



Indicators of Regulatory Legal Immunity Rights in the Perspective of the Indonesia State Constitution

Abdul Madjid; Triya Indra Rahmawan; Mohamad Jainuri

Personality Development Course Center, University of Brawijaya, Malang, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i3.2480>

Abstract

The birth of Perppu 1/2020 as passed into Law 2/2020 presents the pros and cons of views in society. Article 27 of Perppu 1/2020 which regulates state financial policies and financial system stability for handling the Covid-19 pandemic turns out to give privileges to certain officials to be immune from the law. The rule of law universally prioritizes the main principle of equality before the law or everyone is equal before the law and the rule of law. But on the other hand, there is a concept called emergency constitutional law. Emergency law is a law that is deliberately enacted in and for emergencies, namely conditions that are narrow and precarious, very dangerous situations. This research is normative juridical research (normative legal research) which aims to analyze the suitability of the regulation of legal immunity rights with the concept of emergency constitutional law in Indonesia; analyze the impact of legal immunity rights regulation on the protection of citizens' rights; and finding indicators of regulating legal immunity rights by the concept of emergency constitutional law in Indonesia and the 1945 Constitution.

Keywords: *Legal Immunity Rights; State Administration; Emergency Law*

Introduction

The Constitution of the Republic of Indonesia, namely the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), has affirmed that the State of Indonesia is a constitutional state. Besides, the State of Indonesia also accommodates the existence of democracy as the principle of state administration. Thus, the State of Indonesia is a rule of law and a democracy based on a constitution (constitutional democracy). This means that all the implementation of state power, including the power to form laws and various other state regulations must be based on legal and constitutional provisions (Hamdan Zoelva, 2012). In the rule of law concept, it is ideal that what must be made commander in the dynamics of state life is law, not politics or economy (Asmaeny Azis, 2018). Therefore, all state equipment, whatever its name, including citizens, must obey and obey and uphold the law without exception (B. Hestu Cipto Handoyo, 2009).

However, in the practice of state or government administration, things that are not normal are very likely to occur, where the legal system is usually used which cannot be used properly. In that sense, ordinary law is unable to accommodate the interests of the state or society, so it demands the state to act in ways that are not normal according to the rules of law that usually apply in normal circumstances.

This situation of course requires separate arrangements to mobilize state functions so that they can run effectively to ensure respect for the state and fulfillment of the basic rights of citizens. In Indonesia, regarding the situation of danger and matters of urgency that force as the basis for the government's action to form a Perpu in the framework of saving the interests of the nation and state, the legal basis can be found in Article 12 and Article 22 of the 1945 Constitution. Article 12 states that "the President declared a state of danger. , the terms and conditions of danger are determined by law ". Article 22 states that "in matters of urgency forcing the President to stipulate government regulations in lieu of laws" (Muhammad Syarfi Nuh, 2011). Therefore, to overcome this abnormal condition, Article 22 paragraph (1) of the 1945 Constitution gives the President of the Republic of Indonesia the authority to stipulate government regulations in lieu of laws (Perppu) that are at the same level as laws.

In 2020, to be precise on March 31, the Government of the Republic of Indonesia issued a Government Regulation in Lieu of Law (Perppu) Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Pandemic Corona Virus Disease (Covid-19) and/or In Facing Threats That Endanger the National Economy and/or Financial System Stability (hereinafter referred to as Perppu 1/2020). There are 3 (three) important things behind the birth of Perppu 1/2020. First, considering the spread of Corona Virus Disease 2019 (Covid-19) which was declared by the World Health Organization as a pandemic in most countries around the world, including in Indonesia. The Covid-19 pandemic has also shown an increase over time and has resulted in greater casualties and material losses, which have implications for social, economic, and social welfare aspects.

Second, the implications of the Covid-19 pandemic have had an impact, among others, on a slowdown in national economic growth, a decrease in state revenues, and an increase in state spending and financing, so that various government efforts are needed to save health and the national economy, with a focus on spending on health, safety nets social (social safety net), as well as the economic recovery, including for the business world and the affected communities. Third, the implications of the Covid-19 pandemic have also had an impact on the deterioration of the financial system, as indicated by a decrease in various domestic economic activities, so it is necessary to jointly mitigate the Government and the Financial System Stability Committee (KSSK) to take forward-looking actions to maintain financial sector stability. The President then considered that these considerations had met the parameters of compelling urgency which gave the President the authority to enact a Government Regulation in Lieu of a Law as stipulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Perppu 1/2020 also emphasizes that this is an extraordinary policy and step in the context of saving the national economy and financial system stability through various relaxation policies related to the implementation of the State Revenue and Expenditure Budget (APBN) in particular by increasing spending on health and spending. For a social safety net, and economic recovery, as well as strengthening the authority of various institutions in the financial sector.

The existence of Perppu 1/2020 was then discussed, approved, and stipulated by the House of Representatives of the Republic of Indonesia (DPR RI) into law through the ratification of Law Number 2 of 2020 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2020 concerning Financial Policy State and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in the Context of Facing Threats that Endanger the National Economy and/or Financial System Stability into Law (hereinafter referred to as Law 2/2020).

Indeed, the Government, in this case, the President, has the constitutional right to issue Perppu 1/2020 in case of compelling crises. This is reinforced by the Constitutional Court Decision Number 138 / PUU-VII / 2009 which explains the conditions for compelling urgency as referred to in Article 22 paragraph (1) of the 1945 Constitution, if:

- a. There is a situation, namely an urgent need to resolve legal problems quickly based on the law;
- b. The required law does not yet exist, so there is a legal vacuum or there is a law, but it is not sufficient.
- c. This legal vacuum cannot be resolved by making laws in ordinary procedures because it will take quite a long time, while the urgent situation needs certainty to be resolved (Decision of the Constitutional Court of the Republic Indonesia Number 138 / PUU-VII / 2009).

Jimly Asshiddiqie has a similar view on the condition of 'compelling urgency'. According to Jimly Asshiddiqie, the urgency of forcing as a requirement of the Perppu has three conditions, namely: dangerous threats, reasonable necessity, and/or limited time (Jimly Asshiddiqie, 2007).

Although the President has the authority to enact the Perppu on "compelling urgency" conditions. However, according to the author, there is one article that deserves attention, namely Article 27 of Perppu 1/2020 which regulates the rights of legal immunity for government officials in the Covid-19 response process. Article 27 of Perppu Number 1/2020 states:

- (1) Costs that have been incurred by the Government and/or KSSK member institutions in the framework of implementing state revenue policies including policies in the field of taxation, state expenditure policies including policies in the regional finance sector, financing policies, financial system stability policies, and national economic recovery programs, is part of the economic cost to save the economy from the crisis and not a loss to the state.
- (2) Members of the KSSK, Secretary of the KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, the Deposit Insurance Corporation, and other officials related to the implementation of this Government Regulation in lieu of this law, cannot prosecute both civil and criminal if in carrying out the task is based on good faith and by the provisions of laws and regulations.
- (3) All actions including decisions made based on this Government Regulation in Lieu of Law are not the object of a lawsuit that can be submitted to the state administrative court.

Based on these provisions, the existence of the right to legal immunity can be seen from the phrase in Article 27 paragraph (2) of Perppu 1/2020 which states that "... cannot be prosecuted either civil or criminal if in carrying out tasks based on good faith and by the provisions of the legislation - invitation." The existence of the right of legal immunity/impunity to government officials certainly raises questions. Moreover, when viewed from the perspective of Article 1 paragraph (3) of the 1945 Constitution, it confirms that Indonesia is a constitutional state. The law exists as a step because basically, every power has a tendency to develop arbitrarily as Lord Acton's leading expression "Power tends to corrupt, and absolute power corrupt absolutely" - power tends to corruption and absolute power tends to absolute corruption (Ermasjah Djaja, 2010).

Thus, the question is whether in the context of a state of the law the provisions of the right to immunity / legal immunity in Article 27 of Perppu 1/2020 can still be implemented? This is because

Article 5 letter d of Law Number 12 the Year 2011 concerning the Formation of Laws and Regulations affirms that informing laws and regulations, must be carried out based on the principle of the formation of good laws and regulations, namely one of the principles of 'can be implemented' (Article 5 letter d Law Number 12 the Year 2011 concerning the Establishment of Legislation (Legislation Law)).

Research Methods

The method used in this paper is juridical normative with a statutory approach and a conceptual approach. Normative juridical research is legal research that is carried out by examining library materials or secondary data as the basic material to be researched by searching for the rules and literature related to the problem under study (Soerjono Soekantor and Sri Mamudji, 2001).

Research Result and Discussion

The regulation of legal immunity rights in Indonesia is not something new. Several regulations have the same character, namely regulating the rights regarding the right to legal immunity.

First, the Criminal Code (KUHP). The provisions of Article 50 KUHP state that "Whoever commits an act to implement the provisions of the law, is not sentenced." Meanwhile, Article 51 states that: (1) Anyone who commits an act to carry out an official order given by the competent authority shall not be punished. (2) An order of office without authority does not result in the abolition of a sentence unless the person ordered, in good faith, thinks that the order is given with authority and that the implementation is included in his work environment. Based on these provisions, there is an affirmation that anyone who commits an act, in which the act is in the context of implementing the provisions of the law, is not sentenced. Besides, every person is also not penalized if he commits an act to carry out a position order given by the competent authority.

Second, Act Number 23 of 1999 concerning Bank Indonesia (BI Law). Article 45 of the BI Law states that "Governors, Senior Deputy Governors, Deputy Governors, and/or Bank Indonesia officials cannot be punished for having made decisions or policies that are in line with their duties and authorities as referred to in this law as long as they are carried out in good faith. " This provision is intended to provide legal protection for personal responsibility for members of the Board of Governors and/or Bank Indonesia officers who in good faith based on their authority have made difficult but indispensable decisions in carrying out their duties and powers. Decision making can be deemed to have fulfilled good faith if:

- a. carried out with the intention of not seeking profit for himself, his family, his group, and/or other actions that indicate corruption, collusion, and nepotism;
- b. conducted based on in-depth analysis and has a positive impact;
- c. followed by a plan of preventive action if the decision is not correct;
- d. equipped with a monitoring system (Article 45 of BI Law).

Third, Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia (Ombudsman Law). The provisions of Article 10 of the Ombudsman Law state that "In the context of carrying out their duties and powers, the Ombudsman cannot be arrested, detained, interrogated,

prosecuted, or sued in court." Based on the explanation of Article 10 of the Ombudsman Law, it can be seen that "this provision does not apply if the Ombudsman violates the law."

Fourth, Law Number 11 of 2016 concerning Tax Amnesty (Tax Amnesty Law). The provisions of Article 22 of the Tax Amnesty Law state that "Ministers, Deputy Ministers, Ministry of Finance employees, and other parties related to the implementation of Tax Amnesty, cannot be reported, sued, carried out investigations, carried out investigations, or prosecuted, both civil and criminal. carry out tasks based on good faith and by the provisions of the legislation. " This provision has an explanation that in carrying out their duties it is based on good faith if the Minister, Deputy Minister, Ministry of Finance employees, and other parties related to the implementation of Tax Amnesty, in carrying out their duties are not seeking profit for themselves, their families, groups, and/or other actions that indicate corruption, collusion and/or nepotism.

Fifth, Law Number 18 of 2003 concerning Advocates (Advocate Law). The provisions of Article 16 of the Advocate Law state that "Advocates cannot be prosecuted either civil or criminal in carrying out their professional duties in good faith for the benefit of the client's defense in court proceedings." (Decision of the Constitutional Court of the Republic Indonesia Number 26 / PUU-IX / 2013). This provision has an explanation that "What is meant by" good faith "is carrying out professional duties for the sake of upholding justice based on the law to defend the interests of his clients. Meanwhile, what is meant by "trial court" is a court session at every level of court in all areas of the judiciary. "(Article 224 and its explanation of Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the House of Representatives, Regional Representative Council, and Regional People's Representative Council (MD3 Law)).

Sixth, MD3 Law. The provisions of Article 224 states that: (1) Members of the DPR cannot be prosecuted in front of a court because of the statements, questions, and/or opinions expressed either orally or in writing in DPR meetings or outside DPR meetings relating to the functions and authorities and duties of the DPR. (2). DPR members cannot be prosecuted in front of a court because of their attitudes, actions, activities in the DPR meetings or outside the DPR meetings which are solely due to the constitutional rights and authorities of the DPR and/or DPR members. (3) DPR members cannot be replaced at any time because of the statements, questions, and/or opinions expressed both in DPR meetings and outside DPR meetings relating to the functions and powers, and duties of the DPR. (4) The provisions referred to in paragraph (1) shall not apply if the member concerned announces the material which has been agreed upon in a closed meeting to be kept secret or other matters which are declared a state secret according to the provisions of the legislation. There is no further explanation regarding the provisions of Article 224. The explanation of Article 224 only states "Self-explanatory".

Seventh, Perppu No. 1/2020 The provisions of Article 27 of Perppu No. 1/2020 state that: (1) Costs that have been incurred by the Government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state expenditure policies including policies in regional finance, financing policies, financial system stability policies, and the national economic recovery program, are part of the economic costs of saving the economy from the crisis and not state losses. (2) Members of the KSSK, Secretary of the KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, the Deposit Insurance Corporation, and other officials related to the implementation of this Government Regulation in lieu of this law, cannot prosecute both civil and criminal if in carrying out the task is based on good faith and by the provisions of laws and regulations. (3) All actions including decisions made based on this Government Regulation in Lieu of Law are not the object of a lawsuit that can be submitted to the state administrative court. There is no further explanation for Article 27 of Perppu Number 1/2020. Elucidation of Article 27 of Perppu No. 1/2020 states "Self-explanatory".

Based on a comparison of the regulations regarding the right to immunity in several laws and regulations in Indonesia, it can be seen that there are similarities and differences as follows:

- a. There is similarity like the substance of the regulation, namely giving the right of immunity/immunity to law enforcers by their respective types of law.
- b. There is a difference in the clarity of the regulatory formulation regarding the existence of good faith. The Criminal Code stipulates that it cannot be punished if "to carry out an order of office given by the competent authority". Meanwhile, the BI Law explains in detail the necessity of good faith and then explains what is meant by good faith in the regulatory perspective of the BI Law. Then the Ombudsman Law does not regulate the necessity of good faith. It's just that the explanation of the article is emphasized with the phrase "This provision does not apply if the Ombudsman violates the law." Furthermore, in the Tax Amnesty Law and the Advocate Law, the right to legal immunity is given as long as there is good faith. Good faith in the Tax Amnesty Law has the meaning that "in carrying out its duties it is not for seeking profit for oneself, family, groups, and/or other actions that indicate corruption, collusion and/or nepotism." Whereas in the Advocate Law, the term good faith "is carrying out professional duties for the sake of upholding justice based on the law to defend the interests of his clients." Furthermore, Article 27 of Perppu No. 1/2020 provides for the right to legal immunity by requiring good faith. However, there is no further regulation regarding what is meant by good faith in Perppu No.1/2020.

Therefore, basically in Indonesia, there is a regulatory recognition of the right to immunity. The ability to regulate immunity rights is also emphasized in the Constitutional Court Decision, which according to the Constitutional Court the regulation of immunity rights does not contradict the concept of a rule of law.

According to the Constitutional Court, regardless of which constitutional state is referred to, whether a rule of law in the meaning of Rule of Law, *Etat de droit*, or *Rechtsstaat*, all three contain the same three main substances, namely: First, the substance which contains the idea that the government (in broad meaning) is limited by law. This idea implies that state apparatus or officials work within a framework whose boundaries are determined by law. Second, the substance which contains the notion of formal legality is an idea that emphasizes the necessity of a legal order created and maintained by the state. Such legal order must contain legal norms that are general, prospective, enforce the same and provide certainty so that everyone knows from the start what actions are permissible, prohibited to be carried out, or which must be carried out accompanied by the threat of sanctions for the violator; Third, the substance which contains the idea that law rules, not humans. This idea is related to the first and second ideas above which then gave birth to the need for the presence of a judge or court. Judges or courts who must judge and decide when there is a violation of the applicable legal order (Decision of the Constitutional Court of the Republic of Indonesia Number 7 / PUU-XVI / 2018)

Based on the Decision of the Constitutional Court of the Republic of Indonesia Number 7 / PUU-XVI / 2018, it can be seen that the regulation of immunity rights is not contrary to the idea of a rule of law, as long as it is carried out with the following conditions:

- a. provide a basis for the state (law enforcers) to take law enforcement action against a person if there is sufficient evidence that the person concerned has committed the act as formulated.
- b. Contains norms that are general, prospective, give equal treatment, and provide certainty so that everyone knows from the start what actions are allowed or prohibited to do.

- c. it is the law that governs, not the will of the ruler where it will then be proven through a judicial process.

If it is then linked to the formulation of immunity rights in Article 27 of Perppu No 1/2020, there is a phrase which states "... cannot be prosecuted either civil or criminal if in carrying out duties based on good faith and by the provisions of laws and regulations." This provision has provided a basis for the state (law enforcers) to take law enforcement action against someone if there is sufficient evidence. In that sense, if there is an act that is not based on good faith and is by the provisions of statutory regulations, then law enforcement action can be taken. The right to immunity automatically fails when elements of good faith are not fulfilled and violates statutory regulations.

The provisions in Perppu Number 1/2020 have also provided certainty so that everyone knows from the start what actions are allowed or prohibited to do. The provisions of Perppu No.1/2020 also show that the law rules, because by still opening the process of proof in court when there is an act that is not based on good faith and is not by the provisions of the legislation.

However, based on comparative data on the regulation of immunity rights, it can also be seen that there are differences in the formulation of regulations regarding what is meant by good faith. Even in each of the immunity rights arrangements, some clearly explain the term good faith and some do not. The difference in the clarity of the regulatory formulation regarding the term good faith can of course confuse the public, and in particular for law enforcers, (Police, Attorney General's Office, and Courts) as an integrated criminal justice system that regulates how criminal law enforcement is carried out (integrated criminal justice system).

Moreover, Article 27 of Perppu Number 1/2020 does not explain actions that are in good faith or not in good faith. Thus, Article 27 of Perppu Number 1/2020 should provide clarity on the formulation of actions that are in good faith or not in good faith. This is important, because Article 5 letter f of Legislation Law, that in forming laws and regulations must be carried out based on the principle of the formation of good laws and regulations, namely one of the principles of 'clarity the formulation', namely each statutory regulation must meet the technical requirements for drafting statutory regulations, systematic, choice of words or terms, as well as clear and easy to understand legal language so as not to cause various interpretations in its implementation.

The presence of law in society is among others to integrate and coordinate interests that can collide with one another by law to be integrated in such a way that collisions can be minimized as little as possible. Organizing these interests is done by limiting and protecting these interests. Indeed, in traffic of interests, protection of certain interests can only be done by limiting interests on the other hand (Satjipto Rahardjo, 2014).

The law protects a person's interests by allocating power to him to act in his interests. The allocation of this power is carried out in a measured manner, in the sense that its breadth and depth are determined. Such power is called a right. Thus every power in society can be called a right, but only certain powers, that is, that which is given by law to a person.

According to Fitzgerald in Satjipto Rahardjo, there is a very close relationship between rights and obligations. One reflects the other. The characteristics inherent in legal rights are as follows:

- a. The right is attached to someone who is said to be the owner or subject of that right. He is also referred to as the person who has the title for the goods which are the target of rights.

- b. The right is assigned to another person, namely the holder of the obligation. Between rights and obligations, there is a correlative relationship.
- c. Existing rights; in this person, obliging the other party to do (Commission) or not do (Omission) an act. This can be called the content of rights.
- d. Commission or Omission is about something that can be called an object of rights.
- e. Every right according to the law has a title, which is a certain event that becomes the reason for the inherent rights of the owner (Satjipto Rahardjo, 2014).

The term "right" is ultimately also used to mean immunity from the jurisdiction of others. Just as power is the ability to change legal relationships, this immunity is the freedom from having a legal relationship to be able to be changed by others. This immunity has the same position about power, as between freedom and rights in a narrow sense: immunity is liberation from the power of others, while freedom is freedom from the rights of others.

The regulation of legal immunity rights in Indonesia is not something new. Several regulations have the same character, namely regulating the rights regarding the right to legal immunity. Immunity rights are known for 2 (two) types, namely: absolute immunity right, namely the right to immunity which remains in effect absolutely in the sense that it cannot be revoked by anyone. Meanwhile, the right to qualifying immunity is relative, meaning that the right to immunity can still be overridden. When the exercise of these rights "deliberately" is done to insult or to defame one's good name and dignity.

Does the immunity article for the officials concerned automatically get legal immunity and therefore cannot be legally processed and prosecuted in exercising the powers contained in Perppu 1/2020? To answer this question, Article 27 paragraph (1) of the Perppu does not automatically (by the operation of law) assure of obtaining immunity for the officials concerned. The provision of immunity in Article 27 paragraph (1) is conditional immunity.

Two conditions are put in place so that immunity can be obtained by the official of fiscal or monetary affairs concerned. First, the application of the principle of good faith in carrying out its main duties and functions in Perppu 1/2020. Second, the main tasks and functions of aquo are carried out by the provisions of the legislation. Because of these two conditions, in various criminal cases, the matter of whether or not the principle of good faith is present in policymaking and/or its implementation becomes part of the aspects of cases being investigated by law enforcers. Usually, such investigations are carried out in the framework of proving the criminal element: "intentionally", "with the intention", "knowing that" what is in the criminal article to be presumed. Likewise, aspects of violations of laws and regulations are also the object of investigation. If law enforcers believe that these two aspects are believed to have been neglected, then the legal process will still be carried out even though there is an immunity article in the relevant law.

A concrete example of the violation of good faith principles and laws can be seen from the corruption cases that arose in the implementation of the Bank Century bailout policy. Even though there is Article 45 of the BI Law grants legal immunity to BI officials, the legal process is still being carried out. BI Deputy Governor Budi Mulia was found guilty of corruption related to the provision of a short-term funding facility (FPJP) to Century Bank and the appointment of Century Bank as a failed bank with systemic impacts. The judge said that Budi was proven to have violated Article 2 paragraph (1) in conjunction with Article 18 of the Corruption Law Number 20 of 2001 in conjunction with Article 55 paragraph 1 to 1 of the Criminal Code in conjunction with Article 64 paragraph 1 of the Criminal Code as the primary indictment (Dian Maharani, 2014).

Therefore, the existence of an article on the right to legal immunity in Perppu 1/2020 does not necessarily mean that there is a violation of the principle of equality before the law for all Indonesian citizens vide Article 27 paragraph 1 of the 1945 Constitution. This is because the right to legal immunity in Perppu 1/2020 does not automatically grant immunity to the officials concerned in all circumstances that prevent legal proceedings in the form of criminal investigations, investigations, and prosecutions as well as civil prosecution. Thus, law enforcement authorities cannot arbitrarily use the article on the right of legal immunity in Perppu 1/2020 to carry out impunity by not carrying out legal proceedings if there are allegations of criminal acts of corruption, banking, or other general crimes related to the implementation of the contents of the Perppu 1 content. / 2020. The legal process space must still be open when the principles of good faith and laws and regulations have been allegedly violated.

The existence of articles that regulate the right to legal immunity creates a potential vulnerability to abuse of power, in which when there is an abuse of power, the community will be harmed by their rights. Although the existence of articles that regulate the right to legal immunity does not provide legal immunity to officials who are given the authority, the regulation of the right to immunity in legislation will create doubts about law enforcement efforts. It is as if the law enforcers were prevented first from not carrying out the law enforcement process with the existence of articles on the right of legal immunity.

Therefore, seeing the implications of the existence of the articles of the right to immunity, it is better if the legislators do not need to regulate the right of legal immunity in statutory regulations. Because it is an unnecessary or useless arrangement. In fact, the existence of articles that regulate the right to legal immunity, will even give law enforcers a doubt to carry out the law enforcement process.

According to the Constitutional Court, regardless of which constitutional state is referred to, whether a rule of law in the meaning of Rule of Law, *Etat de droit*, or *Rechtsstaat*, all three contain the same three main substances, namely: First, the substance which contains the idea that the government (in broad meaning) is limited by law. This idea implies that state apparatus or officials work within a framework whose boundaries are determined by law. Second, the substance which contains the notion of formal legality is an idea that emphasizes the necessity of a legal order created and maintained by the state. Such legal order must contain legal norms that are general, prospective, enforce the same and provide certainty so that everyone knows from the start what actions are permissible, prohibited to be carried out, or which must be carried out accompanied by the threat of sanctions for the violator; Third, the substance which contains the idea that law rules, not humans. This idea is related to the first and second ideas above which then gave birth to the need for the presence of a judge or court. The judge or court must judge and decide when there is a violation of the prevailing legal order.

Conclusion

Based on the above discussion, it can be seen that the regulation of immunity rights is not contrary to the idea of a rule of law with the following conditions: First, provide a basis for the state (law enforcers) to take law enforcement action against someone if there is sufficient evidence that the person concerned has committed actions as formulated. Second, contains norms that are general, prospective, give equal treatment, and provide certainty so that everyone knows from the start what actions are allowed or prohibited to do. Third, the law rules, not the will of the ruler, where it will then be proven through a judicial process.

References

Books and Journal

- Asshiddiqie, Jimly, 2007 *Hukum Tata Negara Darurat*, PT. RajaGrafindo Persada, Jakarta.
- Azis, Asmaeny, 2018, *Constitutional Complaint dan Constitutional Question Dalam Negara Hukum*, Jakarta Kencana, Jakarta.
- B. Hestu Cipto Handoyo, 2009, *Hukum Tata Negara Indonesia “Menuju Konsolidasi Sistem Demokrasi”*, Universitas Atma Jaya, Jakarta.
- Bryan A. Garner, 1999, *Black’s Law Dictionary*, West Group, St. Paul USA.
- Ermasjah Djaja, 2010, *Memberantas Korupsi Bersama KPK Edisi Kedua*, Jakarta: Penerbit Sinar Grafika.
- Hamdan Zoelva, 2012, *Constitutional Complaint dan Constitutional Question dan Perlindungan Hak-Hak Konstitusional Warga Negara*, Jurnal Media Hukum, Fakultas Hukum Universitas Muhammadiyah Yogyakarta, Vol. 19, No. 1.
- Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Rajawali Pers, Jakarta, 2001.

Indonesian Laws and Regulations

- 1945 Constitution of the Republic of Indonesia.
- Act Number 23 of 1999 concerning Bank Indonesia.
- Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes.
- Law Number 18 of 2003 concerning Advocates.
- Law Number 37 of 2008 concerning the Ombudsman of the Republic of Indonesia.
- Law Number 12 the Year 2011 concerning the Establishment of Legislation.
- Law Number 11 of 2016 concerning Tax Amnesty.
- Law Number 2 of 2018 concerning the Second Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council, and the Regional People's Representative Council.
- Government Regulation in Lieu of Law Number 1 Year 2020 Concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in the Context of Facing Threats That Endanger the National Economy and/or Financial System Stability.

The Decision of the Constitutional Court of the Republic of Indonesia

- The decision of the Constitutional Court of the Republic of Indonesia Number 138/PUU-VII/ 2009.
- The decision of the Constitutional Court of the Republic of Indonesia Number 26/PUU-XI/2013.
- The decision of the Constitutional Court of the Republic of Indonesia Number 7/PUU-XVI/2018.

Article Internet

- Kompas.com, *Kasus Century, Budi Mulya Divonis 10 Tahun Penjara*, (Online), <https://nasional.kompas.com/read/2014/07/16/16425681/Kasus.Century.Budi.Mulya.Divonis.10.Tahun.Penjara> (accessed on 24 June 2020)

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).