

Conference Paper

The State of Emergency in Indonesia. A Great Lesson from the Covid-19 Pandemic

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ORCIDSonya Claudia Siwu: <https://orcid.org/0000-0001-6018-6597>Rofi Aulia Rahman: <https://orcid.org/0000-00002-7245-9457>**Abstract.**

The Covid-19 pandemic is interpreted by the President as a public health emergency (KEPPRES No. 12 of 2020). None of those declarations refers to either Article 12 or Article 22 of the 1945 Constitution of the Republic of Indonesia, although the situation (de facto) meets all the criteria of a state of emergency. On behalf of justice, normal law shall be applied in a normal situation, while in an abnormal situation, an abnormal law shall be applied. Regarding that issue, this paper investigates these three questions: i) why is the state of emergency not applied in the time of Covid-19? ii) how to measure the scale of the emergency of Covid-19 pandemic from the perspective of the state of emergency? iii) how should the law of the state of emergency in Indonesia overcome the situation in the future? These questions would be discussed on the level of legal philosophy using legal politics approach, statutory approach, conceptual approach, theoretical approach, and comparative approach. The main principle is *solus populi suprema lex*. It should be implemented properly. The results of this study indicate and explain that the state emergency law must adhere to the concept of people's security is state security. In addition, state emergency laws must be anticipatory to new and very diverse developments and forms of danger.

Keywords: state of emergency, political legal dimension, future legal framework, legal reform

1. INTRODUCTION

The state may be in an emergency situation. Emergency as a doctrine is the doctrine of sudden danger, which is understood as a principle that justifies a person to take action outside the standard / inappropriate / out of the ordinary for a reasonable reason that is when he encounters a situation where suddenly or urgently it is necessary. According to Venkat Iyer, when the country is in an emergency situation, the necessity doctrine applies.

Thomas Jefferson argued that when a country is in danger, it is the highest obligation to enforce the law of necessity, namely the law of self-defense, the law to save the country.[1] The law of necessity in question is state emergency law that is enforced when the country is in an emergency situation with the aim of bringing the country's

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situation back to normal.[2] State emergency law is certainly different from the law that applies when the country is in a normal situation. Krabbe argues that when the country is in an emergency situation, the effort that needs to be taken is the application of extraordinary laws [3]. Thus it can be understood that when the country is in an emergency situation, all extraordinary actions are justified to be carried out with the aim of preventing, overcoming the threat of danger, or the danger itself with a view to overcoming the impact of the emergency situation and to restore the country's condition to normal. as before.

On January 30, 2020, the Director General of the World Health Organization (WHO) announced the status of a global pandemic to deal with the Covid-19 pandemic. WHO declared the status of Public Health Emergency of International Concern (PHEIC) against the transmission of Covid-19. WHO recommends all countries to anticipate and stop the spread of Covid-19 by contact tracing and social distancing. However, to deal with the outbreak, which has entered the level of a pandemic, not all countries enforce state emergency laws to deal with the Covid-19 pandemic.

In Indonesia, facing the emergency of the Covid-19 pandemic, the President stipulates and enforces four policies: a) Presidential Decree No. 11 of 2020 concerning the Determination of Public Health Emergency of Corona Virus Disease 2019 (Covid-19) (KEPPRES No. 11 of 2020), which was stipulated with reference to Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia and Law Number 6 of 2018 concerning Health Quarantine (Law No. 6 of 2018); b) Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions (PSBB) in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19) which refers to Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases (Law No. 4/1984), as well as Law no. 6 of 2018; c) Government Regulation in Lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic and/or in Facing Threats Endangering the National Economy and/or Financial System Stability (PERPPU No. 1 of 2020); d) Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Corona Virus Disease (Covid-19) as National Disasters (KEPPRES No. 12 of 2020). This Presidential Decree refers to Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Law no. 4 of 1984 concerning Outbreaks of Infectious Diseases, and Law Number 24 of 2007 concerning Disaster Management (Law No. 24 of 2007). d) Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Corona Virus Disease (Covid-19) as National Disasters (KEPPRES No. 12 of 2020). This

Presidential Decree refers to Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Law no. 4 of 1984 concerning Outbreaks of Infectious Diseases, and Law Number 24 of 2007 concerning Disaster Management (Law No. 24 of 2007). d) Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters Spreading Corona Virus Disease (Covid-19) as National Disasters (KEPPRES No. 12 of 2020). This Presidential Decree refers to Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Law no. 4 of 1984 concerning Outbreaks of Infectious Diseases, and Law Number 24 of 2007 concerning Disaster Management (Law No. 24 of 2007).

Even though during the Covid-19 pandemic in Indonesia, the number of victims who fell was very large at the national level, however, if one examines the four policies of the President mentioned above, it appears that the President does not interpret the Covid-19 pandemic as an emergency situation in the sense of a state emergency. For a democratic state of law, the implementation of state emergency law is indeed a decision that is not easy and even a dilemma. In a country with a democratic political system, guaranteeing human rights is one of the main elements. Meanwhile, when the country is in an emergency situation, the security of the country is the main priority.

In Indonesia, the legal basis for state emergency law is regulated in the constitution, namely Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia. Based on these two articles, in Indonesia, we do not use the term state emergency, but there are two legal terminology, namely the state of danger and matters of coercive urgency. Furthermore, the two articles also stipulate that the President is the highest emergency authority who has special authority called prerogatives in terms of assessing and then determining state emergency law in order to face threats and overcome state emergencies.

Article 12 of the 1945 Constitution of the Republic of Indonesia stipulates that the President has the authority to declare a state of danger with the conditions and consequences of a state of danger regulated by law. The law in question and which is still in force today is the Law on Dangerous Conditions Number 23 of 1959 concerning Hazardous Conditions (UUKB No. 23 of 1959). Meanwhile, Article 22 of the 1945 Constitution of the Republic of Indonesia stipulates that the President has the authority to enact a Government Regulation in Lieu of Law (PERPPU) when by the President, the state is in a situation defined in terms of a compelling urgency. The PERPPU is tested by the DPR at the next session. If the PERPPU is approved by the DPR, then the PERPPU can be enforced as a law. However, if the PERPPU is rejected by the DPR, the PERPPU will be revoked. In the development of constitutional dynamics in Indonesia,

PERPPU is no longer tested by the DPR but also by the Constitutional Court. Through the Constitutional Court's Decision Number 138/PUU-VII/2009, matters of urgency that force is interpreted as a legal emergency.

Based on the description of the background above, this paper will investigate these three questions: i) why, in Indonesia, is not the law of the state of emergency applied in time of the Covid-19 pandemic? ; ii) how to measure the scale of the emergency of Covid-19 pandemic from the perspective of state of emergency; iii) how should the state of emergency in Indonesia overcome all kinds of state of emergency that possible emerge in the future?

2. METHODOLOGY/MATERIALS

The discussion in this article is a juridical normative study of legal science at the level of legal philosophy. The starting point of the discussion in this article is starting from the provisions in the legislation [4]. Normative legal research is conducted to find answers that are prescriptive in the form of solutions to existing legal issues. The prescriptive answer obtained will remain an answer that can be discussed further [5]. This article will discuss the questions posed from the ontology, epistemology and axiology aspects related to emergency law that applies during the Covid-19 pandemic.

3. RESULTS AND DISCUSSIONS

3.1. The Emergency Law in Indonesia during the Covid-19 Pandemic.

The term emergency, according to a general understanding from the point of view of linguistics, can be defined as: a) unexpected difficult (difficult) conditions (danger, hunger, etc.) that require immediate response; b) forced circumstances; c) temporary state. [6] Based on this understanding, in Indonesia other than UUKB no. 23 of 1959, there are several laws in which it regulates emergencies. The laws in question are:

1. Law No. 24 of 2007 concerning Disaster Management (Law No. 24 of 2007);
2. Law No. 7 of 2012 concerning Social Conflict (Law No. 7 of 2012);
3. Law Number 9 of 2016 concerning Prevention of Financial System Crisis Handling (Law No. 9 of 2016);
4. Law Number 6 of 2018 concerning Health Quarantine (Law No. 6 of 2016).

Observing the contents of the four laws above, even though all four contain their respective emergency concepts, which are similar to UUKB no. 23 of 1959, but the four of them did not use Article 12 or Article 22 of the 1945 Constitution of the Republic of Indonesia in their preamble as well as UUKB no. 23 of 1959. Thus, the entire law referred to above is not an emergency concept, as is the concept of an emergency in a state of danger, nor is it an emergency in terms of a compelling urgency. Thus the concept of emergency from the four laws above in addition to UUKB no. 23 of 1959 is an emergency in a country that is under normal circumstances not in danger or in danger. and the state is not in a situation of compelling urgency.

The Covid-19 pandemic, of course, meets the criteria of an emergency. At the beginning of this outbreak in Indonesia, the government was planning to enact UUKB no. 23 of 1959 by setting the level of emergency referred to at the level of civil emergency because the conditions have been met to be considered a hazard. However, by various parties it was opposed by considering the implementation of UUKB no. 23 of 1959 will worsen the situation because the handling of the Covid-19 pandemic will be full of repressive militarism nuances that will open up opportunities for human rights violations so that the situation will get worse. At the level of civil emergency, the emergency authority has the authority to limit/eliminate the following rights of citizens:

1. Conduct press activities;
2. Trading;
3. Communication;
4. Using communication tools;
5. Prohibit the use of languages other than Indonesian;
6. Limiting performances;
7. confiscate goods suspected of interfering with security;
8. Determine permission to hold general meetings, gatherings and processions;
9. Limiting/prohibiting the use of buildings/houses/fields for worship;
10. Restrict people from being out of the house.

Even though the civil emergency is the lowest level [7] in a state of danger according to the provisions of Article 1 paragraph (1) of this law, however, the operational implementers in the field are in the hands of the military authorities as stipulated in Article 4, Article 5, Article 6 and Article 7 UUKB No. 23 of 1959.

Reconsidering the consequences that will arise if UUKB no. 23 of 1959, the government at the central level, in this case the President as the emergency authority, ultimately chose to implement Law no. 24 of 2007 and Law no. 6 of 2018, and later declared the Covid-19 pandemic a public health emergency. The two laws are ordinary emergency laws that apply in a normal legal system (normal constitutional law) so that the nature of public health emergencies is an ordinary emergency or in other words not a state emergency in the concept of an abnormal state as referred to in Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia. The President assessed that the Covid-19 Pandemic was not a disturbance to security and legal order as referred to in Article 1 paragraph (1) UUKB No. 23 of 1959.

The policies chosen by the President are as proposed by Ferejohn and Pasquino [8]: “First, it may be that of emergency powers. It is plausible that elected officials are cautious in triggering the use of exceptional powers and, indeed, that caution is probably to be applauded. Perhaps, in view of the historical abuses of such powers...Second, it is possible because of the advance of state-controlled technology for dealing with disorder, that most emergencies can be successfully managed by the operation of the ordinary legal-constitutional system.”

The President decided not to impose an emergency law based on the constitution but an ordinary emergency law, namely a law to be a reference for him to carry out his authority as an emergency ruler to overcome / overcome the Covid-19 pandemic. According to Tom Ginsburg and Mila Versteeg, the emergency law contained in the constitution is vulnerable to abuse because the powers given to the President are very large and special and have minimal supervision.[9] In an emergency situation according to the constitutional emergency law, it is possible for the government to get out of the constitutional framework to take abnormal actions which in normal situations it is not allowed. This is very vulnerable to threaten the guarantee of the protection of human rights.

The President in this case has the authority to judge whether in certain situations the country is in an emergency situation or not. This authority is a free authority that is special (prerogative). The President's authority in this case is a discretionary authority which must be applied carefully. This authority can be said to be the authority of the President as the Head of Government. The president must of course take the facts into account. This free authority is an authority that must always pay attention to the general principles of good governance. The President's ability to assess the existing facts will determine the quality of the emergency law that will be applied to address the existing emergency situation.

Observing the emergency law implemented by the President to deal with the dangers of the Covid-19 pandemic even though it is not included in the state of emergency regime, emergency law or the President's emergency policies, from a human rights perspective it clearly places people's safety as the highest law.[10] This is in line with Article 28H (1) of the 1945 Constitution of the Republic of Indonesia which explains that everyone has the right to live in physical and spiritual prosperity and to have a good and healthy environment and to obtain health services. Health is important for the existence of a country. The handling of this health emergency is certainly not appropriate if it is handled using UUKB no. 23 of 1995 which was very dominant in its repressive militarism, which was oriented towards the state.

3.2. The State of Emergency in Indonesia

In Indonesia, state emergency law is regulated in the constitution, the 1945 Constitution of the Republic of Indonesia with the following objectives: first, in order to seek the safety of the state and at the same time to provide legal protection for the people when the state is in an emergency situation; second, to ensure a balance between the weight of the state emergency law and the weight of the state emergency itself; and the third purpose is to anticipate that there will be no arbitrary actions or abuse of authority by the emergency authorities, in this case the President. The state emergency law in Indonesia is defined by the constitution as a state of danger and a matter of coercion. The two legal terms contain different concepts of state emergency law. The term state of danger is used in Article 12 of the 1945 Constitution of the Republic of Indonesia with the provisions of the conditions and consequences of a state of danger regulated in the law. This law will be the President's reference for declaring a state of danger. So that the concept of emergency law in a state of danger in this article is based on the President's assessment of the existing emergency situation with reference to the law on the state of danger. UUKB No. 23 of 1959 the elaboration of this article. The emergency criteria for a state of danger in this law stipulates the conditions under which a state can be declared in a state of danger and the consequences or steps that must be taken to deal with the emergency situation. So that the concept of emergency law in a state of danger in this article is based on the President's assessment of the existing emergency situation with reference to the law on the state of danger. UUKB No. 23 of 1959 the elaboration of this article. The emergency criteria for a state of danger in this law stipulates the conditions under which a state can be declared in a state of danger and the consequences or steps that must be taken to deal with the emergency situation. So that the concept of

emergency law in a state of danger in this article is based on the President’s assessment of the existing emergency situation with reference to the law on the state of danger. UUKB No. 23 of 1959 the elaboration of this article. The emergency criteria for a state of danger in this law stipulates the conditions under which a state can be declared in a state of danger and the consequences or steps that must be taken to deal with the emergency situation.

The following is the concept of a state of emergency according to Article 12 of the 1945 Constitution of the Republic of Indonesia as described in the table below:

TABLE 1: The concept of State Emergency Law in the provisions of Article 12 of the 1945 Constitution of the Republic of Indonesia

| State Emergency Term | Danger State |
|---|--|
| Indicator | Defined In Law Conditions and Consequences of Danger Conditions |
| Reason | Defined In Law Conditions and Consequences of Danger Conditions |
| State Emergency Ruler | President |
| State Emergency Type | Emergency de jure (declared) |
| Form State Emergency Law | Constitution About Conditions and Consequences of Danger Conditions |
| Nature of Authority State Emergency Ruler | Objective Authority (together with the DPR to stipulate the law on conditions & consequences of dangerous conditions) Subjective Authority (statutory interpretation of conditions & consequences of danger) |
| Authority State Emergency Ruler | Authority Declaring a State of Danger & Enacting Laws Conditions & Consequences of a State of Danger |

Meanwhile, in Article 22 of the 1945 Constitution of the Republic of Indonesia, the term "forced urgency" is a subjective interpretation of the President on the existing emergency situation. If the country is judged by the President to be in a compelling emergency situation, then the President can enact government regulations in lieu of law (PERPPU). The enactment of this PERPPU is not preceded by a declaration or statement by the President in advance as in the provisions regarding the state of danger in Article 12 of the 1945 Constitution of the Republic of Indonesia. This PERPPU has the same content as the law. The concept of state emergency law is similar to the concept of state emergency in terms of state of exception.

It is not specified in Article 22 of the 1945 Constitution of the Republic of Indonesia what the criteria for this compelling urgency are. The President’s subjective interpretation in interpreting the terminology of this compelling urgency is very broad [11]. It can be seen from the history of this nation that based on this article in Indonesia, what is meant by matters of urgency that force each President to interpret in various ways. The matter

of urgency that forces not only emergency situations in the context of the threat of war or social conflict. From the provisions in this article, it seems that Article 22 of the 1945 Constitution of the Republic of Indonesia is an emergency law in an actual emergency situation. Moreover, in the implementation of the law, the President does not need to ask the DPR for consideration as is the case if the President wants to submit a draft law for ratification. Article 22 of the Constitution of the Republic of Indonesia really opens wide opportunities for arbitrary actions or abuse of power by the authorities, in this case the President. In its development in the Decision of the Constitutional Court Number 138/PUU-VII/2009, the court interpreted the matter of compelling urgency as a legal emergency. This meaning has also been debated in several discussions because it is very risky to give the meaning of a compelling crisis only as a legal emergency situation, while the history of the government regime since the beginning of independence until now is not only a legal issue.

The founders of the country were very familiar with the terminology and concepts contained in Article 22 of the 1945 Constitution of the Republic of Indonesia. So that Article 12 of the 1945 Constitution of the Republic of Indonesia is not enough, considering that an emergency situation can take any form, especially dealing with situations in the future.[12] So that later by the founders of the state, the concept of state emergency law was added in a terminology of state emergency law, namely matters of coercive urgency with meaning based on the subjective assessment of the President. However, in the same article, the founding fathers of the state have required checks and balances that the implementation of this PERPPU can be tested by the DPR at the next session with the possibility of being enacted as a law.

The following table below explains in essence how the concept of emergency law regarding compelling urgency is based on the provisions of Article 22 of the 1945 Constitution of the Republic of Indonesia:

3.3. The Future of The State of Emergency in Indonesia

The state emergency law in Indonesia in the future will of course be part of the concept of state security. The concept of state security becomes an indicator in interpreting emergency situations of danger and emergencies in terms of compelling urgency. In the traditional era the concept of state security was always colored with military nuances whose main focus was to protect the state from threats of national interests [13]. In its development, security issues became widespread due to the existing dynamics and

TABLE 2: The concept of state emergency law in the provisions of Article 22 of the 1945 Constitution of the Republic of Indonesia.

| | |
|--|--|
| State Emergency Term | The Matter of Forcing Crunch |
| Indicator | Critical and Urgent President and DPR Can't Congregate Together |
| Reason | Undefined/Unlimited (Wars, Natural Disasters, Internal Riots, Terrorists, Politics, Economics, Corruption, Legal and Constitutional Dysfunctions, etc.) |
| State Emergency Ruler | President |
| State Emergency Type | Undeclared (De facto Emergency) |
| State Emergency Law | PERPPU |
| Nature of Authority State Emergency Ruler | Subjective Authority |
| Authority State Emergency Ruler | Authority for Interpretation of Matters of Compulsory Urgency and Legislative Authority |

progress. Among them are technological advances that make it seem as if the country has no territorial boundaries so that it is very possible for exploration and exploitation.

Security issues are not only geographical boundaries but also other dimensions of life [14]. Thus, the risk of threats to state security also becomes wider in scope, such as threats to human rights, globalization, technology, terrorism, the spread of disease outbreaks, and so on. Thus the risks of threats to national security are also becoming more diverse. In relation to national security, of course, what is meant is human security. As stipulated in Article 2 paragraph (4) of the United Nations Charter: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity of political independence of any state."

This shift in the concept of security is getting faster in its development. If there is a country that still applies the traditional concept of security, it can be said that the country is lagging behind. In a democratic country, the concept of national security should not be clearly defined and detailed. Of course, this is also the case with the concept of a state of emergency and emergency in terms of a compelling urgency in the 1945 Constitution of the Republic of Indonesia. In fact, in the future a good state emergency law must also apply flexibility in its provisions considering the concept of national security which will certainly always be dynamic and almost universal. certainly will always change with the times.

The founders of this country seem to be visionaries who can see far ahead in conceptualizing the regulation of conditions of danger and matters of compelling urgency. The state of emergency as stipulated in Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia is an open text, which is ready to anticipate the arrival

of various forms of threats or dangers in the future. The legal politics of the state of emergency in Indonesia is certainly in line with the legal politics of national defense and security law.

As a state of law, Indonesia does not adhere to a subjective state emergency law, but an objective state emergency law because the state emergency law in Indonesia has been regulated in the highest law of the Indonesian state, namely the 1945 Constitution of the Republic of Indonesia. Thus the state emergency law in Indonesia is an objective state emergency law. The concept of state emergency law in Indonesia also applies the principle of checks and balances while also giving the President the authority to interpret the existing situation to anticipate anything that cannot be predicted.

With the description of the thoughts above regarding the concept of national security which is of course very closely related and important to observe because security is a part of state emergency law, the concept of state emergency law in the future, especially in Indonesia, should no longer be in the perspective of the power system. (state centered security) but has shifted to the concept of state emergency law (people centered security) [15]. Because in the preamble to the 1945 Constitution of the Republic of Indonesia, it is stated that the state is obliged to provide protection to its citizens who are the founders of the state itself. The concept of state emergency law should apply the concept of human security. When a country is in a state of emergency, the main principle is the safety of its citizens. As the basic principle of emergency law itself, namely *salus populi suprema lex*, which means that the safety of the people is the highest law. The interests of both must be accommodated in a balanced manner in the implementation of state emergency law. Thus, the most important indicator to be applied to state emergency law is human rights. The principle of rationality and proportionality is one of the important things in the implementation of state emergency law in the future [16].

Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia are ideal. The founding fathers of Indonesia have provided a correct legal concept [17, 18] regarding the state of emergency. Furthermore, of course again, it will depend on the good will of the government in this case the President as the ruler of the state emergency in implementing it. This is an important thing that will determine the ability of the state's emergency law to deal with the threat of danger or danger that exists. Anticipating and dealing with possible threats in the future [19], the main thing is to replace UUKB no. 23 of 1959 which is no longer in accordance with the current government regime. Even though this law is a derivative of Article 12 of the 1945 Constitution of the Republic of Indonesia, the application of the law will deviate from the principles of rationality and proportionality.

The Covid-19 pandemic is a valuable lesson. Article 22 of the 1945 Constitution of the Republic of Indonesia should not be understood narrowly and emergency law should only be understood in the context of a state emergency so that PERPPU does not become an opportunity for emergency authorities to commit acts of abuse of authority or arbitrary actions.

4. CONCLUSION AND RECOMMENDATION

Measuring the weight of an emergency from the perspective of state emergency law is to use a law that contains the conditions and consequences of a state of danger, and apart from that with the President's free assessment of the existing situation; third, the state of emergency in Indonesia in the future cannot be separated from the concept of national security. State emergency law should adhere to the concept of people's security is state security. The state emergency law must be anticipatory to new and very diverse developments and forms of danger. For this reason, the state emergency law must adhere to the principle of humanitarian rationality with an emphasis on human rights. the state of emergency in Indonesia in the future is inseparable from the concept of national security. State emergency law should adhere to the concept of people's security is state security. The state emergency law must be anticipatory to new and very diverse developments and forms of danger. For this reason, the state emergency law must adhere to the principle of humanitarian rationality with an emphasis on human rights. the state of emergency in Indonesia in the future is inseparable from the concept of national security. State emergency law should adhere to the concept of people's security is state security. The state emergency law must be anticipatory to new and very diverse developments and forms of danger. For this reason, the state emergency law must adhere to the principle of humanitarian rationality with an emphasis on human rights.

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