The Study of Limitation of Legislative Authority in Law Number 2 Year 2020 Regarding Emergency Law

Ratih Damayanti[1], and Hibatullah Maajid[2]
{ratihdamayanti@gmail.unnes.ac.id[1], hibatullahm23@gmail.com[2]}

[12]Faculty of Law, Universitas Negeri Semarang, Indonesia

Abstract. Since the emergence of Covid-19 in December 2019, it has given rise to polemics for the implementation of the country specifically in the economic and health sectors. Efforts made by the government in dealing with economic threats due to the Covid-19 pandemic, one of which is by implementing Perppu 1/2020 which has now been passed into Law 2/2020. However, with the presence of regulations such as Law 2/2020 has created new problems, such as the emergence of the principle of castration of constitutional authority of the House of Representatives related to the function of the budget, and the Article of Immunity for state organizers. This makes many people concerned about the administration of the state, especially in the field of finance, because the truth will feel very impossible when the truth cannot be accounted for, and not become an object of judicial supervision.

Keywords: Articles of limitation, Articles of Impunity, Law 2 of 2020, emergency

1 Introduction

National development is a series of efforts to sustainably, planned, thorough, directed, integrated, gradual, and systematic. This is for the sake of the integrity of the nation and the country. National development is helpful to protect all Indonesians, improve the general welfare, educate the nation's life, and participate in implementing a world order based on independence, lasting peace, and social justice. National development is one of the mandates given by the 1945 Constitution, contained explicitly in the opening of the 1945 Constitution Paragraph IV, which is a manifestation of the national goal.

The implementation of national development usually involves all structures, both from the community's lower structure and upper structure. The most crucial thing in determining the direction of state policy in national development is the government's own policy, both from its regulations and actions. Government regulations and actions from both executive, legislative, and judicial institutions can cause a legal consequences. Of course this has a significant influence in various areas of people's lives as well as: economic, political, defense, science, and technology, social, and cultural. The form of public policy aims to motivate the development of national capabilities so that national capabilities can realize a life that is equal and equal to other more advanced nations.

The global disaster of The Covid-19 Virus spread in various parts of the world, making the economies of countries in various parts of the world experience a slump, including Indonesia. The sectors that had the most impact when the Covid-19 virus began to spread in various parts of the world, among others in the areas of health, tourism, trade, and investment. Of course, these four sectors are included in a vital sector, because of the four sectors that are the determinants of economic success in a country.

Since the Covid-19 Pandemic, the Virus has been categorized as an extraordinary disaster, causing widespread economic, health, social, and cultural impacts. Therefore, it must be pursued with great solutions, one of which is through the instruction of President Joko Widodo (Jokowi) with the issuance of Presidential Decree No. 11 of 2020 on the Determination of Public Health Emergency Corona Virus Disease 2019 (Covid-19) (Presidential Decree 11/2020). From the Presidential Decree, the Government Regulation (Perppu) Law number 1 of 2020 was issued. In this Regulation implies the country's financial stability that will use the state budget of Rp 405 trillion. Perppu (government regulation in lieu of Law) then was changed to a law that has

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been approved by the House of Representatives and passed by President Joko Widodo on May 16, 2020 in Jakarta and enacted Minister of Law and Human Right Yasonna H. Laoly on May 18, 2020 in Jakarta. Now Law No. 2 of 2020 concerning the Establishment of Government Regulation Replacement Law (Perppu) Number 1 Year 2020 On State Financial Policy And Financial System Stability For The Handling of Corona Virus Disease Pandemic 2019 And/Or In Order to Face Threats That Endanger the National Economy And/Or Financial System Stability into Law (Uu 2/2020). [1]

National development efforts in the implementation of emergencies must be made extraconstitutionally conducted by the government or authorized TUN officials. So that efforts to implement national development in an emergency are not origin and put forward social aspects, public interests, and environmental aspects, it is necessary to hold laws to know what parameters are used to restore the state of emergency. The reason for the legal action is to ensure the legal certainty itself, of course this is by Article 1 paragraph (3) of the 1945 Constitution which reads: 'The State of Indonesia is a state of law.'. One of the efforts made by President Jokowi in the face of global disasters (Covid-19), one of which was issued perppu 1/2020 which then changed to Law 2/2020.

The existence of Law 2/2020 becomes controversial when there are Controversial Articles contained in Article 2 paragraph (1) letter a number 1 of Law 2/2020 which indicates that there is a limit on the budget deficit of Gross Domestic Product (GDP) which is allowed more than 3% (three percent), this is of course contrary to the explanation of Article 12 paragraph (3) of the Law of the Republic of Indonesia Number 17 of 2003 concerning State Finance (Law 17/2003) which states that the determination of maximum GDP is 3% (three percent). In addition, the focus of this study, the author formulated contained in Article 12 paragraph (2) law 2/2020 which relates to the provision of castration regulations of authority given constitutionally to the House of Representatives related in the function of the budget, and there is also an Article of Immunity in Article 27 paragraph (1), paragraph (2), and paragraph (3) of Law 2/2020, which in the regulation gives the right of immunity to financial officials in running the wheel of government in the midst of the Covid-19 disaster, the granting of immunity rights is given the specificity of not being tested in the Court, of course this arises controversial because such regulations are contrary to the principle of equality in the eyes of the law and this reflects the treatment of rights that tend to be discriminatory and create power that exceeds the limits. Even the basis set perppu 1/2020 itself is based on Article 22 paragraph (1) of the Constitution of the Republic of Indonesia 1945 (NRI Constitution 1945) which means that a regulation is only used in the usual emergency, should be if paradigm Covid-19 as a national disaster even a global disaster should be the basis necessary to make Perppu 1/2020 is to use Article 12 of the 1945 NRI Constitution which means that a rule is in danger.

The emergency has mechanisms related to the actions of officials in carrying out national stability in the Covid-19 emergency as it is now, then the mechanism has also been guaranteed in Law No. 30 of 2014 on Government Administration (AP Law 30/2014), such a step is usually known as Discretion. In addition, there is also a criminal law related to the elimination of criminal acts and cannot be criminalized because there is no mistake, and also explained in the law of PTUN (Administrative Court) related to the enforcement of PTUN in case of emergency. So why is the Article of Impunity resurfaced into Law 2/2020? Aggravated by the process of expropriation of authority to determine the budget that should be in the legislative realm instead fell into the hands of the executive. Of course, it can thus harm democracy and harm the country's finances. Because power is too large, it will tend to be abused. Based on the data above the author is interested to discuss and examine more in-depth research in the form of an article with the title " Analysis of The Study of Articles of Castration and Articles of Impunity In Law 2/2020 On Indonesia Emergency Law".

2 Method

The article method used a qualitative approach. A qualitative approach is a research approach based on the phenomenon and paradigm of constructivism in developing science. The book Quantitative, Qualitative, and R&D Research Methods explains that the qualitative approach is named a new method because of its recent popularity. Qualitative research methods are based more on the processing of legal materials to conduct legal systematization. Legal systematization is a classification of legal materials that makes it easy to analyze and construct a research object. [2]

In this legal study, the author used a type of normative juridical research that is legal research that examines the law from an internal perspective with the object of its research is the legal norm. Normative legal research

is a legal research that uses secondary data sources in the form of laws and regulations, legal theories, opinions of certain scholars.[3]

3 Result and Discussion

3.1. Review of Law 2/2020 on Emergency Law

Law No. 2 of 2020 concerning the Establishment of Replacement Regulations of Law No. 1 of 2020 concerning State Financial Policy and Financial System Stability for the Handling of coronavirus disease pandemic 2019 (Covid-19) and in Order to Face the Threat That Endangers the National Economy And / Or Financial System Stability into Law is a regulation formed based on the matter of crunch that forces as stated in Article 22 of the NRI Constitution 1945. The issuance of this regulation is intended to stabilize the country's finances from the threat of slowing economic activity of the country and related to the slowdown in the country's economy, the decline of the state economy, and increased state spending financing. The worsening economic condition of the country is driven by the Covid-19 pandemic which has implications for the decrease in domestic and foreign trade activities, restrictions on the mobilization of citizens, to the closure of tourism objects that make the country's economy sluggish. In addition, in terms of health aspects, state financing becomes bloated, so that with the above reasons issued a regulation to save the state's economic condition that is realized through Perppu and then passed into Law No. 2 of 2020.

The content of Law No. 2 of 2020 generally describes the recovery to the country's economy, such as the extension of time to fulfill tax rights and obligations and providing exemption and waiver of import duties. Although the content of Law 2/2020 is charged with the restoration of the country's economy, there is still a controversial content such as castration of constitutional authority of the House of Representatives related to the function of the budget contained in Article 12 paragraph (2), and the granting of the right to state finance officials to make decisions in the field of state finance in Article 27 paragraphs (1), (2), and (3).

Since the establishment of PSBB in mid-March 2020, Indonesia has experienced changes in economic growth that usually economic growth in the first quarter is in the range of 5 %, and in the end, now the growth of the first quarter economy fell only 2.97%, even worse the second quarter also experienced minus 5.3%. Of course, with such data, the government issued an extraordinary policy to restore the country's economic growth because the impact can harm the country's financial stability. At least the steps proposed by the government to deal with such emergencies by conducting fiscal expansion policies, loose monetary policy, lowering central bank interest rates along with pumping liquidity, and relaxing regulations in the financial sector. To realize the change of regulation quickly and measurably, the government can make a constitutional effort by forming a Regulation conducted by the President.[4]

The material of Law No. 2 of 2020 has an idea that this rule was made so that Government Officials in taking a policy can be done flexibly in handling the handling of Covid-19 quickly, precisely, and directed. Specifically, the rule of Law 2/2020 regulates the technical matters related to state revenues and financing. In other words, Law 2/2020 was drafted as an answer to the covid-19 response that is expected to threaten the safety of the country's finances and state financing and state revenues. In addition, Law 2/2020 was drafted to fill the legal void to take swift, appropriate and targeted legal action when the Covid-19 disaster began to threaten all elements of the international community, including Indonesia. The reason drafted by Law 2/2020 is because the threat of Covid-19 not only threatens one of the areas of health, but also the impact of Covid-19 is quite widespread, including threatening the country's economic activity and the balance of the country both from the social, political, and cultural fields.

In a Democratic country of course, the application of emergency law is not as easy as imagined because a democratic state demands sovereignty in the hands of the people. In contrast, emergency law demands an immediate effort implemented by the supreme leader of the state as head of government or head of state to act quickly and immediately without involving the participation of the community. In addition, in his book Prof Jimmly explained there are also two dilemmas when the state implements emergency law, namely First, in a democratic country there is a demand for freedom without direction and control among citizens who are very thirsty for freedom because it has long been gripped by fear. Second, the state is faced with a rational need to consolidate state power that has the potential to limit freedom , this is of course contrary to the democratic state itself. In addition, the regulation of the dilemma mechanism can be minimized by actions that can be regulated and measured rationally.[5]

The concept of emergency law is in abnormal circumstances or emergency, the state is faced with the imposed governmental action or the usual or customary law, because if the law is applied or the usual legal action will be considered as an act that deviates from the law, then in this position the state is only faced with two things to be chosen namely First, the state must take an unlawful action, and Second, the state is required to change the legal norms through *legislative review.* Of course, *legislative review* is not possible because the estimated time required is long enough, when the role of the state in an emergency is required to have swift and immediate action, then the choice that can be made is the state must take a violation. This violation action when contrary to the principle of the law itself, for the violating action to be free from prohibited acts, it needs to be authorized through emergency law that must be declared by the head of state or head of government before enacting emergency rules. Emergency rules in The Perppu Law No. 23 of 1959 determine there are three levels that can be said in an emergency, namely in a state of threat and endanger both the danger of war, military emergency, and civil emergency such as the occurrence of natural disasters that threaten the life of the greater community.[5]

The consequence of applying emergency law is to make executive power greater by expanding itself into the legislative and judicialfields. The expansion in the legislative field is indicated in the president's authority to change the state budget using only the Presidential Regulation. While the expansion in the field of Judiciary is by intervening through regulations which are manifested through the decision of financial officials who can not be prosecuted through the courts, means in this case there is a reduction in the process of supervision of government actions, so this is certainly contrary to the principle of rule of law because the principle of rule of law puts forward the act of equality in the eyes *of* the law, so both the government and the public should be equal in the eyes *of* the law without exception.

In the view of the constitution there is *a statement contitutional dualism* that considers that the constitution is drafted to apply in two circumstances at once, namely in normal circumstances and in emergencies. There are two different points of view that look at the doctrine of constitutional dualism, the first being that in the constitution there should be two normal and emergency circumstances, and in both circumstances should explicitly regulate how the application in both circumstances, and in this view the application of the law of both normal and emergency laws should be applied according to what is stipulated in the constitution, thus Lobel calls it with ***absolutist* view.** While in the second view Lobel mentions his view as a ***relativist*** view that in an emergency the state should act must be based on interpretations of the constitution that are not rigid so that everything faced in an emergency can be resolved quickly and efficiently, such actions are intended for the benefit of the country and the nation that is threatened. This relativist view is also reinforced by Alexander Hamilton, who bases that what has been determined in the constitution is an outline to give the government authority to act. When the emergency occurs, the government must act according to what has been outlined by the constitution by giving an interpretation by the circumstances on the ground.. In view of the creation of Law 2/2020 the government sees it in the view of relative constitutional dualism where interpretations are required to realize the purpose of the state manifested in the constitution that is still in the form of outlines or basis for taking government action.[6]

Regulations governing emergencies in Indonesia as the basis for establishing emergency regulations have 2 basic regulatory matters, of the 2 basic arrangements each have a thin difference contained in Article 12 and Article 22 of the 1945 NRI Constitution. In Article 12 states that in essence the President can declare a state of danger along with the terms and consequences using the mechanism of the Law, while in Article 22 states that in essence in the case of crunch about that forces or in an emergency, the President has the right to make Perppu. From the statement, it can be concluded that the two basic determination of emergencies have similarities that the two have in common as emergencies, but the difference is in the difference in emphasis on the use. Article 12 emphasizes more on its structure (external factors) and its use focuses on the authority of the president as head of state to save the nation and the country from foreign interference. In contrast, Article 22 emphasizes on its content (internal factors) and its use focuses on the President having the authority to make Perppu.[7]

In line with the opinion of M. Syarif Nuh, that Jimly Ashiddiqie also argues that there are 2 types of Regulation contained in Article 12 and Article 22 of the 1945 NRI Constitution. Perppu content in Article 12 is a Regulation that is prepared in an emergency or danger that it considers as a rule that contains special or extraordinary legal efforts that are not prepared in the state when conditions are normal, so perppu type in Article 12 is more likely not to be permanent or only valid for a while in the period of emergency / danger only. Perppu whose foundation uses Article 12 is also only applied as a means of being prepared in an emergency only and extraordinary efforts that are prepared intended to overcome problems that arise in an emergency / danger and

restore the situation to return to normal. While perppu contained in Article 22 is perppu which is considered as ordinary law or Perppu is compiled when the state of the country is experiencing normal conditions. Perppu contained in Article 22 contains important policies or important efforts that must be immediately poured in the form of law, but because there is a state of crunch that forces, then there is no time to propose, discuss, and get a joint agreement with the House of Representatives to be submitted as a regular law. So Perppu type Article 22 is intended to be permanent as a regular law.[8]

The author concludes from the doctrine of the two figures related to the regulation of Article 12 and Article 22 of the 1945 NRI Constitution, that the legal basis of Perppu 1/2020 which is now Law 2/2020 is not intended for a state of danger but is intended for a mediocre emergency that should apply permanently and not intended for emergencies only. So that the arrangements carried out should not contradict or circumvent the 1945 Constitution or the constitution, as contained in various Articles in Law 2/2020 including articles relating to the castration of constitutional authority of the House of Representatives, namely related to the function of the budget, and articles related to the granting of immunity rights of financial officials or KSSK. Because basically the rules used as the basis for making Perppu does not reflect in an emergency even though the current state is perceived to be an emergency, so *de facto* the state of emergency, but de *jure* the state does not reflect in an emergency. By law is a rule that governs the state does not charge the law 2/2020 in an emergency so it is necessary to understand that the rule is contrary to the higher law that is the constitution itself, so that if the author analyzes the principle of law then the rule is contrary to the law itself, because the lower law should not be contrary to the high law.

3.2. Study of the Implications of the Article on Castration in Law 2/2020

The process of castration of the authority of the budget function of the House of Representatives through Law 2/2020 is an effort that should not be done in a mediocre state or not in an emergency except as happened in the covid-19 period. Because the castration process itself has tarnished the idea that it is disproportionate between state institutions such as executive institutions, legislative institutions, and judiciary. In the context of the creation of *Good Governance* or often referred to as good governance, there is a system of equal power sharing to achieve checks and *balanced* between institutions in running a system of government.

Amendments to the 1945 NRI Constitution bring the spirit to improve the principle of *Check and Balanced* between state institutions in running a system of government, because the system before the amendment makes the power of the president or executive become unlimited making it possible for abuse of power or abuse *of* authority while in office. To minimize the events that occurred in the past in the form of a check and *balanced* mechanism that is amburadul or unclear, therefore the reform period is always heralded about the check and *balanced* system between institutions. Considering Indonesia is a sovereign state and the location of the sovereignty lies in the sovereignty of the people who should be in exercising the power of the state required the practice of organizing a good government in accordance with the applicable law or adapted to the constitution of a country.

The division of power is intended to limit power too large, so that such great power can be regulated, limited, and controlled so that the abuse of the state can be easily minimized even prevented. As said by Miriam Budiarjo that the *check and balanced* system is a system that regulates each branch of power that supervises each other. [9] In addition Albert Hasibuan also gave his opinion on the function of check and *balanced,*according to him the function of check *and balanced* is a constitutional system that designs democracy that is intended to guarantee and ensure the existence of *deliberation* or constitutional system containing *reasoning spirit of the constitution.* Therefore, the democratic 1945 NRI Constitution is pragmatic because it has a system of check and *balances* among state institutions.[10]

3.3. Study of the Implications of the Article on Imunity of Financial Officers in Law 2/2020

Article Impunity itself regulates the protection of the law for government officials to take a legal action which means this Article regulates the immune system of government officials in exercising their authority, there is a suspension to be processed legally. Thus the regulation of Article Impunity in Article 27 paragraph (1), (2), and (3) of Law 2/2020 has obscured the competence of the Court which causes the suspension of the authority of the court to examine and adjudicate. This is contrary to the state law that recognizes the existence of the court and the division of power as part of the characteristics of the state law. In addition, the Impunity

Article of Law 2/2020 also suspends the principle of *Equality Before the Law* or the position of equality in the eyes of the law which is in accordance with the mandate given in Article 27 paragraph (1) of the 1945 NRI Constitution.

In Article Impunity Law 2/2020 in the concept of discretion there is a correlation with the concept *of welfare state*(welfare state), in theconcept of *welfare state* is intended to play an active role in interfering with people's lives be it economic life, politics, and social society, this role of the state in interfering with people's lives instended solely to prosper society. More broadly explained by Prof. Jimmly who the author quotes in the book W Iriawan Tjandra which basically the concept of *the welfare state* has the meaning that the state is required to expand its responsibilities to socioeconomic problems faced by society both for the short, medium, and long term. So in the concept *of welfare state* it is known that the state must be interventionist because the state has a great responsibility to ensure the welfare of society in general, so that in this case the state positions itself as a public servant for even smaller affairs including in order to create welfare in the field of Education, in the field of religion, in the field of health and so on both for groups and individuals. [11]

In the concept of discretion gives an idea that the government is given the freedom to act, but it should be understood as conditional freedom. Conditional freedom is defined as freedom that does not mean freedom that is free but conditional freedom is freedom that can be done as long as it is not contrary to the law. Because Indonesia is believed to be a legal country, this is stated in Article 1 paragraph (3) of the 1945 NRI Constitution, so that the existing mechanisms of both government actions and community actions must be regulated by law. However, in the concept of discretion there are exceptions to actions related to the general rules in the legislation, provided that the action is solely to facilitate the administration, fill legal vacancies, provide legal certainty, and overcome government stagnation in order to take greater benefits or for the greater public interest, this is in accordance with Article 22 paragraph (2) of law AP 30/2014.

Discretionary actions taken by the government often experience abuse of authority so it is necessary to set up to minimize or eliminate the process of abuse of authority. Because abuse of authority can be detrimental to the country's finances, therefore there needs to be certainty in taking government actions that are realized by considering the decisions to be taken by looking at the benefits that will be felt, carefully understanding the potential to be taken, and openness to make a decision. The abuse arises due to misinterpretation of authorized officials in taking action to commit discretion and/or malicious intent of authorized officials to profit from decisions taken in such discretionary actions.[12]

In the context of abuse of authority the World Bank divides into two namely *administrative corruption* and state *corruption. Administrative corruption* is a government action deliberately carried out by authorized officials to impede the policy of applicable legislation intended to benefit officials personally. While *State capture* is the action of either individual or group to influence in the process of making legislation or decisions aimed at the benefit of his group or each individual. [13]

Abuse of authority is defined as the use of authority for any other purpose or in other words the use of authority of such office is not used properly which means that the officer is using authority deviating from the purpose for which it has been given.[14] Deviation of authority has also been stipulated in the amendment to *the Judicial Review* decision of the Constitutional Court No. 25/PUU-XIV/2016 which states that law enforcement must prove the existence of state losses contained in Article 2 paragraph (1) and Article 3 of the Corrupt Criminal Law, so that state losses can no longer be potential (potential *loss)*but must be proven objectively. In the ruling it is also explained that the consideration of inclusion in the word 'can' makes the state's loss deliberations on the Tipikor Law become offence formil, so this offence is often misinterpreted to criminalize officials who commit discretion because on the grounds of decisions or actions taken in urgent circumstances and have no legal basis.[15]

To avoid abuse of authority, a supervisory mechanism and regulation are required in accordance with the AAUPB in law AP 30/2014. The supervision in question is intended to ensure accountability and as a form of legal sovereignty itself, supervision is not only carried out by the Institution but also involves community participation, because community participation is a fundamental right guaranteed directly by the constitution that is in Article 1 paragraph (2) of the 1945 NRI Constitution. Community participation efforts are preventive or countermeasures by directly controlling state financial officials in taking policies related to management for the Covid-19 budget.

The review of Article 27 paragraph (1) of Law 2/2020, the government wants to understand that in the use of funds to overcome the Covid-19 pandemic gives an understanding that the budget used to overcome the Covid-19 pandemic is not a state loss even though in the use of the budget has the potential to reduce and / or

loss of state financial receipts, because the mechanism used in Law 2/2020 uses legal mechanisms in emergencies that result in the specificity of treatment that should not be applied to normal legal circumstances.

This is in line with Law No. 1 of 2004 on State Maintenance (Law 1/2004) described in Article 1 number 22 which is essentially a lack of state finances and state assets that are certain amounts as a result of unlawful acts either intentionally or negligently. Means in this case not all reduction of state finances and reduction of state assets are interpreted as unlawful acts that lead to corruption crimes as stated in Article 2 and Article 3 of the Corruption Crime Law which states that every official can be said to be corrupt if the act is against the law to enrich themselves or others or corporations that harm the state's finances.

On the other hand, the categorization contained in Article 27 paragraph (1) of Law 2/2020 seems to be considered as an exception to corruption crimes, because in the phrase the costs incurred by the KSSK are considered part of the cost to save the economy from crisis and not a loss of the state so that it seems that the cost justifies any actions and decisions taken by the government in handling Covid-19 related to the use and allocation of the state budget.

Concept in Article 27 paragraph (2) and paragraph (3) of Law 2/2020 is contrary to the concept of the state of law, which in the concept of state law has the characteristics of one of which has a court institution to decide the case and have equality in the eyes of the law, in the regulation of Article 27 paragraph (2) and paragraph (3) of Law 2/2020 deliberately to eliminate the concept of the justice system for matters related to the use of state finances in dealing with the Covid-19 pandemic, it is certainly dangerous because it deliberately eliminates the legal liability of state financial officials so that it will potentially be used to benefit themselves or others or corporations that cause harm to the state's finances. Explicitly the policy in Article 27 paragraph (2) and paragraph (3) of Law 2/2020 is interpreted as an action or decision of officials that cannot be legally prosecuted is an action / decision based on good faith, if the action is not based on good faith then the action is not protected by impunity rights derived from Article 27 paragraph (2) and paragraph (3) of Law 2/2020. But the problem is actions based on good faith, it is very difficult to be held accountable, because judgments related to good faith are based only on subjective and not objective, so in the supervision of accountability is very difficult to prove, except in do through court process.

In addition, the regulation in Article 27 paragraphs (1), (2), and (3) of Law 2/2020 has actually been regulated in the Penal Code , so the regulation of Article Impunity is not new in criminal law because in Article 50 and Article 51 of the Criminal Code there is already an article governing the matter of impunity or can not be prosecuted KSSK criminally as long as the official in making decisions / actions based on good faith and in accordance with the legislation. This is of course in accordance with Article 50 of the Criminal Code and Article 51 of the Criminal Code, because in Article 50 of the Criminal Code it is explained that in essence no one can be penalized for carrying out the orders of the laws and regulations, while in Article 51 it is also explained that no one can be penalized for carrying out the orders of superiors over legitimate positions. In addition, it is also asserted about the concept of the dualist view of criminal law that states that the punishment of a person is not only based on evil deeds *(actus reus)* but also because he is to blame because there is evil intentions (mens*rea)*.. Then explained also related to the phrase can not be prosecuted legally when the official makes a decision or action in accordance with the legislation, this is explained in the Supreme Court Decision (MA) No. 81 / K / Kr / 1973 dated May 30, 1977[16], which in this case according to the MA there are 3 properties of loss of elements against the law materially or as a reason for criminal removal as long as there is no state loss factor, there is a public interest to be served, and the accused does not benefit.[17]

Criminal liability with those stipulated in Article 27 paragraphs (1), (2), and (3) Law 2/2020, is also in accordance with the principle of criminal law that states that 'no criminal without fault (*geen straft zonder schuld*)' or often referred to as the principle of *Culpability* although in the Criminal Code is not rigidly explained about this, but in practice between criminal liability and error can not be separated from each other. The *Culpability* Principle describes that the criminal maker will only be convicted if he has an error in committing the crime. The error referred to is explained as follows, namely when the criminal maker commits an act, then the action will be respoed by the community. This is in accordance with Article 27 paragraph (2) of Law 2/2020 which states that decisions / actions taken by officials must be in accordance with good faith and in accordance with the laws and regulations, if not done in good faith and not based on the legislation then there is an element of error that will be processed by law.[18]

The element of criminal acts is divided into 2, namely elements in the objective field seen as acts that are against the law, and elements in the subjective field consist of accountability and wrongdoing.[19] There are 3 conditions for determining criminal liability according to J.E Jonkers which is the possibility to find his will,

know the true intent of the act, and the inability that the act is prohibited. Another opinion on accountability is according to Simons and Moeljatno. According to Simon that the accountability of his psyche is to have a normal view, be able to accept the view faced normally, and can determine his will normally.[20] While Moeljatno put accountability to his actions, so according to him criminal accountability can only be determined by the ability to distinguish between good and bad deeds, and determine the intuition about the good of an act. [21]

Regulation of Article 27 paragraph (3) of Law 2/2020 is not a new regulation of subtance because in Article 49 of the Law PTUN 5/86 has been set so clearly related to the limitation of competence of the state administrative court in an emergency, as contained in Article27 paragraph (3) Law 2/2020. However, according to the researchers such regulations should be examined more deeply related to what types there needs to be restrictions on the competence of the state administrative court, in Article 49 of the Law ptun 5/86 gives restrictions that the competence of PTUN authorized because in times of war, state of danger, natural disaster circumstances, or extraordinary circumstances that according to the regulations of danger, as well as urgent circumstances for the public interest based on the prevailing laws and regulations. Philosophically, Article 49 of the PTUN Law 5/86 describes the competence of PTUN as invalid because the judicial apparatus does not work due to an urgent situation that does not allow the judicial process or indeed the regulation to be tested for the benefit of the wider community.

Delay competence authority PTUN can be seen through the existence of judicial tools can still function or in other words the judicial process can still be carried out, in contrast to in a state of war or in a state of natural disasters that indeed the safety of citizens must be completely saved first than by fighting for the rights that must be obtained or not obtained, so that the delay to the competence of the court is appropriate to be carried out, because the court process can not be carried out at a critical time forced rather than life at stake. However, in the Covid-19 pandemic, the role of PTUN should not be postponed because there is now an expansion of the competence of the court by applying E-Court or judicial process online, so it should not abort the competence of the state administrative court, because the Covid-19 pandemic is only prohibited to gather or crowd, so that the functions of the judiciary can still be carried out even though the judiciary can be carried out online. Thus, there are 2 competency perspectives of the state administrative court located in Article 49 of the PTUN Law 5/86, it is not appropriate to apply because in the circumstances of Covid-19 as it is now, PTUN or performance in the court can still work as it should, so the delay to the implementation of tun decision testing is not allowed because it hinders for the legal subject to get justice.

4. Conclusion

Thus Law 2/2020 is issued solely to be a state step so that the actions taken by the state in state financing and reallocation of the state budget get legal recognition, so as to minimize the state apparatus to be processed legally because of what is done by state officials including or in accordance with existing legislation orders, although there is a suspension of some laws and regulations to establish Law 2/2020, this is of course allowed in emergencies and emergency laws, because indeed Indonesia also adheres to the *Walfare State* system. But the formulation of Law 2/2020 does not describe an extraordinary emergency or a mediocre emergency, when in a state of describing an exceptional emergency or a state of danger. So the determination of the suspension of exceptions that are in the legislation should not be done, because legally only reflects a mediocre emergency. In addition, there is a formulation of Law No. 2 of 2020 that is considered controversial and contrary to the relevant law concerning the absence of proposional power sharing where executive power is more dominant than other branches of power, namely the legislative power branch and judicial power. The controversial article referred to in Law 2/2020 is contained in Article 12 paragraph (2) relating to the castration of the authority of the House of Representatives related to the function of legislation. In the Article castration authority of the House of Representatives there is a controversial thing that there is a change of state budget using only Presidential Decree this is contrary to the rules of the constitution. Thus the regulation on castration of the authority of the House of Representatives related to legislative functions is very threatening to democratic values, because participatory institutions other than the executive are limited in their enforcement. In addition, related to the regulation of granting immunity there is actually no regulation in the legislation related to the concept of criminal law, the concept of discretion, and the concept of law PTUN, so there is no need to apply article impunity in Law 2/2020, because the granting even gives special authority so that indeed state officials / KSSK can not be prosecuted legally, so this even obscures the principle of supervision by the court and the law

itself. Although the CPC can directly supervise the process of managing state finances in dealing with state losses, there is amputation from the Court of Justice not to be able to prosecute, so there is no principle of equality in the eyes of the law. So it has the potential to be an act of abuse of *power* that leads to state losses that lead to financial instability of the state.

In order to optimize the provision of the castration system of constitutional authority of the House of Representatives related to the function of the budget and the granting of the Article of Immunity, the author suggests to use the legal basis contained in Article 12, because the basis used in Article 22 of the 1945 NRI Constitution has other consequences regarding the concept of emergency law. In addition, according to the author on the regulation of Law 2/2020 related to the amendment of the State Budget by using the Presidential Regulation is very excessive, because in the regulation of the House of Representatives in an emergency can change the State Budget Law with only a day. In the regulation of Law 2/2020 there should also be a category of grouping of anyone who gets subsidies clearly, because many of the subsidy programs are not on target, so the purpose of Law 2/2020 does not run optimally, even such rules that harm the state's finances that should be avoided because of such arrangements seemed unthappeful. Even if it can not be written in a rule of law, but at least it must be loaded and affirmed in the executive rules, because it gives assurance of certainty, so that the implementation does not impress ugal-ugalan. According to the researchers on the regulation of Law 2/2020 related to the granting of immunity rights to state financial officials / KSSK in conducting actions / decisions in state financing does not need to be given, because such arrangements already exist in the Concept of Criminal Law, the concept of Discretion, and the concept of law PTUN, because the regulation of granting the Article of Immunity actually gives consequences forthe disbursement of the surveillance system that should be carried out by the Court of both PN and PTUN, which weakening the supervisory systemn pengadilan will instead result in the granting of the government's flexibility in interpreting the granting of the concept of immunity, so that it is possible for the occurrence of abuse of authority by making actions / decisions that benefit personally, because precisely in such circumstances should need intensive supervision in the use of the state budget so that the use of state budgets is not done in a personal manner. by persons who could have taken advantage of the situation of law 2/2020 to benefit himself or his group.

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