DISSENTING OPINION ANALYSIS IN THE CONSTITUTIONAL COURT DECISION NUMBER 37/PUU-XVIII/2020 AGAINST REVIEWING ARTICLE 27 OF LAW NUMBER 2 OF 2020

(Progressive Legal Theory Perspective and *Sadd Al-Dzari'ah*)

THESIS

Writen by:

Muhammad Jihadil Akbar

NIM: 18230020

DEPARTMENT OF CONSTITUTIONAL LAW (*SIYASAH*)

FACULTY OF SHARIA

UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM

MALANG

2022

DISSENTING OPINION ANALYSIS IN THE CONSTITUTIONAL COURT DECISION NUMBER 37/PUU-XVIII/2020 AGAINST REVIEWING ARTICLE 27 OF LAW NUMBER 2 OF 2020

(Progressive Legal Theory Perspective and *Sadd Al-Dzari'ah*)

THESIS

Written by:

Muhammad Jihadil Akbar

NIM: 18230020

DEPARTMENT OF CONSTITUTIONAL LAW (*SIYASAH*)

FACULTY OF SHARIA

UNIVERSITAS ISLAM NEGERI MAULANA MALIK IBRAHIM

MALANG

2022

STATEMENT OF THE AUTHENTICITY

PERNYATAAN KEASLIAN SKRIPSI

Demi Allah,

Dengan kesadaran dan rasa tanggung jawab terhadap pengembangan keilmuan, Penulis menyatakan bahwa skripsi dengan judul:

ANALISIS *DISSENTING OPINION* DALAM PUTUSAN MAHKAMAH KONSTITUSI NOMOR 37/PUU-XVIII/2020 TERHADAP PENGUJIAN PASAL 27 UU NO 2 TAHUN 2020

(Perspektif Teori Hukum Progresif dan *Sadd al-Dzari'ah*)

benar-benar merupakan skripsi yang disusun sendiri berdasarkan kaidah penulisan karya ilmiah yang dapat dipertanggungjawabkan. Jika dikemudian hari laporan penelitian skripsi ini merupakan hasil plagiasi karya orang lain baik sebagian maupun keseluruhan, maka skripsi sebagai prasyarat mendapat predikat gelar sarjana dinyatakan batal demi hukum.

Malang, 23 Agustus 2022
Penulis,

Muhammad Jihadil Akbar
NIM 18230020

APPROVAL SHEET

HALAMAN PERSETUJUAN

Setelah membaca dan mengoreksi skripsi saudara Muhammad Jihadil Akbar, NIM: 18230020, Program Studi Hukum Tata Negara, Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang dengan judul :

ANALISIS *DISSENTING OPINION* DALAM PUTUSAN MAHKAMAH KONSTITUSI NOMOR 37/PUU-XVIII/2020 TERHADAP PENGUJIAN PASAL 27 UU NO 2 TAHUN 2020

(Perspektif Teori Hukum Progresif dan *Sadd al-Dzari'ah*)

maka pembimbing menyatakan bahwa skripsi tersebut telah memenuhi syarat-syarat ilmiah untuk diajukan dan diuji oleh Majelis Dewan Penguji.

Malang, 23 Agustus 2022

Mengetahui,
Ketua Program Studi
Hukum Tata Negara (*Siyasah*)

Musleh Harry, S.H., M.Hum.
NIP. 196807101999031002

Dosen Pembimbing

Prof. Dr. H. Saifullah, SH., M.Hum.
NIP. 196512052000031001

KEMENTERIAN AGAMA UNIVERSITAS ISLAM NEGERI
MAULANA MALIK IBRAHIM MALANG
FAKULTAS SYARI'AH
Jl. Gajayana 50 Malang Telp. (0341) 551354 Fax. (0341) 572533

BUKTI KONSULTASI

Nama : Muhammad Jihadil Akbar
NIM : 18230020
Program Studi : Hukum Tata Negara
Dosem Pembimbing : Prof. Dr. H. Saifullah, SH., M.Hum.
Judul Skripsi : Analisis *Dissenting Opinion* Dalam Putusan Mahkamah Konstitusi Nomor 37/Puu-Xviii/2020 Terhadap Pengujian Pasal 27 Uu No 2 Tahun 2020 (Perspektif Teori Hukum Progresif Dan *Sadd Al-Dzari'ah*).

No	Hari/Tanggal	Materi Konsultasi	Paraf
1.	Sabtu, 12 Februari 2022	ACC sidang Sempro	
2.	Senin, 28 Maret 2022	Kerangka Berfikir	
3.	Selasa, 05 April 2022	Teori, Judul, dan Substansi	
4.	Selasa, 26 April 2022	Ganti judul	
5.	Selasa, 17 Mei 2022	Rumusan masalah dan Teori	
6.	Senin, 27 Juni 2022	Substansi	
7.	Kamis, 04 Agustus 2022	Abstrak	
8.	~~Jum'at~~ Selasa, 23 Agustus 2022	ACC	
9.			
10.			

Malang, 23 Agustus 2022
Mengetahui,
Ketua Program Studi
Hukum Tata Negara (*Siyasah*)

Musleh Harry, S.H., M.Hum.
NIP. 196807101999031002

LEGITIMATION SHEET

Board of Thesis Examiner of a student named; Muhammad Jihadil Akbar, NIM 18230020, Student of Constitutional Law Department (*Siyasah*), Faculty of Sharia of State Islamic University Maulana Malik Ibrahim Malang, with the thesis title:

DISSENTING OPINION ANALYSIS IN THE CONSTITUTIONAL COURT DECISION NUMBER 37/PUU-XVIII/2020 AGAINST REVIEWING ARTICLE 27 OF LAW NUMBER 2 OF 2020

(Progressive Legal Theory Perspective and *Sadd Al-Dzari'ah*)

Has passed the last examination with grade: ....

1. IFFATY NASYI'AH, SH., S.HI., MH. (.....) Chair
   NIP. 197606082009012007
2. Prof. Dr. H. Saifullah, SH., M.Hum. (.....) Secretary
   NIP. 196512052000031001
3. Dr. H. M. Aunul Hakim, S.Ag. M.H. (.....) Principal
   NIP. 196509192000031001

Malang, September, 27th 2022

Dean,

Dr. Sudirman, M.A.

NIP. 197708222005011003

MOTTO

"Some drugs actually cause disease, just as something that hurts sometimes becomes a cure"
(Ali bin Abi Thalib)

PEDOMAN TRANSLITERASI

A. Umum

Transliterasi ialah pemindah alihan tulisan Arab ke dalam tulisan Indonesia (Latin), bukan terjemahan bahasa Arab ke dalam bahasa Indonesia. Termasuk dalam kategori ini ialah nama Arab dari bangsa Arab, sedangkan nama Arab dari bangsa selain Arab ditulis sebagaimana ejaan bahasa nasionalnya, atau sebagaimana yang tertulis dalam buku yang menjadi rujukan.

Penulisan judul buku dalam footnote maupun daftar pustaka, tetap menggunakan ketentuan transliterasi ini Banyak pilihan dan ketentuan transliterasi yang dapat digunakan dalam penulisan karya ilmiah, baik yang berstandar internasional, nasional maupun ketentuan yang khusus digunakan penerbit tertentu. Pedoman Transliterasi Arab Latin yang merupakan hasil keputusan bersama (SKB) Menteri Agama dan Menteri Pendidikan dan Kebudayaan R.I. Nomor: 158 Tahun 1987 dan Nomor: 0543b/U/1987.

B. Konsonan

Daftar huruf bahasa Arab dan transliterasinya ke dalam huruf Latin dapat dilihat pada halaman berikut:

Huruf Arab	Nama	Huruf Latin	Nama
ا	Alif	Tidak dilambangkan	Tidak dilambangkan
ب	Ba	B	Be
ت	Ta	T	Te
ث	S|a	S|	Es (dengan titik di atas)

ج	Jim	J	Je
ح	Hã	H{	Ha (dengan titik di atas)
خ	Kha	Kh	Ka dan Ha
د	Dal	D	De
ذ	Z|al	Z|	Zet (dengan titik d iatas)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es dan ye
ص	Sãd	S{	Es (dengan titik di bawah)
ض	Dãd	D.	De (dengan titik di bawah)
ط	Tã	T.	Te (dengan titik di bawah)
ظ	Zã	Z.	Zet (dengan titik di bawah)
ع	‘Ain	‘	apostrof terbalik
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We
ه	Ha	H	Ha
ء/أ	Hamzah	.... ’	Apostrof
ي	Ya	Y	Ye

C. Vokal Panjang dan Diftong

Setiap penulisan bahasa arab dalam bentuk tulisan vokal fathah ditulis dengan “a”, kasrah dengan “i”, dlommah dengan “u”, sedangkan bacaan panjang masing-masing ditulis dengan cara berikut Vokal (a) panjang = â misalnya قا ل menjadi qâla Vokal (i) panjang= î misalnya قِيْلَ menjadi qîla Vokal (u) panjang = û misalnya دون menjadi dûna

Khusus untuk bacaan ya‟ nisbat, maka tidak boleh digantikan dengan “î”, melainkan tetap ditulis dengan “iy” agar dapat menggambarkan ya‟ nisbat diakhirnya. Begitu juga untuk suara diftong, wawu dan ya‟ setelah fathah ditulis dengan “aw” dan “ay”. Perhatikan contoh berikut:

Diftong (aw) = و misalnya قول menjadi qawlun

Diftong (ay) = ي misalnya خى ر menjadi khayrun.

D. Ta’marbûthah (ة)

Ta’ marbûthah ditransliterasikan dengan “t” jika berada di tengah kalimat, tetapi apabila ta’ marbuthah tersebut berada di akhir kalimat, maka ditransliterasikan dengan menggunakan “h” misalnya ال ل م د ر سة terdiri dari susunan mudlaf dan mudlaf ilayh, maka ditransliterasikan dengan menggunakan “t” yang disambungkan dengan kalimat berikutnya, misalnya في ر حمة هلل menjadi fi rahmatillâh.

E. Kata Sandang dan Lafadz al-Jalâlah

Kata sandang berupa "al" (ال) ditulis dengan huruf kecil, kecuali terletak di awal kalimat, sedangkan "al" dalam lafadh jalalah yang berada di tengah- tengah kalimat yang disandarkan (idhafah) maka dihilangkan. Perhatikan contoh- contoh berikut ini:

1. Al-Imâm al-Bukhâriy mengatakan.
2. Al-Bukhâriy dalam muqaddimah kitabnya menjelaskan
3. Masyâ'Allah kânâ wa mâlam yasyâ lam yakun.
4. Billâh 'azza wa jalla.

F. Nama dan Kata Arab TerIndonesiakan

Pada prinsipnya setiap kata yang berasal dari bahasa Arab harus ditulis dengan menggunakan sistem transliterasi. Apabila kata tersebut merupakan nama Arab dari orang Indonesia atau bahasa Arab yang sudah terIndonesiakan, tidak perlu ditulis dengan menggunakan sistem transliterasi. Perhatikan contoh berikut: "...Abdurahman Wahid, mantan presiden RI keempat, dan Amin Rais, mantan ketua MPR pada masa yang sama, telah melakukan kesepakatan untuk menghapuskan nepotisme, kolusi dan korupsi dari muka bumi Indonesia, dengan namun...Perhatikan penulisan nama "Abdurahman Wahid", "Amin Rais" dan kata "salat" ditulis dengan menggunakan tata cara penulisan bahasa Indonesia yang disesuaikan dengan penulisan namanya. Kata-kata tersebut sekalipun berasal dari bahasa arab, namun ia berupa nama dari orang Indonesia dan telah terIndonesiakan, untuk itu tidak ditulis dengan cara "Abd al-Rahmân Wahîd", "Amîn Raîs", dan

bukan ditulis dengan “shalât.

ACKNOWLEDGEMENTS

بِسْمِ اللهِ الرَّحْمَنِ الرَّحِيْمِ

Alhamdulillahirabbil'alamin, La haula wa la quwwata illa billahil 'aliyyil azhimi. First of all, the writer's deepest thank To Allah SWT, the lord of the universe, so the author can complete this thesis with the title: "***Dissenting Opinion Analysis In The Constitutional Court Decision Number 37/Puu-Xviii/2020 Against Reviewing Article 27 Of Law Number 2 OF 2020 (Progressive Legal Theory Perspective and Sadd Al-Dzari'ah)"*** as one of the one requirement to complete the Undergraduate Program (S1) of the Constitutional Law Department (*Siyasah*) Faculty of Sharia of State Islamic University Maulana Malik Ibrahim, Malang.

Not forgetting the *Shalawat* and greetings we pour out to the Prophet Muhammad who has brought us out of the dark ages to the era of bright light today, namely Islam. *May we all get intercession on the end, Aamiin Allahumma Aamiin.*

The author realizes that this thesis could not have been completed without the support, assistance, guidance, and advice from various parties during the preparation of this thesis. In this opportunity, the writer would like to express deep gratitude to:

1. Prof. Dr. M. Zainuddin, M.A., as a Rector of the State Islamic University of Maulana Malik Ibrahim Malang.
2. Dr. Sudirman, M.A., as a Dean of the Faculty of Sharia, State Islamic University of Negeri Maulana Malik Ibrahim Malang.

3. Musleh Harry, S.H., M.Hum., as the Head of the Constitutional Law Department (*Siyasah*) of the Faculty of Sharia as well as Guardian Lecturer of the author.
4. Prof. Dr. H. Saifullah, SH., M.Hum. as a supervisor who has devoted time to provide direction and motivation in completing this thesis writing.
5. All the thesis examiner who has provided constructive criticism and suggestions as well as directions in perfecting the shortcoming thatexistst in the writer's research.
6. All lecturers and academic community of the Faculty of Sharia, State Islamic University of Maulana Malik Ibrahim Malang, who have provided learning to the writer. Hopeful,ly his deeds will be part of worship to get the pleasure of Allah SWT.
7. Especially for my parents, my dad, KH. Abd. Hannan, and my mother, Lilik Sulastri, S. Pd, for his extraordinary patience has given so full of love, endless prayers and enthusiasm, unrequited sacrifices that have made the writer stand tall until now
8. The author's family who have supported and helped wholeheartedly and prayed for the author in completing this thesis.
9. And all parties that I cannot mentioneony by owhowhe have helped the writer, and provided prayers and motivation so that this thesis can be completed.

As an ordinary person, the author realizes that this thesis still hashortcomingstcoming and mistakes, therefore all constructive criticism and

suggestions will be accepted by the author. With the completion of this thesis report, the author hopes that the knowledge that has been obtained during the study process can provide benefits as a charity for life in this world and the hereafter.

Malang, August, 23th 2022

Writer,

Muhammad Jihadil Akbar
NIM 18230020

ABSTRAK

Muhammad Jihadil Akbar, NIM 18230020. ***Analisis Dissenting Opinion Dalam Putusan Mahkamah Konstitusi Nomor 37/Puu-Xviii/2020 Terhadap Pengujian Pasal 27 UU No 2 Tahun 2020 (Perspektif Teori Hukum Progresif Dan Sadd Al-Dzari'ah)*.** Skripsi. Program Studi Hukum Tata Negara (*Siyasah*), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Prof. Dr. H. Saifullah, SH., M.Hum.

Kata Kunci: Putusan Mahkamah Konstitusi; Pertimbangan Hukum; *Dissenting Opinion*; Hukum Progresif; *Sadd Al-Dzari'ah*.

Berkembangnya Pandemi Covid-19 diseluruh dunia memaksa pemerintah mengambil tindakan untuk mengatasi keadaan tersebut berupa pembentukan produk hukum, namun produk hukum yang dibentuk ternyata memiliki ketentuan yang terindikasi bermasalah sehingga diajukan *judicial review* kepada Mahkamah Konstitusi yang melahirkan Putusan MK No 37/PUU-XVIII/2020.

Tujuan penelitian ini untuk mengetahui dan menganalisis pertimbangan hukum, *Dissenting opinion* dan Hasil dari Putusan Hakim MK dalam Putusan MK No 37/PUU-XVIII/2020 terhadap pasal 27 UU No.2 Tahun 2020 ditinjau dari perspektif Teori Hukum Progresif dan *Sadd Al-Dzari'ah*. Dengan rumusan masalah 1) bagaimana Pertimbangan Hukum dan *Dissenting Opinion* Putusan MK Nomor 37/PUU-XVIII/2020 terhadap Pengujian Materiil Pasal 27 UU No. 2 Tahun 2020; 2) Bagaimana hasil Putusan MK No. 37/PUU-XVIII/2020 terhadap Pengujian Materil Pasal 27 UU No. 2 Tahun 2020 dalam perspektif Teori Hukum Progresif dan *Sadd Al-Dzari'ah*.

Penelitian ini menggunakan metode penulisan hukum normatif, dengan dua metode pendekatan yaitu *statue approach,* dan *conceptual approach*. sumber bahan hukum yang digunakan yaitu bahan hukum primer, sekunder, dan tersier. Penelitian ini menggunakan metode analisis yuridis kualitatif.

Hasil penelitian 1) terdapat *dissenting opinion* dalam pertimbangan hukum Putusan MK No. 37/PUU-XVIII/2020 yakni 6 banding 3. Enam Hakim MK menyatakan Pasal 27 UU No 2/2020 adalah pasal yang inkonstitusional bersyarat sedangkan 3 (tiga) Hakim MK yang menyatakan pasal tersebut tidak bermasalah. 2) Hasil Putusan MK No. 37/PUU-XVIII/2020 masih berpotensi terjadi pelanggaran hukum karena kelalaian sehingga terhindar dari penuntutan baik secara perdata, pidana atau PTUN sehingga tidak memenuhi indikator pertama dan kedua dari empat indikator untuk tercapainya hukum progresif berupa tujuan besar untuk kesejahteraan dan kebahagiaan rakyat serta mengandung moral kemanusiaan yang sangat kuat yang berdampak kepada tidak tercapainya tujuan sebagai produk hukum yang ideal. Hal ini selaras dengan *Sadd Al-Dzari'ah* dimana Putusan MK tersebut masih mengandung kemudharatan yang dapat merugikan rakyat indonesia.

ABSTRACT

Muhammad Jihadil Akbar, NIM 18230020. **Dissenting Opinion Analysis in the Constitutional Court Decision Number 37/PUU-XVIII/2020 Against Reviewing Article 27 of Law Number 2 of 2020 (Progressive Legal Theory Perspective and *Sadd Al-Dzari'ah*).** Thesis. Department of Constitutional Law (Siyasah), Faculty of Sharia, Universitas Islam Negeri Maulana Malik Ibrahim Malang. Advisor: Prof. Dr. H. Saifullah, SH., M. Hum..

Keywords: Constitutional Court's Decision; Legal Considerations; Dissenting Opinions; Progressive Law; *Sadd Al-Dzari'ah.*

The existence of the Covid-19 pandemic in the world forced the government to take action to overcome this situation by forming legal products, but the legal products that were formed had provisions that were indicated to be problematic so a judicial review was submitted to the Constitutional Court which created the Constitutional Court Decision Number 37/PUU-XVIII/2020.

The purpose of this study is to find out and analyze legal considerations, differences of opinion, and the results of the Constitutional Court Judges' Decisions in the Constitutional Court Decision Number 37/PUU-XVIII/2020 against Article 27 of Law Number 2 of 2020 in terms of the perspective of Progressive Legal Theory and Sadd Al-Dzari' Ah. The research questions from this study, 1) how are the Legal Considerations and Dissenting Opinions (Dissenting Opinion) on the Decision of the Constitutional Court Number 37/PUU-XVIII/2020 concerning the Material Examination of Article 27 of Law Number 2 of 2020; 2) What are the results of the Constitutional Court's Decision Number 37/PUU-XVIII/2020 concerning the Review of Article 27 of Law No. 2 of 2020 in the Perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

The research method used is normative legal writing, with two approaches such as a sculpture approach, and a conceptual approach. The sources of legal materials used are primary, secondary, and tertiary legal materials. This study uses a qualitative juridical analysis method.

The results of the study, 1) the existence of a dissenting opinion in the legal considerations of the Constitutional Court's Decision No. 37/PUU-XVIII/2020 which is 6 to 3. Six Constitutional Court Justices stated that Article 27 of Law No. 2/2020 was conditionally unconstitutional while 3 (three) Constitutional Court Judges stated that the article was not problematic. 2) Results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 there is still the potential for violations of the law due to negligence to avoid prosecution either in a civil, criminal, or administrative manner so that it does not meet the first and second indicators of the four indicators for achieving progressive law in the form of a big goal for the welfare and happiness of the people and contains morals. very strong human rights

that have an impact on not achieving the goal as an ideal legal product. This is in line with Sadd Al-Dzari'ah where the Constitutional Court's decision still contains harm that can harm the Indonesian people.

مستخلص البحث

محمد جهاد الأكبر. ١٨٢٣٠٠٢٠. تحليل الرأي المخالف في قرار المحكمة الدستورية رقم ٢٠٢٠/PUU-XVIII/٣٧ على تحقيق الفصل ٢٧ UU رقم ٢ في السنة ٢٠٢٠ (بمنظور النظرية القانونية التقديمية وسد الذريعة). بحث جامعي. قسم القانون الدستوري (السياسة)، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج. المشرف: الأستاذ الدكنور سيف الله، الماجستير.

الكلمات الأساسية: الاعتبار القانوني، الرأي المخالف، القانون التقديمي، سد ذريعة، قرار المحكمة الدستورية.

أدى تطور الوباء كوفيد 19 في جميع أنحاء العالم إلى إجبار الحكومة على اتخاذ إجراءات للتغلب على هذا الوضع في شكل تكوين منتج قانوني، ولكن تبين أن المنتج القانوني الذي تم تشكيله يحتوي على أحكام تمت الإشارة إلى أنها إشكالية بحيث تم ارسالة. المراجعة القضائية للمحكمة الدستورية التي أصدرت قرار المحكمة الدستورية رقم 37 / PUU–XVIII / 2020

الغرض من هذه الدراسة هو تحديد وتحليل الاعتبارات القانونية والآراء المخالفة ونتائج قرار قاضي المحكمة الدستورية في قرار المحكمة الدستورية رقم 37 / PUU–XVIII / 2020ضد المادة 27 من القانون رقم 2 لسنة 2020 من حيث الشروط. من منظور النظرية القانونية التقدمية وسد الدزري آه. مع صياغة المشكلة 1) كيف هي الاعتبارات القانونية والآراء المخالفة لقرار المحكمة الدستورية رقم 37 2020 / PUU–XVIII / بشأن الفحص المادي للمادة 27 من القانون رقم. 2 لعام 2020 ؛ 2) ما هي نتائج قرار المحكمة الدستورية رقم (8 / ر. 37 2020 / PUU–XVIII / بشأن اختبار المواد للمادة 27 من القانون رقم. رقم 2 لسنة 2020 في منظور النظرية القانونية التقدمية والسد الدرعية.

تستخدم هذه الدراسة طريقة الكتابة القانونية المعيارية ، مع طريقتين منهجيتين ، وهما منهج التمثال ، والنهج المفاهيمي. مصادر المواد القانونية المستخدمة هي المواد القانونية الأولية والثانوية والثالثية. تستخدم هذه الدراسة أسلوب التحليل القانوني النوعي.

النتائج في هذا البحث من ١) إيجاد الاختلاف رأي القاضي في الاعتبارات القانونية لقرار المحكمة الدستورية رقم ٢٠٢٠/Puu-XVIII/٣٧ من ٦ ضد ٣. إن ٦ القاضي يقرر أن الفصل ٢٧ UU رقم ٢ في السنة ٢٠٢٠ هو الفصل غير دستوري مشروطا تستند إلى المساواة في القانون والحكومة، و٣ القاضي يقرر أن الفصل ٢٧ UU رقم ٢ في السنة ٢٠٢٠ غير معقد ودستوري. ٢). نتيجة القرار المحكمة الدستورية رقم ٢٠٢٠/Puu-XVIII/٣٧ لا يزال هناك فجوة في حدوث انتهاكات القانون ثم PTUN حتى لا يكون مستكملا لأنماط أولية وثانية من أنماط أربعة لنيل القانوني التقديمي من الهدف إلى ازدهر الناس واجعله السعداء ثم لديه بسبب الإهمال أو غير المتعمد وأنماط إنسانية قوية لها تأثير على تحقيق الهدف كمنتج قانوني مثالي. وهذا، مناسبة لسد ذريعة لأن قرار المحكمة الدستورية له ضرر يمكن أن يضر بشعب إندونيسيا.

TABLE OF CONTENTS

CHAPTER I

INTRODUCTION

A. Research Background

At the beginning of 2020, the world began to be attacked by an unusual disease, the Corona Virus Pandemic or COVID-19 had disrupted various joints of human life that previously ran normally. Because of this situation, the World Health Organization or commonly abbreviated as WHO took quick steps by declaring the spread of COVID-19 as a pandemic in almost all countries around the world, as well as Indonesia. The spread of COVID-19 from time to time has increased and has caused many casualties, as well as many losses in all aspects that are getting bigger, such as social, economic, and community welfare aspects.

The implications of the Covid-19 pandemic have had an impact on decreasing state revenues, slowing national economic growth, increasing state spending and financing. Therefore, various efforts and government efforts are needed to find solutions to save the national economy and health, by focusing on spending on health care, social safety nets, and economic recovery, including in the business world and affected communities.

The Covid-19 pandemic also has logical consequences for the weakening of the financial system as evidenced by the decline in various domestic economic activities, this needs to be jointly mitigated by the government and Komite Stabilitas Keuangan (KSSK)[1] to carry out anticipatory actions (Looking Forward)

[1] The KSSK official is the Financial System Stability Committee, which is a committee that

in order to maintain the stability of the state financial sector.[2]

Based on the above considerations, in the hope of overcoming matters of urgency and coercive urgency, the President is in line with the mandate of Article 22 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads "in the case of a compelling urgency, the President has the right to stipulate regulations the government in lieu of law" has stipulated Government Regulation in Lieu of Law Number 1 of 2020 concerning State financial policies and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in the context of dealing with threats that endanger the National Economy. and/or Financial System stability, hereinafter referred to as PERPPU Number 1 of 2020 on March 31, 2020 which was later ratified as Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic. and/or In Facing the Threat jeopardize the National Economy and/or Financial System Stability Become a Law, hereinafter referred to as Law Number 2 of 2020 on May 16, 2020 by the President of the Republic of Indonesia.[3]

There are 3 important elements that make up a state of emergency that requires the government and the state to take a stance/looking forward, namely: first, there is a dangerous threat. Second, there is a need that requires (reasonable

organizes the prevention and handling of financial system crises to carry out the interests and resilience of the state in the economic sector as referred to in the law regarding the prevention and handling of financial system crises.

[2] The preamble to Law Number 2 of 2020, State Gazette of the Republic of Indonesia of 2020 Number 134, ratified on May 16, 2020, and promulgated on May 18, 2020.

[3] Indonesia, keputusan presiden Nomor 11 tahun 2020 tentang penetapan kedaruratan kesehatan masyarakat Corona Virus Disease 2019, ditetapkan Presiden Joko Widodo di Jakarta pada tanggal 31 Maret 2020.

neccesity). Third, there is an element of limited time available.[4]

In addition to the above elements, what is categorized as a state of emergency must also be based on the principle of proportionality known in international law and commonly referred to as The Principle of Proportionality. The principle of proportionality can be said to be the standard of fairness of a necessity to apply abnormal law in this emergency situation. In addition, the need that is used as a justification for carrying out an emergency/abnormal action is proportional, reasonable or commensurate so that the said action must not exceed the fairness or equivalence that forms the basis for justification for the action.[5]

if we draw a common thread in terms of the historical formation of Law no. 2 of 2020 which departed from PERPPU No.1 of 2020 due to the determination of the situation of urgent matters by President Joko Widodo on March 31, 2020 which was caused by the COVID-19 pandemic so that it had an impact on every aspect of life, especially health and the national economy, because the Law -Law No. 2 of 2020 departs from PERPPU no. 1 of 2020, we can categorize the Covid-19 Pandemic as an urgent matter according to the mandate of Article 22 of the 1945 Constitution of the Republic of Indonesia which mandates the formation of a PERPPU by the President with the approval of the DPR.

On the other hand, there are 3 (three) indicators that must be met so that an emergency can be said to be an urgent matter in accordance with the Decision of the Constitutional Court (PMK) No. 138/PUU-VII/2009 which explains that a

[4] Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: PT. Rajawali Grafindo Persada, 2007), 207.
[5] Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, 207.

Government Regulation in Lieu of Law is required if:

1. There is an urgent/emergency situation, which is meant by the existence of a situation here, namely the urgent need to resolve legal issues quickly based on the Act;
2. The required law does not yet exist so that there is a legal vacuum, or there is a law but it is not sufficient;
3. The legal vacuum cannot be overcome by making laws in the usual procedure because it will take quite a long time while the urgent situation requires legal certainty to be resolved.[6]

From the three indicators above, it can be concluded that firstly, it is necessary to issue a PERPPU because of the urgent need to improve the national economy, which is starting to become problematic due to the Covid-19 Pandemic and is a legal problem that must be quickly resolved based on legislation.

Then in the second indicator, PERPPU is needed provided that there is no other law that regulates this so that it can be categorized as a legal vacuum, or there is a law but it is not sufficient. In the current problem, there are already several legal products that regulate these problems, but they are not adequate and cannot accommodate the problems that occur.

Then in the third indicator, the legal vacuum cannot be overcome by making legal products in the usual procedure because it will take quite a long time while the urgent situation requires legal certainty to be resolved immediately. The existence of Covid-19 which has an impact on every aspect of life must be resolved

[6] Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009

immediately with fast handling so that it does not have a bigger impact. Making normal legal products which of course take a long time is indicated to cause the widespread impact of Covid-19. So that legal products must be made quickly to overcome these problems.

If the Covid-19 problem has met 3 indicators as a matter of urgency as a condition for the approval of a PERPPU by the president, then PERPPU No. 1 of 2020 was born, which was later ratified as Law No. 2 of 2020. With the ratification of Law No. 2 /2020, the conditions or circumstances of urgent matters should no longer be fulfilled because they are no longer relevant to the second indicator of urgent matters, namely the existence of normal statutory regulations that regulate. So the implication of the change in the legal product has implications for its practice and substance, where the existence of urgent matters has implications for urgent handlers and may violate other regulations and provisions, but because PERPPU which is the legal basis for resolving urgent matters has ratified into law, then indirectly the condition of urgent matters is no longer relevant which results in the prohibition of actions that are outside and contrary to other laws and regulations.

Meanwhile, Article 27 Paragraphs (1), (2), and (3) of Law no. 2 of 2020 submitted by the applicant in the Constitutional Court Decision No. 37/PUU-XVIII/2020 that the enactment of Article 27 of Law No. 2 of 2020 has the potential to eliminate the Petitioner's constitutional rights related to legal accountability for the use and management of State money (APBN) from the relevant officials or government authorized, as the principle of popular sovereignty has been stated in Article 1 Paragraph (2) of the 1945 Constitution. Due to the enactment of Article

27 of Law no. 2/2020, the Indonesian people, including researchers and applicants, are injured and lose their rights to exercise legal control through legal remedies, whether criminal law, civil law, especially state administration if the applicant finds allegations of misuse or irregularities in the management of funds handling COVID-19 by the government or officials. related, because Article 27 is either paragraph (1). (2), and (3) from Law No. 2 of 2020 guarantees legal control for the public against related officials contained in the phrase cannot be prosecuted in a Civil and Criminal manner, and all actions and decisions of related officials cannot be made the object of a lawsuit by the State Administrative Court.[7]

On the other hand, Article 27 of Law no. 2/2020 also precedes the legal situation which determines that an event using state money is not a state loss (which in this case is without going through an audit process from the BPK or other law enforcers). this is what seems to precede the legal situation and provides immunity against deviant and/or unlawful behavior carried out by officials because it has already been determined and regulated so that they cannot be prosecuted in criminal, civil, and state administration. So that if the article remains valid and applied, the Indonesian people will lose and be injured in their rights in the context of law enforcement and justice, which in this case is especially the process of eradicating corruption, because on the other hand, Article 27 Paragraph (1) of Law Number 2 of 2020 also guarantees the duties and authority of the BPK to set limits on state losses which become the benchmark for how to manage state finances. In this case, state losses are one of the elements that must exist in a criminal act of

[7] Putusan Mahkamah Konstitusi Nomor 49/PUU-XVII/2020

corruption. To identify the action in the realm of the category of corruption or the like, the element of state loss is the main element in addition to the legal subjects of the perpetrators of corruption.[8]

In Article 27 Paragraph 1 of Law no. 2/2020 especially on the phrase "not a loss to the state" is viewed as immunity and provides a loophole to abuse authority for the government and related officials to avoid corruption offenses in managing the budget that is mandated to save the country's economy during this Covid-19 pandemic. The researcher feels that this view is not excessive, because every trace of disaster management in Indonesia always leaves behind unscrupulous actions from individuals who take advantage of the situation. Previously, it was proven that Juliari Batubara, a former social minister, was caught committing a criminal act of corruption. The former PDI-P politician received bribes of more than Rp. 32 billion from partners providing social assistance funds at the Ministry of Social Affairs, the social assistance ration that should have been received in full has been stolen by each package.[9] for the fee for each social assistance package agreed by the perpetrators of Rp. 10,000 for food packages from a value of Rp. 300.00 per social assistance package.[10] Not to mention other cases that departed from funds issued by the government/relevant officials for the improvement of the national economy, with the existence of these cases, it is clear that Article 27 Paragraph (1) is a very blundering regulation during this Covid-19 Pandemic, thus providing the opportunity to take advantage of the legality of handling Covid-19 by taking refuge

[8] Bagus Priyo Atmojo. *Eksistensi Penentuan Kerugian Negara dalam Penyidikan Tindak Pidana Korupsi, Volume 12 Nomor 4* (Jurnal Hukum Khaira Ummah, Desember 2017), 700.
[9] https://www.bbc.com/Indonesia/Indonesia-58301733
[10] Firli dalam konferensi pers desember 2020.

in the phrase "not a loss to the state", even though the element of state loss is what determines whether an event is a criminal act of corruption or not, especially after the Constitutional Court issued Decision Number 25/PUU- XIV/2016[11], to change the formal offenses of Article 2 Paragraphs (1) and (3) of the Law on the Eradication of Corruption Crimes into material offenses.[12]

The phrase in the provisions of Article 27 Paragraph (1) of Law no. 2/2020 which confirms that the expenditure of the Covid-19 Pandemic funds is not a state loss also provides a logical consequence, namely overriding the authority of the State Audit Board, because the BPK is not only authorized to account for state finances and to examine the management of state finances, it also has the authority to determine the amount of state losses. , so that the logical consequences are clear, if the results of the examination are found to have reduced money, securities, and state property, it can be indicated that there is a criminal act of corruption. The existence of these provisions is also considered to reduce the role and function of mutual control and balance between state institutions as a manifestation of the application of the concept of separation of power with the principle of checks and balances which is intended to avoid abuse and absolute power.[13]

Article 27 Paragraph 1 of Law 2 of 2020 does regulate that all costs incurred

---

[11] The decision of the Constitutional Court, issued on January 25, 2017 which states that the word "can" in Article 2 Paragraph (1) and (3) of the PTPK Law is contrary to the 1945 Constitution and has no binding legal force, with that consideration, the inclusion of the word "can" in the article creates legal certainty and has the potential to provide opportunities for abuse of authority by law enforcement. Therefore, the application of the element of harming state finances with the concept of actual loss provides more fair legal certainty.

[12] Kusnadi Umar, *Pasal Imunitas Undang-Undang 'CORONA' Dan Kewenangan Badan Pemeriksaan Keuangan Dalam Menetapkan Kerugian Negara*, *Nomor 1*, (*Universitas Islam Negeri Alauddin Makassar* 2, 2020) 114–29.

[13] Jimli Asshiddiqie, *Konstitusi dan Konstitualisme Indonesia*. (Jakarta: Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi, 2005). 58.

by the government or related officials are only economic costs and are not state losses. But on the other hand, the determination of losses in the management of state assets must go through a process or mechanism to determine exactly how much the state loses, this is in line with the definition of state losses in Article 1 Paragraph (22) of Law Number 1 of 2004 concerning State Treasury. the loss must be real and definite in amount caused by an unlawful act, the same understanding is also contained in Article 1 Paragraph (15) of Law Number 15 of 2006 BPK.

The phrase as a result of unlawful acts contained in the norm of the article means that not all conditions that have logical consequences for reducing money, securities or state property can be declared as a state loss, but must be caused by something that is against the law.[14] So that without an examination process, it will certainly be difficult to determine whether the state losses that occur are a logical consequence of legal actions or not, including the calculation of the amount must also be real and definite (actual loss).[15]

The entry into force of Article 27 of Law no. 2 of 2020 also overrides the applicant's constitutional right to obtain and receive open and responsible information regarding the use of funds for handling Covid-19. Because if there is a misappropriation of funds for handling Covid-19 which has the potential to cause the people of Indonesia to be miserable, especially if it occurs because the relevant official who violates the law cannot be held legally responsible. Because the principles/principles of not abusing authority and openness are also benchmarks in

---

[14] Siti Nurhalimah, *Menyoal Kegentingan Dan Pasal Impunitas Dalam Perppu Corona Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019*" 4 (2020): 35–48.

[15] Umar, *"Pasal Imunitas Undang-Undang 'CORONA' Dan Kewenangan Badan Pemeriksaan Keuangan Dalam Menetapkan Kerugian Negara."*. 9

determining a good government, thus, it is impossible for a country that is not open and cannot be held accountable for the use of state money to be called a country that has a government that is good, especially in the provisions of Article 27 of Law no. 2 of 2020, especially in Article 27 Paragraph (1), is not in accordance with the principle of eradicating corruption.

Due to the reason that the applicant feels that his constitutional rights have been violated, the Constitutional Court is based on article 29 Paragraph (1) of Law Number 48 Year 2009 concerning Judicial Power which stipulates that the Constitutional Court has the authority to judge at the first and last levels whose decisions are final for:

a. Examining the Law against the 1945 Constitution of the Republic of Indonesia,
b. To decide disputes over the authority of state institutions whose authorities are granted by the 1945 Constitution of the Republic of Indonesia,
c. Deciding on the Dissolution of Political Parties,
d. Decide on disputes over the General Election Results,
e. And other powers granted by law [16]

So based on the above authorities, especially in Article 29 Paragraph (1) letter (a) of Law No. 48/2009 concerning Judicial Power above, the Constitutional Court has the authority to accept requests for judicial review of Article 27 Paragraph (1), (2), and (3) from Law No.2/2020 on the 1945 Constitution of the Republic of

[16] Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman, Lembaran Negara Republik Indonesia Nomor 5076

Indonesia.[17]

The parameters used by the Constitutional Court in measuring the loss of constitutional rights and/or authority of the applicant, in its Decision Number 006/PUU-V/2005 the Constitutional Court is of the opinion that the loss of constitutional rights and/or authority must meet five conditions, namely:

a. The existence of the constitutional rights and/or authorities of the Petitioner granted by the 1945 Constitution;
b. Such constitutional rights and/or authorities are deemed by the Petitioner to be impaired by the enactment of the law petitioned for review;
c. The constitutional loss must be specific (special) and actual or at least potential which according to reasonable reasoning can be ascertained to occur;
d. There is a causal relationship (causal verband) between the loss in question and the enactment of the law requested for review;
e. There is a possibility that with the granting of the petition, the constitutional loss as argued will not or will no longer occur.[18]

From the parameters above, the constitutional rights and authorities deemed impaired by the enactment of Article 27 Paragraph (1), (2), and (3) of Law No. 2/2020 are Article 1 Paragraph (1), (2), and (3) from the 1945 Constitution of the Republic of Indonesia which explains that the state of Indonesia is a Unitary State in the form of a Republic whose sovereignty is in the hands of the people and is

[17] Pasal 29 Ayat (1) huruf (a) Undang-Undang Nomor 48 Tahun 2009 tentang Kekuasaan kehakiman, Lembaran Negara Republik Indonesia Nomor 5076
[18] Putusan Mahkamah Konstitusi Nomor 006/PUU-V/2005

implemented according to the Constitution, and an explanation that the State of Indonesia is a State of Law.[19] So that based on the article it is expressly interpreted that there is no absolute power in running the government in Indonesia where the power holder only holds a mandate from the people, so that the people can still or have the right to exercise control over everyone who holds power where the control process is regulated in a legal process/mechanism, both formal and material. Then, the existence of a review of the Act against the Constitution is also part of the control of the Indonesian people who carry out the principle of people's sovereignty over the power holders.

Due to several polemics from Article 27 Paragraph 1 to Paragraph 3 of Law No. 2 of 2020 which has been described above, a judicial review was submitted to the Constitutional Court which resulted in the Decision of the Constitutional Court Number 37/PUU-XVIII/2020. From the results of this Constitutional Court Decision, the Judges of the Constitutional Court decided in their ruling that:

1. The Constitutional Court granted the petition of the Petitioners in part,
2. Stating that the phrase "is not a state loss" in Article 27 Paragraph (1) attachment to law number 2 of 2020 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning state financial policy and financial system stability for handling the Corona Virus Disease pandemic 2019, and/or in the context of dealing with threats that endanger the national economy and/or financial system stability, it becomes a law, contrary to the 1945 Constitution of the Republic of Indonesia and

[19] Pasal 1 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

does not have legal force that is conditionally binding as long as it is not interpreted. constitutes a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations. So that Article 27 Paragraph 1 of Law No. 2 of 2020 becomes complete and reads "Costs that have been issued 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 the area of regional finance, policies on state revenues, financing, financial system stability policies, and national economic recovery programs are part of the economic costs to save the economy from the crisis and are not state losses as long as they are carried out in good faith and in accordance with the laws and regulations. 27 Paragraph (1) Law No. 2 of 2020 is no longer problematic as long as it is not interpreted as "not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations". whereas in accordance with what the author has explained above that the main indicator of the existence of a criminal act of corruption is the existence of state losses where the limits of state losses are set by the Financial Supervisory Agency. On the other hand, the phrase "good faith" still looks absurd and vague because the law or the related Constitutional Court decision has not clearly explained the meaning of the phrase "good faith".

3. Stating the phrase "not an object of a lawsuit that can be submitted to the state administrative court" in article 27 Paragraph (3) attachment of Law n0

2 of 2020 concerning the stipulation of government regulations in lieu of law number 1 of 2020 concerning state financial policy and stability the financial system for handling the 2019 Corona Virus Disease pandemic, and/or in the context of dealing with threats that endanger the national economy and/or financial system stability, becomes law, contrary to the 1945 Constitution of the Republic of Indonesia and has no legally binding force. conditional as long as it is not interpreted, "is not the object of a lawsuit that can be submitted to the state administrative court as long as it is carried out in relation to the handling of the Covid-19 pandemic and is carried out in good faith and in accordance with the laws and regulations". so that Article 27 Paragraph (3) of Law No. 2 of 2020 becomes complete "All actions including decisions taken based on this Government Regulation in Lieu of Law are not objects of lawsuits that can be submitted to the state administrative court as long as they are carried out related to the handling of the Covid-19 Pandemic and carried out in good faith and in accordance with the laws and regulations".

The decision of the Panel of Judges of the Constitutional Court also contained dissenting opinions from three (3) Constitutional Court Justices in case Number 37/PUU-XVIII/2020, namely Anwar Usman, Arief HidAyat, and Daniel Yusmic P Foekh with the majority of judges, especially in Article 27 Paragraph (1) and (3) from Law Number 2 of 2020. Where the three judges who have dissenting opinions reject the applicant's application in full because it is not legally grounded because Article 27 of Law Number 2/2020 occurs in an urgent situation caused by

due to the Covid-19 Pandemic which must be carried out with extraordinary measures as well. So that the purpose of the inclusion of Article 27 of Attachment to Law 2/2020 is not intended to provide absolute immunity, but rather to provide guarantees as well as confidence for the implementers of Attachment Law 2/2020 within the legal framework and legal system that will protect them in carrying out their duties and authorities based on Attachment of Law 2 /2020. Therefore, the provision of good governance in Law 2/2020 actually shows that Law 2/2020 cannot be misused by irresponsible parties.

In the view of Progressive Law theory initiated by Satjipto Rahardjo, the law has a goal for welfare, happiness, and justice for the community. So in this case the law was born for humans, not humans for law. So in this case the law must be pro people and pro justice. In the context of this research, the Constitutional Court's Decision Number 37/PUU-XVIII/2020, especially in the review of Article 27 of Law No. 2/2020, must also prioritize the strong moral values of community justice. So that the purpose of the formation of these regulations is not only for the handling of the Covid-19 Pandemic and the recovery of the national economy, but also must be based on and based on justice felt by all elements in the Unitary State of the Republic of Indonesia without exception according to the mandate of the fifth Pancasila principle which mandates " justice for all Indonesian people". In this case, Progressive Law demands the courage of law enforcement officers to interpret the articles for the nation's civilization. So if the process is correct, the ideal of law enforcement built in law enforcement in Indonesia is in line with the nation's efforts to achieve national goals. This ideal will keep away from the practice of

uncontrollable legal inequality. So that the law in Indonesia is not indicated to contain legal discrimination, because the law does not only serve some elements of society. Because humans create laws not only for legal certainty, but also for happiness.[20]

From the point of view of Islamic law, actions that are consciously carried out must have certain clear objectives, the establishment of Law no. 2 of 2020 which departed from PERPPU No. 1 of 2020 was started because of urgent matters that needed to be handled immediately, but Law no. 2 of 2020, which is expected to be able to provide a solution to the problem of Covid-19, even looks like a blunder from several policy rules, especially in Article 27 of Law No. 2 of 2020, so that a judicial review is proposed by several parties. Which resulted in Constitutional Court Decision No. 37/PUU-XVII/2020.

In using the two perspectives, namely progressive legal theory and Sadd Al-Dzari'ah as a knife of analysis of the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the review of Article 27 of Law No. 2 of 2020 there is a relevance of the two analytical knives.

Progressive legal theory seeks and examines existing laws to produce ideal laws and provide welfare and benefits to society. In this case progressive law is critical and functional where progressive law always sees existing deficiencies and finds ways to improve them.[21]

On the other hand, Sadd al-Dzari'ah is a way, way, or method to achieve a

[20] Satjipto Rahardjo, *Penegakan Hukum Progresif*, (Jakart: Kompas, 2010), 36.
[21] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009). 17-19

goal, good or bad. In this case Sadd al-Dzari'ah becomes a method to determine whether the path or method can be implemented or not by looking for the side of harm. If something that contains a harm or leads to a harm then it is prohibited. So that the two analytical knives, both progressive legal theory and Sadd al-Dzariah, both examine the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 to look for loopholes and shortcomings so that they can be improved and implemented properly.

To find out whether the results of the Constitutional Court's decision have provided benefits and are in accordance with what is intended from the formation of Law No. 2 of 2020, the researcher will analyze using one of the Islamic perspectives, namely Sadd Al-Dzariah. Where Sadd Al-Dzari'ah explains the legal method of doing everything / making legal decisions in Islam by looking at the intermediary, goals, and the impact / consequences that will be obtained.[22]

So if we look at this legal research which analyzes the Dissenting opinion in the legal considerations of the Judges' Decision on Article 27 of Law Number 2 of 2020 of the Constitutional Court Decision No. 37/PUU-XVIII/2020, researchers need to study further from the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah as an analytical knife that the author uses to dissect the problems above.

So the author feels that the appointment and research on the title of the author's thesis is about "juridical analysis of the Dissenting opinion of the Judges' Decision on Article 27 of Law Number 2 of 2020 of the Constitutional Court Decision No. 37/PUU-XVIII/2020 with article 27 of the 1945 Constitution of the

[22] Amir Syarifuddin, *Ushul Fiqih*, (Jakarta: Logos Wacana Ilmu, 2001), Jilid 2, 448.

Republic of Indonesia in the Perspective of Progressive Legal Theory and Sadd Al-Dzari'ah "it is important to know how the national economy is recovering during the Covid-19 pandemic, one of which is based on article 27 of Law no. 2020 as well as legal considerations and dissenting opinions from the Constitutional Court of Justice, especially after the stipulation of Constitutional Court Decision No. 37/PUU-XVIII/2020 which the author then analyzes using the Perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

B. Formulation of the Problem

Based on the descriptions of the problems that have been described, the formulation of the problem in this study is:

1. How is the juridical analysis of legal considerations and the Dissenting opinion of the judges of the Constitutional Court on Article 27 of Law No. 2 of 2020 in the Decision of the Constitutional Court No. 37/PUU-XVIII/2020?
2. How is the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 based on perspective of Progressive Legal Theory and Sadd Al-Dzari'ah?

C. Objective of Research

Based on the formulation of the problem above, the objectives to be achieved in this study are:

1. To examine the legal considerations and the dissenting opinion of the judges of the Constitutional Court on Article 27 of Law No. 2 of 2020

in the Decision of the Constitutional Court No. 37/PUU-XVIII/2020.

2. To examine the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 based on perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

D. Benefit of Research

In addition to realizing some of the goals mentioned above, this research is also expected to be able to provide benefits for both personal researchers and readers in general. There are several benefits of conducting this research, including the following:

1. Theoritical Benefits

This research can provide benefits in increasing the knowledge and treasures of readers, especially the academic community in the Constitutional Law Study Program, Faculty of Sharia, State Islamic University Maulana Malik Ibrahim Malang about juridical analysis of legal considerations and the Dissenting opinion of the judges of the Constitutional Court on Article 27 of Law No. 2 of 2020 in the Decision Constitutional Court No. 37/PUU-XVIII/2020 and what are the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 from the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

2. Practical Benefits

a. For the Government, Researchers hope that with the results of this research, they can give consideration to the government regarding how the juridical analysis of legal considerations and the Dissenting

opinion of the judges of the Constitutional Court on Article 27 of Law No. 2 of 2020 in the Constitutional Court Decision No. 37/PUU-XVIII/2020 and what are the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 from the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

b. For academics, it can add insight and knowledge related to how the juridical analysis of legal considerations and the Dissenting opinion of the judges of the Constitutional Court on Article 27 of Law No. 2 of 2020 in the Constitutional Court Decision No. 37/PUU-XVIII/2020 and what are the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 from the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

c. For the public, it is hoped that they can provide information related to the juridical analysis of legal considerations and the dissenting opinion of the judges of the Constitutional Court on Article 27 of Law No. 2 of 2020 in the Decision of the Constitutional Court No. 37/PUU-XVIII/2020 and what are the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 from the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

E. Method of Research

Research methods can be referred to as a guide on the procedures for how a research is carried out. According to another opinion, it is stated that the research

method is a procedure used to carry out a research that aims to obtain scientific updates from the object under study.[23]

1. Type of Research

Legal research [24] is a research activity that applies a certain method, systematics and thought with the object of study which includes knowledge or dogmatic rules related to people's lives which has the aim of studying and analyzing legal phenomena that require solving solutions.[25]

There are 2 types of legal research [26], namely normative legal research and empirical legal research.[27] The type used in this research is normative legal research. Normative legal research[28] is an activity to identify legal

---

[23] Suryana, "*Metodologi Penelitian: Model Penelitian Kuantitatif dan Kualitatif*" (Bandung: Universitas Pendidikan Indonesia, 2010), 21.

[24] The Black Law Dictionary also states that legal research is an activity that aims to find and unify legal solutions with the aim of answering a particular legal problem, quoted from Bryan A. Gamer, "Black's Law Dictionary – 9th Edition" (St. Paul: Thomson West, 2004).

Peter Mahmud Marzuki argues that legal research is an activity that aims to answer existing legal issues by going through various processes of reviewing and analyzing various legal rules, principles, and doctrines that support the study of these legal issues, quoted from Peter Mahmud Marzuki, "Research Law" (East Jakarta: Prenadamedia Group, 2019), 35.

[25] Jonaedi Efendi, Johny Ibrahim, "*Metode Penelitian Hukum Normatif dan Empiris*" (Depok: Pranamedia Group, 2019), 16.

[26] The difference in these two studies lies in extracting data, where in normative legal research data mining can be carried out based on library research by reviewing various legal literature, while in empirical legal research data mining is carried out directly in the field which requires researchers to know the facts and problems that occur in the field. community, quoted from Bechtiar, "Legal Research Methods" (Tangerang: UNPAM PRESS, 2018), 55.

However, according to Soerjono Soekanto, this normative legal research and empirical legal research in its application can be carried out separately or in combination, quoted from Soerjono Soekanto and Sri Mamudji, "Normative Legal Research: A Brief Overview" (Jakarta: Raja Grafindo Persada, 2001), 6.

[27] Depri Liber Sonata, "Metode Penelitian Hukum Normatid dan Empiris: Karekteristik khas dari metode penelitian hukum", *Fiat Justitia Jurnal Ilmu Hukum, Jilid Vol. 8* (2014): 24

[28] According to Soerjono Soekamto, Normative Legal Research is a legal research conducted by examining library materials or secondary data without requiring field data, quoted from Abdul Rachmat Budiono, "Legal Science and Legal Research", MAKALAH, (2015), 8.

Soerjono Soekanto argues that the benchmark of normative legal research is from the nature and scope of legal discipline, where legal discipline is defined as a system of teaching about reality, which usually includes analytical discipline and perspective discipline and legal discipline is usually included in perspective discipline if law is seen to only cover normative aspect only, quoted from Depri Liber Sonata, "Normative and Empirical Legal Research Methods: Typical

problems, analyze the legal problems faced and then provide solutions to these problems, where the problems studied in normative legal research are caused by the existence of problematic norms or rules either because of conflicts in these norms, the existence of ambiguity in meaning in these norms, or a legal vacuum.[29]

Normative legal research has a tendency to image law as a perspective discipline where the law is only seen from the point of view of the norms, which are prescriptive, with the research themes covering the following:[30]

a. Research on legal principles;
b. Research on legal systematics;
c. Research on the level of vertical and horizontal synchronization;
d. Comparative law; and
e. Legal history.

This research can be regarded as normative legal research because it contains the object of study in the form of legal norms. The legal norm that will be studied in this research is Article 27 of Law no. 2 of 2020 from legal considerations and dissenting opinions in Constitutional Court Decision No. 37/PUU-XVIII/2020.

2. Research Approach

Research Approach[31] is one of the methods in legal research that aims to

Characteristics of Legal Research Methods", Fiat Justitia Journal of Legal Studies, Vol. 8 (January-March 2014), 25.

[29] Peter Mahmud Marzuki, "*Penelitian Hukum*" (Jakarta Timur: Prenadamedia Group, 2019), 60.

[30] Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Penelitian Hukum", *Fiat Justitia Jurnal Ilmu Hukum*, 25.

[31] Terdapat 5 jenis pendekatan dalam penelitian hukum normative menurut Peter Mahmud Marzuki,

build a relationship with the object of the problem being studied in order to achieve an understanding of the research problem.[32]

The Research approach used in this research are:

a. Statute Approach

The statutory approach is an approach taken by examining all laws and regulations related to the legal issues being handled.[33] The legal approach is carried out by reviewing all laws and regulations related to the issues and problems being handled.[34] The laws and regulations that will be examined in this research are:

i. Article 27 of Law Number 2 of 2020 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-2019) Pandemic and/or In the context of dealing with dangerous threats National economy and/or financial system stability into law, hereinafter referred to as Article 27 of Law Number 2 Year 2020,

ii. The 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution of the Republic of Indonesia,

---

antara lain yaitu:
a. Pendekatan Undang-Undang (*Statute approach*);
b. Pendekatan kasus (*case approach*);
c. Pendekatan historis (*historical approach*);
d. Pendekatan perbandingan (comparative approach); dan
e. Pendekatan konseptual (*conseptual approach*).
Dikutip dari Peter Mahmud Marzuki, "*Penelitian Hukum*" 93.

[32] Ishaq, "*Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, dan Dsertasi*", 68-69

[33] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenda Media, 2011), 93.

[34] Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif dan Pendekatan Normatif Sosiologis dalam Penelitian Ilmu Hukum", *Pranata Hukum, Jilid Vol. 6* (juli 2011), 129.

iii. Constitutional Court Decision Number 37/PUU-XVIII/2020. Hereinafter referred to as PMK Number 37/PUU-XVIII/2020.

b. Conceptual approach

This research also uses a conceptual approach. This conceptual approach aims to find a middle ground that can be used as a solution to uniform understanding or perception of legal language which tends to be multi-interpreted.[35] The conceptual approach is a concept of activity that departs from the legal doctrines and principles that exist in the science of law in order to give birth to legal concepts that are relevant to the legal issues being studied.[36] In this research, the concept being tested is regarding the Constitutional Court's Decision in the review of Article 27 of Law No. 2/2020 especially when there is a dissenting opinion in the decision of the Constitutional Court Judges.

3. Law Material

There are 3 methods of collecting data in normative legal research, namely literature study, document study and archive study.[37] The data needed in a normative legal research is secondary data. There are 2 types of normative legal research based on Abdul Kadir Muhammad's opinion, namely:[38]

a. Primary legal materials (derived from law), namely statutory

[35] Suhaimi, "Problem Hukum dan Pendekatan dalam Penelitian Hukum Normatif", *Jurnal Yustisia, Jilid Vol. 19* (2018): 208.
[36] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenda Media, 2011), 137.
[37] Abdulkadir Muhammad, "*Hukum dan Penelitian Hukum*" (Bandung: Citra Aditya Bakti, 2004). 81.
[38] Abdulkadir Muhammad, "*Hukum dan Penelitian Hukum*", 121-122.

regulations, legal documents, court decisions, legal reports, and legal records;

b. Secondary legal materials (derived from legal science), namely legal doctrines, legal theories, legal opinions, and legal reviews;
c. Tertiary legal materials (a complement to primary and secondary legal materials) are legal dictionaries, the large Indonesian dictionary.

Primary legal materials are legal materials that are authoritative (have authority), consisting of statutory regulations, official records or minutes in the making of legislation and judges' decisions.[39] The primary legal materials used are:

a. UUD NRI 1945, UU No 2 Tahun 2020,
b. Constitutional Court Decision No. 37/PUU-XVIII/2020.
c. UU Nomor 2 Tahunn 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In Facing Threats That Endanger the National Economy and/or Financial System Stability Becomes Law
d. Constitutional Court Decision (PMK) No. 138 /PUU-VII/2009

Secondary legal materials are all publications on law that are not official documents, including textbooks, legal journals and others.[40] The secondary legal materials used in this study are as follows:

[39] Peter Mahmud Marzuki, "*Peneltian Hukum*", 181.
[40] Peter Mahmud Marzuki, "Penelitian Hukum", 181.

1. Books related to the Procedural Law of the Constitutional Court; Such as Hukum Acara Mahkamah Konstitusi book by Seketariat Jenderal dan Kepaniteraan MK
2. Books that contain discussions about Progressive Legal Theory, by Prof. Stadjipto Rahardjo.
3. Books or books that discuss Sadd Al-Dzariah such as the book of Al-Ushul Al Fiqh by Wahbah Zuhaili
4. Journals or writings related to constitutional court decisions, progressive legal theory and Sadd Al-Dzari'ah such as by Baroh Nurdin, Budiono, etc.

The tertiary legal materials in this study are materials obtained through the internet and news through the website.

4. Law Material Collection

Analysis is a process of describing certain symptoms or problems systematically and consistently.[41] Analysis is also defined as an activity of searching for and compiling various data that has been obtained through various sources and then classified into categories according to the nature of their importance, then the data is concluded to make it easier to understand. Analysis of legal material itself is interpreted as an activity that aims to solve a problem under study by utilizing various sources of legal material obtained.

In general, there are 2 methods of data analysis, namely qualitative

[41] Soerjono Soekanto, "*Pengantar Penelitian Hukum*" (Depok: UI Press, 1982), 137.

analysis methods and quantitative analysis methods.[42] The analytical method used in this study is qualitative juridical analysis, which is a research method that produces analytical descriptive information, and is collected to then describe the facts that already exist in this study to then draw conclusions and suggestions by utilizing deductive thinking, namely drawing conclusions from things that are general to things that are specific.[43] In addition, this qualitative juridical analysis method is carried out by analyzing the laws and regulations relating to the formulation of the problems contained in this study and then correlated with several principles and theories that form the basis or knife of analysis in writing this research as a step to find conclusions. The solution as well as the ideal conception of the matters being discussed.[44]

This qualitative juridical analysis is also interpreted as an analysis carried out by analyzing data in a comprehensive and quality manner in the form and arrangement of sentences that are coherent, orderly, logical, not overlapping, and effective in order to facilitate data interpretation and

---

[42] Pada pendapat lain menyebutkan bahwa terdapat 4 teknik dalam analisis bahan hukum, yaitu:

a. Menemukan jawaban dari suatu permasalahan tertentu dengan cara menguraikan berbagai fenomena yang ada berdasarkan semua sumber bahan hukum maupun bahan non hukum yang telah ada;
b. Teknik interpretasi merupakan suatu teknik analisis yang mengutamakan penafsiran secara sistematis terhadap berbagai sumber bahan hukum yang sesuai dengan permasalahan yang diteliti;
c. Teknik evaluasi adalah teknik analisis yang berfokus pada penilaian peneliti terhadap suatu pandangan, pendapat, ataupun rumusan norma yang terdapat baik dalam bahan hukum primer maupun bahan hukum sekunder;
d. Teknik sistematis adalah suatu kegiatan yang bertujuan untuk mememukan hubungan suatu rumusan norma yang saling berkaitan antara peraturan perundang-undangan yang sederajat maupun yang tidak sederajat;

Dikutip dari Sumardi Suryabrata, "*Metodelogi Penelitian*" (Jakarta: rajawali press, 1992), 85.

[43] Jonaedi Efendi, Johnny Ibrahim, "*Metode Penelitian Hukum Normatif dan Empiris*", 236.

[44] Jonaedi Efendi, Johnny Ibrahim, "*Metode Penelitian Hukum Normatif dan Empiris*", 236.

understanding of the results of the analysis.[45] Data analysis in this qualitative juridical analysis method is carried out using legal materials derived from concepts, theories, laws and regulations, doctrines, legal principles, expert opinions and the views of the researchers themselves.

5. Analysis of Law

In this study, legal materials are processed deductively through three steps, namely using editing techniques, namely rewriting of legal materials that have been obtained so that later they can be completed if there are incomplete legal materials and simplifying sentences of legal materials obtained by researchers. Then the second, systematic, namely conducting selection and classification based on the classification of legal materials and compiling legal materials sequentially. Then the third, description, which describes the results of the research found based on the legal material obtained which then analyzes it.

6. Conceptual Definition

a. Constitutional Court Decision

The decision of the Constitutional Court is a reflection of the judge's statement as a state official who is authorized by the 1945 Constitution or by law to decide disputes submitted by applicants who feel that their constitutional rights have been impaired due to the enactment of a law.[46]

[45] Ishaq, "*Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, dan Dsertasi*", 69.
[46] Iriyanto A. Baso Ence. 2008. *Negara Hukum dan Hak Uji Konstitusionalitas Mahkamah Konstitusi "Telaah Terhadap Kewenangan Mahkamah Konstitusi"*. (Bandung: Alumni), 195

b. Judge's Differences

The difference of opinion of the Panel of Judges can be divided into two types, namely:

1. Dissenting opinion is the difference of opinion of the Panel of Judges of the Constitutional Court in terms of substance that affects the difference in the decision
2. Concurrent opinion is a difference in the judge's consideration that does not affect the verdict, or underlies the same decision.[47]

c. Progressive Legal Theory

Progressive Legal Theory is an idea about how the law is present for humans by continuing to develop until it reaches the ideal legal level by referring to several existing indicators.[48]

d. *Sadd Al-Dzari'ah*

Sadd Al-Dzari'ah Is a method of determining the law by analyzing the way to achieve a goal by seeing whether the path or goal to be achieved contains or there is an evil / harm.[49]

F. Previous Research

There was a similar research conducted prior to this research which raised the same discussion topic as the topic of discussion in this study, the difference in this study with similar studies, both from the main focus of the discussion and the

[47] Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang,* (Jakarta: Sekretariat Jenderal dan Kepaniteraan MK, 2005). 289-291.
[48] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia,* (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009). 5.
[49] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 873

theory used. In this study, there is a new innovation by combining pure legal theory with Islamic legal theory to analyze the dissenting opinion and decision of the Constitutional Court Judge against the Constitutional Court Decision Number 37/PUU-XVIII/2020 which is focused on reviewing the material of article 27 of Law Number 2 of 2020. So that the author expressly states that this research is the original work of the author without any plagiarism from anyone's research work.

Research related to Article 27 Paragraph (1) to Paragraph (3) of Law no. 2 of 2020 which discusses the immunity rights of related officials and/or government in dealing with the National Economic Recovery during the Covid-19 Pandemic, of course, several researchers have carried out the discussion, but the discussions analyzed are different, especially after the Constitutional Court Decision Number 37 /PUU-XVIII/2020. To complete the data in the study and avoid repeating the discussion, it is necessary to conduct similar research that has been studied previously. The previous research related to Article 27 Paragraph (1) to Paragraph (3) of Law no. 2 of 2020 which discusses the immunity rights of related officials and/or government in dealing with the National Economic Recovery during the Covid-19 Pandemic are as follows:

1. Journal by Surya Oktaviandra (Volume 50 No. 2 of 2020) this research is entitled “Analisis Aspek Legalitas, Proporsionalitas, dan Konstitusionalitas ketentuan Imunitas pidana bagi Pejabat Pemerintah dalam Undang-Undang Nomor.2 Tahun 2020”. This research was conducted in a normative juridical manner by using the method of studying and analyzing secondary data in the

literature in the form of primary, secondary and tertiary legal materials.[50] The conclusion of the research is that the legality, proportionality and constitutionality aspects have been tested against Article 27 Paragraph (2) of the Perppu in Law Number 2 of 2020. The results of the tests that have been carried out show that the provision of immunity from criminal threats for government officials in implementing the Perppu is not found. conflict with the constitution.

The difference between this research journal and the writer's thesis research is in the object being studied and the subject matter, if the previous researchers only examined Article 27 Paragraph 2 of Law no. 2 of 2020 concerning aspects of legality, proportionality, and constitutionality, while the author's research is more about dissenting opinions and the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in material testing, especially on articles (1), (2), and (3) of Article 27 of Law no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

2. Journal by Gede Surya Aditya Marda, Dewa Gede Sudika Mangku, Made Sugi Hartono (volume 3 No. 3 of 2020) entitled “Interpretasi Unsur Iktikad baik dalam ketentuan pasal 27 Ayat 2 Undang-Undang Penanganan COVID-19”. The type of research used is normative legal research with a statute approach and a conceptual approach. The sources of legal materials used in this study consist of primary legal materials, secondary legal materials and tertiary legal materials. The technique of collecting legal materials is library research and the

[50] Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat (Jakarta: Rajawali Press, 2011), 13.

obtained legal materials are analyzed by descriptive techniques and examined in a qualitative juridical manner, the description is carried out on the content and structure of positive law. Processing of legal materials is carried out in a deductive way, namely drawing conclusions from a general problem to general problems in more detail. The conclusion of the research journal is that the meaning of the element of good faith referred to by the legislator is that all actions or policies carried out by authorized officials in the provisions of the COVID-19 Handling Law must be carried out based on good governance and aim to support sector stability. finance. The benchmark for whether there is an element of good faith in the provisions of Article 27 Paragraph 2 (two) of the COVID-19 Handling Law can be seen from the principles in constitutional law, namely in particular on the General Principles of Good Governance in the Anti-KKN Law.

The difference between this research journal and the writer's thesis research is in the object being studied and the subject matter, if the previous researchers only examined Article 27 Paragraph 2 of Law no. 2 of 2020 regarding the element of good faith. As for the author's research, it is more of a dissenting opinion and the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in a material review, especially on Articles (1), (2), and (3) of Article 27 of Law No. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

3. The journal by Siti Nurhalimah entitled “Menyoal Kegentingan dan Pasal Impunitas dalam perppu corona”. The conclusion of this research is that the

existence of immunity for the implementation of the Perppu in handling financial system stability must be solely intended so that the authorities do not hesitate to take strategic policies that must be decided immediately, in order to save the national economy. Do not let the existence of this impunity actually be used as a momentum by the dark riders solely with the intention of making personal gain. Through the implementation of the obligation to stabilize the financial system, it is hoped that this nation can quickly rise from the economic downturn.

As for the difference in this research journal with the author's thesis research, there are objects that are examined and the subject of the discussion, if previous researchers examined article 27 of Law no. 2 of 2020 concerning the urgency and the article on Impunity in the Covid PERPPU. The author's research is more about dissenting opinions and the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in material testing, especially articles (1), (2), and (3) of article 27 of Law no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

4. A research journal by Kusnadi Umar (Volume 2 Number 1 of 2020) entitled "Pasal Imunitas Undang-Undang Corona dan kewenangan Badan Pemeriksa Keuangan Dalam menetapkan Kerugian Negara". literature or secondary data as the basic material for research. The approach used is a conceptual and statutory approach. The data in this study were obtained through secondary data in the form of primary, secondary, and tertiary legal materials. The collected data was then analyzed using descriptive-analytical techniques to draw

conclusions. The conclusion of the researcher is that the provisions governing the authority of the BPK and state losses, do not include part of the provisions that are expressly revoked and/or declared invalid in the provisions of Article 28 of the Corona Law, which specifically contains and confirms the invalidity of the articles of various laws. While the phrase "not a loss to the state" cannot be used as a justification, because the formulation is still general in nature, and even tends to have the potential to cause disharmony between laws and regulations. So legally, the existence of Article 27 Paragraph (1) of the Corona Law, cannot negate the authority of the BPK in determining state losses.

The difference between this research journal and the author's thesis research is in the object being studied and the subject matter of the discussion, if the previous researchers examined Article 27 Paragraph 1 of Law no. 2 of 2020 the phrase losses to the State and the authority of the BPK, The author's research is more about dissenting opinions and the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in a material review, especially to articles (1), (2), and (3) of Article 27 of Law no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

5. Thesis by Sukron Jazil (State Islamic University of Maulana Malik Ibrahim Malang in 2021) entitled “Problematika Pasal 27 Ayat 2 UU No.2 tahun 2020 tentang PERPPU No. 1 tahun 2020 menjadi UU (Perspektif Hukum Responsif dan maslahah Mursalah)”. The type of research used is this research using normative legal research, namely research conducted by examining a statutory regulation that applies and or is applied to a particular legal problem, where the

object of the study is to examine existing library materials. And using the approach to legislation (statue approach), conceptual approach (conceptual approach). The conclusion of this previous research is that the problems in Article 27 Paragraph 2 of Law No. 2 of 2020 invite discussions of pros and cons, where the substance contained in the article is that, members of the KSSK (Financial System Stability Committee, secretary of KSSK), members of the KSSK secretariat, and officials or employees, the ministry of finance, bank Indonesia, financial services authorities, as well as deposit insurance institutions, and other officials, related to the implementation of government regulations in lieu of this law, cannot be prosecuted either civilly or criminally if in carrying out their duties based on goodwill good and in accordance with the provisions of the legislation. In a responsive legal breakthrough, where the article has violated constitutional principles and is not in accordance with the principles of decency and justice as well as the principle of abuse of circumstances, as well as providing legal immunity to government officials, because actually in the realm of good faith 76 must still be based on the existing law. such as the Criminal Code and does not eliminate criminal elements. Finally, in this research, in Article 27 Paragraph 2 of Law No. 2 of 2020, breakthroughly, maslahah mursalah does not cause benefits but will cause harm, where when people's rights become personal rights on the basis of good faith, then in this context Maalahah Doruriyah whose scope includes the Maqasid as-Shari'ah in the form of hifdu mal, can be misused by the government so that it will cause disgrace, and the word good faith needs to be changed and cannot be

used as an excuse and benchmark.

As for the difference in this research journal with the author's thesis research, there are objects that are examined and the subject of the discussion, if previous researchers examined article 27 of Law no. 2 of 2020 concerning the Settlement of Problems with Article 27 Paragraph 2 of Law no. 2 of 2020 using a Responsive Legal Perspective, the author's research is more about dissenting opinions and the results of the Constitutional Court's decision Number 37/PUU-XVIII/2020 in material testing, especially to articles (1), (2), and (3) of article 27 UU no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

6. A research journal by Henny Juliani (Volume 3, number 1, June 2020) entitled "Analisis Yuridis Kebijakan Keuangan Negara dalam Penanganan Pandemi Covid-19 Melalui Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 tahun 2020". normative juridical research, namely by examining library materials or secondary data as the basic material for research. The approach used is a conceptual and statutory approach. The data in this study were obtained through secondary data in the form of primary, secondary, and tertiary legal materials. The collected data was then analyzed using descriptive-analytical techniques to draw conclusions. The conclusion of the researcher is that the Government Regulation in Lieu of Law (Perppu) is a constitutional discretionary authority as a right of the President based on Article 22 Paragraph (1) of the 1945 Constitution. In terms of the pressing urgency related to the Covid-19 Pandemic, the President has stipulated Perppu Number 1 of 2020 as

a legal product as part of the hierarchy of laws and regulations combined with policy regulations as the operational technical basis in handling the Covid-19 pandemic, of course, supported by the bureaucracy as the implementer of the policy. The discretion of the President and government officials is a strategic policy in the form of decisions and/or actions in overcoming urgent concrete problems that require immediate handling.

As for the difference in this research journal with the author's thesis research, there are objects that are examined and the subject of the discussion, if previous researchers examined State Financial Policy in Handling the Covid-19 Pandemic Through Government Regulation in Lieu of Law Number 1 of 2020 which focused more on how was PERPPU No. 1 of 2020 born, The author's research is more about dissenting opinions and the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in material testing, especially to articles (1), (2), and (3) of article 27 UU no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.

Previous Research Table

Name/agency/ year/title	Formulation of the Problem	Result	Difference	Novelty Element
Surya Oktaviandra/ Pemerintah Kota Padang Panjang/ 2020/ Analisis Aspek Legalitas, Proporsionalitas dan Konstitusionalitas ketentuan Imunitas pidana bagi Pejabat Pemerintah dalam Undang-Undang Nomor. 2 Tahun 2020	1. How is the analysis of the legality, proportionality, and constitutionality aspects of the provisions on criminal immunity for government officials in Law Number 2 of 2020? 2. Have the articles in Law Number 2 of 2020 fulfilled the elements of writing legal norms in accordance with the guidelines of Law Number 12 of 2011 concerning the Establishment of Legislations?	1. The legality, proportionality and constitutionality aspects have been tested against Article 27 Paragraph (2) of the Perppu in Law Number 2 of 2020. The results of the tests that have been carried out show that the provisions on immunity from criminal threats for government officials in implementing the Perppu are not found to be in conflict with the constitution and is in accordance with the existing 3 aspects. 2. Whereas Law Number 2 of 2020 has	The difference between this research journal and the writer's thesis research is in the object being studied and the subject matter, if the previous researchers only examined Article 27 Paragraph 2 of Law no. 2 of 2020 concerning aspects of legality, proportionality, and constitutionality, while the author's research is more about dissenting opinions and the results of the decision of the Constitutional Court Number 37/PUU-	This research is a development of previous research after the object under study was subject to judicial review by the Constitutional Court. The juridical analysis of dissenting opinions and decisions of the Constitutional Court judges on the material review of Article 27 of Law Number 2 of 2020 in the Constitutional Court Decision will then be discussed and analyzed using the perspective of Progressive Legal Theory and Al-Dzari'ah.

		complied with the guidelines for the formation of laws and regulations in accordance with Law Number 12 of 2011	XVIII/2020 in material testing, especially on articles (1), (2), and (3) of Article 27 of Law no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.	The results of this study are expected to be used to answer the main problems regarding the handling of the Covid-19 pandemic and the recovery of the national economy
Gede Surya Aditya Marda, Dewa Gede Sudika Mangku, Made sugi Hartono/ Universitas Pendidikan Ganesha Singaraja, Indonesia/ volume 3 No. 3/ 2020/ Interpretasi Unsur Iktikad baik dalam ketentuan pasal 27 Ayat 2 Undang-Undang Penanganan COVID-19.	1. What is the interpretation of the element of good faith in the provisions of Article 27 Paragraph (2) of Law Number 2 of 2020 concerning the handling of the Covid-19 Pandemic? 2. What is the benchmark for the interpretation of the element of good faith in the provisions of Article 27 Paragraph (2) of Law Number 2 of 2020 concerning	From the research journal, the meaning of the element of good faith referred to by the legislator is that all actions or policies carried out by authorized officials in the provisions of the COVID-19 Handling Law must be carried out based on good governance and aim to support financial sector stability. The benchmark	The difference between this research journal and the writer's thesis research is in the object being studied and the subject matter, if the previous researchers only examined Article 27 Paragraph 2 of Law no. 2 of 2020 regarding the element of good faith. As for the author's research, it is more of a dissenting opinion and the results of	This research is a development of previous research after the object under study was subject to judicial review by the Constitutional Court. The juridical analysis of dissenting opinions and decisions of the Constitutional Court judges on the material review of Article 27 of Law Number 2 of 2020 in the Constitutional Court Decision will

	the Handling of the Covid-19 Pandemic?	for whether or not there is an element of good faith in the provisions of Article 27 Paragraph 2 (two) of the COVID-19 Handling Law can be seen from the principles in constitutional law, namely in particular on the General Principles of Good Governance in the Anti-KKN Law.	the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in a material review, especially on Articles (1), (2), and (3) of Article 27 of Law No. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.	then be discussed and analyzed using the perspective of Progressive Legal Theory and Al-Dzari'ah. The results of this study are expected to be used to answer the main problems regarding the handling of the Covid-19 pandemic and the recovery of the national economy
Siti Nurhalimah/ Researcher of the Center for the Study of National Constitution and Legislation of UIN Jakarta, Volume 4 Number 1/ 2020/ Menyoal Kegentingan dan Pasal Impunitas dalam perppu corona	1. What is the issue of urgency and the article on impunity in the Corona PERPPU?	From the research, the existence of immunity for the implementation of the Perppu in handling financial system stability must be solely intended so that the authorities do not hesitate to take strategic policies that must be decided	As for the difference in this research journal with the author's thesis research, there are objects that are examined and the subject of the discussion, if previous researchers examined article 27 of Law no. 2 of 2020 concerning	This research is a development of previous research after the object under study was subject to judicial review by the Constitutional Court. The juridical analysis of dissenting opinions and decisions of the Constitutional Court judges

		immediately, in order to save the national economy. Do not let the existence of this impunity actually be used as a momentum by the dark riders solely with the intention of making personal gain. Through the implementation of the obligation to stabilize the financial system, it is hoped that this nation can quickly rise from the economic downturn.	the urgency and the article on Impunity in the Covid PERPPU. The author's research is more about dissenting opinions and the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in material testing, especially articles (1), (2), and (3) of article 27 of Law no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.	on the material review of Article 27 of Law Number 2 of 2020 in the Constitutional Court Decision will then be discussed and analyzed using the perspective of Progressive Legal Theory and Al-Dzari'ah. The results of this study are expected to be used to answer the main problems regarding the handling of the Covid-19 pandemic and the recovery of the national economy
Kusnadi Umar/ Volume 2 Number 1, Alauddin State Islamic University Makassar/ 2020/ Pasal	1. What is the position of the State Audit Board in the State Administration Structure? 2. What is the	The results of the researcher are the provisions governing the authority of the BPK and state losses, excluding part of the	The difference between this research journal and the author's thesis research is the object being studied	This research is a development of previous research after the object under study was subject to judicial review by the

Imunitas Undang-Undang Corona dan kewenangan Badan Pemeriksa Keuangan Dalam menetapkan Kerugian Negara.	concept of separation of power and the principle of checks and balances? 3. What are the implications of Article 27 Paragraph (1) of the Corona Law on the Authority of the BPK in determining state losses?	provisions that are expressly revoked and/or declared invalid in the provisions of Article 28 of the Corona Law, which specifically contains and confirms the invalidity articles of various laws. While the phrase "not a loss to the state" cannot be used as a justification, because the formulation is still general in nature, and even tends to have the potential to cause disharmony between laws and regulations. So legally, the existence of Article 27 Paragraph (1) of the Corona Law, cannot negate the authority of the BPK in determining state losses.	and the subject of the discussion, if the previous researchers examined Article 27 Paragraph 1 of Law no. 2 of 2020 the phrase losses to the State and the authority of the BPK, The author's research is more about dissenting opinions and the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in a material review, especially to articles (1), (2), and (3) of Article 27 of Law no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.	Constitutional Court. The juridical analysis of dissenting opinions and decisions of the Constitutional Court judges on the material review of Article 27 of Law Number 2 of 2020 in the Constitutional Court Decision will then be discussed and analyzed using the perspective of Progressive Legal Theory and Al-Dzari'ah. The results of this study are expected to be used to answer the main problems regarding the handling of the Covid-19 pandemic and the recovery of the national economy

Sukron Jazil / Maulana Malik Ibrahim State Islamic University Malang / 2021 / Problematika Pasal 27 Ayat 2 UU No.2 tahun 2020 tentang PERPPU No. 1 tahun 2020 menjadi UU (Perspektif Hukum Responsif dan maslahah Mursalah.	1. What are the indicators of good faith in Article 27 Paragraph 2 of Law No. 2 of 2020? 2. Has Article 27 Paragraph 2 of Law No. 2 of 2020 fulfilled the responsive law and maslahah mursalah?	From this previous research, the problems in Article 27 Paragraph 2 of Law No. 2 of 2020 invite discussions of pros and cons, where the substance contained in the article is that, KSSK Members, officials or employees, the Ministry of Finance, Bank Indonesia, financial services authorities, and Deposit insurance institutions, and other officials, relating to the implementation of government regulations in lieu of this Law, cannot be prosecuted either civilly or criminally if in carrying out their	As for the difference in this research journal with the author's thesis research, there are objects that are examined and the subject of the discussion, if previous researchers examined article 27 of Law no. 2 of 2020 concerning the Settlement of Problems with Article 27 Paragraph 2 of Law no. 2 of 2020 using a Responsive Legal Perspective, the author's research is more about dissenting opinions and the results of the Constitutional Court's decision Number	This research is a development of previous research after the object under study was subject to judicial review by the Constitutional Court. The juridical analysis of dissenting opinions and decisions of the Constitutional Court judges on the material review of Article 27 of Law Number 2 of 2020 in the Constitutional Court Decision will then be discussed and analyzed using the perspective of Progressive Legal Theory and Al-Dzari'ah. The results of this study are expected to be used to

		duties they are based on good faith and in accordance with the provisions of laws and regulations. In a responsive legal breakthrough, where the article has violated constitutional principles and is not in accordance with the principles of decency and justice as well as the principle of abuse of circumstances , as well as providing legal immunity to government officials, because actually in the realm of good faith 76 must still be based on the existing law. such as the Criminal	37/PUU-XVIII/2020 in material testing, especially to articles (1), (2), and (3) of article 27 UU no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.	answer the main problems regarding the handling of the Covid-19 pandemic and the recovery of the national economy

		Code and does not eliminate criminal elements. Finally, in this research, in Article 27 Paragraph 2 of Law No. 2 of 2020, breakthroughly, maslahah mursalah does not cause benefits but will cause harm, where when people's rights become personal rights on the basis of good faith, then in this context Maalahah Doruriyah whose scope includes the Maqasid as-Shari'ah in the form of hifdu mal, can be misused by the government so that it will cause disgrace, and the word good faith needs to be		

		changed and cannot be used as an excuse and benchmark.		
Henny Juliani/ Faculty of Law, Diponegoro University, Administrative Law & Governance Journal, Volume 3, no. 1/ 2020/ Analisis Yuridis Kebijakan Keuangan Negara Dalam Penanganan Pandemi Covid-19 Melalui Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020	1. To what extent is the President's authority to stipulate PERPPU Number 1 of 2020 as a state financial policy? 2. What are the implications for the implementation of the State Budget (APBN)?	The result of the researcher is that the Government Regulation in Lieu of Law (Perppu) is a constitutional discretionary authority as a right of the President based on Article 22 Paragraph (1) of the 1945 Constitution. In terms of the pressing urgency related to the Covid-19 Pandemic, the President has stipulated Perppu Number 1 The year 2020 as a legal product as part of the hierarchy of laws and regulations combined with policy regulations as an operational	As for the difference in this research journal with the author's thesis research, there are objects that are examined and the subject of the discussion, if previous researchers examined State Financial Policy in Handling the Covid-19 Pandemic Through Government Regulation in Lieu of Law Number 1 of 2020 which focused more on how was PERPPU No. 1 of 2020 born, The author's research is more about dissenting opinions and	This research is a development of previous research after the object under study was subject to judicial review by the Constitutional Court. The juridical analysis of dissenting opinions and decisions of the Constitutional Court judges on the material review of Article 27 of Law Number 2 of 2020 in the Constitutional Court Decision will then be discussed and analyzed using the perspective of Progressive Legal Theory and Al-Dzari'ah.

		technical basis in handling the Covid-19 pandemic, of course, is supported by the bureaucracy as policy implementers. The discretion of the President and government officials is a strategic policy in the form of decisions and/or actions in overcoming urgent concrete problems that require immediate handling.	the results of the decision of the Constitutional Court Number 37/PUU-XVIII/2020 in material testing, especially to articles (1), (2), and (3) of article 27 UU no. 2 of 2020 using the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah.	The results of this study are expected to be used to answer the main problems regarding the handling of the Covid-19 pandemic and the recovery of the national economy.

G. Structure of Discussion

The author divides four chapters of systematic discussion of this research. Each chapter consists of sub-chapters. The thesis that will be written will be divided into three main parts, namely the introduction, the main or content section, and the closing section. The systematics of writing this law consists of 5 chapters, each of

which consists of sub-sections. Here the author will describe in the form of systematic writing.

CHAPTER I: INTRODUCTION

Contains research background, problem formulation, research objectives, research benefits, research methods, systematic discussion, and framework of thinking.

CHAPTER II: Tinjauan Pustaka

Contains a Literature Review which will explain related thoughts and juridical concepts as a theoretical basis for reviewing and analyzing research problems. In this study, a review of the literature related to the juridical analysis of Article 27 of Law No. 2 of 2020 with Article 27 of the 1945 Constitution of the Republic of Indonesia will be presented after the Constitutional Court Decision No. 49/PUU-XVIII/2020 using the perspective of Progressive Legal Theory and *Sadd Al-Dzari'ah.*

CHAPTER III: Result and Discussion

This chapter will describe the analysis of research on primary and secondary legal materials aimed at answering the formulation of the problem which contains:

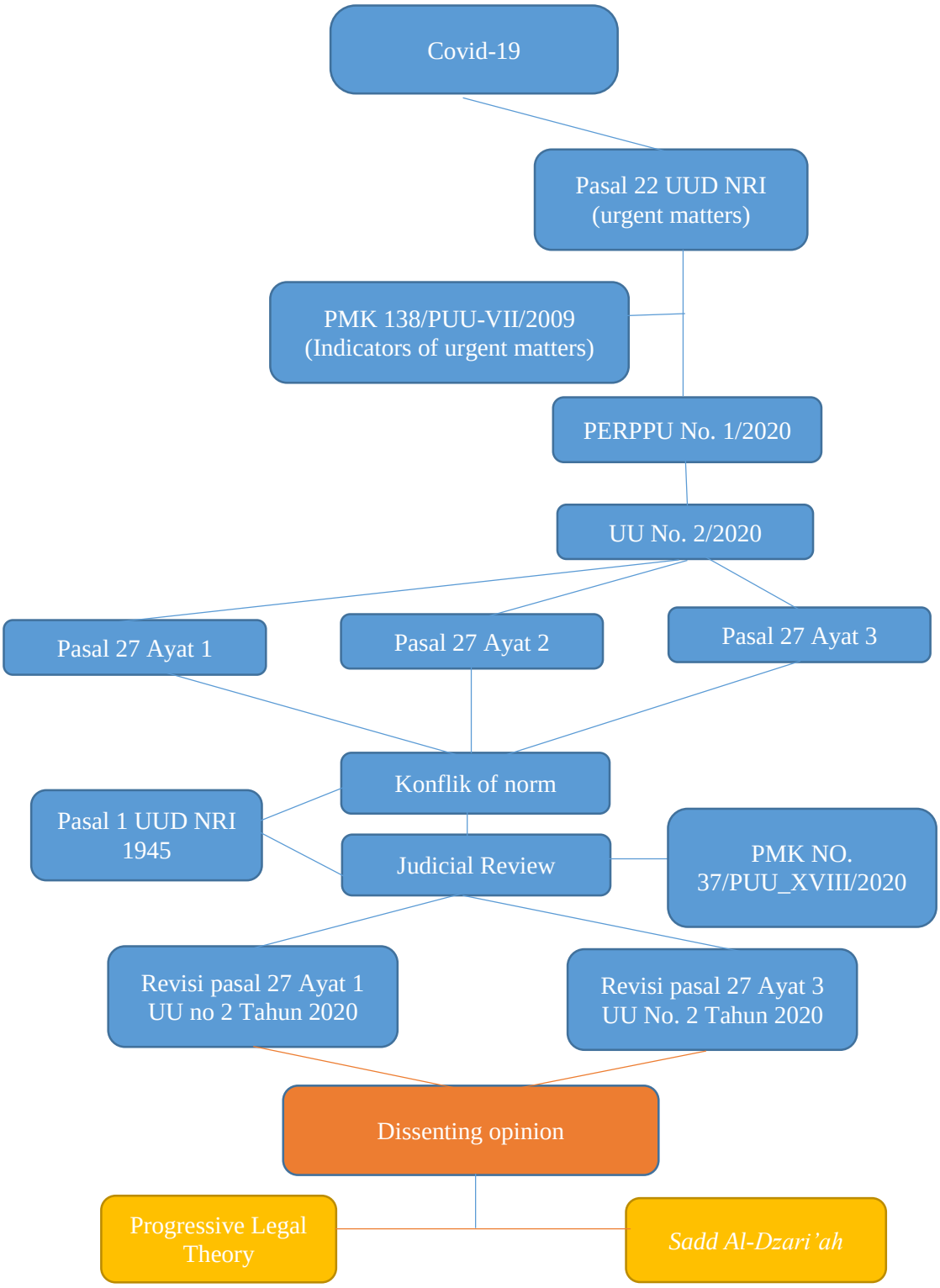
1. How is the juridical analysis of legal considerations and the Dissenting opinion of the judges of the Constitutional Court on Article 27 of Law No. 2 of 2020 in the Decision of the Constitutional Court No. 37/PUU-XVIII/2020?

2. How is the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 based on perspective of Progressive Legal Theory and Sadd Al-Dzari'ah?

CHAPTER IV: Closing

explain the conclusions and recommendations. The conclusion in this chapter is the final result of the research that answers the problem formulation. Suggestions are suggestions given to related parties who have the authority and are related to this research.

H. Frame of Mind



CHAPTER II

LITERATURE REVIEW

1. National Economic Recovery Program

To cope with the impact of the Covid-19 Pandemic, the National Economic Recovery Program is contained in Law no. 2 of 2020 which later derivatives of fiscal policy are regulated in (Government Regulation (PP) No. 23 of 2020). The definition of the National Economic Recovery Program, hereinafter referred to as the PEN Program, is a series of activities for the recovery of the national economy which is part of the state financial policy implemented by the Government to accelerate the handling of the Corona Virus Disease 2Ol9 (COVID19) pandemic and/or to face threats that endanger the national economy. --and/or financial system stability as well as saving the national economy.[51]

In addition to handling the health crisis, the government also runs the National Economic Recovery program as a response to the decline in community activities that provide logical consequences for economic factors. Especially in the informal sector or MSMEs.

The National Economic Recovery Program here has the aim of protecting, maintaining, and improving the economic capacity of business actors in carrying out their business during the Covid-19 Pandemic. The National Economic Recovery Program is expected to be able to extend the breath of MSMEs and improve the

[51] Pasal 1 Ayat 1 Peraturan Pemerintah Republik Indonesia Nomor 23 Tahun 2020 Tentang Pelaksanaan Program Pemulihan Ekonomi Nasional Dalam Rangka Mendukung Kebijakan Keuangan Negara Untuk Penanganan Pandemi Corona Yirus Dt.Sease 2019 (Covid- 19) Dan/Atau Menghadapi Ancaman Yang Membahayakan Perekonomian Nasional Dan/Atau Stabilitas Sistem Keuangan Serta Penyelamatan Ekonomi Nastonal, Lembaran Negara Republik Indonesia Nomor 6514.

performance of MSMEs that contribute to the Indonesian economy.

Meanwhile, in the principle of implementing the National Economic Recovery Program, according to article 3 of Government Regulation Number 23 of 2020, namely:

a. Principles of Social Justice
b. As much as possible for the prosperity of the people
c. Support business actors
d. Implement prudent policy principles, as well as good, transparent, accelerative, fair and accountable governance in accordance with the provisions of laws and regulations;
e. Does not cause moral hazard, and
f. There is a sharing of costs and risks among stakeholders according to their respective duties and responsibilities.

2. COVID-19 Pandemic

According to the website of the Inspectorate General of the Ministry of Education and Culture, it is an epidemic that occurs simultaneously everywhere, covering a wide geographical area. Pandemic is an infectious disease (epidemic) that spreads in almost all countries or continents and usually affects many people, while COVID-19 (coronavirus disease 2019) is a new disease caused by a virus from the Coronavirus group, namely SARS-CoV-2 which is also often called the Corona Virus.[52]

Coronavirus is also a collection of viruses that infect the respiratory system.

[52] Pengertian Pandemi Covid-19, Statusnya di Indonesia Diperpanjang Jokowi (detik.com)

In most cases, this virus causes only mild respiratory infections, such as the flu. However, this virus can also cause severe respiratory infections such as lungs and not even a few who died due to this virus. In addition to the SARS-CoV-2 virus or Corona virus, viruses that are included in the Coronavirus group are the virus that causes Severe Acute Respiratory Syndrome (SARS) and the virus that causes Middle-East Respiratory Syndrome (MERS).[53]

In the latest data update on the official website covid19.go.id, the data on the distribution of Covid-19 on a global scale in the last update on March 8, 2022 sourced from WHO, it was detected that Covid-19 had spread to 228 countries with 445,096,612 confirmed positive for Covid -19, then as many as 5,998,301 people have died due to this Covid pandemic,

National-scale distribution data in Indonesia, the latest update on distribution data on 08, March 2022 as many as 5,800,253 positive people for Covid-19, then 5,226,530 have recovered from Covid-19 infection, and 150,831 have died.

In the latest information compiled on the BBC.com page, one of the first doctors in South Africa to detect the latest variant of the Covid virus, named "Omicron". Angelique Coetzee, said that patients affected by the variant so far have mild symptoms and can be treated at home. The complaints submitted by Omicron patients usually are that they feel very tired for 24 hours to two days. Other symptoms that occur in patients infected with Omicron are headache, body aches, and hoarseness of the throat. Patients infected with omicron do not cough and do

[53] Aladokter.com/virus-corona

not lose their sense of smell or taste.

3. Constitutional Court Decision

The decision of the Constitutional Court is a reflection of the judge's statement as a state official who is authorized by the 1945 Constitution or by law to decide disputes submitted by applicants who feel that their constitutional rights have been impaired due to the enactment of a law. If in the end the Constitutional Court gives its decision regarding the judicial review, the basis for its decision must refer to the provisions of Article 45 of Law Number 24 of 2003 concerning the Constitutional Court.[54]

According to Martiah, the Constitutional Court's decision in its development has experienced a shift in function, namely from negative legislature (only deciding) to positive legislature (decision that is regulating), the decision is usually based on 3 (three) considerations, namely:

1. To create justice and the benefit of society,
2. There is an urgent situation,
3. Filling the rechtvacuum, which is to avoid chaos and legal chaos in society.[55]

Based on the provisions of Article 24C Paragraph (1) and Paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has the authority to:

---

[54] Iriyanto A. Baso Ence. 2008. *Negara Hukum dan Hak Uji Konstitusionalitas Mahkamah Konstitusi "Telaah Terhadap Kewenangan Mahkamah Konstitusi"*. (Bandung: Alumni), 195

[55] Martitah, *Mahkamah Konstitusi dari Negative Legislature ke Positive Legislature,* (Jakarta: Konstitusi Press, 2013), 175

a. Examine the Act against the 1945 Constitution of the Republic of Indonesia;
b. To decide on disputes over the authority of state institutions whose authorities are granted by the 1945 Constitution of the Republic of Indonesia;
c. Deciding on the Dissolution of Political Parties
d. Deciding on Disputes over the General Election Results; and
e. Giving a decision on the opinion of the DPR that the President and/or Vice President are suspected of having violated the law in the form of treason against the state, corruption, bribery, other serious crimes, or disgraceful acts, and/or no longer fulfill the requirements as President and/or Vice President as stipulated referred to in the 1945 Constitution of the Republic of Indonesia.[56]

In relation to the authority and decision of the Constitutional Court, it can be concluded that there are three important issues that need to be raised, namely the Law that can be tested by the Constitutional Court, the Petitioners and the Contents of the Petitioners, and the Nature of the Decisions of the Constitutional Court.

1) Laws that can be submitted to the Constitutional Court

The laws that can be applied for a judicial review to the Constitutional Court are laws that were enacted after the amendment to the 1945 Constitution of the Republic of Indonesia. on 12-04-2005.[57] With the cancellation, it provides logical consequences for the wider authority of the Constitutional Court so that the Constitutional Court can examine all existing laws before the amendment to

[56] Kewenangan dari Mahkamah konstitusi ini kemudian formulasikan lagi dalam pasal 12 Undang-Undang Nomor 4 tahun 2004 tentang Kekuasaan kehakiman dan Undang-undang Nomor 24 tahun 2003 tentang Mahamah Konstitusi.

[57] Lihat putusan Perkara No Perkara: 066/PUU-II?2004 tentang pengujian terhadap Undang-Undang Nomor 24 Tahun 2003 dan Undang-Undang Nomor 1 tahun 1987 tentang kamar dagang dan Industri terhadap UUD NRI 1945

the 1945 Constitution.

2) Applicant and Applicant Content

In the case of judicial review of the 1945 Constitution, the applicant is the party who considers his constitutional rights and/or authorities to be impaired by the enactment of the law being tested, including:

a. Individuals or Indonesian citizens;
b. Customary Law Community Units as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Law;
c. Public or private legal entities;
d. State institutions.

Meanwhile, the contents of the application contain constitutional rights and/or authorities that have been violated because the formation of laws does not meet the provisions based on the 1945 Constitution; and/or content material in paragraphs, articles, and/or parts of the law are deemed to be contrary to the 1945 Constitution of the Republic of Indonesia.

Furthermore, the decision of the Constitutional Court which in its decision stated that the material content of paragraphs, articles, and/or parts of the law is contrary to the 1945 Constitution of the Republic of Indonesia, the material content of paragraphs, articles, and/or parts of the law does not have binding legal force.[58] While the decision of the Constitutional Court which in its decision stated that the formation of the law in question did not meet the

[58] Pasal 57 Undang-Undang nomor 24 tahun 2003 tentang Mahkamah Konstitusi, Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98.

provisions for the formation of a law based on the 1945 Constitution of the Republic of Indonesia, the law did not have binding legal force.

From the description above, the important thing that has broad legal implications is that the consequence of the cancellation by the Constitutional Court of an unconstitutional law is the occurrence of a legal vacuum, legal conflict, and legal ambiguity. In addition, the cancellation of a law due to the unconstitutional process of its formation has broad legal implications, because all parts of the law no longer have binding legal force. This is what happened in the case regarding the review of Law Number 20 of 2002 concerning Electricity. With no recognition of the law, forced to return to the old law and its implementing regulations. It is different in the case of reviewing article 27 of Law Number 2 of 2020 which only revised a few phrases in article 27, especially in paragraphs 1 and 3 so that it did not change the overall meaning in terms of both paragraphs. Chapter. Even the law.

3) The decision of the Constitutional Court is Final

The decision of the Constitutional Court is final. Where the final nature of this Constitutional Court Decision refers to the provisions of Article 24C Paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Law Number 24 of 2003 concerning the Constitutional Court. In the 1945 Constitution it is affirmed that the Constitutional Court has the authority to judge at the first and final levels whose decisions are final…" Whereas in Article 10 Paragraph (1) of Law Number 24 of 2003 concerning the

Constitutional Court it is reaffirmed that the Constitutional Court has the authority to adjudicate at the first and final levels whose decisions are final. .

4) Judge's Difference of Opinion

In Article 45 Paragraph (10) of Law no. 24 of 2003 mandates that the opinions of different members of the panel of judges be included in the decision. This difference of opinion is very possible, and often occurs in practice in court, because decisions can be taken by majority vote if deliberation cannot reach consensus.

The difference of opinion of the Panel of Judges can be divided into two types, namely (1) dissenting opinion; and (2) concurrent opinion or consenting opinion. Dissenting opinion is the difference in opinion of the Panel of Judges of the Constitutional Court in terms of substance that affects the difference in the verdict, while the difference in the Concurrent opinion is the difference in the judge's consideration that does not affect the decision, or underlies the same decision.[59] *Concurrent opinion* because its content is in the form of different considerations with the same order does not always have to be placed separately from the majority judge, but can be incorporated into legal considerations that strengthen the decision.

Meanwhile, dissenting opinion, as a different opinion that influences the decision, must be stated in the decision. Because dissenting opinion is the moral responsibility of constitutional judges who have different opinions and a form

[59] Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang*, (Jakarta: Sekretariat Jenderal dan Kepaniteraan MK, 2005). 289-291.

of transparency so that the public knows all the legal considerations of the Constitutional Court's decision. The existence of a dissenting opinion does not affect the legal force of the Constitutional Court's decision. The Constitutional Court's decisions that were taken unanimously by 9 constitutional judges without differences of opinion had the same power, no less and no more, with the Constitutional Court decisions taken by majority vote with a composition of 5 to 4.

In the practice of the Constitutional Court's decision, the placement of dissenting opinions has undergone several changes. For the first time, the dissenting opinion was placed on the court's legal considerations after the majority legal considerations, followed by the verdict.[60] Which is then seen as confusing the people who read the decision because after reading the dissenting opinion, they will only read the verdict, which of course is contradictory. Moreover, if the dissenting is quite a lot in proportion to the legal considerations of the majority judge.

Therefore, the placement of the dissenting opinion was again changed, namely after the verdict but before the closing part and the signature of the Constitutional Justice and the substitute clerk.[61] Currently, the dissenting opinion is placed after the closing and signature of the constitutional judge but before the name and signature of the substitute clerk [62]

[60] Model ini pernah digunakan untuk saatu putusan, yaitu pada putusan MK yang pertama, Putusan Nomor 4/PUU-I/2003

[61] Model ini diterapkan mulai pada Putusan Nomor 011-017/PUU-I/2003, yang diucapkan pada hari Selasa, 24 Februari 2004.

[62] Model ini diterapkan sejak putusan Nomor 019-020/PUU-III/2005 diucapkan pada hari selasa, tanggal 28 Maret 2006.

5) The Power of Judgement

The Constitutional Court's decision has permanent legal force since it has been pronounced in a plenary session open to the public, this is in accordance with the provisions of Article 47 of Law no. 24 of 2003. This is a consequence of the nature of the decision of the Constitutional Court which is also determined by the 1945 Constitution as final. Thus, the Constitutional Court is the first and last court for which legal action cannot be taken against its decision. After the verdict is read, the Constitutional Court is obliged to send a copy of the decision to the parties within a period of no later than 7 working days after the decision is pronounced in accordance with the mandate of Article 49 of Law no. 24 of 2003.

4. Progressive Legal Theory

The idea of progressive law emerged because of concerns about the legal situation in Indonesia. observers, including international observers, have expressed it in various negative expressions, such as the legal system in Indonesia is among the worst in the world. Not only observers, but generally people also say that, although they do not convey it in a clear speech, but through their concrete experiences with everyday laws, such as their weaknesses when dealing with the law and the strengths of strong people tend to escape the law. Thus, people experience and live it everyday, while observers convey it contemplatively and analytically. Since the fall of the New Order in 1998, the Indonesian people have not succeeded in bringing up the law to a level that is close to the ideal state, but instead it causes more disappointment, especially with regard to eradicating

corruption. The commercialization and commodification of law is getting more and more widespread every year. [63]

From the contemplation of these things and events, an idea was proposed to choose a more progressive way. This is formulated into an idea and type of progressive law or progressive law. Through this idea, we want to find a way to more meaningfully overcome the setback or deterioration of existing laws in Indonesia. The meaning of meaningful in this case is to mean faster changes, make fundamental reversals, make liberations, breakthroughs and so on.

Progressive legal theory has a basic assumption that it wants to put forward is the view of the relationship between law and humans. So progressive legal theory wants to emphasize the principle that "law is for humans", and not the other way around. In this regard, the law does not exist for the law/ itself, but for something wider and greater. So that whenever there is a problem within and with the law, it is the law that is reviewed and corrected instead of forcing humans to be included in the legal scheme itself.[64]

In progressive legal theory, law is not an absolute and final institution but is very dependent on how humans look and use it. In this case, it is humans who are decisive. Progressive law does not accept law as an absolute and final institution, but is largely determined by its ability to serve humans. In the context of this thought, law is always in the process of becoming. Law is an institution that continuously builds and changes itself towards a better level of perfection. The

---

[63] Satjipto Rahardjo, *Hukum Progresif (Sebuah Sintesa Hukum di Indonesia),*(Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009). 4.

[64] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia,* (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009). 5.

quality of perfection can be verified into factors of justice, welfare, concern for the people and others. This is the essence of "law which is always in the process of becoming" (law as a process, law in the making). Because the law does not exist for the law itself, but for humans. In this case, the law does not exist for its own sake, but for a purpose that is outside of itself.[65]

If the law rests on "rules and behavior", then progressive legal theory places more behavioral factors above regulations. Because human factors and contributions are considered more decisive than existing regulations. This reminds us of Taverne's words, "give me good prosecutors and judges, then even with bad regulations I can make good decisions". The former chief justice, Bismar Siregar also said that justice is above the law. Therefore, Bismar always decides based on his conscience first and only then looks for the rules, because the judge must decide based on the law.

Prioritizing the human factor over the law, leads us to understand the book as a process or project. Karl Renner formulated this very well when he said, "The development of the law gradually works out what is socially reasonable" (Renner, 1969).[66]

In addition, progressive law rejects the prioritization and superiority of legal science that works analytically (analytical jurisprudence), namely those that prioritize rules and logic (rule and logic), and favors the flow of legal realism, as the characteristics of progressive law proposed by Satjipto Rahardjo, which was

[65] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, 6.
[66] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, 10.

later concluded by Ahmad Rifai[67] that:

1) Law exists to serve the community
2) Progressive law will continue to live because the law is always in its status as law in the making and is never final as long as humans exist, then progressive law will continue to live in managing people's lives,
3) In progressive law there is always a very strong ethics and morality of humanity, which will respond to human development and needs and serve justice, welfare.

Progressive law shares ideas with legal realism and freirechtslehre, because law is not seen from the perspective of the law itself, but is seen and assessed from the social goals it wants to achieve and the consequences that arise from the operation of the law.[68] Progressive law can be a correction to the weakness of the modern legal system which is full of bureaucracy and procedures, so it has the potential to marginalize justice and truth.[69]

The key word of the progressive legal theory is the willingness to break free from the status quo. The idea of self-liberation is related to psychological factors or the spirit that exists within the perpetrators of the law. Namely courage, the inclusion of the courage factor expands legal proceedings, namely not only prioritizing rules, but also behavior. Judgment is not only textual, but also involves

[67] Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif,* (Jakarta, 2010), 46
[68] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, 36
[69] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, 41.

personal predeposition.[70]

Although progressive legal theory places great emphasis on the actual behavior of legal factors, progressive law does not ignore the role of the legal system in which they exist. Thus, progressive law enters two domains, namely systems and humans. Both require a brightening injection so that it becomes progressive.

All aspects related to progressive law are condensed into the concept of progressiveism. In this case, progressiveism teaches that law is not a king, but a tool to describe the basis of humanity that functions to give grace to the world and humans. Progressiveism does not want to make law a technology that has no conscience, but an institution with human morality. The assumptions underlying legal progressivism are: first, law exists for humans and not for itself; second, the law is always in the status of "law in the making" and is not final; third, the law is an institution that is morally human, and not a technology that is not conscientious on the basis of these assumptions, the criteria for progressive law are:

a. Having a big goal of human welfare and happiness;
b. Contains a very strong human moral content;
c. Progressive law is a liberating law covering a very broad dimension that does not only move in the realm of practice, but also theory;
d. It is critical and functional, because progressive law never stops looking at existing deficiencies and finding ways to improve them.[71]

[70] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, 91.
[71] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, 17-19

5. Sadd Al-Dzari'ah

In the period of the history of Islamic civilization, the scholars developed various theories, methods and legal principles that were not previously formulated systematically, both in the Qur'an and Hadith. The efforts of these scholars are related to the demands of social reality which are increasingly complex. Several new issues began to emerge that were not previously discussed specifically in the Qur'an and Hadith. Among the legal methods developed by the scholars is *Sadd al-Dzari'ah.*

a. Definition of *Al-Dzari'ah*

All actions that are consciously carried out by a person must have a certain clear purpose, without questioning whether the intended action is good or bad, brings benefits or causes harm. Before arriving at the implementation of the intended action, there is a series of actions that preceded it that must be passed.

The small analogy, when someone wants to get knowledge, then that person must learn. In order for him to learn, he must go through several phases of activities such as finding a teacher, preparing a place and other learning tools. The main activity in this case is learning or studying, while other activities are called intermediaries, roads or introductions.

With another example, if a person wants to commit murder, he must previously carry out several activities such as having a weapon to kill and looking for opportunities to commit the murder. Killing is the main activity aimed at, while other actions that precede it are called intermediaries or

preliminaries.

The main actions aimed at by a person have been regulated by syara' and included in the five Taklifi laws or what is called al-Ahkam Al Khamsah in order to be able to carry out the main actions that are ordered or prohibited, must first perform the actions that preceded them. The obligation to do or avoid actions that precede the main action, there are some that have been regulated by the syara' and some are not regulated directly, for example:

1. Wudhu is a preliminary (intermediary) act to perform prayer. However, the obligation of ablution itself has been regulated in the Qur'an. In this case it is clear that the law for preliminary (intermediary) actions is the same as the law for the main action, which is equally obligatory.[72]
2. 2. Seeking legal knowledge is obligatory based on the hadith of the prophet. However, to carry out the obligation to study, there are things that must be done beforehand, such as establishing a school. However, there is no direct legal argument for establishing the school.

Al-Dzari'ah in language is a way or way to get to a certain thing.[73] In addition, Usul Ulama argue that *Al-Dzari'ah* is a way or way to get to

[72] Lihat contoh klasifikasi *Al-Dzari'ah* Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 874

[73] Frasa "tertentu" dalam hal ini ditinjau dari Hukum Syari'atnya. Lihat Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986) Hlm. 873.

something that is prohibited and contains a disadvantage.[74]

Wahbah Zuhaili classifies *Al-Dzariah* [75] into two kinds. That is:

1) *Sadd Al-Dzari'ah* is a path that is used for something bad or contains bad things.
2) *Fath Al-dzari'ah* is a path that is used for a good thing.[76]

In language, Sadd al-Dzari'ah is a combination of two words in the form of mudhaf -mudhaf ilaih which consists of the words sad and al-dzri'ah. The first word comes from the verb sadda ya suddu, which means to occupy. Which means blocking the way of the occurrence of a damage. While the word al-dzari'ah means means, wasilah and road which means media that conveys to something the way.[77]

In language, Al-Dzari'ah means:

الْوَسِيْلَةُ الَّتِي يَتَوَصَّلُ بِهَا إِلَى الشَّيْئِ سَوَاءٌ كَانَ حِسِّيًّا أَوْمَعْنَوِيًّا

"*a path that leads to something, in hissi or ma'nawi. Good or bad"*.[78]

This linguistic meaning contains a neutral connotation without giving an assessment of the results of actions. This neutral understanding

---

[74] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 873.

[75] Wahbah Zuhaili juga berpendapat bahwasanya *Al-Dzari'ah* adalah suatu jalan atau cara untuk mencapai suatu hal tergantung motif dari pelaku. Apabila jalan tersebut digunakan untuk suatu hal yang dilarang atau mengandung kemudharatan, maka hukumnya tidak diperbolehkan, begitupun sebaliknya. Lihat Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 874.

[76] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2*, Cetakan Pertama, 873

[77] Nurdin Barooh, *"metamorphosis Illat Hukum dalam Sadd Al-Dzari'ah dan Fath al-Dzari'ah"* (sebuah kajian perbandingan), *Al-Mazahib*, Vol. 5 No. 2 (Desember, 2017), 293.

[78] Amir Syarifuddin, *Ushul Fiqih*, (Jakarta: Logos Wacana Ilmu, 2001), Jilid 2, 449. Lihat Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2* Cetakan Pertama, 873

was raised by Ibn Qayyim into the dafinisi formulation of Dzari'ah. That is:

مَا كَانَ وَسِيْلَةً وَطَرِيْقًا إلى الشيء

"What is the intermediary and the way to something".[79]

So according to him, that the limitation of understanding from Adzari'ah which has a purpose to what is recommended. Therefore, according to him, the definition of Al-Dzari'ah is better put forward in a general way, so that Al-Dzari'ah contains two meanings, namely: First, what is prohibited, which is called Sadd Al-Dzari'ah, while the second is what is required. to be implemented, which is commonly called Fath Al-Dzari'ah.

In terms of ushul fiqh, what is meant by al-Dzari'ah is something that is a medium and a way to arrive at something related to syara' law, both haram and halal, and which leads to obedience or disobedience.[80]

From the explanation above, we can draw a common thread that the sadd al-Dzari'ah method is more a method that discusses the impact of a media. If the media is permissible which is recommended to the Shari'ah, then it is recommended, but if the impact is on something that is forbidden, for example, there is a harm or damage, then the law is not allowed (haram).

b. Method of Determining the *Law of Sadd Al-Dzari'ah*

The predicates of syara' law that are placed on actions that are al-Dzari'ah can be viewed from two aspects:[81]

[79] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* Cetakan Pertama, 873
[80] Abd. Rahman Dahlan, *Ushul Fiqh*, cet-2 (Jakarta: Amzah, 2011), 236.
[81] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2,* Cetakan Pertama, 879

1. In terms of al-baits (the motive of the perpetrator), and
2. In terms of the impact it will cause solely, without reviewing in terms of the motives and intentions of the perpetrators.

Al-Baits is a motive that encourages the perpetrator to do an act, either the motive is to cause something that is justified (halal) or the motive is to produce something that is forbidden (haram).[82]

Then the second review, namely the motive in terms of maslahah and mafsadah resulting from an action. If the impact caused by an act is in the form of benefit, then the act is ordered according to the level of benefit (mandatory/sunnah). And vice versa, if the series of actions leads to damage, then the act is prohibited. In accordance with the level too (haram or makruh).

Things like this do not mean an attempt to curb the law, but because one of the goals of Islamic law is to realize and achieve a benefit and avoid damage. If an action that has not been carried out is strongly suspected of causing damage, then the things that lead to the act are prohibited. As a preventive method, the first thing in this method is to guard against the worst possible things that will happen. The damage caused when an act is committed.

[82] Abd. Rahman Dahlan, *Ushul Fiqh*, Cetakan ke-2, 237

c. The position of Saddu Al-Dzari'ah

Although almost all scholars and writers of ushul fiqh mention Sadd Al'Dzari'ah, very few discuss this in a separate special discussion.

The placement of Al¬-Dzari'ah as one of the arguments in establishing the law even though its use is disputed, implies that although Syara' does not clearly specify the law of an act, but because the act is designated as Washilah for an act that is clearly prohibited, then the matter This becomes an indication or argument that the Washilah law is the same as the law stipulated by the Shari'a for the main action. This problem has attracted the attention of scholars because there are many verses of the Qur'an that hint in that direction, for example:

a. Surah al-An’am (6): 108:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ ۗ

“*Do not insult those who worship other than Allah, because later they will insult Allah hostilely without knowledge*”

Looking at the verse above, it is actually okay to berate and insult worshipers other than Allah, even if it is necessary to fight them. However, because the act of insulting and insulting will cause worshipers other than Allah to insult Allah, then the act of insulting and insulting is prohibited.

b. Surat an-Nuur (24):31:

وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ ۚ وَتُوبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهَ الْمُؤْمِنُونَ لَعَلَّكُمْ تُفْلِحُونَ [٢٤:٣١

"*Do not let the woman stomp her feet so that the jewels hidden in them will be known.*".

Actually stamping the foot is okay for women, but because it causes other people to know about her hidden jewelry, so that it will cause stimulation for those who hear, then stamping the foot becomes blocked.

From the two examples of the verse above, it can be seen that there is a prohibition for actions that can cause something that is forbidden, even though initially basically the act is legal. In this case, the legal rationale for scholars is that every act contains two sides:

1. The side that drives to do, and
2. The target or goal that is the natijah (Conclusion/Consequence) of the act.

By looking at the resulting result, then the action is divided into two forms:

- If the result is good, then everything that leads to it is good and therefore required to do it.
- If the result is bad, then everything that is pushed into it is also bad, and therefore prohibited.[83]

d. *Saddu Al-Dzari'ah* Grouping

[83] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 879

Dzari'ah are grouped by looking at several aspects:

1. By looking at the consequences (impacts) it causes, *Sadd Al-Dzari'ah* is divided into four [84], that is;
    a. *Sadd Al-Dzari'ah* which basically leads to damage such as drinking intoxicating drinks that lead to damage to the mind or drunkenness, adultery which leads to damage to the lineage.
    b. *Sadd Al-Dzari'ah* which is determined for something that is permissible, but is intended for destructive bad deeds, both with pleasure such as *Muhalil Nikah,*[85] or unintentionally, such as insulting the worship of other religions. Marriage itself is basically legal, but because it is done with the intention of justifying what is unlawful, it becomes illegal. It is permissible to abuse the worship of other religions, but because this activity can be used as an intermediary for other religions to insult Allah, it is forbidden to insult the worship of other religions.
    c. *Sadd Al-Dzari'ah* which was originally determined to be permissible, was not intended for harm. But usually it comes to damage where the damage is greater than the good, such as the decoration of a person who has just died of her husband and is in the 'iddah period. It is permissible for a woman to make decorations, but

[84] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2*, Cetakan Pertama, 884.
[85] Nikah Muhallil adalah nikah yang dimaksudkan untuk menghalalkan bekas istri yang telah ditalak tiga kali.

she does this when her husband has just died and is still in the *'Iddah* period, so the situation is different.

d. *Sadd Al-Dzari'ah* which was originally determined to be permissible, but sometimes it leads to damage, while the damage is smaller than the good. An example in this case is seeing a woman when she is being wooed.

2. In terms of the level of damage caused, Sadd Al-Dzari'ah is divided into four types [86],that is;

a. *Sadd Al-Dzari'ah* which leads to definite destruction. That is, if *Dzari'ah's* actions are not avoided, then there will definitely be damage.

b. *Sadd Al-Dzari'ah* which leads to damage according to the usual, namely if the Dzari'ah is carried out, then it is likely that damage will occur or a prohibited act will be carried out.

For example, selling wine to liquor factories, or selling knives to criminals who are looking for their enemies. Selling wine is actually okay and it doesn't have to be wine that is sold as liquor, but according to custom, liquor factories buy wine to be processed into liquor. Similarly, selling knives to criminals is more likely to be used to commit criminal acts.

c. *Sadd Al-Dzari'ah* which leads to forbidden acts according to most. This means that the billa Dzari'ah is unavoidable, often after that it

[86] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2,* Cetakan Pertama, 885.

will result in a forbidden act. For example, buying and selling credit. Indeed, buying and selling credit does not always lead to usury, but in practice it is often used as a means for usury.

d. *Sadd Al-Dzari'ah* which rarely leads to harm or illicit acts. In this case, if the act is done, it will not necessarily cause damage. For example, digging a hole in your own garden that is rarely passed by people. According to his custom, no one who passed by that place would fall into the hole, but it was possible that someone strayed and fell into the hole.

3. Ulama's View on *Sadd Al-Dzari'ah*

There is no clear and definite argument either in the form of texts or ijma'ulama' about whether or not it is permissible to use Saddu Al-Dzari'ah. Therefore, the basis for taking it is solely ijtihad based on the act of prudence in doing charity and not to do actions that can cause damage. Then what is used as a guideline in the precautionary action is the benefit and harm factor or good and bad.

The majority of scholars, which basically put the benefits and harms into consideration in establishing the law, basically also accept the Saddu Al-Dzari'ah method, although it differs in the degree of acceptance. Among the Malikiyah scholars who are known to use the maslahat factor by themselves also use the Saddu Al-Dzari'ah method a lot.

The ulema's basis for using Saddu Al-Dzari'ah is to be careful in doing charity when facing a clash between benefit and mafsadhat, if benefit

is dominant, then it is permissible to do it, and if mafsadat is dominant, it must be abandoned. If the two are equally strong, then to maintain prudence, the applicable principle must be taken, namely as formulated in the rules:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

"*rejecting harm takes precedence over taking benefit*"

If the lawful and the unlawful are mixed (mixed), then the principle is formulated in the following rules:

إِذَا اجْتَمَعَ الْحَلَالُ وَالْحَرَامُ غُلِّبَ الْحَرَامُ

"*If it is mixed between the haram and the halal, then the haram beats the halal*"

As a guide for scholars who take prudent actions in charity, there is a saying of the Prophet which reads:

دَعْ مَا يَرِيبُكَ إِلَى مَا لاَ يَرِيبُكَ

"*leave what doubts you to take what does not doubt you*".

Likewise the words of the Prophet which reads:

الْحَلَالُ وَالْحَرَامُ بَيِّنَةٌ وَبَيْنَهُمَا أُمُوْرٌ مُتَشَابِهَاتٌ اَلَا وَاِنَّ حُمَى اللّٰه مُحَرَّمَةٌ فَمَنْ حَامَ

حَوْلَ الْحُمَى يُوْشَكُ أَنْ يُوْقَعَ فِيْهِ

"*what is lawful is clear and what is unlawful is clear, which lies in*

both of them including doubtful affairs (Syubhat). Know that Allah's field is a field which he has forbidden. Whoever shepherds around Allah's forbidden field will doubtfully fall into it."

CHAPTER III

Research Results and Analysis

DISSENTING OPINION ANALYSIS IN THE CONSTITUTIONAL COURT DECISION NUMBER 37/PUU-XVIII/2020 AGAINST REVIEWING ARTICLE 27 OF LAW NUMBER 2 OF 2020 (Progressive Legal Theory Perspective and *Sadd Al-Dzari'ah*)

A. Juridical Analysis of Legal Considerations and Dissenting Opinions of the Panel of Judges of the Constitutional Court on Article 27 of Law No. 2 of 2020 in the Decision of the Constitutional Court No. 37/PUU-XVIII/2020

The decision of the Constitutional Court Number 37/PUU-XVIII/2020 is actually an answer to several material tests, especially in the material review of Article 27 Paragraphs (1), (2), and (3) of Law Number 2 of 2020 concerning State financial policies. and Financial System Stability for Handling the Corona Virus Disease 2019 (COVID-19) Pandemic and/or in the context of dealing with threats that endanger the National Economy and/or Financial System stability, hereinafter referred to as PERPPU Number 1 of 2020 on March 31, 2020 which was later ratified as Law Number 2 Year 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or In Facing Threats That Endanger the National Economy and/or Financial System Stability Becomes the next law so-called Law Number 2 of 2020 is contrary to several articles in the Constitution of the Republic of Indonesia in

1945. This *Judicial review*[87] submitted by Yayasan Penguatan Partisipasi, Inisiatif, dan Kemitraan Masyarakat Indonesia (Yappika), Desiana Samosir, Muhammad Maulana, and Syamsuddin Alimsyah who were registered at the Registrar's Office of the Constitutional Court on 13 and 14 May 2020 with Case Number 37/PUU-XVIII/2020.

Furthermore, the Petitioners as the Indonesian people feel disadvantaged over the enactment of Article 27 Paragraphs (1), (2), and (3) of Law Number 2 of 2020 where the government or related officials are given the authority to manage the budget intended for handling the Covid-19 pandemic. and economic recovery and is not a state loss. In addition, the government or related officials cannot be prosecuted both civilly and criminally as long as they rely on good faith and laws and regulations and all actions and decisions cannot be the object of a lawsuit to the State Administrative Court. which finally submitted a judicial review of the article against Article 1 Paragraph (1), (2), Article 22D Paragraph (2), Article 23 Paragraph (1), Article 28C Paragraph (2), Article 28D Paragraph (1) of the Constitution Year 1945 and declared not to have binding legal force.

Then on October 12, 2021 ago on the application for judicial review of articles 27 Paragraphs (1), (2), and (3) of Law Number 2 of 2020 against several

[87] The term Judicial review is related to the Dutch term “toetsingsrecht”, but the two have differences, especially in terms of the judge's actions. Toetsingsrecht is limited to the judge's assessment of a legal product, while the cancellation is returned to the institution that formed it. Whereas in the general concept of judicial review, especially in Continental European countries, it includes the actions of judges to cancel the legal rules in question. In addition, the term "judicial" review is also related but must also be distinguished from other terms such as Legislative review, Constitutional review, and legal review. In the context of the judicial review carried out by the Constitutional Court, it can also be referred to as a Constitutional review, because the touchstone is the constitution. See, Jimly Asshiddiqie, Models of Constitutional Testing in Various Countries, (Jakarta, Konspress, 2005). 6-9.

articles in the 1945 Constitution of the Republic of Indonesia. , the panel of judges of the Constitutional Court has handed down its decision Number 37/PUU-XVIII/2020.

Prior to the decision on the judicial review case of Article 27 Paragraphs (1), (2), and (3) of Law Number 2 of 2020. The Panel of Judges of the Constitutional Court has several legal considerations that form the basis and reasons for the Panel of Judges of the Constitutional Court to decide the trial case. the material. In the legal considerations containing the opinions of the Panel of Judges of the Constitutional Court, there were differences of opinion from the Nine Panels of Judges of the Constitutional Court. Where the opinion of the Panel of Judges of the Constitutional Court in which there is a difference of opinion is divided into 6 (six) to 3 (three) different opinions. The legal considerations of the Panel of Judges of the Constitutional Court are as follows:

1. Legal opinions and considerations 6 (six) Constitutional Court Justices

   The Panel of Judges of the Constitutional Court mapped out constitutional issues related to the norms of the provisions of Article 27 of Law Number 2 of 2020, so that further considerations need to be made, namely:

   a. Not a loss to the state;
   b. Cannot be prosecuted either civilly or criminally if in carrying out the task it is based on good faith and in accordance with the provisions of the legislation; and
   c. It is not an object of a lawsuit that can be submitted to the State Administrative Court.

After mapping out constitutionality issues related to norms in the provisions of Article 27 of Law No. 2 of 2020, there are 3 issues. So with regard to the constitutionality of the phrase "not a loss to the state" in the provisions of Article 27 Paragraph (1) Attachment to Law Number 2 of 2020 because it is closely related to state finances, it cannot be separated from Article 2 Paragraph (1) and Article 3 Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption, hereinafter referred to as the Anti-Corruption Law, which determines the essential elements that must be met in proving the occurrence of a criminal act of corruption is the fulfillment of the element of "harmful". state finances or the state economy". where the loss of state finances or the state economy occurs due to abuse of authority in the management of state finances. In the perspective of Article 27 Paragraph (1) of Law Number 2 of 2020, if examined carefully, there is no element of state loss, both for the costs used for handling the Covid-19 pandemic and the national economic recovery program which is part of the economic costs for saving the economy. and crises issued in good faith and in accordance with the laws and regulations by the government or related officials who manage the budget. Thus, even though the use of funds from state finances for the purpose of handling the Covid-19 pandemic is carried out not in good faith and not in accordance with the laws and regulations, the perpetrators who commit the abuse of authority cannot be prosecuted because they have been locked with the phrase " is not a loss to the state" as stated in the norm of Article 27 Paragraph (1) of Law Number 2 of 2020. This is not in line with the provisions of the norm of Article 27 Paragraph (2) of Law Number 2 of 2020

which opens up the possibility that he can be sued either legally or legally. civil or criminal acts against the officials or government concerned if the performance of their duties is not based on good faith and is not in accordance with the laws and regulations. This is because the provisions that open up the possibility that the government or related officials can be prosecuted both civilly and criminally in Article 27 Paragraph (2) of Law Number 2 of 2020 must fulfill an essential element, namely the existence of "state losses", where there is state loss. caused by the use of state finances based on bad faith and not in accordance with the laws and regulations.

The logical consequence of the situation described above has legal consequences for the provisions of Article 27 Paragraph (2) of Law Number 2 of 2020 by not being able to apply or apply the article to anyone who abuses authority related to state finances if the phrase "is not a loss". state" is maintained even if the abuse of authority is really based on bad faith and is not in accordance with the laws and regulations. In other words, for perpetrators of abuse of authority over state finances in the a quo Law, the possibility of being opened for prosecution both civil and criminal. Because, as previously considered, in order to be prosecuted both civilly and criminally, the fundamental element of "state loss" must be met.[88] and elements of loss in unlawful acts.[89]

In addition to the above legal considerations, the provisions of Article 27 of Law Number 2 of 2020 also have the potential to provide immunity rights for parties that have been specifically mentioned in Article 27 Paragraph (2) of Law Number

[88] Lihat, Pasal 2 Ayat (1) dan pasal 3 Undang Undang Tindak Pidana Korupsi
[89] Lihat, Pasal 1365 Kitab undang-Undang Hukum Perdata

2 of 2020 which in the end has the potential to cause impunity in law enforcement. So according to the Constitutional Court, if you look at the construction of Article 27 Paragraph (1) of Law Number 2 of 2020 which specifically stipulates that all costs that have been incurred by the Government and/or related officials in the context of implementing crisis management policies due to the Covid-19 pandemic are part of the economic costs to save the economy and "not a state loss", then the main thing that becomes the benchmark is related to the right of immunity which is reserved for policy-making officials in terms of overcoming the economic crisis due to the Covid-19 pandemic which cannot be prosecuted either civilly or legally. criminal if in terms of carrying out the task is based on good faith and in accordance with the provisions of the legislation. Where the emergence of the word "cost" and the phrase "not a state loss" in article 27 Paragraph (1) of Law Number 2 of 2020 which is not accompanied by good faith and in accordance with the legislation in the end has caused the a quo article to create uncertainty. in law enforcement. According to the Constitutional Court, the placement of the phrase "not a loss to the state" in Article 27 Paragraph (1) of Law Number 2 of 2020 is certainly contrary to the principle of due process of law to obtain equal protection (equal protection). Such a distinction has of course denied the rights of all people, because of a law that negates the right for some people to be excluded but grants such rights to others without exception, such a situation can be considered a violation of equal protection. Therefore, for the sake of legal certainty, the norms of Article 27 Paragraph (1) of Law Number 2 of 2020 must be declared unconstitutional as long as the phrase "not a state loss" is not interpreted as "not a state loss as long as it is

carried out in good faith and in accordance with the laws and regulations." invitation".

Thus, based on the description of the legal considerations above, it has turned out that Article 27 Paragraph (1) of Law Number 2 Year 2020 is contrary to the principle of certainty and equal treatment before the law as regulated in Article 27 Paragraph (1) and Article 28D Paragraph (1) the 1945 Constitution. Thus, the arguments of the petitioners regarding Article 27 Paragraph (1) of Law Number 2 of 2020 are legally grounded in part.

Whereas furthermore with regard to the arguments of the petitioners regarding the unconstitutional norms of Article 27 Paragraph (2) of Law Number 2 of 2020, the Constitutional Court considers that because it has been declared unconstitutional the phrase "not a loss to the state" is conditional as long as it is not interpreted as "not a loss to the state as long as it is done in good faith and in accordance with the laws and regulations" in the provisions of the norms of Article 27 Paragraph (1) of Law Number 2 Year 2020, thus there is no longer any constitutionality issue between Article 27 Paragraph (1) and Article 27 Paragraph (2) Law Number 2 of 2020. Thus, this also causes no more unconstitutional issues regarding Article 27 Paragraph (2) of Law Number 2 of 2020. This is because legal actions both civil and criminal can still be carried out against legal subjects who abuse state finances as referred to in Article 27 Paragraph (2) of Law Number 2 of 2020 as long as the act causes state losses because it is carried out in bad faith and violates the laws and regulations in Article 27 Paragraph (1) of Law Number 2 of 2020.

So based on the legal considerations above, it is clear that Article 27 Paragraph (2)

of Law Number 2 of 2020 has guaranteed legal certainty and equal treatment before the law as regulated in Article 27 Paragraph (1) and Article 28D Paragraph (1) of the Constitution. 1945. Thus, the argument of the petitioners' petition regarding the unconstitutionality of Article 27 Paragraph (2) of Law Number 2 of 2020 is legally groundless.

Then regarding the arguments of the Petitioners related to the constitutionality of article 27 Paragraph (3) of Law Number 2 of 2020 which states that all actions including decisions taken based on Law No. 2/2020 are not objects of a lawsuit that can be submitted to the State Administrative Court contrary to Article 27 Paragraph (1) and Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Against the a quo argument, the Constitutional Court considers that the provisions of Article 27 Paragraph (3) of Law Number 2 of 2020 cannot be separated from the provisions of Article 49 of Law Number 5 of 1986 concerning the State Administrative Court (UU PTUN), which in full states:

"The court does not examine, decide, and settle certain State Administrative disputes in the event that the decision issued is issued:

a. In times of war, in a state of danger, in a state of natural disaster, or in an extraordinary situation that is dangerous, based on the prevailing laws and regulations;
b. In urgent circumstances for the public interest based on the applicable laws and regulations."

By referring to the provisions of Article 49 of the Administrative Court Law above, in fact, the Covid-19 Pandemic situation as it is currently happening is

part of the excluded situation so that it cannot be used as the object of a lawsuit against the Decision of the State Business Entity to the State Administrative Court. However, after careful scrutiny, it is clear that Law Number 2 of 2020 is not only related to the Covid-19 Pandemic but also relates to various kinds of threats that endanger the national economy and/or financial system stability.[90] Therefore, to the circumstances outside the Covid-19 Pandemic and also to the decisions of the State Administrative Body which are based on bad faith and are not in accordance with the laws and regulations. According to the Constitutional Court, such matters should still be controlled and can be the object of a lawsuit to the State Administrative Court. moreover, with the enactment of Law Number 13 of 2014 concerning Government Administration (UU 30/2014) the object of a lawsuit to the State Administrative Court is not only a decision but also a government administrative action.[91] Thus, if the control function is not provided, it will potentially lead to abuse of power and legal uncertainty. Because, in fact, those who have the authority to judge decisions and/or actions that are contrary to or not against the law are the Court Judges. Therefore, as long as decisions and/or actions are issued in relation to the Covid-19 Pandemic and are carried out in good faith and in accordance with statutory regulations, the judge must state that the object of the decision of the State Administration and/or government administrative action is not the object of a lawsuit. .

[90] vide judul Undang Undang Nomor 2 Tahun 2020 tentang "Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) dan/atau Dalam Rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan Menjadi Undang-Undang"

[91] Vide pasal 75 dan Penjelasan Umum Undang-Undang Nomor 30 tahun 2014 tenteang Administrasi Pemerintahan

However, in the event that factually the opposite is true, then the decision of the State Administration and/or the government's action if it is proven that there has been abuse of authority must be declared null and void and has no binding legal force.

Based on the description of the legal considerations above, it is clear that Article 27 Paragraph (3) of Law Number 2 of 2020 has created legal uncertainty and unequal treatment before the law as regulated in Article 27 Paragraph (1) and Article 28D Paragraph (1) The 1945 Constitution of the Republic of Indonesia, as long as the phrase "is not an object of a lawsuit that can be submitted to the State Administrative Court", as long as it is not interpreted as "not an object of a lawsuit that can be submitted to the State Administrative Court as long as it is carried out in good faith and in accordance with the laws and regulations" . Thus, the petitioners' petition is legally grounded in part.

2. Dissenting Opinions of three Constitutional Court Justices

In case Number 37/PUU-XVIII/2020, there are three Constitutional Justices, namely Anwar Usman, Arief HidAyat, and Daniel Yusmic P Foekh, who have different opinions (dissenting Opinion) with the majority of judges, especially Article 27 Paragraph (1) and Paragraph (3) and Article 29 of Law Number 2 of 2020. However, because the focus of this research is only on Article 27 Paragraphs (1), (2), and (3) and does not discuss Article 29 of Law Number 2 of 2020, the discussion in this research This is especially in the

dissenting opinion section which only focuses on Article 27 of Law Number 2 of 2020 only.

In the dissenting opinion, three judges of the Constitutional Court stated that the definition of state losses is contained in several laws, including the following:

Article 1 point 15 of Law Number 15 of 2006 concerning the Supreme Audit Agency (BPK Law):

"State/Regional losses are losses of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, whether intentionally or negligently"

"Article 1 Number 22 of Law Number 1 of 2004 concerning State Treasury (State Treasury Law)":

“State/Regional losses are shortages of money, securities, and goods, which are real and definite in amount as a result of unlawful acts, either intentionally or negligently”.

Based on the above definition, a state loss must contain elements of an unlawful act. It adopts the principle of criminal law, that there is no crime without guilt (*geenstrafzonderschould*). In criminal law, there are two reasons that cause violators of the rule of law not to be penalized, namely justification reasons (*rechtvaardigingsground*) and the reason for removing the element of error (*schulduitsluitingground*) so-called fait d'excuse or excuses forgiving (*schulduitsluitingground*). Meanwhile, there are two deviations from the rules, namely deviations which are exceptions and which are deviations or violations.

Article 50 of the Criminal Code (KUHP) stipulates that whoever implements the provisions of the law cannot be punished. This provision "justifies" actions based on the provisions of the law as long as they have good faith. Implementing the law is not only limited to carrying out the actions ordered by the law, but also includes actions taken on the authority granted by the law. In this case, what has been required by law cannot be threatened by other laws, even though the act committed is a violation of the rule of law, but the perpetrator is freed from guilt. (*schuldopheffingsground*). This action occurred because of the circumstances of coercion (*force majeure* atau *overmacht*), namely a condition or force beyond human capabilities based on Article 48 of the Criminal Code. In this case, an emergency (noodtostand) is a form of force majeure, so that actions based on these provisions cannot be punished.

As long as the state's financial policy is not against the law, the costs incurred are not state losses. If the act/action implementing Law 2/2020 turns out to be carried out against the law or does not meet the requirements in Article 27 Paragraph (2) of Law 2/2020, then of course the check and balances mechanism can still apply. Furthermore, Article 27 Paragraph (1) of Law 2/2020 does not eliminate the BPK's authority to carry out supervision in the context of implementing Law 2/2020.

The purpose of the inclusion of Article 27 of the Attachment of Law 2/2020 is not intended to provide absolute immunity, but rather to provide guarantees as well as confidence for the implementers of Law 2/2020 within the legal framework and legal system that will protect them in carrying out their duties and authorities

based on Law 2/2020. Therefore, the provision of good governance in Law 2/2020 actually shows that Law 2/2020 cannot be misused by irresponsible parties. Discussion in decision making is needed openly with up and down with all the risks. If state spending during the Covid-19 pandemic is considered detrimental to the state, then there will be no official who dares to take extraordinary policy steps even with the aim of saving the country, society, and economy. In the context of legal protection provided by law to officials who make and implement policies, the Court has also provided legal protection to advocates in the form of immunity from being prosecuted both civilly and criminally both inside and outside the court session in carrying out their duties and professions as long as it is done in good faith.[92]

In his dissenting opinion, it was stated that by using the method of legal interpretation "argumentum per analogiam" (interpretation of different but similar analogies/events), then in fact what was formulated in Article 27 of Law 2/2020 is constitutional, it is very unreasonable if the Petitioners argue for the unconstitutionality of Article 27 of Law 2/2020 based on the principle of equality before the law, because basically the immunity rights possessed by policy makers in Article 27 of Law 2/2020 do not at all eliminate the principle of equality before the law.

Regarding the arguments of the Petitioners which state that the implementation of Article 27 Paragraph (3) of Law 2/2020 has overridden the function of the State Administrative Court, a similar provision has been regulated in Article 49 of Law Number 5 of 1986 concerning the State Administrative Court.

[92] Vide, Putusan Mahkamah Konstitusi Nomor 26/PUU-XI/2013, tanggal 14 Mei 2014

In this provision, it is regulated that the State Administrative Court is not authorized to examine, decide, and resolve state administrative disputes in the event that the decision is issued in a state of danger, natural disaster, or extraordinary circumstances and in urgent circumstances for the public interest. This means that the formulation of Article 27 Paragraph (3) of Law 2/2020 has been aligned and in harmony with the provisions of Article 49 of Law 5/1986. Thus, the arguments of the a quo Petitioners are groundless according to law and must therefore be set aside.

In addition, as long as the state's financial policy is not against the law, the costs incurred are not state losses. If the act/action implementing Law 2/2020 turns out to be carried out against the law or does not meet the requirements in Article 27 Paragraph (2) of Law 2/2020, then of course the check and balances mechanism can still apply. Furthermore, Article 27 Paragraph (1) of Law 2/2020 does not eliminate the BPK's authority to carry out supervision in the context of implementing Law 2/2020.

The arguments of the Petitioners stating that Article 27 of Law 2/2020 has the same content and meaning as Article 29 of the Government Regulation in Lieu of Law Number 4 of 2008 concerning the Financial System Safety Net (PERPPU 4/2008) which reads “Minister of Finance, Governor of Banks Indonesia, and/or parties carrying out their duties in accordance with this Government Regulation in Lieu of Law cannot be punished because they have taken decisions or policies that are in line with their duties and authorities as referred to in this Government Regulation in Lieu of Law.” It is true that the norms in Article 27 of Law 2/2020

have similarities with Article 29 of PERPPU 4/2008. However, comparing PERPPU 4/2008 with PERPPU 1/2020 is not correct. The comparison is not 'apple to apple' because every emergency is different in type and impact.

The state of emergency (non-natural disaster) caused by Covid-19, is not only a health crisis, but has a domino effect that has an impact on all sectors of life. Accordingly, the petition of the Petitioners has no legal basis. "We are of the opinion that all of the arguments for the Petitioners' petition, both formal and material examinations, are groundless according to law."

From legal considerations and dissenting opinions from the Panel of Judges of the Constitutional Court, so fundamentally, it can be concluded that there are three main things that the Constitutional Court makes careful observations of Article 27 of Law Number 2 of 2020, which is stated in the Decision of the Constitutional Court Number 37/PUU -XVIII/2020, namely:

1. The Constitutional Court has succeeded in detecting the violation of the main principles of the rule of law as stated in Article 1 Paragraph (3) of the 1945 Constitution[93] by the provisions of Article 27 of Law Number 2 of 2020;
2. The Constitutional Court considers that Article 27 Paragraph (1) of Law Number 2 of 2020 is contrary to the principle of certainty and equal treatment before the law as regulated in Article 27 Paragraph (1)[94] and

[93] Pasal 1 Ayat (3) UUD 1945 menyatakan bahwa, “Indonesia adalah negara hukum”

[94] Pasal 27 Ayat (1) UUD 1945 menyatakan bahwa, “segala warga negara bersamaan kedudukannya di dalam hukum dan pemerintahn dan wajib menjunjung Hukumdan Pemerintahan itu dengan tidak ada kecualinya”.

Article 28D Paragraph (1)[95] UUD 1945. These provisions preclude the principle of *due process of law*,[96] as if freeing the misappropriation of state finances by public officials. Although the use of state finances in dealing with the pandemic is not counted as state losses.

3. The Constitutional Court views that public control through the submission of cases to be resolved at the State Administrative Court (PTUN) must still be held. Because it will avoid abuse of power, even though government officials claim to act in the name of an emergency.

Furthermore, the Constitutional Court has a sharp view that Law Number 2 of 2020 is not only related to the handling of the Covid-19 Pandemic, but also regulates conditions that threaten and endanger the national economy as well as state financial stability. The Constitutional Court is of the opinion that circumstances beyond the handling of Covid-19, decisions from the government or related officials based on the absence of good faith and compliance with the law, must still be controlled and become the object of a lawsuit to the Administrative Court.

In its balance, the Constitutional Court cites Article 75 of Law Number 30

---

[95] Pasal 28D Ayat (1) UUD 1945 menyatakan bahwa setiap orang berhak atas pengakuan, jaminan, perlindungan, dan kepastian hukum yang adil serta perlakuan yang sama dihadapan hukum.

[96] *Due Procces of Law* can be interpreted as a legal process that is fair and impartial, appropriate, as well as a correct judicial process, which has gone through existing mechanisms or procedures, so that substantive justice can be obtained. Yesmil Anwar and Adang stated that:

"*Due Procces of law* basically it is not solely about the rule of law, but is an essential element in the administration of justice, the essence of which is (….a law wich hears before it condemns, which proceeds upon inquiry, and reders judgment only after trial…) the central point is the protection of individual human rights against arbitrary actions of the government". See Yesmil Anwar and Adang, The Criminal Justice System: Concepts, Components, and Implementation in Law Enforcement in Indonesia, First Edition (Padjadjaran: Widya Padjadjaran, 2009). 113-114

of 2014,[97] that the object of a lawsuit by the State Administrative Court is not only a decision, but also a government administrative action. Thus, the fundamental constitutional issue is preventing and controlling arbitrary government actions that are against the law.[98]

On the other hand, three of the nine judges of the Constitutional Court have three main different opinions (*dissenting opinion*)[99] with the majority of other Constitutional Court Justices regarding the substance of Article 27 of Law Number 2 of 2020. Namely:

1. The three judges who have dissenting opinion based their opinion on the previous precedent of the Constitutional Court, namely Constitutional Court Decision Number 138/PUU-VII/2009, which laid down the parameters of a compelling urgency;
2. Submit an opinion regarding the issue of the constitutionality of the phrase “not a loss to the state”. this opinion is fundamentally focused on the purpose why the phrase is included, namely so that policy makers have confidence in taking breakthrough policies in critical conditions;
3. Regarding the issue of constitutionality regarding the phrase "not the object of the PTUN lawsuit". In this context, the three judges who have dissenting opinions refer to Article 27 Paragraph (3) of Law Number 2

[97] Undang-Undang Nomor 30 Tahun 2014 Tentang Admnistrasi Pemerintahan.

[98] Poin 3.19.4 Bagian Pertimbangan Hukum Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020

[99] *Dissenting opinion* adalah pendapat berbeda dari sisi substansi yang mempengaruhi perbedaan amar putusan, lihat Jimly Asshiddiqie, *Hukum Acara Pengujian Undang-Undang*, (Jakarta: Seketariat Jenderal dan Kepaniteraan MK, 2005) dikutip dari Mahkamah Konstitusi RI, *Hukum Acara Mahkamah Konstitusi*, (Jakarta: Seketariat Jenderal dan Kepaniteraan Mk, cetakan pertama, 2010). 58.

> of 2020, which is fundamentally in line with Article 49 of Law Number 5 of 1986 concerning Administrative Court. Meanwhile, regarding the constitutionality of the formation of the PERPPU, three judges with dissenting opinions confirmed that Law Number 2 of 2020 was in line with the President's constitutional authority in issuing PERPPU. Besides that, the legal procedural ratification of the PERPPU has been aligned with the DPR. Regarding the period of validity of the law, three judges with dissenting opinions submitted opinions depending on how effective the pandemic control was.

In legal considerations and the dissenting opinion of the Panel of Judges of the Constitutional Court on the review of the material of Article 27 of Law Number 2 of 2020 in the Decision of the Constitutional Court Number 37/PUU-XVIII/2020, there is still the potential for violations of law in the form of criminal acts of corruption contained in the phrase "not is a state loss" in Article 27 Paragraph (1) of Law Number 2 of 2020 even though it has been declared conditionally unconstitutional if the phrase is not added (it is not a state loss as long as it is carried out in good faith and in accordance with the laws and regulations)[100] which according to legal considerations of the six judges of the Constitutional Court if the phrase has been added, it has provided legal certainty and avoided abuse and absolute power against the government or related officials because of article 27 Paragraph (2) after the Constitutional Court Decision Number 37/PUU-XVIII/2020 can apply and is not hindered by the phrase "state loss" in Article 27 Paragraph (1)

[100] Lihat amar putusan dalam Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020. 419

of Law Number 2 of 2020 after the Decision of the Constitutional Court Number 2 of 2020 because the phrase "as long as it is carried out in good faith and in accordance with the legislation ".

However, even though Article 27 Paragraph (1) of Law Number 2/2020 has been revised with the addition of the sentence "costs incurred by the government or related officials are not state losses as long as they are carried out in good faith and in accordance with the laws and regulations".[101] what if the government or related officials in managing the costs incurred for the Covid-19 Pandemic and the recovery of the national economy have indeed been carried out in good faith and are in line with the laws and regulations but there are elements of negligence or unintentional actions by the relevant government that cause losses country..?

In the legal considerations of the Constitutional Court, the six Panel of Judges of the Constitutional Court stated that legal actions, both criminal and civil and the Administrative Court could still be carried out against legal subjects who abused state finances as referred to in Article 27 Paragraph (2) Attachment to Law No. 2/2020 as long as the act This causes state losses because it is carried out in bad faith and violates the laws and regulations in the norms of Article 27 Paragraph (1) Attachment to Law Number 2 of 2020.[102] That is, when the six panel of judges state that legal actions, both criminal and civil, can be carried out against related legal subjects who commit abuse of authority which is only focused on being done in bad faith and violating the laws and regulations, but not due to negligence or accident.

---

[101] Vide pasal 27 Ayat (1) Undang-Undang Nomor 2 Tahun 2020 Pasca Putusan mahkamah Konstitusi Nomor 37/PUU-XVIII/2020

[102] Pertimbangan Hukum Majelis Hakim Mahkamah Konstitusi, Poin (3.19.3) dalam Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020. 415

Meanwhile, in the context of criminal law, there are at least two acts/delicts that can lead to legal liability, namely:

1. deliberate offense (doleuse delicten) is the occurrence of a criminal act because it is done intentionally;
2. negligence offense (culpose delicten) is the occurrence of a criminal act due to negligence or unintentional.[103]

So if there is a culpa offense or an unlawful act due to negligence or accident that causes state losses, then the provisions of Article 27 Paragraph (2) of Law Number 2 of 2020[104] can't run. Due to legal considerations from the six judges of the Constitutional Court, it is stated that the provisions can be prosecuted both civilly and criminally against legal subjects if it is indicated that they have violated the law by not relying on good faith and not in accordance with the laws and regulations. Meanwhile, unlawful acts due to negligence or unintentional (delik culpa) occur not because of an element of intent or a desire to violate the law. This means that legal subjects may manage costs for the Covid-19 Pandemic and restore the national economy by relying on good faith and in accordance with laws and

---

[103] Moeljanto, dalam Asas-Asas Hukum Pidana menyatakan bahwasanya:
1. *Delik Dolus*, yaitu perbuatan-perbuatan yang diinsafi sebagai demikian atau yang dilakukan dengan kesengajaan. Sedangkan,
2. *Delik Culpa*, adalah perbuatan yang dilakukan dengan kealpaan. Untuk adanya kesalahan, hubungan antara keadaan batin dengan perbuataannya (atau dengan suatu keadaan yang menyertai perbuatannya) yang menimbulkan celaan harus berupa kesengajaan atau kealpaan. Dikatakan bahwa kesengajaan (*dolus*) dan kealpaan (*culpa*) adalah bentuk-bentuk kesalahan (*schuldvormen*). Diluar dua bentuk ini, KUHP (dan kiranya juga lain-lain negara) tidak mengenal macam kesalahan lain. Lihat Moeljanto, *Asas-Asas Hukum Pidana*, (Jakarta: Rineka Cipta, 2008), 178.

[104] Anggota KSSK, Sekretaris KSSK, anggota secretariat KSSK, dan pejabat atau pegawai Kementerian Keuangan, Bank Indonesia, Otoritas Jasa Keuangan, serta Lembaga Penjamin Simpanan, dan pejabat lainnya, yang berkaitan dengan pelaksanaan Peraturan Pemerintah Pengganti Undang-Undang ini, tidak dapat dituntut baik secara perdata maupun pidana jika dalam melaksanakan tugas didasarkan pada iktikad baik dan sesuai dengan ketentuan peraturan perundang-undangan.

regulations, but due to negligence and unintentional management of these costs, resulting in state losses which constitute a violation of the law or the occurrence of criminal acts. corruption in this case.

In general, there are two conditions that must be met to categorize a violation of the law as negligence in criminal law. That is:

1. does not take into account what is legally necessary;

   this relates to the perpetrator who does not take into account the consequences of his negligent act. There are two possibilities that cause the perpetrator to think so, namely:

a. the perpetrator thinks that the consequences of his actions will not lead to something breaking the law or the perpetrator thinks that there is a possibility that the consequences will be unlawful but he does not believe that the consequences of his actions will not occur. This is the basis for determining negligence in the law.
b. The perpetrator does not know at all that his actions have the potential to cause unlawful consequences.
c. Not showing prudence according to the law;

   The second condition for negligence in law is not showing caution. which means that the perpetrator does not carry out research, weighing, skill, and prevention or wisdom in carrying out an act. This second condition is more concerned with the actions of the perpetrator than his inner state and intentions. So law enforcers will find out whether their actions are in

accordance with the precautionary rules that generally apply in society.[105]

So that if there is an action that causes state losses carried out by the government or officials even though it is in good faith and in line with the laws and regulations but has fulfilled the requirements for negligence in the offense of culpa, then there is an indication that the relevant official or government has escaped or cannot be prosecuted in a civil manner. or criminal penalties in accordance with the provisions of Article 27 Paragraph (2) of Law Number 2 of 2020. Because the legal considerations of the six judges of the Constitutional Court only focused on legal subjects who violated the law by not relying on good faith and not in line with the laws and regulations. Only those who can be prosecuted both civilly and criminally in accordance with the provisions of Article 27 Paragraph (2) of Law Number 2 of 2020. This is what has the potential to still provide immunity rights to related officials or government from the results of the Constitutional Court Decision Number 37/PUU -XVIII/2020 against mate testing ri Article 27 of Law no. 2/2020 which must be fixed.

So, it should be in a social phenomenon like this, where there is an interaction between law and society, factual cases that occur are not only resolved with written legal considerations, so when faced with the problem of conflict between the principle of legal certainty and the principle of justice in examining, analyze, and decide legal cases, the judge prioritizes the principle of justice (substantive) over legal certainty (procedural justice).[106]

---

[105] Moeljanto, *Asas-Asas Hukum Pidana*, (Jakarta: PT. Rineka Cipta, 2009), 217.

[106] Saifullah, "Senjakala Keadilan: Risalah Paradigma Baru Penegakan Hukum di Indonesia", (2020), 12.

In addition, in the argument of the three judges of the Constitutional Court who had dissenting opinions, they stated that the Petitioner's application for review of material to Article 27 of Law Number 2 of 2020 did not have binding legal force and rejected the applicant's application with the consideration that "in Article 50 The Criminal Code (KUHP) stipulates that whoever implements the provisions of the law cannot be punished. This is what "justifies" actions based on the provisions of the law as long as they have good faith. Implementing the law is not only limited to carrying out the actions ordered by the law, but also includes actions taken on the authority granted by the law. In this case, what has been required by law cannot be threatened by other laws, even though the act committed is a violation of the rule of law, but the perpetrator is freed from guilt (schuldopheffingsground). This act occurs because of a forced state (force majeure or overmacht), which is a state or force beyond human capability based on article 48 of the Criminal Code. In this case, a state of emergency (noodtostand) is a form of force majeure, so that acts based on these provisions cannot be punished.[107]

So because of this emergency/urgent matter, the government or related officials are given guarantees to carry out the handling and recovery due to the Covid-19 Pandemic which has a domino effect on all aspects, especially on state finances. but even in an emergency situation that requires emergency handling where abnormal laws here can apply, what needs to be underlined is that there are types of human rights which are protected by the 1945 Constitution absolutely,

[107] Lihat *dissenting opinion*, poin IV dalam Putusan Mahkamah Konstitusi Nomor 37/PUU/XVIII/2020

under any circumstances.[108] The meaning of "*under any circumstances*" is of course entered in a state of war or in a state of emergency. Thus, even if the state has been declared in a state of danger or an emergency, the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right to not to be prosecuted on the basis of retroactive law, is a human right that must be protected, even though the state condition has been declared or declared to be in a state of danger or emergency (state of exception, state of emergency, etat de siege).[109]

This also means that the provisions of Article 27 Paragraph (1) of the 1945 Constitution which stipulate that "*all citizens are equal before the law and government and are obliged to uphold the law and the government with no exceptions*"[110] because in the last sentence of the article there is the phrase *"with no exception"*. So when the phrase is interpreted by the method of grammatical interpretation of the text.[111] The phrase "with no exceptions" means that all citizens

---

[108] Lihat Pasal 28I Ayat (1) UUD 1945 yang berbunyi "hak untuk hidup, hak untuk tidak disiksa, hak kemerdekaan pikiran, dan hak hati nurani, hak beragama, hak untuk tidak diperbudak, hak untuk diakui sebagai pribadi di hadapan hukum, dan hak untuk tidak dituntut atas dasar hukum yang berlaku surut adalah hak asasi manusia yang tidak dapat dikurangi dalam keadaan apapun".

[109] Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: PT. Raja Grafindo Persada, 2007). 271.

[110] Pasal 27 Ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

[111] Metode Interpretasi gramatikal atau yang disebut juga metode penafsiran onjektif ini memiliki ciri penafsiran atau penjelasan yang paling sederhana untuk mengetahui makna ketentuan Undang-undang dengan menguraikannya menurut Bahasa, susunan kata atau bunyinya. Interpretasi menurut Bahasa ini selangkah lebih jauh sedikit dari sekedar membaca undang-undang. Dari sini arti atau makna dari ketentuan undang-undang dijelaskan menurut Bahasa sehari-hari yang umum, ini tidak berati hakim terikat erat pada bunyi kata-kata dari undang-undang. Interpretasi menurut Bahasa ini juga harus logis. Lihat, Satjipto rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2006). Hlm. 96-98. lihat jug Pendapat Ahli, Philipus M. Hadjon dalam Putusan Mahkamah Konstitusi RI Nomor 005/PUU-IV/2006 (tetang permohonan pengujian undang-undang Nomor 22 Tahun 2004 tentang Komisi Yudisial dan Pasal 34 Ayat (3) Undang-undang Nomor 4 Tahun 2004 Tentang Kekuasaan Kehakiman) dikutip dari Mahkamah

are equal before the law and government and are obliged to uphold the law and government under any conditions and under any circumstances without any specialization. This means that equality in law and government must be maintained even in times of emergency, danger or urgency. Because indirectly the patterns and patterns of Article 28I Paragraph (1) with Article 27 (1) of the 1945 Constitution have similarities.

So that a common thread can be drawn that in an emergency or urgent matter, equality before the law and government as well as several other types of human rights that have been regulated according to the explanation above cannot and cannot be ruled out in the Covid-19 pandemic situation and economic recovery. This national policy is in accordance with the mandate of Article 27 Paragraph (1) and Article 28I Paragraph (1) of the 1945 Constitution. This provides a logical consequence that the provisions of Article 27 Paragraph (2) and (3) of Law Number 2 Year 2020 are in accordance with the opinion of three Constitutional Court judges who have dissenting opinions should not have binding legal force and are contrary to the 1945 Constitution because Article 27 Paragraphs (2) and (3) of Law Number 2 of 2020 indicate the right of immunity against related officials or government cannot be prosecuted either civilly, criminally or administratively while Article 27 Paragraph (1) and Article 28 (1) The 1945 Constitution prohibits the exclusion of these types of rights, in other words, equality in law and government cannot be reduced under any circumstances. Then article 27 of Law Number 2 of 2020 should be in accordance with the opinions in the legal considerations of six Constitutional

---

Konstitusi Republik Indonesia, *Hukum Acara Mahkamah Konstitusi*, (Jakarta: Seketariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010). 71.

Court Justices which stated that Article 27 Paragraphs (1) and (3) of Law Number 2 of 2020 were conditionally unconstitutional.

B. Analysis of the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 from the perspective of Progressive Legal Theory and *Sadd Al-Dzari'ah*

The decision of the Panel of Judges of the Constitutional Court with Case Number 37/PUU-XVIII/2020 is as follows:

i. Granted the petition of the Petitioners in part. Where the petitioner's request which was granted by the Panel of Judges of the Constitutional Court in the Decision of the Constitutional Court Number 27/PUUU-XVIII/2020 is an amendment to Article 27 Paragraphs (1) and (2) of Law Number 2 of 2020.

ii. Stating the phrase "not a loss to the state" in Article 27 Paragraph (1) of Law Number 2 of 2020[112] contrary to the 1945 Constitution and does not have legal force that is conditionally binding as long as it is not interpreted, "it is not a loss to the state as long as it is carried out in good faith and in accordance with the laws and regulations" so that the sound of Article 27 Paragraph (1) of the Law Number 2 of 2020 is "Costs that have been issued by the Government and/or KSSK member institutions in the context of implementing state revenue

[112] Lampiran Undang-Undang Nomor 2 Tahun 2020 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) dan/atau Dalam Rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan Menjadi Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2020 Nomor 134, Tambahan Lembaran Negara Republik Indonesia Nomor 6516)

policies including policies in the field of taxation, state expenditure policies including policies in regional finance, financing policies, financial system stability policies, and recovery programs. the national economy, is part of the economic costs of saving the economy from the crisis and is not a loss to the state as long as it is carried out in good faith and in accordance with statutory regulations."

iii. Stating that the phrase Article 27 Paragraph 3 of Law Number 2 Year 2020 which reads "is not an object of a lawsuit that can be submitted to the State Administrative Court"[113] contrary to the 1945 Constitution and does not have legal force that is conditionally binding as long as it is not interpreted, "it is not an object of a lawsuit that can be submitted to the State Administrative Court as long as it is carried out related to the handling of the Covid-19 Pandemic and is carried out in good faith in accordance with the regulations. legislation". So that Article 27 Paragraph (3) of Law Number 2 of 2020 becomes complete which reads, "All actions including decisions taken based on this Government Regulation in Lieu of Law are not objects of lawsuits that can be submitted to the State Administrative Court as long as they are carried out related to the handling of Covid-19 pandemic and carried out in good faith and in accordance with the laws and regulations."

[113] 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 national economic recovery programs, are part of the economic costs to save the economy from the crisis and are not a state loss as long as it is carried out in good faith and in accordance with the laws and regulations

With the 3 points of the decision of the Panel of Judges of the Constitutional Court in the decision of the Constitutional Court Decision Number 37/PUU-XVIII/2020, indirectly the Panel of Judges of the Constitutional Court rejected the Petitioner's Application to change or delete the provisions of Article 27 Paragraph (2) of the Law. Number 2 of 2020 because the Panel of Judges of the Constitutional Court only partially granted the applicant's request. Where the results of the decision of the Panel of Judges of the Constitutional Court in the decision with Case Number 37/PUU-XVIII/2020 stipulates that Article 27 Paragraphs (1) and (3) of Law Number 2 of 2020 are conditionally unconstitutional rules,[114] because the Panel of Judges of the Constitutional Court stipulates that Article 27 Paragraphs (1) and (3) of Law Number 2 of 2020 does not have binding legal force and is contrary to the 1945 Constitution as long as it is not interpreted and added the phrase "as long as it is carried out related to handling Covid-19 pandemic and carried out in good faith and in accordance with the laws and regulations." The enforcement of this type of conditional unconstitutional decision is actually a

[114] Dalam perkembangannya terdapat juga amar putusan lainya dalam praktik di Mahkamah Konstitusi, yaitu:

1. Konstitusional Bersyarat (*Conditionally Constitutional*). Dimana gagasan konstitusional bersyarat ini muncul saat permohonan pengujian UU Nomor 7 Tahun 2004 tentang Sumber Daya Air (Harjono, *Transformasi Demokrasi,* Jakarta: Seketariat Jendral dan Kepaniteraan Mahkamah Konstitusi, 2008. Hlm. 178)
2. Inkonstitusional Bersyarat/ Tidak Konstitusional Bersyarat (Conditionally Unconstitutional)

Dalam perkembangan tiga jenis amar putusan ini, hakim Konstitusi Harjono menyebutkan sebagai berikut:

> "*oleh karena itu, kita mengkreasi dengan mengajukan sebuah persyaratan: jika sebuah ketentuan yang rumusannya bersifat umum dikemudian hari dilaksanakan dalam bentuk A, maka pelaksanaan A ini tidak bertentangan dengan konstitusi. Akan tetapi jika berangkat dari perumusan yang umum tersebut kemudian bentuk pelaksanaannya berbentuk B, maka B akan bertentangan dengan Konstitusi. Dengan demikian, ia bisa diuji kembali.*

Dikutip dari Harjono, *Transformasi Demokrasi,* (Jakarta: Seketariat Jendral dan Kepaniteraan Mahkamah Konstitusi, 2008). 179.

development of the Constitutional Court Decision[115] where if only relying on the three types of previous decisions,[116] then it will be difficult to test the law. Because a law often has the nature of being formulated in general terms, even though in a very general formulation it is not yet known whether in its implementation it will conflict with the 1945 Constitution or not.[117]

From the decision in the Constitutional Court Decision Number 37/PUU-XVIII/2020 which materially examines the provisions of Article 27 of Law Number 2 of 2020, we can review the results of the decision of the Panel of Judges in reviewing the material of Article 27 of Law Number 2 of 2020 This is in the perspective of Progressive Legal Theory and Sadd Al-Dzari'ah. As for the analysis of the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the review of Article 27 of Law No. 2 of 2020 which is reviewed in the perspective of Progressive Legal Theory and Sadd al-Dzari'ah are as follows:

1. Analysis of the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the review of Article 27 of Law No. 2 of 2020 which is reviewed in the perspective of Progressive Legal Theory.

The results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the review of Article 27 of Law Number 2 of 2020 states that Article 27 Paragraphs (1) and (3) are legal products that are conditionally unconstitutional

---

[115] Mahkamah Konstitusi Republik Indonesia, *Hukum Acara Mahkamah Konstitusi*, (Seketariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, Cetakan pertama, 2010) 142.

[116] Dalam pasal 56 UU Nomor 24 Tahun 2004 tentang MK diatur tiga jenis amar putusan, yaitu permohonan tidak dapat diterima, permohonan dikabulkan, dan permohonan ditolak. (lihat Republik Indonesia, Undang-Undang tentang Mahkamah Konstitusi Nomor 24 tahun 2003, Pasal 56).

[117] Harjono, *Transformasi Demokrasi*, (Jakarta: Seketariat Jendral dan Kepaniteraan Mahkamah Konstitusi, 2008). 178.

as long as Article 27 Paragraph (1) Law No. 2/2020 is not interpreted and added "as long as it is carried out in good faith and in accordance with the laws and regulations" and Article 27 Paragraph (3) of Law No. 2/2020 as long as it is not interpreted and added "as long as it is carried out related to the handling of the Covid-19 Pandemic. and carried out in good faith and in accordance with the laws and regulations."[118]

According to the author, the Constitutional Court's decision stating that it is conditionally unconstitutional against the provisions of Article 27 Paragraphs (1) and (3) of the Attachment to Law Number 2 of 2020 is a decision that is slightly less in accordance with progressive law. In progressive law, which rejects the prioritization and superiority of legal science that works analytically (analytical jurisprudence), that is, that puts forward rules and logic (rule and logic), and favors the flow of legal realism.[119] In addition, thinking progressively, according to Satjipto Rahardjo [120] means that you have to dare to go out of the mainstream of legal absolutism thinking, then put the law in a relative position. In this case, the law must be placed in the whole of humanity. It is necessary to work based on a mindset that is determined by law. However, it is not an absolute thing to do when legal experts are faced with a problem which if using modern legal logic will injure the position of humanity and truth. Working based on a progressive legal mindset (progressive legal paradigm), of course it is different from the positive-practical

[118] Lihat, Amar Putusan poin 3 dalam Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020
[119] Satjipto Rahardjo, *Hukum Progresif: Hukum Yang Membebaskan*, (Jurnal Hukum Progresif, Program Doktor Ilmu Hukum UNDIP Volume 2 Nomor 1/April 2005), 19.
[120] Baca lebih lanjut, Satjipto Rahardjo, *Membedah Hukum progresif,* (Jakarta: PT Kompas Media Nusantara, 2007).

legal paradigm that has been taught in universities. The progressive legal paradigm sees that the main factor in law is the human being himself. On the other hand, the positivist legal paradigm believes in the truth of the law above humans. Humans may be marginalized as long as the law remains upright, on the other hand the progressive legal paradigm thinks that the law may be marginalized to support the existentiality of humanity, truth and justice.[121] Satjipto Rahardjo gives the criteria of progressive legal theory are:

a) Has a big goal of human welfare and happiness;
b) Contains very strong human moral content;
c) It is critical and functional, because progressive law never stops looking at existing deficiencies and finding ways to improve them;
d) Progressive law is a liberating law covering a very broad dimension that does not only move in the realm of practice, but also theory.[122]

So, when the characteristics of this progressive law are applied to the Constitutional Court Decision Number 37/PUU-XVIII/2020 which decides the results of the material review of one of the articles in Law Number 2 of 2020, namely Article 27 Paragraph (1), (2), and (3) Are:

1. Because the criteria of the first progressive legal theory are having a big goal in the form of human welfare and happiness, then the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the review

[121] Imam Sukadi, "Matinya Hukum Dalam proses Penegakan Hukum Di Indonesia", Volume 7, Nomor 1. (2011). 46
[122] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia,* (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009). 17-19.

of Article 27 of Law Number 2 of 2020 should also not harm justice and rights in society, especially equality in law and government for the achievement of the welfare and happiness of the community. Because even though this law (Law No. 2/2020) applies in emergency situations/urgent matters, however, in Article 27 Paragraph (1) of the NRI Constitution which contains the principle of equality before the law (every citizen is equal before the law) , there is the phrase "without exception" which means that human rights to have equality before the law and government under any conditions and situations cannot be excluded. This has a similar pattern to the provisions of Article 28I Paragraph (1) of the NRI Constitution. On the other hand, this is also in accordance with the decision of the Constitutional Court in its development according to Martitah which has undergone a shift in function, namely from negative legislature (only deciding) to positive legislature (decision that is regulating). The decision is usually based on 3 (three) considerations, namely:

(1) To create justice and benefit society,

(2) There is an urgent situation,

(3) Filling in the rechtracuum, which is to avoid chaos or legal chaos in society.[123]

So it is very clear that the development of the Constitutional Court Decision from negative legislation to positive legislation is based on the three

[123] Martitah, *Mahkamah Konstitusi dari Negative legislature ke Positive Legislature"* (Jakarta: Konstitusi Press, 2013). 175

considerations above. In particular, the first consideration is in accordance with the purpose of the progressive legal theory itself, namely to create justice so as to achieve prosperity and happiness in society. so when talking about justice, Moh. Koesnoe stated that justice in law enforcement is not only visible in the explicit editorial formulation of the articles and nominal figures on the punishment sanctions listed in the decisions or laws and regulations, but much more important is the justice that is felt directly by the conscience of the litigants. as well as by the inner eyes of the wider community who see and feel the justice.[124] Meanwhile, in the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 which examines the provisions of Article 27 of Law Number 2 of 2020, there is still the potential for law violations and state losses and human rights to be injured in accordance with the previous discussion. Where the results of the Constitutional Court's decision still have the potential to cause state losses and cannot be prosecuted by related officials or government either civilly or criminally. because in the Legal Consideration of the Panel of Judges of the Constitutional Court, the majority of judges of the Constitutional Court decided that the provisions of Article 27 Paragraph (1) and (3) of Law Number 2 of 2020 as a legal product were conditionally unconstitutional as long as no sentence was added in Article 27 Paragraph (1) Law no. 2/2020 "as long as it is carried out in good faith and in accordance with the laws and regulations" and Article 27 Paragraph (3) of Law no. 2/2020 added the

[124] Saifullah, “Senjakala Keadilan: Risalah Paradigma Baru Penegakan Hukum di Indonesia” (2020), 13.

sentence "as long as it is related to the handling of the Covid-19 Pandemic and is carried out in good faith and in accordance with statutory regulations." In this case, the majority of judges of the Constitutional Court are of the opinion that legal action, whether criminal, civil or administrative, can still be carried out against legal subjects who abuse state finances as referred to in Article 27 Paragraph (2) and (3) Attachment to Law No. 2/2020 as long as the act causes state losses because it is carried out in bad faith and violates the laws and regulations in the norms of Article 27 Paragraph (1) Attachment to Law Number 2 of 2020.[125] That is, when the majority of the panel of judges state that legal actions, both criminal and civil, can be carried out against related legal subjects who commit abuse of authority which is only focused on being carried out in bad faith and violating laws and regulations, but not due to negligence or accident. Meanwhile, in the context of criminal law, there is a culpa offense (an act of negligence / unintentional). Obviously this is something that gives the potential for harming public justice in the form of equality before the law and government and so that the big goal of welfare and community happiness in accordance with the criteria of the first progressive legal theory is not achieved.

2. In addition, one of the criteria for progressive law is that it contains a very strong human moral content. Substantially, the Constitutional Court's decision has indeed contained human morals. This is evidenced by the

[125] Pertimbangan Hukum Majelis Hakim Mahkamah Konstitusi, Poin (3.19.3) dalam Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020. 415.

phrase "in line with good faith and in accordance with statutory regulations" so that what the government or related officials do, especially in budget management for handling the Covid-19 Pandemic and restoring the national economy must be carried out and carried out in good faith and must not deviate from the objectives and applicable laws and regulations. Even though the provisions of the results of the Constitutional Court Decisions, there is still the potential for unwanted things to occur in the form of state losses as described above. So with this potential, the human morals that have been contained in the Constitutional Court Decision Number 37/PUU-XVIII/2020 cannot yet be said to be strong humanitarian morals, this is because there are still indications in the form of injury to equality of position in law and government for the community. and in accordance with the mandate of Article 27 Paragraph (1) of the Constitution of the Republic of Indonesia because in this provision it is very clear that equality before the law and the government must continue to be carried out without exception.

3. Because in this case, progressive law is aimed at protecting the people towards the ideal of law and rejecting the status-quo.[126] That means there are possibilities in the future, the current law is no longer ideal to protect the people, so it is necessary to look at the gaps and shortcomings that exist in order to find a way to fix it. So that the gaps and shortcomings in the law which has the aim of protecting the people in the future are still the ideal of pro-people law. With the potential for the enactment of the right of

[126] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum*, (Yogyakarta: Genta Publishing, 2009), 2.

immunity that prevents the fulfillment of the first and second criteria in progressive law in the form of achieving community welfare and happiness and contains a very strong human moral content, the next criterion in progressive law is needed in the form of progressive law that is critical and functional. so that if there are deficiencies and gaps in existing legal products in the form of the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the review of the material of Article 27 of Law Number 2 of 2020, it is necessary to find a way to fix it.[127] Because in progressive legal theory there is a relationship between law and humans which emphasizes the principle that *"law is for humans, not humans for law"*. So the law is not for itself, but for something wider and greater. So whenever there is a problem in and with the law, it is the law that is reviewed and corrected, not humans who are forced to be included in the legal scheme.[128] So in this context, the existence of a Constitutional Court Decision that provides the potential for being injured and not achieving legal justice so that the big goals of welfare and happiness of the community as well as very strong human morals are not achieved, then it would be better if Article 27 Paragraph (2)[129] and Paragraph (3)[130] Law Number 2 of 2020

[127] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia* 17-19
[128] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*. 5.
[129] Bunyi Ketentuan Pasal 27 Ayat (2) Undang-Undang Nomor 2 Tahun 2020 adalah Anggota KSSK, Sekretaris KSSK, anggota sekretariat KSSK, dan pejabat atau pegawai Kementerian Keuangan, Bank Indonesia, Otoritas Jasa Keuangan, serta Lembaga Penjamin Simpanan, dan pejabat lainnya, yang berkaitan dengan pelaksanaan Peraturan Pemerintah Pengganti Undang-Undang ini, tidak dapat dituntut baik secara perdata maupun pidana jika dalam melaksanakan tugas didasarkan pada iktikad baik dan sesuai dengan ketentuan peraturan perundang-undangan.
[130] Bunyi Ketentuan Pasal 27 Ayat (3) Undang-Undang Nomor 2 Tahun 2020 Pasca Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020 adalah "bukan merupakan objek gugatan yang dapat diajukan kepada peradilan tata usaha negara sepanjang dilakukan terkait dengan

was abolished because in fact Article 27 Paragraphs (2) and (3) of Law Number 2 of 2020 contained the right of immunity in the form of abuse and absolute power for the government or related officials. Even if these provisions have been revised/amended after a judicial review that resulted in Decision Number 37/PUU-XVIII/2020 as explained above, Article 27 Paragraph (2) of Law Number 2 of 2020 still has the potential to harm public justice and equality before the law. and the government, due to the consideration of the majority of judges who decided that related officials can be prosecuted both civilly and criminally and all decisions and actions can be submitted to the State Administrative Court if they are not in accordance with the handling of the Covid-19 Pandemic, in good faith, and not in accordance with the laws and regulations. the law, while the existence of criminal acts and unlawful acts is not only motivated by intentional acts (delik dolus) but can occur because of acts due to negligence or unintentional (delik culpa) in accordance with the previous explanation.

In addition, the provisions for equality before the law and the government in accordance with the mandate of Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia are enclosed by the phrase "without exception" meaning in any situation and condition (whether normal circumstances, abnormal in the form of dangerous, coercive, and other things. urgent) equality before the law and government must be upheld

penanganan Pandemi Covid-19 serta dilakukan dengan iktikad baik dan sesuai dengan peraturan perundang-undangan"

and must not be harmed. While the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 which although it closes the possibility of abuse and absolute power, there is still the potential for violations of the law that cannot be prosecuted both civilly, criminally, and administratively. On the other hand, the provisions of Article 27 Paragraphs (2) and (3) of Law NO 2/2020 are useless because they were originally made to protect government policies or related officials in managing costs for handling the Covid-19 Pandemic and restoring the national economy by not being able to sue the government. or related officials in civil, criminal or administrative terms, however, these provisions should not be implemented because equality before the law and the government must be enforced under any circumstances or conditions because of the phrase "without exception" in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Moreover, Article 27 of Law No. 2 of 2020 still has the potential for violating the law in accordance with the previous explanation. With the abolition, this is in accordance with the status of the law itself in progressive law, where the law is always in the status of "law in the making", because the law does not exist for itself and is not final.[131]

With the abolition of Paragraphs (2) and (3) of Article 27 of Law Number 2 of 2020, it is hoped that this will be a breakthrough and a more progressive way to achieve the ideal law in accordance with the purpose of progressive law itself, namely to create happiness. and community welfare. So that the

[131] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009). 47.

law is really for humans and not humans for the law.[132]

4. The legal conditions in Indonesia are laden with positivistic legal nuances which are a legacy of the Dutch colonial which adheres to the "civil law" legal system so that we are trapped in a formalistic legal framework, meaning that the law is what is written in a statutory regulation produced by the authorities who has authority over it, because of the influence in formal legality thinking, it has a very large impact on the product of a law that is enacted and also on law enforcement by law enforcement officers. So the law should be discussed in a human context. Talking about the law that only dwells on the text and regulations, is not talking about the law properly and completely.[133]

In this progressive legal perspective, the law should not solely rely on formal legality which is full of procedural processes that always pursue legal certainty. However, one must also be able to look holistically at the various problems that arise in the midst of life. This means that law is not only limited to a system of rules but also law as a value. So that in addition to legal certainty, it is also inseparable from the value of justice that exists in society.[134]

So the Constitutional Court Decision Number 37/PUU-XVIII/2020 should not only be oriented towards the formal legality aspect

---

[132] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia,* (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009). 47.

[133] Imam Sukadi, "Matinya Hukum Dalam proses Penegakan Hukum Di Indonesia", Volume 7, Nomor 1. (2011). 41.

[134] Imam Sukadi, "Matinya Hukum Dalam proses Penegakan Hukum Di Indonesia", Volume 7, Nomor 1. (2011). 41.

(procedurally), but also be able to holistically accommodate the legal substance in this emergency situation so that it does not have the potential to create violations of the rights of the Indonesian people even though the potential is very small.

When it is seen that there is a potential for violation of the law and the existence of immunity rights that can still apply to the official or related government, it causes a reduction in justice which gives logical consequences in the form of not achieving the happiness and welfare of the community. then the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020, especially in the review of Article 27 of Law No. 2/2020 is not in line with progressive legal theory.

On the other hand, these provisions are also not in accordance with the principles of implementing the National Economic Recovery Program according to article 3 of Government Regulation Number 23 of 2020, namely:

a. Principles of Social Justice
b. As much as possible for the prosperity of the people
c. Support business actors
d. Implement prudent policy principles, as well as good, transparent, accelerative, fair and accountable governance in accordance with the provisions of laws and regulations;
e. Does not cause moral hazard, and
f. There is a sharing of costs and risks among stakeholders according to their respective duties and responsibilities.

Because in addition to injuring the principle of justice where there is still immunity from the relevant officials or government, they are free from civil, criminal or administrative charges if the legal subject commits an unlawful act due to negligence in accordance with the previous explanation. The existence of this National Economic Recovery Program must also be in accordance with the principle of maximum prosperity for the people and prudent policy principles. This means that the National Economic Recovery Program here must not injure the rights of the people and must not provide a loophole for violations of the law. While the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 still have the potential for violations of the law in accordance with the explanation above.

2. Analysis of the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the review of Article 27 of Law No. 2 of 2020 which is reviewed in the perspective of Sadd Al-Dzari'ah.

The contribution of Islamic law in a positive legal order has a very large role as authentic evidence that Islamic law has a formulation for solving legal problems in the country. In addition to these contributions, Islamic law is "latent" alive and culturally developed in jihad fi sabilillah as freedom of choice for religious life in Indonesia.[135]

Every goal will not be achieved without going through the causes and media that mediate, the media that serves as an introduction is a must that cannot be ignored. Therefore, the introduction has the same legal status as the goal to be

[135] Saifullah, “Senjakala Keadilan: Risalah Paradigma Baru Penegakan Hukum di Indonesia” (2020). 10.

achieved. So al-Dzari'ah is something that is a medium and a way to arrive at something related to syara' law, both haram and halal, and which leads to obedience or disobedience. So the Sadd Al-Dzari'ah method is more of a method that discusses the impact of a media. If it is permissible/permissible media that is recommended to the Shari'ah, then it is recommended. However, if the impact on something that is forbidden, for example, will cause harm or damage, then the law is not allowed.

In the context of this problem, the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 which decided the norm of Article 27 of Law Number 2 of 2020 as a conditional constitutional norm will then be analyzed using the perspective of Sadd Al-Dzari'ah.

Article 27 Paragraphs (1) and (3) of Law No. 2/2020 which is stated as a conditionally unconstitutional provision in the Decision of the Constitutional Court Number 37/PUU-XVIII/2020 as long as it is not interpreted and a sentence is added to Article 27 Paragraph (1) which is "in line with good faith, and in accordance with the laws and regulations" and Article 27 Paragraph (3), namely "as long as it is carried out in good faith and in accordance with the laws and regulations" actually still has the potential for violating the law against acts of negligence or inadvertence (culpa offenses), because the results of the consideration of the majority of the judges of the Constitutional Court said that the provisions of Article 27 Paragraph (2) which were declared no longer problematic after the amendment to the sound of Article 27 Paragraph (1) of Law No. 2/2020 according to the explanation above no longer provide abuse and absolute power because if the relevant officials take actions that are not in line with good faith and are not in accordance with the

applicable laws and regulations If applicable, it can be prosecuted civilly or criminally, but the Panel of Judges of the Constitutional Court does not discuss the provisions in the event of an act due to negligence (delik culpa) that causes state losses even though it has relied in good faith and statutory regulations. On the other hand, this also gives an indication in the form of injury to justice in accordance with the previous discussion, so even though the purpose of the formation of PERPPU No. 1 of 2020 which was later ratified as Law No. 2 of 2020, even though a judicial review has been carried out on the provisions of Article 27 of Law No. 2 of 2020 which resulted in the Constitutional Court Decision Number 37/PUU-XVIII/2020 in accordance with the explanation above, the norms, especially the provisions of Article 27 of Law No. 2/2020 still contain a disadvantage. Because in Sadd Al-Dzariah's Perspective, if the method or way contains a disadvantage, even though it has a good goal (in this case for handling the Covid-19 pandemic and restoring the national economy), then it is included in the Sadd Al-Dzari'ah category.[136] When viewed from the perspective of progressive legal theory in the previous discussion, this also hinders the achievement of an ideal law that aims for the welfare and happiness of the community.[137]

If the provisions of Article 27 of Law No. 2/2020 still indicate a violation of the law in the form of an act of negligence that cannot be prosecuted both civilly

[136] Wahbah Zuhaili juga berpendapat bahwasanya *Al-Dzari'ah* adalah suatu jalan atau cara untuk mencapai suatu hal tergantung motif dari pelaku. Apabila jalan tersebut digunakan untuk suatu hal yang dilarang atau mengandung kemudharatan, maka hukumnya tidak diperbolehkan, begitupun sebaliknya. Lihat Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2*. (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986) Hlm. 874

[137] Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009).47

and criminally, because according to the majority of judges of the Constitutional Court, a violation of law in accordance with these provisions is if it is not in line with good faith and is not in accordance with the law. with laws and regulations, meaning that legal violations that occur are only based on intentional acts (dolus offenses) but not with elements of negligence (culpa offenses). So this is clearly still contrary to the provisions of Article 27 Paragraph (1) of the 1945 Constitution where everyone has equality in law and government and is obliged to uphold the law and government without exception. This means that no one party is privileged in law and government under any circumstances and conditions. So that the enactment of the provisions of Article 27 Paragraph (2) of Law Number 2 of 2020 is useless, because the existence of this norm is expected to become the right of immunity for the government or related officials in carrying out their duties to resolve the problems of the Covid-19 pandemic and the recovery of the national economy.[138] Whereas equality in law and government cannot be excluded under any conditions and circumstances.

The problem with the provisions of the norms above is actually in line with Surat an-Nuur (24): 31:

وَلَا يَضْرِبْنَ بِأَرْجُلِهِنَّ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ ۚ وَتُوبُوا إِلَى اللَّهِ جَمِيعًا أَيُّهَ الْمُؤْمِنُونَ

لَعَلَّكُمْ تُفْلِحُونَ [٢٤:٣١

[138] Lihat *Dissenting opinion* tiga Hakim MK dalam Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020. 423

"Do not let the woman stomp her feet so that the jewels hidden in them will be known."

Actually wearing jewelry and stamping the foot is okay for women, but because it causes other people to know about her hidden jewelry, so that it will cause stimulation for those who hear, then stamping the foot becomes blocked.

This problem is also in line with Surah al-An'aam (6): 108:

وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ ۗ

"Do not insult anyone who worships other than Allah, because later he will insult Allah hostilely without knowledge"

In fact, insulting and insulting worshipers other than Allah is okay, even if necessary it is permissible to fight them. However, because the act of insulting and insulting will cause worshipers other than Allah to insult Allah, then the act of insulting and insulting is prohibited.

From the two examples of the verse above, it can be seen that there is a prohibition on actions that can cause something forbidden (contrary to existing law), even though basically the act is legal. In this case, the rationale for scholars is that every act contains two sides:[139]

1. the side that drives to do, and
2. the target or goal that is the natijah (conclusion/consequence) of the act.

[139] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 879.

So when looking at the natijah, the action is divided into two forms:

a. if the Natijah is good, then something that leads to it is good and therefore it is required to work on it.
b. If his Natijah is bad, then everything that leads to him is bad and therefore prohibited.

So that in the context of the problem of the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on the material review, especially in Article 27 of Law No. 2/2020 even though it has a goal for goodness in the form of handling the Covid-19 pandemic and restoring the National Economy, but if the way or method (in this case the law that regulates the implementation) it is indicated that there has been a violation of the law in the form of injury to justice and not achieving the welfare and happiness of the community in accordance with The purpose of progressive legal theory is to cause harm according to the explanation above, then it is closer to a prohibition to be implemented. This is carried out to maintain prudence that relies on the applicable principles as formulated in the rules:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

"Rejecting harm is more important than taking advantage"[140]

In this case, rejecting something that results in bad / harm is more prioritized than taking benefits in accordance with the fiqh rules above. This means refusing to violate the law from negligence, which causes harm to justice so that happiness

[140] Amir Syarifuddin, *Ushul Fiqih,* (Jakarta: Logos Wacana Ilmu, 2001), Jilid 2. 455

and prosperity are not achieved in accordance with the goals of progressive legal theory in this case taking precedence over giving immunity to the government or related officials in implementing policies to resolve the Covid-19 pandemic and economic recovery. National.

Then the norm provisions from the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 on material testing, especially Article 27 of Law Number 2 of 2020 also mixed between good noble goals in the form of handling the Covid-19 pandemic and restoring the national economy with the path taken. which still contains violations of the law from acts of negligence, there is the potential for harm to justice so that the happiness and welfare of the community cannot be achieved in accordance with the goals of progressive legal theory, so to determine this, it is based on the principle of the rules of fiqh if between what is lawful and what is unlawful is mixed (mixed).), then the principle is formulated in the rule:

إِذَا اجْتَمَعَ الْحَلَالُ وَالْحَرَامُ غُلِّبَ الْحَرَامُ

> *"If you mix what is haram and what is lawful, then what is haram overtakes what is lawful"*

In line with this rule, if there is a mix between something good and something bad, the bad will win, meaning that badness in this case is more influential than the existence of goodness itself. There are indications of violations of the law from acts of negligence in the form of being injured in justice, causing logical consequences of not achieving the happiness and welfare of the community

in accordance with the goals of progressive legal theory in the Covid-19 pandemic and the recovery of the national economy, it is feared that it will cause greater damage than the achievement of the desired goals. Because in addition to not achieving the big goal of the welfare and happiness of the community, the results of the decision also do not contain strong human morals in accordance with the second criterion of progressive legal theory.

On the other hand, there are still doubts in the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 which are indicated to have the potential to violate the law from negligence in the form of injury to justice so that the happiness and welfare of the community will not be achieved in accordance with the objectives of the progressive legal theory in accordance with the previous explanation. then in the context of another rule as a guide for scholars who take prudent actions in charity, there is a saying of the Prophet which reads:

دَعْ مَا يَرِيبُكَ إِلَى مَا لاَ يَرِيبُكَ

"Leave what doubts you to take what does not doubt you."

Then, if the problem with the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 regarding the review of materials, especially Article 27 of Law Number 2 of 2020, is seen from the consequences (impacts) it causes according to the grouping,[141] then the above problems fall into the fourth group,[142]

---

[141] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 884

[142] Lihat pembagian *Sadd Al-Dzari'ah* oleh Ibn Qayyim dalam kitab karangan Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 884

namely Dzari'ah which was originally determined to be permissible/permissible, but sometimes it leads to damage, while the damage is smaller than the good, but this Sadd Al-Dzari'ah is based on the precautionary principle in accordance with the rules of fiqh in the previous discussion, then Dzari' oh it's forbidden. The context of the problem with the results of the Constitutional Court's Decision, is in line with the fourth grouping because the purpose of the existence of Law Number 2 of 2020, especially in the provisions of Article 27 is to provide immunity to relevant officials so as not to worry about making decisions in resolving the problems of the Covid-19 Pandemic and recovery of the national economy, although the majority of judges declared the article as a conditionally unconstitutional norm so that the phrase "as long as it is in line with good faith, and in accordance with the national economic recovery and implemented for handling Covid-19" then if the government implements these provisions and is not in line with the good and not in accordance with the laws and regulations, the government or related officials may be prosecuted both civilly and criminally, but there are still gaps and disadvantages where the government or related officials can still take action. Violation of the law in the form of negligence (delik culpa) which can cause state losses but may not be prosecuted either civilly or criminally, because the legal considerations of the majority of the judges of the Constitutional Court stated that the government or related officials can be prosecuted if they are not in line with good faith. and not in accordance with statutory regulations. This means that the unlawful act is only based on a deliberate act (delik dolus). This results in injury to justice and not achieving the welfare and happiness of the community in accordance with the objectives of progressive legal

theory, because there is the potential for the government or related officials to commit acts that are detrimental to the state but with acts due to negligence (delik culpa). So that the gap becomes a disaster even though the harm is smaller because the purpose of this regulation is to deal with the Covid-19 pandemic and to restore the national economy in a general way.

In addition, if the problem is viewed from the level of damage caused,[143] then the problem is in the fourth level of Sadd Al-Dzari'ah, where the Dzari'ah rarely leads to damage or forbidden acts. Indeed, after the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 which closed the gap for abuse and absolute power given Article 27 of Law No. 2/2020 by stating that the provisions of Article 27 Paragraph (1) and (3) of Law No. 2/2020 as a conditional unconstitutional norm if the phrase "in line with good faith and in accordance with the laws and regulations" is not added, so that if the government implements these provisions and is not in good faith and is not in accordance with the laws and regulations, the government or officials related parties may be prosecuted both civilly and criminally, but there is still the potential for harm where the government or related officials can still commit acts of law violation in the form of acts of negligence (delik culpa) that can cause state losses but may not be prosecuted both civilly and criminally and Administrative Court, due to legal considerations from the majority of the panel of judges of the Constitutional Court stating that the government or related officials can be prosecuted if they are not in line with good faith and are not in accordance with the laws and regulations. This means that the

[143] Wahbah Zuhaili, *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* (Dar al-Fikr: Damaskus, Cetakan Pertama, 1986). 885.

unlawful act is only based on a deliberate act (delik dolus).

The possibility of violating the law from negligence (delik culpa) is indeed very minimal, but the existence of this loophole can cause harm, so that when we return to the prudence of scholars and the principles of fiqh:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

"Rejecting harm is more important than taking advantage"[144]

Likewise, when viewed from the words of the Prophet which reads:

الْحَلَالُ وَالْحَرَامُ بَيِّنَةٌ وَبَيْنَهُمَا أُمُوْرٌ مُتَشَابِهَاتٌ اَلَا وَاِنَّ حُمَى اللّٰه مُحَرَّمَةٌ فَمَنْ حَامَ

حَوْلَ الْحُمَى يُوْشَكُ أَنْ يُوْقَعَ فِيْهِ

"What is lawful is clear and what is unlawful is clear, what lies in both is a dubious affair (Subhat). Know that Allah's field is a field which he has forbidden. Whoever shepherds around Allah's forbidden field will doubtfully fall into it."

So by relying on the rules of fiqh and the hadith of this prophet and in accordance with the prudence principle of the scholars, by rejecting any harm, it takes precedence over taking advantage, then it would be better if Article 27 Paragraph (2) [145] and Paragraph (3)[146] Law Number 2 of 2020 is abolished. because actually Article 27 Paragraphs

---

[144] Amir Syarifuddin, *Ushul Fiqih*, (Jakarta: Logos Wacana Ilmu, 2001), Jilid 2, 455

[145] Bunyi Ketentuan Pasal 27 Ayat (2) Undang-Undang Nomor 2 Tahun 2020 adalah Anggota KSSK, Sekretaris KSSK, anggota sekretariat KSSK, dan pejabat atau pegawai Kementerian Keuangan, Bank Indonesia, Otoritas Jasa Keuangan, serta Lembaga Penjamin Simpanan, dan pejabat lainnya, yang berkaitan dengan pelaksanaan Peraturan Pemerintah Pengganti Undang-Undang ini, tidak dapat dituntut baik secara perdata maupun pidana jika dalam melaksanakan tugas didasarkan pada iktikad baik dan sesuai dengan ketentuan peraturan perundang-undangan.

[146] Bunyi Ketentuan Pasal 27 Ayat (3) Undang-Undang Nomor 2 Tahun 2020 Pasca Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020 adalah “bukan merupakan objek gugatan

(2) and (3) of Law Number 2 of 2020 contain the right of immunity in the form of abuse and absolute power for the government or related officials. Even if these provisions have been revised/amended after a judicial review that resulted in Decision Number 37/PUU-XVIII/2020 as explained above, Article 27 Paragraph (2) of Law Number 2 of 2020 still has the potential to contain the right of immunity so that there are indications of injury to justice. community and equality before the law and government, due to the consideration of the majority of judges who decided that related officials can be prosecuted both civilly and criminally and all decisions and actions can be submitted to the State Administrative Court if they are not in accordance with the handling of the Covid-19 Pandemic, good faith, and not in accordance with statutory regulations, while violations of law that cause state losses are not only intentional acts (delik dolus) but can occur because of acts due to negligence or unintentional (delik culpa) in accordance with the previous explanation.

In addition, the provisions for equality before the law and the government in accordance with the mandate of Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia are enclosed by the phrase "without exception" meaning in any situation and condition (whether normal circumstances, abnormal in the form of dangerous, coercive, and other things. urgent) equality before the law and government must be upheld and must not be harmed. While the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 which although it

---

yang dapat diajukan kepada peradilan tata usaha negara sepanjang dilakukan terkait dengan penanganan Pandemi Covid-19 serta dilakukan dengan iktikad baik dan sesuai dengan peraturan perundang-undangan"

closes the possibility of abuse and absolute of power, it still has the potential to provide immunity rights that cause legal violations that cannot be prosecuted both civilly, criminally, and PTUN according to the explanation above. On the other hand, the provisions of Article 27 Paragraphs (2) and (3) of Law NO 2/2020 are useless because they were originally made to protect government policies or related officials in managing costs for handling the Covid-19 Pandemic and restoring the national economy by not being able to sue the government. or related officials in civil, criminal or administrative terms, however, these provisions should not be implemented because equality before the law and the government must be enforced under any circumstances or conditions because of the phrase "without exception" in Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Moreover, Article 27 of Law No. 2 of 2020 still has gaps in the occurrence of violations of the law in accordance with the previous explanation.

With the abolition of the provisions of Article 27 Paragraphs (2) and (3) of Law Number 2 of 2020, then this has become part of the use of Sadd al-Dzari'ah theory to determine the law of a method or way to achieve a goal, by holding It is hoped that the precautionary principle and Sadd Al-Dzariah's methods are expected to be able to cover the potential for granting the right of immunity and to improve legal conditions in Indonesia, especially in the implementation of the handling of the Covid-19 pandemic and the recovery of the national economy. So that the abolition of Article 27 Paragraphs (2) and (3) of Law 2/2020 is in line with the rules of Islamic law which is built on two basic concepts, namely providing benefits for the creation of convenience in carrying out Shari'ah for its adherents and to

eliminate harm.[147]

[147] Saifullah, Mustafa Lutfi, Abdul Azis, "Transformasi Nilai-nilai Hukum Islam dalam Yurisprudensi Putusan Mahkamah Konstitusi Perspektif Teori Hukum Integratif", Volume 12, No. 1 (2020), 17.

CHAPTER IV

CLOSING

A. Conclusion

Based on the explanation that has been presented by the author above, it can be concluded that:

1. In this Constitutional Court Decision Number 37/PUU-XVIII/2020, there is a dissenting opinion with a ratio of 6 (six) to 3 (three). where the six judges of the Constitutional Court decided that Article 27 of Law No. 2/2020 is an unconstitutional article conditionally because even though it is to solve problems in an emergency situation, the law applied must also be proportional and not give abuse and absolute of power to the government or officials related so that it contradicts several articles in the 1945 Constitution. Meanwhile, three of the nine Constitutional Court Justices are of the opinion that Article 27 of Law no. 2/2020 is not problematic because the application of the article occurs in emergency situations and conditions, so to guarantee and give courage to the government or related officials, rules such as the article are needed.

2. From the results of the Constitutional Court Decision No. 37/PUU-XVIII/2020 it turns out that there is still potential in the form of violations of the law committed by acts of negligence (delik culpa) which cannot be prosecuted either civilly, criminally or administratively, because the majority of the Constitutional Court Judges stated that the government or related officials could be prosecuted whether civilly, criminally, and/or PTUN if the relevant official

or government implements the handling of the covid-19 pandemic and the recovery of the national economy which is carried out in bad faith and not in accordance with the laws and regulations. so that acts due to negligence or unintentional here can be separated from prosecution, both civil and criminal, and / or PTUN. This provides a logical consequence of harming justice regarding equality before the law and the government in accordance with the mandate of Article 27 Paragraph (1) of the 1945 Constitution, in the form of "every citizen has the same position in law and government and is obliged to uphold the law and government with no exceptions", meaning that under any circumstances or conditions, equality in law and government cannot be reduced. Because there is the potential to injure public justice in the form of equality before the law and government, so that in the context of progressive legal theory the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 hinder the criteria provided by progressive law itself in the form of:

a. the achievement of social welfare and happiness;
b. contains very strong human morals,

so that it cannot be said to be an ideal law because it does not meet the two indicators of progressive law,

From the perspective of sad al-Dzari'ah, the results of the Constitutional Court Decision Number 37/PUU-XVIII/2020 indicate that there is still the potential for granting immunity rights to related officials so that the injury to public justice becomes a disaster for the way to achieve a goal in the form of handling the Covid-19 pandemic. 19 and the recovery of the national economy,

so that by relying on the precautionary principle and some principles of fiqh and the Prophet's Hadith, it is better not to implement these provisions. In addition, if viewed from the theory of progressive and sad al-Dzari'ah law, a solution can be drawn to abolish the provisions of Article 27 Paragraph (2) and (3) of Law No. 2/2020. The relevance of the two perspectives used is that they are both looking for the shortcomings of legal products in order to achieve the ideal law so as to create public welfare and happiness.

B. Suggestion

1. In the formation of an emergency law to deal with the Covid-19 pandemic situation, the Government, especially the legislative body which has the authority to make and ratify laws, is indeed allowed and allowed to take discretionary action, but with a note in this case the government, especially the legislative body, must still pay attention to the space in the scope of emergency law that creates the potential for KKN (Corruption, Collusion, and Nepotism). Accountability in terms of the use of state finances during the Covid-19 pandemic must also be considered. Immunity in implementing the provisions of the emergency law is still needed so that the law in an emergency situation that has been established can be implemented properly as long as the immunity used is still in the right capacity and does not violate other laws and regulations and does not reduce the rights of the Indonesian people at large. , especially the rights that are excluded are to be reduced, because the purpose of solving these problems is for justice and social

welfare. This is also followed by supervision of the use and distribution of the state budget, in this case the APBN and APBD, which are intended for handling the Covid-19 pandemic, of course, it must also not be relaxed, considering that the use of state finances in disaster situations is prone to be misused and corrupted.

2. With the results of this research, it is hoped that they can be used as input and benchmarks in future policy making, especially to the legislative body as an institution that forms laws and regulations, especially in certain situations or conditions such as the current (Covid-19 Pandemic) in order to create a regulation. justice in accordance with the ideals that have been mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia, namely the creation of justice and social welfare.

BIBLIOGRAPHY

BOOKS

A., Iriyanto dan Baso Ence. *Negara Hukum dan Hak Uji Konstitusionalitas Mahkamah Konstitusi "Telaah Terhadap Kewenangan Mahkamah Konstitusi*. Bandung: Alumni, 2008.

Anwar, Yesmil dan Adang, *Sistem Peradilan Pidana: Konsep, Komponen, dan Pelaksanaannya dalam Penegakan Hukum di Indonesia*, Cetakan Pertama. Padjadjaran: Widya Padjadjaran, 2009.

Asshiddiqie, Jimly. *Hukum Acara Pengujian Undang-Undang*. Jakarta: Seketariat Jenderal dan Kepaniteraan MK, 2005.

Asshiddiqie, Jimly. *Hukum Tata Negara Darurat.* Jakarta: PT. Rajawali Grafindo Persada, 2007.

Asshiddiqie, Jimly. *Model-Model Pengujian Konstitusional di Berbagai Negara.* Jakarta, Konspress, 2005.

Bechtiar. *Metode Penelitian Hukum*. Tangerang: UNPAM PRESS, 2018.

Dahlan, Abd. Rahman. *Ushul Fiqh,* cet-2. Jakarta: Amzah, 2011.

Efendi, Jonaedi dan Johny Ibrahim. *Metode Penelitian Hukum Normatif dan Empiris*. Depok: Pranamedia Group, 2019.

Harjono. *Transformasi Demokrasi.* Jakarta: Seketariat Jendral dan Kepaniteraan Mahkamah Konstitusi, 2008.

Mahkamah Konstitusi RI. *Hukum Acara Mahkamah Konstitusi.* Jakarta: Seketariat Jenderal dan Kepaniteraan Mk, cetakan pertama, 2010.

Martitah. *Mahkamah Konstitusi dari Negative Legislature ke Positive Legislature*. Jakarta: Konstitusi Press, 2013.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta Timur: Prenadamedia Group, 2019.

Marzuki, Peter Mahmud. *Penelitian Hukum.* Jakarta: Kencana Prenda Media, 2011.

Moeljanto. Asas-Asas Hukum Pidana. Jakarta: Rineka Cipta, 2008.

Muhammad, Abdulkadir. *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti, 2004.

Nazir, Moh. *Metode Penelitian*. Bogor, Ghalia Indonesia, 2014.

Pompe, Sebastian. *Runtuhnya Institusi Mahkamah Agung,* (Jakarta: Lembaga Kajian dan Advokasi untuk Independesi Peradilan, 2012.

Rahardjo, Satjipto. *Hukum Progresif (Sebuah Sintesa Hukum di Indonesia)*. Genta Publishing, Yogyakarta, Cetakan 1, 2009.

Rahardjo, Satjipto. *Hukum Progresif: Hukum yang Membebaskan,* dalam Jurnal Hukum Progresif, Program Doktor Ilmu Hukum UNDIP Volume 2 Nomor 1/April 2005.

Rahardjo, Satjipto. *Hukum Progresif: Sebuah Sintesa Hukum di Indonesia*, (Genta Publishing, Yogyakarta, Cetakan 1, Juli 2009.

Rahardjo, Satjipto. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti, 2006.

Rahardjo, Satjipto. *Membedah Hukum progresif.* Jakarta: PT Kompas Media Nusantara, 2007.

Rahardjo, Satjipto. *Penegakan Hukum Progresif,*. Jakarta: Kompas, 2010.

Rifa'I, *Penemuan Hukum oleh Hakim Dalam Perspektif Hukum Progresif*. Jakarta, 2010.

Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, 2001.

Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Depok: UI Press, 1982.

Suryabrata, Sumardi. *Metodelogi Penelitian*. Jakarta: rajawali press, 1992.

Suryana. *Metodologi Penelitian: Model Penelitian Kuantitatif dan Kualitatif*". Bandung: Universitas Pendidikan Indonesia, 2010.

Syarifuddin, Amir. *Ushul Fiqih* Jilid 2. Jakarta: Logos Wacana Ilmu, 2001.

Zuhaili, Wahbah. *Kitab Ushul Al-Fiqh Al-Islami, Juz 2.* Dar al-Fikr: Damaskus, Cetakan Pertama, 1986.

JOURNALS

Atmojo, Bagus Priyo. "Eksistensi Penentuan Kerugian Negara dalam Penyidikan Tindak Pidana Korupsi," *Jurnal Hukum Khaira Ummah, Nomor 4* (Desember 2017).

Barooh, Nurdin. *"Metamorphosis Illat Hukum dalam Sadd Al-Dzari'ah dan Fath al-Dzari'ah"* (sebuah kajian perbandingan), *Al-Mazahib*, No. 2 (Desember, 2017).

Budiono, Abdul Rachmat. "Ilmu Hukum dan Penelitian Hukum", *MAKALAH*, (2015).

Ishaq. "*Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, dan Desertasi*".

Nurhalimah, Siti. "Menyoal Kegentingan Dan Pasal Impunitas Dalam Perppu Corona Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019" 4 (2020).

Rahardjo, Satjipto. "Hukum Progresif: Hukum Yang Membebaskan", Jurnal Hukum Progresif, Program Doktor Ilmu Hukum UNDIP Nomor 1, (April 2005).

Saifullah, Mustafa Lutfi, Abdul Azis, "Transformasi Nilai-nilai Hukum Islam dalam Yurisprudensi Putusan Mahkamah Konstitusi Perspektif Teori Hukum Integratif", No. 1 (2020).

Saifullah. "Senjakala Keadilan: Risalah Paradigma Baru Penegakan Hukum di Indonesia", (2020).

Sonata, Depri Liber. "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode Meneliti Hukum", *Fiat Justitia Jurnal Ilmu Hukum*, (Januari-Maret 2014)

Suhaimi. "Problem Hukum dan Pendekatan dalam Penelitian Hukum Normatif", *Jurnal Yustisia, Jilid* (2018).

Sukadi, Imam. "Matinya Hukum Dalam proses Penegakan Hukum Di Indonesia", Nomor 1. (2011).

Umar, Kusnadi. "Pasal Imunitas Undang-Undang 'CORONA' Dan Kewenangan Badan Pemeriksaan Keuangan Dalam Menetapkan Kerugian Negara," *Nomor 1, Universitas Islam Negeri Alauddin Makassar* 2, (2020).

Umar. "Pasal Imunitas Undang-Undang 'CORONA' Dan Kewenangan Badan Pemeriksaan Keuangan Dalam Menetapkan Kerugian Negara."

Zaini, Zulfi Diane. "Implementasi Pendekatan Yuridis Normatif dan Pendekatan Normatif Sosiologis dalam Penelitian Ilmu Hukum", *Pranata Hukum*, (Juli 2011).

DICTIONARY

"*Black's Law Dictionary – 9th Edition*" (St. Paul: Thomson West, 2004).

STATUTORY

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 2 Tahun 2020 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020 tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid-19) dan/atau Dalam Rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan Menjadi Undang-Undang (Lembaran Negara Republik Indonesia Tahun 2020 Nomor 134, Tambahan Lembaran Negara Republik Indonesia Nomor 6516).

Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan kehakiman, Lembaran Negara Republik Indonesia Nomor 5076.

Undang-Undang Nomor 5 Tahun 1986 Tentang Tata Usaha Negara.

Undang Undang Tindak Pidana Korupsi.

Kitab undang-Undang Hukum Perdata.

Undang-Undang Nomor 30 tahun 2014 tenteang Administrasi Pemerintahan.

Undang Nomor 4 tahun 2004 Tentang Kekuasaan kehakiman.

Undang-Undang nomor 24 tahun 2003 tentang Mahkamah Konstitusi, Lembaran Negara Republik Indonesia Tahun 2003 Nomor 98.

Peraturan Pemerintah Republik Indonesia Nomor 23 Tahun 2020 Tentang Pelaksanaan Program Pemulihan Ekonomi Nasional Dalam Rangka Mendukung Kebijakan Keuangan Negara Untuk Penanganan Pandemi Corona Virus Disease 2019 (Covid- 19) Dan/Atau Menghadapi Ancaman Yang Membahayakan Perekonomian Nasional Dan/Atau Stabilitas Sistem Keuangan Serta Penyelamatan Ekonomi Nastonal, Lembaran Negara Republik Indonesia Nomor 6514.

Keputusan presiden Nomor 11 tahun 2020 tentang penetapan kedaruratan kesehatan masyarakat Corona Virus Disease 2019.

Putusan Mahkamah Konstitusi Nomor 138/PUU-VII/2009.

Putusan Mahkamah Konstitusi Nomor 49/PUU-XVII/2020.

Putusan Mahkamah Konstitusi Nomor 006/PUU-V/2005.

Putusan Mahkamah Konstitusi: 066/PUU-II/2004.

Putusan Mahkamah Konstitusi Nomor 26/PUU-XI/2013.

Putusan Mahkamah Konstitusi Nomor 37/PUU-XVIII/2020.

Putusan Mahkamah Konstitusi RI Nomor 005/PUU-IV/2006.

WEBSITE

Aladokter.com/virus-corona

https://www.bbc.com/Indonesia/Indonesia-58301733

Pengertian Pandemi Covid-19, Statusnya di Indonesia Diperpanjang Jokowi (detik.com)

CURRICULUM VITAE

Data Pribadi:

Name	: Muhammad Jihadil Akbar
Date of Birth	: August, 12th 1999
Place of Birth	: Pamekasan
Address	: Dusun. Lembung Utara, Desa. Lembung, Kec. Galis, Kab. Pamekasan, Jawa Timur.
Gender	: Male
Contact Number	: 0851 - 7247 - 1731
Email	: akbarjihadil22@gmail.com

Formal Educations:

2006-2012	: SDN Lembung
2012-2015	: MTsN Pademawu Pamekasan 1
2015-2017	: Ma'had Tahfidz Al-Qur'an Al-Amien Prenduan
2017-2018	: MAN 2 Pamekasan
2018-2022	: UIN Maulana Malik Ibrahim Malang

Organitation Experiences:

2016-2017	: Ketua Bag. Keilmuan RITMA (Ma'had Tahfidz Al-Qur'an Al-Amien Prenduan)

2017-2018	: Ketua Angkatan'18 MAN 2 Pamekasan
2019-2020	: Ketua Hubungan Internal Law Debate Community
2020-2021	: Pengurus Dinas Sosial Politik DEMA F. Syariah (Bidang Kajian Isu & Strategis)

Experiences:

2017	: Komikus Majalah MAN 2 Pamekasan (Mafintaq)
2017	: Juara 3 Lomba Robot Nasional PORSENI Gontor'99
2017	: Juara 1 MAROCO 2017 (Madura Robot Contest)
2017	: Best Design CONTECH 2017 (Contes Technology)
2018	: Juara 1 Debat Hukum Internal GPHS 2018
2018	: Peserta Lomba Debat Pendidikan IAIN Madura 2019
2019	: Peserta Lomba Debat Hukum Agraria Universitas Brawijaya 2019
2019	: Pendamping Peserta Lomba Debat Pendidikan Antar Mahasiswa Nasional IAIN Madura 2021
2019	: Pembina Peserta Lomba Debat Pendidikan SMAN 9 Malang antar SMA Se-Jawa Timur
2021	: Pendamping Peserta Lomba Debat Hukum Antar Mahasiswa Nasional IAIN Madura 2021
2022	: Juara 3 Lomba Debat Hukum PINISI LAW FAIR Universitas Negeri Makassar 2022

Publications:

2020	: Buku *"Saya Belum Benar"*
2020	: Buku "*Padi & Rumput Kehidupan* (Kumpulan Ide & Gagasan Amiril Lazuardi)"
2020	: Buku "*Setetes Tinta Kehidupan* (Kumpulan Ide & Gagasan Amiril Lazuardi)"

2021 : Buku "*Suara Hati Kehidupan Muhammad Amiril A'la* (Kumpulan Ide & Gagasan Amiril Lazuardi)"

2021 : Buku "*Belajar Menjadi Manusia Yang Manusia* (Kumpulan Ide & Gagasan Amiril Lazuardi)"

ATTACHMENT

The Appendix contains the Decision of the Constitutional Court Number 37/PUU-XVIII/2020 along with the Minutes of the Trial of the Decision as attached on the next sheet.