

Implications of Article 28 H Verse (1) UUD 1945 Related To State Responsibilities In The Pandemic of Covid-19

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ABSTRACT

The 1945 Constitution has regulated the State's obligation to fulfill the right to life of its citizens, namely in Article 28 paragraph (1) of the 1945 Constitution. "Everyone has the right to live in physical and mental prosperity, to live and get a good and healthy living environment and the right to obtain health services". This means that in relation to this concept, the government is fully tasked with fulfilling all aspects needed by the community to comply with the rules in the article. With the danger of infectious diseases like what is happening today, namely the presence of COVID-19, the government must work harder in fulfilling its obligations. Meanwhile, citizens have the right to sue the government when their constitutional rights are deemed neglected by the government. This study uses a descriptive normative method, namely by combining the analysis of a legal rule that has been in effect and presented using an explanation and depiction of the flow and the results of the author's analysis with in-depth data presentation. Citizens who consider the government not taking proper COVID-19 precautions, not fully serious in providing health services to citizens who test positive for COVID-19, or not maximizing efforts to prevent the spread of COVID-19, then these citizens can apply lawsuits against the government. The lawsuit is addressed to the State Administrative Court with evidences where when the lawsuit is granted by the court, the citizen can claim compensation against the government regarding the losses suffered by the citizen.

Keywords: Government Responsibility, Lawsuit, COVID-19

1. INTRODUCTION

China has issued an alarm to the world about the danger of Corona Virus Disease 2019 (COVID-19) which has occurred in its country in early 2020. After that, several countries have been aware of the development of this virus. A brief study by the Bandung Institute of Technology's Center for Mathematical Modeling and Simulation predicts that the pandemic will peak at the end of March and end in mid-April 2020. Even with the dynamics of the data, these predictions can certainly continue to change (CNN.com).

April 10, 2020, exactly 1 month after the President announced that there were positive patients with COVID-19 in Indonesia, positive patients with COVID-19 had reached 4,557 cases. At its peak, the government through the President issued Presidential Decree (Keppres) Number 12 of 2020 concerning the Determination of the Non-Natural Disaster for the Spread of Corona Virus Disease 2019 which was ratified by the President on April 13, 2020. This decision was considered by some to be a very late decision. In fact, there are several MSME community alliances that have

explicitly challenged the Presidential Decree by filing a lawsuit for the losses they experienced due to the COVID-19.

The reason for the lawsuit is that the government is deemed late in anticipating and handling these infectious diseases, thus harming the public in the economic sector, as well as their constitutional rights. As a part that cannot be separated from a country, society has constitutional rights that must be protected and guaranteed by the state as the highest supremacy institution for the continuity of law in a country. The right to live a decent life, the right to feel calm and peaceful to live in the country where he lives is the highest right in the regulations concerning human rights.

The 1945 Constitution regulates the existence of the state's obligation to fulfill the right to live of its citizens, namely in Article 28 paragraph (1) of the 1945 Constitution. "Everyone has the right to live in physical and mental prosperity, to live and get a good and healthy living environment and the right to obtain health services ", there are at least several important points related to the fulfillment of the State's obligations towards its people according to this article. First, the concept of living physically and mentally prosperous, having a place to live and getting a good and healthy living environment is a sub-system in the environment of every community.

This means that in relation to this concept, the government is fully tasked with fulfilling all aspects needed by the community to comply with the rules in the article. The concept of a prosperous life and living in a decent environment is the most basic right for everyone. If the government wants to fulfill its obligations, one of the things that must be prepared by the government is a livable house, a clean environment and free from viruses or diseases. With the danger of infectious disease as is currently happening, namely the presence of COVID-19, the government must work harder in fulfilling its obligations. How can people live properly when the environment where they live has been infected with a dangerous virus. The concept of living well and physically and spiritually cannot be realized by the state, because people live with an inner state of depression and are constantly haunted by the fear of contracting the virus.

Second, adequate health services is one thing that is very much needed by the community in the midst of a viral pandemic like now. How people can meet their needs for health is also the main task of the government contained in the article above. The problem then arises with the fulfillment of obligations by the government which is considered by the community to be less responsible. The extent to which the government as the highest law supremacy institution is able to fulfill these responsibilities, and how when many people think that their rights as citizens are not fulfilled by the state.

2. RESEARCH METHOD



This study uses a descriptive normative method, namely by combining the analysis of a legal rule that has been in effect and presented using an explanation and depiction of the flow and the results of the author's analysis with in-depth data presentation. Problems that arise will be analyzed using the applicable legal rules with synchronization between the existing rules and the theory that should apply, then presented in the form of a description with an explanation for each problem and solving the problem.

According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer legal issues at hand.

3. RESULTS AND DISCUSSION

The COVID-19 disaster outbreak does not only have implications for the country of Indonesia, but is a global outbreak in which all countries in the world are infected with the virus. This then has a significant impact on all aspects of community life. Various things have an impact, especially namely economic, social and of course the survival of the community. The affected sectors then become a serious problem related to how the state can guarantee a decent life for its citizens amid the current outbreak.

There are several things that have become the starting point for recent problems, namely the readiness of the state as the highest institution to guarantee and overcome the spread of the COVID-19 virus outbreak, and also the health services provided by the state to citizens who are positively infected with the virus.

The high ratio of transmission of the COVID-19 virus that has occurred recently indicates that the government's unpreparedness in protecting the constitutional rights of citizens from the threat of COVID-19 as stipulated in Article 28 H paragraph (1) of the 1945 Constitution, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live and get a good and healthy living environment and has the right to obtain health services".

In addition, the rules regarding the fulfillment of health and prevention of infectious diseases are contained in the International Covenant on Economic, Social and Cultural Rights, which has been ratified into Law Number 11 of 2005 concerning the ratification of the international covenant on economic, social and cultural rights (international covenant on economic, social and cultural rights). economic, social and cultural rights) (Ecosob Covenant) which in this regulation obliges the state to recognize the right of everyone to the fulfillment of health and is responsible for the prevention of infectious diseases:

Article 12 of the Covenant on Economic, Social and Cultural Rights states that:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

2. The steps which a State Party to the present Covenant will take to achieve the full realization of this right shall include those necessary to achieve:
 - a. Provisions for the reduction of the stillbirth and mortality rates of children and the healthy development of children;
 - b. Improvement of all aspects of environmental and industrial health;
 - c. Prevention, treatment and control of all infectious, endemic and other occupational diseases;
 - d. Creation of conditions which will warrant all medical care and attention in the event of a person's illness.

The above rules are also mutually sustainable with Article 152 paragraph (1) and (2) of Law Number 36 Year 2009 concerning Health, which regulates namely:

1. The government, regional governments and the community are responsible for making efforts to prevent, control and eradicate infectious diseases and their consequences
2. Efforts to prevent, control and eradicate infectious diseases as referred to in paragraph (1) shall be carried out to protect the public from contracting diseases, reduce the number of sick, disabled and / or dead, and to reduce the social and economic impacts of infectious diseases

The high number of COVID-19 sufferers has led to various perceptions from the public that the state as the party that should be responsible for the current conditions has not been able to fulfill the needs and constitutional rights of its citizens optimally. So that many of the people then want to sue or just question about the extent of responsibility that the government should take in relation to the outbreak that occurs.

There are various kinds of allegations and speculation that state the government's unpreparedness in dealing with the COVID-19 outbreak which is the background of the decreasing level of public confidence in government performance. In the face of an epidemic that occurs in the country of Indonesia, the government should have a basis for acting in accordance with Article 33 letter a of Law Number 24 of 2007 concerning Disaster Management (Disaster Management Law), which in this article has been written in full about how it should be. the government behaves and acts, before and when an epidemic occurs in Indonesia.

There are various stages that should be carried out by the government when referring to these regulations, namely the existence of pre-disaster and disaster management stages when a disaster does not occur and in a situation there is a potential for disaster to occur.

Disaster management operations where a disaster does not occur may include:

- a. disaster management planning;
- b. disaster risk reduction;

- c. prevention;
- d. integration in development planning;
- e. disaster risk analysis requirements;
- f. implementation and enforcement of spatial planning;
- g. education and training; and
- h. disaster management technical standard requirements.

Meanwhile, the implementation of disaster management when there is a potential for disaster, namely:

- a. preparedness;
- b. early warning; and
- c. disaster mitigation.

When looking at how systematic the mitigation stages are in the above rules, there are indications that these pre-disaster stages were not or had not been carried out optimally by the government. When the pre-disaster stages have been carried out by the government, at least after the State of China announced that its citizens have been infected with the COVID-19 virus, Indonesia has been alert with all kinds of things, including how to prevent the virus from being massive in Indonesia.

In addition, Article 5 paragraph (1) of Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases also regulates the following:

Plague prevention efforts include:

- a. epidemiological investigations;
- b. examination, treatment, care and isolation of patients, including quarantine measures;
- c. prevention and immunization;
- d. elimination of disease causes;
- e. handling of bodies due to the plague;
- f. outreach to the community;
- g. other countermeasures.

The efforts that should have been carried out by the government before a disaster occurred in Indonesia have not been fully implemented by the government. This has led to the public suspicion that the government is not fully responsible for safeguarding the constitutional rights of its citizens when the COVID-19 outbreak occurs. However, is it possible? When citizens want to hold the government accountable.

Fulfillment of their constitutional rights when they feel they have been violated. Is it possible for the public to sue the government for their alleged unpreparedness and negligence in responding and overcoming the threat of the COVID-19 outbreak in Indonesia. Referring to Supreme Court

regulation number 2 of 2019 concerning "guidelines for dispute resolution Government actions and the authority to adjudicate unlawful acts by government bodies and / or officials (*Onrechtmatige Overheidsdaad*)" (Perma No.2 2019), has explained how the public can sue against government agencies and / or officials to declare invalid and / or cancellation of actions of government officials, along with compensation. After this regulation, citizens who consider the government to not take proper COVID-19 preventive measures, have not been fully serious in providing health services to citizens who have tested positive for COVID-19, or have not maximized efforts to prevent the spread of COVID-19 These citizens can file lawsuits against the government. This lawsuit is in accordance with the provisions contained in Article 2 paragraph (1) of the Regulation No.2 2019 "Cases of unlawful acts by government agencies and / or officials (*Onrechtmatige Overheidsdaad*) are the authority of the State Administrative Court".

This lawsuit will then be processed by the State Administrative Court, where it will prove the violations committed by the government against citizens regarding their constitutional rights. These constitutional rights are in accordance with those contained in article 28 H paragraph (1) above, so that if the lawsuit has been granted and it has been proven that the government is considered negligent in fulfilling constitutional rights, or has not fully met the prevention of the COVID-19 outbreak, citizens can ask for the right of harm to the government in accordance with the losses suffered by citizens during the COVID-19 outbreak. The claim for damages that can be made by the public is a civil suit which is written in Article 1365 of the Civil Code regarding Acts Against the Law (*Onrechtmatigdaad*), namely: "Every act violating the law that brings harm to others, obliges the person who due to his wrongdoing to issue the loss, to compensate for the loss"

The concept of accountability in article 1365 then becomes the absolute basis that anyone who by his actions can cause harm to someone, then the person who has done that can be asked for damages for it. This also becomes the basis that the state as one of the legal subjects can be asked for losses if the decisions taken can cause harm to the community.

4. CONCLUSION

The state as one of the legal subjects in fulfilling its duties and obligations has the same responsibilities as other legal subjects. When the State is deemed to have committed an act that violates the law and is indicated to have resulted in losses incurred to a person, the State is also obliged to compensate for the losses suffered by that person. This is also the basis that the constitutional rights of citizens are an absolute obligation of the government in fulfilling them. When it is felt that the constitutional rights of the community have not been fulfilled, or the community feels that they have been disadvantaged, then the community has the right to ask for losses for what has been done by the State to them in relation to the fulfillment of these rights.

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