

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

**ACCOUNTABILITY OF STATE FINANCES FOR THE USE OF THE
HEALTH BUDGET AFTER THE COVID-19 PANDEMIC**

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Abstract

The large number of health budgets that have not been spent by the relevant ministries and agencies is a problem in itself for various reasons. In the midst of the Covid-19 pandemic, several new regulations provide space in managing the Health budget without accountability, whereas it contradicts the spirit and principles of state finances. This can become a loophole in committing acts of corruption due to weak supervision and accountability. The purpose of this research is to build the concept and flexibility of accountability for the health budget in the midst of an emergency and to elaborate various regulations related to state financial accountability. This study uses normative legal research methods with a statutory approach in analyzing and providing future views regarding existing problems. The research results show regulatory loopholes that can be used in committing acts of corruption. Flexibility is meant by strengthening the supervision and budgeting side instead of the budget report. Due to various factors, reports are also an obstacle in itself when in a pandemic emergency.

Keywords: *Accountability, Health Budget, State Finances.*

A. Introduction

In early 2020, global community was stirred up by extraordinary circumstances as an outbreak of mysterious virus in China was transmitted rapidly into several countries including Indonesia. According to WHO, the number of confirmed cases around the world has been rising at relatively high spikes. It is recorded that more than 500,000 people are infected and it continues to increase every day and 200 countries affected by COVID-19 are no exception in Indonesia.¹ Not only has an impact on the health aspect, COVID-19 also causes substantial material losses. Various aspects were affected, both the socio-culture

¹Nur Rohmi Aida, "Update Virus Corona di Dunia", <https://www.kompas.com/tren/read/2020/03/27/090200565/update-virus-corona-di-dunia--tembus-200negara-529.614-kasus-123.380?page=1>, diakses pada 21 November 2022.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

and the weakening world economy.

The latest reports on Covid-19 curve graphs from the regions in Indonesia show that the number of the confirmed cases of Covid-19 is still growing by 600 people per day in average. In order to address this crisis, the government has issued various policy instruments requiring the regional governments to reallocate and refocus their budget for handling the Covid-19 pandemic in accordance with the Presidential Instruction (Inpres) to Circular Letter (SE). As stated in the Government Regulation in Lieu of Law (PERPPU) No. 1 of 2020,² which has been enacted into law No. 2 of 2020 by the House of Representative (DPR), the government has set Rp 405.1 trillion in funds for handling COVID-19. Rp 75 trillion of the budget will be allocated to the health care, Rp 110 trillion to the social safety net, Rp 70.1 trillion to tax incentives as well as incentives for micro, small and medium businesses (KUR), while as much as RP 150 trillion is set aside to finance the national economic recovery program.³ Unfortunately, the budget reallocation of Rp 405.1 trillion made by the government in battling against the effect of Covid-19 is still very small in numbers, providing only 3 percent of the required amount.⁴

Evidently, the government has shown lacklustre efforts in the reallocation of Covid-19 funds and inadequate budget execution control. Furthermore, the weak supervision over the distribution of the Covid-19 funds opens the possibility of corruption. Principally, every transaction in State Finance are to be accounted for. In this new Covid-19 regulation, however, there is no strict rules established in the accountability system. As a result, there are a number of corruptions of Covid-19 funds that were indicated in the study.⁵ Hence, it is stated in this paper that numerous new regulations related to the Covid-19 budget provides a leakage for unaccountable healthcare finance administrators whereas it is contrary to the spirit and principles of the State Financial management. This gap potentially creates a loophole in committing corruption due to weak supervision and lack of accountability.

Therefore, a strict set of rules in the accountability system is crucial to prevent any fraud or corruption committed by the government or the finance administrator, and to control the spending of the Covid-19 health funds which should be fully allocated for managing and handling Covid-19 outbreak in Indonesia. Thus, this study is aimed to build the concept and flexibility of

²Kementerian Keuangan, “Perppu No. 1 Tahun 2020 disahkan menjadi undang-undang” <https://www.kemenkeu.go.id/publikasi/berita/perppu-no12020-disahkan-jadi-undang-undang/>, diakses pada 21 November 2022.

³Yesi Mutia Basri, dan Gusnardi, “Pengelolaan Keuangan Pemerintah di Masa Pandemi Covid 19 (Kasus Pada Pemerintah Provinsi Riau)”, *Jurnal Akuntansi Terapan Indonesia Volume 4 Nomor 1*, (Maret 2021), hlm. 34.

⁴Deti Mega Pirnamasari, “Ini Potensi Korupsi Anggaran Penanganan Covid-19”, <https://nasional.kompas.com/read/2020/04/09/21255061/ini-potensi-korupsi-anggaran-penanganan-covid-19-menurut-fitra>, diakses pada 21 Novemebr 2022.

⁵Suwarjono, “Kumpulan Berita Korupsi Dana Covid 19 Terbaru Hari Ini”, <https://www.suara.com/tag/korupsi-dana-covid-19>, diakses Pada Tanggal 21 November 2022.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

healthcare budget accountability amid emergency and to explain various regulations related to the State's financial accountability.

B. Research Methods

The research method employed in this study was a Normative Legal Research in which a research is set to be focused on reviewing the implementations of rules or norms in the prevailing positive law.⁶ A normative legal research was carried out by delving into various kinds of formal law such as laws and regulations, as well as theoretical references to make a correlation with the issues at hand.⁷

The research approach applied in this study was the statute approach which is used in analyzing and providing future views on existing problems. The statute approach was implemented by examining all laws and regulations related to the legal issue being discussed.⁸ As for the data collection method, the data was obtained through library research on primary sources of law such as the Law of the Republic of Indonesia Number 17 of 2003 on State Finance, Minister of Finance Regulation of the Republic of Indonesia Number 43pmk.05/2020 of 2020 on Budget Implementation Mechanism at the Expense of State Budget on COVID-19 Handling, and secondary sources of law such as books, journals, reports, and electronic media related to the concepts of state, law, discretion, supervision and accountability of public officials.

C. Result and Discussion

1. Regulation of State Financial Management on Covid-19 Budget During Pandemic

Responding to the crisis caused by the COVID-19 pandemic, on March 31, 2020, the President of the Republic of Indonesia has set 3 related regulations as countermeasures against the pandemic, namely Presidential Decree No. 11 of 2020 On The Declaration Of A Public Health Emergency Due To Corona Virus Disease 2019 (Covid-19) ("Kepres No. 11/2020"), Government Regulation No. 21 of 2020 On Large Scale Social Restrictions In Order To Accelerate The Management Of Corona Virus Disease 2019 (Covid-19) ("PP No. 21/2020"), and Government Regulation in Lieu of Law No. 1 of 2020 on State Financial Policy and Stability of Financial Systems for the Management of Corona Virus Disease 2019 (Covid-19) and/or Encounter the Threat to National Economy and/or Stability of Financial Systems ("Perpu No 1/2020").⁹

⁶Johny Ibrahim, *Teori Metodologi Penelitian Hukum Normatif*, (Malang: Banyu Media, 2008), hlm. 295

⁷Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010), hlm. 29

⁸Peter Mahmud Marzuki, *Penelitian Hukum...*, hlm. 136.

⁹Herdiyasti Anggitya, *Article: Kebijakan Keuangan Negara Dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19)*: <https://www.kebijakan-keuangan-negara-dan-stabilitas-sistem-keuangan-untuk-penanganan-pandemi-corona-virus-disease-2019-covid-19/>, di akses pada tanggal 1 Desember 2022.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

Government Regulation in Lieu of Law No.2/2020 specifically regulates state financial policies, taxation policies, national economic recovery programs and financial system stability policies in connection with the management of Covid-19 pandemic and/or facing threats that endanger the national economy and financial system stability.¹⁰

Furthermore, in order to fight the COVID-19 pandemic, the government is authorized to 1) take actions that result in expenditures at the expense of State Budget, while in the contrary the budget to finance such expenditures is not yet available or not sufficiently available, 2) determine the process and methods of goods/services procurement, and 3) simplify the mechanism and documents simplification of state finances. In order to manage the implementation of the budget for actions that result in expenditures on the expense of the State Budget, the Minister of Finance has issued Minister of Finance Regulation (PMK) No. 43/PMK.05/2020 on Budget Implementation Mechanism at the Expense of State Budget on COVID-19 Handling.

There are 4 main frameworks that become the scope of regulation of Minister of Finance Regulation (PMK), namely:

1. Budget Implementation Mechanism at the Expense of State Budget on COVID-19 Handling;
2. Allocation for pandemic handling fund contained in the Ministries/Agencies' Budget Implementation List (DIPA);
3. Grouping funds for COVID-19 handling in a special COVID-19 account; and
4. This PMK is valid during the handling of the COVID-19 pandemic.

As for the supervision and accountability of the spending on the COVID-19 budget that has been used, it has not been strictly regulated in the PMK. In fact, financial accountability for Covid-19 should not eliminate the form of supervision since a numerous data of healthcare spending that were collected were indicated with corruption on healthcare spending. Whereas the Minister of Finance Regulation (PMK) No. 43/PMK.05/2020 on Budget Implementation Mechanism at the Expense of State Budget on COVID-19 Handling only regulates financial accounting and reporting, and there are no stern rules controlling the accountability of any payments made using Covid budget. These law breaking are against the principles of state finance stated in Act No. 17 of 2003 On State Finance.

It is stated in Act Number 17 of 2003 that one of the concrete efforts to incorporate transparency and accountability in the management of state finances is the submission of government financial accountability reports that meet the principle of punctuality and is compiled in accordance with the generally accepted government accounting standards. This law stipulates that the accountability report for the implementation of the State Budget/Regional Budget (APBN / APBD) shall be submitted in the form of a financial report which at least include

¹⁰Undang-Undang Nomor 2 Tahun 2020 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang No.1 tahun 2020 Tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan untuk Penanganan Pandemi Covid-19.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

the State Budget Realization Report, the Balance Sheet, the Cash Flows Report and the Notes on the Financial Statements written in accordance to the governmental accounting standards.¹¹ Central government financial reports that have been audited by the Audit Board of Indonesia must be submitted to The People's Representative Council (DPR) no later than 6 (six) months after the end of the relevant fiscal year.¹² Likewise, local government financial reports that have been audited by the Audit Board of Indonesia must be submitted to the The Regional People's Representative Council (DPRD) by 6 (six) months after the relevant fiscal year ends. In the context of accountability for the management of state finances, the minister / head of institution / governor / regent / mayor as budget user / user of goods is responsible for the implementation of policies stipulated in the Law on State Budget (APBN) / Local Government Regulations concerning Regional Budget (APBD), in terms of benefits / outcomes.¹³

Similar to how the chief of the organizational unit of state ministries / institutions is responsible for the implementation of activities stated in the Law on State Budget (APBN), the Head of Regional Working Units (SKPD) is also responsible for the implementation of activities stipulated in Local Regulations concerning Local Government Budget (APBD), in terms of goods and / or services provided (output). Consequently, this law provides the sanctions that will be applied to ministers / heads of institutions / governors / regents / mayors, as well as heads of organizational units of state ministries / institutions / regional working units proven to have deviated the policies / activities given in the Law on State Budget (APBN)/ Local Government Regulation on Regional Government Budget (APBD).¹⁴

These sanctions provisions are intended as both preventive and repressive measure, to serve as a guarantee that they are in compliance with the Law on State Budget (APBN)/ Regional Regulations on the relevant Local Government Budget (APBD). Furthermore, it is highly necessary to emphasize the universally applicable principle that whoever is authorized to receive, keep and pay or deliver money, securities or state property is personally responsible for all deficiencies that occur in its management. The obligation to compensate for state financial losses by the state financial managers is an element of reliable internal control.

¹¹Beni Kurnia Ilahi, dan Haykal, "Penguatan Kebijakan Pengawasan Terhadap Pelaksanaan APBN dalam Keadaan Darurat Guna Mencegah Terjadinya Kerugian Negara", *Jurnal Simposium Nasional Keuangan Negara Volume2 Nomor 1*, (Desember 2020), hlm. 757-758.

¹²Yusrianto Kadir, "Prevention of Corruption in Management Of Village Funds", *Jurnal IUS Volume 6 Nomor 3*, (Desember 2018), hlm. 432.

¹³Undang-Undang Republik Indonesia Nomor 17 Tahun 2003 Tentang Keuangan Negara, Dalam Penjelasan Tentang Pertanggungjawaban Pengelolaan Keuangan Negara, hlm. 27.

¹⁴ Tim Pengkajian Spkn, *Upaya Pencegahan Dan Penanggulangan Korupsi Pada Pengelolaan Anggaran Pendapatan Negara/Daerah*, (Jakarta: Badan Pengawasan Keuangan dan Pembangunan (BPKP), 2002), hlm. 47.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

2. Principles of Post-Pandemic Covid Financial responsibility

In Government Regulation in Lieu of Law No. 1 of 2020 on State Financial Policy and Stability of Financial Systems for the Management of Corona Virus Disease 2019 (Covid-19) and/or Encounter the Threat to National Economy and/or Stability of Financial Systems, a number of policies such as allocating additional spending and funding for the 2020 State Budget for handling Covid-19 were taken. For this purpose, the government has disbursed a budget of IDR 450.1 trillion which will then be allocated to a number of areas handling various matters from healthcare to economically impacted sectors.

Nevertheless, despite the noble aim of the Government Regulation in Lieu of Law to guarantee public health as well as to save the national economy and financial system stability, many have criticized the regulation, even sued it to the Constitutional Court for creating gaps for corruption.¹⁵ This Government Regulation in Lieu of Law does have legal issues. There are several content materials that are contrary to the principles of state administration and finance law that tend to provide immunity for the government.

Through this Government Regulation in Lieu of Law, President Joko “Jokowi” Widodo has increased the allocation of spending and financing in the 2020 State Budget (APBN) of IDR 405.1 trillion to deal with the outbreak. Previously, the 2020 State Budget expenditure allocation was set at IDR 2,540.4 trillion.¹⁶ In Article 27 section 1 this Government Regulation in Lieu of Law states: In Article 27 section 1 this Government Regulation in Lieu of Law states: “Costs incurred by the Government and / or member institutions of the Financial Stability System Committee (KSSK) in the context of implementing state revenue policies including policies in the field of taxation, state expenditure policies including policies in the field of regional finance, financing policies, financial system stability policies, and national economic recovery program, is part of the economic costs to save the economy from the crisis and not a loss to the state”.

Administratively, this article is risky. With this provision, any financial policy issued by a State Administration agency / official (TUN) cannot be considered as an act that is detrimental to state finances. This norm opens the door for State Administration Agency / Officials to cheat and can lead to the abuse of authority. Whereas the law (UU) on the criminal act of corruption explicitly states that anyone who misuses their authority by exploiting their title or position which is detrimental to state finances can be punished with the maximum penalty of death. In sound reasoning, it is precisely in this emergency condition that government policies are prone to abuse.

The emergency condition requires the government to work more practically

¹⁵Nian Riawati, “Potensi Korupsi dalam Kebij akan Publik Studi Kasus Korupsi Program Penanganan Sosial Ekonomi Masyarakat di Provinsi Jawa Timur”, *Jurnal Ilmu Sosial dan Politik Volume 19 Nomor 2* (November 2015), hlm. 159.

¹⁶Deti Mega Pirnamasari, “Ini Potensi Korupsi Anggaran Penanganan Covid-19”, <https://nasional.kompas.com/read/2020/04/09/21255061/ini-potensi-korupsi-anggaran-penanganan-covid-19-menurut-fitra>, diakses pada 21 Novemembr 2022.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

and flexibly, starting from planning, implementation to accountability. This situation opens up opportunities for the government to make bizarre decisions. In several previous disasters relief, such as the Aceh tsunami and the Palu earthquake, many officials misused their authority since they felt there was an opportunity from the lack of supervision during the disastrous event.

Based on this fact, classical state administrative law expert, W.F. Prins explains in his book, *Introduction to Indonesian Administrative Law (1970)*, that almost every administrative law policy must end in *in cauda venenum* with several criminal provisions.¹⁷

Literally, *In cauda venenum* means there is poison at the end/tail. In a series of systems of imposing sanctions in state administrative law, when administrative sanctions are ineffective, criminal sanctions are the last resort. This system is particularly important to provide a threat to state administration agencies / officials to avoid any abuse of authority. This classic concept is not included in this Government Regulation in Lieu of Law. There is no warning to officials in case they misuse their title in handling COVID-19.

Article 27 section 2 is in line with section 1:

“Members of the Financial Stability System Committee (KSSK), the Secretary of the KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, as well as the Deposit Insurance Corporation, and other officials related to the implementation of this Government Regulation in Lieu of Law, cannot be charged either civil or criminal if the tasks are carried out based on good faith and in accordance with the provisions of laws and regulations.”

The statement in the article means that this norm provides immunity for State Administration (TUN) bodies / officials, regardless of whether their actions are destructive to state finances or not. Despite the phrase "based on good faith and in accordance with the provisions of laws and regulations", the statement does not preclude potential abuse of authority. Furthermore, the phrase "cannot be sued" is dangerously disadvantageous to the effort of providing legal certainty for State Administration (TUN) bodies / officials who are proven to be guilty in misusing the state finances. This law just opens the door wider for state administrators to deflect and act defiantly since their actions are protected by the Government Regulation in Lieu of Law.

Article 27 section 3 stated that:

“All actions, including decisions taken under this Government Regulation in Lieu of Law, are not the object of a lawsuit that can be submitted to the state administrative court.”

This norm does not provide protection and legal remedies for the community against adverse government policies. Administratively, it is precisely in this emergency condition that the financial policy has the potential and is prone to

¹⁷Ridwan, “Upaya Pencegahan Tindak Pidana Korupsi Melalui Peran Serta Masyarakat”, *Kanun Jurnal Ilmu Hukum Np. 64, Th. XVI* (Desember, 2014). Hlm 386-387

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

irregularities so as to harm the constitutional rights of the people. Generally, this article ignores the principles of administrative law more and more.

This Government Regulation in Lieu of Law also disregarded any content related to financial law. Not a single phrase or clause in the law that mentions financial accountability monitoring and reporting. This issue is only slightly addressed in Article 13 in which the government must report the use of the budget in the implementation of financial policies in the Central Government Financial Report. The law does not include any elements of financial accountability monitoring and reporting as well as the role of each financial supervisory institution in overseeing this emergency budget.¹⁸ Every budget management and implementation in an emergency situation should still refer to the prevailing laws and regulations, only with few exceptions or limitations which essentially should be included in the Government Regulation in Lieu of Law.

Similarly, in Minister of Finance Regulation (PMK) Number 43 / PMK.05 / 2020 on Budget Implementation Mechanism at the Expense of State Budget on COVID-19 Handling, there are no regulations concerning the supervision and accountability for the use of the COVID-19 budget that has been spent. In fact, financial accountability for Covid-19 should not eliminate the form of supervision since a numerous data of healthcare spending that were collected were indicated with corruption. Whereas the Minister of Finance Regulation (PMK) No. 43/PMK.05/2020 on Budget Implementation Mechanism at the Expense of State Budget on COVID-19 Handling only regulates financial accounting and reporting, and there are no stern rules controlling the accountability of any payments made using Covid budget.

Based on these circumstances, the Government needs to re-examine the content of norms so that it does not create a loophole for state administrators to commit any fraudulence towards the policies regarding the outbreak. The government should focus more on reviewing the policy particularly on the concept of accountability reporting and supervision of state finances, so that the enacted policies will bring a good impact on the welfare of the community.¹⁹

Without specific regulation in terms of financial supervision and accountability, it is hardly believed that the use of the Rp405.1 trillion fund will be effective since there are so many open spaces left in the law for the possibility of corruption that need to be closely supervised. There are two options for the government to adopt the norms regarding the supervision and financial accountability: adding a section in the Government Regulation in Lieu of Law on financial accountability monitoring and reporting, or drafting a particular Government Regulation in Lieu of Law regulating policies for monitoring and reporting financial accountability for pandemic handling.

¹⁸Tim Pengkajian SPKN, *Upaya Pencegahan Dan Penanggulangan Korupsi Pada Pengelolaan Anggaran Pendapatan Negara/Daerah...*, hlm. 160.

¹⁹Yudha Perdana Putra, "Dampak Pandemi Covid-19 Terhadap Kinerja Anggaran Aspek Implementasi Pada Satuan Kerja Lingkup Bkpr: Analisis Perbandingan", *Jurnal Anggaran dan Keuangan Negara Indonesia Volume 3 Nomor 2*, (November 2021), hlm. 95.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

In normal circumstances, there are already regulations regarding the supervision and accountability of state finances. However, amid the outbreak, it is necessary to distinctly regulate this policy, including the involvement of financial supervisory institutions such as the Audit Board of Indonesia, Indonesia's National Government Internal Auditor and the inspectorate in overseeing the implementation of the COVID-19 budget.

In conclusion, there are loopholes in the regulation related to the covid funding that can be breached to commit corruption. Flexibility is described as strengthening the supervision and budgeting part of the budget report. Due to various factors, the report is also considered as an obstacle in the midst of a pandemic emergency. Thus, it can be concluded that the passing of of the Minister of Finance Regulation (PMK) loosens the accountability of Covid-19 funding.

It is evident that the regulations passed by the government are actually not in accordance with the principles of State Finance which are regulated in Acts No. 17 of 2003, which states that "State Finances are managed orderly, and are obedient to laws and regulations, efficient, economical, effective, transparent and accountable with respect to the sense of justice and propriety".

D. Conclusion

New regulations related to the Covid-19 budget provides a leakage for unaccountable healthcare finance administrators whereas it is contrary to the spirit and principles of the State Financial management. This gap potentially creates a loophole in committing corruption due to weak supervision and lack of accountability. Therefore, a strict set of rules in the accountability system is crucial to prevent any fraud or corruption committed by the government or the finance administrator, and to control the spending of the Covid-19 health funds which should be fully allocated for managing and handling Covid-19 outbreak in Indonesia.

El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

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El-Iqtishady: Jurnal Hukum Ekonomi Syariah
Volume 4 Nomor 2 Desember 2022
Halaman 248-258

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