



Duties of Government and the Supreme of Law in Emergency: Coronavirus Disaster Outbreak in Indonesia



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Abstract

The purpose of this research is to evaluate and assess (1) the government's actions and policies in an emergency crisis that occurred in Indonesia; and (2) the rule of law in Indonesia in emergencies. This study is a descriptive qualitative study that describes government policy and the rule of law in Indonesia during an emergency. This article is based on secondary legal materials, such as books, journals, essays, and other written works from both print and digital media, as well as field occurrences. The study's findings indicate that (1) the coronavirus illness outbreak is a non-natural disaster, including a pandemic, in which case the government established several strategies throughout the COVID-19 pandemic emergency response period; It is noted that 1 Perppu (Government Regulation in Lieu of Law), 1 PP (Government regulations), 1 Perpres (Presidential Regulation), 1 Inpres (Presidential Instruction), 4 Keppres (Presidential decree), 15 Permen (Ministerial regulation), 19 Kepmen (Ministerial decree), and dozens of decrees and circulars have been issued, which were specifically formed in response to the COVID-19 pandemic situation as a rule of law.

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1 Introduction

Indonesia is a legal state. Following the modification, this is stated explicitly in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. As a legal state, the law must be regarded as a complete system comprised of institutional elements (institutional), rule rules (instrumental), and legal subjects' behavior (subjective and cultural elements). Indonesia, as a modern legal state, must adhere to the main principles or basic principles of legality, recognition, and protection of human rights, sharing state power, an independent and impartial judiciary, popular sovereignty, democracy, and the constitution to realize the state's goal of providing welfare for its people and protecting the human rights of its citizens (Hamzah, 2010).

The meaning or value of the rule of law concept is that law is the ultimate source (supremacy) in regulating and directing the mechanism of legal interactions between the state and society, as well as between members or groups of people in fulfilling its aims (Adityo, 2013). The current rule of law is more likely to be progressive. As shown by the state's constant endeavor to promote general wellbeing (government). As a result, the government or state administration needs more leeway to act promptly, precisely, and productively on their initiative on something for which legislators have not established rules (Sudiro, 2013). The government, as the implementer of state political policy, has the authority to control the government, lead or regulate its citizens, give instructions, mobilize potential, give direction, coordinate activities, supervise, encourage, and protect the community, as provided by applicable laws and regulations or based on the principle of legality (GOZALI, 2021).

Things that are out of the ordinary, urgent, and have a harmful influence on the management of state life, in other words, the State is in an emergency. To prepare for this circumstance, the provisions of Article 22 of the 1945 Constitution, paragraph 1, state that in the event of a pressing emergency, the president has the authority to issue a Regulation in Lieu of Law (Perpu). In this case, the authors want to know what the requirements are in a situation of emergency, such as what transpired behind the establishment of Perpu Number 1 in 2014 (Panggabean, 2012).

Every great disaster has the potential to alter society in some manner. The global pandemic coronavirus disease 2019 (COVID-19), which is now affecting people in numerous nations, is no exception (Abdi, 2020). We are gradually seeing the possibility for change in numerous elements of civilization as a result of this epidemic. A new normal (new normal) is approaching and casting a shadow over us all (Antin et al., 2020). The increasing dependence on technology is a sign that the space for civil liberties is starting to narrow, the role of the state is strengthening in disciplining citizens, the economy of various countries is weakening, and so on. When civilization changes, human behavior changes. When human behavior changes, laws can change (Susilawati et al., 2020).

Article 1 paragraph (3) of the 1945 Constitution clearly states that the state of Indonesia is a state of law. In the explanation (pre-amendment to the constitution), it is explained that the Indonesian state is founded on law (rechtstaat), rather than simple authority (machstaat) (Biroli, 2015). This brief article purposefully avoids delving into the complexity of the concepts of the State of Law, Rechstaat, and the Rule of Law (Qamar, 2017). Essentially, the governmental authority must be restrained by law, and human rights must be safeguarded. So, what is the "fate" of the rule of law during a pandemic?

Before the pandemic, we can proudly say *Fiat Justitia Ruat Caelum* (establish justice even though the sky is falling). Upholding justice is not as easy as the saying goes. The sky is still not falling, we are already tempted to temporarily put aside the law and human rights with the excuse of a pandemic (Smereka & Szarpak, 2020). When the pandemic hit, then we started quoting the adage "*Salus Populi Suprema Lex Esto*" (people's safety is the highest law). There's nothing wrong with that quote. The meaning of this expression also does not contradict the meaning of *Fiat Justitia Ruat Caelum*. This term, however, might be misinterpreted and used to excuse arbitrariness in the name of people's safety (Song & Zhou, 2020). As a result, the general public and policymakers must exercise extreme caution anytime they perceive or intend to utilize this term as an argument (Abman, 2018; Buitelaar & Sorel, 2010).

This COVID-19 outbreak may be the first occasion when citizens, especially pro-democracy and human rights groups, demand that the government enact limitations immediately (Whitelaw et al., 2020; Vecchio et al., 2020). Of course, different sorts and levels of limitations are not only normal but also necessary in the face of this pandemic (Hall, 2020). Tracing (tracing), restriction/quarantine/isolation (isolation), examination/testing (testing), and therapy (treatment) have all become required prescriptions implemented by various governments at various levels (Vindegaard & Benros, 2020).

President Jokowi eventually declared COVID-19 a public health emergency (Keppres No.11/2020) and imposed Large-Scale Social Restrictions (PSBB) in the context of speeding COVID-19 response (PP No.21/2020). After that, the President declared a non-natural catastrophe that spreads COVID-19 a National Disaster (Keppres No.12/2020) (Modjo, 2020). During the epidemic, Indonesia developed several legal products and laws. There are at least 1 Perppu, 1 PP, 1 Perpres, 1 Inpres, 4 Keppres, 15 Permen, 19 Kepmen, and dozens of decrees and circulars created in reaction to the COVID-19 epidemic (Vindrola-Padros et al., 2020). We all must realize that constraints in a pandemic are not infinite. Law and human rights must always serve as a guide to ensure that limits do not become unjustified and disproportionate, let alone an abuse of power (Susilawati et al., 2020). Our devotion to the ideals of the rule of law is being put to the test in the face of a pandemic. Then, what about the rule of law in Indonesia during the COVID-19 pandemic?

2 Materials and Methods

Because of the influence of digital technology on VUCA (Volatility, Uncertainty, Complexity, and Ambiguity) on numerous parts of human life, the occurrence of COVID-19 generates legal uncertainty for various parties (Kunderevych et al., 2022). In this scenario, the government's policy of establishing the rule of law is extremely important (Ilczak et al., 2021). The rule of law strives to build a peaceful, orderly, and just life system in society so that the law can play a part in ensuring the country's stability. Essentially, the rule of law entails two things: prohibiting the practice of abuse of power and safeguarding the people so that when exercising their rights, they do not engage in illegal behaviors (Bryson, 2021).

The study technique utilized to address the problem formulation is characterized as normative or doctrinal legal research with a juridical-normative approach (Sumardjono, 1989). The normative legal research approach is carried out by investigating existing library materials, specifically secondary legal documents in the form of books, journals, articles, and other written works from print and digital media that are relevant to this inquiry (Soekanto, 2007). Because this is a normative study, the data collecting approach is the study of documents or library materials, and the legal materials analysis techniques are deduction (from general to particular) and interpretation (interpretation) in evaluating existing legal materials (Abdurrahman, 2009). The data in this study were analyzed utilizing qualitative approaches (Sulaiman, 2018). This technique aims to answer problems related to government efforts and policies in emergencies that occur in Indonesia, as well as the rule of law in Indonesia regarding emergencies.

3 Results and Discussions

Government policy in a state of emergency: status of the corona virus disease outbreak (COVID-19) in Indonesia

Regarding the state of danger and the pressing urgency as the basis for the government's action to form a Perppu in the context of saving the interests of the nation and state, the legal basis can be found in Article 12 and Article 22 of the 1945 Constitution. Article 12 affirms that "The President declares a state of danger, the conditions and consequently the state of danger is determined by law". Article 22 states that "in matters of urgency that force the President to stipulate government regulations in lieu of laws" (Mosolov, 2020). Based on the provisions above, it can be seen that there are 2 (two) categories of unusual (extraordinary) conditions from the state or state of emergency, namely First, dangerous conditions, and Second, matters of urgency that force Both categories have the same meaning as a state of emergency (state of emergency), but they differ in

their focus; specifically, the term danger stresses its structure (external elements), whilst the term urgency that compels emphasizes its substance (internal factors) (Inkster et al., 2020).

It must fulfill the requirements for the implementation of an emergency, including material and formal requirements (Ihrig & Moe, 2004; Åhman, 2006). The material condition is that a new state institution relevant to the emergency be established, as well as new authority to act, and the formal requirement is that the new state institution operates following the applicable laws and regulations. In the context of the Indonesian state, several formal requirements that must be met for the implementation of an emergency are as follows (Antonijevic et al., 2020):

- The adoption of a state of emergency must be specified in a certain manner, namely by a Presidential Decree, whereas the material preparations required in an emergency are stated in the form of a Perppu, as alluded to by the Republic of Indonesia's 1945 Constitution (Spoorthy et al., 2020);
- Only the President is constitutionally entitled to stipulate and regulate an emergency;
- The Perpres (Presidential Regulation) and Perppu referred to above are confirmed and signed by the President and issued in the State Gazette as appropriate;
- The Perppu shall explicitly explain which elements of the law are barred by its passage;
- The Presidential Regulation in question must determine the legal area of application within the territory of the Republic of Indonesia, for example, whether the Perppu applies to the entire national territory or only applies to certain areas, such as in certain provinces or certain districts;
- The Perppu and Perpres must also establish the length of the emergency with confidence. If such restrictions are not confirmed, the Presidential Decree or Perppu is only valid for the duration of the DPR session until the re-opening of the next trial period, as referred to in Article 22 of the 1945 Constitution of the Republic of Indonesia (Greenberg et al., 2020);
- The Perppu must be submitted to the DPR for proper approval immediately after enactment. If the DPR does not or has not indicated its approval within the following trial term, the Perppu must be declared revoked by the President (Ehrlich et al., 2020).

Disasters are defined under Law No. 24 of 2007 concerning Disaster Management as natural, non-natural, and societal disasters. Non-natural catastrophes are those produced by non-natural occurrences or a chain of events, such as technical failures, failed modernization, epidemics, and disease outbreaks (GEDE SUDIKA MANGKU et al., 2020). According to the WHO, coronavirus illness (COVID-19) is a non-natural calamity that has already reached pandemic proportions. The status of a disaster emergency is defined in Law No. 24 of 2007 as a condition decided by the Government for a certain amount of time-based on the proposal of the Agency tasked with dealing with catastrophes (Purwendah & Mangku, 2021). The state of emergency is determined by the government. At the national level, it is determined by the President, at the provincial level by the governor, and at the district/city level by the regent/mayor (Mangku et al., 2020). There are three types of disaster emergency status, namely emergency alert, emergency response, and emergency to recovery (Mangku & Yuliartini, 2021).

- Emergency Alert Status is a situation when the potential threat of a disaster has led to a disaster which is marked by information on increasing threats based on the early warning system in place and consideration of the impacts that will occur in the community (Smereka & Szarpak, 2020);
- Emergency Response Status is a condition when a disaster threat occurs and has disrupted the lives and livelihoods of a group of people/communities (Suastika et al., 2020);
- Emergency to Recovery Transition Status is a situation when the threat of a disaster that occurs tends to escalate and/or has ended, while disruption to the lives and livelihoods of a group of people/community is still ongoing (Mangku & Radiasta, 2019).

The Government / Regional Government that declares a state of emergency is serious and ready to work 24 hours a day, seven days a week, mobilizing all available resources to save people from the disaster's impact. According to Presidential Decree No. 17 of 2018, disaster management is implemented in certain circumstances where the status of a Disaster Emergency has not been determined or the status of a Disaster Emergency has ended and/or has not been extended, but actions are required or continue to be required to

reduce Disaster Risk and the wider impact. Because of the outbreak of the coronavirus epidemic in Wuhan, China, the Indonesian government evacuated 238 Indonesian residents back to Indonesia and was observed on Natuna Island at the time. Emergency and quick disaster management assistance, as well as BNPB Ready to Use Fund (DSP) assistance, are required to support this response (Awaliyah et al., 2020).

There was no such thing as a disaster emergency status decided by the Regional Head or the Head of State at the time (Maguire et al., 2002; Manzanedo & Manning, 2020). The Head of BNPB then reviews the progress of particular requirements based on a Coordination Meeting organized by the Coordinating Minister for PMK on January 28, 2020 (Yuliantini & Mangku, 2020). The coordination meeting is attended by the Minister of Health, the Minister of Foreign Affairs, the Minister of Social Affairs, the BNPB, and others (according to Article 3 of Presidential Regulation No. 17 of 2018). Certain conditions must be followed for the BNPB to execute national, provincial, and regency/city-level emergency operations (Yuliantini & Pramita, 2022). BNPB can carry out emergency activities to help the emergency response in this situation. In addition, to assist in the repatriation of ABK World Dream, ABK Diamond Princess, and others using the same way (Itasari, 2015).

The BNPB accomplished this by releasing Decree of the Head of the BNPB Number 9.A. Year 2020 about the Determination of Certain Emergency Status of Disease Outbreaks Due to Corona Virus in Indonesia, which is effective for 32 days from January 28 to February 28, 2020. The decree was extended by the Decree of the Head of the BNPB Number 13.A of 2020 about the Extension of the Status of Circumstances Certain Emergency Disasters Due to Corona Virus Disease in Indonesia, which is effective for 91 days beginning February 29 and ending May 29, 2020 (Yuliantini & Pramita, 2022).

To expedite the process, the President of the Republic of Indonesia issued Presidential Decree No. 7 of 2020 establishing the Task Force for the Acceleration of Handling Coronavirus Disease (COVID-19), with BNPB serving as the coordinator (Vaishya et al., 2020; Butler & Barrientos, 2020). There has been no change in status as of yet; the Head of BNPB still has the right to carry out disaster management activities, including easy access to disaster emergency management, till a specified time limit (Ilczak et al., 2021).

Local governments can define the state of an emergency, namely Emergency Standby or Emergency Response, in line with Law 24/2007 and presidential instructions. Presidential Decree No. 7 of 2020, establishing the Task Force for the Acceleration of COVID-19 Handling, can also be utilized as a reference (Organization, 2020). Setting the COVID-19 Emergency Alert/Response Status indicates that the local government is prepared to work 24 hours a day, seven days a week, mobilizing all available resources to save the people in their region from coronavirus sickness (COVID-19) (Hall, 2020). It can also use the Ready-to-Use Fund (DSP) and the regional Unexpected Expenditure (BTT) budget to deal with the current circumstances. The Ministry of Finance has also allowed the Refocusing of Activities and Budget Reallocation of Ministries/Institutions in the Context of Accelerating the Handling of COVID-19, as indicated in the Circular Letter of the Minister of Finance Number SE-6/MK.02/2020, to expedite this COVID-19 response. Meanwhile, regarding Work From Home (WFH), it is not based on the Decree of the Head of BNPB Number 13.2020. Regarding this matter, it is returned and determined by policymakers such as regional heads/ministers/heads of respective offices (Magnavita et al., 2020). One of them is doing social distancing or social distancing such as avoiding gatherings in public spaces in large numbers, with the intent and purpose of preventing the spread of the coronavirus to and from other people (Xing et al., 2020).

The rule of law in an emergency of corona virus disease in Indonesia

For at least the last six months of 2020, the COVID-19 pandemic has grown extremely popular over the world. Practically every day, almost all media outlets debate COVID-19. The issue of COVID-19 is even present in scientific lectures and other events (Vindrola-Padros et al., 2020). This occurrence demonstrates the scope and depth of the COVID-19 pandemic's influence, grabbing all attention, concentration, and orientation of human existence throughout the planet. However, it is not unusual to override human logic, ethics, and aesthetics that a priori violate the order of values and norms that have been believed and utilized as social institutions for human life without comprehending the worldwide and huge phenomena of COVID-19 (Setiadi, 2012).

Various points of view and ideas are being developed based on the new normal notion, which tends to be futuristic and appears to disregard old concepts and theories that have been accepted for years. The interpretation of the COVID-19 pandemic phenomena is quite different, which is, of course, significantly

impacted by their points of view, backgrounds, and orientations (Adityo, 2013). The production of asymmetrical statements with fundamental comprehension and knowledge in judging the propositions of the events that occur might be significantly more repetitive in terms of futuristic direction and interests. The psychological components of dread of the COVID-19 problem may likewise impact thinking independence by putting aside core scientific philosophical conceptions in pursuit of formal and material truth (Mangku & Firdaus, 2022).

During the COVID-19 epidemic, legal interpretation should employ both deductive and inductive syllogisms. Thus, material and formal proof theory should be used to validate the minor assumption that serves as the foundation for evaluating the hypothesis. For example, in the discussion over the corpse suspected of containing COVID-19, the autopsy parameter by judicial medicine should be an essential need for determining the cause of death (Yuliartini & Pramita, 2022). Thus, the ultimate conclusion, which is the legal interpretation's conclusion, truly demonstrates the process of thinking in a scientific juridical syllogism and as a feature of defending the rule of law. Because of the influence of digital technology on VUCA (Volatility, Uncertainty, Complexity, and Ambiguity) on numerous parts of human life, the occurrence of COVID-19 generates legal uncertainty for various parties (Smereka & Szarpak, 2020). The virtual world (internet and social media), which began as a replica of the actual world, became so muddled that it could no longer be recognized from the real world. Society can no longer tell the difference between genuine reality and fabricated reality, between fact and fiction (Gautam & Hens, 2020). Bourdillard in the book *Paradigm for The Third Millennium* by John Tiffin and Nobuyashi Terashima, defines Hyperreality as a condition experienced by postmodern society with its technological sophistication, where public awareness is unable to sort and distinguish between reality and fiction (Hall, 2020).

In this state, reality and fantasy are so intertwined that it is difficult to tell them apart. Changes in the human life system with the phenomenon of fast-paced change, uncertainty, complexity, and ambiguity, which was then hit by the COVID-19 pandemic, causing an uncertain psychological situation, had the potential to cause common sense logic to not work optimally, scientific parameters were frequently neglected, and ambiguous judgment (Fatimah, 2022). Which is true and which is a work of fiction? Is it conceivable for the law to be supreme as a social institution that combines social reality (real world) and artificial social (virtual world) under such conditions?

The discussion of epistemology in the philosophy of science suggests the source of knowledge (the origin of knowledge) which divides knowledge based on the mind alone ('aqliyyah), sensory experience (tajribiyyah), criticism (naqdiyyah) and intuition (hadasiyyah); and the theory of truth which discusses the Correspondence Theory of Truth or according to the theory of truth; Coherence Theory of Truth; The pragmatic theory of truth; Performative Theory and the theory of religious truth (Verguet et al., 2021). Of course, amid the psychological conditions of the current COVID-19 pandemic, some people are unclear in describing the veracity of knowledge with correspondence, coherence, or pragmatic patterns.

Hornby.A.S argues that supremacy or supreme means "highest in degree or highest rank" (being at the highest level or highest rank). Supremacy also means "Highest of authority" (supreme power) (Asshiddiqie & Safa'at, 2006). According to Soetandyo Wignjosoebroto, the rule of law is an endeavor to uphold and elevate the law to a position where it can protect all levels of society without involvement from any party, including state authorities (Zaidan, 2017). So far, understanding law enforcement (law enforcement) has been limited to the existence of oppressive activities by law enforcement officials in carrying out forceful reactions against illegal actors. In reality, this is not the case, because law enforcement encompasses a wide range of responsibilities, including the obligation of every adult who is capable of being a legal person (perzoonlijk) (Wibisana, 2018). The responsibility to enforce the law is inherent. In the study of legal philosophy, the law seeks legitimacy rather than truth.

The legality principle argues that what is provided in the *ius constitutum* is agreed upon as legal truth at a certain locus and tempus and is obeyed as a formal truth. Although positivism dictates that the law be viewed as a rational structure, Lon Fuller argued that it is "morality that makes law conceivable," implying that the power of the law is primarily controlled by its morality (Satrianegara, 2014). The function of morality in law is so close that they cannot be separated, as is the usual view of the flow of natural law. However, not all laws have moral standards that are equitable to all (Sudiro, 2013). During the COVID-19 pandemic, the law may not be the philosophical or theoretical foundation for developing a coherent logic based on legal morality ideals to combat the epidemic. However, it is also feasible that the law functions as "law is a weapon of social

engineering," as Rouscou Pound's theory of efficacy and legal validity suggests (Rif'an et al., 2020). Such conditions place the rule of law in the choice of legal obedience through legal awareness or legal feeling. Laws that are built from the basic values of community morality (bottom up) require obedience through legal feeling. Meanwhile, the law that was built as a tool of social engineering (up to down) requires obedience through legal awareness (Hadi, 2016).

4 Conclusion

The 2019 Corona Virus Disease (COVID-19) pandemic has had an impact on a variety of economic and social sectors. The government has enacted several legislative regulations, both federal and regional, in response to the COVID-19 epidemic. However, there is a phenomenon of policy discrepancies between the national government and the local governments. The national and regional administrations have not yet spoken with one voice in dealing with COVID-19, therefore the public perceives the situation as poor. The legal foundation for declaring the Corona Virus Disease 2019 (COVID-19) outbreak a National Disaster is Presidential Decree No. 12 of 2020, dated April 13, 2020, concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster. Until now, the rule of law during the COVID-19 epidemic has essentially been the duty of every adult who is capable of becoming a legal person (*perzoonlijk*) and is bound by the commitment to preserve themselves and others from the COVID-19 pandemic. Legal awareness (legal awareness) and legal feeling are needed to build discipline and consistency in law compliance in fighting the COVID-19 pandemic, no longer at the level of debate on the gap between *das sollen* and *das sein* in the COVID-19 pandemic phenomenon.

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