

Immunity Rights in Public Laws for Indonesia's Handling of Covid-19 Pandemic

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Abstract

This paper discusses about the regulation of immunity rights that are given to government officials in their response to the outbreak of COVID-19 in Indonesia, seen from the perspective of guilt theory and public laws. This right to legal immunity was created with the issuance of Government Regulation in Lieu of Law (*Perppu*) Number 1 of Year 2020, which was approved and enacted by the People's Representative Council of the Republic of Indonesia into law by the ratification of Law Number 2 of Year 2020. Article 27 explicitly states that government officials, in their execution of this Government Regulation in Lieu of Law, cannot be prosecuted civilly or criminally if the execution of their tasks is based on good faith and is in line with the stipulations of legal regulations. This paper uses the normatif legal research with the statute approach and the conceptual approach. The research results shows that there is a certain recognition of regulations regarding immunity rights. This is affirmed by a verdict of the Constitutional Court, by which according to the Constitutional Court, regulation of immunity rights is not in conflict with the concept of rule of law, with several conditions. In addition, although several stipulations in Indonesian positive law that provide immunity prevent a person from being prosecuted criminally while performing their duties, at a practical level, the specifically provided immunity is meaningless if the person in question fulfills the elements of an article that stipulates a criminal act, because the intention of a person is the essence of an act, and judges in court will decide the matter.

Keywords: *Crime; COVID-19; Legal Immunity; Public Laws*

Introduction

The 1945 Constitution of the Republic of Indonesia (hereinafter stated as the 1945 Constitution) has given the assertion that the country Indonesia possesses rule of law.¹ In addition, Indonesia also accommodates the presence of democracy as a principle in state organization.² As such, Indonesia is a country with rule of law and a democratic country based on a constitution (constitutional democracy). This means that all organization of state powers, including the power to form laws and various other kinds of state regulations, must be based on legal and constitutional stipulations.¹ In the concept of rule of law, what ideally must become commanding in the dynamics of state living is the law, not politics or even the economy.³ Therefore, all apparatuses of the state, whatever they may be including its citizens, must be subject to, obey, and highly uphold the law without exception.⁴

However, in the practice of state or government organization, it is quite possible that abnormal situations will occur, in which the ordinary usage of the legal system cannot take place as it should. This means that ordinary law becomes unable to accommodate the interests of the state or the people, which demands the state to act in abnormal ways according to legal regulations that ordinarily apply under normal conditions.⁵

Such situations certainly require their own regulations to stimulate the functions of the state to ensure they run effectively in order to ensure respect to the state and fulfillment of the basic rights of citizens.⁶ In Indonesia, regarding emergencies and circumstances of crises as the basis of government actions in forming regulations that act as laws in order to save the interests of the nation and the state, the legal foundations are found in Articles 12 and 22 of the 1945 Constitution.⁷ Article

12 affirms that “the President declares an emergency; the conditions and consequences of the emergency are established with a law”.⁸ Article 22 affirms that “in circumstances of crises, the President enacts government regulations in lieu of law”.⁵ Therefore, in order to surmount the abnormal conditions, Article 22 Paragraph (1) of the 1945 Constitution provides the authority to the President of the Republic of Indonesia to enact government regulations in lieu of law (*Perppu*) that has equal standing with laws.⁹

In 2020, specifically on March 31, the Government of the Republic of Indonesia enacted Government Regulation in Lieu of Law (*Perppu*) Number 1 of Year 2020 on State Economic and Financial System Stability Policies for Responding to the Corona Virus Disease (COVID-19)¹⁰ Pandemic and/or in Facing Threats that Endanger the National Economy and/or Financial System Stability (hereinafter called *Perppu* 1/2020).¹¹ There are three important matters that underlie the creation of *Perppu* 1/2020.¹² The first is the consideration of the spread of Corona Virus Disease 2019 (COVID-19), which the World Health Organization has declared as a pandemic for most countries around the world, including Indonesia. Further, the COVID-19 pandemic has also shown an increase over time and has caused ever-greater deaths and material losses, and this has implications on the aspects of society, economy, and welfare of the people.¹³

The second is that the implications of the COVID-19 pandemic have had the impacts, among others, of slowing down national economic growth, reducing national revenue, and increasing financing and expenditures by the state.¹⁴ Therefore, the government needs to conduct various efforts to save national health and economy by focusing on expenditures for healthcare, social safety net, and economic recovery, including for affected businesses and people.¹⁶ The third is that the implications of the COVID-19 pandemic have also affected and worsened the financial system¹⁷, which is indicated by reduction in various domestic economic activities, and this requires collaborative mitigation by the Government and the Committee for Financial System Stability (KSSK) to take anticipative (forward

looking)¹⁹ measures in order to maintain financial sector stability. Thus, the President then considered that these considerations have fulfilled the parameters of an emergency, which provides the authority for the President to enact a Government Regulation in Lieu of Law as regulated in Article 22 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.²⁰

Perppu 1/2020 also affirms that this constitutes an extraordinary policy and measure in order to save the national economy and maintain financial system stability through various policy relaxations related to the execution of the State Budget and Expenditures (APBN),²¹ particularly by increasing expenditures for healthcare, the social safety net, and economic recovery, as well as strengthening the authority of various financial sector agencies.²²

Perppu 1/2020 was then discussed, approved, and enacted by the People’s Representative Council of the Republic of Indonesia (DPR RI) into a law through the ratification of Law Number 2 of Year 2020 on the Enactment of Government Regulation in Lieu of Law Number 1 of Year 2020 on State Economic and Financial System Stability Policies for Responding to the Corona Virus Disease (COVID-19) Pandemic and/or in Facing Threats that Endanger the National Economy and/or Financial System Stability into a Law (hereinafter called Law 2/2020).²³

Indeed, the Government, in this case the President, fundamentally possesses the constitutional right to issue *Perppu* 1/2020 in the circumstance of an emergency. This is asserted by Constitutional Court Verdict Number 138/PUU-VII/2009 that contains an explanation of the requirement of an emergency as expressed by Article 22 Paragraph (1) of the 1945 Constitution, by which:

- a. There is a situation with an urgent need to resolve legal problems quickly with a law;
- b. The required law is not yet available, which leads to a legal void or insufficiency of current laws.
- c. The legal void cannot be resolved by the creation of a law with ordinary procedures because these will take a long time and yet the emergency needs to be

assured of its resolution.

Jimly Asshiddiqie possesses a viewpoint that is not radically different regarding the requirements for an “emergency”. According to Jimly Asshiddiqie, an emergency as the requirement for a *Perppu* has three requisites: dangerous threats, reasonable necessity, and/or limited time.

The President does possess the authority to enact a *Perppu* with the requirement of an “emergency”. However, according to the author, one of its articles needs to be considered, which is Article 27 of *Perppu* 1/2020 that regulates the legal immunity rights of government officials in responding to COVID-19. Article 27 of *Perppu* Number 1/2020 states:

(1) Costs that have been expended by the Government and/or member agencies of the KSSK in order to execute state revenue policies that include policies in the field of taxation, state expenditure policies that include policies in the fields of regional finances, financing policies, financial system stability policies, and the national economic recovery program, constitute a part of the economic costs to save the economy from a crisis and does not constitute state losses.

(2) KSSK Members, KSSK Secretary, KSSK secretariat members, and officials or employees of the Ministry of Finance, Bank Indonesia, Financial Services Authority, as well as the Indonesia Deposit Insurance Corporation, and other officials, who are related to the execution of this Government Regulation in Lieu of Law, cannot be prosecuted whether civilly or criminally if in the execution of tasks is based on good faith and in accordance with the stipulations of legal regulations.

(3) All actions including the decisions that are made based on this Government Regulation in Lieu of Law do not constitute objects of legal action that may be brought to the state administration court.

Based on these stipulations, the right to legal immunity can be discerned from a phrase in Article 27 Paragraph (2) of *Perppu* 1/2020, which affirms that one “...cannot be prosecuted whether civilly or criminally if in the execution of tasks is based on good faith and in

accordance with the stipulations of legal regulations.”²⁴

The presence of a right to legal immunity for the government officials certainly becomes questionable. This is more so considering the perspective of Article 1 Paragraph (3) of the 1945 Constitution, which affirms that Indonesia is a country with rule of law. The law is present as a measure, because fundamentally, any kind of power possesses the tendency to develop authoritatively; as has been famously expressed by Lord Acton, “Power tends to corrupt, and absolute power corrupts absolutely” – power tends to lead to corruption and absolute power tends to lead to absolute corruption.²⁵

As such, the question becomes, in the context of rule of law, could the stipulations of legal immunity rights in Article 27 of *Perppu* 1/2020 still be executed? This is because Article 5 Letter d of Law Number 12 of Year 2011 on the Formation of Legal Regulations contains the assertion that the formation of legal regulations must be executed according to good principles that shape legal regulations, one of them being the “practicable” principle.²⁵

Furthermore, in criminal law, there are two recognized postulates that are related to legal immunity, the first being “*impunitas continuum affectum tribuit delinquendi*”, which means that protection from punishment (impunity) is the same as permitting crime. The second is that “*impunitas semper ad deteriora invitata*”, meaning that impunity invites greater crimes. Therefore, it becomes important to carry out further analysis on the regulation of immunity rights in legal policies for the response to COVID-19 in Indonesia as seen from the perspective of the guilt theory.

The utilized method in this paper is the normative juridical method with the statute approach and conceptual approach. Normative juridical research is a kind of legal research that is performed by researching library materials or secondary data as the base research materials in order to conduct an investigation of the legal regulations and literature that are related to the problem that is being researched.

Results and Discussion

A. Comparison of the Formulation of Regulations Related to Legal Immunity Rights in Indonesia

The regulation of immunity rights in Indonesia is actually not something new. There are several regulations that possess the same characteristics, in that they all regulate the right regarding legal immunity. **First**, there is the Criminal Code (KUHP). The stipulation of Article 50 of the KUHP states, *“Whoever performs actions to carry out the stipulations of laws is not criminally punished.”* Meanwhile, Article 51 states:

(1) *Whoever performs actions to carry out the administrative order that is given by a competent authority is not criminally punished.*

(2) *An administrative order without authority does not cause the removal of a criminal act, except if those commanded, with good faith, supposing that the order was given with authority and its execution is included within the scope of their work.*

Based on these stipulations, there is the affirmation that fundamentally, any person who performs actions, for which those actions are in order to carry out legal stipulations, cannot be criminally punished. In addition, no person can be criminally punished if they perform actions to carry out an administrative order that was given by a competent authority.

Second, there is Law Number 23 of Year 1999 on Bank Indonesia (BI Law). Article 45 of the BI Law states, *“The Governor, Senior Deputy Governor, Deputy Governor, and/or officials of Bank Indonesia cannot be punished because of having made a decision or policy that is in line with their tasks and authorities as stated in this law as long as they were carried out with good faith.”* This stipulation is fundamentally intended to provide legal protection for the personal responsibility of members of the Governor’s Council and/or Bank Indonesia officials, who with good faith based on their authority, have made decisions that are difficult but very much necessary in carrying out their tasks and authorities. The making of decisions is considered to

have fulfilled good faith if:

b. They were made without the intent of seeking gains for themselves, their families, or their groups, and/or other actions that are indicated to be corruption, collusion, and nepotism;

c. They were made based on analysis that is in-depth and has positive impacts;

d. They are followed up with planned preventive measures if the decisions that were made turn out to be inaccurate;

e. They are accompanied by a supervisory system.

Third, there is Law Number 37 of Year 2008 on the Ombudsman of the Republic of Indonesia (Ombudsman Law). The stipulation of Article 10 of the Ombudsman Law states, *“In carrying out their duties and obligations, the Ombudsman cannot be arrested, detained, interrogated, prosecuted, or sued within a court.”* Based on the Explanation of Article 10 of the Ombudsman Law, it is known that *“This stipulation does not apply if the Ombudsman commits legal violations.”*³²

Fourth, there is Law Number 11 of Year 2016 on Tax Amnesty (Tax Amnesty Law). The stipulation of Article 22 of the Tax Amnesty Law state, *“The Minister, Deputy Minister, officials of the Ministry of Finance, and other parties that are related to the execution of Tax Amnesty cannot be reported, sued, investigated, inquired, or prosecuted, whether civilly or criminally if in the execution of their tasks they are based on good faith and in line with the stipulations of legal regulations.”* This stipulation has the explanation that the execution of their tasks is based on good faith if the Minister, Deputy Minister, officials of the Ministry of Finance, and other parties related to the execution of Tax Amnesty in doing so do not seek benefits for themselves, their families, or their groups, and/or perform other actions that are indicated to be corruption, collusion, and/or nepotism.

Fifth, there is Law Number 18 of Year 2003 on Attorneys (Attorney Law). The stipulation of Article 16 of the Attorney Law state, *“Attorneys cannot be prosecuted whether civilly or criminally in executing the*

tasks of their profession with good faith for the interest of defending the Client in a court trial.” This stipulation has the explanation that “What is meant by “good faith” is executing the tasks of the profession for upholding justice based on the law to defend the interests of the client. Meanwhile, what is meant by “court trial” is trials in court at all court levels in all court environments.”

Sixth, there is Law Number 2 of Year 2018 on the Second Amendment to Law Number 17 of Year 2014 on the People’s Deliberative Council (MPR), People’s Representative Council (DPR), Regional Representative Council (DPD), and Regional People’s Representative Council (DPRD). The stipulations of Article 224 state:

(1) Members of the DPR cannot be prosecuted in court because of statements, questions, and/or opinions that they express whether spoken or written inside DPR meetings or outside DPR meetings that are related to the functions as well as the authority and tasks of the DPR.

(2) Members of the DPR cannot be prosecuted in court because of attitudes, actions, activities inside DPR meetings or outside DPR meetings that are solely because of the rights and constitutional authority of the DPR and/or members of the DPR.

(3) Members of the DPR cannot be replaced in interim because of statements, questions, and/or opinions that they express whether inside DPR meetings or outside DPR meetings that are related to the functions as well as the authority and tasks of the DPR.

(4) The stipulation as expressed in Paragraph (1) does not apply in the case that the members in question announce matters that have been agreed upon in closed meetings to be kept secret or other matters that are declared as state secrets according to the stipulations of legal regulations.

There is no further explanation regarding the stipulations of Article 224. The explanation for Article 224 only states “*Self-explanatory*”.

Seventh, there is *Perppu* Number 1/2020. The stipulations of Article 27 of *Perppu* Number 1/2020 state that:

(1) Costs that have been expended by the Government and/or member agencies of the KSSK in order to execute state revenue policies that include policies in the field of taxation, state expenditure policies that include policies in the fields of regional finances, financing policies, financial system stability policies, and the national economic recovery program, constitute a part of the economic costs to save the economy from a crisis and does not constitute state losses.

(2) KSSK Members, KSSK Secretary, KSSK secretariat members, and officials or employees of the Ministry of Finance, Bank Indonesia, Financial Services Authority, as well as the Indonesia Deposit Insurance Corporation, and other officials, who are related to the execution of this Government Regulation in Lieu of Law, cannot be prosecuted whether civilly or criminally if in the execution of tasks is based on good faith and in accordance with the stipulations of legal regulations.

(3) All actions including the decisions that are made based on this Government Regulation in Lieu of Law do not constitute objects of legal action that may be brought to the state administration court.

There is no further explanation regarding Article 27 of *Perppu* Number 1/2020. The explanation for Article 27 of *Perppu* Number 1/2020 only states “*Self-explanatory*”.

Based on the comparison of regulations related to immunity rights in several legal regulations in Indonesia, the following similarities and differences were found:

a. There were similarities in the regulatory matter, which is to provide the right of legal immunity for the legal administrators according to each kind of law.

b. There were differences in the explanations of the formulation of regulations regarding the presence of good faith. The KUHP regulates that no criminal punishment can be given “*to carry out the administrative order that is given by a competent authority*” Meanwhile, the BI Law explains in detail regarding the necessary presence of good faith, which is followed by an explanation of what is meant by good faith in the regulatory perspective of the BI Law. Next, the Ombudsman Law does not

regulate regarding the necessary presence of good faith. However, in the article explanation, there is an emphasis with the phrase “*This stipulation does not apply if the Ombudsman commits legal violations.*” Further on, in the Tax Amnesty Law and Attorney Law, the right to legal immunity is provided as long as there is good faith. Good faith in the Tax Amnesty Law is understood as being that in the execution of tasks, these are not to seek benefits for oneself, family, or groups, and/or to commit other actions that are indicated to be corruption, collusion, and/or nepotism. Meanwhile, in the Attorney law, the term good faith “...*is executing the tasks of the profession for upholding justice based on the law to defend the interests of the client.*” Then, Article 27 of Perppu Number 1/2020 provides the right of legal immunity by requiring the presence of good faith. However, there is no further regulation on what is meant by good faith in *Perppu* Number 1/2020.

Therefore, in Indonesia fundamentally there is a recognition of regulations regarding immunity rights. This sanctioning of the regulation of immunity rights is also affirmed in a Constitutional Court Verdict, by which according to the Constitutional Court the regulation of immunity rights is not in conflict with the concept of rule of law.

According to the Constitutional Court, no matter what understanding of rule of law is being referred to, whether English rule of law, *État de droit*, or *Rechtsstaat*, all three of them contain the same three key matters. *First*, there is the matter that contains the idea that the government (in a wide sense) is limited by the law. Within this idea, there is the understanding that state apparatuses or officials work within a framework for which its limits are determined by the law. *Second*, there is the matter that contains the idea on formal legality, which is the idea that emphasizes the necessary presence of a legal order that is created and maintained by the state. The legal order must contain legal norms that are general, prospective, and equally applicable, and provide certainty in order that every person from the start already knows what actions are permitted to do, prohibited to do, or obligated to do and accompanied by sanctions for violators. *Third*, there is the matter that contains the

idea that the law commands, not the people. This idea is related to the first and second ideas above that then creates the need for the presence of judges or courts. Judges or courts must consider and decide if there are violations toward the prevailing legal order.

Based on Constitutional Court Verdict Number 7/PUU-XVI/2018, it is known that the regulation of immunity rights does not conflict with the idea of rule of law, as long as it is provided with these requirements:

a. They provide a foundation for the state (*in casu* law enforcers) to take actions of law enforcement toward a person if there is enough evidence that the person in question has committed certain actions as formulated.

b. They contain norms that are general and prospective, give equal treatment, and provide certainty such that every person from the start already knows the actions that are permitted or forbidden to do.

c. The law is in command, not the will of those in power, and all evidence is to be proven through the legal administration process.

Then, in relation to the formulation of immunity rights in Article 27 of *Perppu* Number 1/2020, there is a phrase that states “...*cannot be prosecuted whether civilly or criminally if in the execution of tasks is based on good faith and in accordance with the stipulations of legal regulations.*” This stipulation provides a foundation for the state (*in casu* law enforcers) to take law enforcement actions toward a person if there is enough evidence. This means that if there are actions that are not based on good faith and in accordance with the stipulations of legal regulations, law enforcement actions can be taken. The immunity rights by themselves are eliminated when the element of good faith is not present and legal regulations are violated.

The stipulations of *Perppu* Number 1/2020 also have provided certainty such that every person from the start already knows the actions that are permitted or prohibited to do. The stipulations of *Perppu* Number 1/2020 also indicate that the law commands, because it still allows for the process of proving evidence in court when there are actions that are not founded by good

faith and not in accordance with the stipulations of legal regulations.

However, based on the data for comparing regulations of immunity rights, it is also known that there are differences in the formulation of regulations regarding what is meant by good faith. Even in each regulation of immunity rights, there are those that explain the term “good faith” clearly and those that do not. These apparent differences in regulation formulations regarding the term of “good faith” certainly can be confusing to the people and especially so for law enforcers (Police, Prosecuting Attorney, and Courts of Law) as an integrated criminal justice system that regulates how the enforcement of criminal law is carried out.

Furthermore, Article 27 of *Perppu 1/2020* does not provide an explanation regarding actions that are appropriate or not appropriate to good faith. Therefore, Article 27 of *Perppu* Number 1/2020 should have provided formulated explanations regarding actions that are appropriate to good faith or not. This becomes important, because Article 5 Letter f of Law Number 12 of Year 2011 on the Formation of Legal Regulations states that the formation of legal regulations must be based on good principles for doing so. One of these is the principle of “clarity of formulation”, in that each legal regulation must fulfill the technical requirements for their composition in systematics, choice of words or terms, and legal language that is clear and easily understood, in order to avoid creating various kinds of interpretations in their execution.

B. Analysis of Immunity Rights Based on Guilt Theory and Public Laws

In public law in many countries, the regulation of impunity is not a new thing. We can examine the Indonesian Criminal Code, which also regulates immunity as written in Article 50 of the Criminal Code. This article stipulates that a person who commits an act (which can be criminalized) cannot be punished to carry out the provisions of the law. Based on Article 50 of the Criminal Code, an official justifies committing an act that can be criminalized because of an order from the legislation. Article 51 of the Criminal Code regulates

that a person cannot be punished for committing an act based on a valid position order or believed to be valid from an official authorized to give orders. In the legal literature, immunity is divided into functional immunity (*ratione materiae*) and personal immunity (*ratione personae*). Legal experts themselves have not yet agreed on the difference between these two concepts of immunity. In simple terms, the concept of functional immunity can be understood as the granting of legal immunity from lawsuits to an official who, because of his position, duty, and function, acts for and on behalf of a country to commit certain acts, even though the act can be criminalized according to the law of the country where it is located.

Public international law extends the scope of immunity for diplomatic officials of one country on duty in another country. This is regulated in the Vienna Convention on Diplomatic Relations, 1961, and its protocol. The contents of the Vienna Convention also apply in our country after being ratified by Law no. 1 of 1982. Further expansion of immunity against heads of state, heads of government, and certain officials from lawsuits in other countries is placed by the International Court of Justice, among others, can be seen in the decision on the case of “*Yerodia/Arrest Warrant*.”

This functional immunity is attributable to the state represented by the official so that even though the official who committed the act has stopped serving, the legal immunity associated with his act remains attached to the official concerned. Meanwhile, personal immunity is understood as immunity from lawsuits given to officials of a country for actions that can be criminalized without looking at whether the act was carried out on behalf of the state or is a personal act. In terms of this distinction, the immunity that Article 27 paragraph 1 of *Perppu 1/2020* seems to provide can be categorized as either functional or personal immunity.

In relation to the apparent differences in regulations regarding the clarity of regulatory formulations of good faith, it is necessary to evaluate whether an action does or does not indicate no malicious intention (*mens rea*) from that action. There are 18 kinds of intention (*dolus*)

that are recognized in the doctrine of criminal law (as intention as purpose, intention as certainty, intention as possibility, consequential intention, “colored” intention (with legal realization), “uncolored” intention (without legal realization), objectified intention, *dolus directus*, *dolus indirectus*, *dolus determinatus*, *dolus indeterminatus*, *dolus alternativus*, *dolus generalis*, *dolus repentinus*, *dolus premeditatus*, *dolus antecedens*, *dolus subsequens*, and *dolus malus*). In the history of the formation of the KUHP (*Memorie van Toelichting*) at the *Twee de Kammer* (Dutch Parliament) as quoted by Pompe, the requirement of intention is *willens en wetens*, or willing and knowing (*In die zin kan men opzettelijk aanduiden als willens en wetens*).

These two requirements are absolute. This means that a person can be said to have committed an action intentionally, if that action was committed knowingly and willingly. Yet, someone who has committed a criminal act has certainly realized that the consequences of that act may be in line with its purpose or objective, or it might not. This is relevant with the Latin phrase “*affectus punitur licet non sequatur effectus*”, which means that intention can be punished although the purpose or objective is not achieved.

As such, in order to determine good faith for the immunity right of Article 27 *Perppu* Number 1/2020, it is necessary to examine whether an act does or does not possess intention, because the intention of a person is the essence of an act.¹ Criminal law will examine intention on a case-by-case basis (*animus se omne jus ducit*). Sometimes, intention has greater consideration compared to the actual event or facts (*in maleficiis voluntas spectator, non exitus*

For someone to be punished, the person must have committed an act (“guilty act”, Dutch: *strafbaar handeling*; Latin: *actus reus*) with the threat of criminal sanctions and the person possesses a “guilty mind” (Dutch: *schuld*; Latin: *mens rea*). Matters related to this “guilty mind” is what is called “criminal liability”. Between the act and the mental state, there is a very close relationship, and this becomes a general principle

in criminal law: there is no punishment without guilt (Dutch: *geen straf zonder schuld*). This principle indicates that a person can only be punished for their actions if there is guilt (Dutch: *schuld*) within the person.³⁰

Therefore, although Article 27 of *Perppu* Number 1/2020 provides the right of immunity, this will not eliminate the legal trial process if the KSSK Members, KSSK Secretary, KSSK secretariat members, and officials or employees of the Ministry of Finance, Bank Indonesia, Financial Services Authority, Indonesia Deposit Insurance Corporation, and other officials possess intention in relation to the execution of *Perppu* Number 1/2020. This is even more so if this causes state financial losses.

This can be discerned in the case of the former Deputy Governor of Bank Indonesia (BI) Budi Mulya, who was sentenced to 10 years of prison in the Bank Century corruption case.² Although immunity rights have been regulated in Article 45 of the BI, if the element of intention can be proven, a person can still be processed based on the stipulations of applicable legal regulations; in this case, Budi Mulya was subjected to Article 2 Paragraph (1) *iuncto* Article 18 of the Law on Crimes of Corruption. As such, if there is enough evidence that a person intentionally commits an act as mentioned previously, without regard of who the person is, the stipulations as expressed in Article 27 of *Perppu* Number 1/2020 applies to the person. Then, as to whether the person in question is truly proven to have committed the act or not, the judges in the courts will decide the matter.

Conclusion

Based on the discussion that has been previously conducted, it can be concluded that in Indonesia there is a certain recognition of regulations regarding immunity rights. This is affirmed in a Constitutional Court Verdict, by which according to the Constitutional Court, the regulation of immunity rights is not in conflict with the concept of rule of law. The regulation of immunity rights does not conflict with the idea of rule of law, as long as

it meets certain conditions. First, it gives a foundation to the state (*in casu* law enforcers) to take actions of law enforcement to a person if there is sufficient evidence that the person in question has committed certain specifically formulated acts. Second, it contains norms that are general and prospective, provide equal treatment, and give certainty and thus every person since the beginning has known what actions are permitted or prohibited to be done. Third, the law commands, not those in positions of power, by which the actions will then be proven through the court trial process.

Although several stipulations in positive law in Indonesia that provide immunity do not allow a person to be prosecuted criminally in performing their duties, at a practical level, the specially provided immunity becomes meaningless if the person in question fulfills the elements of an article that fulfills a criminal act. As such, the doubt of law enforcers that is caused by the presence of regulations of immunity rights should be removed. This is because immunity rights will themselves be eliminated when there is no good faith and violation of legal regulations. Law enforcers must be focused on the principles of criminal law, because the intention of a person is the essence of an act, and judges in a court will decide on the matter.

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14. What is meant by the “practicable” principle is that the formation of legal regulations must take into account the effectiveness of the legal regulations among the people, whether philosophical, sociological. juridical. See Republic of Indonesia, Law N. .
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