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CONSTITUTIONALITY OF PRESIDENT'S AUTHORITY REGARDING LOCKDOWN POLICY DURING THE STATE'S EMERGENCY

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The Article 22 of the 1945 Constitution of the Republic of Indonesia grants an exclusive authority to the president enacted as legal dictatorial power, meaning that the President holds a sovereign authority to create and form regulations or laws independently without needing to discuss with the House of Representatives (DPR). The authority is to stipulate Government Regulation in Lieu of Law (Perppu). It refers to the president's authority basis to run the regulation over the running government whose primary aims are to guarantee and to protect the

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citizen's welfare. On the other hand, in respect of Indonesian constitutional system that adheres to the concept of decentralization, local governments also have the right to determine a situation/condition in response to the global pandemic situation. As a matter of the fact, so many overlaps are found in the exercise of policies and regulations under the authority of central and regional governments. Thus, the current research is aimed to strengthen the role of President as the head of state in dealing with the global pandemic issue and in applying lockdown with its all mechanisms. Practically, the research was carried out by means of normative legal research method associated with statutory, conceptual, historical, and comparative approaches. Furthermore, the research had found that the President appeared to be the supreme power holder over central governments, equipped with strong legitimacy in running the lockdown in accordance with juridical and empirical perspectives on the effectiveness of pandemic handling.

Keywords: *State of Emergency Law; Regional Quarantine; Covid-19 Pandemic Handling*

I. INTRODUCTION

If the topic is re-raised, the author feels that it is very relevant to the situation and conditions that develop in this country, especially the many obstacles faced by these women seeking justice. Various studies show that women's access to justice is still very weak (UNDP, 2007:vii-xvi, The Asia Foundation, 2001:vx, Narayan, 2000:6-9, World Bank, 2004&2008). Weak access to justice further leads women to be further trapped in poverty (Dewi Novirianti, 2005:76). This is partly due to the fact that women often lose their rights to assets and resources when facing legal cases, especially when they are unable to obtain a fair case settlement. Various studies and reports have revealed various obstacles faced by women in accessing justice. The main obstacle generally is the low awareness and understanding of their legal rights (UNDP, 2007:81). Meanwhile,

Now that the global Covid-19 pandemic becomes the part of life, many countries in the world, including Indonesia, have their crucial sectors of life nearly collapsed, including economy, education, and socio-culture. In fact, Covid-19 is found as a kind of infectious disease caused by coronavirus firstly detected in Wuhan, China. In addition, the transmission of Covid-19 to infect can be in the form of a droplet

substance from mouth or nose, and produced by those positive with the virus.¹ Therefore, the Indonesian's Government, as the leader of the State, has a duty to protect whole citizens from any kinds of threats that potentially impend the security of the citizens.²

Moreover, Emergency Constitutional Law appears as a specific concept initially introduced by Carl Smith through *State of Exception (Ausnahmezustand)*.³ By the concept, Carl Smith declares that leaders are allowed to be dictatorial unless state's emergency situation never happens, which grants the leaders with full access to making emergency decisions for the sake of the State's sovereignty.⁴ Nonetheless, such a practice needs to have specific limitations, as stated by Herman Sihombing claiming that emergency decisions are supposed to only last for a moment until the situation remains secure again.⁵

Nowadays, almost all parts of the world, especially Indonesia, are suffering much from the emergency health situation due to the Covid-19 virus.⁶ According to the data obtained from the Covid-19 Task Force *Peduli Lindungi*, more than 4 million people/day have been tested positive with the virus, which is accumulated with the previous data of the National's Covid-19 trend from the three months backward, with significant increase compared to the other previous quarter.

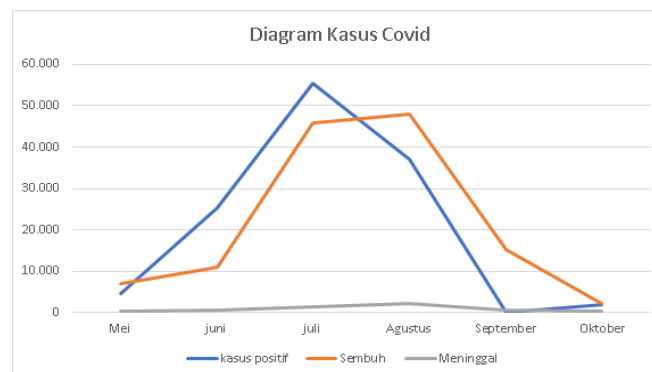


FIGURE 1. Accumulation of Covid-19 Cases Data.⁷

¹ "According to World Health Organization (WHO)," n.d., <https://doi.org/https://www.who.int/indonesia/news/novel-coronavirus/qa/qa-for-public>.

² Ahmad Redi, "Dr. Ahmad Redi, s.h.,m.H," n.d.

³ Detlev Vagts, "Carl Schmitt's Ultimate Emergency: The Night of the Long Knives," *The Germanic Review: Literature, Culture, Theory* 87, no. 2 (April 2012): 203–9, <https://doi.org/10.1080/00168890.2012.675795>.

⁴ *Ibid*

⁵ Ali Marwan Hsb, "Kegentingan Yang Memaksa Dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang," 2019, 109–22, <https://doi.org/10.31219/osf.io/4cuh3>.

⁶ "According to World Health Organization (WHO)."

⁷ Satgas Covid, "Distribution Map from Covid-19 Task Force," n.d., <https://covid19.go.id/peta-sebaran>. Accessed on Monday, October 25, 2021, 00.00 WIB.

According to the aforementioned accumulation data of Covid-19 cases, it infers that the number of Covid-19 cases fluctuates. Regarding the empirical fact, moreover, the beginning of the virus attack deployed over the whole countries in the world. At that moment, many countries took anticipatory efforts in response to the virus dissemination; even most of which chose to close access for foreigners to coming into the countries for the sake of prevention from Covid-19. Unfortunately, such a prevention never happened in Indonesia, especially in the start of Covid-19 case in which Covid-19 had been named as the global pandemic. The Indonesia's Government was seen irresponsible to initiate preventive efforts in the Covid-19 handling. In fact, the Minister of Health and some of State's personnel underestimated potential risks of the virus for Indonesia, and even they were strongly sure that the virus would not be penetrate into Indonesia.⁸ On March 2, 2020, the Indonesia's President, Joko Widodo, announced the first Covid-19 case amongst his people. After the president's confirmation about the first case, the Indonesia's Government even seemed to be irresponsible still to close all the accesses to Indonesia, especially for foreign flights. In fact, only anticipatory steps were taken by the government in the beginning of the case.⁹

Following the preventive and handling efforts for Covid-19 cases in Indonesia that went higher day by day, the President as the leader of the State and government made some regulations in response to the virus attack. Besides the issuance of Government Regulation in Lieu of Law No. 1 of 2020, the Government had also released a policy through the enactment of Government Regulation No. 21 of 2020 concerning Large-Scaled Social Restrictions (PSBB) in the handling of Covid-19 cases. Further, the Government attempted to apply Local-Scaled Social Restrictions and transitional PSBB until at its peak through the release of Instruction of the Minister of Home Affairs No. 1 of 2021 concerning Social Activities Restrictions (PPKM) to handle the Covid-19. In the next regulation through Instruction of the Minister of Home Affairs No. 15 of 2021, PPKM was set to be more centralized to Java and Bali only. Such an instruction was intended to the governors and mayors as they were

⁸ Kompas Media, "Pernyataan Kontroversi Menkes Terawan Di Awal Pandemi Covid-19," 2021, 2021, <https://nasional.kompas.com/read/2020/09/29/16290701/pernyataan-kontroversial-menkes-terawan-di-awal-pandemi-covid-19?page=all>. Accessed on Saturday October 30, 2021. 15:03 WIB. .

⁹ Langkah Antisipasi ialah suatu pijakan awal dalam menghalau datangnya sesuatu pada hal ini langkah pemerintah dalam menghadapi awal covid-19 hanya dengan langkah : Cek suhu tubuh, penggunaan antiseptik saja. Kompas Media, "Diumumkan Awal Maret, Ahli: Virus Corona Masuk Januari.," n.d., <https://www.kompas.com/sains/read/2020/05/11/130600623/diumumkan-awal-maret-ahli--virus-corona-masuk-indonesia-dari-januari?page=all>. .

mandated to implement the emergency PPKM by criteria level 1-4. Revisiting the policies concerning PSBB and PPKM based on the material substances, both are quite similar, with formal differences as enacted in the following table.

TABLE 1. Comparison between PSBB and PPKM¹⁰

	PSBB	PPKM
Legal Basis	PP No. 21 of 2020 concerning Large-Scaled Social Restrictions in the Acceleration of Covid-2019 Handling	• INMENDAGRI No. 1 of 2021 concerning Emergency Social Activities Restrictions for COVID-19 • INMENDAGRI No. 15 of 2021 concerning Emergency Social Activities Restrictions for Covid-19 in Java and Bali
Implementation	1. School (SFH) and Work (WFH) 2. Restrictions from any religious activities 3. Restrictions from any activities in the public spaces 4. Restrictions from any socio-cultural activities 5. Restrictions at transportation sector 6. Restrictions from any of special activities regarding defense and security	1. Set into some levels from 1-4 2. Level 1 comes with less tightening health protocols with 25-50% for public activities, e.g., work, school, and religious activities. 3. Level 2 requires tight health protocols, with the percentage of 50-75% from 25-50%. 4. Level 3 is set with more tightening health protocols up to 75-100%. 5. Level 4 is stipulated to fully restrict and give no access to majority of sectors, excluding the essential ones, with >75% restrictions.

Source: Processed by the authors based on www.kompas.com, October 31, 2021.

The implementation of both of the policies is on purpose, that the Government intends to give protection to all the people from the Covid-19 threat. Having a closer check on those policies for PPKM, the details only included social activity restrictions and public spaces. PSBB, in fact, constitutes a policy as a result of Government Regulation, but in its practices, the Local/Regional Governments also have the right to run it

¹⁰ Mulyadi Mohammad, "Penerapan Pemberlakuan Pembatasan Kegiatan Masyarakat (PPKM) Untuk Mengendalikan Laju Pandemi Covid 19," *Kajian Singkat Terhadap Isu Aktual Dan Strategis* 13 (2021): 1–16.

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under their authority. Moreover, the restrictions are carried out based upon the initiatives from the Local to Central Governments. Unlike PSBB, PPKM is running after the approval from the Central Governments, which becomes an absolute authority for them to take charge for and has just been recently applied, especially in Java and Bali, for the sake of covid-19 handling. Further, the effectiveness of PPKM and PSBB can be seen in the following table.

TABLE 2. Implementation of PSBB and PPKM ¹¹

Implementation Period	PSBB	PPKM
April 2020 – July 2020	With only 11,457 people tested positive with Covid-19 in the entire parts of Indonesia despite the fact that it was only implemented in certain areas	Not yet implemented
August-October 2020 (Post-PPKM)	Detached	Only 671 people tested positive with Covid-19 by the restrictions only centralized in Java and Bali; yet, the accumulation is referred to the National's state.

Table is independently processed by the authors based on the existing data from Covid-19 Task Force.

In time of Covid-19, the connection between the Central and Local/Regional Governments becomes a hot issue due to spanning interest amidst its practices. Let alone in a unitary state, the Central Governments always have a duty to take care of governmental administrative interests.¹² Relational issues that involve both of which rise in the handling of Covid-19. Not only that, doubts increase over who are supposed to be responsible for these Covid-19 cases. Any of health interests that have been decentralized to the Local/Regional Governments cause unilaterality amidst the regions to set up their own policies to prevent from the Covid-19 attack. Most shockingly, the Central Governments also take their own different decisions.¹³

¹¹ Satgas Covid, "Distribution Map from Covid-19 Task Force, Independently Processed by the Authors," 2021, <https://covid19.go.id/peta-sebaran>.

¹² Septi Nur Wijayanti, "Hubungan Antara Pusat Dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014," *Jurnal Media Hukum* 23, no. 2 (2017): 186–99, <https://doi.org/10.18196/jmh.2016.0079.186-199>.

¹³ Riris Katharina, "Relasi Pemerintah Pusat- Pemerintah Daerah Dalam Penanganan COVID-19," *Jurnal Ilmu Pemerintah* xii, no. 5 (2020): 25–30,

The spanning interest that occurs is portrayed when the Local/Regional Governments preceded the Central Governments in making decisions for anticipatory Covid-19 prevention and handling. For instance, local lockdown policy was implemented by Mayor of Tegal District since 2020 through the closures of accesses to the city using movable concrete barriers (MBC). In addition, Papua's Governor did the same thing by blocking the in-out accesses, i.e., harbors, airports, and stations, including the Cross-Border Post since March 26, 2020. Moreover, Bali's Governor's policy since March 27 had instructed all the people to avoid any activities that caused crowd so that any of school, work, and religious activities were supposed to be carried out at home, and so did those in the other regions. Meanwhile, the Central Government lately released the Government Regulation No. 21 of 2020 per March 31, 2020 concerning Large-Scaled Social Restrictions in the Acceleration of Covid-19 Handling.¹⁴ This condition has raised a new issue regarding authority distribution between the Local/Regional and Central Governments in handling the Covid-19 pandemic.

Beginning from this non-uniformity issue in the policy for Covid-19 handling, involving those two government sides, we would like to provide the enactment of authority reinforcement of the Central Governments as the most-deserved entity to take care of health program exercise.

II. CONSTITUTIONALITY OF PRESIDENT'S AUTHORITY IN THE DECLARATION OF EMERGENCY STATE

President is the most responsible entity to assure the people's welfare and security. The responsibility is surely effective for state of exception, including in normal and abnormal states.¹⁵ Due to presidential government system, the role of the President is more dominant, exclusively in the time of emergency state as enacted at the Article 12 and 22 of the 1945 Constitution of the Republic of Indonesia (UD 1945), in which the President has an exclusive authority for "legal dictatorial power", which allows him to form and stipulate laws and regulations independently without needing to discuss with the House of

http://berkas.dpr.go.id/puslit/files/info_singkat/Info_Singkat-XII-5-II-P3DI-Maret-2020-221.pdf.

¹⁴ Mandasari dan Zayanti, "PENANGANAN COVID-19," 2021, 2021, <https://ombudsman.go.id/artikel/r/artikel--tarik-menarik-penanganan-covid-19>.

¹⁵ Jimly Asshiddiqie, *Konstitusi & Konstitusionalisme Indonesia* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006).

Representatives (DPR), in the forms of Government Regulations in Lieu of Law (Perppu). According to Philipus M. Hadjon, the authority conferral for Perppu stipulation is intended to assure the grant of legal protection¹⁶ for the people even though the President is highly required to make fast and precise decisions for the sake of the State's security and safety.¹⁷ During those crucial times, the Governments are freed to take whatever actions they think best-taken as long as the State is in danger, or is dealing with abnormal situations¹⁸, which actually has its own legal and ethical norms called as "*Appaddharmakle*" meaning "in the critical or miserable situations."¹⁹

According to the context of legal state, legal instruments are needed as the reference for the State to executing the duty in the protection for the people. It means that each of countries that declare as the legal state cannot be separated from laws and regulations. This legal dependency is absolute, and remains uncontested despite the countries facing normal or emergency situations. Jimly Asshidiqie claims that a juridical concept of emergency conditions is based upon the doctrine people are familiar with all this time, referring to the necessity principle that acknowledges the right of sovereign countries in making needed decisions for the sake of the State's security and integrity. In case of the president's authority over emergency situations, it is not carried out to be against the laws, or to run the practice of authoritarianism.²⁰ In other words, the necessity doctrine must be associated with the self-defense one²¹, which serves to protect essential human rights from any kinds of unrecoverable threats due to unexpected conditions when no alternative ways remain to protect and recover the legal state like it used and supposed to be.

¹⁶ Legal protection provided by the State for the people serves to fully protect the humans so as to guarantee their interests. Therefore, the people are fully protected, in peace, and in good prosperity due to the presence of laws and regulations that govern every action taken out by the governments. For that reason, the regulations aimed for the Covid-29 handling also appear to be the legal basis for the governments to carry out any attempts in the protection of the people from any kinds of harmful threats.

¹⁷ Philipus M. Hadjon, *Hak Asasi Manusia : Hakikat, Konsep, Dan Implikasinya Dalam Perspektif Hukum Dan Masyarakat* (Bandung: Rafika Aditama, 2004.)Hlm 64.

¹⁸ Jazim Hamidi, et.al. *Teori dan Politik Hukum Tata Negara* (Total Media, Yogyakarta, 2013).

¹⁹ Siti Marwiyah, "Kewenangan Konstitusional Presiden Terhadap 'Hal Ihwal Kegentingan Yang Memaksa,'" *Masalah-Masalah Hukum*, 2015, <https://doi.org/10.14710/mmh.44.3.2015.296-304>.

²⁰ Sanford Levinson and Jack M. Balkin, "Constitutional Dictatorship: Its Dangers and Its Design," *Minnesota Law Review* 94, no. 6 (2010): 1789–1866.

²¹ Jimly Asshidiqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Press, 2008)Pg 78.

Regarding the president's authority in terms of unlocking the 'emergency door', there are basically two main Articles referred to: Article 12 and Article 22 of the 1945 Constitution of the Republic of Indonesia. **Firstly**, it is related to the right possessed by the President as enacted at the Article 22 Verse (1) of the 1945 Constitution, stating "*Should exigencies compel, the President shall have the right to establish Government Regulations in Lieu of Laws.*"²² Revisiting the phrase "... *exigencies compel*," it cannot be defined or associated with the phrase 'emergency situations' pronounced at the Article 12 of the 1945 Constitution. It is because use of the phrase "*exigencies compel*" is referred to a specific condition of legal emptiness that requires the State to fast respond to it. **Secondly**, with respect to the interpretation of the Article 12 of the 1945 Constitution about *original intent*, according to M. Yamin, the state of emergency as enacted at the Article 12 is referred to a specific situation called *martial law* or *staat van beleg*.²³

In accordance with the Constitutional Court decision No. 138/PUU-VII/2009, compelling exigencies should meet some specific requirements. **Firstly**, there must be a certain occasion in which legal issues are highly required to be solved immediately based on the laws and regulations. **Secondly**, there are still no necessary laws so as to cause legal emptiness, or there are needed laws, but still unqualified enough. **Thirdly**, the legal emptiness cannot be solved through the creation of laws and regulations by means of regular procedures as it must be time consuming, whilst, in fact, the exigencies do need certainty about when it can be fully tackled.²⁴ Thus, referring to the current state that occurs, that the President releases the policy represents the real practice of the Article 22 of the 1945 Constitution. Moreover, it is also considered based on the President's decision through the Law No. 6 of 2018 concerning Health Quarantine in the stipulation of Covid-19 handling. Meanwhile, the Law No. 6 of 2018 concerning Health Quarantine is not associated with the Article 12 as the consideration.²⁵ In fact, it is legislative model that is used by the Indonesia's President. The model is one of three specific models proposed by Ginsburg dan Versteeg.²⁶

²² FH UII, "CONSTITUTIONAL OPTIONS FOR CENTRAL GOVERNMENT RELATIONSHIP WITH LOCAL GOVERNMENTS IN BALANCING FINANCIAL IN EMERGENCY CONDITIONS," in *Department of Constitutional Laws and Department of State's Administrative Laws, Faculty of Law* (Jogyakarta: Indonesia's Islamic University (UII), 2021), March 29, 2021. pg. 109.

²³ Rizki Bagus Prasetyo, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat Dan Perlindungan HAM," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 327, <https://doi.org/10.30641/kebijakan.2021.v15.327-346>.

²⁴ PUTUSAN MK No.138/PUU-VII/2009. (2009).

²⁵ Fitra Arsil and Qurrata Ayuni, "Model Pengaturan Kedaruratan Dan Pilihan Kedaruratan Indonesia Dalam Menghadapi Pandemi Covid-19," *Jurnal Hukum & Pembangunan* 50, no. 2 (2020): 423, <https://doi.org/10.21143/jhp.vol50.no2.2585>.

²⁶ Mila Versteeg Ginsburg Tom, "States of Emergencies: Part I," *Harvard Law Riview*, October 2021, <https://blog.harvardlawreview.org/states-of-emergencies-part-i/>.

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Furthermore, the Article 22 of the 1945 Constitution mainly regulates about the right of the President to establish Government Regulations in Lieu of Laws (Perppu), and the Article 12 about emergency situations. Therefore, at glance by their looks, both of the Articles regulate the same issue. Nevertheless, the phrases of “*compelling exigencies*” enacted at the Article 22 and “*emergency situations*” at the Article 12 need to be carefully highlighted. In fact, the scope inferred at the Article 22 seems so universal, which means that compelling exigences are not solely related to that the State is in danger, but more to the absence of laws and regulations in upcoming periods in which their existence is actually so crucial to be used immediately. Thus, it can be concluded that when the consideration of organic laws is put on the Article 22 of the 1945 Constitution, they will be more effective and protected since the State is going to pay more attention to the individual rights of the people. As a matter of the fact, the State will never annul nor take out the whole rights of the people for any reasons, including the state of emergency. It is because of the restriction on the use of the Article 22 of the 1945 Constitution through the Constitutional Court Decision No. 138/PUU-VII/2009 as stated in advance.

In addition to the basis from the President’s consideration in the release of policy, the right of President to issue an extraordinary policy in the time of pandemic is a logical consequence of presidential government system. Such a system puts the President as the leader of the State as well as the head of government. According to Bagir Manan, cited from a book entitled *Dasar-Dasar Hukum Tata Negara Indonesia* (Basics of Indonesian Constitutional Laws),²⁷ one of the rights and authorities possessed by the executive institution is related to the laws and regulations: to establish Laws, to decide Government Regulations, to stipulate Presidential Regulations, and to stipulate Government Regulation in Lieu of Laws (Perppu). The foregoing has been affirmed in advance through the enactment of the Article 4 Verse (1) of the 1945 Constitution, stating “*The President of the Republic of Indonesia shall hold the power of government in accordance with the Constitution.*” In other words, in addition to establishing Perppu, the President also has the full right to define the procedures and control over the handling of particular issues, which is intended to the administrative personnel in the executive institution.²⁸ Moreover, in accordance with the Constitutional

²⁷ Sirajuddin dan Winardi, *Dasar-Dasar Hukum Tata Negara Indonesia*, Setara Pre (Malang: Setara Press, 2015), Page 76.

²⁸ Hukum Online, “Pejabat Administrasi Dalam Lingkup Eksekutif ialah Menteri-Menteri Dan Turunannya Serta Pejabat Pemerintahan Lainnya,” 2021, <https://www.hukumonline.com/klinik/detail/ulasan/lt52f38f89a7720/pejabat-negara-dan-pejabat-pemerintahan>. Accessed on Saturday, October 23, 2021, 22:58 WIB..

Court (hereinafter referred to as MK) Decision No. 87/PUU-XIII/2015,²⁹ it is claimed that referring to the Article 4 Verse (1), MK opines that basically, the exercise of government in Indonesia fully becomes the utmost responsibility and is under the control of the President.

Moreover, four consecutive amendments on the 1945 Constitution since 1999-2002 result in some implications on the government system applied by the country based on the 1945 Constitution of the Republic of Indonesia. As a result, the amendment determines that the President and Vice President shall be elected as a single ticket directly by the people through National Election. In addition, the President has the right to establish and lead the cabinet, and the House of Representatives (DPR) shall have no power to impose and dismiss the President and Vice President during the stipulated tenure due to political interests.³⁰ The President, further, holds the highest executive authority in the constitutional system of Indonesia, which actually constitutes the basic consequence of presidential election through a National Election.

Based on the theoretical studies, Indonesia adheres to presidential government system. It has been implicitly stated in the Article 17 Verse (2) of the 1945 Constitution, stating “*Ministers of State shall be appointed and dismissed by the President.*” In fact, the enactment of the Article is in line with the basic presidential theory as proposed by Mahfud MD³¹; one of its characteristics is that the Ministers are appointed by and responsible upon the President. Further, the rights of the President are regulated at the Article 5 junto Article 12 junto Article 22 of the 1945 Constitution, namely: (1) the President shall be entitled to submit bills to the DPR; (2) the President may issue Government Regulations as required to implement laws; (3) the President has the right to establish and stipulate Perppu if exigencies compel; and even (4) the President may declare a state of emergency. As a matter of the fact, the Perppu stipulated by the President hierarchically constitutes laws and regulations whose positions are in level with Laws, which has been mentioned at the Article 7 of the Law No. 12 of 2011 concerning Laws and Regulations Establishment.

²⁹ Sekretariat Jenderal et al., “Putusan MK Perkara No 87/PUU-XIII/2015,” no. 6 (2015), https://mkri.id/public/content/persidangan/putusan/87_PUU-XIII_2015.pdf.

³⁰ Bintang R Saragih, “Perubahan Sistem Pemerintahan RI Melalui Amandemen UUD 1945,” *Artikel Rudi M Rizky Refleksi Dinamika Hukum : Rangkaian Pemikiran Dalam Dekade Terakhir (Didedikasikan Untuk Tokoh Hukum Komar Kantaatmadja)*, 2008, 621–29.

³¹ Sirajuddin and Winardi, *Op.Cit.* p. 70

III. HUMAN RIGHTS PROTECTION ASSOCIATED WITH THE PRESIDENT'S AUTHORITY REGARDING LOCKDOWN/ REGIONAL QUARANTINE POLICY

Covid-19 is a kind of infectious disease caused by a new coronavirus variant firstly traced in Wuhan, China. In fact, the dissemination of the virus is through a droplet substance produced in the mouth or nose either by those tested positive for Covid-19.³² For that reason, the Indonesia's Government, as the entity fully responsible for the State's organization, has the duty to protect the whole people from any kinds of harmful threats.

According to the concepts of restriction, repeal, and freezing of Human Rights of the civil societies as enacted in the doctrine and the convention of sovereign countries pronounced in the *Covenant on Civil and Political Rights* (ICCPR) Charter,³³ the State has the right to restrict its people, but not entirely for all the time. It means that restrictions and freezing are supposed to last for a moment (temporarily), which is only intended to deal with critical situations and to restore the normal state for the sake of defense upon fundamental rights.³⁴

According to Alexander N. Dormin,³⁵ in his book, there are a number of requirements for human right restrictions and reduction in the declaration of emergency situation based on laws in some countries over the whole world. Further, a German bachelor of legal studies, A.

³² WHO, "COVID-19," n.d., <https://www.who.int/indonesia/news/novel-coronavirus/qa/qa-for-public>. Accessed on Monday, October 25, 2021, 23:15 WIB..

³³ The ICCPR convention regulates the state's authority to limit human rights when the state declares an emergency and/or danger that can threaten the life of a nation. The Article 4 Verse (1) of ICCPR states that in the time of "*compelling exigencies that cause threats on the life of the state and nation through an official declaration, the countries of the Covenant members are allowed to take out actions that may be able to release some of their responsibilities described in this Covenant, as long as it is necessary to deal with the state of emergency and as long as those are not against the other responsibilities in accordance with international laws by the exclusions of races, skins, genders, languages, or social backgrounds*"

³⁴ Fundamental rights are human rights as basic rights that cannot be revoked, even if they are revoked for reasons of protection. However, it must be immediately returned to its original state. Cited from Osgar S. Matompo, "Pembatasan Terhadap Hak Asasi Manusia Dalam Prespektif Keadaan Darurat," *Jurnal Media Hukum* 21, no. 29 (2014): 58–72.

³⁵ Robert L Larsson, "Russia's Energy Policy: Security Dimensions and Russia's Reliability as an Energy Supplier," no. FOI-R--1934--SE (2006), www.foi.se/ReportFiles/foir_1934.pdf.

Hamman, divides the state of emergency into seven categories, i.e., (1) foreign invasions; (2) public actions with the purpose of constitutional regime subversion; (3) serious violations that threaten public order; (4) disasters; (5) strikes and riots against critical economic sectors; (6) critical interferences in public services; (7) economic and financial crises; all of which are interpreted in details as *Siracusa Principles*).³⁶ Therefore, in this case, the freezing of human rights amidst the societies must be based on particular conditions.

Moreover, the Indonesia's governments have ratified *International Covenant on Civil and Political Rights Charter*³⁷ through which the right of the State to restrict human rights in the time of emergency is declared by the President as the attempt to assure the security and safety of the people and the State.³⁸ In fact, it is already enacted at the Article 4 Verse (1) of ICCPR, stating that in the time of "*compelling exigencies that cause threats on the life of the state and nation through an official declaration, the countries of the Covenant members are allowed to take out actions that may be able to release some of their responsibilities described in this Covenant, as long as it is necessary to deal with the state of emergency and as long as those are not against the other responsibilities in accordance with international laws by the exclusions of races, skins, genders, languages, or social backgrounds.*"³⁹

Revisiting the Article on the phrase "*not against the other responsibilities,*" it can be inferred that any kinds of restrictions, repeal, and freezing of human rights are temporary for the sake of restoration. A point needing to be highlighted is concerned on the repeal or restrictions that are only limited to the classification of human rights in the sense of *Derogable rights*. In fact, the State is strongly prohibited to intervene and restrict other than those rights, or commonly known as *non-Derogable rights*, due to the fact that the rights are rigidly absolute – unmodifiable (not to be added nor detracted). Regarding the Indonesia's Constitution

³⁶ Osgar S. Matompo, *Op.Cit.*

³⁷ The International Covenant on Civil and Political Rights (ICCPR) was established and declared open for signature by countries in need, this covenant was ratified by Indonesia through Law no. 12 of 2005 concerning the ratification of the International Covenant on Civil and Political Rights. LN 2005 No. 119 TLN No. 4558. The Covenant is divided into 6 sections containing 53 articles. The distribution includes: bag. I-III (articles 1-27) violations of discrimination, gender equality and restrictions and regulate rights. Bag. IV-VI (articles 28-53) regulates monitoring mechanisms, interpretation principles. Adapted from *Journal of Cekli Setya Pratiwi*, "Konsep Dasar, Prinsip-Prinsip Dan Instrument HAM Internasional Dan Pengaturannya Di Indonesia.," *SSRN Electronic Journal*, 2018, 17–19, <https://doi.org/10.2139/ssrn.3304096>.

³⁸ Rani Kurniawati and Fahmi Fadilah, "PRESUMPTION of LAW PRESUMPTION of LAW," *PRESUMPTION of LAW Fakultas Hukum Universitas Majalengka* 1, no. April (2019): 72–115.

³⁹ *Ibid.*

that also adheres to the principles of modern legal state, the conception of welfare state becomes the core indicator. As a matter of the fact, the governments are fully responsible to make social welfare a reality.⁴⁰ The obvious consequence of it is that the governments deserve to have the right to intervene at any kinds of social activities in the reality.⁴¹ In other words, the State's governments are highly demanded to be active at each of life sectors and dynamics that occur amidst the societies, but still comply with the legality principle.⁴² In addition, the governments have the full right to establish regulations as mentioned in advance. The right of executive institution, in this case the President, has been clearly regulated at the Article 12 and Article 22 of the 1945 Constitution. Recently, the President used the right, as attributed in the 1945 Constitution and embodied through the Government Regulation in Lieu of Laws (Perppu) No. 1 of 2020 concerning Financial Policy and Financial Stability System for Covid-19 Handling Program and/or in response to Potential Threats that may harm the National Economic System and/or Financial Stability System. The Perppu, moreover, is aimed to regulate restoration and economic stability that remains weakened as a result of the Covid-19 pandemic.⁴³

As mandated in the Constitution, providing health facilities for the people is basically the main responsibility of the State upon the people. In addition, it is also fully responsible to ensure that the people can have access to the health facilities provided so that social welfare can be achieved, and the State's goal can be realized at once. Moreover, the Article 4 of Law No. 11 of 2009 concerning Social Welfare enacts that *"the State is responsible for social welfare exercise."* The terms of the Article 9 Verse (1) Letter (a) are pronounced that: Social Assurance is aimed to give guarantee to *"(1) the poor, (2) abandoned orphans, (3) abandoned elderlies, (4) people with physical disorders, (5) mentally-ill people, (6) physically- and mentally-ill people, and (7) ex-patients of chronic diseases suffering from socio-economic disabilities."* Moreover, the conception of the duty of State in the realization of right to health

⁴⁰ In the Constitution of the State of Indonesia, Indonesia has explained the goals of the state in the preamble of the 1945 Constitution of the Republic of Indonesia. Paragraph-IV states *"Then rather than that to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the life of the nation, and participate in carrying out world order based on independence, eternal peace and social justice,"* which further enacted at the Article 33 and 34 which are located in the body of the 1945 Constitution of the Republic of Indonesia. Bentuk D A N Kedaulatan, "Www.Peraturan.Go.Id" 1, no. 1 (1945).

⁴¹ Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Rajawali Press, 2014), Page 229.

⁴² Mulyadi Mohammad, "Penerapan Pemberlakuan Pembatasan Kegiatan Masyarakat (PPKM) Untuk Mengendalikan Laju Pandemi Covid 19."

⁴³ Prasetyo, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat Dan Perlindungan HAM." pag 12.

constitutes a legal positive right so that the governments are strongly required to meet the right of the people as the State's personification. Abandonment over the right of the people to health is a kind of violation on the protection and provision of eligible health services, which also harms the Constitution.⁴⁴

Regarding the Covid-19 handling programs under the Local/Regional Governments, the policy made in response to Covid-19 pandemic is merely aimed to create a good order to obtain fair legal certainty despite the trend of legal uncertainty amidst the societies. In some particular occasions that require fast and precise decisions (in spite of procedural process for approval from the central governments), the Local/Regional governments are quite possible to make decisions directly. It manifests the principle of autonomy and embodies sense of discretion, only if they are still based on the terms and conditions enacted in the laws and regulations.⁴⁵

On the other hand, the stipulation for local quarantine may cause restrictions on human rights amidst the civil societies. In fact, the restrictions or freezing can only be possessed by the Central Governments along with power and authority. In accordance with the Law No. 23 of 2014 on Local/Regional Governments, there are some classifications of government affairs, including absolute government, concurrent government, and regular government.⁴⁶ Firstly, absolute government stipulates that the Central Governments hold the full right to any of the government affairs. Secondly, concurrent government sets up that the government affairs must be divided in portions between the Central and Local/Regional Governments.⁴⁷ Thus, as regards local/regional quarantine, the policy made is supposed to correlate with defense and security, monetary, and foreign political interests, including justice.⁴⁸

In sum, the stipulation of a policy for a country that adheres to decentralization basis requires the Central and Local/Regional Governments to construct good synergy in the protection of the entire life of state and nation of Indonesia. It means that the Local/Regional

⁴⁴ PSKN F H Unpad, "Indra Perwira," 3 (2015): 1–10, Pag 7.

⁴⁵ Fakultas Hukum, Universitas Wijaya, and Kusuma Surabaya, "ANALISIS YURIDIS DASAR PERTIMBANGAN KEBIJAKAN DI TINGKAT DAERAH," no. 3 (2020). pg. 222-232.

⁴⁶ Andi Luhur Prianto, "Good Governance Dan Formasi Kebijakan Publik Neo-Liberal," *Otoritas: Jurnal Ilmu Pemerintahan* 1, no. 1 (2011): 1–10, <https://doi.org/10.26618/ojip.v1i1.11>.

⁴⁷ Absolute Government Affairs are such as: defense, security, religion, justice, foreign policy, monetary and fiscal. Meanwhile, in concurrent government affairs, the authority of local governments includes: Basic Services, Non-Basic Services, Marine and Communications, Tourism, Agriculture, Forestry, Energy and Mineral Resources, Trade, Industry, and.

⁴⁸ Arsil and Ayuni, "Model Pengaturan Kedaruratan Dan Pilihan Kedaruratan Indonesia Dalam Menghadapi Pandemi Covid-19."

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Governments will not precede nor intervene any of policies related to financial and international relations businesses, especially in this case of the Covid-19 handling program.

IV. CONCLUSION

According to the aforementioned elaboration about the president's right and authority in the stipulation of a policy for a state of emergency, it can be summed up that: **(1)** stipulating an emergency decision is an initial stage to do restrictions, repeal, and freezing of human rights only if such the procedures last within a temporary period, or after the condition is normally restore; **(2)** the implementation of PPKM centralized at th

e Central Governments is proven to be effective and successful to cut the number of Covid-19 cases so that in upcoming time, the Central Governments can lead and take control over the handling scheme for Covid-19 cases through local/regional quarantine as it is believed that single command system is more effective than any other models; **(3)** the Local/Regional Governments are not supposed to precede the mandates released by the Central Governments, let alone on those concerning financial state and economic stability threats as well as socio-political background of the people; and **(4)** any policies regarding the execution of PPKM will be more effective if the command system is made centralized so that in response to the new variant of the virus, the governments are responsible to make coordination to instruct the Local/Regional Governments not to precede the Central Governments to make any decisions.

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