



Social Contracts Undertaken by the State in Post-Pandemic

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Abstract

Justice in the legal context is to bring out a caring attitude from the state and this is important in the post-pandemic era. The state has the ability to exercise control over all things as its natural state but must still pay attention to the condition of society. Justice must be an inseparable part of a country because of the existence of a social contract from society. The research object is a country with a normative research method that makes legal hermeneutics a problem solving. As a result, the state cannot impose its will in the post-pandemic era because the people have done what the people want, including vaccines, using masks or maintaining attitudes in daily life. The conclusion obtained is that there is a prioritization of the meaning of the social contract so that the essence of justice appears and has a good impact on society.

Keywords: Justice, state law, public.

1. Introduction

Indonesia is a country based on law, so that every human activity or society which constitutes their life activity must be based on the rules and norms that apply in society. Law cannot be separated from human life because law is a rule to regulate human behavior in life. Every good Indonesian citizen has the obligation to uphold applicable law, in realizing the Indonesian state as a rule of law, it requires responsibility and awareness for its citizens. This responsibility and awareness must be manifested in the behavior and actions of everyone in Indonesia. In line with these provisions, one of the important principles is the guarantee of equality for everyone before the law, therefore everyone has the right to recognition, guarantees, protection and fair legal certainty, as well as equal treatment before the law or the principle of equality before the law. The law also regulates human behavior in the dimensions of political, social and defense and security life. The need to enforce the law in its implementation has always received the attention of many parties, because it involves the treatment of individual rights and the demands of life, both of which are related to the social life of society. The application of law in daily life does not always go well, there are always problems when law enters society, including problems with achieving legal certainty and a sense of justice in society. In general, law is made for a noble purpose, namely to provide services to the community in order to create order, security, justice and prosperity, but in reality there are still deviations from the law, whether done intentionally or unintentionally or negligently. Laws in the form of norms are known as legal norms, where the law binds itself to society as the place where the law operates (*ibi ius ibi societas*). Humans are social creatures (*homo socius*). Since humans are born, humans have been associating with other humans in a container that we know as society (Olsen, 2003; Rusydi & Sulchan, 2021).

In the life of the nation and state, all people have different desires. The absence of equality will make the state need equal treatment of society because if it is treated differently, injustice will emerge. Equal treatment means that there are similarities in the fulfillment of rights and obligations, fulfillment of needs according to the agreed time and supervision of each implementation. As a country that always has its source in law, the sources consist of two, namely written and unwritten.

Written has the meaning of laws and regulations, jurisprudence or conventions while unwritten can be in the form of habits, customs or teachings of figures. All of these have different legal implications. In this perspective, this research focuses on the ongoing Covid-19 and its changing status creates its own legal problems. Referring to the covid19.go.id page, there is data related to the confirmation of Covid-19

Table 1: Covid-19 Situation Assessment As of 29 November 2022

Asesmen	Asesmen (KTP)	Nilai Asesmen	Kategori Asesmen	Testing	Tracing
ASESMEN SITUASI COVID-19 PER 29 NOVEMBER 2022					
Provinsi	Kasus Konfirmasi (7DMA)	Kasus Konfirmasi yang Dilacak (7DMA)	Kontak Erat dari Kasus Konfirmasi (7DMA)	% Kasus yang Dilacak (7DMA)	Rasio KE per KK (7 Hari Terakhir)
KALIMANTAN SELATAN	3,00	1,86	20,71	61,90	
KALIMANTAN TENGAH	2,71	0,71	1,43	26,32	
KALIMANTAN TIMUR	6,57	1,29	5,14	19,57	
KALIMANTAN UTARA	3,29	1,86	3,29	56,52	
KEPULAUAN BANGKA BELITUNG	4,86	2,14	4,00	44,12	
KEPULAUAN RIAU	4,00	4,00	66,14	100,00	
LAMPUNG	5,57	4,57	62,86	82,05	
MALUKU	0,00	0,00	0,00	0,00	
MALUKU UTARA	0,29	0,29	1,00	100,00	
NUSA TENGGARA BARAT	5,57	4,43	83,57	79,49	
NUSA TENGGARA TIMUR	4,14	3,29	13,43	79,31	
PAPUA	0,00	0,00	0,00	0,00	
PAPUA BARAT	0,57	0,29	0,57	50,00	
RIAU	9,71	8,57	61,29	88,24	
SULAWESI BARAT	1,43	0,71	2,43	50,00	
SULAWESI SELATAN	5,71	3,86	12,43	67,50	
SULAWESI TENGAH	0,29	0,29	0,57	100,00	
SULAWESI TENGGARA	1,00	0,57	2,57	57,14	
SULAWESI UTARA	0,29	0,14	0,14	50,00	
SUMATERA BARAT	0,00	0,00	0,00	0,00	
SUMATERA SELATAN	4,57	2,43	7,29	53,13	
SUMATERA UTARA	16,86	14,71	178,14	87,29	

7DMA: 7-day-moving-average

Data harian diupdate berdasarkan pelaporan pelacakan yang ditarik hari berikutnya pukul 14.00 WIB

% Kasus yang Dilacak (7 Hari Terakhir) = Kasus Konfirmasi yang Dilacak (7 Hari Terakhir) / Kasus Konfirmasi (7 Hari Terakhir)

Rasio KE per KK (7 Hari Terakhir) = Kontak Erat dari Kasus Konfirmasi (7 Hari Terakhir) / Kasus Konfirmasi yang Dilacak (7 Hari Terakhir)

The source points to a downward trend in Covid-19. Thus the state must be able to control everything if the social contract is properly understood. Social contracts are often part of the natural law that applies to society. General jurisprudence is not concerned with the law of some jurisdiction at some time but rather with the nature of law, wherever and whenever law is found. A prominent debate in this area centers on the relationship between evaluative facts (facts about what is good, rational, etc.) and the existence and content of law (whether a legal norm exists and, if so, what it requires or permits). The main camps in this debate are positivism and anti-positivism. How to define these camps is itself contentious (Watson, 2022). This means that there is a difference in interpreting natural law which is the origin of social contracts so that this research will provide a discourse on social contracts in countries that carry out post-pandemic actions.

2. Methods

This study uses normative research where normative research is research that does not always use a statutory approach because such thinking will narrow the search for meaning. (Michael, 2022) Therefore, this study uses legal interpretation as a way out that collaborates the thoughts of the figures so that the desired answer will raise questions for the reader, but for the researcher it is an absolute answer (Michael, 2022).

3. Result and Discussion

In an equal relationship, the state is the recipient of sovereignty from the community while the community is the holder of sovereignty. Even though people are sovereign holders, they cannot exercise sovereignty because of the heterogeneity of their needs. If it is associated with homogeneity, the holder of sovereignty will be able to do it well. The form of government is one of the originators where as a rule of law, Indonesia adheres to a democratic form of government. The state always has different meanings because what is needed in assessing the state is fulfilling the conditions. For example, the state requirements must have permanent residents, a definite territory, government and the ability to enter into relations with other countries.

This traditional concept makes the state a legal subject that has full authority over everything in it. The state has the right to make anything for its purpose, especially how to defend what it has and its sovereignty. But in the principle of a modern state, the state is growing and there are similar patterns in defending the state, for example by entering into agreements with other countries or having common goals. Referring to international law, one country's agreement with another country is due to the needs between parties, but that reason in the current era is the complexity of allies or the presence of certain goals.

Such an understanding will provide new insights into the form of government. In the past, the form of government showed the absolute characteristics of a country that could be studied in a cycle. The form of government is very purely influenced by the thoughts of philosophers. In the end, the thoughts of philosophers are only wishful thinking,

namely Socrates and become material for dialectics by later thinkers such as Plato and Aristotle. Researchers will take an example of a form of government that has been widely discussed and has experienced a change in meaning to date.

More than two thousand years ago, Aristotle used the same example to address the same issue and argue that since people do not agree on how to properly distribute political and economic rights and duties among citizens (since democrats believe that the best criterion of Distributive Justice is the status of a freeman while the supporters of Oligarchy identify it as wealth or nobility of birth, and the supporters of Aristocracy as excellence of character), the Distribution of political rights will be fair if it is done according to a certain Proportion. In fact, Aristotle comments that although there is a consensus among the people that justice in distribution must be according to merit (& in some sense, at the same time, however, he documents a widespread and profound disagreement about which merit should be the fairest measure of value (Salamone, 2021).

In principle, the form of democratic government in Aristotle's era is different from democracy today. Aristotle said that political science is the understanding needed to show its true meaning. Aristotle continued that political science has a big impact on a country. This shows that the state cannot be separated from politics even though there are legal norms in it.(Berger, 2013) As a youth, he studied at Plato's Academy in Athens. After Plato's death, Aristotle left Athens to undertake philosophical and biological research in Asia Minor and Lesbos, and he was later invited by King Philip II of Macedon to tutor his son, Alexander the Great. Soon after Alexander succeeded his father, consolidation and conquest of the Greek city-states began, including launching an invasion of the Persian Empire. Aristotle returned as a foreigner to Athens, and was a close friend of Antipater, ruler of Macedonia. It was during this time that he wrote several works including *Politics*. When Alexander died suddenly, Aristotle had to flee Athens because of his Macedonian connections, and he died not long after. He died in 322 BC (Winarno, 2015).

The researcher agrees with Aristotle's political thought because sometimes the state does not always comply with the norms it makes but sets aside for the sake of achieving legal goals. Back to the beginning, namely the social contract which is a derivation of natural law, naturally humans are obliged to do what they want with other parties without any legal norms. For example, a person named Yuri makes a social contract with Pakis, if they have good awareness then what is required to be done between the two of them can go well without a written agreement. But there are many things for resistance to occur such as time limits, human nature to want to have great power or intimidation from third parties. But it should be noted, Aristotle tends to prioritize *politeia* where *politeia* is a form of government that originates from the constitution.

The constitution is not just a guide but actually a watchdog to slow down or prevent a worse form of government. The existence of a constitution will provide a new understanding of the state. For example, in the Covid-19 pandemic, Indonesia imposed restrictions and there were rejections, but the rejections occurred because there were concerns from the public about what the next steps would be, especially since the country had never faced it.

Problem solving is done wisely with a social contract. The social contract itself can be analogous to a human being who has no ability for himself. He can't arrange what he wants but he can do outside of his will. The humans here are babies. A baby will accept what his parents do to calm him down. Babies will have an attitude of surrender so that their needs are met until a certain age. There is an attitude of unilateral consent, an attitude of slavery or arbitrary. There is no single power that can resist and regulate him. As previously believed, each person has the same right to his own Life, as it ended. Other things in which he has the decency; and that this right is also subject to consent.(Olsthoorn & van Apeldoorn, 2020) However, this validity will stop when there is an acknowledgment of the existence of God. What God says cannot be rejected by someone and that power actually belongs to God.

The social contract is also known as a way to solve legal problems that cannot be solved with the same will. Starting from the many desires, the social contract actually surrenders sovereignty to someone who will go according to what he wants. Jean Jacques Rousseau said that the social contract starts from the family as the smallest circle. The father's role is analogous to that of the state because he knows what society needs. In a social contract, there is a transfer of rights due to natural incapacity or permanent incapacity. The surrender of rights will have a different impact because of the dissimilarity in giving what one wants. If the transfer of rights is linked to the development of a modern state, it will present responsibilities that must be shared. As a rule of law country that refers to a presidential system, the social contract will make the state leader the holder of absolute power based on the law. Notice the difference with the parliamentary system.

In a national parliamentary democratic setting, the legislative branch takes care of legislation while the executive branch takes care of policy implementation. The members of the legislative branch are elected by citizens or electors. How electors' preferences are reflected and materialized in legislated bills is called the branch of legislative politics. Otto Bismarck once remarked that legislation is like making sausages into the process of which every conceivable source is fed. In the real world, there is no global legislative mechanism with legislative and executive branches. There is no legal mechanism whereby global citizens' preferences are fed into laws, which in turn function as a set of global public policies. Yet if one envisages that those public opinions expressed and revealed to the public and those multilateral treaties and conventions signed, ratified, and further implemented are equivalent to nationally surveyed citizens' preferences and nationally legislated bills respectively, there emerges global quasi-legislative politics (Inoguchi & Le, 2016).

Specifying the relation between dictatorship and sovereign authority, Jean Bodin introduced the notion of a 'commissarial dictator': [it] thus appears that the dictator was neither a prince nor a sovereign magistrate, as many have written, and that he held nothing more than a simple commission to conduct a war, or to put down sedition, or to

reform the state, or to bring in new magistrates'. The characterization of the dictatorship as a 'simple commission' cannot be found in earlier sources, and may therefore have been Bodin's own invention. Previous authors had sometimes suggested that the dictatorship was a limited power, in the sense that other state officials had continued in their functions, so that they acted as the dictator's 'guardians' (de Wilde, 2019).

Then to what extent is the social contract related to the existence of the state after the Covid-19 pandemic? In this case, what the state really wants is for the common good but legal obligations from the perspective of the state are absolute obligations. For example, someone who is bound by the state, namely the state civil apparatus, will definitely support whatever is given by the state as a legal obligation. Legal obligations are not based on morals, but the highest obedience is the awareness of legal subjects who surrender their rights completely to the state. But are they not allowed to refuse it? Rejection will not occur even though it is contrary to morality because there is an attachment to the state as the highest legal subject. In this context, there are people who have the right to refuse, namely those who are not bound by the state. For example, researchers use themselves as lecturers who are not bound by the state, meaning they do not receive pensions but severance pay. Researchers can take action to disobey or refuse legal obligations because it is against morals, but is everything that researchers do really separate from the state? Referring to Jimly Asshiddiqie's thought, it can be seen from the theory of the source of legitimacy norms, namely what form of legal norm is the source or which gives authority to the state institution in relation to who is the source or giver of authority to the state institution concerned. Based on this theory, state institutions are grouped into state institutions at the central level and regional institutions. Meanwhile, state institutions at the central level are categorized into four groups, namely 1) Institutions formed based on a constitution which are further regulated and determined in or by laws, government regulations, presidential regulations, and presidential decrees. 2) Institutions formed based on laws that are further regulated and determined in or by government regulations, presidential regulations, and presidential decrees. 3) Institutions formed based on government regulations or presidential regulations which are further determined by a presidential decree. 4) Institutions formed based on ministerial regulations which are determined further by ministerial decrees or by decisions of officials under the minister (Macarie, et al., 2011; Shih & Susanto, 2010).

With this meaning, researchers are state institutions because while working as lecturers they receive grants or funds which are also tied to the state. The researcher's social contract is more complex because it is tied to the state and outside the state. Back to post-Covid-19 pandemic countries where most people have done things that support the government, namely using vaccines, using masks, maintaining distance to using various facilities that are given limited access. People who carry out social contracts will understand that they do not have the ability to solve problems. Then the leader can act with the social contract from the community. Is it possible that authority automatically arises in a leader?

This is answered by a democratic form of government which carries legal implications focusing on legal objectives, namely legal justice, legal usefulness and legal certainty. According to Hans Kelsen, justice is rationally loaded with interests, causing conflicts that have been seen in society. It is believed that the way to deal with conflicts of interest can be achieved if an order is created that is able to provide satisfaction if it is carried out by prioritizing other interests, or through reaching an agreement between conflicting interests. What is meant by order here is positive law which is the object of science, as well as being the object of pure legal theory. Justice contains social happiness. The existence of social order gives its own satisfaction to everyone. Therefore, every human being will get happiness in it through this social order. The aspiration to get justice is of course very attached to everyone in order to achieve eternal happiness. The pleasure of happiness is what is difficult for every human being in social life (Matczak, 2020; Lodder & Zelznikow, 2005). Legal justice has different interpretations for each community because legal justice leads to self-knowledge of law. Legal justice as a reflection of social life so that whatever is fair will be a rejection for others. Legal justice must be strengthened by legal benefits.

Legal benefits will provide an understanding that a legal norm has benefits for society that are made by legislators. The benefits of the law in the aftermath of the Covid-19 pandemic can allay people's doubts but can also cause turmoil. For example, when there are regulations for the use of masks in public places without a detailed explanation, the benefits of these regulations cannot be felt. People will act obediently or disobediently. For example, if there is a member of the public who does not wear a mask while he is being reprimanded by law enforcers, he will not only give sanctions but what rights can be obtained when ignorance turns him into a denial. There must be a display of entitlement in case of resistance from society.

Returning to the starting point regarding legal obligations is directly proportional to legal benefits. Legal benefits also have an impact on all levels of society so that all of them benefit. For example, a statutory regulation does not include what the consequences are for a law-abiding society. In statutory regulations there are always prohibitions and legal consequences if you don't comply. This will provide a doctrine that every statutory regulation must be obeyed so as not to be subject to sanctions. Even though this is contrary to the purpose of forming statutory regulations that comply with legal norms to provide a sense of security and safety for every community.

Philosopher Gustav Radbruch, provides an understanding of the concept of three basic elements of law, which the average expert uses as the goal of law. So, in other words, the three legal objectives in question are justice, benefit and legal certainty. So clearly, legal benefits are part of one of the objectives of the law itself. Where the law is intended to provide benefits to the community so that people are happy and prosperous. In this case, what is believed by the community to measure the effectiveness or ineffectiveness of a law can be seen from the value of expediency. Law is

believed to have a function as a means of photographing reality or phenomena that develop in society. Here, the law can play a role in providing benefits or being efficient for the community. Understanding the flow of utility assumes that the purpose of law is solely to provide the greatest benefit or happiness for as many people/citizens. "The principle of benefit underlies all activity according to the degree to which it increases or decreases the happiness of the group; or, in other words, promotes or opposes that happiness." (*Implementasi Nilai Kemanfaatan Hukum Dalam Pencegahan Penyalahgunaan Narkoba Melalui Lomba Keluarga Sadar Hukum (KADARKUM) / Lex Scientia Law Review*, n.d.).

Next is legal certainty which can provide satisfaction to all parties. Legal certainty here is responsive law that can be created if there is an active role from society (democratization of legislation). Law, said Teubner, will never be born independently without democracy obtained through the legislative process. If this is not implemented, then the law merely legitimizes the will of the government. This makes the government's actions seen as against the law. Public interest rights can be neglected because law is independent because its meanings refer to itself (Sunshine & Tyler, 2003).

4. Conclusion

The social contract in the post-Covid-19 pandemic is a wise way that can be taken by the government because the social contract provides comfort for the community. The social contract will change the paradigm that the state only shows its power relations but does it for the benefit of society.

References

Berger, C. (2012). Making Liberal Democracy Ethical: Aristotle on the Unity of Ethics and Politics. *The Agora: Political Science Undergraduate Journal*, 3(1), 73-91.

de Wilde, M. (2019). Silencing the laws to save the fatherland: Rousseau's theory of dictatorship between Bodin and Schmitt. *History of European Ideas*, 45(8), 1107-1124.

Inoguchi, T., & Le, L. T. Q. (2016). Toward modelling a global social contract: Jean-Jacques Rousseau and John Locke. *Japanese Journal of Political Science*, 17(3), 489-522.

Lodder, A. R., & Zelznikow, J. (2005). Developing an online dispute resolution environment: Dialogue tools and negotiation support systems in a three-step model. *Harv. Negot. L. Rev.*, 10, 287.

Macarie, F. C., Hințea, C., & MORA, C. M. (2011). Gender and Leadership. The impact of organizational culture of public institutions. *Transylvanian Review of Administrative Sciences*, 7(32), 146-156.

Matczak, M. (2020). The clash of powers in Poland's rule of law crisis: tools of attack and self-defense. *Hague Journal on the Rule of Law*, 12(3), 421-450.

Michael, T. (2021). Meaning the Phrase "Own Demand" in Leadership In East Java. *Journal of International Trade, Logistics and Law*, 7(2), 16-21.

Michael, T. (2022, September). Law And Reducing The Use Of Plastic Bags In The City Of Surabaya. In *Proceeding of Green Environment Related To Reuse, Recycle And Reduce From Waste Conference* (Vol. 1, No. 1, pp. 46-48).

Olsen, B. (2003). Material culture after text: re-membering things. *Norwegian Archeological Review*, 36(2), 87-104.

Olsthoorn, J., & Van Apeldoorn, L. (2022). 'This man is my property': Slavery and political absolutism in Locke and the classical social contract tradition. *European Journal of Political Theory*, 21(2), 253-275.

Rusydi, A. A., & Sulchan, A. (2021). Simultaneous Regional Election Polemics in the Middle of the Covid-19 Pandemic. *Jurnal Daulat Hukum*, 3(4), 369-375.

Salamone, M. A. (2021). Aristotle's Political Justice and the Golden Ratio between the Three Opposing Criteria for the Distribution of Public Goods among Citizens: Freedom, Wealth and Virtue. *Philosophies*, 6(4), 96.

Shih, H. A., & Susanto, E. (2010). Conflict management styles, emotional intelligence, and job performance in public organizations. *International journal of conflict management*, 21(2), 147-168.

Watson, B. (2022). The Decline of Natural Law and the Rise of Exclusive Positivism.