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COVID-19 PANDEMIC REVIEWED IN CONSTITUTIONAL LAW PERSPECTIVE

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Abstract

Many countries are unsure to decide on legal instruments to use to overcome the crisis caused by the Covid-19 pandemic. Some chose to establish a state of emergency based on the constitution, while others used the applicable law regarding disasters or health crises, implemented new legislation, and issued another community restriction enforcement policy namely PPKM. The stipulation of a state of emergency allows the state to deviate from the rule of law. Therefore, the determination of the emergency status is potentially be misused. The method of this research is normative legal research using statute and conceptual approaches. The result of this research experienced that the Indonesian government chose to use Health Emergency in Law 6 of 2018 and Non-Natural Disaster Emergency in Law 24 of 2007 to deal with the Covid-19 Pandemic regardless of Article 12 of the 1945 Constitution providing provisions for a constitutional emergency. The emergency status does not entirely involve Article 12 of the 1945 Constitution as the basis for its formation. Thus, the term emergency is not a state of emergency as referred to in the study of emergency constitutional law (only de facto not de jure). Although there are restrictions, this certainly does not apply to basic rights, especially to non-derogable rights groups.

Keywords: Covid-19; Emergency State; Emergency Constitutional Law

INTRODUCTION

At the end of 2019, the world was horrified by the spread of a deadly new disease, Covid-19. Since it was first announced by the World Health Organization (WHO) in the Health Emergency of International Concern (PHEIC),[1] the spread of coronavirus is now increasingly massive and hit almost all countries in the world. Numerous countries apply various regulations, such as restrictions on the movement of people by temporarily closing crowded amusement places, schools, and offices, banning gatherings, and suspending worship activities, to overcome the spread of the virus.[2]

Concerning law, various diverse legal instruments are offered to determine policies to handle the virus in some countries; some countries have even already offered legal instruments that specifically regulate health crises. However, the reality is that the legal instrument is unable to cope with the complexity of the crisis caused by the infectious virus, and many countries do not have relevant legal instruments to tackle the crisis. Moreover, some countries, especially in Europe, such as Spain, Belgium, and Hungary,

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[1] World Health Organization, "Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-NCoV)," accessed on September 3, 2021, https://www.who.int/news/item/3-09-2021-statement-on-the-second-meeting-of-the- international-health-regulations (2005)- emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov).

[2] Syamsuddin Radjab *et. all, The Indonesian Government's Inconsistency In Handeling The Covid-19 Pandemic,* Yuridica Journal Faculty of Law, University of Airlangga, Vol. 36 No. 3, Nopember 2021, pg. 756

DOI: http://dx.doi.org/10.29303/ius.v9i3.980

decide to use their constitutional emergency provisions to respond to the pandemic crisis by establishing a state of emergency.[3]

In Indonesia, since the first Covid-19 case was announced, it took at least a month for the government -in this case, was the President- to decide to issue the *Keputusan Presiden Republik Indonesia Nomor 11 Tahun 2020* (Keppres No. 11 Tahun 2020) (the Presidential Decree No. 11 of 2020) on the Determination of Public Health Emergency Corona Virus Disease, and utilized his constitutional authority under Article 22 of 1945 Constitution to issue the *Peraturan Pemerintah Pengganti Undang-Undang (Perpu)* (the Government Regulation In lieu of Law) No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Coronavirus Disease Pandemic 2019 (Covid-19) and/or In Order to Deal with Dangerous Threats National Economy and/or Financial System Stability.[4] As a further measure, a month later, the President issued the Presidential Decree No. 12 of 2020 on the Determination of Non-natural Disasters spreading COVID-19 as a National Disaster before issuing the Instruction Regulation of the Minister of Home Affairs Number 15 of 2021 regarding the *Perberlakukan Pembatasan Kegiatan Masyarakat* (PPKM) (The Community Activities Restrictions Enforcement).

The various previous emergency determinations are inseparable from the variety of emergencies contained in Indonesia's positive law. In the context of the constitution, the terms used to emphasize the emergencies to respond to the Covid-19 crisis are "state of danger" and "compelling crisis". In addition, in the regulation at the level of the law, the following are the terms used referring emergencies: civil emergency and martial law in Law No. 23 of 1959 on The State of Danger, disaster emergency in Law No. 24 of 2007 on Disaster Management, social conflict conditions in Law No. 7 of 2012 Handling Social Conflicts, financial system crisis in Law No. 9 of 2016 on Prevention and Handling of Financial System Crisis, and Health Emergency in Law No. 6 of 2018 on Health Quarantine.[5]

Using the term emergency enables the government to abandon the enactment of some basic principles such as legal irregularities; this is echoed by international legal instruments such as the International Covenant on Civil and Political Rights (ICCPR).

In the perspective of emergency law, every state of emergency by providing an alternative ability for the government to derogate human rights (public emergency) which is certainly unlimited and with several conditions justifying their extraordinary actions during the situation.

The imposition of a state of emergency can be seen as a form that allows the authorities to quickly overcome the crisis, but, on the other hand, the justification of the power is too broad to carry out various restrictions causing insecurity to be abused. The unrest over the abuse of power by countries in the Covid-19 crisis was conveyed by the United

[3] Sefriani and Seguito Munteiro, *Potential Investor Claims and Possible State Defense During the Covid-19 Emergency,* Sriwijaya Law Review Faculty of Law Sriwijaya University, Vol. 5 Issue 2, July 2021, pg. 237

[4] Merry Tjoanda *et.all*, *The Outbreak of Covid-19 as An Overmacth Claim in Credit Agreements, Fiat Justisia Law Journal, Faculty of Law University of Lampung*, Vol. 15 No. 1, January-March 202, https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/2195. pg. 80

[5] Republic of Indonesia, Law No. 6 of 2018 on Health Quarantine, Article 1 Number 2.

Nations (UN) by urging every country to avoid excessive security measures in response to the Covid-19 outbreak.

In Indonesia, such concerns are inevitable because of, reflecting on the various emergencies in Indonesia, many ambiguous cases. Indonesia has been faced an emergency case several times yet rarely has the government declared a legal emergency; the actions taken are extraordinary as in an emergency.

The raise of concerns regarding the abuse of emergencies are reasonable since giving more power to the government in a state of emergency conservatively aims to restore the condition of the government that potentially, as indicated in practice precedents, leads to abuses leading to human rights violations.

Based on the previous explanation, this paper focus to analyze government policies dealing with the covid-19 pandemic from the perspective of constitutional law consisting of the concept of government policy to deal with the covid-19 pandemic and the concept of constitutional law against handling the covid-19 pandemic. The purpose of this paper is to comprehensively know and understand the concept of government policy dealing with the covid-19 pandemic and the concept of constitutional law against the handling of the covid-19 pandemic.

Legal research is to find solutions to legal issues arising to get a prescription for what should be done on the issues discussed.[6] This type of research is normative legal research that focuses on reviewing the application of rules or norms in positive law, especially related to legal synchronization. Thus, this research implemented the legal approach (statute approach) which is an approach done by reviewing various laws regarding legal issues handled through seeing consistency and conformity between one law with another law or with the 1945 Constitution. In addition, to clarify the analysis, the conceptual approach, an approach that focuses more on views, doctrines in legal science[7], is also used; the views and doctrines from various experts related to the concept of Constitutional Law are used in this paper.

DISCUSSIONS

Government Policy Concepts Addressing The Covid-19 Pandemic

Pembatasan Sosial Berskala Besar (PSBB) (Large Scale Social Restriction) is a government policy issued through Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions aiming to Accelerate the Handling of COVID-19. PSBB is a restriction on certain activities of residents in an area suspected of being infected with COVID-19 to prevent the possible spread of the virus (the concept is similar to PPKM).

The policy is an implementation of the opening of The 1945 Constitution of the Republic of Indonesia paragraph 4 stating that the government of Indonesia shall "protect all the people of Indonesia… and to improve public welfare". It means, regarding the pandemic, based on the opening of the Constitution of the Republic of Indonesia in 1945, the country shall protect the entire Indonesian nation by implementing Large-

[6] Peter Mahmud Marzuki, 2010, *Legal Research*, Kencana, Jakarta, pg. 74.
[7] *Ibid*. thing. 35.

Scale Social Dissemination and the Enactment of Restrictions on Community Activities to reduce the spread of COVID-19. Large-scale Social Restrictions and Restrictions on Community Activities are based on several basic rules which are Law No. 4 of 1984 on Infectious Disease Outbreaks, Law No. 24 of 2007 on Disaster Management, and Law No. 6 of 2018 on Health Quarantine, Law No. 4 of 1984 In this case Article 2 of Law No. 4 of 1984 can be used as the basis for the implementation of Large-Scale Social Restrictions and Enactment of Restrictions on Community Activities. These laws are essential to reduce the spread of the coronavirus outbreak or pandemic 2019 (COVID-19) and protect the inhabitants from this very dangerous outbreak of the pandemic; it is also contained in Article 5 paragraph (1) of Law No. 4 of 1984.

Public security (also be called social security) is implemented by following the principle of the welfare state widespread in several countries such as Western European countries, the United States, Australia, and New Zealand. Formally, as in the Amendment of the 1945 Constitution Articles 28 and 34, social security is mandated for the state. Social security is an individuals' basic right and should be fulfilled by the state under the mandate of the constitution. Article 34 (2) of the 1945 Constitution mentions that "The state shall develop a system of social security for all of the people and shall empower the inadequate and underprivileged in society in accordance with human dignity". It means that it is compulsory for the State to optimize social security for all levels of society and reflect justice; the current COVID-19 pandemic seems to be impacting all sectors, especially the economy.

Concept Of Constitutional Law On Handling The Covid-19 Pandemic

a. State of Danger According to Article 12 of the 1945 Constitution

Emergency *Hukum Tata Negara* (HTN) (Constitutional Law) or The state of emergency, is a condition in which the government in a country performs an extraordinary response to the threats faced by a country. The activation of Emergency HTN suspends the normal functioning of a government and allows authorities to suspend civil liberties and the fulfillment of human rights.[8]

Since the so-called Emergency Laws are meant to apply in abnormal conditions, the norms of emergency law regulation, law enforcement instruments, and their formation are different from normal law (in some cases might even be contradictory) as stated by Beni Prasad that, in an emergency, the government is eligible to commit all considered necessary acts. Furthermore, Carl Schmitt points out that an emergency is "… justified that appears to be necessary for a concretely gained success". The need to declare a country in a state of danger or emergency is commonly recognized in situations such as war, economic crisis, mass strikes, epidemics of disease, and natural disasters.

The practice of constitutional law in an emergency is known as Emergency Constitutional Law (or, as previously mentioned, Emergency HTN). Jimly Asshiddiqie explained the term Emergency HTN as a state of unpredicted danger threatening public

[8] Geneva Centre for The Democratic Control for The Armed Forces, "What Is State of Emergency", Backgrounder Security Sector Governance and Reform, accessed 10 September 2021.

order and requiring the state to act in unusual ways under the rules of law that normally apply under normal circumstances.[9]

Emergency HTN is a concept introduced by Carl Smith through A state of exception (German: *Ausnahmezustand*).[10] Smith stated that a leader may become a dictator when his country is in a state of threat, which creates an urgent necessity to save the sovereignty of a country. However, such behavior should be limited by certain corridors as stated by Herman Sihombing that the emergency is only temporary until the circumstances are deemed no longer dangerous.[11]

The constitutional clause related to Emergency HTN is contained in Article 12 of the 1945 Constitution. This article is considered a form of constitutional exception in a state of emergency. Article 12 of the 1945 Constitution states that " The President may declare a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law." This clause allows the President the authority to determine a state of emergency[12] and the power to deviate from the law in a constitutional emergency.

Tracing the original intent of Article 12 of the 1945 Constitution was obtained from Yamin's translation of the situation referred to Martial Law[13] or " *staat van beleg*".[14] These two terms describe the situation of the state in a state of a dangerous threat. *Staat van beleg,* as mentioned by Ananda B. Kusuma, comes from the medieval concept stating when the country is besieged by the enemy or in a state of danger, civilian power temporarily shifts to military power.

The conception of Article 12 of the 1945 Constitution can also be interpreted from the understanding of the legislation born based on such an article. Law Number 6 of 1946 is the first post-independence law that explicitly places Article 12 in the given consideration. The law enacted in Yogyakarta on June 6, 1946, was based on the desire to make rules ensuring the safety of the state from the threat of danger in the form of attack and rebellion or riots feared that the civilian government will not be able to carry out its work, or that there will be a natural disaster.[15]

In 1957, Law No. 74 of 1957 was also issued to regulate the state of danger. Although the law was enacted based on the 1950 Constitution, it can be understood that the intended meaning is in line with the provisions of the state of danger according to Article 12 of the 1945 Constitution. The consideration of the law stated:

That it is necessary to enact a law on hazardous conditions referred to in article 129 of the Provisional Constitution of the Republic of Indonesia, to replace the "*Regeling op de Staat van Oorlog en van Beleg*" (Staatsblad 1939 No. 582) and the Hazardous Conditions Law of the Republic of Indonesia in 1946 No. 6, with all its changes.

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[9] Jimly Asshiddiqie, 2000, *Emergency Constitutional Law*, Rajawali Pers, Jakarta, pg. 7.

[10] Also known as "State of Emergency", "State of Civil Emergency", "State of Siege", "State of Exception (etat d'exception)" in other countries indicating the occurrence of a state of danger, either military emergency or emergency. civil.

[11] Herman Sihombing, 1996, *Emergency Constitutional Law in Indonesia*, Djambatan, Jakarta, pg. 1.

[12] See the Attachment to the Original Text of the 1945 Constitution, the authority of Article 12 of the 1945 Constitution is the power of the President as the Head of State.

[13] Muhammad Yamin, 1959, *Manuscript-Preparation of the 1945 Constitution: Published with Dibubuhi Tjatatan*, Volume 1, Jajasan Prapantja, Jakarta, pg. 51.

[14] *Ibid*

[15] Indonesia, 1945 Constitution, Article. 12.

From the previous considerations, it is clear that Law Number 74 of 1957 which is a derivative of Article 129 of the 1950 Constitution, and Law Number 6 of 1946 which is a derivative of Article 12 of the 1945 Constitution govern the same issues as the Dutch East Indies regulations "*Regeling op de Staat van Oorlog en van Beleg*"(Staatsblad 1939 N. 582); it is a regulation about a country in a state of danger, war, or siege. Currently, there is only one law as a derivative of Article 12 of the 1945 Constitution, namely *Peraturan Pemerintah Pengganti Undang-Undang* (PRP) (government regulation in lieu of law) 23 of 1959 on the Determination of Dangerous Conditions (UU 23/prp/1959). The birth of the Danger Conditions law summarizes and repeals all previous similar legal rules.

Law (PRP) 23 of 1959 concerning Dangerous Conditions provides regulations regarding three emergency conditions in Indonesia namely Civil Emergency, Military Emergency, and War Emergency. These three conditions can be determined by the President under three conditions: a) there is a threat to security or law and order in part or all of Indonesia's territory due to rebellion, riots, or natural disasters feared that ordinary equipment cannot overcome; b) the emergence or danger of war or occupation of Indonesian territory; c) the integrity of the state which is in a state of danger or other special circumstances that endanger the sustainability of the state.

Law 23/Prp/1959 provides a series of permissibility for the government to commit legal and human rights deviations that are not normally practiced in ordinary times. For example, in a state of civil emergency, the government is allowed to confiscate goods,[16] use public service items,[17] conduct wiretapping and restrict telecommunications media,[18] prohibit activities and gatherings,[19] and restrict people from leaving their homes.

As for the state of military emergency, the government is given the authority to prohibit the production and trade of firearms and explosives, control the means of communication, restrict land, air, and sea traffic, limit shows and printing, withhold post and telegram letters, militarize certain positions, and arrest for 21 days.

Meanwhile, in a state of emergency of a war, the government is given the right to take ownership of goods for war, prohibit the display and close the printing press, compel people to be conscripted/militarized, and make regulations that are contrary to the legislation for the sake of defense and security during the war.

One of the flexibility clauses provided by the State of Danger law when a state of emergency is that the government is eligible to make regulations that are deemed essential to address the emergency immediately. As Article 10 of law 23/prp/1959 states:

(1) The Regional Civil Emergency Authority has the right to make regulations deemed necessary in the interest of public order or regional security, which, according to central legislation, may be regulated by regional regulations. (2) The Central Civil Emergency Authority shall have the right to make all regulations deemed necessary in the interest of public order and security.

Another clause that is also considered to deviate from the principle of checks and balances is an exemption from the supervision of judges and legislative oversight of the

[16] *Ibid*, Article 15.
[17] *Ibid*, Article 16.
[18] *Ibid*, Article 22.
[19] *Ibid*, Article 23.

statement of a state of danger by the President; the court cannot test the decision of the President regarding the state of danger. The exemption from judicial review, especially the state administrative court against the policies issued during the emergency period, is reaffirmed in Article 49 of Law Number 5 of 1986 concerning the State Administrative Court which states:

The court is not authorized to examine, decide, and resolve certain State Administrative disputes if the disputed decision is issued: a. in time of war, a state of danger, a state of natural disaster, or an unusually dangerous circumstance, subject to applicable laws and regulations; b. in a state of urgency in the public interest based on applicable legislation.[20]

Emergency activation also has a number of limitations within the scope of human rights. Although the activation of a state of emergency allows for many deviations from the fulfillment of human rights, these deviations are not unlimited. A clause in the Constitution stipulates that there is a cluster of human rights that cannot be reduced under any circumstances. Article 28I paragraph (1) of the 1945 Constitution states that there is a prohibition against deviating from the fulfillment of the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right to not be prosecuted on the basis of retroactive law as a human right that cannot be reduced under any circumstances. This prohibition also applies even if an emergency activation has been declared.[21]

The possibility of violations of human rights in an emergency is a common concern. The fundamental question that arises is regarding the extent of the suspension of human rights is relevant to the real emergency threat faced. Therefore, the author considers the need for detailed regulation of emergency law in the constitution as part of the design of human rights protection that needs to be initiated.

The main concept of power mobilization in the Danger Act is the attributive granting of power to emergency authorities to shape policies. The author considers that the formation of this policy also includes policies that can deviate from the Constitution and other laws and regulations. Exceptions are policies or actions that violate non-derogable rights, as determined by the Constitution; so, the focus is on granting general and broad powers of emergency law enforcement (blanco mandaat).

Currently, even though it is considered an "old-fashioned" regulation, Law 23/prp/1959 still exists and is used. At least, this Danger Act was never revoked despite attempts to replace it at the beginning of the 1998 reform. It was also used repeatedly in different regimes, such as in the Megawati[22] and Susilo Bambang Yudhoyono regimes to establish martial law and civil emergency in Aceh.[23] Then it was also used by Abdurrahman Wahid for the case of civil emergency in Maluku.

[20] Norman Edwin Elnizar, Covid-19 Emergency! Let's Get to Know the Various Emergency Statuses in Indonesian Law and Their Impacts, accessed on September 10, 2021. And https://indonesien.ahk.de/en/infocenter/news/news-details/covid-19-developments-in-indonesia accessed on November 27 2021.

[21] Variena Josepha B Rehatta et.all, *Fulfillment Children's Health Right In Ambon City During Covid-19 Pandemic*, SASI Journal, Vol. 27 No. 2, April-Juni 2021, pg. 192

[22] Indonesia, Presidential Decree Number 28 of 2003 concerning the Implementation of Military Emergency Status in the Province of Nanggroe Aceh Darussalam.

[23] Indonesia, Presidential Decree No. 43 of 2004 concerning the Statement of Changes in the Status of a State of Danger with the Level of Military Emergency to a State of Danger with the Level of a State of Civil Emergency in the Province of Nanggroe Aceh Darussalam.

b. Disaster Management Law

Law Number 24 of 2007 concerning Disaster Management (Law on Disaster Management) is considered to provide the characteristics of an emergency due to the existence of an emergency mechanism regulated in this law. Some technical terms in the Disaster Management Act do use emergency terminology such as "disaster emergency response" and "disaster emergency status".[24]

As previously discussed, the Emergency Constitutional Law is a series of legal institutions that are specifically implemented in crises with the potential to violate the existing positive legal order. Elliot Bulmer states that declaring a state of emergency usually involves the suspension or restriction of certain rights and freedoms that are otherwise constitutionally protected. In some countries, the declaration of a state of emergency may have an immediate effect on rights even without further legislative action.[25]

The characteristics of an emergency that appear in the Disaster Management Law are due to the enactment of certain laws after the declaration of certain emergency statuses. Another characteristic is the authority of the President as head of state to determine the status of a national disaster emergency. Although it does not use Article 12 of the 1945 Constitution as a consideration in its formation, the Disaster Management Law has a distinctive character as the concept contained in Article 12 of the 1945 Constitution known as Emergency HTN.

It is stated in the Disaster Management Law that the status of a disaster emergency is a condition determined by the Government for a certain period based on the recommendation of the Agency assigned to deal with disasters. The status of a disaster emergency can be determined by the President for a national disaster scale and by a regional head for a regional disaster scale. So that, in disaster conditions, the Central Government and Regional Governments are given the authority to activate other legal regimes that cannot be used under normal conditions. As stated in Article 51 of the Disaster Management Law:

(1) Determination of disaster emergency status is carried out by the government following the scale of the disaster. (2) The determination as referred to in paragraph (1) for the national scale is carried out by the President, the provincial scale is carried out by the governor, and the district/city scale is carried out by the regent/mayor.

There is no provision regarding what formal form is used in the determination of this emergency status. However, in the practice of establishing a disaster emergency, the president will use a determination in the form of a Presidential Decree. Likewise with the determination made by the regional head who will use the Governor's Decree, Regent's Decree, or Mayor's Decree to determine the status of regional disasters.

Through the stipulation of this disaster emergency, a number of legal conditions apply in a limited manner in accordance with the clauses in the Disaster Management Law. Article 50 of the Disaster Management Law appoints the National Disaster Management

[24] Indonesia, Law Number 24 of 2007 concerning Disaster Management, State Gazette of the Republic of Indonesia (LNRI) of 2007 Number 66, and Supplement to the State Gazette (TLN) Number 4723, Ps. 1 Figure 10.

[25] Elliot Bulmer, 2018, *Emergency Powers: International IDEA Constitution-Building Primer 18*, International IDEA, Sweden, hal. 20.

Agency and Regional Disaster Management Agency as institutions given the authority to facilitate access in disaster management, such as the deployment of human resources, deployment of equipment, deployment of logistics, immigration, excise, and quarantine, licensing, procurement of goods/services, management and accountability of money and/or goods, rescue, and command to command sectors/institutions.

The Disaster Management Law does not provide details on what discretion can be exercised in the disaster time interval. Further regulations regarding 'easy access' are then explained in a Government Regulation in Article 50 paragraph (2) of the Disaster Management Law. These discretions should be detailed in the law to avoid greater opportunities for deviation.

c. Health Quarantine Law

Another law that also has specificities regarding emergencies is Law Number 6 of 2018 concerning Health Quarantine (Health Quarantine Law).[26] This law gives the President the authority to determine the status of a Public Health Emergency. Although it does not use Article 12 of the 1945 Constitution as a consideration, this law still uses the "emergency" clause as terminology.

It is stated in Article 1 number 2 of the Health Quarantine Law that a Public Health Emergency is an extraordinary public health event marked by the spread of infectious diseases and/or events caused by nuclear radiation, biological pollution, chemical contamination, bioterrorism, and hazardous food, and potentially spread across regions or countries.

The Health Quarantine Act provides an opportunity for provisional law to be enforced in an emergency. With the argument of the public interest in the form of public health, the government can restrict the activities of people, containers, transportation means, and goods deemed capable of transmitting disease or preventing other contaminations. Such restrictions are known as the concept of quarantine.

There are three types of quarantine recognized in this law. The first is Home Quarantine which is the restriction of occupants in a house and its contents suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination. Second, Hospital Quarantine is the limitation of a person in a hospital who is suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading the disease or contamination. And the third is Regional Quarantine, which is the limitation of the population in an area including the entrance area and its contents suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility of spreading disease or contamination.

In addition to quarantine restrictions, there are also restrictions known as Large-Scale Social Restrictions and Enforcement of Restrictions on Community Activities, which are abbreviated as PSBB and PPKM respectively. It is explained that PSBB and PPKM are restrictions on certain activities of residents in an area suspected of being infected with a disease and/or contaminated in such a way as to prevent the possibility

[26] Indonesia, Law Number 6 of 2018 concerning Health Quarantine, State Gazette of the Republic of Indonesia (LNRI) of 2018 Number 128, and Supplement to the State Gazette (TLN) Number 6236

of spreading disease or contamination. PSBB and PPKM are a response to a Public Health Emergency that allows the government to close schools and workplaces, restrict religious activities, and/or restrict activities in public places or facilities.

The implementation of the PSBB and PPKM quarantine requires a stipulation from the Central Government. In practice, the determination of Public Health Emergency Status is carried out by the President in the form of a Presidential Decree. There is no time limit on how long the minimum or maximum duration of this Public Health Emergency Status.

After the President has determined the status of Public Health Emergency, the Minister of Health will stipulate regional quarantine and/or large-scale social restrictions. This stipulation by the Minister will provide legality to close certain areas considered to potentially endanger public health in Indonesia. The Health Quarantine Law allows the authority to restrict the movement of people and goods, to close areas and borders, or to detain ships or airplanes deemed to be dangerous to public health.

d. The Government's Choice in Handling the Covid-19 Pandemic

The concept of HTN in the current laws and regulations has its distinctive characteristics. This rises to the range of emergency arrangements of each legislation which are also different in solving different scopes of problems. Therefore, it is necessary for the policymakers to accurately identify the type of occurring emergency and what policy space is needed to deal with the emergency.

Conformity between the type of emergency and the space policy created by the chosen emergency law scheme is crucial. This conformity will make emergency handling policies focus on the problems faced thus the emergency will end soon. An important principle in an emergency is the provisional principle containing a message that an emergency must be carried out within a certain time limit -when possible, the emergency must end immediately- it does not need to take a long time.

The longer the duration of an emergency, the more likely fundamental concerns raise. It is to say that not only worrying about the emergence of casualties, restrictions on rights, and abuse of power but also extends to the reduction of democratic procedures and the fulfillment of human rights. World experts and activists have sounded an early warning that lest the enactment of laws in the current state of emergency of the Covid-19 outbreak might lead to a long-term decline of civil liberties and constitutional democracy. In particular, they worry that many country leaders may not easily give up their newly acquired powers in this crisis, and will continue to use them so that restrictions on civil liberties will become the new normal.

Tom Ginsburg and Mila Versteeg in their writings in the Harvard Law Review Blog classify the legal scheme models that are the choice of countries in the world to implement emergencies in the face of the Covid-19[27] outbreak. Ginsburg and Versteeg offered three models of emergency choices for countries worldwide.

First, the declaration of a state of emergency under the constitution chose to carry out emergency activation based on the constitution.

[27] Tom Ginsburg and Mila Versteeg, States of Emergencies: Part I, and , accessed September 10, 2021.

Second, the use of existing legislation dealing with public health or national disasters (legislative model) chose to use legal instruments at the statutory level, especially those related to public health and national disasters.

Third, the passing of new emergency legislation chose to form new legislation specifically for handling the Covid-19 pandemic.

In the analysis presented by Ginsburg and Versteeg, each of these emergency options has implications for democracy and freedom in each country. The emergency option based on the constitution (the first option) is similar to the provisions of the State of Danger in Article 12 of the 1945 Constitution. Giving great powers to the authorities can carry out various kinds of legal and human rights deviations with limited supervision. The same problem as in Indonesia is also encountered in various countries; the concept of an emergency is more emphasized on emergencies due to security disturbances. There are very few countries whose constitution explicitly mentions disasters, especially those caused by the spread of disease, as a reason for imposing a state of emergency. As a result, the use of this type of emergency is less focused and tends to potentially hamper freedom and democracy.

The classification of emergency law schemes according to the law (the second option) was borrowed by Ginsburg and Versteeg from the ideas presented by Ferejohn and Pasquino regarding the legislative model. Ferejohn and Pasquino argue that in developed democracies in an emergency, it is not necessary to always activate an emergency based on the constitution; the emergency approach based on law is preferred. Ferejohn and Pasquino's approach emphasizing the large role of the legislature in an emergency is considered interesting because the concern is the magnitude of the executive power in an emergency performing the role of constitutional dictatorship as mentioned by Clinton Rossiter.

The third option, namely implementing new legislation, is considered an emergency option when the existing laws are deemed insufficient to address the problem of the Covid 19 outbreak. The choice of new legislation may be appropriate to define the type of emergency faced, but this type of legislation has several weaknesses. New legislation in the event of an emergency usually lacks participation because it is discussed and decided during a pandemic hence activities, such as public debates and absorption of aspirations, are relatively limited due to pandemic barriers. In addition, another important weakness is that regulations made during an emergency usually give great powers to the emergency authorities by giving them the freedom to take extraordinary steps that may deviate from democratic procedures and the fulfillment of human rights.

If we look at the choices of policymakers in Indonesia regarding the Covid-19 pandemic, the dominant choice is the legislative model, namely carrying out emergency activation based on the law. This choice was marked by Presidential Decree Number 11 of 2020 concerning the Determination of the Covid-19. Public Health Emergency which was the activation of Law Number 6 of 2018 concerning Health Quarantine then followed by the issuance of Presidential Decree Number 12 of 2020 concerning Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as National Disasters which is an activation of Law Number 24 of 2007

concerning Disaster Management, the latest of which is the Minister of Home Affairs' Instruction on PPKM.[28]

With such a policy choice, any limitations on the basic rights of citizens should be nullified. Even if there are residents who feel that their rights have been violated, they can still apply for their fulfillment either through legal or political channels. In its various provisions, there are indeed restrictions on the expression of citizens in carrying out their activities, but they are not directly related to the matter of freedom of expression. The restrictions imposed are more on technical meetings and the movement of citizens to prevent transmission. Limiting the mechanism for meeting residents in direct meeting forums does not mean that there is a ban on discussion materials, nor does the restriction of carrying out activities in places of worship and on online studies and restrictions on study materials.

The policy for handling Covid-19 in Indonesia does not choose to activate a "state of danger" based on Article 12 of the 1945 Constitution, which means the implementation of an emergency legal system with various powers and minimal supervision as previously mentioned. The discourse on the activation of Article 12 of the 1945 Constitution had previously surfaced through the emergence of debates about the imposition of Civil Emergency which was the lightest level in Law 23/prp/1959. However, as earlier described, the Civil Emergency material is not suitable for a pandemic situation which is a non-security emergency.

The choice to avoid emergency declarations based on the Constitution in various countries has similar reasons to Indonesia. The powers of the emergency ruler will be enormous with more freedom of citizens can be deviated with limited political and legal control. Therefore, the potential for deviation by the emergency authorities is wide open. Constitutional emergency declarations in democratic countries tend to be reserved as "safety valves" if statutory emergency activation alone is not sufficient to deal with crises.

CONCLUSION

Based on the previous descriptions, the authors can conclude that health insurance for every Indonesian citizen is enshrined in the constitution. With the health insurance provided by the government, the government has a responsibility to its citizens, especially in the case of the COVID-19 pandemic. Therefore, to achieve at least the ideals of the state, namely the welfare state, the government needs to enact policies that can be a solution to overcome existing problems. Implementing PSBB and PPKM is a preventive measure that the government is currently implementing. In addition, the laws and regulations in Indonesia have provided a place for regulation in emergencies, both at the constitutional and legal levels. Each of these emergency law schemes has its characteristics. The emergency option based on the constitution which is represented by the phrase "state of danger" in Article 12 of the 1945 Constitution gives the emergency authorities great powers that can deviate from democratic procedures in the constitution

[28] Nima Nourozi and Ilham Atei, *Covid-19 Crisis and Environmental Law: Opportunities and Challenges,* Hassanuddin Law Review, Vol. 7 Issue 5, April 2021, pg. 56

and deviate from human rights, except for non-derogable rights. Activation of a "state of danger" also results in minimal political and legal oversight. The device was formed so that the power of the emergency authorities was effective and quick to decide so that they could immediately get out of an emergency. However, it seems that the "state of danger" in this constitution is not supported by the derivative legislation so that it seems only suitable for use in a security emergency. At the statutory level, various laws also have an emergency character that is not directly related to emergencies based on the constitution. Consequently, emergency activation of these various laws limits the powers of the emergency authorities. However, analyzing from the aspect of guaranteeing freedom and fulfilling human rights in conditions of an emergency, emergency activation-based law has advantages. The powers of the emergency authorities have become more focused on the type of emergency, not democratic procedures and the fulfillment of human rights that have been violated. In dealing with Covid 19, it appears that this emergency option has become the choice of the Government of the Republic of Indonesia so that there should be no unnecessary repression of freedom of expression in handling Covid-19 in Indonesia.

REFERENCES

Books

Elliot Bulmer, (2018), *Emergency Powers: International IDEA Constitution-Building Primer 18*, International IDEA, Sweden.

Herman Sihombing, (1996), *Emergency Constitutional Law in Indonesia*, Djambatan, Jakarta.

Jimly Asshiddiqie, (2000), *Emergency Constitutional Law*, Rajawali Pers, Jakarta.

Muhammad Yamin, (1959), *Manuscript-Preparation of the 1945 Constitution: Published with Dibubuhi Tjatatan*, Volume 1, Jajasan Prapantja, Jakarta.

Peter Mahmud Marzuki, (2010), *Legal Research*, Kencana, Jakarta.

Journal and Other Scientific Refrences

Merry Tjoanda *et.all*, *The Outbreak of Covid-19 as An Overmacth Claim in Credit Agreements, Fiat Justisia Law Journal, Faculty of Law University of Lampung*, Vol. 15 No. 1, January-March 202, https://jurnal.fh.unila.ac.id/index.php/fiat/article/view/2195.

Nima Nourozi and Ilham Atei, *Covid-19 Crisis and Environmental Law: Opportunities and Challenges,* Hassanuddin Law Review, Vol. 7 Issue 5, April 2021.

Sefriani and Seguito Munteiro, *Potential Investor Claims and Possible State Defense During the Covid-19 Emergency*, Sriwijaya Law Review Faculty of Law Sriwijaya University, Vol. 5 Issue 2, July 202.

Syamsuddin Radjab *et. all, The Indonesian Government's Inconsistency In Handeling The Covid-19 Pandemic,* Yuridica Journal Faculty of Law, University of Airlangga, Vol. 36 No. 3, Nopember 2021

Varienа Josepha B Rehatta et.all, *Fulfillment Children's Health Right In Ambon City*

During Covid-19 Pandemic, SASI Journal, Vol. 27 No. 2, April-Juni 2021

Regulations

Indonesia, Constitution of 1945.

Indonesia, Law Number 24 of 2007 concerning Disaster Management, State Gazette of the Republic of Indonesia (LNRI) of 2007 Number 66, and Supplement to the State Gazette (TLN) Number 4723.

Indonesia, Law Number 6 of 2018 concerning Health Quarantine, State Gazette of the Republic of Indonesia (LNRI) of 2018 Number 128, and Supplement to the State Gazette (TLN) Number 6236

Indonesia, Presidential Decree No. 43 of 2004 concerning the Statement of Changes in the Status of a State of Danger with the Level of Military Emergency to a State of Danger with the Level of a State of Civil Emergency in the Province of Nanggroe Aceh Darussalam.

Indonesia, Presidential Decree Number 28 of 2003 concerning the Implementation of Military Emergency Status in the Province of Nanggroe Aceh Darussalam.

Also known as “State of Emergency”, “State of Civil Emergency”, “State of Siege”, “State of Exception (etat d’exception)” in other countries indicating the occurrence of a state of danger, either military emergency or emergency. civil.

Geneva Centre for The Democratic Control for The Armed Forces, “What Is State of Emergency”, Backgrounder Security Sector Governance and Reform, accessed 10 September 2021.

Internet

https://www.unicef.org/indonesia/coronavirus

https://kemlu.go.id/brussels/en/news/6349/policies-by-the-indonesian-government-related-to-the-coronavirus-covid-19-pandemic.

https://indonesien.ahk.de/en/infocenter/news/news-details/covid-19-developments-in-indonesia

World Health Organization, “Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-NCoV),” accessed September 3, 2021, https://www.who.int/news/item/3-09-2021- statement-on-the-second-meeting-of-the-international-health-regulations (2005)- emergency-committee-regarding-the-outbreak- of-novel-coronavirus-(2019-ncov).

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