

# Indonesia's Legal Response to the Covid-19 Pandemic based on International Law

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## Abstract

COVID-19 has become an epidemic that has disrupted life throughout the world, including Indonesia. As a legal state, Indonesia needs a legal framework as a legal basis to deal with the COVID-19 pandemic. As a country that has also signed international agreements, Indonesia must be able to implement these international agreements, one of which is in the context of dealing with the COVID-19 pandemic. By using a legal approach research method, this paper reviews from International Health Regulations, TRIPs Agreement, WHO Constitution, and other international agreements to the positive law that exists in Indonesia. This paper aims to provide an overview of how Indonesia is dealing with the COVID-19 outbreak from the point of view of international law which is linked to national law. Where Indonesia and other countries collaborate in efforts to restore the economic and health sectors. The existence of international organizations and treaties have impact on the realisation of harmonisation in dealing with epidemics in each country.

**Keywords:** *COVID-19, International Law, WHO Constitution, International Health Regulations, TRIPs Agreement.*

## I. INTRODUCTION

The Coronavirus Disease 2019 (COVID-19) was announced as a pandemic by the World Health Organization (WHO) in March 2020.<sup>1</sup> This was due to a significant increase in patients presenting with COVID-19 and the spread of this virus to all corners of the world. As is known, as of Wednesday (27/1/2021) morning, the total number of confirmed COVID-19 cases worldwide reached 100,801,465 (100 million), of which 72,810,592 (72 million) patients have recovered, and 2,164,749 people have passed away.<sup>2</sup> COVID-19, which also goes by Coronavirus 2 (SARS-

<sup>1</sup> BBC News, "Coronavirus confirmed as pandemic by World Health Organization," accessed on October 1, 2020, <https://www.bbc.com/news/world-51839944>.

<sup>2</sup> Kompas, "Update Corona di Dunia 27 Januari: 100 Juta Kasus | WHO Rilis Pedoman Klinis Terbaru untuk Rawat Pasien COVID-19," accessed on January 27, 2021, <https://www.kompas.com/tren/read/2021/01/27/093100765/update-corona-di-dunia-27-januari--100-juta-kasus-who-rilis-pedoman-klinis?page=all>.

CoV-2), is an acute respiratory syndrome.<sup>3</sup> The virus is spread through droplets of saliva or discharge from the nose when an infected person coughs or sneezes.<sup>4</sup> The most common symptoms of COVID-19 are fever, fatigue, and dry cough. Some patients may experience aches and pains, nasal congestion, runny nose, or sore throat.<sup>5</sup> This virus is a new type of virus so there is no complete and detailed understanding. However, from the facts seen so far, COVID-19 can be defined as an acute respiratory syndrome that can spread through fluids from the body that cause a person to have flu symptoms.

In 2020, COVID-19 affected almost all countries and more than 50 million people around the world. It has forced governments to operate in a context of radical uncertainty, and faced with difficult trade-offs given the health, economic and social challenges it has raised. By spring of 2020, more than half of the world's population had experienced a lockdown including strong containment measures. Beyond the health and human tragedy of the coronavirus, it is now widely recognised that the pandemic has triggered the most serious economic crisis since World War II. Many economies will not return to their 2019 productivity levels until 2022 at the earliest.<sup>6</sup> A rebound of the epidemic in autumn 2020 increased the uncertainty. The nature of the crisis is unprecedented; beyond the short-term repeated health and economic shock, the long-lasting effects on human capital, productivity and behaviour remain unknown. The COVID crisis has massively accelerated some pre-existing trends, in particular digitalisation. It has shaken the world, setting in motion waves of change with a wide range of possible trajectories.<sup>7</sup>

The COVID-19 pandemic has reached all corners of the earth, including Indonesia. The focus and discussion of the world community and governments refer to overcoming the COVID-19 pandemic and its effects. This focus was exemplified by the data presented by Google, namely during 2020 the search for the word "Coronavirus" ranked first worldwide,<sup>8</sup> meanwhile ranking 6<sup>th</sup> in Indonesia.<sup>9</sup> Various concerns ranging from health, economy, employment, education, religion, and culture are affected by the effects of restrictions on social mobility, designed to prevent the spread of the virus. The impact on these life factors has resulted in changes to the habits of people in general.

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<sup>3</sup> Fei Zhou et.al, "Clinical Course and Risk Factors for Mortality of Adult Inpatients with COVID-19 in Wuhan, China: a Retrospective Cohort Study," *The Lancet* 395, no. 10229 (2020): 1054.

<sup>4</sup> WHO, "Coronavirus," accessed on October 1, 2020, [https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1).

<sup>5</sup> WHO, "Media Statement: Knowing The Risk for COVID-19," accessed on October 1, 2020, <https://www.who.int/indonesia/news/detail/08-03-2020-knowing-the-risk-for-covid-19>.

<sup>6</sup> OECD, *OECD Economic Outlook, Interim Report September 2020* (Paris: OECD Publishing, 2020).

<sup>7</sup> OECD, "Strategic Foresight for the COVID-19 Crisis and Beyond: Using Futures Thinking to Design Better Public Policies," accessed on October 1, 2020, <http://www.oecd.org/coronavirus/policy-responses/strategic-foresight-for-the-covid-19-crisis-and-beyond-using-futures-thinking-to-design-better-public-policies-c3448fa5/>.

<sup>8</sup> Google Trends, "Year in Search 2020 Global," accessed on July 14, 2021, <https://trends.google.com/trends/yis/2020/GLOBAL/>.

<sup>9</sup> *Ibid.*

In the health sector for example, service facilities and health infrastructure have proven the main challenges to treating COVID-19 patients. Various countries, including Indonesia, have been competing to find a vaccine as a solution to control the pandemic. In September 2020 there were 151 COVID-19 vaccine candidates who were in the pre-clinical trial stage and 41 COVID-19 vaccine candidates who had entered the clinical stage.<sup>10</sup> In the economic sector, restrictions on people's mobility have hampered industrial and trade activities. In terms of employment, there have been massive layoffs across the affected industries, reducing manpower to keep companies afloat during a pandemic that knows no time limit. This can be seen from data on layoffs in Indonesia. As of July 2020, 3.5 million workers had been laid off,<sup>11</sup> exactly 3 months after the COVID-19 pandemic was declared a national disaster.<sup>12</sup> COVID-19's exploitation of humans as a medium of transmission has led to a mandate to work from home. As with problems in employment, education, religious and cultural sectors require learning and teaching activities, religious and cultural rituals to be carried out from home.

This research highlights the strong territorial dimensions of the COVID-19 crisis. Subnational governments – regions and municipalities – are on the frontline of crisis management and recovery and confronted by COVID-19's asymmetric health, economic, social and fiscal impact – within countries but also among regions and local areas. For example, the health of populations in some regions is more affected than in others. Large urban areas have been hard hit, but even within them on a more micro-level, deprived areas are more affected than less-deprived ones. Over the past few months, the health impacts have spread towards less-populated regions in some countries. In the United States for instance, the highest increase in the number of deaths occurring in October were in the rural counties not adjacent to metropolitan areas. The various risks vary greatly depending on where one lives. This regionally differentiated impact calls for a territorial approach to policy responses on the health, economic, social, fiscal fronts, and for very strong inter-governmental coordination. Many governments at all levels have reacted quickly, applying a location-based approach to policy responses, and implementing national and subnational measures in response to the COVID-19 crisis.

The COVID-19 crisis has a strong territorial dimension with significant policy implications for managing its consequences. The regional and local impacts of the crisis is highly asymmetric within countries. Some regions, particularly the more

<sup>10</sup> World Health Organization, "Draft Landscape of COVID-19 Candidate Vaccines - 30 September 2020," accessed on July 14, 2021, <https://www.who.int/publications/m/item/draft-landscape-of-covid-19-candidate-vaccines>.

<sup>11</sup> Kompas, "Imbas Corona, Lebih dari 3,5 Juta Pekerja Kena PHK dan Dirumahkan," accessed on July 14, 2021, <https://money.kompas.com/read/2020/08/04/163900726/imb- corona-lebih-dari-3-5-juta-pekerja-kena-phk-dan-dirumahkan?page=all>.

<sup>12</sup> Badan Nasional Penanggulangan Bencana, "Presiden Tetapkan COVID-19 Sebagai Bencana Nasional," accessed on July 14, 2021, <https://bnpb.go.id/berita/presiden-tetapkan-covid19-sebagai-bencana-nasional>.

vulnerable ones, such as deprived urban areas, have been harder hit than others. Certain vulnerable populations, too, have been more affected. In economic terms, the impact of the crisis has varied across regions, at least in the initial stages. Differentiating factors include a region's exposure to trade sectors, exposure to global value chains and specialisation, such as tourism. Subnational governments – regional and municipal – are responsible for critical aspects of containment measures, health care, social services, economic development and public investment, putting them on the frontline of crisis management. Because such responsibilities are shared among various levels of government, coordinated efforts are critical. The COVID-19 pandemic will have short- medium- and long-term effects on territorial development and subnational governmental functioning and finance. One risk is that government responses focus only on the short term. Longer-term priorities must be included in immediate response measures to boost the resilience of regional socio-economic systems.

COVID-19, like all pandemics, requires management of a spatial dimension.<sup>13</sup> By November 2020, it was clear that the impact of the COVID-19 crisis differed markedly not only across countries, but also across regions and municipalities within countries, both in terms of declared cases and related deaths. In the People's Republic of China (hereafter 'China') for example, 83% of confirmed cases were concentrated in Hubei province. In Italy, the country's northern region was hardest hit, and one of the wealthiest regions in Europe, Lombardy, registered the highest number of cases (47% as of November).<sup>14</sup> In France, the regions of Île-de-France and Grand Est were the most affected with 34% and 15% of national cases respectively.<sup>15</sup> In the United States, New York suffered the largest share of federal cases (14.6%), followed by Texas (8%). In Canada, the provinces of Quebec and Ontario accounted for 61% and 31% respectively of total cases as of November.<sup>16</sup> In Chile, Metropolitan Santiago accounted for 70% of cases as of November.<sup>17</sup> In Brazil, Sao Paulo registered 25% of cases as of November.<sup>18</sup> In India, the State of Maharashtra registered 21% of confirmed cases in India, and in Russia, Moscow represented 24% of total cases as of November.

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<sup>13</sup> David McCoy, "What Exactly is the Government's Coronavirus Strategy?", 3 April 2020, Queen Mary University of London, accessed on July 14, 2021, <https://www.qmul.ac.uk/media/news/2020/pr/what-exactly-is-the-governments-coronavirus-strategy.html>.

<sup>14</sup> "Italian Government COVID-19 Data Platform," accessed on July 14, 2021, <http://opendatadpc.maps.arcgis.com/apps/opsdashboard/index.html#/b0c68bce2cce478eac82fe38d4138b1>.

<sup>15</sup> "French Government COVID-19 Data Platform," accessed on July 14, 2021, <https://www.gouvernement.fr/info-coronavirus/carte-et-donnees>.

<sup>16</sup> "Canadian Government COVID-19 Data Platform," accessed on July 14, 2021, <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink>.

<sup>17</sup> Chile Ministry of Health, "Action Plan Coronavirus COVID-19," accessed on July 14, 2021, <https://www.minsal.cl/nuevo-coronavirus-2019-ncov/casos-confirmados-en-chile-Covid-19/>.

<sup>18</sup> "Brazilian Government Covid-19 Data Platform," accessed on July 14, 2021, <https://covid.saude.gov.br/>.

Based on Article 1, paragraph 3, of the 1945 Constitution of the Republic of Indonesia (UUD 1945), Indonesia is a rule of law state. As a rule of law state, Indonesia must have a framework to carry out authority on a legal basis. As such, Indonesia follows international treaties, which have been signed and ratified as national law to facing COVID-19 pandemic, such as International Health Regulations, the WHO Constitution, TRIPs Agreement, etc. Thus, the purpose of this research is to explain the International and national policies that have been adopted in Indonesia to respond to the COVID-19 pandemic.

## II. LAWS AND POLICIES RELEVANT TO HEALTH

### II.A. International Health Regulations

International Health Regulations (IHR) are international legal instruments that have been agreed upon by 196 countries and regulate the rights and obligations of a country in dealing with health emergencies or events that exist in the community and have potential cross-border implications, including toward international trade.<sup>19</sup> In this case, IHR seek a balance between a country's right to protect the health of its people and safeguards against trade activities and cross-border travel by avoiding unnecessarily restrictive policies.<sup>20</sup> From a health perspective, IHR oblige member countries to carry out national capacity-building in terms of routine preventive measures as well as detection and response to health emergencies of international concern.<sup>21</sup> IHR have links to the World Trade Organization (WTO) in terms of trade restrictions in the interest of health by taking into account exigent circumstances.<sup>22</sup>

The IHR have requirements for capacity-building of member states to swiftly identify, report, and respond to potential Public Health Emergencies of International Concern (PHEIC).<sup>23</sup> These terms themselves are legally binding on all members, subject to some technical exceptions or "reservations."<sup>24</sup> In addition, the IHR also give the WHO the authority to collect surveillance data on potential PHEICs at national borders, which are then conveyed to other potentially affected countries by issuing trade and travel recommendations or warnings to control the spread of the threat.<sup>25</sup>

<sup>19</sup> World Health Organization, "International Health Regulations", accessed on 14 July 2021, [https://www.who.int/health-topics/international-health-regulations#tab=tab\\_1](https://www.who.int/health-topics/international-health-regulations#tab=tab_1).

<sup>20</sup> David P. Fidler & Lawrence O. Gostin, "The New International Health Regulations: An Historic Development for International Law and Public Health," *Journal of Law, Medicine & Ethics* 34, no. 1 (2006): 86.

<sup>21</sup> Hucii-chih Niu, "A Comparative Perspective on the International Health Regulations and the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures," *Asian Journal of WTO & International Health Law and Policy* 1, no. 2 (2006): 518.

<sup>22</sup> World Health Organization and World Trade Organization, *WTO Agreements & Public Health: A Joint Study by the WHO and the WTO Secretariat* (Geneva: World Health Organization, 2002).

<sup>23</sup> Kumanan Wilson, Sam Halabi, Lawrence O. Gostin, "The International Health Regulations (2005), The Threat of Populism and the COVID-19 Pandemic," *Global Health* 16, no. 70 (2020): 2.

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

With COVID-19 being declared a pandemic, it shows that the IHR has not been implemented effectively in terms of taking steps to prevent the spread of COVID-19. However, in Indonesia, the implementation of the IHR is still being continuing through the enactment of Law No. 6 of 2018 on Health Quarantine, which limits people's mobility. By reducing mobility, the spread of COVID-19 can be controlled, and the number of available health facilities can be maintained.

## **II.B. WHO Constitution**

The World Health Organization is an international organisation that brings together countries from around the world to discuss global health and take necessary actions to achieve the highest possible levels of health.<sup>26</sup> The WHO constitution is a legal basis as the establishment of WHO which regulates the rights and authorities of the WHO and signatory countries thereto. This constitution is open and can be adopted by all countries in the world, meaning that all countries in the world can become members of the WHO. Article 2 of the WHO Constitution stipulates that to achieve the objectives of the founding of the WHO, the WHO functions, among others, to:

1. Act as an authority that directs and coordinates international Health work;
2. Establish and maintain cooperation with the United Nations, special institutions, and government health administrations;
3. Play a role in assisting governments to govern and strengthen health services on demand;
4. Provide appropriate technical assistance in case of emergency at the request or acceptance of the government;
5. Provide or assist in providing, at the request of the United Nations (UN), health services and facilities for special groups;
6. Establish and maintain administrative and technical services that may be required, including epidemiological and statistical services;
7. Stimulate and advance work to eradicate epidemics, endemics, and other diseases;
8. Promote and cooperate with other specialised agencies where necessary in order to prevent accidental injury;
9. Promote and cooperate with other specialised agencies to improve nutrition, housing, sanitation, recreation, economic or occupational conditions and other aspects of environmental hygiene;

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<sup>26</sup> Eric C. Ip, "The Constitutional Economics of the World Health Organization," *Health Economics, Policy and Law* 16, no. 3 (2021): 11.

10. Promote cooperation among scientific and professional groups that contribute to the advancement of health;
11. Propose conventions, agreements, and regulations, and make recommendations with respect to international health issues and to carry out obligations as assigned to the organisation and consistent with its objectives;
12. Improve maternal and child health and well-being to foster the ability to live harmoniously in a changing environment;
13. To foster activities in the field of mental health, especially in influencing the harmony of human relations;
14. To foster activities in the mental health sector, especially those affecting harmonious human relationships;
15. Promote and conduct research in the field of health;
16. Promote the improvement of teaching and training standards in the health, medical and related professions;
17. Study and report, in collaboration with other specialised agencies where necessary, administrative and social techniques affecting public health and medical care from a preventive and curative point of view, including hospital services and social security;
18. Provide information, advice, and assistance in the health sector;
19. Help develop a universal, informed public on health issues;
20. Establish and revise the international nomenclature of disease, causes of death, and public health practices as necessary;
21. Standardise the necessary diagnostic procedures;
22. Develop, establish and promote international standards with respect to food, biological, pharmaceutical and similar products; and
23. Take all necessary actions to achieve the goals of the Organisation.

In addition, the WHO Constitution also gives responsibilities to member countries as regulated in articles 61-65, including:

- a) Reporting on the steps and progress that have been made to improve the health of their people every year;
- b) Reporting on the steps that have been taken based on the recommendations made by WHO as well as conventions, treaties and regulations;
- c) Submitting to the WHO related laws and regulations, official reports, and important statistical data related to Health and have been published in the country concerned;
- d) Providing statistical and epidemiological reports in a manner to be determined by the Health Assembly; and

- e) Submitting, at the request of the Board, any additional health-related information that may be practicable.

Based on the description above, it can be concluded that the WHO Constitution forms the basis of its functions, duties, and authorities in the role of maintaining the health of the world community. In terms of dealing with outbreaks, the WHO is the only source of legally binding international regulations for responding to pandemics, as well as providing technical assistance and guiding standards for member states.<sup>27</sup> However, in its implementation, the WHO has often been criticised for being late in preventing the occurrence of a pandemics, one of which is the COVID-19 pandemic. This can be seen even though COVID-19 has been declared a pandemic, but the WHO failed to recommend restrictions on trade and travel.<sup>28</sup> However, there are positive things that have been done by the WHO. Among them are in raising the funds to deal with the COVID-19 outbreak, coordinating medical supplies, and developing a COVID-19 vaccine.<sup>29</sup>

### II.C. Law No. 6 of 2018 on Health Quarantine

Indonesian Law No. 6 of 2018 on Health Quarantine is one of the cornerstones of regulations implemented by the Indonesian Government together with local governments in preventing the spread of COVID-19, namely by limiting social mobility. This law is one of the implementations of the IHR that have been established by WHO. The provisions in the law applied by the government are Article 15 paragraph (2)(b), namely Large-Scale Social Restrictions (PSBB). The PSBB provisions themselves are then specifically regulated in the PSBB Policy as stated in Government Regulation (PP) Number 21 of 2020 concerning PSBB in the Context of Accelerated Handling of COVID-19. The implementation of the law through PSBB in Jakarta is not without risk as efforts to reduce the spread exact a high cost to economic interests. Data from the Central Statistics Agency (BPS) of DKI Jakarta Province shows that the Capital's Gross Regional Domestic Product (GRDP) in the second quarter of 2020 fell 8.22% *year on year* (yoy).<sup>30</sup> This April-June achievement fell sharply when compared to January-March 2020 with an increase of 5.06% yoy.<sup>31</sup>

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<sup>27</sup> Lidia Kuznetsova, "COVID-19: The World Community Expects the World Health Organization to Play a Stronger Leadership and Coordination Role in Pandemics Control," *Frontiers in Public Health* 8, no. 470 (2020): 1.

<sup>28</sup> *Ibid.*, 4.

<sup>29</sup> *Ibid.*

<sup>30</sup> Kontan.co.id, "Melihat Dampak PSBB Jakarta Terhadap Ekonomi di Ibu Kota," accessed on July 14, 2021, <https://regional.kontan.co.id/news/melihat-dampak-psbb-jakarta-terhadap-ekonomi-di-ibu-kota?page=all>.

<sup>31</sup> *Ibid.*

## II.D. Law No. 24 of 2007 on Disaster Management

Indonesian Law No. 24 of 2007 on Disaster Management (Law No. 24/2007) governs disaster management in Indonesia. The Law No. 24/2007 declares a disaster status under circumstances stipulated by Government for a certain time based on recommendations from the authorised institution (Article 1 paragraph 19). The Law No. 24/2007 articulates three categories of disaster, specifically natural disasters, non-natural disasters, and social disasters. Cases of Epidemic and plague such as COVID-19 are part of non-natural disasters that are governed by the Law No. 24/2007.<sup>32</sup> The Law No. 24/2007 grants responsibility to the Central Government and Region Governments for the implementation of disaster management. There is no formal procedure to activate the disaster clause but usually it is activated through Presidential Decree.<sup>33</sup> In this case, the disaster stipulation can be seen through Presidential Decree No. 12 of 2020 on the Stipulation of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as National Disasters (Presidential Decree 2020). Aside from the President, regional governors can activate the disaster clause, but only regionally.

## II.E. Hospital Services in Response the Pandemic in Indonesia

Hospital service in Indonesia is governed by Law No. 44 of 2009 on Hospitals (Law No. 44/2009). Based on article 1, paragraph 1, of the Hospitals Law, a hospital is an institution that provides health service plenary for society, consisting of medical treatments and emergency services. During COVID-19, hospitals have become a war front to fight COVID-19. Medical professionals and facilities have been on the front line to fight the virus. The main problem with hospitals, is there is a limited capacity due to the increase of COVID-19 patients. Until December 2020, the bed occupancy rate (BOR) reaches 64,10%, and there were nine provinces in Indonesia that had a BOR above the national rate.<sup>34</sup> Those nine provinces included Jakarta (84%), West Java (83%), Yogyakarta (80%), and Central Kalimantan (79%). However, hospitals In Indonesia could not work independently as the central government and regional governments also have obligations to develop and supervise hospitals in Indonesia to ensure the provision of public health services.<sup>35</sup> In this case, the government and the WHO coordinated medical treatment facilities in Indonesia. This can be seen by the intra-action review (IAR) that that was conducted virtually between the

<sup>32</sup> Badan Nasional Penanggulangan Bencana, "Status Keadaan Tertentu Darurat Bencana Wabah Penyakit Akibat Virus Corona di Indonesia," accessed on August 17, 2021, <https://bnpb.go.id/berita/status-keadaan-tertentu-darurat-bencana-wabah-penyakit-akibat-virus-corona-di-indonesia->.

<sup>33</sup> Fitra Arsil and Qurrata Ayuni, "Model Pengaturan Kedaruratan dan Pilihan Kedaruratan Indonesia dalam Menghadapi Pandemi COVID-19," *Jurnal Hukum & Pembangunan* 50, no. 2 (2020): 433.

<sup>34</sup> Antaranews.com, "Tingkat Pemanfaatan Tempat Tidur RS di Indonesia Capai 64,10%," accessed on August 19, 2021, <https://www.antaranews.com/berita/1917324/tingkat-pemanfaatan-tempat-tidur-rs-di-indonesia-capai-6410-persen>.

<sup>35</sup> Law No. 44/2009, Article 6.

11-14 August 2020.<sup>36</sup> The meeting discussed Indonesia's response to COVID-19, especially command and coordination; risk communication and community empowerment; surveillance, rapid response teams and case investigation; points of entry, international travel, and transport; laboratories; infection control; case management; and operational and logistics support and maintaining essential health services and systems.<sup>37</sup>

### III. LAWS AND POLICIES RELEVANT TO ECONOMY & TRADE

#### III.A. UN-ECOSOC

The United Nations - Economy and Social (UN-ECOSOC) is the heart of the United Nations' system for advancing the three dimensions of economic, social, and environmentally-sustainable development.<sup>38</sup> UN-ECOSOC is a central platform for encouraging debate and innovative thinking, forging consensus on ways forward, and coordinating efforts to achieve internationally agreed goals.<sup>39</sup> UN-ECOSOC is also responsible for follow-up to UN conferences and summits.<sup>40</sup> In 1945, the United Nations Charter designated UN-ECOSOC as one of the six main organs of the United Nations.<sup>41</sup> UN-ECOSOC plays a role in conducting analysis, building consensus on global norms, and advocating for progress. UN-ECOSOC focuses on advancing sustainable development.<sup>42</sup> In carrying out its functions, UN-ECOSOC has legal standing, namely through the International Covenant on Economic, Social and Cultural Rights which has been ratified by Indonesia through Law Number 11 of 2005, concerning Ratification of the International Covenant on UN-ECOSOC.

In 2020, Indonesia was elected as a member of the UN-ECOSOC Council for the period 2021-2023, garnering 186 of 190 valid votes.<sup>43</sup> The majority of votes in favour of Indonesia showed the international community's trust in Indonesia's role in contributing to achieving the goals of the UN-ECOSOC. The election of Indonesia has important implications, namely:<sup>44</sup>

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<sup>36</sup> World Health Organization, "Monitoring the Implementation of Intra-Action Report recommendations for COVID-19 response in Indonesia", accessed on August 20, 2021, <https://www.who.int/indonesia/news/detail/-monitoring-the-implementation-of-intra-action-report-recommendations-for-covid-19-response-in-indonesia>.

<sup>37</sup> *Ibid.*

<sup>38</sup> United Nations, "75<sup>th</sup> Economic and Social Council," accessed on July 14, 2021, <https://www.un.org/ecosoc/en/about-us>.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> United Nations "ECOSOC Brings People and Issues Together to Promote Collective Action for a Sustainable World," accessed on July 14, 2021, <https://www.un.org/ecosoc/en/>.

<sup>43</sup> Ministry of Foreign Affairs Republic of Indonesia, "Indonesia Terpilih sebagai Anggota ECOSOC 2021 – 2023," accessed on July 14, 2021, <https://kemlu.go.id/newyork-un/id/news/7224/indonesia-terpilih-sebagai-anggota-ecosoc-2021-2023>.

<sup>44</sup> Cabinet Secretariat Republic of Indonesia, "Terpilih Jadi Anggota ECOSOC PBB, Indonesia Siap Dorong Pemulihan Global Dalam Kerangka SDGs 2030," accessed on July 14, 2021, <https://setkab.go.id/terpilih-jadi-anggota-ecosoc-pbb-indonesia-siap-dorong-pemulihan-global-dalam-kerangka-sdgs-2030/>.

1. Encouraging efforts for economic and social recovery after the COVID-19 pandemic;
2. Reflection on Indonesia's global leadership in accelerating the achievement of the SDGs; and
3. Promotion of national priority programs.

### III.B. The World Trade Organization

Indonesia ratified the Agreement Establishing the World Trade Organization (WTO) can also referred to as the Agreement for the Establishment of the World Trade Organization through Law No. 7 of 1994. The WTO itself is the only international organisation that deals with matters regulating world trade among member nations.<sup>45</sup> Its main functions include ensuring that trades run smoothly, predictably, and as freely as possible.<sup>46</sup> It is understood that the business community needs predictability and security in the trade environment provided by a multilateral system of rules.<sup>47</sup> The WTO is believed to liberalise trade and open markets thereby opening business opportunities.<sup>48</sup>

In dealing with the COVID-19 outbreak, the WTO has considered measures related to trade and public health issues based on The Agreement on Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT).<sup>49</sup> However, these agreements are only enforceable automatically when WHO declares a disease as a public health emergency of international concern. Specifically, these two agreements only become active when there are excessive trade restrictions imposed during the epidemic, as judicial ambiguity can become an obstacle to appeals made by affected regions.<sup>50</sup> The SPS Agreement stipulates that the WTO members have the right to restrict trade by taking SPS measures necessary to protect human, animal, and/or plant life or health.<sup>51</sup> These measures should only be applied to the extent necessary to achieve their objectives, based on scientific principles and supported by scientific evidence. In situations where relevant scientific evidence is insufficient, members may temporarily adopt SPS measures based on available, relevant information.<sup>52</sup> The TBT Agreement aims to ensure that technical regulations,

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<sup>45</sup> Cambridge University Press, "World Trade Organization," accessed on July 16, 2021, <https://www.cambridge.org/core/societies/world-trade-organization>.

<sup>46</sup> *Ibid.*

<sup>47</sup> Peter Sutherland, "The World Trade Organization at Ten Years," *World Trade Review* 4, no. 3 (2005): 348.

<sup>48</sup> *Ibid.*

<sup>49</sup> Kevin Z. Chen and Rui Mao, "Fire Lines as Fault Lines: Increased Trade Barriers during the COVID-19 Pandemic Further Shatter the Global Food System," *International Society for Plant Pathology* 12, no. 4 (2020): 736.

<sup>50</sup> *Ibid.*

<sup>51</sup> S. Gunaseelan and N. Kesavan, "Business and Economic Recessions in India the COVID-19 Review," *Journal of Xi'an University of Architecture & Technology* 12, no 4 (2020): 61.

<sup>52</sup> *Ibid.*

standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary barriers to trade.<sup>53</sup> At the same time, WTO members retain the right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety.<sup>54</sup> Both the SPS and TBT agreements require WTO members to notify others of new or changing requirements affecting trade, and to respond to requests for information about new or existing measures.<sup>55</sup> Of course, such measures should avoid conflict with WTO principles, namely Most Favoured Nations and National Treatment, which propound the principle of non-discrimination to fellow WTO member countries.<sup>56</sup>

### III.C. TRIPS Agreement

The TRIPs Agreement is an international agreement that has been in force since 1995, produced in the Uruguay Round.<sup>57</sup> The function of the TRIPs Agreement is to harmonise and become an “umbrella” for intellectual property protection previously regulated separately under several international conventions.<sup>58</sup> The nature of the compliance of WTO member countries to comply with the TRIPs Agreement is mandatory in whole (*Full compliance*).<sup>59</sup> (Cameron and Gray 2001) The existence of the TRIPs Agreement is intended to encourage innovation, transfer of technology, knowledge of production, as well as welfare and development.<sup>60</sup> The TRIPs Agreement provides protection for intellectual property in Indonesia, including patent rights. The TRIPs Agreement provides protection to inventors in the form of exclusive rights. With exclusive rights, inventors can own patents, license the patent rights to other parties, and prohibit other parties from using patented technology.

The granting of rigid exclusive rights to inventors can, however, interfere with the distribution of an invention when it is needed, especially when we are discussing the COVID-19 Vaccine. The exclusive rights of patent holders are also often used as tools of exploitation. This has happened in India, which witnessed drug price increases of 52% due to patents which then contributed to the loss of public welfare by US \$ 33 million.<sup>61</sup> Similarly, patents interfered with the distribution of drugs to

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<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

<sup>56</sup> Reza Zaki, *Pemikiran Hukum, Politik, dan Ekonomi Internasional* (Surabaya: Pustaka SAGA, 2018), 123-124

<sup>57</sup> Afrilyanna Purba, et. al., *TRIPs-WTO & Hukum HKI Indonesia* (Jakarta: PT Rineka Cipta, 2005), 1.

<sup>58</sup> Adji Samekto, “Dampak Berlakunya TRIPs Agreement Terhadap Pelaksanaan Konvensi Keanekaragaman Hayati,” *Jurnal Hukum dan Pembangunan* 34, no. 1 (2004): 37.

<sup>59</sup> James Cameron and Kevin R. Gray. “Principles of International Law in the WTO Dispute Settlement Body,” *International and Comparative Law Quarterly* 50, no. 2 (2001): 248.

<sup>60</sup> Peter K. Yu, “The Objectives and Principles of the TRIPs Agreement,” 46 *Houston Law Review* 46, no. 979 (2009): 1046.

<sup>61</sup> Jayashree Watal, “Introducing Product Patents in the Indian Pharmaceutical Sector-Implications for Prices and Welfare,” *World Competition* 20, no. 2 (1996): 19-20.

South Africa intended to treat AIDS.<sup>62</sup> In addition, patent holders often file for cancellation. Of the issuance of mandatory licenses in developing countries.<sup>63</sup> When discussing pharmaceutical products in Indonesia for example, most pharmaceuticals in hospitals are patented rather than generic because patented drugs are more economically profitable.<sup>64</sup>

However, it seems that WTO member countries have agreed to regulate patent rights if an invention is needed in a very urgent situation, namely through Article 31 of the TRIPs Agreement. Through Article 31, a country in an emergency does not need a license from an exclusive rights holder to use patented technology. Article 31 of the TRIPs Agreement has been amended through the Doha Declaration. The Doha Declaration states that use of patented technology based on mandatory licenses cannot be exported to other countries, it becomes permissible. The purpose of the amended stipulation is to help countries that have problems in terms of drug production.<sup>65</sup>

### III.D. Law No. 13 of 2016 on Patents

The main patent regulations in Indonesia are contained in Law No. 13 of 2016 on Patents (Law No. 13/2016). This law regulates objects, subjects, period, rights and obligations, as well as other limitations. In addition to regulating material matters, this Law also regulates formal matters, namely the procedures and procedures for filing patents in Indonesia. In terms of the implementation of patents by the government, Presidential Regulation No. 77 of 2020 on the Procedure of Patent Implementation by the Government regulates patent filings. Indonesia has previously implemented patents for Anti-Retroviral drugs in the context of fighting the HIV/AIDS epidemic. The implementation was regulated in Presidential Decree No. 6 of 2007 on Amendments to Presidential Decree No. 83 of 2004 on the Procedure of Patent Implementation by the Government on Anti-Retroviral Drugs. Of course, under available regulations, the promulgation of the COVID-19 vaccine patent is permissible. Intellectual property law observer, Widyaretna Buenastuti also argues that: "Of course the public interest, especially for public health, must take precedence over the economic rights of vaccine inventors."<sup>66</sup> However, appreciation of the discovery of a vaccine that requires investment, time and effort must be

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<sup>62</sup> Tomi Suryo Utomo, "Pharmaceutical Patent Protection Versus National Drug Policy in South Africa: A Tension between International Standards and Domestic Developmental Policy," *Mimbar Hukum* 19, no. 3 (2007): 420.

<sup>63</sup> Achmad Amri Ichsan, "Analisis Yuridis terhadap Lisensi Wajib dan Pelaksanaan Paten oleh Pemerintah berdasarkan Perjanjian TRIPs," *Jurnal Ilmu Hukum Legal Opinion* 2, no. 1 (2013): 9.

<sup>64</sup> *Ibid.*

<sup>65</sup> Tomi Suryo Utomo, "Implementasi Lisensi Wajib terhadap Produk Obat yang Dipatenkan Pasca Deklarasi Doha," *Jurnal Ilmu Hukum Refleksi Hukum* 23, no.3 (2009): 30-31.

<sup>66</sup> Kliklegal.com, "Dilema Permasalahan Paten COVID-19 dan Kepentingan Publik," accessed on December 31, 2020, <https://kliklegal.com/dilema-permasalahan-paten-covid-19-dan-kepentingan-publik/>.

maintained and implemented, namely through respect for intellectual property rights.

Article 109 paragraph 1(b) of the Law No. 13/2016 explains that the Government can issue patents on its own in Indonesia based on the consideration of very urgent needs benefitting the community. Additionally, in Article 111 of the Law No. 13/2016, it is stated that what is meant in Article 109 paragraph 1(b) includes pharmaceutical products that are expensive, needed to treat diseases that can cause sudden death in large numbers, and/or which cause Public Health Emergency that has worldwide implications.

If we trace the elements one by one, the COVID-19 vaccine would fulfil the elements which are mentioned in Article 109 paragraph 1(b) in conjunction with Article 111 of the Law No. 13/2016. In Article 93 paragraphs (1) and (2) of the Law No. 13/2016, it is stated that the minister may grant a compulsory license to manufacture patented pharmaceutical products or to patented imported products that have yet to be produced in Indonesia, in the context of the treatment of diseases in humans. Article 93 paragraph (3) states that the compulsory license issued by the Minister can also be aimed to export pharmaceutical products for the purpose of treating diseases based on requests from developing or underdeveloped countries.

Licenses issued by the Minister have a limited duration as stated in the mandatory license application.<sup>67</sup> A party that receives a mandate from the government in the form of a compulsory license is considered as an applicant for a compulsory license.<sup>68</sup> This means that the researcher assumes that the period for granting the compulsory license itself will be determined by the government as the party providing the compulsory license. Later, the party receiving the compulsory license may cooperate with other parties either in Indonesia or outside Indonesia,<sup>69</sup> but the compulsory license cannot be transferred to another party except for inheritance.<sup>70</sup> Even though the government provides a compulsory license, the obligation of the Patent Holder to make annual payments is not eliminated, which means that the patent holder still has to pay royalties per the provisions of the legislation.<sup>71</sup> The compulsory license may expire when the period has expired or due to the decision of the Minister on granting the compulsory license being cancelled by order of the Commercial Court.<sup>72</sup> Matters that may invalidate a compulsory license by a commercial court include:<sup>73</sup>

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<sup>67</sup> Indonesia, Law No. 13/2016, Article 97.

<sup>68</sup> *Ibid.*, Article 98.

<sup>69</sup> *Ibid.*, Article 101.

<sup>70</sup> *Ibid.*, Article 102.

<sup>71</sup> *Ibid.*, Article 99.

<sup>72</sup> *Ibid.*, Article 103 para. 1.

<sup>73</sup> *Ibid.*, Article 103 para. 2.

1. The basis given for granting a compulsory license does not exist or is no longer relevant. Such as if the period of granting a mandatory license is given for three years but the COVID-19 pandemic is resolved in only 1.5 years. Therefore, the compulsory license could be cancelled through the commercial court.
2. The Licensee fails to use the compulsory license within 24 months (article 103 paragraph 3). In this case, if the Compulsory License for vaccine production has been granted but the recipient of the compulsory license does not produce or there is no attempt to produce it after 24 months since the compulsory license is granted.
3. The Licensee does not comply with other terms and conditions. In this case, if the recipient of the compulsory license turns out to transfer its implementation activities to another party, the license can be cancelled.

### **III.E. Presidential Regulation No. 77 of 2020 on Procedures for Implementing Patents by the Government**

Presidential Regulation No 77 of 2020 in Article 13 authorises the government to issue patents, including pharmaceutical products, based on very urgent needs for the benefit of the community. Based on the explanation and description above, in Indonesia it is permissible to issue a patent or license without obtaining permission from the patent holder when Indonesia is in a state of national emergency and the implementation of the patent is intended for the public benefit and not for commercialisation. Currently, President Joko Widodo has declared COVID-19 a national disaster through Presidential Decree No. 12 of 2020, so that the implementation of COVID-19 patents without the authority of the patent holder is authorised.

### **III.F. The Regional Comprehensive Economic Partnership (RCEP)**

The Regional Comprehensive Economic Partnership (RCEP) Agreement is an agreement to expand and deepen ASEAN relations with Australia, China, Japan, Korea, and New Zealand.<sup>74</sup> The main objective of the RCEP is to establish economic cooperation that provides for the expansion of regional trade and investment, and contributes to global economic growth and development, by supporting an open, inclusive, and rules-based multilateral trading systems.<sup>75</sup> The RCEP is an international agreement initiated by Indonesia in 2011 and finally acceded to by 10 ASEAN countries and their partners in 2020.<sup>76</sup> The RCEP is the largest trade

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<sup>74</sup> ASEAN, "Summary of Regional Comprehensive Economic Partnership Agreement," accessed on July 16, 2021, <https://asean.org/storage/2020/11/Summary-of-the-RCEP-Agreement.pdf>.

<sup>75</sup> *Ibid.*

<sup>76</sup> Ministry of Trade Republic of Indonesia, "Ditandatangani di Tengah Masa Pandemi COVID-19 RCEP Tumbuhkan

agreement in world history aside from the WTO in terms of total Gross Domestic Product (30.2 Percent); foreign direct investment (29.8 percent); population (29.6 percent); and trade (27.4 percent) which was only slightly below the EU-27 which reached 29.8 percent.<sup>77</sup>

The scope of the RCEP includes 20 Chapters that regulate agreements governing the Trade in goods; provisions of origin of goods; customs procedures and trade facilitation; sanitary and phytosanitary; assessment standards, techniques, and procedures; trade remedies; services trade; telecommunication services; financial services; professional services; human mobility; investment; intellectual property; e-commerce; SMEs; economic and technical cooperation; legal and institutional; and dispute resolution.<sup>78</sup> According to the Directorate General of International Trade, Ministry of Trade of the Republic of Indonesia, the benefits of RCEP for Indonesia itself include:<sup>79</sup>

1. Creating opportunities for Indonesian industry to take advantage of the regional value chain region;
2. Encouraging the improvement of high-quality telecommunications services;
3. Expanding market access and increasing competitiveness for service sector providers and workers in Indonesia;
4. Providing opportunities for Indonesian investors to invest throughout the RCEP area;
5. Setting up better mechanisms in overcoming non-tariff barriers;
6. Providing RCEP opportunities for service providers from RCEP members to provide financial services in Indonesia;
7. Facilitating the improvement of the regulatory environment and business opportunities on all fronts;
8. Encouraging the development of economic capacity and the ability of SMEs in the Region;
9. Providing protection and enforcement of intellectual property in the Area;
10. Regulating e-commerce in order to open access to Indonesian business actors to take advantage of digital trade within the Region; and
11. Expanding the market share of Indonesian export products.

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Harapan Baru di Kawasan,” accessed on July 16, 2021, <https://www.kemendag.go.id/id/newsroom/press-release/ditan-datangani-di-tengah-masa-pandemi-covid-19-rcep-tumbuhkan-harapan-baru-di-kawasan-1>.

<sup>77</sup> *Ibid.* Reza Zaki, *Hukum Perdagangan Internasional* (Jakarta: Prenada Media, 2021), 69.

<sup>78</sup> Directorate of ASEAN Negotiation, Directorate General of International Trade Negotiation Ministry of Trade Republic of Indonesia, “Selayang Pandang RCEP,” accessed on July 16, 2021, [https://ditjenppi.kemendag.go.id/assets/files/publikasi/doc\\_20191215\\_selayang-pandang-rcep.pdf](https://ditjenppi.kemendag.go.id/assets/files/publikasi/doc_20191215_selayang-pandang-rcep.pdf).

<sup>79</sup> *Ibid.*

The RCEP can facilitate economic recovery in Indonesia. This is because RCEP opens opportunities for foreign interests to invest in Indonesia, which in turn can have an impact on job creation. In terms of industry, the presence of developed countries such as Japan and China, which can encourage the transfer of technology for industry in Indonesia, improving goods and services. The impact of RCEP is the ability of Indonesian products to compete with the products and services offered by countries that are more distant than Indonesia.

### III.G. National Logistics Ecosystem (NLE)

The NLE is a logistics ecosystem that harmonises the flow of traffic of goods and international documents from the arrival at the means of transport until the goods' arrival at the warehouse, oriented towards cooperation between government and private agencies, through data exchange, process simplification, elimination of repetition and duplication, and supported by an information technology system that covers all related logistics processes and connects existing logistics systems.<sup>80</sup> The Directorate General of Customs and Excise at the Ministry of Finance applies the National Logistics Ecosystem (NLE) in order to update the customs registration procedures related to the manifest of arrival and departure of transportation means.<sup>81</sup>

The NLE is further regulated by the Minister of Minister of Finance Regulation No. 97/PMK.04/2020 concerning Amendments to Minister of Finance Regulation No.158/PMK.04/2017 concerning Procedures for Submission of Notification of Planned Arrival of Transport Facilities, Manifestation of Arrival of Transport Means and Manifestation of Departure of Transportation Means. Through this system, Customs and Excise tax systems are capable of synchronising data collection on logistics transportation that enters or exits the customs area.<sup>82</sup> NLE facilitates the submission of licensing applications related to the unloading and stockpiling of imported goods in accordance with Article 22 of the Minister of Finance Regulation. It is envisioned that the NLE system will be used to implement the plan for the arrival of transportation facilities (RKSP) which contain commercial goods that are transported or imported by logistics transport by sea, air, and land. In addition to making the system more efficient, NLE also increases revenue through taxes.<sup>83</sup>

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<sup>80</sup> NLE Ecosystem "About," accessed on July 17, 2021, <https://nle.kemenkeu.go.id/portal/#/>.

<sup>81</sup> Katadata.co.id, "Mengenal National Logistic Ecosystem, Sistem Baru Registrasi Pabean," accessed on July 17, 2021, <https://katadata.co.id/muhammadridhoi/berita/5f44da7dc384c/mengenal-national-logistic-ecosystem-sistem-baru-registrasi-pabean>.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

### III.H. Law No. 11 of 2020 on Job Creation

Job Creation was a hotly discussed issue at the beginning of the COVID-19 pandemic in Indonesia, specifically the ratification of Law No. 11 of 2020 on Job Creation or what is often referred to as the Omnibus Law. The Omnibus law revises and/or revokes a series of laws.<sup>84</sup> This concept is modelled on common law countries with Anglo Saxon legal systems such as the United States, Belgium, England and Canada. The concept of the omnibus law offers to fix problems caused by too many and overlapping regulations (over regulation) and overlapping.<sup>85</sup> This ratification had caused controversy among the public, legal experts, especially the workers. The deluge of information has created turmoil in society.<sup>86</sup> However, the government through the Coordinating Minister for Economic Affairs, Airlangga Hartarto, emphasised that the Omnibus Law was intended to create jobs for the community.<sup>87</sup> As is well known, the Omnibus law itself amends 11 clusters of statutory provisions including; Simplification of Licensing, Investment Requirements, Employment, Ease, Empowerment, and Protection of MSMEs, Ease of Business, Research and Innovation Support, Government Administration, Imposition of Sanctions, Land Acquisition, Government Investment and Projects, and Economic Zones.<sup>88</sup>

Although it is often a controversial discussion, the Job Creation Law mitigates the impact of the COVID-19 outbreak. One of them is a tool to restore the post-COVID-19 economy. According to data processed by the Central Statistics Agency, the unemployment rate in August 2019 reached 5.23 percent or 7.1 million people. While in August 2020 the unemployment rate reached 7.07 percent or reached 9.7 million people. Of course, simplification of regulations can invite foreign investors to create jobs in Indonesia, although it is undeniable that simplification of regulations is not the only way to invite investors. At least the existence of the Job Creation Law can provide investment in Indonesia. Considering that currently the government's APBN is focused on handling the COVID-19 pandemic and its impact in the form of threats that endanger the national economy and/or financial system stability, with a focus on health spending, social safety nets, and economic recovery.<sup>89</sup>

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<sup>84</sup> Antoni Putra, "Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi." *Jurnal Legislasi Indonesia* 17. no. 1 (2020): 2.

<sup>85</sup> *Ibid.*

<sup>86</sup> BBC.Com, "The Job Creation Law: More than a thousand people in various provinces were arrested after demonstrations against the omnibus law, the police were accused of being anti-democratic," accessed on July 12, 2021, <https://www.bbc.com/indonesia/indonesia-54445044>.

<sup>87</sup> King Eben Lumbanrau, "The Omnibus Law on Job Creation: Why are office workers 'ignorant' and what are the implications for them?" accessed on July 12, 2021, <https://www.bbc.com/indonesia/indonesia-51661671>.

<sup>88</sup> Mochamad Januar Rizki, "Clusters in the Omnibus Law on Job Creation and Taxation," accessed on July 12, 2021, <https://www.hukumonline.com/berita/baca/lt5df3106c12dc0/klaster-klaster-dalam-ruu-omnibus-law-cipta-lapangan-kerja-dan-perpajakan/>.

<sup>89</sup> Ministry of Finance of the Republic of Indonesia, "Changes in Posture and Details of the 2020 State Budget During the Covid-19 Pandemic," accessed on July 12, 2020, <https://anggaran.kemenkeu.go.id/in/post/change-of-posture-and-details-apbn-2020-in-the-pandemic-covid-19>.

In addition, the Indonesian national budget in 2020, in particular, is mostly based on tax revenues, making the state budget unreliable to support the entire economy in Indonesia. This is because there are various tax relaxation policies that may reduce the state budget revenues in the coming year. This can be seen by the data shown by the Ministry of Finance, namely the 2020 State Revenue Budget, which was originally estimated at Rp.2,233 trillion to become Rp. 1,760 trillion.<sup>90</sup> This state revenue budget consists of tax revenues reaching Rp1,462 trillion, non-tax state revenues amounting to Rp297.75 trillion and grant revenues amounting to Rp498.74 billion.<sup>91</sup> Therefore, inviting foreign investors to support the economy can be said to be a job creation measure. If we relate it to the basic theory of supply and demand, high unemployment also makes labour costs cheaper. Accordingly, investors can be more interested in investing in Indonesia.

### **III.I. Government Regulation in Lieu of Law No. 1 of 2020 on 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 Stability of the Financial System**

The Indonesian government issued Government Regulation in Lieu of Law No. 1 of 2021 on State Financial Policy and Financial System Stability for Handling the COVID-19 Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability. This regulation was issued by the President based on the authority of Article 22 paragraph (1) of the 1945 Constitution. Through this provision, the President stipulated a Government Regulation in lieu of Law in matters of compelling urgency. This Government Regulation In lieu of Law goes through an unusual mechanism process that is appropriate for making laws in general because of the urgency factor that is understandable.

This regulation was issued based on the massive spread of COVID-19 which resulted in casualties, social, economic impacts to the welfare of the community. This Government Regulation in lieu of Law was made as a legal basis so that the government and relevant authorities can take extraordinary action, including increasing the deficit and other measures to maintain financial sector stability.<sup>92</sup> This can be seen in the provisions of Article 27 which provide guarantees to the government that any actions and/or decisions taken in handling the COVID-19 pandemic related to the costs incurred are not state losses even though they have

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<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> Ministry of Communication and Information Republic of Indonesia, "This is the Minister of Finance's explanation regarding the background of Perppu No. 1 of 2020," accessed on July 16, 2021, <https://kominfo.go.id/content/detail/26291/ini-pencepatan-menkeu-lalu-latar-perpu-nomor-1-tahun-2020/0/news>.

resulted in losses or reduction of state finances because they are used for save the economy from the crisis. With this, the policy is immune to lawsuits before the State Administrative Court.<sup>93</sup> In other words, this Government Regulation in lieu of Law provides protection in the form of discretion to public officials in dealing with the COVID-19 pandemic in Indonesia.

In the context of implementing state financial policies, based on Government Regulation in lieu of Law No. 1 of 2020, the Government is authorised to:

1. Set limits on the budget deficit, with the following provisions:
  - a) Exceeding 3% (three percent) of Gross Domestic Product (GDP) during the handling of Corona Virus Disease 2019 (COVID-19) -19) and/or dealing with threats that endanger the national economy and/or financial system stability no later than the end of the 2022 Fiscal Year;
  - b) Beginning Fiscal Year 2023, the amount of the deficit will return to the highest of 3% (three percent) of Gross Domestic Product (GDP); and the
  - c) Adjustment of the amount of the deficit as referred to in number 1 to be as referred to in number 2 is carried out in stages.
2. Make adjustments to the amount of mandatory spending as stipulated in the provisions of the relevant laws and regulations;
3. Perform budget shifts between organisational units, between functions, and/or between programs;
4. Take actions that result in expenditures at the expense of the State Revenue and Expenditure Budget (APBN), for which the budget to finance these expenditures is not yet available or insufficient, and determines the procurement process and method goods/services; and
5. Using a budget sourced from:
  - a) Excess Budget Remaining (SAL);
  - b) Endowment and accumulation of education endowment fund;
  - c) State-controlled funds with certain criteria;
  - d) Funds managed by the Public Service Agency; and/or
  - e) Funds originating from a reduction in State Equity Participation in State-Owned Enterprises (BUMN);
6. Issuing Government Securities and/or State Sharia Securities with a specific purpose, especially in the context of the Corona Virus Disease

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<sup>93</sup> Henry Juliani, "Analisis Yuridis Kebijakan Keuangan Negara dalam Penanganan Pandemi COVID-19 Melalui Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020," *Administrative Law and Governance Journal* 3, no. 2 (2020): 17.

- 2019 (COVID-19) pandemic to be purchased by Bank Indonesia, State-Owned Enterprises (BUMN), corporate investors, and/or retail investors;
7. Determine sources of Budget financing originating from within and/or abroad;
  8. Providing loans to the Deposit Insurance Corporation;
  9. Prioritising the use of budget allocations for certain activities (refocusing), adjustment of allocations, and/or cutting/delaying the distribution of budget transfers to the Regions and Village Funds, with certain criteria; provide grants to Regional Governments; and/or
  10. Simplify the mechanism and simplify documents in the field of state finance.

#### **IV. CONCLUSION**

The onslaught of COVID-19 infections across the world has of course created varying legal responses. Starting from the rearrangement of several international regulations to national laws in every country, Indonesia is no exception. The emergence of several new laws in the COVID-19 pandemic situation is of course to restore conditions as before. The focus of the laws used during the COVID-19 pandemic has focused on the health sector and the economy. So that the involvement of the UN-ECOSOC, WTO, WHO, and RCEP regulations for Indonesia is very important to become a reference for making regulations domestically.

During the COVID-19 pandemic from 2019 to 2020, Indonesia regulated several aspects of the economy including employment, investment, customs, health quarantine, intellectual property, to efforts to restore the national economy. These regulations have had an influence on efforts to recover the national economy, which continues to be suppressed by the increasingly massive threat of the spread of the COVID-19 virus.

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