

Debate Emergency Law to Handle Covid-19 Pandemic: How States Regulate in Time of Crisis

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ABSTRACT

Each country has specific policies formulated to handle and deal with the impact of the spread of Covid-19 in both social, economic, and cultural aspects. In Indonesia, the government has issued the Covid-19 Law in Lieu which has been agreed by the Parliament as an umbrella law for policies, especially in the economic sector, to maintain national financial stability. This paper examined the law by comparing it with regulations in other countries to determine how relevant economic policies and law are to deal with the impact of the Covid-19 pandemic. By normative research method, this paper saw the extent to which emergency laws are needed to deal with the Covid-19 pandemic, primarily for economic stability that will directly or indirectly impact the welfare of citizens. Time limits for the emergency law need to apply, to provide an opportunity for an evaluation process to avoid authoritarian rule.

Keywords: Covid-19 Policies, Economic Policies, emergency law.

1. INTRODUCTION

Since the beginning of February 2020, there has been a precarious situation due to the spread of the Covid-19 pandemic. For this reason, the legislators have issued Law Number 2 of 2020 concerning Stipulation of Government Regulations in lieu of Law Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling Pandemic Corona Virus Disease 2019 (Covid-19) and/or in the Context of Facing Threats that Endanger the National Economy and / or Financial System Stability (Law 2/2020).

Technically, the handling arrangements are also through Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Covid-19, Presidential Decree of the Republic of Indonesia Number 9 of 2020 concerning Amendments to Presidential Decree of the Republic of Indonesia Number 7 of 2020 concerning Task Force for the Acceleration of Handling of Covid-19; Republic of Indonesia Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions, Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019; and various technical regulations issued by respective ministries of institutions and government offices in Indonesia. There have been multiple forms of adjustments to work

procedures and government management that have been implemented in order to support efforts to prevent the spread of covid-19 and accelerate the response to covid-19.

Several articles have discussed how the state issued an emergency law to deal with the COVID-19 pandemic. Still, no one has provided a comparison of how each country's regulations regulate various Covid-19 issues. Therefore, this paper will examine the law by comparing it with regulations in other countries to determine how relevant economic policies and laws to deal with the impact of the Covid-19 pandemic. Moreover, this paper intends to see the extent to which emergency laws are needed to deal with the Covid-19 pandemic, primarily for economic stability that will directly or indirectly impact the welfare of citizens.

2. RESEARCH METHOD

This study employs the normative legal research method and a comparative study, which analyzes both primary and secondary data. The primary legal materials are any regulations pertaining to Covid-19, while the secondary data consists of literature journals and dictionaries related to the problems encountered during this research.

This research not only compiles materials dealing with the topic, such as theories, concepts, principles, and

regulations of law, but it also explains the reality of the law in society as a law phenomenon for the subject, Covid-19, in both social, economic, and cultural aspects. compared the legal and policy frameworks in Indonesia, Singapore, Taiwan, German, South Korea, New Zealand were compared. All the data needed are collected by literature review. We chose Singapore, Taiwan, and South Korea as the representation of states in Asia. Germany and New Zealand were acknowledged as two of many states that succeeded in handling the Covid-19 so that we want to take some lesson learned that might be implemented in Indonesia.

3. FINDINGS AND DISCUSSION

3.1. Anticipate of State of Emergencies

Issues of law and constitutional law are usually discussed with the assumption, namely that the state is in a normal state. However, in practice, in addition to the normal condition of the country (average condition), sometimes abnormal conditions arise or occur.

Moreover, if it is related to the condition of the Indonesian state, which is located in the area of intersection between oceans, between continents, between cultures, between economic forces, and even between civilizations, and contains a lot of potential disasters and extraordinary events, it is very easy to develop unusual circumstances, extraordinary circumstances, ordinary, or other abnormal conditions, all of which are included in the category of an emergency or a state of emergency.

If an unusual emergency does occur, there can be two possible responses to state and government organs to deal with it, namely the state and government organs experiencing dysfunction syndrome (not functioning properly), or state authorities turning into tyrants (dictator by accident) who take advantage of this unusual emergency for their own interests or to strengthen their power. It is necessary to provide various positive legal instruments which from the beginning, anticipate multiple possible situations of such an unusual nature [1, p. 4].

For this reason, it is necessary to understand that in such an unusual or abnormal condition, norms that are also specific must apply which need to be regulated separately accordingly. Both regarding the conditions, the procedure for their enforcement, the terms and procedures for terminating them, as well as things that can and cannot be done in an emergency, need to be clearly regulated so as not to give an opportunity for abuse that is contrary to the constitution. In this regard, according to Jimly Asshidiqie, it is also necessary to distinguish the context of Emergency Constitutional Law with the term emergency law which includes a broader definition, namely covering all areas of law that apply when the state is in an emergency. This is because the laws that apply in a country are not only related to the field of constitutional law, but also other areas of law, for example, the field of civil law, the field of business law, the field of criminal law, the field of state administrative

law, and so on. In addition, at the time and during the validity of an emergency in a country, all existing legal provisions are still in effect, unless the authority of the emergency situation determines otherwise in accordance with their legitimate authority [1].

Previously, there have been cases of emergencies in Indonesia. For example, there was a State of Emergency Statement for the East Java and Madura Region issued by President Soekarno on June 7, 1946 when the government was based in Yogyakarta, which was followed by a statement by the government that starting June 28, 1946, Indonesia was in danger. This condition is related to the socio-political condition of Indonesia in the early days of independence which was full of turmoil and upheaval. There was also the 1965-1966 political crisis, the 1997-1998 political crisis, the state of emergency due to the tsunami in Aceh, and even the Sidoarjo hot mud overflow case [1]. Now, the Covid-19 pandemic has occurred.

US Judges Richard Posner once stated “a Constitution that will not bend will break” [2]. Posner wants to explain that there is flexibility needed to be regulated to deal with conditions that are not normal in the constitution. The state does not always run in normal conditions, where all state instruments function properly according to the ideal constitutional design. There are certain situations where the state is faced with unusual conditions that require a special administrative approach through emergency regulation [2].

Emergency regulations are the laws that are used to anticipate or respond to emergencies or other urgent needs. Therefore, legal products in this abnormal situation may activate a specific legal status or even form a new law [3].

In the practice of Indonesian policy-making, at the statutory level, there are various laws that also have an emergency character that is not directly related to emergencies based on the constitution. As a result, the emergency activation of these various laws has implications for the limited powers of the emergency rulers. However, when viewed from the perspective of guaranteeing freedom and fulfilling human rights in conditions of enforcement of emergency conditions, emergency activation based on the law has an advantage. As a result, the power of emergency rulers has become more focused on the type of emergency and not many democratic procedures and fulfillment of human rights has been distorted.

Covid-19 cases in Indonesia were first announced by the government on March 2, 2020, and then paying attention to the development of covid-19 cases in Indonesia and the world, on March 31, 2020, the government issued Presidential Decree Number 11 of 2020 concerning the Determination of Public Health Emergency Corona Virus Disease, followed by the promulgation of a Government Regulation in Lieu of Law Number 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. The issuance of

Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster, indicates that the COVID-19 pandemic has entered a fairly serious phase. In facing Covid-19, it appears that this emergency choice has become the choice of the Government of the Republic of Indonesia. Therefore, there should be no unnecessary repression of freedom in handling Covid-19 in Indonesia [4].

3.2. *Indonesia and Covid-19 Pandemics*

Each country has specific policies that are formulated with the aim of tackling and dealing with the impact of the spread of Covid-19 in both social, economic and cultural aspects. The main policies in Indonesia regarding COVID-19 are:

1. Law Number 2 of 2020 concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (COVID-19) Pandemic and / or in the Context of Facing Threats that Endanger the National Economy and / or Financial System Stability,
2. Government Regulation Number 21 of 2020 Concerning Limitation of Large-Scale Issues in the Context of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19),
3. Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (COVID-19).

The Indonesian government has indeed issued the Covid-19 Perpu which was later approved by the DPR to become Law 2/2020 to provide a legal umbrella for policies, especially in the economic sector in order to maintain national economic stability because after all economic stability will have a direct or indirect impact on the welfare of the country's citizens.

According to Constitutional Court Decision Number 138/PUU-VII/2009, Article 22 paragraph (1) of the 1945 Constitution states. "In terms of pressing urgency, the President has the right to set government regulations lieu of the law. From the formulation of the sentence it is clear that the government regulations referred to in this article are as follows: substitute for the Law, which means that the material should be regulated in the Law but because of the urgency that forced the 1945 Constitution gives the President the right to stipulate a Perpu and does not give the right to the DPR to make regulations in lieu of laws. If the making of regulations is submitted to the DPR, the process in the DPR requires a long time because the DPR as a representative institution, the decision-making is in the hands of the members, which means to decide something has to go through DPR meetings so if you have to wait for Parliament's decision on legal needs quickly it may not be met [5].

Moreover, the Court states that, in addition, by mentioning the "President has the right" it seems that the making of Perpu becomes very subjective because it becomes a right and is completely dependent on the President. The making of the Perpu is in the hands of the President, which means it depends on the President's subjective judgment, however, this does not mean that it absolutely depends on the President's subjective judgment because the President's subjective assessment must be based on objective condition, namely the existence of three conditions as a parameter of coercive urgency. In certain cases where the need for a law is very urgent to solve state problems that arise is very important that is felt by the whole nation, the President's right to determine Perpu can even be a mandate to the President to stipulate a Perpu as an effort to solve the problems of the nation and state [5].

In the Indonesian context, there is something interesting in Article 2 paragraph (1) letter a numbers 1, 2, 3 of Law 2/2020. It is stated that in the framework of implementing the state financial policy as referred to in Article 1 paragraph (4) the government has the authority to: a. Setting a budget deficit limit with the following conditions: 1. Exceeding 3% (three percent) of Gross Domestic Product (GDP) during the handling period of the corona virus disease 2019 (Covid-19) and / or to face threats that add to the national economy and / or financial system stability no later than the end of 2022; 2. Since fiscal year 2023, the amount of the deficit will return to a maximum of 3% (three percent) of GDP; 3. The amount of deficit as referred to in number 1 as referred to in number 2 shall be adjusted gradually.

Article 27 paragraph (1) states the costs that have been incurred by the government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state expenditure policies including policies in the field of regional finance, financing policies, financial system stability policies, and the national economic recovery program, are part of the economic costs to save the economy from the crisis and are a loss to the state.

In paragraph (2) it is explained that members of the KSSK, the secretary of the KSSK, members of the KSSK secretariat, and officials or employees of the Ministry of Finance, Bank Indonesia, the Financial Services Authority, the Deposit Insurance Corporation and other officials related to the implementation of this Government Regulation in Lieu of Legislation, cannot be prosecuted both civil and criminal if in carrying out the task is based on good faith and in accordance with the provisions of laws and regulations. Interestingly, in paragraph (3), it is stated that all actions, including decisions made based on this government regulation in lieu of this law, are not the object of a lawsuit that can be submitted to the state administrative court.

According to this regulation, the costs incurred by the government and/or KSKK member institutions in the context of implementing state revenue policies, including taxation policies, state expenditure and regional finance policies, financing policies, financial system stability policies, and national economic recovery programs, are

part of the economic costs. The following article stipulates that KSKK member institutions must be able to exercise their authority in good faith and conform to the provisions of laws and regulations, so that the phrase "cannot be prosecuted both civil and criminal" cannot be interpreted as a form of absolute immunity protection. If related stakeholders implement policies in government regulations instead of laws in bad faith and deviate from statutory regulations, law enforcement efforts can be carried out in accordance with the provisions of the prevailing laws and regulations.

3.3. Comparison with Other Countries

As a comparison, the following are some economic policies in order to deal with the impact of the Covid-19 pandemic that applies in other countries:

1. Singapore

Singapore has not declared a state of emergency in response to the COVID-19 outbreak. It began by relying on powers granted by the Infectious Diseases Act (IDA), which had been strengthened during the global SARS (Severe Acute Respiratory Syndrome) outbreak in 2002/2003. [6].

MAS (Monetary Authority Singapore) has issued several monetary, financial, fiscal and regulatory policies to maintain exchange rates in order to suppress the decline in economic growth. [7] MAS not only focuses on the financial sectors but also provides solutions to support individuals, business players, and SMEs to survive through Covid-19 [8]. In terms of the recovery of the economic in the tourism and travel sector, the government of Singapore has discussed bilateral cooperation with the Indonesian government to re-activate the *Travel Corridor Arrangement (TCA)* [9]. TCA will facilitate all official and essential travel between the states. The border will also be re-opened for tourism purposes.

Later on, Singapore released a blueprint for getting used to live with Covid-19. It shows that in Singapore, Covid-19 is not considered an emergency of state. However, the state has been well prepared to enact regulations and policies for the sake of the handling of the covid-19 pandemic. The social aspect has been the main factor of the success of Covid-19 handling in Singapore, since the society has an awareness that preventing the spread of covid-19 is not only the state's responsibility but also all citizens' [10].

2. Taiwan

Taiwan also enforces the use of emergency law as regulated in Article 2 (3) of the Supplementary Article to the Constitution of the Republic of China of Taiwan which reads: "The President may, by resolution of the Executive Yuan Council, issue emergency decrees and take all necessary measures to avert imminent danger affecting the security of the State or the people or to cope with any serious financial or economic crisis, the restrictions in article 43 of the Constitution notwithstanding. However, such a decree must be

presented to the Legislative Yuan for ratification within ten days of its issuance. Should the Legislative Yuan withhold ratification, the said emergency decree shall forthwith cease to be valid. [11]"

However, Taiwan has not issued a state and emergency law due to several reasons, namely [12]:

- a. Taiwan issued an Emergency Law which was in effect from March 15, 2003 to December 31, 2004 which was later amended into the Communicable Disease Control Act which was last amended in 2019 where this regulation regulates everything related to health emergency measures and procedures. in detail and complete;
- b. On February 25, 2020, the Taiwan Parliament issued a Covid-19 Law on Prevention, Assistance and Revitalization Measures for Covid-19. The time interval between the enactment and enactment of these regulations is only 2 hours apart. The law will take effect from 15 January to 30 June 2021. If it has passed the expiration date, this law can be extended again with the approval of the parliament. Although there is no time limit for the extension, it is unlikely that the law will be extended if we reflect on Taiwan's experience when implementing the SARS Law. In terms of legislative procedures and the effectiveness of regulations, the Covid-19 Special Law actually has an equivalent impact to the issuance of emergency decrees.

3. Germany

Under Article 91 of the German Constitution, a state of emergency in a country can be enforced only referring to a state of "order to avert an imminent danger to the existence or free democratic basic order of the Federation or of a land. [13]" Thus, the covid-19 pandemic situation cannot be categorized as a situation that threatens democracy so that no emergency law has been issued.

Even though Germany did not issue an emergency law, the parliament continues to carry out its obligations and responsibilities by issuing provisions and legislation aimed at protecting the economic impact of COVID-19, for example a provision to protect tenants who cannot make payments during a pandemic. In addition to this, the German government has also launched a new loan assistance package worth approximately 156 billion euros.

4. South Korea

The state of emergency in the South Korean constitution falls into two categories. First, an emergency financial order that refers to Article 76 (1) of the South Korean Constitution which reads: "in time of internal turmoil, external menace, natural calamity or grave financial or economic crisis [...] the President may take in respect to them the minimum necessary financial and economic actions or issue orders having the effect of Act,

[...] only when [...] there is no time to await the convocation of the National Assembly”.

It is possible for the President of South Korea to issue regulations related to the national economy or to have a direct impact on the national economy only if there is not enough time for national representatives to approve them in a formal meeting or meeting. Second, a state of emergency which is interpreted as "emergency order) is based on article 76 (2) of the Korean Constitution which states that emergency orders will only be adopted in a situation of" in case of major hostilities affecting national security [...] the President may issue orders [...] only when [...] it is impossible to convince the national assembly. [14]

Currently, South Korea has several regulations regarding the handling of covid-19, including:

- a. The Contagious Disease Control and Prevention Act;
- b. Legal Framework Law on Planning and Safety Management;
- c. Territorial Quarantine Law;
- d. Regional Public Health Law;
- e. AIDS Prevention Act.

The Infectious Diseases Control and Prevention Act, hereinafter referred to as IDCPA) was amended on December 2, 2016 and underwent its last amendment on March 4, 2020. The IDCPA provides a very detailed means for the government to distribute resources and mobilize and invite various actors across society to combat the spread of disease transmission collectively. This law was born out of the existence of Middle East Syndrome (MERS) in 2015, this law basically regulates how the economic consequences arise as a result of an outbreak of disease [15].

5. New Zealand

The New Zealand government has declared a national emergency on March 25, 2020. Regarding emergencies that are implemented through the covid-19 emergency detection system in stages, it is regulated in the Civil Defense Emergency Management Act of 2002 (Civil Defense Emergency Management Act 2020) [16].

A State of National Emergency declaration, as defined by the Civil Defence Emergency Management Act 2002, allows the Director Civil Defence Emergency Management to direct and coordinate personnel, material, and other resources, as well as gain access to other extraordinary powers that will aid in the delivery of an effective and timely response to COVID-19. While the State of National Emergency is in effect, the Director and local controllers will be able to: conserve and supply food, fuel, and other essential supplies; regulate land, water, and air traffic; close roads and public places; evacuate any premises, including any public place; and, if necessary, exclude people or vehicles from any premises or place. [16].

From the explanation above, we can see data from the emergency laws of five countries to deal with the Covid-19 pandemic as shown in the table below:

Indonesia	Singapore	Taiwan	German	South Korea	New Zealand
Law Number 2 of 2020 Government Regulation Number 21 of 2020	-Covid-19 (temporary Measure) Act 2020 -Revised Supplementary Supply (FY 2020) Act 2020	Covid-19 Law on Prevention, Assistance and Revitalization Measures for Covid-19	The Covid019 pandemic situation can't be categorized as a situation that threatens democracy	-The Contagious Disease Control and Prevention Act-Legal Framework Law on Planning and Safety Management -Territorial Quarantine Law	Covid-19 Public Health Response Act 2020

Noodverorderingsrecht is the legal regulations used to organize emergencies when: (1) there is a dangerous situation, a situation precarious; (2) the situation can threaten the safety of the State if the government does not as soon as possible take concrete action; (3) by causing the situation is urgent, Government action is needed asap, so it's not possible to involve the DPR mechanism which takes a long time to process [17, p. 48].

Article 12 and Article 22 of the 1945 Constitution can be the basis for issuing an emergency law in Indonesia. Article 12 of the 1945 Constitution states that: "The President declares a state of danger, the conditions, and consequences of a danger stipulated by law ", while Article 22 reads" in the event of an emergency that forces the President to stipulate a replacement government regulation ". The two categories of ordinary state emergencies of the two articles are that, first, there must be a state of danger, and second, there must be compelling interests. It can be understood, that the difference between a dangerous situation and a compelling interest is that the term hazard emphasizes its structure (external factors) while in terms of circumstances crunch that forces more emphasis on the content (internal factors) [18].

According to this regulation that becomes the basis of the other following policies and regulations for the handling of Covid-19 in Indonesia, it could be concluded that Covid-19 is a non-catastrophic state of emergency with the issuance of Presidential Decree Number 12 of 2020 concerning the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (COVID-19) as a National Disaster.

According to Jayus and M. Bahrul Ulum, the constitutional design set the President's dominant power on the exercise of the legislative function, which was not only through the regular session to establish acts but also through the extraordinary situation to legitimate the issuance of Perppu. Accordingly, further translation was laid down with the Law on the State of Emergency through Perppu No. 23/Prp/1959. The Perppu classified the state of emergency into three degrees: civil emergency, martial law, and war situation. Through this Perppu, the state of emergency could be declared solely

by the President where the security of Indonesia or any part of the territory is endangered with three indicators. First, if the nation is threatened by rebellion, turmoil, or natural disaster. Second, if the nation will cause a danger of war or, there is a fear of dealing with rape in the territory. The third indicator is whether the state is in danger or whether particular circumstances can potentially endanger the life of the state. As a result of the declaration, the law gives the authority to issue regulations to restrict performance, publishing, announcement, distribution, trade, and attachment of any form whatsoever to paintings and drawings. It also legitimates the authority in dealing with searching, surveillance, and detention [19, p. 352].

Constitutionalism under extreme conditions raises a bundle of fascinating and important issues [20, p. 2]. During times of crisis, the expansion of executive powers, suspension of protected rights, or even suspension of democracy as it is or has been practiced cause grave concern for the entire enterprise of constitutionalism.

Supervision from the stakeholders is needed when an emergency regulation is established. Ideally, regulations issued during an emergency must also have a certain time limit, so that the agreement will provide a greater sense of security to the community and reduce the possibility of abuse of power.

4. CONCLUSION

Some of the risks from the COVID-19 pandemic include an increase in the budget for mitigating health risks, and also protecting business activities that exist in the community. The COVID-19 pandemic also has an impact on decreasing domestic economic activity due to social distancing policies, which can lead to economic and financial system instability. According to the regulations that become the basis of the other following policies and regulations for the handling of Covid-19 in Indonesia, it could be concluded that Covid-19 is a non-catastrophic state of emergency.

In times of crisis, the government still has to be controlled and limited. Therefore, it takes an official and open proclamation of an emergency so that everyone can control it. This includes the need for a specific time limit so that it can be evaluated to avoid the strengthening of the government's role leading to authoritarianism. Some countries even choose not to make special laws to avoid this.

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