

INTISARI

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Penelitian ini bertujuan untuk memahami unsur-unsur dalam muatan Pasal 27 Perppu 1/2020 dan permasalahan yang berpotensi terjadi akibat pencantuman unsur-unsur dalam muatan Pasal 27 Perppu 1/2020 tersebut. Penelitian ini termasuk dalam kategori penelitian deskriptif. Dalam hukum, penelitian ini termasuk dalam penelitian hukum normatif. Pendekatan yang digunakan dalam penelitian ini adalah pendekatan peraturan perundang-undangan dan pendekatan konseptual. Penelitian ini merupakan penelitian kepustakaan yang dilakukan dengan meneliti bahan hukum yang terdiri dari bahan hukum primer dan bahan hukum sekunder.

Hasil penelitian menunjukkan bahwa: 1) unsur-unsur dalam muatan Pasal 27 Perppu 1/2020 baik ayat (1), ayat (2), maupun ayat (3), setelah ditelaah tidak memuat unsur yang problematik. Secara teoretis-yuridis beberapa unsur yang dinilai problematik diartikan sebagai: a) bukan merupakan kerugian negara sepanjang dilakukan dengan iktikad baik dan sesuai dengan peraturan perundang-undangan; b) tidak dapat dituntut baik secara perdata maupun pidana, dibenarkan karena untuk menjalankan perintah undang-undang dan adanya daya paksa dalam keadaan darurat pandemi Covid-19. Kondisi tersebut hanya dapat diperoleh selama pejabat tersebut menjalankan tugasnya dengan iktikad baik dan sesuai dengan peraturan perundang-undangan; dan c) bukan merupakan objek gugatan yang dapat diajukan kepada PTUN diatur berlandaskan pada Pasal 49 Undang-Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara. Segala tindakan dan keputusan yang berkaitan dengan penanganan pandemi Covid-19 dan yang dilakukan dengan iktikad baik dan sesuai dengan peraturan perundang-undangan, dikecualikan dari objek gugatan kepada PTUN; 2) permasalahan yang berpotensi terjadi dalam pencantuman Pasal 27 Perppu 1/2020 antara lain adalah: a) tidak terdapat norma atau penjelasan yang mengatur terkait mekanisme hukum dalam penilaian dan penentuan unsur “iktikad baik dan sesuai dengan peraturan perundang-undangan”. Hal ini mengakibatkan Pasal 27 rentan terhadap ketidakpastian hukum; b) ketentuan imunitas perlu untuk diatur dan diterapkan bagi pejabat yang berwenang dalam menjalankan tugasnya mengatasi dampak pandemi Covid-19. Ketentuan tersebut meskipun menyimpangi atau mengatur sebaliknya ketentuan dalam Pasal 2 ayat (2) UU Tipikor, namun sepanjang sesuai dengan prinsip imunitas yang dianut, serta peraturan perundang-undangan yang berlaku yakni tidak bertentangan dengan amanat Pasal 2 dan Pasal 3 UU Tipikor, KUHP, dan UU PTUN, serta Putusan MK Nomor 37/PUU-XVIII/2020, ketentuan imunitas tersebut dapat diberikan terutama dalam mengatasi keadaan darurat.

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ABSTRACT

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This study aims to understand the elements in the content of Article 27 of Perppu 1/2020 and the problems that have the potential to occur due to the inclusion of elements in the content of Article 27 of the Perppu 1/2020. This research is included in the category of descriptive research. In law, this research is included in normative legal research. The approach used in this research is a statutory approach and a conceptual approach. This research is a library research conducted by examining legal materials consisting of primary legal materials and secondary legal materials.

The results of the study show that: 1) the elements in the content of Article 27 of Perppu 1/2020, both paragraph (1), paragraph (2), and paragraph (3), after being examined do not contain problematic elements. Theoretically-juridically several elements that are considered problematic are defined as: a. 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. b. cannot be prosecuted both civilly and criminally, justified because it is to carry out legal orders and there is coercive power in an emergency situation of the Covid-19 pandemic. This condition can only be obtained as long as the official carries out his duties in good faith and in accordance with the laws and regulations. c. is not the object of a lawsuit that can be submitted to the Administrative Court which is regulated based on Article 49 of Law Number 5 of 1986 concerning the State Administrative Court. All actions and decisions related to the handling of the Covid-19 pandemic and which are carried out in good faith and in accordance with the laws and regulations, are excluded from the object of the lawsuit to the Administrative Court; 2) problems that have the potential to occur in the inclusion of Article 27 of Perppu 1/2020 include: a. there are no norms and explanations that regulate legal mechanisms in the assessment and determination of the element of "good faith and in accordance with statutory regulations". This makes Article 27 vulnerable to legal uncertainty; b. Immunity provisions need to be regulated and implemented for authorized officials in carrying out their duties to overcome the impact of the Covid-19 pandemic. The immunity provisions in Article 27 of Perppu 1/2020 even though they deviate or regulate otherwise the provisions in Article 2 paragraph (2) of the Anti-Corruption Law, but as long as they are in accordance with the principle of immunity adopted, as well as applicable laws and regulations, namely not contradicting the mandate of Article 2 and Article 3 The Anti-Corruption Law, the Criminal Code, and the Administrative Court Law, as well as the Constitutional Court Decision Number 37/PUU-XVIII/2020, the provisions for immunity can be granted, especially in dealing with emergencies.

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