



## Constitutional Law During the Covid-19 Pandemic in a Juridical Perspective: Challenges and Strategies

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**Abstract.** The phenomenon of the significant development of Covid-19 is increasingly causing unrest in the community because of its impact on the community's economy. Seeing the circumstances and situations caused by the Covid-19 pandemic, in fact, the implementation of emergency law by issuing an emergency law is carried out by incorporating substances regarding the handling of the Covid-19 pandemic in a comprehensive manner. Various safeguards are carried out in each country with different policy implementations. Then addressing the problems caused, especially in the economic aspect and information related to the Covid-19 pandemic, is necessary to do this firmly. This research uses a normative juridical type of research. Normative juridical writing is library research through secondary materials. This study uses a statutory approach, a conceptual approach, and a comparative approach. Source of data as research reference using literature study. The results of the study conclude that it is necessary to adjust various regulations or laws that regulate emergencies with efficient constitutional law doctrine. In addition to the application of emergency constitutional law, legal aspects must be enforced. In this case, aspects of law formation, law application, and law enforcement in a pandemic situation can run optimally, and all elements, including the community, take part in helping to break the chain of the spread of the Covid-19 pandemic by looking at aspects health, economy, and social welfare.

**Keywords:** Constitutional Law, Juridical Perspective, Covid-19 Pandemic



**Abstrak.** Fenomena perkembangan signifikan Covid-19 ini tentunya semakin menimbulkan keresahan di masyarakat karena berdampak pada perekonomian masyarakat. Melibat keadaan dan situasi yang ditimbulkan oleh pandemi Covid-19, sebenarnya penerapan undang-undang darurat dengan mengeluarkan undang-undang darurat dilakukan dengan memasukkan substansi-substansi mengenai penanganan pandemi Covid-19 secara komprehensif. Berbagai safeguards dilakukan di setiap negara dengan implementasi kebijakan yang berbeda. Kemudian menyikapi permasalahan yang ditimbulkan, khususnya dalam aspek ekonomi dan informasi terkait pandemi Covid-19, perlu dilakukan secara tegas. Penelitian ini menggunakan jenis penelitian yuridis normatif. Penulisan yuridis normatif merupakan penelitian kepustakaan melalui bahan sekunder. Penelitian ini menggunakan pendekatan perundang-undangan, pendekatan konseptual, dan pendekatan komparatif. Sumber data sebagai referensi penelitian menggunakan studi literatur. Hasil kajian menyimpulkan bahwa perlu penyesuaian berbagai peraturan atau undang-undang yang mengatur keadaan darurat dengan doktrin hukum tata negara yang efisien. Selain penerapan undang-undang darurat, aspek hukum harus ditegakkan dalam hal ini aspek pembentukan undang-undang, penerapan undang-undang dan penegakan hukum dalam situasi pandemi dapat berjalan secara optimal dan semua elemen termasuk masyarakat turut serta membantu memutus mata rantai penyebaran pandemi Covid-19 dengan melihat aspek kesehatan, ekonomi dan kesejahteraan sosial.

**Kata kunci:** Hukum Tata Negara, Perspektif Yuridis, Pandemi Covid-19

## 1. Introduction

The reality of the spread of Covid-19 was increasingly widespread s throughout the world, and then Covid-19 was declared a global pandemic. The paradigm that the growth of Covid-19 had developed widely since transmission could occur through human contact with other humans, such as through droplets when coughing and sneezing or through objects contaminated with the virus. In the first quarter of 2020, the spread of Covid-19 had reached Indonesia and Iraq.<sup>1</sup>

The significant development of Covid-19 was increasingly causing unrest in the community because of its impact on the community's economy and social instability.<sup>2</sup> Various safeguards are carried out in each country with different policy implementations. For example, Italy implements a policy blocking activities and public access, known as a lockdown. While the Iraqi government enacted a lockdown to limit social movement,<sup>3</sup> the Indonesian government did not implement or decide on the lockdown policy as a preventive and repressive effort against Covid-19.<sup>4</sup> Instead, it established social restrictions or what is known as

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<sup>1</sup> Raghda Alsayed, Ali Abd Ali, Raghda Makia, Mohammed Kadhom, Rasha Raheem, Omar Al-Obaidi, Angham Hadi, Dana Khdr Sabir, and Emad Yousif. "Challenges facing Iraq to tackle the spread of COVID-19: An overview." *Journal of university of Anbar for Pure science* 14, no. 2 (2020): 22-27; Ivan Elisabeth Purba, Seri Asnawati Munthe, and Henny Arwina Bangun. "Enam Langkah Mencuci Tangan Yang Benar Dalam Pencegahan Penularan Virus Covid 19." *Jurnal Abdimas Mutiara* 2, no. 2 (2021): 14-24.

<sup>2</sup> Nazih A. Bizri, Walid Alam, Tala Mobayed, Hani Tamim, Maha Makki, and Umayya Mushrrafieh. "COVID-19 in conflict region: the Arab levant response." *BMC Public Health* 21, no. 1 (2021): 1-13.; Rindam Nasruddin, and Islamul Haq. "Pembatasan sosial berskala besar (PSBB) dan masyarakat berpenghasilan rendah." *SALAM: Jurnal Sosial dan Budaya Syar-i* 7, no. 7 (2020): 639-648.

<sup>3</sup> Nawfal R. Hussein, Ibrahim A. Naqid, Zana Sidiq M. Saleem, Lokman A. Almizori, Dildar H. Musa, and Nashwan Ibrahim. "A sharp increase in the number of COVID-19 cases and case fatality rates after lifting the lockdown in Kurdistan region of Iraq." *Annals of medicine and surgery* 57 (2020): 140-142.

<sup>4</sup> Direktorat Jendral Pencegahan dan Pengendalian Penyakit Republik Indonesia. *Pedoman Pencegahan dan Pengendalian Coronavirus Disease (COVID-19)*, Jakarta: Kementerian Kesehatan Republik Indonesia, 2020.

social distancing.<sup>5</sup> In addition, the government also ordered all workers in Indonesia to carry out their work from home (WFH). It raised various speculations in the community. Pros and cons emerged against the policies set by the government because these policies affect the community's economic condition.

Seeing that the 2019 Corona Virus Disease pandemic had a huge impact on the economy and given the increasing number of infected people, financial sector support was highly needed since its first wave to restore economic stability. In Indonesia, Government Regulation in Lieu of Law of the Republic of Indonesia No. 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and/or in Facing Threats That Endanger the National Economy and/or Financial System Stability, through the Ministry of Finance issued a Government Securities policy which is referred to in Law No. 24 of 2002 concerning Government Securities.

Technically, this policy was the government's effort to continue to implement a credible, sustainable, and disciplined fiscal policy amid the turbulent global economic conditions, especially during the Covid-19 pandemic. On the other hand, it is responsive and effective that this fiscal policy is profitable to support three priority and fundamental programs in handling Covid-19, in this case including handling health problems, support for the business world such as SMEs and providers of social safety nets. Indonesia is essentially a state of law. This announcement is expressly and straightforwardly contained in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the conception of a legal state, the law must place the law as a unified system which includes aspects of the behavior of legal subjects, rules of law, and institutional elements. Comprehensively these three aspects cover law making, law application and law enforcement processes.<sup>6</sup>

In the context of the current pandemic, practically, the state has carried out its role as a state of the law by issuing several policies. However, the policy is considered to be causing conflict and not an emergency response, as is the case with the presence of a Government Regulation regarding the Covid-19 PSBB,

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<sup>5</sup> Devira Prastiwi, "Imbauan Jokowi terkait Covid-19, dari Kerja dari Rumah hingga Ingatkan Social Distancing", <https://www.liputan6.com/news/read/4202629/imbauan-jokowi-terkait-covid-19-darikerja-dari-rumah-hingga-ingatkan-social-distancing>, (Accessed 11 April 2020).

<sup>6</sup> Jimly Asshiddiqie. *Konstitusi dan Ketatanegaraan Indonesia Kontemporer*. Jakarta: The Biography Institute, 2007, p. 13.

which is too bureaucratic. Technically in an emergency, the state must be responsive to make emergency response laws in the current pandemic situation.<sup>7</sup>

If studied from the perspective of emergency constitutional law or *staatsnoodrecht*, the Indonesian state in a state of coercion, urgency and in a state of urgency can take an emergency law position as an effective and efficient solution. As a rule, emergency constitutional law has an object of study: the state in a state of emergency.<sup>8</sup> In an emergency, which is defined as an extraordinary situation, it actually requires an extraordinary law. Likewise, in a state of danger that can threaten public order, the state can act in an unusual way, which is outside the normal legal situation.<sup>9</sup>

In practice, when normal law cannot be a solution for handling abnormal circumstances, it is very necessary to have an unusual law. Jimly Asshidiqie also shares that if there is no possible way to solve emergency problems with existing legal instruments, by establishing an emergency in a country, martial law is applicable.<sup>10</sup> Based on the context of the discussion mentioned above related to the Covid-19 pandemic, which requires the government to issue policies in handling it but also must pay attention to the economic condition of the community, a comprehensive study of efforts to handle the pandemic is needed through optimizing the role of the state, especially in the study of emergency constitutional law.

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<sup>7</sup> Rezky Panji Perdana Martua Hasibuan, and Anisa Ashari. "Optimasi Peran Negara Menghadapi Pandemi Corona Virus Disease 2019 dalam Perspektif Hukum Tata Negara Darurat." *SALAM: Jurnal Sosial dan Budaya Syar-i* 7, no. 7 (2020): 581-594.

<sup>8</sup> Venkat Iyer, State Of Emergency. Dalam Jimly Asshiddiqie. *Pengantar Ilmu Hukum Tata Negara*. Jakarta: Rajawali Press, 2012, hlm. 7.

<sup>9</sup> Jazim Hamidi, and Mustafa Lutfi. "Ketentuan Konstitusional Pemberlakuan Keadaan Darurat dalam Suatu Negara." *Jurnal Konstitusi* 6, No. 1 (2009): 39-78; Tomy Michael. "Hukum Tata Negara Darurat Corona di Indonesia." *Mimbar Keadilan* 13, no. 2 (2020): 163-172; Muhammad Rinaldy Bima. "Implementation of State of Emergency Within the Constitutional Law System In Indonesia." *Diponegoro Law Review* 4, no. 1 (2019): 122-135.

<sup>10</sup> Muhammad Yasin. "Staatsnoodrecht dalam Pandangan Tiga Tokoh Hukum". 2019. <https://www.hukumonline.com/berita/a/istaatsnoodrecht-i-dalam-pandangan-tiga-tokoh-hukum-lt5cbe8b53690fd> (accessed pada 16 April 2020)

## **2. Research Method**

Seeing the circumstances and situations caused by the Covid-19 pandemic, in fact, the implementation of martial law by issuing an emergency law is carried out by incorporating substances regarding the handling of the Covid-19 pandemic in a comprehensive manner. Therefore, this research uses normative juridical research. Normative juridical writing is library research through secondary materials. This study uses a statutory approach, a conceptual approach, and a comparative approach. Source of data as research reference using literature study.

## **3. Result and Discussion**

In terms of law, many countries choose legal instruments to determine policies for handling Covid-19.<sup>11</sup> The legal instruments they have are, in fact, less effective in overcoming the complexity of the crisis caused by the infectious virus. Many countries do not have the relevant legal instruments to deal with the Covid-19 crisis. Countries in Europe, such as Hungary, have chosen to use their constitutional state of emergency in response to the coronavirus. In Indonesia, the government, in this case, the president, decides to issue Presidential Decree No. 11 of 2020 concerning the Determination of Public Health Emergency of Corona Virus Disease (Keppres 11 of 2020) and uses constitutional authority based on Article 22 of the 1945 Constitution to issue Perpu No. 1 of 2020 concerning State Financial Policy and financial system stability for Handling the Corona Virus Pandemic. Then the president also issued Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease (Covid-19) as a national disaster.

The imposition of a state of emergency is seen as a form that allows the state to overcome a crisis quickly. On the other hand, giving the government justification for power can lead to abuse of power. Concerns about the abuse of power by the state during the Covid-19 pandemic were conveyed by the United Nations, which urged each country to avoid and make efforts to prevent excessive security measures in response to the Covid-19 pandemic.

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<sup>11</sup> Rizki Bagus Prasetyo. "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat dan Perlindungan HAM." *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 327-346.

In terms of regulating regulation as a public policy, legally formally, a public policy can be manifested in the form of Laws, Government Regulations, Provincial Government Regulations, City/Regency Government Regulations, and Mayor/Regent Decrees. However, in an effort to optimize the implementation of a policy, it is necessary to have support from several aspects. Four aspects can fundamentally affect the existence of the policy. According to George Edward III, there are four aspects: communication, sources, attitudes, behavior, and bureaucratic structure.<sup>12</sup> These four aspects are a unit that supports the implementation of a policy, so these aspects must be carried out optimally and sustainably.

That it turns out that the Covid-19 pandemic does not only have an impact on health but also has an impact on the national economy,<sup>13</sup> So as an effort to maintain financial sector stability and save health and recovery for the affected community, the state finally made a policy, namely Government Regulation in Lieu of Law (Perppu) No. 1 of 2020 concerning State Financial Policy and Financial System Stability for handling the Covid-19 pandemic. In addition to issuing this policy, the Ministry of Finance issued a Government Securities policy which refers to Law No. 24 of 2002 concerning Government Securities. This policy is the government's effort to continue to carry out fiscal policy in a credible, sustainable and disciplined manner in the midst of turbulent global economic conditions, especially during the Covid-19 virus pandemic and fundamentals in handling Covid-19 in this case, include handling health problems, support for the business world such as MSMEs and providers of social safety nets.<sup>14</sup>

In practice, when normal law cannot be a solution for handling abnormal circumstances, it is very necessary to have an unusual law. Jimly Asshidiqie also shares that if there is no possible way to solve emergency problems with existing legal instruments by establishing an emergency in a country, the applicable law is

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<sup>12</sup> George C Edward III. *Implementing public policy*. Congressional Quarterly Press, 1980.

<sup>13</sup> Mei Susanto, and Teguh Tresna Puja Asmara. "Ekonomi Versus Hak Asasi Manusia Dalam Penanganan Covid-19: Dikotomi Atau Harmonisasi (The Economy Versus Human Rights in Handling Covid-19: Dichotomy or Harmonization)." *Jurnal HAM* 11 (2020): 301-317.

<sup>14</sup> Anton Aulawi. "Penerbitan peraturan pemerintah pengganti Undang-undang Nomor 1 tahun 2020 sebagai strategi kebijakan pajak pemerintah Indonesia dalam menghadapi dampak pandemi Covid-19 terhadap keuangan negara." *Progress: Jurnal Pendidikan, Akuntansi Dan Keuangan* 3, no. 2 (2020): 110-132.

emergency law or martial law<sup>15</sup>. Emergency law can be established and enforced in an emergency with the issuance of an emergency law. Technically there are five conditions in making an emergency law, which includes security that endangers and threatens the realization of the state, an urgent situation, to overcome the conditions and difficulties that arise from the dangerous situation, there is no opportunity to discuss with parliament, and the law only applies as long as there is danger<sup>16</sup>. Looking at the current situation and situation, in fact, the implementation of emergency law by issuing emergency laws is carried out by including substances regarding the comprehensive handling of the Covid-19 pandemic.

It has become necessary to implement emergency law by issuing emergency laws by including substances regarding the handling of the Covid-19 pandemic. In responding to problems related to the economy, the handling of the economy needs to be monitored, which in this case needs to be formed a substance tasked with handling the economic sector to oversee regional and central economic growth in synergy and optimally in its implementation. Policies must be implemented in a sustainable manner and supported by all elements, including the community itself. Suppose the aspects of law formation, law application and law enforcement in a pandemic situation can run optimally. In that case, the law can run as it should so that the existence of Indonesia as a legal state can run optimally, namely in terms of carrying out protection and providing public welfare at large<sup>17</sup>.

Looking at the current situation and situation, in fact, the implementation of emergency law by issuing emergency laws is carried out by including substances regarding the comprehensive handling of the Covid-19 pandemic. Refly Harun explained that it is better to simultaneously implement several policies in one unit including hospital quarantine, regional quarantine and PSBB. Then in the regulation, it is emphasized that each regional government has the flexibility to determine handling policies which can then be evaluated by the central government, continued, reduced or stopped.

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<sup>15</sup> Yasin, Muhammad. Staatsnoodrecht dalam Pandangan Tiga Tokoh Hukum. Staatsnoodrecht dalam Pandangan Tiga Tokoh Hukum. 2019. <https://www.hukumonline.com/berita/a/istaatsnoodrecht-i-dalam-pandangan-tiga-tokoh-hukum-lt5cbe8b53690fd> (accessed pada 16 April 2020)

<sup>16</sup> Iwa Kusuma Sumantri. *Ilmu Hukum dan Keadilan*. Medan: Bangun Pustaka, 1956.

<sup>17</sup> Bambang Arumanadi, and Sunarto, *Konsepsi Negara Hukum Menurut UUD 1945*. Semarang: IKIP Semarang Press, 1990.



Then addressing these problems, especially in the economic aspect and information related to the Covid-19 pandemic, needs to be done firmly. As with handling the economy during the pandemic to post-pandemic, it is necessary to supervise; in this case, it is necessary to form a sub-task force for handling Covid-19 in the economic field to oversee regional and central economic growth in synergy and optimally in its implementation. Then regarding the problem of information, the state should actually play a transparent and responsive role in conveying information related to the pandemic because of the emergence of hoaxes and disinformation between the central and regional levels.

#### **4. Conclusion**

Legal optimization through emergency constitutional law needs to be made, especially considering this pandemic can have an impact on the world economic recession. To address this situation, the law must be present in this case, covering aspects of handling the eradication of the spread of the Covid-19 pandemic, aspects of handling health, aspects of disseminating information, and economic aspects. Policies must be implemented sustainably and supported by all elements, including the community. Suppose the aspects of law formation, law application, and law enforcement in a pandemic situation can run optimally. In that case, the law can run as it should so that the existence of Indonesia as a legal state can run optimally, namely in terms of carrying out protection and providing community welfare.

With the urgency of the Covid-19 pandemic and the enactment of a state of emergency, the implementation of emergency constitutional law is a progressive and responsive step for the state in dealing with the Covid-19 pandemic. This is based on ensuring and achieving the ideals of the rule of law, namely ensuring protection and providing public welfare as a supreme law in the presence of the state. Therefore, it is necessary to adjust various regulations or laws that regulate emergencies with the doctrine of efficient constitutional law. In addition to the application of emergency constitutional law, legal aspects must be enforced. In this case, the aspects of law formation, law application, and law enforcement in a pandemic situation can run optimally, and all elements, including the community, take part in helping break the chain of the spread of the Covid-19 pandemic by looking at aspects health, economy, and social welfare.

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