

## **MEASURING “PUBLIC HEALTH EMERGENCY” IN COVID-19 AND THE EXIGENCY OF INDONESIAN FINANCIAL STATE POLICY AND FINANCIAL SYSTEM STABILITY**

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### **INTRODUCTION**

Corona Virus Disease 2019 (Covid-19) has been changing the living order of people and countries and brings impact to people to live normally in every situation. World Health Organization mentions that “people are living through extraordinary times. The global outbreak of Covid-19 will have an unprecedented”<sup>2</sup>. Thus, in the abnormality situation, every country tries to regulate it into normality. This is a difficult struggle faced by all countries. Covid-19 has categorized as a Pandemic by the World Health Organization.

In its effort to make normality among the abnormality, through any kind of regulations, decisions, real action to society, Government still faces challenges due to its abnormality. The problem of healthy, social, economy and law emerges as a global problem. The United Nation, in its website, convened by the Prime Minister of Canada, H.E. Mr. Justin Trudeau, the Prime Minister of Jamaica, H.E. Mr. Andrew Holness, and UN Secretary-General António Guterres, the virtual event aimed to advance concrete solutions to the development emergency caused by the COVID-19 pandemic, On 28th of May 2020, explains as follows:

The COVID-19 pandemic and the social and economic crisis it triggered, will derail our chances to achieve the 2030 Agenda for Sustainable Development – unless we provide a commensurate global response reaching at least 10 percent of global GDP, respond rapidly, provide support to all countries in need, and build back better for more resilient economies and inclusive societies.<sup>3</sup>

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<sup>2</sup> Available at [www.who.int](http://www.who.int)

<sup>3</sup> Available at <https://www.un.org/en/coronavirus/financing-development>

Covid-19 has an arising challenge on the problem to the 2030 Agenda for Sustainable Development achievement, as long as the mentioned requirements are fulfilled. Further, the United Nations in the Discussion note on Recovering Better for Sustainability shares a thought that:

At the same time, the crisis is accelerating structural economic changes already underway: the unfettered digitalization of the economy; the ascendance of e-commerce over bricks and mortar retail; the transformation of supply chains from being global and just-in-time to more local and regional, resilient and less dependent; and the wholesale restructuring of many heavy-emitter industries.

These big economic changes will have strong social impacts that will need to be addressed and will require a massive reallocation of capital and our recovery policies will have an enormous influence on how that capital is invested. These changes have major impacts on the world of work, the way in which work is organized, as well as in which sectors jobs are created, with massive implications for education and skills. Our recovery policies need to be human-centered and ensure that structural transformations lead to decent work for all.

In the situation of abnormal, all the government needs to come to rescue the life of the nation and their citizen through a proper policy. It needs real action to intervene in the whole aspects that affected by the Covid-19. A set of policies that consist of how to recover the condition soon, including how to prepare life after abnormal. There are so many threats, challenges, and difficulties in the process, but it needs to be done.

As a daily report served to the public, it can be seen the unstable curves of Covid-19 in the whole world. More than 216 countries, areas, and territories are struggling to win the situation and end from the virus, while some still facing the same situation. The number of new cases of Covid-19 globally is still increasing every day. Most countries in the world have reported the development of Covid-19 cases in their territory. Some reports show that there are decreasing cases of Covid-19, but some are not. According to the [worldometers.info](https://worldometers.info), per June 1<sup>st</sup>, 2020, the number of corona virus cases in the world is 6.258.796 cases, with 3,065,128 infected people. The rate of deaths is 12%. This number is still in an uncertain and unstable curve. Some countries have already declared to start new normal phases, while some countries are still struggling with their domestic problems affected by this Covid-19.

The condition in Indonesia is still in high numbers. According to <https://covid19.co.id>, the data of Covid-19 in Indonesia (per June 1<sup>st</sup>, 2020) can be seen as follows:

**(Table 1: Data of Covid-19 in Indonesia, per 1<sup>st</sup> of June 2020)**

Currently confirmed	Currently cured	Deaths
26,940 (= + 467 new cases)	7637 (= +329 people)	1641 ( = + 28 people)

**Note:** data processed from the source

The Distribution map of the Covid-19 data can be seen for the top 5 of the provinces with the high number of Covid-19 below:

**Table 2: Distribution map of the Covid-19 in Indonesia - Top Rank**

Rank Number	Province	Cases
1	Jakarta	7485
2	East Java	4922
3	West Java	2294
4	South Sulawesi	1586
5	Central Java	1417

The Covid-19 Pandemic has been put Indonesia in 3 (three) kinds of conditions/situation, as follows:

- Public Health Emergency based on the Presidential Decree No. 11 of 2020 concerning the Establishment of Corona Virus Disease 2019 (Covid-19) public health emergency

- National Disaster based on the Presidential Decree No. 12 of 2020 concerning Establishment of a non-natural disaster of Corona Virus Disease 2019 (Covid-19) spreading as a national disaster.

- Emergency Forced based on Law Number 2 of 2020 concerning Establishment of the Government Regulations in lieu of Laws Number 1 of 2020 as Law.

Each of the conditions above has different implications since it referred to the different laws.

In order to handle the situation of Covid-19, President released the Financial State Policy and the Financial System Stability based on the law Number 2 of 2020 concerning Establishment of the Government Regulation in Lieu of Law Number 1 of 2020 concerning the Financial State Policy and Financial System Stability for Corona Virus Disease 2019 (Covid-19) Pandemic and/or in order the stability of financial system as the Law. But there is another condition mentioned in this law called "Emergency Forced" (The specific term in Bahasa Indonesia is called as "*kegentingan yang memaksa*"). This law gives the Government to establish the Financial State Policy and Financial System Stability referred to implement the 2020 State Budget. The

Government has allocated an amount of IDR 405.1 Trillion as additional funds in the situation of a public health emergency. The allocation of the funds are for:

- In the health sector, the fund is used to purchase medical devices, improving health facilities, and incentives for medical personnel.
- Social protection which will be spent to increase the benefits of social assistance, free electricity costs, and basic needs support.
- Tax incentives and Stimulus for People's Business Credit (KUR). This allocation will be included in the income tax rate reduction and KUR payments' delaying.
- Other support for national economic recovery

This allocation of additional funds regulated in the Presidential Regulation Number 54 of 2020 concerning "the 2020 amendment of State Budget Posture and Detail". On June 3<sup>rd</sup>, 2020, Minister of Finance, Sri Mulyani, as quoted from *beritasatu.com*, said that there will be revised on the Presidential Regulation Number 54 of 2020. The previous IDR 405.1 T will be revised into IDR 677,2 T.<sup>1</sup>

The use of that additional fund for handling Covid-19 has triggered the discussion on the corruption potentiality that may arise in the implementation of the funds. This paper will give the exposition of the Indonesian Policy on handling the Covid-19, and analyzed it based on the effectivity of its implementation in Indonesian society. In the end, the paper will give suggestions to the potential problems that may still happen.

## **PUBLIC HEALTH EMERGENCY IN INDONESIA**

The awareness of the Government of Indonesia on the Covid-19 spreading was around at the end of February 2020, but it comes to start released an appeal to people to start learning from home, and then followed by work from home activity, worship from home, and many other activities that suggested to be done from home on the middle of March 2020. In the situation of Covid-19, the Government of the Republic of Indonesia implements the Law number 6 of 2018 concerning Health Quarantine (or so-called as health care). This law was made in order to implement complete human development in Indonesia. It needs to guarantee the health protection for the society that spread in big and/or small islands, have a strategic position and located in the track of international trade, and play an important role in the traffic of human and goods. Further, in consideration point number b mentions that the advance of technology on transportation and the free trade era can be a risk to create health problems and new diseases or old diseases but reappear and spreading more faster and potentially bring emergency on public health. When Covid-19 appears in

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<sup>1</sup> Retrieved from <https://www.beritasatu.com/ekonomi/640505/perpres-542020-direvisi-biaya-penanganan-covid19-jadi-rp-6772-triliun>

Indonesia, the government implements this law. Covid-19 then categorized as new diseases.

In Article 1, the Law defines such as follows:

- Health quarantine (health care) is an effort to prevent and to control the outgoing and incoming disease and/or the public health risks which potentially affected public health emergency (vide Art 1 (1))

- Public health emergency is an extraordinary public health incident which marked by the spreading of infectious disease and/or an incident that affected by nuclear radiation, biological pollution, chemical contamination, bio-terrorism, and food that endangered to health, and potentially spread out across regions or across countries (vide Art 1 (2))

- Quarantine is the limitation of conducting activities and/or separation of people who are exposed infectious disease as mentioned in the act even though it is not yet showing any symptoms or who is in the incubation period, and/or separation of container, conveyance, or any items that suspected of being contaminated by people and/or goods that caused disease and other sources of contamination to prevent possible spread to other people and/or items in near the area. (Art 1 (6))

- Isolation is the separation of sick people from healthy people conducted in the health facility to be cured and treated. (vide Art 1 (4))

Based on the definition given by the law above, the Covid-19 prevention program will refer to the process of quarantine in order to cut off the spreading of the disease.

Then on March 31<sup>st</sup>, 2020, President of the Republic of Indonesia established the Presidential Decree Number 11 of 2020 concerning The Establishment of Corona Virus Disease 2019 (Covid-19) Public Health Emergency. This presidential decree was issued to address the extraordinary spreading of Covid-19. It is to be noticed from the increases and expand of cases and/or death cases both across areas and across territories, and further, it is impacted on the aspects of political, economic, social, cultural, national defense, and welfare of Indonesian society. This Presidential Decree Number 11 of 2020 is referred to the Law Number 6 of 2018 concerning Health Quarantine. There are two points regulated in this Presidential Decree.

Point 1, Corona Virus Disease 2019 (Covid-19) has been set as a kind of disease that can cause public health emergencies.

Point 2, establishing Corona Virus Disease 2019 (Covid-19) public health emergency in Indonesia must be followed by the prevention and countermeasures in accordance with the law and regulations.

Form the points mentioned in the Presidential Decree Number 11 of 2020, the Government then takes action based on the existing law as mentioned in Law

Number 6 of 2018. This law on health quarantine (health care) recognizes several quarantine models as mentioned in Article 1 of Law Number 6 of 2018. It can be seen through the table below:

**Table 3: Models of Quarantine in the Law Number 6 of 2018**

type Aspect	Home Quarantine (vide Art 1 (8))	Hospital Quarantine (vide Art 1 (9))	Area Quarantine (vide Art 1 (10))	Large scales of social restriction (Vide Art 1 (11))
Subject/ Object	Occupants in the house	Someone in the hospital	Resident	The specific activity of resident
Place	In the house	At the Hospital	In a specific area, including the entrance	An area
Allegedly of disease infection and/or contamination				
Purpose	To prevent the possibility of disease spread or contaminated			

From those 4 (four) models of quarantine above, the Government of the Republic of Indonesia implements the Large scales of social restriction. Hence, the model of lockdown recognized by the Government of the Republic of Indonesia needs to be implemented seriously.

Central Government and Local Government hand in hand to ensure the process of lockdown implemented effectively. Some areas in Indonesia are still in a struggle to be free from this large scales of social restriction, but some are already declare has already prepared to enter a new normal because there is new case happened in recent several day time. According to Article 10 of Law Number 6 of 2018, the Central Government is responsible to set and to revoke the status of a public health emergency. Law Number 6 of 2018 has been set criminal provisions as mention in Article 90 – 93.

In order to implement the Large Scales of Social Restriction, the Government established Government Regulation Number 21 of 2020 concerning large scales of social restriction in the acceleration of Covid-19 handling. As it can be seen in the consideration of the regulation, this regulation is issued to highlighted the spreading of Covid-19 with the recent cases and/or death cases has been widespread, and it is impacted to the political, economical, social, cultural, national defense and welfare of the Indonesian society. Thus, it needs to take countermeasure action called the large scales of social restriction after considering that the effect of covid-19 has caused “certain circumstance”. Unfortunately, there is no further explanation of what is the meaning of “certain circumstance”. Apparently, this Government Regulation has not merely implemented the Law on Health Quarantine but also referred to the others exist law which never been mentioned before in the Presidential Decree Number 11 of 2020. That other existing law:



- Law Number 4 of 1984 concerning Infectious Disease Plagues
- Law Number 24 of 2007 concerning Disaster Countermeasures

Both of those Law Number 4 of 1984 and Law Number 24 of 2007 did not recognize large scales of social restriction. It means this Government Regulation should be understood as a regulation to be used to countermeasure the Covid-19 as a disease that caused public health quarantine, infectious disease plague, and disaster. As it is mention in Article 2 of Government Regulation Number 21 of 2020, the Large scales of social restriction implementation shall be meet to 2 (four) criteria, as following:

- a. The number of recent cases and/or death cases affected by the disease are increasing and significantly and speedily spread out to some areas; and
- b. There is a relationship between epidemiologists and a similar event in the area or other countries.

Regulation of Minister of Health of the Republic of Indonesia as the derivative regulation then regulates the mechanism for Governor or Regent or Mayor to request to implement large scales of social restriction. Through Article 4, the request must be accompanied by the data of:

- An increase in the number of cases over time, with the data of epidemiologist curve
- A spread of cases over time
- Local transmission incidents

The Large scales of social restriction are including the activities of:

- a. School and workplace closed off
- b. Religious activities restriction
- c. Activities in public places or facilities restriction (vide Article 4 (1))

Eva Achjani Zulfa (2020) gives comments on the implementation of large scales of social restriction that the Government only recognized the formal sector of workers that can do work from home, but the informal sectors are ignored. From the fact, there are only formal sectors that can work from home. The Government needs to notice to give the same protection to the informal worker.

#### **NON-NATURAL DISASTER OF CORONA VIRUS DISEASE 2019 (COVID-19) SPREADING AS NATIONAL DISASTER**

In the earlier discourses on the effort of the Government of the Republic of Indonesia in handling the rapid spreading of Covid-19 in Indonesia, the Chairman of the Covid-19 tasks force, Doni Monardo, said that there are 3 (three) existing law that will be referred by Government, that Law Number 24 of 2007 concerning Disaster Countermeasure, Law Number 6 of 2018 concerning Health Quarantine, and the Government Regulations in Lieu of Laws Number 23 of 1959 concerning the

determination of the status of a dangerous condition.<sup>1</sup> On the same day, President Jokowi explained that the policy on the social restriction to prevent the Corona Virus Disease 2019 (Covid-19) is needed to be implemented in the huge scales. Thus it needs to accompany by the civil emergency policy.<sup>2</sup>

On April 13<sup>th</sup>, 2020, through Presidential Decree Number 12 of 2020, President announced that Indonesia is in the National Disaster caused by the non-natural disaster Corona Virus Disease 2019. This Presidential Decree referred to the Law Number 4 of 1984 concerning Infectious Disease Plague, and the Law Number 24 of 2007 concerning Disaster Countermeasures.

The Presidential Decree Number 11 of 2020 and Presidential Decree Number 12 of 2020 are different, but it should be completed one to each other. It can be shown through the table below:

**Table 4: Emergency Status of Covid -19 in Indonesia Under the Presidential Decree Number 11 of 2020 and Number 12 of 2020**

	Public Health Emergency	Disaster Emergency
Regulation	Presidential Decree Number 11 of 2020	Presidential Decree Number 12 of 2020
Sources of referral law	Law Number 6 of 2018 concerning Health Quarantine	- Law Number 4 of 1984 concerning Infectious Disease Plague - Law Number 24 of 2007 concerning Disaster Countermeasure
Strengthened Point of view	The existence of Covid-19 as a disease that can harm public health.	The rapid and widespread of Covid-19 seen as a national disaster
Responsible Focal Point	Covid-19 Task Force as appointed by the Presidential Decree Number 7 of 2020 as amended by the Presidential Decree Number 9 of 2020	

Since both presidential decrees referred to different sources of law, it brings different impacts. Through Law Number 6 of 2018, the policy to implement large scales of social restriction will be decided by the Minister of Health after considering the request from the head of local government, accompanied by the data as requested. But under Law Number 4 of 1984, there are several countermeasures effort as mention in Article 5 (1), such as a. epidemiologist investigation; b. examination, medication, care, and patient isolation, including quarantine action; c. prevention and thickening; d. disease source destroys; e. Corpses patient infected by the plague; f. Public Dissemination; g. and other countermeasures effort. The responsible person under this law is the Minister of health.

<sup>1</sup> <https://nasionalKompas.com>, retrieved date: May 2<sup>nd</sup>, 2020

<sup>2</sup> <https://nasionalKompas.com>, retrieved date: May 2<sup>nd</sup>, 2020



Under Law Number 24 of 2007 concerning Disaster Countermeasures, the disaster countermeasure defined as a set of activities that conducted as an effort to annul and/or reduce the threat of disaster. A set of activities can include Preparedness; early warning; mitigation; disaster emergency response; rehabilitation; reconstruction; recovery; and prevention of disaster. For this purpose, the Central Government and Local Government are responsible to take action in the disaster countermeasure (vide Article 5). The determination of the disaster status both at the national level and local level shall accommodate indicators as follows:

- a. Number of victims
- b. Property loss
- c. Facilities and infrastructure damage
- d. Coverage of the area affected by disaster
- e. The Social and economy impact that caused (vide Article 7 (2))

The Article 7 (1) and Article 9 mention a similar authority between the Central Government and Local Government, but local government area coverage is in their own areas. According to Article 10, The Government appoints the Disaster Countermeasure National Agency in order to handle the issues.

After understanding all the explanations, it can emphasize the real problems in Covid-19 handling will come if each agency did not hand in hand to handle the situation, while now Indonesia is in public health emergency and disaster emergency. This assessment comes since both regulations which determination of the emergency status of Indonesia use the referral law, but it is actually a different meaning and scope of implementation. Each of law has a juridical implication.

Regarding the condition of the emergency status of Indonesia, the rate of covid-19 is still high. (see table 1 & table 2 above). It means the Government needs to assess in terms of ineffective implementation of large scales of social restriction. Inconsistency in the implementation of large scales of social restriction regulation, the lack of coordination amongst responsible agencies both at the national and local levels, low legal awareness, and obedience of people caused the condition in Indonesia due to Covid-19 are remaining high.

#### **FINANCIAL STATE POLICY AND THE FINANCIAL SYSTEM STABILITY'S EXIGENCY**

On the same day when Indonesian status has determined as public health emergencies, the Government releases the Government Regulations in lieu of Laws Number 1 of 2020 concerning Financial State Policy and Financial System Stability to handling pandemic Corona Virus Disease 2019 (Covid-19) and/or in order to face a threat that endangering the national economy and/or financial system stability. On

the 16<sup>th</sup> of May 2020, this Government Regulations in lieu of Laws has established as Law through Law Number 2 of 2020. Through this law, Indonesia is called itself as in “Emergency Forced”, and it gives authority to the President to establish this Government Regulations in lieu of laws as arranged in Article 22 (1) of the 1945 Constitutions of the Republic of Indonesia. The consideration on an establishment that emergency forced explain as follows:

a. The spreading of Covid-19 that has been established by World Health Organization as a Pandemic in majority countries, including Indonesia, shows the increasing from time to time, and bring the loss (both soul and finance) and it is impacted to the aspect of social, economical, and welfare of society;

b. The implication of Pandemic brings impact to many things such as the slow growth of the national economy, the decrease of state revenue, the increased on state spend and financing costs. Based on this consideration, the Government needs to save health and national economic.

c. The implication of pandemic brings impact to the deterioration of the domestic economic activity. Thus it needs to be mitigated together by the Government and The Committee of Financial System Stability to do any forward looking in financial sector stability maintenance.

Government and related agencies need to take immediately extra ordinary action in order to saving the national economic and financial system stability through various relaxation related to implementation of the state budget, especially in the budget increases for health, cost for social safety net, and the economy recovery. This budget will be used to strengthen the authority of all agencies in financial sector.

From above consideration, the Government of the Republic of Indonesia actually straight forward says that Indonesia is in “Emergency Forced” situation, so that by the authority of this Government and the related agencies can do action to saving the national economic, and maintain the financial system stability. The authority that given to the Government and related agencies must be used carefully. It needs to use a framework of thinking that the money is “State Financial” that has implication on Anti corruption precautionary, and must be accordance to the law and regulations on State Financial.

Aris Irawan (2020) addresses critics to the enactment of this law in this situation of Covid-19. It is related to the spirit of corruption eradication. Since this law “omit” corruption criminal act in a crisis condition. Through this law, there was an effort to delete the criminal responsibility of offender in “certain condition” as mentioned in Article 2 (2) of Law Number 31 of 1999 as amended by Law Number 20 of 2020 concerning Prevention and Eradication of Corruption.

According to Article 1 (3) of the Law Number 2 of 2020, this State Budget implementation for

1. Covid-19 Pandemic handling;

2. Face threat that can endanger the national economic and/or financial system stability, it needs to establish a Financial State Policy and the Financial System Stability.

As an allocation of additional funds of State Budget explained in the introduction of this paper, then Government and the Committee shall be really careful in allocate and use it. The condition created by this Pandemic has put an “emergency” situation to the implementation of the State Budget. But since Indonesia has also implemented so many laws in determining position as emergencies under various laws, it needs to be careful. Under the Law on Anti Corruption, there is still a provision about “certain circumstances” that can bring a capital punishment if offender conducted corruption in that certain circumstance. In the elucidation of Article 2 (2), certain circumstances are including a condition where State is in dangerous situation, national natural disaster, repetition of corruption act, or when State is in the crisis of economic and monetary. Further, under the Article 2 of the Law on anti Corruption, the offender will be punished with 1/3 higher from the article that charged to him/her if offenders do corruption under circumstance. Since a State Budget is a part of State Finance, thus there will be other aspects that should be collaborated. The aspect of Anti Corruption according to the Law Number 31 of 1999 as amended by the Law Number 20 of 2020 and the Aspect of State Financial according to the Law Number 17 of 2003. Hernold Ferry Makawimbang (2015) gives an analysis that the prevention on detrimental of State Finance action is a solution to press corruption act ad acceleration on embodiment of State aims. Thus, the covid-19 handling measurement must be accordance to the others law. The supervision and prudent to consuming the allocated state budget, and public participation are important to be operated in this Covid-19 handling.

Other problem arise from the Law Number 2 of 2020 is what it state in the Article 27. This article is unclear and can be misused as “immunity” for a person who should have criminal responsibility. Article 27 regulates:

The cost that have been issued by the Government and/or agencies member of Committee on Financial System Stability in order of to implementing the policy on state revenue including the policy on tax, policy on state budgeting (and also local budgeting), policy on financing, policy on financial system stability, and national economy recovery program, are a part of economic costs to saving economic condition from crisis and it is not a part of State Loss.

The Law Number 2 of 2020 is in the grey area whether it is purposed to the handling of covid-19 or only to regulate state economy problems, or as an anticipation

effort for the emergency forced condition that happened affected by Covid-19. But since this regulation on the specific State Budget for covid-19 is part of State Finance, thus it needs to accordance to the other existing law such as the Law on Anti corruption and the Law on State Financial.

If it can be seen from the number of funds that allocated for the Covid-19 handling, it can be vulnerable if only think that funds will be use well without clear purpose. It just need to learn from previous cases that ever happened in Indonesia as public known as Mega Scandals cases of BLBI and Century Bank. Thus Corruption Eradication Commission must give supervision in the implementation of this funds allocated fro, State Budget for Covid-19 and economy recovery.

The condition of emergency shall not discharged from criminal responsibility when the offender conducted act against the law. The subject on the Law Number 2 of 2020 cannot use this Article 27 when their act has cause state loss because it is not following the guidelines. Those specific people who can have immunity to be discharged from the implementation of criminal responsibility.

As it is re-statement, that the condition affected by Covid-19 is an emergency condition, thus it needs special treatment because the normal law can be ruled out. But in terms there is criminal act happened, then the criminal law should be still implemented but under the "emergency" situation. In the context of "emergency" or "*noodtoestand*", the Article 48 of Indonesian Penal Code can be operated by considering subsidiary principle and proportional principle.

Based on that situation, the Article 27 of The Law Number 2 of 2020 should not needed since the limitation of the corruption law implementation in the emergency situation can still exist. In the doctrine based on the previous Supreme court decisions, there are 3 (three) indicators whether a case is corruption or not, as following below:

- The states is not disadvantaged
- The defendant is not benefited
- The interests of the people (community) are served

Anyhow in the context of implementation of this State Financial Policy and the Financial System Stability, it needs to be more supervision, and including the public participation and transparency. However, in a situation of emergency the law must be fully implemented (all the laws that related). There is only a hope that there will be no corruption in the process, both as what Jennifer Bussel quote from Rose-Ackermann (1999) as Petty and Grand Corruption, or quote form Nilekani (2003) as Retail and wholesale Corruption. This abnormality situation shall be guarded from the possibility of people to conduct any kinds of activity against the law.

## CONCLUSION AND SUGGESTION

Covid-19 as a pandemic has bring new approach in conducting everything, and it is including what happen in Indonesia. After Indonesia announce the emergency situation in Indonesia, the legal order should created. The Law that has been regulated, The Large scales of social restriction that has been implemented, and State Budget that has been allocated for Covid-19 should be consistently implemented. The public health emergency and disaster emergency seems did not impacted well to the society. It could be affected by inconsistency of the regulation implementation. Thus, it needs to be assessed and try to find the best method to fight against covid-19.

As it is notice, it is important to take another directly impact effort in this situation because the life of people should be the priotritized to be protected, but without conduct any action against the law. It has to followed by the legal awareness and legal compliance of society to obey any reguation given by the Government with good faith.

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# LAW ON THE STATE OF EMERGENCY

(INTERNATIONAL CONFERENCE PROCEEDINGS)

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(KỶ YẾU HỘI THẢO QUỐC TẾ)

(Sách tham khảo)



NHÀ XUẤT BẢN HỒNG ĐỨC



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## PREFACE

States of emergency are regulated in international law as well as in the laws of domestic jurisdictions around the world. Emergency is an important matter since it is closely related to national security, social order and safety, public health, social-economic development, and human rights. The intersection of these factors also makes the regulation of states of emergency a complicated issue. It is not surprising that there are many debates and a variety of approaches, theories and practices relating to emergencies and emergency laws. At this time, because of the COVID-19 pandemic, many states have adopted emergency measures to respond to many challenges to public health, economy, and governance.

Against this background, on June 16-17, 2020, the Master's Program in Law on Human Rights, School of Law, Vietnam National University, Hanoi and Asian Law Centre, Melbourne Law School, University of Melbourne, in collaboration with the Institute for Legislative Studies under the Standing Committee of the National Assembly of Vietnam, co-hosted the International Conference on "Law of the State of Emergency".

The objectives of the conference were to provide an open forum for scholars to discuss both theoretical and practical aspects of emergency laws, to gather information about emergency laws in many different jurisdictions and how they have been implemented, as well as to discuss similarities and differences between them. We discussed the following important questions:

1. What should be the substantive and procedural requirements for declaration of a state of emergency?
2. What are the appropriate limits to the use of emergency powers, particularly protecting the human rights commitments of states?
3. What types of mechanisms can or should be in place to control abuse of power or other negative impacts on citizens during a state of emergency?
4. How do the experiences of different jurisdictions differ and what lessons can be learnt?

More than 30 papers are included in this book of Conference proceedings. They are grouped into papers written in Vietnamese, English, and other: with one paper in Japanese. Within that they are grouped into 5 thematic discussion topics:

1. legislation/regulations;

2. human rights;
3. criminal justice/martial law/emergency;
4. rule of law/accountability; and
5. economy/labour/health.

Through these papers, we have built a fairly comprehensive picture of this field. However, because of the breadth and complexity of the issues relating to states of emergency, there are certainly still many aspects and gaps that require further consideration and study. We hope to receive sincere comments from readers to be able to continue our work of organizing further research on those aspects requiring further study in the future.

We would like to thank the participants for their excellent contributions to both the workshop and to this publication and acknowledge the efforts of participants, authors, members of the Organising Committee, reviewers, the Selection Committee, and the Editorial Board in making this conference and the publication such a great success.

**Hanoi, September 2020**

**The Workshop Organising Committee and Editorial Board**

## LỜI MỞ ĐẦU

Tình trạng khẩn cấp là vấn đề được ghi nhận trong pháp luật quốc tế cũng như pháp luật của các quốc gia trên thế giới. Pháp luật về tình trạng khẩn cấp quan trọng bởi vì chế định pháp luật này liên quan chặt chẽ với các vấn đề an ninh quốc gia, trật tự an toàn xã hội, sức khỏe cộng đồng, sự phát triển kinh tế, xã hội cũng như các quyền con người, quyền công dân. Đây cũng là một vấn đề phức tạp, còn nhiều tranh luận về lý thuyết cũng như thực tiễn áp dụng pháp luật về tình trạng khẩn cấp. Tại thời điểm này, nhiều quốc gia cũng đã phải ban hành nhiều biện pháp khẩn cấp để giải quyết các vấn đề, thách thức đối với sức khỏe cộng đồng, nền kinh tế và quản trị gây ra bởi đại dịch Covid-19.

Trong bối cảnh đó, vào các ngày 16-17/6/2020, trong khuôn khổ Chương trình thạc sĩ “Pháp luật về Quyền con người”, Khoa Luật, Đại học Quốc gia Hà Nội và Trung tâm pháp luật Châu Á, Trường Luật Melbourne, Đại học Melbourne, cùng với sự phối hợp của Viện Nghiên cứu lập pháp, Ủy ban thường vụ Quốc hội, đồng tổ chức Hội thảo quốc tế về chủ đề “Pháp luật về tình trạng khẩn cấp”.

Mục tiêu của hội thảo này là cung cấp một diễn đàn mở cho các học giả thảo luận cả về khía cạnh lý luận và thực tiễn của pháp luật về tình trạng khẩn cấp, thu thập thông tin về pháp luật về tình trạng khẩn cấp ở nhiều quốc gia khác nhau, và thảo luận về những điểm giống và khác nhau giữa chúng. Hội thảo đã tập trung thảo luận các vấn đề chính sau đây:

1. Các yêu cầu về cơ bản và thủ tục để tuyên bố tình trạng khẩn cấp là gì?
2. Các giới hạn thích hợp đối với việc sử dụng quyền hạn khẩn cấp, đặc biệt là bảo vệ các cam kết nhân quyền của các quốc gia là gì?
3. Những loại cơ chế nào có thể hoặc cần có để kiểm soát sự lạm quyền hoặc các tác động tiêu cực khác đối với công dân trong tình trạng khẩn cấp?
4. Kinh nghiệm của các quốc gia khác nhau như thế nào và có thể rút ra bài học gì?

Hội thảo tiếp nhận được tổng cộng hơn 30 bài viết. Cuốn Kỷ yếu hội thảo sắp xếp theo thứ tự các bài tiếng Việt, tiếng Anh và ngôn ngữ khác (1 bài tiếng Nhật). Các bài viết được nhóm theo 5 chủ đề thảo luận: lập pháp/quy định; quyền con người; tư pháp hình sự/thiết quân luật, khẩn cấp; pháp quyền/trách nhiệm giải trình; và kinh

tế/việc làm/sức khỏe. Nhìn chung, thông qua các bài viết, có thể thấy một bức tranh khá toàn diện về lĩnh vực này. Mặc dù vậy, do đây là những vấn đề rất rộng và phức tạp, chắc chắn vẫn còn những khía cạnh chưa được đề cập hoặc đã được đề cập trong sách nhưng chưa thấu đáo. Chúng tôi mong nhận được sự góp ý chân tình của độc giả để có thể tiếp tục tổ chức nghiên cứu sâu hơn về những khía cạnh đó trong thời gian tới.

Chúng tôi trân trọng cảm ơn các chuyên gia, các nhà khoa học và thực tiễn đã đóng góp các bài viết cho Hội thảo. Chúng tôi cũng gửi lời cảm ơn chân thành tới các quý vị đại biểu tham gia, các tác giả, các phản biện, thành viên Ban tổ chức, hội đồng tuyển chọn, Ban biên tập đã đóng góp cho sự thành công của Hội thảo cũng như cuốn Kỷ yếu này.

**Hà Nội, tháng 9/2020**

**Ban tổ chức Hội thảo và Ban biên tập Kỷ yếu Hội thảo**

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**(INTERNATIONAL CONFERENCE PROCEEDINGS)**  
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**Asian Law Centre**  
Melbourne Law School



**School of Law**  
Vietnam National University, Hanoi

# LAW ON THE STATE OF EMERGENCY

(INTERNATIONAL CONFERENCE PROCEEDINGS)

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