



## GOVERNMENT RESPONSIBILITY POST COVID-19 PANDEMIC WITH THE INCREASE OF SOCIAL PROBLEMS IN SOCIETY

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### ABSTRACT

The post-covid-19 pandemic in Indonesia has had a major social impact on society in the form of unemployment and divorce. The problem is whether the government can be held accountable for its policies in the context of overcoming the COVID-19 pandemic which has caused many social impacts on the society. The study aimed to determine the government's responsibility for increasing social community such as increasing layoffs (PHK) and divorce in the society during the pandemic. The research methodology applied empirical methods. The results were based on the theory of government action, which is an action taken by state administrators in carrying out government duties that cause disputes between the people and the government. In Indonesia, the responsibilities of the government have not been regulated, and in practice, the society is still neglected. Society has surrendered to the consequences of the PPKM policy during the COVID-19 pandemic. Even if there are people who will file a civil lawsuit against the government. This lawsuit against government officials in the civil sector in Indonesia is based on the unlawful acts of the government as regulated in Article 1365 of the Civil Code. The responsibilities of the Government other than in the field of civil law is in the field of state administrative law.

**Keywords:** government responsibilities; social issues; unemployment and divorce; post covid-19 pandemic

### A. INTRODUCTION

The implementation of Regional Quarantine and Community Activity Restrictions (PPKM) by the Government to prevent the transmission of the COVID-19 pandemic is the right step. In contrast to Fithra Faisal's analysis as Executive Director of Next Policy, he stated that it would have an impact on household income in the capital, which could decrease by 1.84% or equivalent to Rp. 11.29 trillion and the number of workers could decrease by 2% to as many as 152,527 people.<sup>1</sup> This difficult economic condition due to reduced income or loss of income has resulted in many quarrels and domestic violence (KDRT) and finally, there have

been many divorce cases during the pandemic in Indonesia.

Data from Suara.com, divorce cases that increased in June and July 2020 by 80 percent were divorce cases filed by wives due to economic problems and domestic violence.<sup>2</sup> In this increase in divorce cases from 34 provinces in Indonesia, the most divorce cases are in the following three provinces: West Java, Central Java, and East Java.<sup>3</sup> Economic problems and violence in the family arose because of the large

<sup>1</sup> Iim Fatimah Timorria, '(Emergency) Community Activities Restrictions Enforcement (PPKM) of Java-Bali and Large-Scale Social Restrictions (PSBB), which economic impact is severe?', *Ekonomi. Bisnis.Com*, 2021 <<https://ekonomi.bisnis.com/read/20210701/12/1412734/ppkm-darurat-jawa-bali-dan-psbb-dampak-ekonomi-berat-mana>>.

<sup>2</sup> Risna Halidi, '*Causes of the High Divorce Rate in Indonesia During the Covid-19 Pandemic*', *Www.Suara.Com*, 2020 <<https://www.suara.com/lifestyle/2020/08/31/182022/penyebab-tingginya-angka-perceraian-di-indonesia-saat-pendemi-covid-19>>.

<sup>3</sup> Aris Tristanto, '*Divorce During the Covid-19 Pandemic In The Perspective Of Social Science*', *Ejournal.Kemensos.Go.Id*, 2020 <<https://ejournal.kemensos.go.id/index.php/Sosioinforma/article/view/2417>>.

number of workers who were laid off during the COVID-19 pandemic. The impact was that there were many new unemployed as data from the Ministry of Manpower in April 2020. The data stated that companies had terminated employment (PHK) of as many as 2,084,593 workers from 116,370 existing companies in Indonesia. This is because the company experienced a decrease in production, and even the company stopped production.<sup>4</sup> The COVID-19 pandemic has a negative impact on people's lives, causing a sense of uncertainty, anxiety, and panic due to disruption of health, economy, and work.<sup>5</sup> In fact, The State guarantees its citizens a decent life as mandated in the Indonesian Constitution.

The 1945 Constitution as the Constitution in Indonesia has regulated Article 28 D paragraph 2 which states that everyone has the right to work and receive compensation and fair and proper treatment in employment relationships. The regulation is in laws such as the Employment Copyright Act related to employment and work relations, so companies must try to avoid layoffs. The fact on the ground is that many companies are laying off their employees. This increases the number of unemployed so that it has an impact on economic problems. Furthermore, there was also a commotion that caused many divorces in the territory of Indonesia. The company carried out the layoffs, one of which was due to Government policies related to the covid 19 pandemic, but it had an impact on business closures and company losses due to the company's inability to operate. Therefore, whether the company is a legal entity or employees as natural persons can hold the government accountable for the policies it issues.

This research is very important to do because it is to find out whether the Government can be sued by society who are affected by the PPKM policy during the COVID-19 pandemic and what are the criteria so that it can be said that the Government

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<sup>4</sup> Sandy Baskoro, 'Indonesian Institute of Sciences (LIPI) survey: Unemployment will increase by 25 million people in the next 3 months', *Nasional.Kontan.Co.Id*, 2021 <<https://nasional.kontan.co.id/news/survei-lipi-pengangguran-akan-bertambah-25-juta-orang-dalam-tiga-bulan-ke-depan>>.

<sup>5</sup> Etc Abdul Rauf, Hajar, Siti, 'Social Change Post COVID-19 in Malaysia: The Density of Social Network', *Asian Social Work Journal (ASWJ)*, 5.2 (2020).

must be responsible for its policies? This research is different from the previous ones conducted by: (Aris Tristanto, 2020); (Salsabila Rizky Ramadhani, Nunung Nurwati, 2021); (Syahrial, 2020); (Siti Indayani, Budi Hartono, 2020).<sup>6</sup> Previous research only examined and discussed the impact of COVID-19 which caused many divorces and unemployment in Indonesia. The novelty of this research is related to the question of whether the Government can be responsible for the policies taken during the COVID-19 pandemic where these policies lead to a lot of unemployment and divorce, as well as looking for criteria so that the Government must be responsible for its policies to create legal certainty.

The problem in this study is whether the government can be held responsible for the increase in unemployment and divorce due to the impact of the COVID-19 pandemic and what are the criteria to classify that the government must be responsible for its policies to call it a legal certainty for citizens. This research methodology is an empirical method with primary data in the form of data originating from the main data source, in the form of social actions and words from the parties involved with the object under study utilizing interviews and observations. Primary data was obtained from information from the Indonesian Institute of Sciences (LIPI) and the Supreme Court of the Republic of Indonesia. Meanwhile, the objective of this study was to analyze the government's responsibility in taking a policy in the context of handling covid 19 which has an impact on increasing social problems in the society.

## B. DISCUSSION

### 1. THE INCREASE IN UNEMPLOYMENT AS THE IMPACT OF THE COVID 19 PANDEMIC AND GOVERNMENT POLICY ON REGIONAL QUARANTINE

Coronavirus or commonly called Covid-19 is a type of infectious disease caused by the

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<sup>6</sup> Aris Tristanto, 'Divorce During the Covid 19 Pandemic In The Perspective Of Social Science', *Jurnal Sosio Informa*, 2020; Nurwati Ramadhani, Rizky, Salsabila dan Nurwati, 'The Impact of the Covid 19 Pandemic on the Divorce Rate', *Jurnal Pengabdian Dan Penelitian Kepada Masyarakat (JPPM)*, 2.1 (2021).

coronavirus. The Covid-19 pandemic has had a huge impact. One of them is the problem of unemployment. The spread of Covid-19 and the uncertainty of when it will end is predicted to cause the unemployment rate in Indonesia to increase. This is because many workers have been laid off due to social distancing policies to prevent the spread of the Covid-19 virus.

The wide and fast spread of the coronavirus forced the government to take measures to limit the mobility and interaction of the people. For example, the government closed offices and schools, all of which were done from home, and even closed factories and restaurants, resulting in a decrease in income and even unemployment due to many layoffs by companies. Meanwhile, according to the Minister of National Development Planning, the Head of the National Development Planning Agency, Mr. Suharso Monoarfa, said that the unemployment rate increased to 3.7 million people due to the impact of the COVID-19 pandemic.<sup>7</sup>

The impact of the COVID-19 pandemic, apart from the health sector, has also greatly impacted the economy, namely in all sectors such as the property sector, tourism sector, manufacturing sector, service sector, and other sectors.<sup>8</sup> LIPI data submitted by Mr. Ngadi MS stated that companies whose production decreased by 52% even did not produce as much as 40%. Of the total 116,370 companies, the companies that laid off their employees were 2,084,593 workers. Following are some of the economic sectors that have laid off their workers:<sup>9</sup>

LIPI data: the survey was conducted in the period 24 April-2 May 2020 on residents over the age of 15, with a total of 2,160 respondents who were recruited and spread across 34 provinces in Indonesia.

No.	Business Sector	Decreased Production	Stopped Production	Layoffs
1	Free Worker in Agriculture and Non-Agriculture	38% of orders have been reduced	55% No Job	So there is no income or
2	Independent Entrepreneur	40% of independent entrepreneurs experience a decrease in income	10 million stopped working	15 million independent entrepreneurs will be unemployed
3	Factory / Manufacturing Sector	40% experienced a decrease in income	50% stopped production	15.6% of Workers experienced layoffs
4	The ability to survive in the business world	41% of Entrepreneurs survive less than 3 months. 24% last 3-6 months, 11% last 6-12 months	-	-

Other business sectors based on a survey by the Central Statistics Agency (BPS) which surveyed 34,559 business actors are accommodation and food/beverage businesses by 92.47%, and the transportation, warehousing, construction, processing, and trading industries by 90.90%.<sup>10</sup>

In the industrial sector, especially the manufacturing and garment industries, the highest impact on social distancing policies is due to reduced production. This is because of the lack of market demand and the supply of production materials from other countries such as Japan and China which cannot enter Indonesia. As a result, there are obstacles and a decrease in the production process. The manufacturing and garment sectors also experienced a decline in demand from abroad, causing a decline in exports in these sectors. Thus the company will experience a decrease in income

<sup>7</sup> Anna Maria Salamor Erwin Ubwarin, Deassy Jacomina Anthoneta Hehanussa, Jetty Martje Patty, 'Immune to Criminal Law in Handling Non-Natural Disasters Due to Sars-Cov-2', *Jurnal Penelitian Hukum De Jure*, 21.1 (2021), 20 <<https://doi.org/http://dx.doi.org/10.30641/dejure.2021.V21.13-22>>.

<sup>8</sup> S Hanoatubun, 'The Impact of COVID-19 on the Indonesian Economy', *Education Psychology and Counseling*, Universitas Kristen Satya Wacana, 2.1 (2020).

<sup>9</sup> Baskoro, Sandy (2021), Survei LIPI : Pengangguran akan bertambah 25 juta orang dalam 3 bulan kedepan (Indonesian Institute of Sciences (LIPI) survey: Unemployment will increase by 25 million people in the next 3 months), derived from <https://nasional.kontan.co.id/news/survei-lipi-pengangguran-akan-bertambah-25-juta-orang-dalam-tiga-bulan-ke-depan>

<sup>10</sup> Dimas Jarot Bayu, 'The Six Business Sectors Most Affected During the Corona Pandemic', *Databoks. Katadata.Co.Id*, 2020 <<https://databoks.katadata.co.id/datapublish/2020/09/15/6-sektor-usaha-paling-terdampak-saat-pandemi-corona>>.

and losses that lead to a reduction in employees and layoffs. In April 2020 the utility of this manufacturing sector decreased by around 30-40% due to the impact of the COVID-19 pandemic.<sup>11</sup>

In the tourism sector, with the implementation of social distancing, the government has taken a policy to limit flights both from within and outside the country. As a result, many tourists both from within and from abroad cannot fly and cancel their visits to tourist attractions in Indonesia. The government then issued a Circular dated March 18, 2020, which regulates all activities both indoors and outdoors in all sectors, especially in the tourism and creative economy sectors, which is temporarily postponed to reduce the spread of covid 19.<sup>12</sup> It can be seen that the policy taken by the government is a dilemma for the Government to prioritize public health or the community's economy.

The government policies that have been made and legalized in the context of social distancing to prevent the transmission of the COVID-19 virus are as follows:

- a. Law No. 24 of 2007 concerning Disaster Management
- b. Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases
- c. Law No. 36 of 2009 concerning Health
- d. Law No. 6 of 2018 concerning Health Quarantine
- e. Government Regulation No. 21 of 2020 concerning Large-Scale Social Restrictions
- f. Presidential Regulation Number 17 of 2018 concerning Disaster Emergency Management in Certain Conditions
- g. Presidential Decree Number 11 of 2020 concerning the Establishment of a COVID-19 Public Health Emergency;

- h. Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters
- i. Presidential Decree No. 7 of 2020 concerning the Task Force
- j. Presidential Instruction Number 4 of 2020 concerning refocusing of activities, reallocation of budgets, and procurement of goods and services in the context of accelerating the handling of Corona Virus Disease 2019 (COVID-19);

The government policies mentioned above are related to efforts to overcome the COVID-19 pandemic, which are in the form of social distancing and physical distancing policies. This is regulated in Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the context of Accelerating Handling. The issuance of these regulations is to support the implementation of Law no. 24 of 2007 which stipulates that disease outbreak is one of the non-natural disasters that need to be managed with potential threats.

The implementation of social distancing and physical distancing will reduce the transmission of the coronavirus 19 in society. This is because the application will prevent contact between the sick person and the surrounding. However, this policy can also create new social problems, such as the number of people who lose their jobs and the number of people who divorce because of economic problems.

## 2. THE INCREASE IN DIVORCE AS THE IMPACT OF THE COVID-19 PANDEMIC

Based on the aforementioned description, social distancing and regional quarantine have both positive and negative impacts. One of the impacts is the number of layoffs occurring during this COVID-19 pandemic. This policy greatly affects the financial condition of the household the family, both in terms of household income and expenditure. This condition causes many community households to lose their balance. This has an impact on the number of quarrels in the family (Rohman Hasyim, 2021). Families experience economic shocks and find it difficult to make ends meet. Many families with this condition resolve their problems by divorce.<sup>13</sup>

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<sup>11</sup> Muhammad Choirul Anwar, 'RI Manufacturing Destroyed Due to Covid-19', *Www.Cnbcindonesia.Com*, 2020 <<https://www.cnbciindonesia.com/news/20201020205812-4-195870/manufaktur-ri-hancur-lebur-gegara-covid-19-ini-buktinya>>.

<sup>12</sup> Rohman Hasyim, 'Analysis of Factors Causing the High Divorce Rate during the Covid-19 Pandemic in Palembang City', *Www.Ejournal.Unitaspalembang.Ac.Id*, 2021 <<http://www.ejournal.unitaspalembang.ac.id/index.php/jhtp/article/view/294>>.

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<sup>13</sup> Alghifari, A., Sofiana, A., et. al., 'Economic Factors



Almost 70% of divorce lawsuits are filed by the wife because the husband cannot meet the daily needs of their household. This condition causes constant commotion in the household.<sup>14</sup> When the pandemic appeared in Indonesia in March 2020, several months later many divorce cases occurred in the society. The number of divorce cases increased sharply in the following table.<sup>15</sup>

Sources	Divorce lawsuit	Talaq request	Location	Month / year	Percentage
(Salsabila Rizky Ramadhani dan Nunung Nurwati, 2021)	20,000 cases	-	Supreme Court Data	April-May/2020	20%
(Salsabila Rizky Ramadhani dan Nunung Nurwati, 2021)	57,000 cases	-	Supreme Court Data	June-July/2020	80%
(Adam, 2020)	51,646 divorce cases sued	17,397 talaq	West Java	September 2020	-
(Windiarso, 2020).	1,966 divorce cases	589 talaq	Tegal Regency, Central Java	August 2020	-
(Tri Puma Jaya, 2021)	654 cases	175 cases	Lampung	Jan-May/2021	25% of 2020
(Irwanto, 2021)	2,250 divorce cases	-	Palembang	September 2021	10%
(Muhammad Subarkah, 2021)	3,200 divorce cases	-	West Jakarta PA	October 2021	-

and Their Impact on Divorce Cases, the Covid 19 Pandemic Era In A Review of Islamic Family Law Interpretations (UIN Raden Intan Lampung)', *Civil and Islamic Family Law*, 2020.

<sup>14</sup> Urip Tri Wijayanti, 'Analysis of Factors Causing Divorce During the Covid-19 Pandemic In Banyumas Regency', *Journal.Ipb.Ac.Id*, 2021, p. Volume 14 Nomor 1 <<https://journal.ipb.ac.id/index.php/jikk/article/view/31790>>.

<sup>15</sup> Salsabila Rizky Ramadhani; Nunung Nurwati, 'The Impact of the Covid-19 Pandemic on Divorce Rates', *Jurnal.Unpad.Ac.Id*, 2021 <<https://jurnal.unpad.ac.id/jppm/article/view/33441>>.

### The question is, is it true that this increasing divorce is the impact of the Covid-19 pandemic?.

Many reasons lead to divorce cases that occur in society. For example: having an affair with one of the partners, not being supported by the husband for several years even though they live in the same house, being left by the husband for many years, and the husband being laid off so that there is no cost for family needs, the presence of domestic violence (KDRT), and differences of opinion between husband and wife. Of the many causes of divorce during the COVID-19 period due to the large number of workers who lost their jobs, this resulted in reduced or lost family income to meet their daily needs. As a result, there is a continuous commotion in the family which eventually leads to divorce.<sup>16</sup>

From the results found in the study, based on the facts in the field, it turns out that many divorces were proposed by wives who are young with low education, does not work, and have one child. Their marriage is on average less than five years.<sup>17</sup> This divorce also occurs because of quarrels in the household caused by economic factors. Meanwhile, other factors are due to domestic violence, the young age factor, the communication factor, and it turns out that with the covid-19 pandemic, the amount of time to gather with the family has caused a lot of commotion between husband and wife, as well as psychological factors.<sup>18</sup> Another factor that causes divorce is due to the large number of layoffs causing the family's finances to be reduced and unable to meet the needs of their family. Therefore, according to Salsabila Rizky, there needs to be good communication between husband and wife in overcoming family economic problems and a shared understanding between husband and wife is needed about the current pandemic condition.<sup>19</sup>

<sup>16</sup> Wigati Taberi Asih, 'Covid-19 : 'Response to the High Divorce Rate During the Pandemic'', *Heylawedu. Id*, 2021 <<https://heylawedu.id/blog/covid-19-respon-terhadap-tingginya-angka-perceraian-di-masa-pandemi>>.

<sup>17</sup> Wijayanti, Urip Tri, *Op.Cit*, Hal. 17.

<sup>18</sup> Aris ( Divorce During the Covid 19 Pandemic In The Perspective Of Social Science).

<sup>19</sup> Salsabila Rizky Ramadhani, Nunung Nurwati. 'The Impact of the Covid-19 Pandemic on Divorce Rates', 2021

The high increase in divorce cases during this pandemic has made divorce an important issue to be studied. This study is also important to see how the government's responsibility in tackling the problem of social restriction policies that cause causality to economic problems and cause divorce indirectly.

## C. ANALYSIS

### 1. GOVERNMENT RESPONSIBILITY FOR REGIONAL QUARANTINE POLICIES THAT IMPACT ON LAYOFFS AND DIVORCE IN SOCIETY

The state is a legal subject both as a public and civil legal entity. The government can thus perform legal actions like other legal subjects such as natural persons and legal entities. As a legal subject, the government also has rights and obligations and can take several actions, either in the form of concrete actions (*feitelijkhandelingen*) or legal actions (*rechtshandelingen*). Concrete actions are actions that have nothing to do with the law and do not cause legal consequences. Meanwhile, legal actions are actions that by their nature can cause certain legal consequences.<sup>20</sup>

The Government's actions have the potential for irregularities or violations of the law. This means that violations may occur. James Madison stated in his "Federalist Papers": *that if men were angels, no government would be necessary. If angels were to govern men neither external nor internal controls on government would be necessary.*<sup>21</sup> If it is related to the aspect of legal protection for the people, then the government's actions can lead to disputes between the people and the government.<sup>22</sup> The act of governing carried out by the Government can be in a broad sense and in a narrow sense. The broad meaning is all State Institutions, while the narrow meaning is the president and the staff. The President as an executive agency in carrying out its duties related to public policies must be based on legislation

either on its terms or through the legislative body.<sup>23</sup>

The government in carrying out its activities can take two kinds of actions, which are ordinary actions and legal actions. In carrying out this legal action, the Government as a State Administrative Officer in relation to government affairs has several elements, namely as follows:<sup>24</sup>

- a. Government actions are carried out in the care of the interests of the state and the people.
- b. Government actions are carried out in relation to carrying out government functions
- c. Government actions are intended as a means to cause legal consequences in the field of administrative law.
- d. Government actions are carried out by government officials in their position as rulers and as government equipment with their own initiatives and responsibilities.

Besides carrying out activities in public law, the Government is also involved in the civil field. As with individuals, everyone can always make mistakes. Under these conditions, an instrument of supervision through the law is needed. The government constitutionally has the legal authority to make and implement laws and other legal regulations. In this case, there is the potential for a violation of the law by the government or an error in the formation and application of the law.

There are several things to know when the government acting as state administration is involved in public law interactions and in civil law interactions. In this case, the government must know whether the institution represented by the government is a state, province, or regency. The above association is based on actions under public law and actions in civil law. There are three criteria to determine the status of a public legal entity, which are:<sup>25</sup>

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<sup>20</sup> Ridwan H.R., 'State Administrative Law', ed. by Raja Grafindo Persada (Jakarta: Raja Grafindo Persada, 2006).

<sup>21</sup> Philipus M Hardjon, 'Legal Protection for the People in Indonesia, A Study of its Principles, Handling by Courts in General Courts and the Establishment of Administrative Courts', Special Edition (2007).

<sup>22</sup> *Ibid.* Hal. 3

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<sup>23</sup> Safi, 'The Concept of Accountability for Government Actions as a Means of Realizing Good Governance in Indonesia, edited by Constitutional Law Section' (Madura: Faculty of Law, Trunojoyo University, 2020).

<sup>24</sup> Abid Zamzani, 'Implementation of State Administrative Law Functions in Realizing Good Governance', *Yurispruden, Jurnal Fakultas Hukum Universitas Islam Malang*, 3.2 (2020).

<sup>25</sup> Chaidir, Ali, 'Legal entity', ed. by Alumni (Bandung: Alumni, 1987).

- a. Establishment aspect: public legal entities are established by the authorities based on laws or other regulations.
- b. Work environment aspect: carrying out public duties.
- c. Public authority aspect: making decisions or regulations that are binding on the public.

Based on the government's actions above, when the government acts in the civil sector, it must comply with civil law regulations, where the government acts as a representative of a legal entity and not a representative of power or position. Therefore, the government's position in the field of civil law is no different from other legal subjects, namely as individuals or as civil legal entities that do not have a special position and are parties to civil disputes in court.<sup>26</sup>

However, in practice, it is rather difficult to distinguish when the government's legal actions are regulated by civil law. It turns out that there are government actions that are not always carried out by government bodies but are carried out by a person or civil legal entity. Besides that, there are difficulties in determining government actions that are public or civil. According to Chaidir Ali, this difficulty is due to the existence of two kinds of public legal actions, namely those that are pure or a mixture of public and civil.<sup>27</sup>

**However, is the government's action on social distancing policy a private legal action or a public legal action?**

Public legal action is a government legal action carried out by a State Administration agency or official in the context of carrying out government affairs. It has the elements described above. Actions based on public law are further differentiated into unilateral actions (*eezijdig*) and various parties (*meerzijdige*). The concrete form of unilateral action is the government's decision or "*beschikking*" and one form of the actions of various parties is "*public rechtterlijke overeekomst*".<sup>28</sup>

The government's decision to deal with the COVID-19 pandemic is a public legal action. In this case, can the government that carries out the public legal action having a social impact on the

society also be legally prosecuted? Then, can the government be held accountable for its decision? According to Philipus M Hadjon, the authority of public law can only be owned by the "ruler", so every person or everybody owned by public law must be included in the ruling class.<sup>29</sup>

The government as the ruler who has the authority to take public legal action has the potential to make mistakes. According to Felix A. Nigro, there are nine kinds of violations committed by the Government, which are as follows:<sup>30</sup>

- a. Failure to show positive initiatives and breakthroughs;
- b. Violations of procedural due process;
- c. Covering mistakes made by the apparatus;
- d. Dishonesty;
- e. Genetical behaviour
- f. Waste in the use of resources (gross inefficiency);
- g. Overriding the law;
- h. Failure to respect legislative intent;
- i. Unfair treatment of employees;

In terms of the authority of the government's public legal action, according to Philipus M Hadjon, it is related to the concept of the welfare state. The concept says that the government has the main task of providing good services for the society to carry out public interest tasks (Philipus M Hadjon, 2007).<sup>31</sup> The government provides good public services to the society by: making people obtain and feel inner and outer peace, being able to feel they are treated fairly, humanely, fairly and civilly. Thus, it is necessary to have a good legal basis for government action (*bestuurhendeling*) so that what the government does can be said to be a legitimate act and can be accounted for (*accountable and responsible*).

Every government action must be based on just law. This means that the government's policy in taking legal policies related to social distancing during this pandemic is not only from a public health perspective but also from a community economic perspective. People do not experience

<sup>26</sup> *Ibid.* Page 35

<sup>27</sup> *Ibid.* Page 43

<sup>28</sup> Philipus M Hardjon, *Loc.Cit.*, Page 10

<sup>29</sup> *Ibid.* Page 12

<sup>30</sup> Winahyu Erwiningsih, 'The Role of Law in Accountability for Government Actions', *Jurnal Ilmu Hukum*, 9.2 (2007).

<sup>31</sup> Philipus M, Hardjon, *Op.Cit.*, Page 8

losing their jobs to gain inner and outer peace. Therefore, has the government taken its policies in dealing with the COVID-19 pandemic, or has it not been fair to the citizens? There are several related theories of justice as follows; a). according to Thomas Aquinas, it is related to distributive justice and commutative justice. The principle of justice according to Thomas Aquinas is the similarity between one thing and another (*aequalitas rei ad rem*). He mentioned that there are 2 forms of similarity, namely: proportional equality (*aequalitas proportionis*) and quantity similarity (*aequalitas quantitas*). Justice according to Thomas is respect for someone who can be realized if something is given or received by someone in proportion to what should be received. Therefore, the recognition of a person must be directed at the recognition of equity and justice; b). Aristotle stated that the construction of justice imposes an obligation on lawmakers to pay attention to it in formulating the concept of justice into law so that through good legislation, justice will guarantee the fulfillment of the society according to their rights. If the Aristotelian theory mentioned above is related to statutory regulations, be it Laws, Government Regulations, and Ministerial Regulations, then to prevent the spread of COVID-19, it is necessary to formulate the concept of justice into its policies. Therefore, government policies can be properly accounted for by society.

Governmental Liability is an obligation in compulsory compliance, made by the state or government or government officials or other officials to carry out government functions. This is a result of an objection, lawsuit, or judicial review, which is submitted by someone, the society to government officials.<sup>32</sup> Otto Depenheuer (*Governmental Liability in Germany*, 1997) argued that in article 131 *Welmar Constitution* it was stated that “The state is liable responsible for the public law for all the actions of its officers who make mistakes”. Then it is also said that the provisions in article 131 are actions that precede civil actions. This can drag the official concerned before a civil court.<sup>33</sup>

<sup>32</sup> Safi, The Concept of Accountability for Government Actions as a Means of Realizing Good Governance in Indonesia, ed. by Constitutional Law Section (Madura: Faculty of Law, Trunojoyo University, 2020).

<sup>33</sup> *ibid.* Hal. 173

If the society files a civil lawsuit against a government official, the claim can be in the form of:

- a. demands for payment of a sum of money (subsidies, compensation, allowances, etc.);
- b. demands to issue or cancel/revoke a decision or regulation;
- c. as well as other actions that are the fulfilment of their obligations, for example: to carry out more effective and efficient supervision, protect citizens’ property, manage and maintain public facilities and infrastructure, and so on (Erwiningsih Wahyu, 2007). Judging from these demands, the lawsuit against government officials in the civil sector is based on unlawful acts of the government. As regulated in article 1365 of the Civil Code which states: “every act that violates the law, which brings harm to someone else, obliges the person who because of his fault published the loss, compensates for the loss”.<sup>34</sup> Whereas in the German Civil Code regulated in Article 839, it is the personal responsibility of officials (official personality) which is often unsatisfactory. This in turn can lead to public distrust of the government.<sup>35</sup>

Based on article 1365 of the Civil Code, the government can be sued, civilly but the lawsuit must meet the elements of an unlawful act so that the lawsuit can be accepted, which are:

- a. The government’s action is an unlawful acts;
- b. The government’s actions are truly guilty;
- c. The community or legal entity suffers losses due to the government’s actions
- d. The losses incurred are the result of government actions.

Government liability in addition to civil law is also in the field of state administrative law based on unlawful acts by the authorities (*onrechsmatige Overheidsdaad*), or from State Administrative Decisions that are made in violation of or contrary to applicable laws and regulations and general principles of good governance, as regulated in Law no. 28 of 1999.

<sup>34</sup> Tjitrosudibio Subekti R dan R, ‘*Civil Code, Burgerlijk Wetboek*’, ed. by PT. Paradnya Paramita (Jakarta: PT. Paradnya Paramita, 1990).

<sup>35</sup> Safi., *Op.Cit.*, Page 175



## 2. CLEAR CRITERIA FOR GOVERNMENT RESPONSIBILITY THAT MUST BE REGULATED IN A REGULATION TO CREATE LEGAL CERTAINTY FOR THE SOCIETY

Law has a goal to create justice, but the law also has a goal to be able to create legal certainty. Therefore, the law must be able to harmonize the elements of justice, elements of legal certainty, and other elements. This is because justice, legal certainty, and other elements often contradict each other.

The principle of legal certainty, whether regulated or not in law, remains binding because the principle has generally been recognized as a fundamental basis for reviewing and resolving arising legal issues. The principle of legal certainty is a principle in a state of law that lays down laws and regulations as the basis for every policy and action in law. The principle of legal certainty refers to the application of a clear but consistent and consequential law, the implementation of which cannot be influenced by subjective circumstances. It contains three main elements, namely the state law, law, and regulations as the basis for making policies and are consistent and consequential.<sup>36</sup>

Lawrence M. Friedman argued that to realize legal certainty, three things are needed, namely legal substance, legal apparatus, and legal culture. Furthermore, Friedmann describes the substance of this law as follows:

*“A legal system is the union of primary rules and secondary rules, primary rules are norms of behavior; secondary rules are norms about those norms-how to decide whether they are valid, how to enforce them, etc. Both primary and secondary rules, of course, are output of legal system. They are ways of describing the behavior of the legal system seen in cross section. Litigants behave on the basis of substance; it creates expectations to which they react”.*<sup>37</sup>

Friedmann’s opinion above is based on the opinion of H.L.A Hart that the legal system is a

unity of primary law and secondary law. The primary law is the norms of behavior, while the secondary law is how to determine the validity of the norms, and how to enforce these norms. Both primary law and secondary law are outputs of the legal system.

The legal system has the function of responding to the needs of the society, according to Friedmann, the functions of the legal system are as follows:

- a. To distribute and maintain values that society feels are right.
- b. For dispute resolution, namely the place and process where people can resolve their disputes.
- c. A means of social control, which is as a guide for the society- what people can and cannot do.
- d. To create norms.
- e. Means of social engineering or social change.

The legal apparatus also has a very important role in creating, changing, interpreting, implementing, and enforcing the applicable legal regulations. The third component is legal culture, such as habits, views, ways of behaving, and thinking, which drive public support to comply or disobey the law. Legal culture has an important role in developing the legal system because it is related to perceptions, values, ideas, and public appreciation of the law so that a legal system cannot exist without legal culture.<sup>38</sup>

Legal certainty cannot be separated from the meaning of what the purpose of the law is actually because legal certainty is one of the goals of the law itself besides the benefit and justice for every human being. Legal certainty cannot be separated from the function of law. The most important thing is the achievement of order in human life in society. This provision causes people to live in certainty, people can pay attention or predict what will happen or what they can expect.

Budiman Ginting added that legal certainty is the consistency of regulations and law enforcement in Indonesia. The consistency of regulations is shown by the existence of other regulations and can be used as guidelines for a sufficient period,

<sup>36</sup> Raimond FL, ‘Law Enforcement, In Manadopolos Article’, 2007.

<sup>37</sup> Lawrence M Friedman, *American Law an Introduction*, ed. by WW Norton Company (New York: WW Norton Company, 2004).

<sup>38</sup> Erman Radjagukguk, ‘Legal Reform Enters the Second PJPT in the Era of Globalization’, *Majalah Hukum Dan Pembangunan* (Jakarta, 1993).

so that it does not seem that every change of office is always followed by a change of conflicting regulations.<sup>39</sup>

Article 28 D paragraph (1) of the 1945 Constitution reads “Everyone has the right to fair recognition, guarantees, protection, and legal certainty and equal treatment before the law”. This provision implies that regulations are enacted to provide legal protection and certainty. This legal certainty, according to Radburch, is controlled by the state that is given the power or the state plays a decisive role when what is just is indeterminable because the state has the will and power to do so.<sup>40</sup>

Based on the above, it is necessary to have clear criteria related to the government’s liability to the community. Furthermore, these criteria must be regulated in a statutory regulation in the form of legal norms which will ultimately create legal certainty for people who will hold the government liable. The principle of legal certainty is included in the material principles in the formation of good legislation according to I.C. Van der Vlies, while the other material principles are the principle of equal treatment in law and the principle of implementing the law according to individual circumstances.<sup>41</sup>

According to H.J. Romijn, government actions as administrative legal actions are “*Een administratieve rechtshandeling is dan een wilsverklaring in een bijzonder geval uitgaande van een administratief orgaan, gericht op het in het leven reopen een rechtsgevolg op het gebied van administratiefrecht*”, that administrative legal action is a statement of will that arises from the administrative organs in special circumstances, intended to cause legal consequences in the field of administrative law. Government legal action is an action taken by a State Administration Agency or Official in the context of carrying out

government affairs. This government action has several elements, namely as follows:

- a. The act is carried out by government officials in their position as rulers and as government equipment with the government having its own initiatives and responsibilities.
- b. Government actions are carried out in the care of the interests of the state and the people.
- c. Government actions are carried out in relation to carrying out government functions
- d. Government actions are intended as a means to cause legal consequences in the field of administrative law.

The fact shows that the government in addition to carrying out activities in public law is also often involved in the civil field. Therefore, the government for their activities can be prosecuted both civilly and constitutionally through the state administrative court. While civilly, the government can be prosecuted through the general court.

Based on the above, it can be understood that there are several criteria regarding government liability as follows:

- a. The first criterion is the extent to which the government’s actions (*bestuurshandeling*) can be declared to be in accordance with the law or legal validity, validity based on laws and regulations (*wetmatigheids*), and the validity of the goals and objectives of the government issuing the policy (*doelmatigheids*).

Regarding the legal validity of government actions, these actions must be considered valid by law, which consists of written and unwritten laws that live in society. As for legitimacy based on statutory regulations (*wetmatigheids*), the government’s actions must not conflict between lower and higher regulations, and the state constitution, which is the 1945 Constitution and amendments. The validity of the goals and objectives of this government policy can be related to which one brings more benefits and welfare to the society or whether it actually causes a lot of harm and misery to the society.

- b. The second criterion is how to take legal responsibility for the actions of the government. Therefore, it must be made in a legal norm in law so that it will provide legal

<sup>39</sup> Budiman Ginting, ‘*Legal Certainty and Implications for Investment Growth in Indonesia*’, *Pidato Pengukuran Guru Besar FH USU, Kampus USU* (Medan, 20 September 1993).

<sup>40</sup> Leawoods H Radburch, Gustav, ‘An Extraordinary Legal Philosopher’, *Journal of Laws and Policy*, 2 (2000), 489.

<sup>41</sup> Marulak Pardede, ‘*Legal Aspects of Health Quarantine and Consumer Protection in Combating the Covid-19 Pandemic*’, *Jurnal Penelitian Hukum De Jure*, 1.1 (2021), 35 <<https://doi.org/http://dx.doi.org/10.30641/dejure.2021.V21.23-44>>.

certainty for both the community and judges in giving their decisions.

- c. The third criterion is the extent to which the government's actions can be personally responsible.

Government responsibilities may consist of the ones government is responsible for or private responsibility. This criterion must also be clearly spelled out in a legal norm so that there is certainty which one is private and which one is the responsibility of the government.

Based on the foregoing, the criteria for clear government responsibility are very important to create legal certainty and in the context of forming good governance in order to uphold a democratic rule of law.

## D. CLOSING

### Conclusion:

After the COVID-19 pandemic, new social problems have increased, such as the increase of unemployment and divorce in society, which are caused by the direct or indirect impact of government policies in dealing with the pandemic. However, the government's responsibilities have not been regulated, and in practice, society is still neglected. Society has surrendered to the consequences of the PPKM policy during the COVID-19 pandemic. There are people who will file a civil lawsuit against the government. This lawsuit against government officials in the civil sector in Indonesia is based on unlawful acts of the government as regulated in Article 1365 of the Civil Code. In addition to the responsibility of the Government in the field of civil law, the government can also be held accountable in the field of state administrative law to the State Administrative Court by filing a claim that the disputed State Administrative Decision be declared null and void, with or without a claim for compensation and/or rehabilitation. Meanwhile, for every government policy issued in the form of statutory regulations under the Act, a material review can be requested from the Supreme Court.

The criteria for clear government responsibility are very important to create legal certainty. There are several criteria in the context of government accountability, namely the extent to which government actions (*bestuurhandeling*) can be declared to be in accordance with the

law or legal validity, validity based on laws and regulations (*wetmatigheids*), and the validity of the goals and objectives of the government issuing the policy (*doelmatigheids*). In addition, what is the legal responsibility for the actions of the government, and the extent to which the actions of the government can be personally accounted for.

### Suggestions:

The government's responsibility needs to be confirmed by regulations so that there is legal certainty. Thus, it is necessary to consider the establishment of the Law on Government Responsibilities and Government Compensation to the society, because the author believes that the existing laws and regulations have not accommodated the regulation regarding the government's responsibility.

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