Law, in Decision Number 37/PUU-XVIII/2020, it was found how the Judiciary's attitude towards the constitutionality of Law 2/2020 was found. This paper discusses, among others, what subjects were submitted by the applicant in testing the Law to the High Court and analyses the Court's legal considerations before making a decision on the legal challenge and how the implications of this decision were in ensuring legal certainty for policies implemented during the Covid pandemic. -19.

Keywords: COVID-19; Judicial Review; Judicial Review; Constitutional Court

1 Introduction

In early 2020, outbreaks of infectious diseases caused by the Corona Virus began to infect some people in the world. The characteristics of the virus include that the virus is relatively new, so humans do not yet have antibodies to deal with it, and drugs that can cure diseases caused by this virus cannot be ascertained quickly. With these conditions, the COVID-19 disease spreads is increasing due to the transmission of the virus through the respiratory route. The high level of fatalism exacerbates this. With a high rate of spread and insufficient antibodies, COVID-19 later developed into one of the crucial factors in changing activities in the world due to the need to quarantine and limit physical interactions between humans. COVID-19 was designated an Outbreak by the World Health Organization (WHO) on March 11, 2020. The latest data reported by WHO on March 16, 2020, the number of cases globally there were 168,878 confirmed cases; within one year, these cases grew to 3,318,431 confirmed

cases, with 62,586 issues causing death.[1] With the determination of COVID-19 as a Pandemic, the world community is faced with conditions that require radical changes in carrying out economic and government activities. Various restrictions and adjustments made to keep the growth under check of the COVID-19 virus impact the financial situation both globally and nationally.

COVID19 was designated a state catastrophe by the Indonesian government on April 13, 2020, with Presidential Directive (Keppres) Number 12 of 2020 about the Recognition of Semi Catastrophes as a Major Crisis for the Growth of CORONA VIRUS DISEASE 2019 (COVID-19). [2] This then became the basis for issuing various regulations that limit the activities of residents so that the spread of the virus can be controlled. These multiple restrictions certainly impact the residents' economy, especially in sectors that rely on trade activities. Regarding the the economic consequences of the epidemic, it is no longer a secret; various studies were completed regarding the effects of the economic impact of the Covid-19 epidemic, including Launching from the Benefits Journal 5 (2), the economic consequences of the contagion can lead to Client demand in the economy is poor which ultimately makes the market go down. negative direction.[3] Research published in the 2020 National Symposium on State Finance proceedings entitled " The Potential Cost of the Covid-19 Pandemic in Targeted States " has also illustrated that the new governance implemented to deal with the pandemic has had an impact on world economic growth. [4]

Without certainty about when the spread of Covid-19 will subside, the government then makes regulatory adjustments to overcome its impact on the national economy and the public welfare situation. The published State Regulation rather than Law Number 1 of 2020 about Credit Guarantee Strategy and Economic System Performance for Managing the 2019 Corona Virus Disease (COVID-19) Influenza and Threats to the Global Markets and Monetary Setup on March 31, 2020. The potential ramifications of COVID-19 now have an effect on, among so many other things, a setback in employment generation, a reduction in tax receipts, and an enhance in government budgets and funding, so that different Governmental actions are required can save wellbeing and the global economy, with a greater emphasis on health expenditures, social protection, and economic expansion, along with, since noted in the Surprised category. As a result, the state and the Capital Markets Sustainability Authority must work together to take proactive measures to ensure financial market stability [5]. The PERPPU also intends to offer a strong legal foundation for the governments to implement succinct initiatives. The DPR subsequently authorized and validated the State “, which became Law Number 2 of 2020 about Official Restrictions of Legal Number 1 of 2020 respecting National Budget Strategy and Monetary System Performance for Administering the 2019 Corona Virus Disease Pandemic. (COVID-19) or to be a law (hereafter referred to as Law 2/2020) in the face of challenges to the economic and banking system sustainability.

The enactment of Law 2/2020 then triggered some reactions from various levels of society. One of the benchmarks for how the public reacts to the issuance of a Law is a request for a The act is up for strict scrutiny. The Indonesian legal system recognizes a system of oversight of statutes, in which a rule can be submitted for consideration by the 1945 Convention of the Republic of Indonesia (UUD 1945). Based on Article 24C paragraph (1) of the 1945 Constitution, the examination is carried out by a Judiciary that has the authority to adjudicate at the first and final level regarding the judicial review of the 1945 Constitution.[6] This is also known as a judicial review mechanism of the Law. The Supreme Court, through this authority, can pass a decision stating that a norm in a statute is contrary to the 1945 Constitution so that it is no longer valid. This mechanism is a manifestation of the checks and balances mechanism. Laws issued by the legislature and the executive can be tested by institutions that hold judicial

or judicial power. This mechanism is also implemented based on the hierarchical principle of statutory regulations as popularized by Hans Kelsen through the *stufenbautheorie*. A statutory rule must not conflict with the Law above. In short, the laws formed and passed by the legislature must not conflict with the 1945 Constitution.

After enacting Law 2/2020, some citizens submitted the Law for review to the Judiciary. Based on data from the official website of the Indonesian Judiciary, there have been nine requests for judicial review of Law 2/2020, which the Court has received since the Law was passed. Among the nine petitions, two petitions were later withdrawn by the petitioners, and seven were registered as cases of judicial review and examined by the Judiciary in the trial of judicial review of the Law, which was open to the public and took place from June 2020, until it was decided in October 2021. [7] In these cases, citizens who become Petitioners vary; among them are Non-Governmental Organizations (NGOs), individual citizens who work as activists, advocates, and academics who have a concern for law enforcement in Indonesia. Among these cases, there is a common thread for a reason for the request for testing, which in essence questions the granting of immunity and impunity for budget management during the Covid-19 Pandemic and the existence of regulations that allow changes to the State Revenue and Expenditure Budget through a particular route. According to the Petitioners, this can create legal uncertainty and pave the way for potential criminal acts of corruption that cannot be punished. Some cases even questioned the process of drafting Law 2/2020 and submitted a formal review of the Law.

The Judiciary then decided on these cases and pronounced them on October 28, 2021. The decisions were Decisions Number 37/PUU-XVIII/2020, 42/PUU-XVIII/2020, 43/PUU-XVIII/2020, 45/PUU -XVIII/2020, 47/PUU-XVIII/2020, 49/PUU-XVIII/2020, and decision number 75/PUU-XVIII/2020. Of all these Decisions, most of them refer to the Decision Order that was pronounced first, namely Decision Number 37/PUU-XVIII/2020, where the Judiciary, in the decision, stated in essence that there were constitutional issues in Article 27 paragraph (1), Article 27 paragraph (3) and Article 29 of the Attachment of Law 2/2020 because it can create the potential for legal uncertainty. With this background, it is necessary to review the Judiciary's Decision, especially regarding applying the principle of legal certainty. This is important because when the Judiciary pronounces the decision, the status of the COVID19 pandemic is still in effect so that it can be analyzed as to whether the basis for consideration of the Court in deciding the case for reviewing Law 2/2020 in these decisions is related to the application of the Judiciary regarding the principle of fair legal certainty as adopted by the 1945 Constitution. Therefore, the main problem in this research is how the Judiciary considers when deciding the issue of the constitutionality of Law 2/2020, especially in applying the principle of legal certainty. This research was conducted using a normative juridical methodology by analyzing premier legal materials, including Law 2/2020, accompanied by several related regulations and the Judiciary's Decision relating to the subject matter.

2 Research Methods

3 Results and Discussion

3.1 The Concept of Legal Examination in Indonesian Law

In principle, the constitution can be interpreted as the fundamental Law regulating the main points in running the state. According to CF Strong, the structure is " a bundle of fundamentals that govern the power of government, the rights of the governed (the people), and the

relationship between the two." [8] Thus, the constitution contains the principles of the relationship and limits of power between the administration and the individual opinions (to be governed). The constitution does not only contain the Rule of Law but also formulates. However, the judiciary also establishes or concludes legal principles, laws of the nation, and policy guidelines, all of which are binding on the authorities. [9] Miriam Budiardjo also emphasized that " The legislation serves a unique purpose in that it is the expression or expression of the basis of law that is enforceable on all people and governmental entities." [10] The notion that stipulates and affirms the constitution as the fundamental principle or basic Law governing state governance is the root of constitutionalism. Constitutionalism wants certainty that the applicable Law must follow the principles espoused in its constitution.

In a concrete context, constitutionalism in Law in Indonesia is applied with the necessity for a statutory regulation not to conflict with the statutory rules above. This principle is based on the hierarchical understanding of legislation or *Stufenbautheorie*. In general, the *Stufenbau* theory (*stufenbautheorie*) initiated by Hans Kelsen likens that the justice system has a tiered and multi-layered nature. Maria Farida Indarti describes *Stufenbau's* Theory as a lower legal norm (norm) originating and based on the above legal norm (norm), and the higher legal norm (norm) must adhere to the most basic legal standards. This most basic legal norm is called the *Grundnorm/Basic Norm* by Hans Kelsen. The most basic legal model is in the form of a constitution. [11] Thus *Stufenbau's* theory is a theory that fully supports the notion of constitutionalism, wherein a legal system, the rule of Law, must not conflict with the constitution as the most fundamental legal norm. The 1945 Constitution also adapts this theory to the state administration system. It utilizes it in the application of a system of checks and balances. The holders of legislative and executive powers are supervised owing to the existence of a judicial body that can conduct judicial reviews of the products of issued laws. The embodiment of this system can be seen in the provisions of Article 24C paragraph (1) of the 1945 Constitution, which states:

"... The Lawful Government has the jurisdiction to hear a case both the first and final levels, with final say, to investigate laws that are in case of infringement, to resolve disagreements about the authority of state entities whose power is vested in them by the legislation, to decide on the dissolving of opposition parties, and to consider on exit polls disagreements. broad."

Based on these facts, the 1945 Constitution, as the written constitution of the Indonesian state, applies a judicial review mechanism to ensure conformity between the applicable laws and the 1945 Constitution as the fundamental law. Judicial review of the constitution is a judicial mechanism aimed at upholding the constitution and avoiding people' legal rights are being violated as a result of rules that are contrary to the 1945 Constitution. This authority is then further elaborated in Law Number 24 of 2003 concerning The Judiciary, which was last amended by Law Number 7 of 2020 concerning the Third Amendment of Law Number 24 of 2003 concerning the Judiciary (for this research, the Judiciary Law was written). [12] This Law is now the legal basis for the constitutional judicial procedure at the Judiciary, including the procedural Law for judicial review of the 1945 Constitution. Article 86 of the Judiciary Law also gives the Judiciary the authority to make more detailed rules regarding the guidelines for proceedings in the Judiciary. It does not conflict with the 1945 Constitution and the Judiciary Law as long as the rules are. This norm is applied in issuing many Judiciary Regulations and Regulations of the Chief Justice of the Judiciary. [13]

Article 56, paragraph (2), and paragraph (3) of the Judiciary Law state in essence that if the Judiciary grants the application for judicial review, the Judiciary may state firmly that the contents of the paragraph, article, and part of the Law are contrary to the 1945 Constitution and in the case of the formation of the Law in question does not meet the provisions for the

construction of Law based on the 1945 Constitution. Furthermore, Article 57 states that the Judiciary may declare a paragraph, article, and part of Law contrary to the 1946 Constitution so that it does not have binding legal force.[14] From this rule, it can be understood that the Judiciary's authority in conducting judicial review of the Law may have implications for the invalidation of certain norms in the Law and may even invalidate the validity of all standards in the Law. The purpose of reviewing laws and regulations is to correct, replace, or straighten the contents of the Act so that it does not conflict with the 1945 Constitution as a constitution or statutory rules under the Law so that it does not conflict with the Law of the Constitution so that these laws and regulations can provide legal certainty and legal protection as well as providing justice and benefits for the wider community. Therefore, the Judiciary is a constitutional choice for Indonesian citizens to question the constitutionality of a law to defend their constitutional rights. From the data on the official website of the Judiciary, it is found that since it was formed in 2003 until now, the Judiciary has decided as many as 1,942 cases of judicial review of the 1945 Constitution. [15]

3.2 The decision of the Constitutional Court regarding the constitutionality of Legal Certainty Law 2/2020

Since being ratified on May 18, 2020, regulation instead of law 1 of 2020 has become an annex to Law 2/2020. For this reason, it is necessary to understand that the substance of Law 2/2020 is contained in the Articles in the Attachment, not in the body of Law 2/2020, because Law 2/2020 is only a law that ratifies a government regulation in place of Law into the Law. - Law. Suppose you want to mention Article 1 of Perppu 1/2020, the mention in Article 1 of Attachment to Law 2/2020. Since it was ratified in the form of Perppu 1/2020, the Perppu, which is often referred to as the "regulation instead of law for Handling COVID-19," has drawn criticism from the public. In general, the criticism is aimed at norms that have provided unnecessary protection to government officials, namely Article 27 paragraph (3), which states that any decisions taken by government officials in the context of implementing this rule cannot be challenged in the Administrative Court. country [16]. When it was passed into Law 2/2020 by the DPR, some Indonesian citizens submitted this provision for review to the Judiciary.

In the case of judicial review of the Law to the Judiciary, Article 27 paragraph (3) Attachment to Law 2/2020 is not the only norm that is considered constitutionally problematic. Some of the Petitioners have also submitted a request for a formal review, namely a review of the constitutionality of the formation of Law 2/2020, which is considered not to meet the requirements for the construction of a law. The application for judicial review of Law 2/2020 was then submitted and registered as a Case for Judicial Review with Numbers 37/PUU-XVIII/2020, 42/PUU-XVIII/2020, 43/PUU-XVIII/2020, 45/PUU-XVIII/2020, 47/PUU-XVIII/2020, 49/PUU-XVIII/2020, and 75/PUU-XVIII/2020, which various groups submitted for different reasons. In this paper, data and information regarding the contents of the petitions of the Petitioners are obtained in full in the section "Sitting Case" of the Judiciary's decisions which can be downloaded on the official website of the Judiciary, including the responses of the President, DPR and experts heard in the trial. How the distribution of norms submitted to the Judiciary in these cases can be illustrated in the table below:

From the seven cases, it can be concluded that there is a common thread on constitutional issues which became the main reasons for the Petitioners to file for the constitutionality of Law 2/2020, namely:

1. In this case, the establishment of Law 2/2020, the Petitioners consider the ratification of Perppu 1/2020 to become a Law does not meet the requirements for the formation of Law.

This is partly because the approval process is deemed to have violated the provisions of the 1945 Constitution and the conditions of the Law concerning the formation of rules and regulations.

2. Freedom for the President to prepare APBN-P without involving the DPR and DPD.
3. Immunity and impunity for state officials in implementing policies and budget management.
4. Uncertainty over the validity period of the provisions in Law 2/2020.

From the reasons for the application, there is one case, namely case number 47/PUU-XVIII/2020, which Triono submitted, ST and 26 other Indonesian citizens based on different constitutionality issues, namely regarding the applicability of Article 72 paragraph (2). The Village Law, which was declared invalid with the existence of Law 2/2020, has the potential to create legal uncertainty in the management of Village funds. The connection between this application and other cases is that if Law 2/2020 is deemed invalid or canceled by the Judiciary's decision as a whole, the Petitioner's application for case 47/PUU-XVIII/2020 will also be fulfilled automatically. The Court then held a series of trials open to the public from June 2020 until a decision was made on October 28, 2021. In the judgment pronounced by the Judiciary at the problem on October 28, 2021, the Court decided on each of these cases as follows:

From the ruling, it can be said that the Judiciary has answered all the constitutional issues in question in Decision Number 37/PUU-XVIII/2020, which was pronounced first so that other decisions were decided to follow what was agreed by the Judiciary in Decision Amar Number 37/PUU-XVIII/2020. In Decisions Number 43/PUU-XVIII/2020, 45/PUU-XVIII/2020, 49/PUU-XVIII/2020, and 75/PUU-XVIII/2020, there is an order stating that it cannot accept the petition of the Petitioners. This is because since Decision Number 37/PUU-XVIII/2020 was pronounced, many Article norms, namely Article 27 and Article 29 of Attachment to Law 2/2020, have changed so that the Court considers the petition of the Petitioners to have lost the object and must be declared unacceptable. [17] Meanwhile, regarding Decision Number 42/PUU-XVIII/2020, the Judiciary stated that the Petitioners' petition could not be accepted because the Petitioners did not comply with the procedures for conducting online trials during the Covid-19 pandemic. [18]

Thus, the substance of the constitutional issue of the norms of Law 2/2020 is actually in the Legal Consideration of the Judiciary Decision Number 37/PUU-XVIII/2020, or it can be said that the Judiciary Decision is the "master decision" of the seven decisions of the case for reviewing Law 2/2020. In this series of decisions, the Judiciary considers that the article relating to the legal certainty of the status of the Covid-19 Pandemic is in Article 29 Attachment of Law 2/2020, for that, apart from discussing the opinion of the Court regarding the proper fulfillment of the formation of Law 2/2020, this paper will limit discussion of the idea of the Judiciary on legal considerations that granted the petition of the Petitioners to the constitutionality of Article 29 of Attachment to Law 2/2020. The main points of the Court's opinion regarding the constitutionality of the ratification of Law 2/2020 and the constitutionality of Article 29 of Law 2/2020 based on the decision are as follows:

Regarding the request for a formal review, in the Judiciary's Decision Number 37/PUU-XVIII/2020, the Court stated that Law 2/2020 is a law originating from the regulation instead of Law. Based on the provisions of Article 22D paragraph (1), paragraph (2), and paragraph (3) of the 1945 Constitution, from the aspect of proposing a bill, the DPD is only given legislative authority as regulated in Article 22D of the 1945 Constitution, which relates to regional autonomy, central relations and regions, formation and expansion and merging of parts, management of natural resources and other economic resources, as well as central and regional financial balance. Meanwhile, from the aspect of the discussion, the DPD has the authority to

participate in conversations on bills pertaining to full independence, central-regional connections, area establishment, progress, and merger, hydrocarbon and other financial strategic planning, and central-regional financial balance. Also, examine the DPR on the Government's Budget Draft Law and the Writ Petition on Taxes, Education, and Religion Writ Petition. Even though some of the substance of Law 2/2020 contains material directly related to state budget/financial policies, because the Law is derived from regulation instead of law Number 1/2020, the process of determining Perpu to become a law is constitutionally subject to the norms of Article 22 of the 1945 Constitution.[19]

The Judiciary in the Decision relates the formation of Law 2/2020 or the approval of Perppu 1/2020 into Law 2/2020 with the condition that matters of the urgency of coercion are as stipulated in Judiciary Decision Number 138/PUU-VII/2009, dated February 8, 2010, namely: a) An immediate ought to fix legal issues fastly predicated on the Gesture; b) The needed Legislation does not yet occur, actually results in a lawful vacuum or inadequacy of the existing Law; and c) the condition of a legal vacuum that cannot be overcome by making laws in the traditional procedure, which takes ages, while the immediate circumstances warrant surety to be cleared up. The Judiciary, in this case, considers that the establishment of regulation in place of law 1/2020 has met the requirements as specified in the Judiciary Decision.[20] As for the issue of formation, which is related to the physical presence of DPR members in the plenary meeting, the Judiciary believes as follows:

"...according to the Court, the meeting that was held virtually by the DPR and the President by utilizing current technological sophistication in making the required regulations is a necessity and a breakthrough to continue to present the state in people's lives, especially during a pandemic, what's more, during the Covid-19 pandemic, which has factually caused health, humanitarian crisis, and the need to immediately save the economy and finances with the people's safety-oriented because the Men's security is a crucial rule (*Salus Populi Suprema Lex Esto*). That is, responding to the Covid-19 pandemic and continuing to carry out its duties in drafting legislation, the DPR took action by stipulating DPR Regulation Number 1 of 2020 concerning Orders (DPR 2020 Regulations) which came into force on April 2, 2020, are part of the effort to foresee the disease's growth Covid-19."

With these considerations, the Judiciary believes that the Plenary Meeting of the ratification of Law 2/2020, which was held during the COVID19 pandemic situation, was reasonable to be carried out in part with the presence of not physically but online (online). The Judiciary is of the view that during the Covid-19 pandemic, which has been going on since early 2020, mobility, activities, events, be it. Hearings (RDP), seminars, limited discussions (Focus Group Discussion), and the net of public aspirations are minimal. Still, on the other hand, the legislative work by the people's representative institutions should not be hampered so that there will be no problem if the discussion meeting and ratification of Law 2/2020 are carried out in part by adjusting the pandemic situation. Relying on this analysis of legal ramifications, according to the Judiciary, the stipulation of regulation instead of law 1/2020 into Law 2/2020 follows the provisions of Article 22 of the 1945 Constitution, so that the argument for the formal review of the Petitioners is not legally grounded.

When viewed from the arguments of the Petitioners' petition for case 37/PUU-XVIII/2020, the norms proposed for material review are pretty numerous and, at first glance, cover many issues. Concerning this, then the Judiciary classifies the issues submitted, in which the constitutional issue of the petition for review is Article 1 paragraph (3), Article 2 paragraph (1) letter a, Article 2 paragraph (1) letter a number 1, Article 2 paragraph (1) letter e number 2, Article 2 paragraph (1) letter f, Article 2 paragraph (1) letter g, Article 3 paragraph (2), Article 4 paragraph (1) letter a, Article 4 paragraph (2), Article 5 paragraph (1) letters a and b, Article

6, Article 7, Article 9, Article 10 paragraph (1), Article 10 paragraph (2), Article 12 paragraph (1), Article 16 paragraph (1) letter c, Article 19, and Article 23 paragraph (1) letter an Attachment to Law 2/2020 is the estuary of one main constitutional issue so that all of these issues are not addressed by the Court one by one. This can be seen from the considerations of the Judiciary as follows:

"...after scrutiny, the Petitioners' arguments in question have turned out to be closely related and based on a specific argument, namely the Petitioners' concerns regarding the use of state finances in dealing with the Covid 19 pandemic. Against the Petitioners' arguments, the Court believes that the choice is the government policies as stated in the norms which the Petitioners conducted the examinations as mentioned earlier are the policy choices issued by the government due to the urgency of the situation or emergency conditions. In this case, policies in handling the Covid-19 pandemic, which inevitably has to do with finances or budgets, include the possibility of assuming the misuse of state finances." [21]

Furthermore, in its consideration, According to the Judge, the Court could understand the policy choices made by the government because the government does have minimal options in handling the Covid-19 pandemic, which requires an unpredictable budget burden as the state budget burden under normal circumstances. The Judiciary did not immediately negate the concerns of all parties, including in this case the Petitioners, regarding the disruption of financial stability that was used to focus on handling the Covid-19 pandemic. Furthermore, based on these considerations, collectively on the articles above, the Judiciary believes that in such a dilemma, there is no constitutionality issue related to the norms in question by the Petitioners as long as these norms are only associated with the handling of the Covid-19 pandemic. 19. Therefore, the Petitioners' arguments regarding the unconstitutionality of the articles mentioned above are not legally grounded.

The Judiciary further considers that most of the constitutional issues or issues arising from the petition are the uncertainty regarding the validity period of Law 2/2020, which according to the Judiciary, must be limited to fulfill the principle of fair legal certainty. According to the Judiciary, all of these problems will be answered if the Court answers the constitutional issue of Article 29 of Attachment to Law 2/2020. The Judiciary, in its consideration, found that it turned out that with the enactment of Law 2/2020, some norms were declared no longer valid, so if there were no time limit for the enforcement of Law 2/2020, then many standards in the various annulled laws would permanently lose their validity. Even when the Covid-19 pandemic has ended, in the absence of a time limit, the norms rejected by Article 28 Attachment of Law 2/2020 still do not apply because they are still used for other purposes, Specifically, when confronted with challenges to the economic growth and/or financial state's security. This creates uncertainty about the time limit for the conditions of the forcing crisis. Furthermore, the Court considers the following:

"The main thing that must also be emphasized in an emergency is a clear time limit on when the Covid-19 pandemic emergency will end. Conceptually, the state of emergency and Law in time of crisis must become a unified whole that cannot be separated to emphasize to the public that an emergency will have an end. This will certainly lead to fair legal certainty, as guaranteed in Article 28D. paragraph (1) of the 1945 Constitution." [22]

"Anyone has the mandate to ensure acknowledgment, safety, and free legal aid, as well as full equality," says the Rule. says Article 28D sentence (1) of the basic Law. These constitutional norms are the basic principles of the constitution regarding guaranteeing the right to fair legal certainty for all Indonesian citizens. This constitutional principle affirms that legal certainty is one of the crucial aspects of implementing the Rule of Law in Indonesia. Without legal certainty, there can be several violations of the constitutional rights of citizens. The

Judiciary interpreted that there was no confirmation in Law 2/2020 regarding the validity period of the Law and the rules in it, especially if it was related to temporary regulations because emergency conditions could violate constitutional rights to fair legal certainty. For this reason, the Judiciary, later in this decision, agreed to provide a strict time limit regarding the enactment of Law 2/2020. In its consideration, the Court stated:

"Therefore, this Law is only valid as far as the President has not declared the Covid-19 epidemic to be over, and at the very least until the end of 2nd year when Law 2/2020 was adopted. However, suppose the pandemic is expected to last longer before entering its 3rd year concerning budget allocation for handling the Covid-19 pandemic. In that case, it need acquire permission of the DPR and the factor to examine of the DPD. Such restrictions need to be carried out because the quo Law has provided regulations regarding the budget deficit scheme until 2022. Therefore, the two-year limitation at the latest by the President officially announcing the end of the pandemic is following the estimated timeframe for the budget deficit mentioned above. Thus, From the Court, depending on these reasons, Article 29 of Attachment to Law 2/2020 must be declared contradictory to the Charter of 1945 and has no binding power of law as long as it is not interpreted as a Instead of rule, the government imposes regulations, which comes since before the President, into force on the day of its proclamation, and must be considered no further legal. Officially call that the Covid-19 epidemic is over in Indonesia, and that this status must be presented before the end of the second year. The quo Law can still be implemented since this Covid-19 epidemic hasn't been finished before the third year. Nonetheless, the allocation and determination of the budget deficit limit for dealing with the Covid-19 epidemic must be approved by the DPR and considered by the DPD. [23]

In light of these factors, the Judiciary, in its ruling, stated the constitutional interpretation of Article 29 of Attachment to Law 2/2020, namely that Article 29 of Attachment of Law 2/2020 must be declared As long as it is not construed as "Than a laws, the government regulates," it is in violation of the basic Law and has no enforceable legal authority. The date of promulgation is the effective date of this law. Because the President publicly confirmed that the Covid-19 epidemic has stopped in Indonesia, it must be deemed null and void. By the conclusion of the second year, that status must be displayed. The quo Law can still be imposed if the Covid-19 epidemic is not finished before the third year. Nonetheless, the outlay and estimation of the budget deficit limit for dealing with the Covid-19 epidemic must be approved by the DPR and considered by the DPD.

In this decision, several things can be described regarding the opinion of the Judiciary regarding the legal certainty of Law 2/2020 In order to deal with the consequences of the Covid-19 Pandemic, including:

1. The Judiciary considers no constitutional violations in approving Perpu 1/2020 into Law 2/2020. All requirements for the ratification of Law 2/2020 have been fulfilled by the legislature, taking into account the situation of the Covid-19 pandemic.
2. The Judiciary acknowledges the existence of an emergency caused by the Covid-19 Pandemic and acknowledges the President's authority to determine the emergency status. The President also can revoke the quality of the Covid-19 Pandemic in Indonesia with various considerations, and this status must be declared no later than the end of the 2nd year.
3. The Judiciary understands that in dealing with the Covid-19 Pandemic situation, the government must make various adjustments in managing state finances as long as these adjustments are temporary.
4. To obtain legal certainty regarding the enactment of Law 2/2020, there must be a firm application period for this Law. This Law is only enforced as long as Indonesia is still in

the Covid-19 pandemic status. After the Covid-19 Pandemic status in Indonesia was revoked by the President, this Law 2/2020 must be declared no longer valid.

Although not explicitly stated in its considerations, in fact, the Judiciary's decision regarding the review of Law 2/2020 also considers the aspect of benefit because the Court understands the importance of Law 2/2020 as the legal basis for particular financial policies in order to deal with the consequences of the Covid-19 Pandemic to maintain the validity of Law 2/2020 until The President revoked the At Indonesia, the Covid-19 epidemic is still active.

Following the objectives of Law 2/2020, the government is responsible for creating an economic safety net to assist the individuals grappling with the Covid-19 Pandemic's effects and securing the financial system from the threat of an economic crisis that could occur due to the pandemic. However, it must be emphasized that the principle of fair legal certainty cannot be forgotten or denied. The government must avoid any arbitrariness that can create legal uncertainty because the 1945 Constitution guarantees the right to legal certainty. In implementing such legal certainty, the Judiciary, on the one hand, understands the need for special a set of guidelines for dealing with the Covid-19 Pandemic but, on the other hand, emphasizes that these rules only apply specifically to these circumstances and the limitations of the validity of the Law must be clear.

4 Conclusion

The first line of Art 28D of the 1945 Constitution states: that fair legal certainty is one of the constitutional rights guaranteed as the right of all citizens. For this reason, in formulating laws, the DPR and the government as law-making institutions are responsible for forming statutes that reflect the legal certainty or at least do not create conflicts between various rules that can create legal uncertainty. The constitutionalism ideology adopted by Indonesia gives the The Supreme Court has the power to examine rules against the 1945 Constitution, where the Judiciary has the jurisdiction to investigate the normative material in the Law and the procedures of forming the Law. The Judiciary's decision can have implications for changes to the proposed Law and even the invalidity of the Law.

The Covid-19 pandemic has had a widespread impact on all aspects of human life, including in Indonesia. In dealing with these conditions, the government inevitably has to issue regulations that can overcome the economic impact on society and adjustments in the management of the state budget. In an emergency, the rule in place of law 1/2020, which was later ratified into Law 2/2020, was initially intended to address the threat conditions to the financial system that occurred due to the impact of Covid-19. However, the naming of Law 2/2020 does raise doubts because it seems that this Law will be applied continuously in the Covid-19 Pandemic situation and in dealing with "Dangers to the Structure of the National Macroeconomic Framework." Regarding this matter, the Judiciary's consideration in Decision Number 37/PUU-XVIII/2020 has emphasized that the enactment of Law 2/2020 must be aimed only at overcoming the impact of Covid-19.

The formation of Law 2/2020 is taken into account constitutional by the Judiciary. Still, the validity of the Law must meet the conditions determined by the Judiciary as decided by the Court in Decision Number 37/PUU-XVIII/2020. This decision must be carried out by all parties who become addresses, especially the President, who implemented Law 2/2020 during the pandemic. One of the orders from the Judiciary's decision was to order that Law 2/2020 be declared null and void after the President announced that the Covid-19 Pandemic in Indonesia had ended. This is to apply the principle of fair legal certainty in Indonesian Law, especially concerning financial policies that should only be used specifically to deal with the impact of the

Covid-19 Pandemic. Suppose the government understands the importance of Law 2/2020 as the legal basis for financial policy in dealing with Covid-19. In that case, the government must also understand so as not to hastily determine that the status of the Covid-19 Pandemic has ended in Indonesia because the Judiciary's decision was not to order the government to revoke the position of the Covid-19 Pandemic but is an affirmation that Law 2/2020 only applies as long as Indonesia is still in the Covid-19 Pandemic status. Even if the Covid-19 pandemic has ended in Indonesia, legislators need to form new rules that can anticipate the continued economic impact of the pandemic or form regulations aimed at tackling the general financial crisis without being associated with the status of the Covid-19 pandemic.

References

- [1] Portal Informasi Covid-19, World Health Organization (WHO) <https://covid19.who.int/>, diakses tanggal 20 Maret 2022;
- [2] Keputusan Presiden Nomor 12 Tahun 2020 tentang Penetapan Bencana Non-Alam Penyebaran CORONA VIRUS DISEASE 2019 (COVID-19) Sebagai Bencana Nasional.
- [3] Dito Aditia Darma Nasution et al., "Dampak Pandemi COVID-19 Terhadap Perekonomian Indonesia.", *Jurnal Benefita* 5(2) Juli 2020. Diunduh dari <http://ejournal.ildikti10.id/index.php/benefita/article/view/5313> tanggal 20 Maret 2022.
- [4] Dedi Junaedi et al, "Dampak Pandemi Covid-19 Terhadap Pertumbuhan Ekonomi Negara-Negara Terdampak", *Simposium Nasional Keuangan Negara 2020*, hlm.995, diunduh dari <https://jurnal.bppk.kemenkeu.go.id/snkn/article/view/600/323> tanggal 20 Maret 2022.
- [5] Bagian "Menimbang" Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 Tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan untuk Penanganan Pandemi Corona Virus Disease 2019 (COVID-19) Dan/Atau Dalam Rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan.
- [6] Pasal 24C ayat (1) Undang-Undang Dasar Negera Republik Indonesia Tahun 1945;
- [7] Data diperoleh dari situs resmi Mahkamah Konstitusi Republik Indonesia, pada www.mkri.id. Diakses tanggal 20 Maret 2022;
- [8] C.F. Strong, *Konstitusi-Konstitusi Politik Modern: Studi Perbandingan tentang Sejarah dan Bentuk-Bentuk Konstitusi Dunia*, terjemahan SPA Teamwork, Bandung: Nuansa dan Nusamedia, 2004, Hlm. 15.
- [9] Ellydar Chaidir dan Sudi Fahmi, *Hukum Perbandingan Konstitusi*, Yogyakarta: Total Media, 2010), Hlm. 34.
- [10] Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Edisi Revisi, Gramedia Pustaka Utama, Jakarta, 2008.Hlm. 177-178.
- [11] Maria Farida Indrati Soepranto, *Ilmu Perundang-undangan; Dasar-Dasar dan Pembentukannya*, Kanisius, Yogyakarta, 2000. hlm. 38.
- [12] Undang-Undang Mahkamah Konstitusi yang kini berlaku adalah Undang-Undang Nomor 24 Tahun 2003 dengan sebagian materinya diubah oleh Undang-Undang Nomor 7 Tahun 2011 dan Undang-Undang Nomor 7 Tahun 2020. Sebelumnya sudah ada Undang-Undang Nomor 4 Tahun 2014 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2013 Tentang Perubahan Kedua Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi Menjadi Undang-Undang, namun Undang-Undang telah dinyatakan tidak berlaku lagi oleh MK karena bertentangan dengan UUD 1945 melalui Putusan MK Nomor 2/PUU-XVII/2014,
- [13] Pasal 86 Undang-Undang Nomor 23 Tahun 2004 Tentang Mahkamah Konstitusi: "Mahkamah Konstitusi dapat mengatur lebih lanjut hal-hal yang diperlukan bagi kelancaran pelaksanaan tugas dan wewenangnya menurut Undang-Undang ini."
- [14] Pasal 57 Undang-Undang Nomor 8 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2004 tentang Mahkamah Konstitusi;

- [15] Data diperoleh dari situs resmi Mahkamah Konstitusi Republik Indonesia, pada www.mkri.id. Diakses pada tanggal 20 Maret 2022;
- [16] BBC News. “Perpu Penanganan Virus Corona: ‘Imunitas Absolut Penguasa’ Gunakan Uang Negara Rp405 Triliun Tanpa Bisa Dituntut Hukum,” 2020, <https://www.bbc.com/indonesia/indonesia-52616906>.
- [17] Putusan Mahkamah Konstitusi Nomor 43/PUU-XVIII/2020, 45/PUU-XVIII/2020, 49/PUU-XVIII/2020, dan 75/PUU-XVIII/2020.
- [18] Putusan Mahkamah Konstitusi Nomor 42/PUU-XVIII/2020, bertanggal 28 Oktober 2021, hlm. 320-321.
- [19] Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020, bertanggal 28 Oktober 2021, hlm. 400.
- [20] Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009, bertanggal 8 Februari 2010.
- [21] Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020, bertanggal 28 Oktober 2021, hlm. 406
- [22] Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020, bertanggal 28 Oktober 2021, hlm. 410.
- [23] Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020, bertanggal 28 Oktober 2021, hlm. 410-411