

# Legal Policy and Constitutionality in Controlling the Covid-19 Pandemic in Indonesia

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## ABSTRACT

Various aspects of life have changed along with the COVID-19 pandemic. It is the mandate of the 1945 Constitution that the state is responsible for the provision of proper health service facilities and public service facilities. As a stakeholder, the government has passed several regulations related to handling pandemics. This study uses a normative juridical research method with a conceptual and statutory approaches. The purpose of this paper is to determine the dynamics of the legal politics of policy making to control the COVID-19 pandemic in Indonesia; and to analyze the constitutionality of controlling the COVID-19 pandemic based on the 1945 Constitution. Health emergencies require intervention from the government as a form of responsibility to protect all elements of society. In practice, the state has played a role as a rule of law by issuing several policies. However, the fact is that the policy is considered to have created conflict and is not considered an emergency response. Although, constitutionally, the state is responsible for the survival of every citizen of its country, every citizen should also obey the government's recommendations. Because in a good rule of law there is an attitude and foundation in which if there are rights, there will also be an obligation.

**Keywords:** *pandemic, covid-19, constitutionality, policy making, legal politics.*

## 1. INTRODUCTION

The World Health Organization declared the outbreak a Public Health Emergency of International Concern on 30 January 2020, and a pandemic on 11 March 2020. In this case, the COVID-19 pandemic in the world and Indonesia requires humans to change or innovate with regard to new visions and habits that are very different both now and in the future. The COVID-19 pandemic has changed the social, economic, cultural and legal structures. Therefore, the state must be present to respond to this condition through various efforts quickly and precisely for the interests, safety and welfare of the people. [1]

The character of the Corona virus is very different from other types of epidemic diseases such as cholera, bubonic plague, influenza, bird flu, and others. COVID-19 is very torturous for humans. If he has infected people, not only those people / residents / patients infected with Corona who are isolated by the government, but all members of the community will also be isolated, both sick and healthy residents. In hospital quarantine places

for those who are infected, those who are healthy, will be quarantined at their respective homes independently. Independent isolation is carried out to prevent and avoid the spread of the Corona virus from spreading to the community. However, the COVID-19 pandemic has caused almost everyone to struggle with it. The problem becomes very serious because what is faced is a new uncertainty. The Covid-19 pandemic has become disrupted so we need to recognize, overcome and prevent it so that this uncertainty ends soon.[2]

The number of COVID-19 transmissions has increased, causing hospital overcapacity and the rate of economic growth to slow down considerably. The health sector and the economic sector are the main fields that so far have had a domino effect on other sectors. Therefore, an appropriate and effective means of controlling the COVID-19 pandemic is needed. The existence of the COVID-19 vaccination process, which began to be implemented in February 2021, is the hope of controlling the COVID-19 pandemic in Indonesia and accelerating the recovery of the health sector and the economy as well as other sectors that are affected.[3]

With the soaring number of cases, it has caused concern and unrest for the community. This problem requires the government to take action to control the pandemic. Because the process of spreading is very fast globally and we don't know when the pandemic will end. The policies taken by the government must be in accordance with Pancasila to create a fair and healthy society.

Protection during the Covid-19 pandemic can be done in two ways, namely providing social protection and legal protection. Social protection is carried out in the form of assisting with necessities, while legal protection is carried out in the form of implementing legal rules regarding infectious disease outbreaks and health quarantine.[4] The success of controlling progressive and constitutional COVID-19 is a key point of recovery for other affected sectors. This is not an easy job, a year of handling COVID-19 shows how ineffective and insignificant policies and actions have been implemented in reducing the spread of COVID-19 and providing optimal health services to the public. In fact, this is a fundamental constitutional right in the health sector, the fulfillment of which is the responsibility of the state.[5]

As explained in the 1945 Constitution of the Republic of Indonesia (UUD 1945), everyone has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment and the right to obtain health services. Therefore, on this basis, the state is responsible for the provision of proper health service facilities and public service facilities. Thus, the constitution as the highest basic law which contains matters concerning state administration guarantees the control process for COVID-19.

As it is known that Indonesia is a state based on law. To control a pandemic, a legal instrument is needed. This legal instrument regulates various fields such as economic impact policies by providing stimulus, preventive policies with work from home, social distancing and others. With the issuance of this policy, the state seeks to prevent its citizens from contracting COVID-19 and meet the needs of the wider community.

Handling the COVID-19 pandemic as a government stakeholder is obliged to ratify several legal instruments. Legal instruments in the form of government regulations, Presidential Decrees, Ministerial Regulations and others. So far the government has passed several regulations related to handling pandemics, including:

1. Government Regulation (PP) No.21/2020 concerning Large-Scale Social Restrictions.
2. Presidential Decree (Kepres) No.11 / 2020 concerning the Determination of Public Health Emergencies
3. Regulation in Lieu of Law (Perppu) No.1 / 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and in the Context of Threats that

Endanger the National Economy or Financial System Stability.

4. Presidential Decree (Keppres) Number 12 of 2020 concerning Determination of Non-Natural Disaster Causes of Corona Virus Disease 2019 (COVID-19).

Seeing the seriousness of the "tsunami" COVID-19 pandemic that was hitting the government, the government realized that it had to be handled in an extraordinary way as well. It can be interpreted that the policies carried out by the government must be based on the prevention of transmission and healing of patients. Various policies by the government in an effort to protect the community. It must be admitted that protection from the government is very much needed because the problems are not only health but other areas that are affected, such as culture and economy.

On the basis of the spread of COVID-19 which is considered to be of an extraordinary nature, marked by the number of cases and / or the number of deaths that have increased and spread across regions and across countries, it has an impact on political, economic, social, cultural, defense and security aspects, as well as the welfare of the people in Indonesia.[6] With the existence of Presidential Regulation Number 99 of 2020 concerning Vaccines Procurement and Implementation of Vaccinations in the Context of the 2019 Corona Virus Disease (COVID-19) Pandemic, it must be revised, because it is not relevant to the development of President Joko Widodo's decision regarding the free vaccine program. In addition, a vaccination program roadmap must be made in detail explaining the mechanism for vaccine procurement, vaccine distribution, vaccination implementation, vaccination data collection and administration, vaccine funding, coordination with local governments, and the role of each state administrator and stakeholder in the vaccination program.[3]

The policy formulation plan should adapt to urgencies and emergencies that require special attention, such as economic and health issues.[3] Thus, specifically in the policy of controlling the COVID-19 pandemic in Indonesia, it must be relevant in accordance with the dynamics of the legal politics of every policy that was born during the COVID-19 pandemic, while still paying attention to policy making must be based on the constitution.

Based on the description above, there is a problem formulation that the writer would like to answer, namely: how is the dynamics of the legal politics of policy making to control the COVID-19 pandemic in Indonesia; and what is the constitutionality of controlling the COVID-19 pandemic in Indonesia based on the 1945 Constitution?

The objectives of writing this article are: First, to find out and analyze the dynamics of the legal politics of policy making to control the COVID-19 pandemic in Indonesia, as well as the problems of each of these policy

developments; and Second, finding a novelty from the constitutionality analysis of the COVID-19 pandemic control in Indonesia based on the 1945 Constitution. Meanwhile, the benefits of this writing generally broaden understanding and knowledge in the field of legal science, especially in the field of constitutional law. In particular, this article can be used as input by the Government in formulating policies to control the COVID-19 pandemic in Indonesia.

There is a previous study related to the direction of handling covid 19, entitled "Government Legal Politics In Handling of the COVID-19 Pandemic Reviewed From The Right To Health's Perspective"[1]. The research focuses on human rights, so the right to health is inherent in humans. However, in this article, we analyze the dynamics of legal politics in making policies to control the COVID-19 pandemic in Indonesia. It is hoped that it can provide updates so that it can be used as reference material or guidance for related parties in controlling COVID-19.

## 2. RESEARCH METHOD

The research is conducted by the juridical-normative method, which is carried out by reviewing the literature or secondary data and various regulations issued by the Government. Analyzed by describing the applicable laws and regulations related to legal theory and practice of implementing positive law concerning the control of Covid-19. The data is in the form of regulations related to Covid-19 in Indonesia, literature, journals, and dictionaries related to the problems that exist in this study. This study compiles materials such as theories, concepts, principles, laws, and regulations related to these topics and explains the legal reality in society as a legal phenomenon. The legal politics of making policies to control the COVID-19 pandemic in Indonesia; and analyze the constitutionality of controlling the COVID-19 pandemic based on the 1945 Constitution. Health emergencies require intervention from the government as a form of responsibility to protect all elements of society.

## 3. FINDING AND DISCUSSION

Health emergencies require intervention from the government as a form of responsibility to protect all elements of society. In the context of the current pandemic, in practice, the state has played a role as the rule of law by issuing several policies. However, the fact is that the policy is considered to have created conflict and is not considered an emergency response. Like the presence of a Government Regulation on Large Scale Social Restrictions (PSBB) policy which is too bureaucratic. Technically, in an emergency, the state must responsively make emergency response laws in the current pandemic state. Every policy taken by the

government has risks. Policy making must also consider conditions and situations from various aspects such as the economy, health, social and culture that are in accordance with the characteristics of Indonesia. The issuance of various policies by the government is a form of state protection for citizens as handling and controlling COVID-19 in accordance with the mandate in the constitution.

### 1. *The Dynamics Of The Legal Politics Of Policy Making To Control The COVID-19 Pandemic In Indonesia*

According to Moh. Mahfud MD, politics of law is a legal policy or line (policy) officially about the law that will be enforced, either by making new laws or replacing old laws, in order to achieve the country's goals. It should be emphasized that legal politics is a policy that is compelling as the responsibility of the state in the context of the welfare of society with certain goals.

In making laws and regulations, the role of political law is very important and can include three things, namely first, constituting state policy (official line) regarding laws that will be enforced or not enforced in order to achieve state goals. Second, the political, economic, social, and cultural background of the birth of legal products; third, law enforcement in reality on the ground.[7] As with the ongoing pandemic, tackling it in Indonesia has big challenges. Legal politics must be in accordance with the objectives of Pancasila which are to create a just and prosperous society.

The COVID-19 pandemic after being declared a global pandemic prompted Indonesia to decide to take policies in the context of dealing with the virus. Either with more preventive steps in monitoring activities at 3 (three) entrances to Indonesian territory, namely airports, ports and border crossings. This is to minimize the arrival of people from various countries with high cases of COVID-19. Repressive measures by carrying out criminal sanctions for individuals who violate health protocols. As well as persuasive steps by inviting and socializing the community to do 3M (maintaining distance, washing hands and wearing masks) in carrying out daily activities.

To make a policy that aims to protect from a pandemic, it is necessary to pay attention to important aspects related to legal politics. In accordance with the concept of political law, that the work area and legal political activities include the following:[8]

1. The process of extracting the values and aspirations that develops in society by state officials who are authorized to continue the politics of law.
2. The process of approach and formulation of the values and aspirations mentioned in the first point above in the form of a draft law by a state

administrator authorized to formulate and enact laws.

3. The facts that influence and determine a political law, both future and predetermined.
4. Implementation of regulations which constitute the implementation of the legal politics of a country.

The President of the Republic of Indonesia, Joko Widodo, stated that the Large-Scale Social Restrictions (PSBB) policy was the policy chosen in response to Health Emergencies. Law Number 6 of 2018 concerning Health Quarantine is the legal basis for this anticipatory policy. The meaning of Large-Scale Social Restrictions is the limitation of certain activities of residents in an area suspected of being infected with Corona Virus Disease 2019 (Covid-19) in such a way as to prevent the possible spread of Corona Virus Disease 2019 (Covid-19).[9]

In accordance with Law Number 6 of 2018 concerning health quarantine, article 3 states that the Implementation of Health Quarantine aims to:

1. Keep the public safe from diseases and/or public health risk factors that have the potential to cause a public health emergency;
2. Prevent and protect against diseases and/or public health risk factors that have the potential to cause a public health emergency;
3. Increase national resilience in public health; and
4. Provide protection and legal certainty for the community and health workers.

It is known that COVID-19 is a contagious respiratory tract infection caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). What makes this disease dangerous is that it can be transmitted from human to human so it makes its spread very quickly both through direct and indirect contact. More aggressively, the transmission can be through droplets of sufferers when coughing or sneezing. Everyone can be infected with this virus; the only difference is the immune system of each individual. So certain groups are that are more vulnerable to the COVID-19 virus than other groups. Particularly in the elderly population with underlying chronic disease (comorbidity).

Before the COVID-19 outbreak, there were 6 types of coronavirus that could infect humans, namely alphacoronavirus 229E, alphacoronavirus NL63, betacoronavirus OC43, betacoronavirus HKU1, Severe Acute Respiratory Illness Coronavirus (SARS-CoV), and Middle East Respiratory Syndrome Coronavirus (MERS-CoV).[10] From the level of spread it is not as massive as COVID-19, where in less than a year, almost the entire world is exposed to a large number of victims.

The symptoms felt by sufferers of COVID-19 are similar to those of SARS sufferers. Symptoms are similar to flu, but the symptoms that arise can vary from person

to person. Most people who are infected will experience mild to moderate symptoms. The Center for Disease Control (CDC) states that at this time additional symptoms of loss of smell and taste are being reported.[11] The development of time, the virus continues to mutate in order to adapt to its environment. Naturally, the virus mutation will continue and this is a normal thing. With the mutation of the COVID-19 virus, it will be difficult to control its spread.

From a medical point of view, several efforts need to be made to prevent infectious diseases. Leavell and Clark describe this in their book Preventive Medicine for the Community Doctor. These prevention efforts include:[12]

1. The period before illness

The purpose of prevention at this stage is to increase the value of health (health promotion) forms of prevention that can be done at this stage, namely by providing special protection against a disease (Specific protection).

2. In times of illness

- a. Recognizing and knowing the type at the initial level, as well as providing appropriate and immediate treatment. (Early diagnosis and treatment).
- b. Limiting disability and trying to eliminate impaired work ability caused by a disease (Disability limitation).
- c. Rehabilitation (Rehabilitation).

The development of the significant spread of COVID-19 requires policy intervention because it is indeed an emergency. The number of cases in Indonesia has made the government not underestimate this disease. As a countermeasure, steps are needed to protect the entire community as a strategy for the government to impose large-scale social restrictions (PSBB). In accordance with Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19) Article 3 Large-Scale Social Restrictions must meet the following criteria:

1. The number of cases and / or the number of deaths due to disease is increasing and spreading significantly and rapidly to several regions; and
2. There is an epidemiological link with similar incidents in other regions or countries.

For the PSBB, at least including: school and work vacations, restrictions on religious activities; and / or, restrictions on activities in public places or facilities. In an effort to implement the PSBB to be effective by maintaining distance from one another and limiting the mobilization of people.

This policy is an implementation of the 1945 Constitution of the Republic of Indonesia Article 28H paragraph 1 which states that every person has the right to live in physical and mental well-being, to have a place

to live, and to have a good and healthy living environment and the right to obtain health services. It can be concluded that the government has the responsibility to provide health insurance and services in accordance with the constitutional mandate. The existence of health insurance and services guarantees peace and there will be no noise and worry in the community.

Law Number 6 of 2018 concerning Health Quarantine also states that there are several types of regional quarantine in health emergencies such as during the current pandemic, namely Home Quarantine, Regional Quarantine, Hospital Quarantine, or Large-Scale Social Restrictions (PSBB). Other countries also apply the PSBB concept to regional quarantine or extreme lockdown, for example in China and European countries as an effort to prevent and control the spread of the virus.

Meanwhile, Japan is also doing the same thing to reduce the spread of COVID-19. In terms of immigration policy, the Japanese government is taking steps to enforce borders to prevent the spread of COVID-19. By tightening the requirements for foreign nationals to enter Japan by obliging quarantine for 14 days at a designated place, based on Government Regulation No. 29/2020 concerning the rules for implementing the quarantine law which was enforced since February 14, 2020, as well as the temporary prohibition of using public transportation (Embassy of Japan, 2020).[13]

Meanwhile, in Taiwan it is taking a vigilant approach to respond to this pandemic. The combination of an open national leadership, listening to the aspirations of the health organization (WHO) and scientists and doctors is the main formula for pandemic control. First, the wisdom that exists for policy makers in studying the historical records of the pandemic (SARS Cov or SARS). Second, maintaining a decentralized command & control center scheme in various regions related to data collection, identification and distribution of funds and resources, as well as the isolation of individuals infected with the virus. This command center is conducted under the Ministry of Health and coordinates with ministries and local governments. Third, ensuring the distribution and availability of masks, and arranging proportionally so that access to masks is maintained. Fourth, fast action and strict rules with sanctions for individuals who do not report being exposed to the virus. Fifth, information disclosure. In other words, Taiwan combines democratic, technocratic aspects and an unbroken chain of command.[14]

In the context of handling and controlling a country, it requires legal instruments to guarantee health protection and services. Indonesia itself has several legal instruments as the basis for the government to be able to control the COVID-19 pandemic. The existing legal instruments in Indonesia include: Law No.4 / 1984 concerning Communicable Disease Outbreaks, Law No.24 / 2007 concerning Disaster Management, Law

No.14 / 2008 concerning Openness of Public Information, Law No.36 / 2009 concerning Health, Law No.6 / 2018 concerning Health Quarantine, Presidential Decree No.17 / 2018 concerning the Implementation of Disaster Management in Certain Circumstances and Presidential Decree No.7 / 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019.[14]

Apart from the health aspect, the government also guarantees economic rights during a pandemic as one of protection for the community. Indirectly, the implementation of the PSBB will have an impact on economic activities. To overcome the consequences of policies for handling and controlling COVID-19, the government has taken several economic policies, including:

1. Law Number 2 of 2020 Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 Concerning State Financial Policy and Financial System Stability for Handling Pandemic Corona Virus Disease 2019 (Covid-19) and / or in the Context of Facing Threats That Endanger the Economy National and / or Financial System Stability;
2. Presidential Instruction of the Republic of Indonesia Number 4 of 2020 concerning Refocusing of Activities, Budget Reallocation, and Procurement of Goods and Services in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19);
3. Regulation No. 23/PMK.03/2020 of the Minister of Finance of the Republic of Indonesia Concerning Tax Incentives for Taxpayers Affected by the Corona Virus Outbreak;
4. Regulation of the Financial Services Authority of the Republic of Indonesia Number 11 / POJK.03 / 2020 concerning National Economic Stimulus as a Countercyclical Policy on the Impact of the Spread of Corona Virus Disease 2019;

Seeing the impact of the pandemic which has destroyed the Indonesian economy, it requires fast and effective steps from the government. By providing stimulus policies and diverting the state budget to help private parties and communities affected by the COVID-19 pandemic. It is undeniable that most of the economic sector has suffered a lot of losses due to the current pandemic. However, there are a few areas that benefit, especially those related to health aspects such as producers of masks, hand sanitizers, supplements or vitamins, medical devices and others that are related to handling and controlling the COVID-19 pandemic.

Efforts to control and protect in the health sector are one of the government's policies apart from the implementation of PSBB, and which can be the hope of the wider community is the provision of vaccines. In accordance with the Minister of Health Regulation Number 84 of 2020 concerning the Implementation of

Vaccination in the Context of the Corona Virus Disease 2019 (COVID-19) Pandemic Article 1 paragraph 1 explains that vaccines are biological products that contain antigens in the form of dead or alive microorganisms that are weakened, intact or part thereof, or in the form of microorganism toxins that have been processed into toxoid or recombinant proteins, which are added with other substances, when given to a person will actively generate specific immunity against certain diseases. The vaccine policy is indeed one of the quick efforts to normalize conditions and situations. Given the massive increase in the number of COVID-19 sufferers in Indonesia. Vaccination is needed because there have been no previous cases of the COVID-19 pandemic. National vaccination interventions have been carried out in early January 2021 without ignoring health protocols to provide immunity in the future, creating herd immunity.

The COVID-19 vaccination carried out by the government is a manifestation of the responsibility and handling of the COVID-19 pandemic. In accordance with the mandate of Law Number 6 of 2018 concerning Health Quarantine Article 15 paragraph 2 health quarantine measures in the form of 1) quarantine, isolation, vaccination or prophylaxis, referral, disinfection, and / or decontamination of people as indicated; 2) Large-Scale Social Restrictions; 3) disinfection, decontamination, disinfection, and / or deracination of Transport Equipment and Goods; and / or; 4) restructuring, safeguarding and controlling environmental media. In his explanation, vaccination is the provision of a vaccine that is specifically given in the context of generating or actively increasing a person's immunity against a disease, so that if one day he is exposed to the disease he will not get sick or only experience mild illness.

Vaccination is medical protection which is also a recommendation from WHO. However, over time there have been pros and cons in the community regarding the provision of the COVID-19 vaccine. There are several groups of people who oppose vaccines. As seen from health, there is a concern that vaccines will have an impact on health because each individual has a different immunity. From a survey conducted by the Indonesian Ministry of Health, WHO and UNICEF, from 112,888 respondents throughout Indonesia, 64.8% were ready to be vaccinated, 7.6% were not willing to be vaccinated and 27.6% did not know.[15]

Health emergencies require intervention from the government as a form of responsibility to protect all elements of society. In the context of the current pandemic, in practice, the state has played a role as the rule of law by issuing several policies. However, the fact is that the policy is considered to have created conflict and is not considered an emergency response. Like the presence of a Government Regulation on PSBB Covid-19 which is too bureaucratic. Technically, in an emergency, the country must responsively make emergency response laws in the current pandemic state.

Every policy taken by the government has risks. Policy making must also consider conditions and situations from various aspects such as the economy, health, social and culture that are in accordance with the characteristics of Indonesia. The issuance of various policies by the government is a form of state protection for citizens as handling and controlling COVID-19 in accordance with the mandate in the constitution.

## *2. The Constitutionality of Controlling The COVID-19 Pandemic in Indonesia Based On The 1945 Constitution*

The Constitutional Court (MK) conducts judicial review of the Law (PUU) against the 1945 Constitution (UUD 1945) to test the constitutionality of a Law (UU), either in whole or in part. The constitutionality test is meant to use the constitution (UUD 1945) as the basis for the test. A law can be declared constitutional when the norm is in accordance with the norms of the 1945 Constitution and declared unconstitutional when the norm is contrary to the 1945 Constitution. Conditions for the Petitioner's petition to be rejected or granted. Such conditions are called conditionally constitutional.[16]

Conditional constitutional is a condition that a law norm is judged to be in accordance with the 1945 Constitution if later interpreted in accordance with the requirements or parameters set by the Constitutional Court. Meanwhile, conditional unconstitutionality is the opposite, namely the norms of the Law that are petitioned for review are currently in accordance with the 1945 Constitution, but there is the potential to become unconstitutional when it is interpreted differently. In other words, in a conditional constitutional decision the Constitutional Court formulates conditions or makes interpretations so that a tested norm of the law can be declared in accordance with the 1945 Constitution, whereas in a conditional unconstitutionality decision the Constitutional Court makes a negative interpretation, meaning that a legal norm is immediately unconstitutional when interpreted as a formulation. / MK's interpretation.[16]

Based on the records of the Constitutional Court in 2020, there were 61 lawsuits related to judicial review. Most of the claims were regarding the review of Law number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic which was passed in May 2020 and there were 9 judicial reviews. This was followed by a judicial review against the Omnibus Law, which was passed in early October 2020 and has also become one of the most contested laws, namely 8 judicial reviews.[17]

A number of non-governmental organizations (NGOs), researchers and advocacy activists conducted a review of Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial

System Stability for Handling the 2019 Corona Virus Disease Pandemic ( COVID-19) and / or in the context of facing threats that endanger the national economy and / or financial system stability to become a law (UU 2/2020) before the Constitutional Court (MK).

The Petitioners for reviewing Law 2/2020 are divided into several groups divided into numbers in different registered cases. Some of them were unable to continue their Judicial Review due to administrative problems so that the applicant withdrew his judicial review and on that basis, in accordance with statutory regulations, the applicant cannot again file a judicial review on the same material.

As for the problems raised by the petitioners, among others:[18] the Petitioners considered that their constitutional rights were violated by the enactment of Articles 1 to Article 25 of the Appendix of the Covid-19 Law. According to the Petitioners, the Law should discuss financial policies during the Covid-19 pandemic, and not discuss the APBN. So that this has the potential to harm the state and contradicts Article 23 of the 1945 Constitution. In addition, the Petitioners consider the state financial policy in the Law to be potentially abused without supervision by the competent bodies. In addition, the law is also stated in relation to state losses issued by the Government / and / or member institutions of the Financial System Stability Committee (KSSK) in the context of implementing state revenue policies including policies in the field of taxation and the national economic recovery program as part of the economic costs of saving the economy from crisis and not a loss to the state. This is not in accordance with the basic principles of state finance and negates the role of BPK in assessing and monitoring it.

In addition, other petitioners considered that they questioned the excess authority possessed by the Financial System Stability Committee (KSSK) which could not be brought to court as stipulated in Article 27 paragraph 1 of the Covid-19 Law. The Petitioners also consider that the rules indirectly eliminate state losses that have the potential to cause opportunities for corruption and its formation is considered legally flawed. The Petitioner also argues that the ratification of Presidential Regulation in Lieu of Law number 1/2020 into Law 2/2020 does not meet the quorum of DPR members who are present. The DPR Plenary Meeting which discussed the presidential regulation in Lieu of Law number 1/2020 to be approved into law was attended by all factions as well as 296 DPR members from a total of 575 DPR members, consisting of 41 members physically present and 255 members "present" virtually. However, claims for "attendance" are virtually deemed inconsistent with the DPR Standing Orders which stipulate that before attending a meeting, an attendance list must be signed.[18]

Another petitioner argued that there was great power given to the president to regulate state finances without involving the DPR from 2020 to 2023 as regulated in Article 2 and Article 12 paragraph (2) of the Covid-19 Law contrary to Article 20A paragraph (1) of the 1945 Constitution. Accordingly, the Petitioners asked the Court to declare the Covid-19 Law contrary to the 1945 Constitution and legally annul its enforcement.[18]

Regarding this, Sri Mulyani as the Minister of Finance of the Republic of Indonesia responded and asked the Constitutional Court as stated in the conclusion of the government's statement on the request for a review of Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic against the Constitution. 1945.[19]

In the statement, there was a request that the Constitutional Court could reject the request for judicial review of the law. There is an affirmation that the regulation was drafted in order to make government policies more flexible in dealing with the impact of the Covid-19 pandemic. In detail, it is stated that "Paying attention to the arguments of the petitioners who feel their constitutional rights have been violated by Law Number 2 of 2020, the government allows the government to state that the issuance of Law Number 2 of 2020 is precisely intended to protect people's lives which are very real threatened by the spread and spread of COVID. Both from the aspect of mental safety because of threats to health, safety and social life and the economy of the community. The government is of the opinion that Law Number 2 of 2020 is in no way detrimental to the constitutional rights of the petitioners. Thus, the applicant cannot fulfill the 5 cumulative requirements related to loss of rights and or authority constitutional law to apply for judicial review of the Act." [19]

Health clearly plays an important role in the survival of humankind. The right to health was then regulated by the United Nations in the Universal Declaration of Human Rights in 1948. It is explicitly stated in article 25 paragraphs (1):

"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing and health care ...."

If viewed in Indonesia itself, regulations regarding the fulfillment of the right to health have been contained since the time of the Constitution of the Republic of Indonesia (RIS) in 1949. Article 40 of the RIS Constitution states,

"The authorities are always making serious efforts to promote public cleanliness and the health of the people."

After the formation of a union, state returned to the form of a unitary state and the enactment of the Provisional Basic Law of 1950 (UUDS), the provisions

of Article 40 of the RIS Constitution were regenerated precisely into Article 42 of the UUDS:

"The authorities have always made a serious effort to combine public hygiene and public health."

Then in 2000, in the second amendment to the 1945 Constitution, health was confirmed as part of human rights. As stated in Article 28H paragraph (1), that: "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to obtain health services." The inclusion of these provisions into the 1945 Constitution illustrates a major and good paradigm shift. Health is no longer just a personal matter related to the fate or grace of God which has nothing to do with the responsibility of the state, but rather a legal right guaranteed by the state.

If it is guided by the norms of the constitution of the Indonesian state, then in fact the Government is always serious in guaranteeing and protecting the constitutional rights of the people. The rights stated in the constitution can be categorized as equivalent to human rights, including the right to fulfill the economy and health during the handling of the Covid-19 pandemic.[20] The government continues to strive to uphold human rights contained in it which are also contained in the constitution. However, what needs to be understood is that human rights are rights that have existed and are inherent in humans since birth, while constitutional rights are rights that come from the government which can be taken back at any time. This means that the Government has the authority to determine which rights can be prioritized in this health emergency, without neglecting the role and presence of the state in them. [20]

People's safety is very important to prioritize in order to save the Indonesian nation from the impact of the pandemic in order to maintain prosperity. This is the basic concept of the constitution providing guarantees even above the constitution itself in providing services to the community.[21] The government sets a mission in order to guarantee the rights of the people to be achieved. In this case, the Government guarantees the health and safety of the public, including medical personnel. Then, ensure the protection of social safeguards and protection for the business world. Good governance of emergency situations or good governance of Covid-19 must be made public. All policies carried out by the government must be transparent and conveyed to the public. So, the steps taken by the government can be measured. The use of emergency and discretionary power during the Covid-19 pandemic and other critical / emergency situations is justified legally, morally and constitutionally. However, it should not be used to eliminate the differences of opinion in society.[21]

As for the relationship between constitutional rights in the sector of economic fulfillment and health that should be carried out by the state, it can be said that economic

and health rights are rights guaranteed in the 1945 Constitution, but they are very general in nature and there is no operational manifestation of these norms, so that further norms are needed to be implemented in the field or community. For this reason, norms such as the Law on Manpower and the Health Quarantine Law were born. In this case, the state is obliged to meet the minimum needs of citizens and the state must not be involved. What the state has done by preparing a large budget for health and basic needs has already had its norms and it is just a matter of how it is implemented and implemented in the field. It is going well or there is politicization or other obstacles that could occur.[20]

Although constitutionally the state is responsible for the survival of every citizen of its country, every citizen should also obey the government's recommendations. Because in a good rule of law there is an attitude and foundation of life in which if there are rights, there will also be obligation.[20]

One of the good efforts made by the government is the covid-19 vaccination program which is carried out free of charge to all Indonesians. This is very appropriate considering the mandate of the constitution of the Republic of Indonesia which guarantees the right to health of every citizen.

Nevertheless, it is very obligatory to administer vaccinations based on the Constitution of the Republic of Indonesia by keeping in mind the following matters as stated in the 1945 Constitution article 4 paragraphs (1), article 18 paragraph (2), article 28H paragraph (1). Also, see Article 34, paragraph 3:

1. Principles of fulfilling the right to health
2. The state's obligation to provide adequate health-care facilities
3. Vaccinations as a public good
4. Effective Presidential leadership
5. Collaboration between central and local governments
6. The COVID-19 pandemic's public health emergencies and non-natural disasters

Pandemic disasters and disease outbreaks pose a great risk to life. All aspects are affected by the pandemic. Control quickly and precisely is required from both government policies and other parties. In fighting the plague, a prompt and comprehensive policy is needed. In Indonesia, there are still several weaknesses in the policy of controlling pandemics.

Related to Law no. 24 of 2007 concerning Disaster Management (Disaster Management Law), there are several issues that require revision. As well as coordination in disaster management, it should be stronger for more adaptive control. Since the beginning of the Covid-19 outbreak in the country, the handling of the COVID-19 virus pandemic in Indonesia has been marked by weak coordination between the central and



local governments. This is what happened in early March 2020 between the central government and the provincial government (DKI Jakarta and West Java), as well as the central government versus district / city governments on the island of Java.[22] Seeing this incident, there is still an overlapping authority that should be in the hands of the National Board for Disaster Management in Indonesia (BNPB) as the disaster emergency response command (Perka BNPB number 10 of 2008) this is to reduce conflicts of interest between government agencies.

BNPB has the authority to direct and implement national disaster management, both natural and non-natural disasters. The role of BNPB as disaster controller is stated in Presidential Regulation (Perpres) Number 17 of 2018 concerning the Implementation of Disaster Management in Certain Circumstances. BNPB acts as a trigger in the control and prevention of a disaster or pandemic situation.

Significantly, in addition to strengthening the coordination and authority of the BNPB in existing policies. The Disaster Management Law must include non-natural disaster management, which can be adopted from the Disease Outbreak Law. It should be noted that the disaster management law only focuses on natural disasters. This is to strongly encourage BNPB's function to manage, to process and to allocate resources in disaster management.

#### 4. CONCLUSION

People's safety is very important to prioritize in order to save the Indonesian nation from the impact of the pandemic in order to maintain prosperity. This is the basic concept of the constitution providing guarantees even above the constitution itself in providing services to the community. The government sets a mission in order to guarantee the rights of the people to be achieved. In this case, the Government guarantees public health and safety, including medical personnel. Then, ensure the protection of social security and protection for the business world. Good governance of emergency situations or good governance of Covid-19 must be made public. All policies carried out by the government must be transparent and conveyed to the public. So, the steps taken by the government can be measured. The use of emergency and discretionary power during the Covid-19 pandemic and other critical / emergency situations is justified legally, morally and constitutionally. However, it should not be used to eliminate differences of opinion in society.

Although constitutionally, the state is responsible for the survival of every citizen of its country, every citizen should also obey the government's recommendations. Because in a good rule of law there is an attitude and foundation of life in which if there are rights, there will also be an obligation

Finally, here are some the recommendations based on this research:

- a. The Epidemic Law must be revised because it is still a centralized system of government, there is no decentralization of local government authority and there is no harmonization with other laws and regulations. The law also does not explain efforts to prevent, eradicate, overcome and recover from the pandemic and accommodate the development of science and technology.
- b. There must be a strengthening of Law number 24 of 2007 concerning Disaster Management related to strengthening the authority of BNPB related to the command system and integration with other institutions in dealing with the pandemic. As well as strengthening in the context of the substance of non-natural disaster management.
- c. There needs to be a revision of Law Number 6 of 2018 concerning Health Quarantine, especially related to regional quarantines that are difficult to carry out and how to implement quarantine.
- d. The government as a decision-maker must prepare policies in order to build a national health security system, such as making big data research that is integrated with state, university and private institutions. This can accommodate the development of new and re-emerging diseases.

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