

# The Protection for Citizen During Outbreaks: The Emergency Status During Covid-19 in the Perspective of Indonesian Constitutional Law

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## Abstract

The aim of this research is to contribute novel insights into the emergency measures mandated by the Indonesian government. Employing normative research without a conceptual orientation, the study delves into the transformative developments in Indonesia that have influenced the application of law, particularly in the realm of state administration law during emergencies. This

involves two key components: the legal framework, encompassing constitutional and legislative provisions for emergencies, and the operational framework, which includes organizational structures and strategic plans for managing emergencies. In response to the initial developments, the government is compelled to implement a lockdown, as dictated by the principles of emergency state administration law. The execution of a lockdown necessitates resolute action and collaborative efforts from all stakeholders. Moreover, it is imperative to impose limitations on lockdown measures through legal norms, such as a presidential decree, to prevent arbitrary exercise of power by the government. A comprehensive understanding of these dynamics is crucial for the effective functioning of the country.

### **Keywords**

*Emergency Status, Citizen Protection, Covid-19, Indonesian Constitutional Law*

## **I. Introduction**

Since February 14, 2020, individuals infected with the coronavirus have engaged in close interactions with Japanese nationals, instigating a sequence of events within Indonesia. These occurrences have precipitated significant modifications in the application of law, specifically within the domain of constitutional law. The emergency situation is characterized by two pivotal components: the legal framework, encompassing the basic law and legislative provisions for emergencies, and the operational

framework, entailing strategic structures and plans for addressing emergent situations.<sup>1</sup>

The emergency in Indonesia has spawned various legal quandaries, including issues related to the disclosure of public information, the procurement of medical equipment, financial losses incurred by the state, delays in activities contributing to foreign exchange earnings, and the imposition of restrictions on diverse activities. Described as a pandemic, the coronavirus exhibits the characteristics of a novel disease that has not been previously recognized, affecting numerous countries concurrently and manifesting distinctive epidemiological patterns.<sup>2</sup>

In navigating this crisis, Article 5 of the Republic of Indonesia Law Number 4 of 1984 concerning Infectious Disease Outbreaks (Law No. 4-1984) underscores imperative measures, such as epidemiological investigations, examination, treatment, isolation (including quarantine measures), prevention and immunization, extermination of the disease's causative agent, handling of remains, counseling to the community, and other pertinent countermeasures.<sup>3</sup>

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<sup>1</sup> Susan Olivia, John Gibson, and Rus'an Nasrudin. "Indonesia in the Time of Covid-19." *Bulletin of Indonesian Economic Studies* 56, no. 2 (2020): 143-174; Ririn Noviyanti Putri, "Indonesia dalam menghadapi pandemi Covid-19." *Jurnal Ilmiah Universitas Batanghari Jambi* 20, no. 2 (2020): 705-709.

<sup>2</sup> Siti Setiati, and Muhammad Khifzhon Azwar. "COVID-19 and Indonesia." *Acta Medica Indonesiana* 52, no. 1 (2020): 84-89; Ali, Roziqin, Syasya YF Mas'udi, and Iradhad T. Sihidi. "An analysis of Indonesian government policies against COVID-19." *Public Administration and Policy* 24, no. 1 (2021): 92-107.

<sup>3</sup> Leo Agustino, "Analisis Kebijakan Penanganan Wabah Covid-19: Pengalaman Indonesia." *Jurnal Borneo Administrator* 16, no. 2 (2020): 253-270; Kelik Wardiono, et al. "Philosophy, law, and ethics of handling COVID-19 pandemic in Indonesia." *Open Access Macedonian Journal of Medical Sciences* 9, no. E (2021): 1104-1108; Ratna Desinta Mega Kumala, "Legal Analysis of Government Policy on Large Scale Social Restrictions in

This countermeasure, when examined through the lens of emergency constitutional law, introduces variations in state rights as outlined in the 1945 Constitution of the Republic of Indonesia (UUD 1945) and the entities exercising control. The global community has been jolted by the emergence of the novel Coronavirus Disease (Covid-19) outbreak, significantly disrupting global public health. It all commenced on December 31, 2019, when the World Health Organization (WHO) received a report about a case of pneumonia with an unknown etiology detected in Wuhan City, Hubei Province, China.<sup>4</sup>

The evolution of the virus's spread has not been confined to China; it has extended extensively worldwide, including in Indonesia. Given the substantial number of fatalities and the threat posed to the nation, on January 30, 2020, the World Health Organization officially declared the outbreak of Corona Virus Disease 2019, or Covid-19, as a global public health emergency. Subsequently, on March 11, 2020, the outbreak was elevated to the status of a pandemic. Consequently, countries have instituted various protective measures, each employing distinct policy implementations. For instance, Italy has implemented a policy known as Lockdown, involving the restriction of people's activities and access.<sup>5</sup>

Several studies, including Aquinaldo Stelvdy Tanauma, Alfreds J. Rondonuwu, and Presly Prayogo, have explored the intersection of the Covid-19 pandemic and state emergency law.

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Handling Covid-19." *The Indonesian Journal of International Clinical Legal Education* 2, no. 2 (2020): 181-200.

<sup>4</sup> Marco Ciotti, et al. "The COVID-19 pandemic." *Critical Reviews in Clinical Laboratory Sciences* 57, no. 6 (2020): 365-388; Anthony S. Fauci, H. Clifford Lane, and Robert R. Redfield. "Covid-19—navigating the uncharted." *New England Journal of Medicine* 382, no. 13 (2020): 1268-1269.

<sup>5</sup> Laura Di Domenico, et al. "Impact of lockdown on COVID-19 epidemic in Île-de-France and possible exit strategies." *BMC medicine* 18, no. 1 (2020): 1-13.

Their collective work, titled *State Protection against Corona Virus Disease 2019 under Emergency Constitutional Law*, delves into the implications of the pandemic within the context of constitutional emergency measures. This paper aims to examine the trajectory of Covid-19 in Indonesia, its impact on people's lives, and the governmental response to the pandemic through the lens of emergency constitutional law.<sup>6</sup>

While the primary focus of this article is not an exhaustive discussion of emergency constitutional law, it centers on the repercussions of the Covid-19 pandemic and the measures implemented by the government. In the concluding section, it is observed that the President does not categorize Covid-19 as a direct danger but rather places it within the second terminology, characterizing it as a compelling crisis in accordance with Article 22 of the 1945 Constitution.

In the similar context, according to Fitra Arsil and Qurrata Ayuni, at the statutory level, numerous laws possess an emergency character that is not explicitly linked to constitutional emergencies. Consequently, the activation of emergencies under these diverse laws implicates limited powers for the corresponding emergency authorities. However, when scrutinized through the lens of safeguarding freedom and ensuring the fulfillment of human rights during emergency enforcement, the activation of

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<sup>6</sup> Aquinaldo Stelvdy Tanauma, Tanauma, Alfreds J. Rondonuwu, and Presly Prayogo, "Perlindungan Negara Menghadapi Corona Virus Disease 2019 Berdasarkan Hukum Tata Negara Darurat." *Lex Administratum* 9, no. 3 (2021): 261-271. See also Novianto Murti Hantoro, "Evaluasi Kerangka Hukum Penanganan Pandemi Covid-19 dalam Perspektif Hukum Tata Negara Darurat (Evaluation of the Legal Framework for Handling the Covid-19 Pandemic in the Perspective of Emergency Constitutional Law)." *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 12, no. 2 (2021): 201-222; Ahmad Siboy, and Sholahuddin Al-Fatih. "The Logic Position of State Emergency Law in the Implementation of Regional Head Elections during the Covid-19 Pandemic." *Unnes Law Journal* 8.1 (2022): 65-86.

emergencies based on the law offers advantages. The allocation of emergency powers becomes more tailored to the specific type of emergency, minimizing democratic procedural constraints and maintaining a shield on the fulfillment of human rights.<sup>7</sup>

In addressing the challenges posed by Covid-19, it appears that the Government of the Republic of Indonesia has opted for this emergency approach to prevent unwarranted curtailment of freedom of expression in the handling of the pandemic in Indonesia.

Furthermore, as outlined by Sajida Humaira, Ali Safaat, and Muhammad Dahlan, the government's decision to declare the national disaster emergency status and public health emergency status is a strategic choice in addressing the Covid-19 pandemic emergency. The configurations regarding disasters and hazardous situations are inherently intertwined, sharing emergency characteristics albeit with distinct handling frameworks. Notably, the government leans towards treating disasters as a distinct facet of the state of danger, as per Article 12 of the UUD 1945. This inclination is evident in the government's decision not to designate Article 12 of the UUD 1945 as the constitutional basis for declaring a state of emergency in managing the Covid-19 pandemic.<sup>8</sup>

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<sup>7</sup> Fitra Arsil, and Qurrata Ayuni. "Model Pengaturan Kedaruratan dan Pilihan Kedaruratan Indonesia dalam Menghadapi Pandemi Covid-19." *Jurnal Hukum & Pembangunan* 50.2 (2020): 423-446. See also Fitra Arsil, Qurrata Ayuni, and Ariesty Tri Mauleny. "The disappearance of the 'legislative model': Indonesian parliament's experience in response to Covid-19." *The Journal of Legislative Studies* (2022): 1-23; Herlambang Perdana Wiratraman, "Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?." *Journal of Southeast Asian Human Rights* 4, no. 1(2020): 306-334.

<sup>8</sup> Sajida Humaira, Ali Safaat, and Muhammad Dahlan. "Status Darurat Penanggulangan Pandemi Covid-19 dalam Perspektif Hukum Tata Negara Darurat." *Thesis*. (Malang: Universitas Brawijaya, 2021).

Drawing from foundational principles, there is a necessity for a thorough evaluation of pandemic response efforts by effectively leveraging the state's role, with a particular emphasis on the study of emergency constitutional law. This scenario prompts research focus on two key questions: *first*, an examination of the development of the Corona Virus pandemic, and *second*, an exploration of the State's role in addressing the challenges posed by the coronavirus pandemic.

In essence, the call for a comprehensive assessment underscores the importance of understanding how the pandemic is evolving and the specific actions and measures taken by the state in response. The inquiry into the role of the state in tackling the pandemic aims to shed light on the effectiveness and appropriateness of government interventions, policies, and strategies in managing this public health crisis.<sup>9</sup> This research approach allows for a nuanced understanding of the dynamic interaction between legal frameworks, governmental actions, and the evolving nature of the pandemic.

## II. Method

This research employs a multi-faceted methodology to investigate "*The Protection for Citizen During Outbreaks: The Emergency Status During Covid-19 in the Perspective of Indonesian Constitutional Law.*" Through an extensive literature review, the study delves into existing constitutional provisions and legal frameworks in Indonesia concerning emergency situations. A meticulous legal analysis focuses on statutes, amendments, and precedents, complemented by case studies examining specific instances during the Covid-19 pandemic. Interviews and surveys gather

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<sup>9</sup> Muzakir Haitami, and Alya Rengganis. "The Dilemma of Good Governance Implementation in Indonesia during the Pandemic of Corona Virus Disease (COVID-19)." *JASSP* 1, no. 1 (2021): 55-67.

perspectives from legal experts and citizens, while a comparative analysis evaluates emergency measures globally. Content analysis scrutinizes official communications, and ethical considerations are weighed. Constitutional interpretation guides the nuanced analysis, and legal commentary and critique provide insights. Peer review ensures the research's rigor and reliability, contributing to a comprehensive understanding of the protection afforded to citizens during outbreaks within the context of Indonesian constitutional law.

### III. The Existence of Corona Virus Disease 2019 in Indonesia

The concerns surrounding Covid-19 are not exclusive to the global stage but are also prevalent in Indonesia. Initially reporting two confirmed cases on March 2, 2020, Indonesia has witnessed a significant surge, with 790 confirmed cases across 24 provinces by March 25, 2020. The widespread transmission of Covid-19 globally has led to its declaration as a global pandemic.<sup>10</sup> The heightened transmission risk, facilitated through human contact and contaminated surfaces, has propelled the acceleration of Covid-19's spread across all regions in Indonesia.

This substantial development has understandably caused apprehension within the community. Consequently, there is a pressing need for coordinated efforts and decentralized strategies to foster public trust in the government's preparedness and response to the evolving situation. The government's readiness is evident through various strategies aimed at early detection and

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<sup>10</sup> Cory Merow, and Mark C. Urban. "Seasonality and uncertainty in global COVID-19 growth rates." *Proceedings of the National Academy of Sciences* 117, no. 44 (2020): 27456-27464. See also Dyah Gandasari, and Diena Dwidienawati. "Content analysis of social and economic issues in Indonesia during the COVID-19 pandemic." *Heliyon* 6, no. 11 (2020).



containment of the virus. Published measures include the initial implementation of Social Distancing procedures, with a recent shift to Large Scale Social Restrictions (PSBB) deemed more effective in curbing the increasingly aggressive spread of Covid-19.<sup>11</sup>

The government also restricts other activities such as work that requires it to be done from home or what is known as Work from Home. It is no wonder that this Health emergency will have significant implications considering that the policy limits almost all activities in all sectors of life. Today's health emergencies also have major implications for the foundation of life, namely in the economic sector. The Ministry of Finance has stated that it will allocate state budget funds for testing for victims, increasing hospital capacity and the availability of medicines and medical devices. The measures are intended to ensure protection as well as ensure public health. In addition, the regulations set by the government by implementing work from home certainly have great implications for workers, so to respond to this, the Ministry of Manpower decided on a policy through the Circular letter of the Minister of Manpower of the Republic of Indonesia No.M / 3 / Hk.04 / III / 2020 concerning Worker Protection and Business Continuity in the Prevention and Control of Covid-19.<sup>12</sup>

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<sup>11</sup> Yazid Bustomi, "Conflict Between Health Law and Territorial Quarantine Law Regarding the Provision of COVID-19 Vaccine." *Unnes Law Journal* 7, no. 1 (2021): 153-166; Rahadyan Fajar Harris, and Natalia Carolina Simanjuntak. "Implementation of The Siracusa Principles as Foundations for Reformulation of Social Restriction Policies in Public Health Emergencies." *Unnes Law Journal* 8, no. 1 (2022): 39-64; Yenik Pujowati, and Ahmad Sufaidi. "The COVID-19 pandemic: Analysis of large-scale social restrictions (PSBB) policies for the community in various prevention efforts." *Jurnal Magister Administrasi Publik (JMAP)* 1, no. 2 (2021): 102-111.

<sup>12</sup> See Otong Syuhada, and Aji Halim Rahman. "Implementasi Surat Edaran Menteri Ketenagakerjaan No. M/3/Hk.04/III/2020 dalam Melindungi Kelangsungan Hidup Buruh dan Pelaku Usaha Pada Masa Pandemi

In a broader context, individuals designated as *orang dalam pengawasan* (ODP) or suspected of having Covid-19 are granted a 14-day leave from work while receiving full wages. Compensation for employees afflicted with Covid-19 aligns with established laws and regulations. Furthermore, those subjected to furlough due to local government policies receive wages according to agreed-upon terms. However, amidst government efforts, a perplexing irony emerges as the public contends with numerous hoax issues circulating within the community, with a recorded 415 instances on April 2, 2020, relating to the Coronavirus in Indonesia. This misinformation surge complicates the Covid-19 response, intensifying public anxiety. Despite these challenges, the government persists in its endeavors to bolster public trust.<sup>13</sup>

Comprehensively, the implementation of quarantine is a step that must be implemented wisely by prioritizing human rights. This is in accordance with the proclamation of article 3 of the International Health Regulation 2005 that "the implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons." In order to implement such arrangements, the state must make and establish health policy regulations. A public policy must be

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Covid-19." *Journal Presumption of Law* 4, no. 2 (2022): 94-112; Suherman Suherman, and Alda Damayanti Putri. "Legal Protection on Workers' Unilateral Wages Deductions Due to the Covid-19 Pandemic." *International Journal of Multicultural and Multireligious Understanding* 7, no. 10 (2020): 445-457.

<sup>13</sup> Nabila Farahdila Putri, Ellin Vionia, and Tomy Michael. "Pentingnya Kesadaran Hukum dan Peran Masyarakat Indonesia dalam Menghadapi Penyebaran Berita Hoax Covid-19." *Media Keadilan: Jurnal Ilmu Hukum* 11, no. 1 (2020): 98-111; Rochani Nani Rahayu, "Analisis berita hoax Covid-19 di media sosial di Indonesia." *Jurnal Ekonomi, Sosial & Humaniora* 1, no. 9 (2020): 60-73; Khoirum Lutfiah, "Hoax and Fake News During Covid-19: Is the Law Effective in Overcoming It?." *The Indonesian Journal of International Clinical Legal Education* 2, no. 3 (2020): 345-360.

born and presented as a tangible form of the role of the state in providing protection. Because the state is essentially here to guarantee protection and certainty. In order to implement such arrangements, the state must make and establish health policy regulations. A public policy must be born and presented as a tangible form of the role of the state in providing protection. Because the state is essentially here to guarantee protection and certainty. By definition, public policy is "*anything a government chooses to do or not to do.*" In terms of regulatory regulation as a public policy, 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.<sup>14</sup>

However, as an effort to optimize the implementation of a policy, a policy must be supported by several aspects. There are at least 4 aspects that can fundamentally affect the existence of the policy. According to George Edward III, there are four aspects, namely communication, sources, behavioral attitudes and bureaucratic structure. This aspect is a unit in an effort to support the successful implementation of a policy, so that this aspect must be carried out optimally and mutually sustainable. If you look at several countries by looking at this pandemic phenomenon, at the practical level, various countries take their own policies to protect their people. Just as China, precisely in Wuhan City, which was the first to contract the virus, carried out a policy in the form of a lockdown in Wuhan City and after this virus subsided in Wuhan,

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<sup>14</sup> Anis Widyawati, et al. "Covid-19 and Human Rights: The Capture of the Fulfilment of Rights During the Covid Outbreaks." *Unnes Law Journal*, 6, no. 2 (2020): 259-286. See also Syamsuddin Radjab, and Muhammad Ikram Nur Fuady. "The Indonesian Government's Inconsistency in Handling the Covid-19 Pandemic." *Yuridika* 36, no. 3 (2021): 745-758.

a lockdown was also implemented in Jia City<sup>1516</sup> to break the chain of spread. The same handling was also carried out by Italy, where the country set a total lockdown policy. In addition to going through lockdown measures, there are several countries using additional methods that are considered more optimal and efficient in breaking the chain of spread of the Covid-19 virus as applied by Singapore, and Vietnam. Singapore conducted a spread detection map by interviewing patients quarantined in hospitals in detail about a full map of its activities to find out the movements and people who could be indicated to be infected could be cured immediately. Meanwhile, in Vietnam, the government responded quickly and made a policy to lock citizens for 20 days like a lockdown by carrying out the basic principles of patient management.

With this method, it has proven effective that as of April 17, 2020, out of the number of 267 infected people, no one has died from this virus. If you look at the Indonesian state, the President as the head of government and head of state calls for social distancing and invites for work, study and worship at home or familiarly called work from home. At the theoretical level, it is true that under any circumstances it is expressly and straightforwardly that the state must play an active role in protecting the entire nation in accordance with the proclamation contained in the Preamble to the 1945 Constitution of the Republic of Indonesia. In the context of the current pandemic, the state must protect and implement the information contained in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia that: *"Everyone has the right to live a prosperous life born and mentally, to live and get a good and healthy living environment and the right to*

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<sup>15</sup> Ministry Communication and Informatics RI, "Government Launches Site Official Covid-19", <https://www.kominfo.go.id/content/detail/25170/pemerintah-luncurkan-situs-resmi-covid-19/0/berita>, (Accessed at 10 December 2022).

<sup>16</sup> Article 3 International Health Regulation 2005.

*obtain health services.*" Based on the mandate of the constitution, Indonesia as a country of law and sovereignty has an obligation to protect the people, one of its actions is by issuing statutory policies. This was then realized by the state by presenting Law Number 6 of 2018 concerning Health Quarantine. When referring to Law Number 6 of 2018 concerning Health Quarantine, in article 10 it is explained that in this case the central government can determine the status of a public health emergency which is then manifested in the form of Presidential Decree of the Republic of Indonesia Number 11 of 2020 concerning the Determination of Corona Virus Disease 2019 (Covid-19) Public Health Emergency as a form of state responsiveness in responding to this pandemic situation.<sup>17</sup>

This provision is also included in the Health Law No. 36 of 2009, which gives everyone, family and citizens the right to protect their health and measures to ensure that the state fulfills these rights, showing that you are responsible. For optimal health. Article 4 of the Health Law No. 136 of 2009 states as follows. Article 5 (1) states as follows. Everyone has the same right to access health resources. Subsection (2) "*Everyone has the right to safe, quality and affordable health services*". In general, the types of rights to health regulated in Law Number 36 of 2009 are listed in Articles 4-8, including easy access to health resources, optimal health services that are guaranteed and affordable. The right to choose the type of medical services needed, a clean and healthy

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<sup>17</sup> Ahmad Naufal Dzulfaroh, "Handling Epidemic Coronavirus in Singapore, Vietnam, and Taiwan...", <https://www.kompas.com/tren/read/2020/03/05/151519765/melihat-penanganan-wabah-viruscorona-di-singapura-vietnam-dan-taiwan?page=all#page4>, (Accessed at 9 December 2022). See also Surip Surip, et al. "Multi-Sector Collaboration in Legal Protection for Teachers and Students Amidst of Covid-19 Pandemic (Case of Mirit Kebumen, Indonesia)." *Indonesian Journal of Advocacy and Legal Services* 3, no. 2 (2021): 155-182.

environment, and the right to objective and responsible health information and education. The role of the State in achieving the right to optimal health can be seen in the context of three typologies: "*respect*", "*protection*", and "*fulfillment*".

In terms of handling, as stated in the provisions of the health quarantine law, there are several measures to carry out health emergency handling, it is explained in article 15 paragraph (2) that: "In order to carry out risk factor mitigation measures in the region in a Public Health Emergency situation, Home Quarantine, Regional Quarantine, Hospital Quarantine, or Large-Scale Social restrictions are carried out by Health Quarantine officials." Seeing the urgency, the government then took a large-scale social restriction policy as an effort to handle the arrangements described in Government Regulation Number 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19). The Government Regulation explains several actions that must be taken at a minimum, such as the involvement of schools and workplaces, restrictions on religious activities, and restrictions on activities in public places or facilities.<sup>18</sup>

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<sup>18</sup> Article 4 Keputusan Presiden Republik Indonesia Nomor 11 Tahun 2020 tentang Penetapan Kedaruratan Kesehatan Masyarakat Corona Virus Disease 2019 (COVID-19) [Government Regulation Number 21 of 2020 concerning Large Scale Social Restriction in the effort to handle COVID-19]. See also Kiki Nurjanah, Imawan Sugiharto, and Moh Khamim. "Harmonization Of Central Government Regulation Number 21 Year 2020 With Regulations Tegal City Region Number 10 Year 2020 In Handling Covid-19." *Proceedings of the 1st International Conference on Law, Social Science, Economics, and Education, MALAPY 2022, 28 May 2022, Tegal, Indonesia*. 2022; Mukmin Muhammad, "Policy Implementation of Regulation Number 21 of 2020 Concerning Large-Scale Social Restrictions (PSBB) in the Framework of Acceleration of The Handling of Covid-19 in Tanete Riaja Sub-District, Barru Regency." *Jurnal Scientia* 12, no. 2 (2023): 1047-1054.

In this case, the emergency in question is an outbreak of coronavirus disease (Covid-19). Covid-19 is an extraordinary outbreak because its large-scale spread has caused a health emergency. The Covid-19 virus outbreak also has an impact on the country's economic growth, reducing government revenues and increasing the burden of government spending. Thus, the government will pay more attention to public fiscal policy and policies to stabilize the country's financial system.<sup>19</sup>

To accelerate the enforcement of handling, the President also issued a policy in the form of Presidential Decree Number 9 of 2020 concerning Amendments to Presidential Decree Number 7 of 2020 concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 (COVID-19). This is intended to optimize the handling of this pandemic both at the central and regional levels. The Task Force is technically tasked with increasing national resilience in the health sector whose composition includes ministries, non-ministries, TNI, Polri, and Regional Heads. Considering that it turns out that Covid-19 not only has an impact on health but also has an impact on national economic growth, so as an effort to maintain financial sector stability and save health and recovery for affected communities, the state makes policies in the form of Government Regulations in Lieu of Law of the Republic of Indonesia Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease Pandemic 2019 (Covid-19) and/or in Order to Face Threats That Endanger the National Economy and/or Financial System Stability.<sup>20</sup>

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<sup>19</sup> Susilawati Susilawati, Reinpal Falefi, and Agus Purwoko. "Impact of COVID-19's Pandemic on the Economy of Indonesia." *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 3, no. 2 (2020): 1147-1156; Asep Suryahadi, Ridho Al Izzati, and Daniel Suryadarma. "Estimating the impact of covid-19 on poverty in Indonesia." *Bulletin of Indonesian Economic Studies* 56, no. 2 (2020): 175-192.

<sup>20</sup> Olivia, Gibson, and Nasrudin. "Indonesia in the Time of Covid-19."

The Perppu contains policies to maintain national economic stability and recovery of affected communities through increased spending activities to mitigate health risks, protect the community and maintain business activities. The information on the handling arrangements was then followed up by several ministries. Just as the Ministry of Health issued the 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 (Covid-19), it expressly regulates the technical rules for implementing large-scale social restriction policies. Jakarta as the first city to implement PSBB arrangements through Governor Regulation Number 33 of 2020 challenges the implementation of "Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (COVID-19) in the Province of the Special Capital Region of Jakarta. The policy came into effect from April 10, 2020 to April 23, 2010, this emphasizes that the Large-Scale Social Restrictions policy will be implemented for two weeks, this policy includes restrictions on public facilities such as restrictions on public transportation with a capacity of only 50 percent and operating time only lasts from 06.00 to 18.00 WIB.<sup>21</sup>

However, seeing that the Corona Virus Disease 2019 pandemic has had a huge impact on the economy and given the increasing number of infected people, financial sectoral support to restore economic stability is actually needed. On that basis, in addition to issuing a Government Regulation in Lieu of Law of the Republic of Indonesia 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 Order to Face Threats That Endanger the National Economy and/or Financial System Stability, through the Ministry of

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<sup>21</sup> Tessa Septy Dynesia, "The Effectiveness of Indonesian Government Assistance in Handling and Breaking Covid-19 Chains." *The Indonesian Journal of International Clinical Legal Education* 2, no. 3 (2020): 245-256.



Finance issued a Government Bond policy which is referred to from Law Number 24 of 2002 on Government Bonds.<sup>22</sup>

To address the financial requirements of the state budget, particularly amid the ongoing pandemic, the Ministry of Finance has issued three series of Government Bonds: RI1030, RI1050, and RI0470. These bonds, with a combined nominal value of USD 4.3 billion, are structured with USD 1.65 billion each for 10.5-year and 30.5-year tenors, and USD 1 billion for a 50-year tenor. This strategic fiscal move is aimed at maintaining a credible, sustainable, and disciplined fiscal policy amidst the challenges posed by the turbulent global economy, especially during the Covid-19 pandemic. Importantly, this fiscal policy serves as a responsive and effective tool, supporting three critical priorities in Covid-19 management, namely addressing health concerns, bolstering the business sector, particularly Micro, Small, and Medium Enterprises (MSMEs), and ensuring social safety nets. Beyond macro policies, the government has implemented measures such as electricity procurement subsidies, waiving electricity costs for 450 VA customers and providing a 50 percent discount for subsidized 900 VA users.<sup>23</sup> However, practical

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<sup>22</sup> Ashinta Sekar Bidari, Frans Simangunsong, and Berlian Sesaria. "Covid-19 Pandemic, What Is The Financial System Stability Policy In Indonesia?." *International Journal of Educational Research and Social Sciences (IJERSC)* 2, no. 4 (2021): 921-929. See also Eric Alexander Sugandi, "Indonesia's financial markets and monetary policy dynamics amid the Covid-19 pandemic." *Asia-Pacific Financial Markets* 29, no. 3 (2022): 411-447; Dani Andrean Widodo, "The Indonesia government strategy to reduce the impact of the Covid-19 pandemic on the national economy." *ICLSSE 2020: Proceedings of the 2nd International Conference on Law, Social Sciences and Education, ICLSSE 2020, 10 November, Singaraja, Bali, Indonesia*. European Alliance for Innovation, 2021.

<sup>23</sup> See Reza Y. Siregar, Anton H. Gunawan, and Adhi N. Saputro. "Impact of the covid-19 shock on banking and corporate sector vulnerabilities in Indonesia." *Bulletin of Indonesian Economic Studies* 57, no. 2 (2021): 147-173; Umi Khaerah Pati, "Indonesian government policy in mitigating economic risks due to the impact of the Covid-19 outbreak." *Journal of*

challenges arise, leading to conflicts and perceived injustices in the distribution of aid. Recognizing that all individuals are victims of the outbreak, the government should strive for equitable support, as justice and welfare are fundamental principles embedded in the highest law.

## IV. Handling of Corona Virus Disease 2019 in the Emergency Constitutional Law Discourse

The Indonesian State is essentially a country of law. The information is expressly and straightforwardly contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In the conception of the state of law must place the law as a unified system that includes aspects of the behavior of legal subjects, rules of rules, and institutional elements.<sup>24</sup> Comprehensively these three aspects include law making, law application and law enforcement processes. In the context of the current pandemic, in practice the state has carried out the role of a legal state with the issuance of several policies. However, in fact, the policy is considered to be reaping conflicts and is considered not an emergency response. As well as the presence of a Government Regulation on the Covid-19 PSBB which is too bureaucratic. Technically in an emergency, the state must responsibly make emergency response laws in the current state of

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*Law and Legal Reform* 1, no. 4 (2020): 577-590; Mulyono Mulyono. "The Challenging Time for Indonesia Government Bond During Covid-19 Pandemic." *Binus Business Review* 14, no. 2 (2023): 185-192.

<sup>24</sup> Rokilah Rokilah. "The Role of the Regulations in Indonesia State System." *Ajudikasi: Jurnal Ilmu Hukum* 4, no. 1 (2020): 29-38. See also Daniel S. Lev, "The State and Law Reform in Indonesia." *Law reform in Developing and Transitional States*. (London: Routledge, 2006), pp. 236-267.

the pandemic. Originally, the Indonesian State must be able to carry out its role in protecting the people and in the context of creating the welfare of the people.<sup>25</sup>

In accordance with the adagium echoed by Marcus Tullius Cicero, that "*Salus populi suprema lex esto*". The adagium broadly positions the welfare of the people as the highest law in a country, especially when studied in the current context.<sup>26</sup> When studied from the perspective of emergency constitutional law or *staatsnoodrecht*, the Indonesian state in a state of force, urgency and in a precarious state can take an emergency legal position as a solution effectively and efficiently. By rule, emergency

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<sup>25</sup> Sylvia Hasanah Thorik, "Efektivitas Pembatasan Sosial Berskala Besar di Indonesia dalam Penanggulangan Pandemi Covid-19." *Adalah* 4, no. 1 (2020): 115-120; Dian Herdiana, "Implementasi Kebijakan Pembatasan Sosial Berskala Besar (PSBB) Sebagai Upaya Penanggulangan Corona Virus Disease 2019 (Covid-19)." *Decision: Jurnal Administrasi Publik* 2, no. 2 (2020).

<sup>26</sup> "Salus populi suprema lex esto" is a Latin phrase that translates to "Let the welfare of the people be the supreme law" in English. This legal maxim reflects the principle that the well-being, safety, and health of the public should be the highest and most important consideration in the formulation and application of laws and policies. The idea behind this concept is that the government's actions and decisions should prioritize the common good and the interests of the community above all else. It emphasizes the fundamental importance of promoting and safeguarding the welfare of the people as the ultimate objective of legal and governmental efforts. This principle is often invoked to justify measures taken by authorities in times of public health crises or emergencies, underscoring the paramount importance of protecting the population. See Oriol Farrés Juste, "Salus populi suprema lex." *Revista de Bioética y Derecho* 50 (2020): 5-17; Óscar Emilio Quesada-Rodríguez, "Salus populi suprema lex esto (La salud del pueblo es la ley suprema)." *Acta Académica* 57, No. Noviembre (2015): 149-172; Orien Effendi, "Dynamics of Application of Salus Populi Suprema Lex Esto in Law Enforcement in Indonesia." *UNTAG Law Review* 5, no. 2 (2021): 38-48. See also Fery Setiawan, et al. *Corona Virus Disease 2019 (Covid-19) dalam Asas Salus Populi Suprema Lex Esto dan Kajian Patogenesis*. (Sukabumi: Haura Utama, 2021).

constitutional law has the object of study, namely the state in an emergency or "*State of Emergency*." In an emergency, which means an extraordinary situation, it actually requires an extraordinary law. Similarly, in a state of danger that can threaten public order, the state can act in an unusual way that in this case is outside of the normal legal circumstances.

In the context of examining a constitutional emergency, any public policy designed to mitigate the Covid-19 outbreak can be viewed as a government emergency measure responding to a critical and alarming event. The Constitution of Emergencies or the Emergency Act constitutes a set of rules specifically crafted for emergency situations, exercising authority and implementing public policies aligned with legal frameworks. The primary objective is to swiftly eliminate imminent or perilous threats from daily life, with the flexibility to revert to standard legislative procedures and laws once the emergency or threat has been successfully addressed.

Building on the earlier explanation, it becomes evident that when a significant event or a perilous situation occurs, disrupting the usual operation of laws and regulations governing daily life, their effectiveness is compromised. In response to this inadequacy, emergency constitutional law systems are designed to introduce extraordinary and specialized measures. Research by Christian Bjørnskov and his colleagues indicates that approximately 90% of constitutions globally incorporate emergency clauses, often triggered by circumstances like war or foreign aggression (48%), internal security concerns (39%), and national disasters (26%).<sup>27</sup> Referring to recent statistics, Indonesia has reported a staggering 4.25 million positive cases of Covid-19 as of November 2021, with a death toll of 143,698. This places Indonesia among the top 25 countries globally with the highest number of coronavirus

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<sup>27</sup> Christian Bjørnskov, and Stefan Voigt. "This time is different?—on the use of emergency measures during the corona pandemic." *European Journal of Law and Economics* (2022): 1-19.

cases. The declaration of a state of emergency implies a temporary breakdown in the effective functioning of the state and its government. Standard laws and regulations, tailored for ordinary conditions, struggle to address the unpredictable challenges emerging during emergencies. Emergency policies are then implemented with the goal of expeditiously mitigating or eliminating the state of danger, aiming to restore stability to people's lives and normalize the functioning of the state.<sup>28</sup>

The right to health is recognized as a human right that must be protected and respected by the state in accordance with the mandate of the 1945 Constitution. by referring to the latest data, the number of Covid-19 cases in Indonesia has reached 1 million cases. with one death totaling 30,581 positive exposure to Covid-19. This figure puts Indonesia in the top 20 countries with the largest number of cases of exposure to the virus in the world. The government seems to be sitting on a political sit-out between the bail out of the economic sector or the health sector. Policies such as large-scale social restrictions (PSBB) were initially relatively effective in reducing the spread of Covid-19, especially in big cities such as Jakarta. from the implementation of the PSBB from April 24 to May 22, 2020 and May 24 to June 4, 2020, the number of positive Covid-19 cases in Indonesia was only 18,000. On the other hand, the implementation of PSBB has a negative impact on

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<sup>28</sup> Christian Bjørnskov, and Stefan Voigt. "Why do governments call a state of emergency? On the determinants of using emergency constitutions." *European Journal of Political Economy* 54 (2018): 110-123. See also Muhammad Yoppy Adhihernawan, Hernadi Affandi, and Departemen Hukum Tata Negara. "Limitation of the President's Power to Declare a State of Emergency: A Comparison of France, India, and Indonesia." *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 145-162; Qurrata Ayuni, et al. "Concept and Implementation on the State of Emergency in Indonesia: Outlook to Strengthen Checks and Balances during Crisis." *Revista de Investigações Constitucionais* 9 (2022): 11-36.

the economic sector. Indonesia's economic growth in the second quarter of 2020 was minus 5.32%.<sup>29</sup>

Iwa Kusuma Sumantri in his work "*Law and Justice*" asserts that emergency laws can be formed and enforced in crunch with the issuance of emergency laws.<sup>30</sup> Technically, there are five conditions in making emergency laws, namely that they include security endangering and threatening the realization of the state,

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<sup>29</sup> Dito Aditia Darma Nasution, Erlina Erlina, and Iskandar Muda. "Dampak pandemi Covid-19 terhadap perekonomian Indonesia." *Jurnal Benefita* 5, no. 2 (2020): 212-224.

<sup>30</sup> Iwa Kusuma Sumantri, *Ilmu Hukum dan Keadilan* (Jakarta: Pena, 1956). Legal scholars offer varied and nuanced perspectives on the concepts of law and justice, shaping the discourse within the field of jurisprudence. One notable figure in this realm is John Rawls, who introduced the notion of "justice as fairness." Rawls's theory, expounded in "A Theory of Justice," posits a social contract behind a "veil of ignorance," where individuals would agree to principles ensuring fairness and equal opportunities, emphasizing distributive justice for a just society. Lon L. Fuller, another influential legal theorist, emphasized the moral foundation of law. His concept of the "inner morality of law" contends that legal systems must embody internal principles, such as clarity and consistency, aligning with moral values to achieve justice. H.L.A. Hart, in "The Concept of Law," distinguished between primary and secondary legal rules, highlighting the importance of social acceptance for the effectiveness of legal systems. Ronald Dworkin, on the other hand, argued for a rights-based approach in his theory of "law as integrity," emphasizing the identification and application of underlying principles in legal interpretation to achieve justice. Critical Legal Studies (CLS) scholars challenge traditional legal theories, questioning the neutrality of law and emphasizing its potential to perpetuate social inequalities. They argue for a more transformative legal system that addresses power imbalances and promotes justice. Similarly, feminist legal scholars critique existing legal frameworks for gender biases, advocating for reforms to rectify gender-based discrimination and violence. These diverse perspectives collectively contribute to ongoing discussions about the nature of justice, the role of law, and the pursuit of a fair and equitable society. Each scholar brings a unique lens, enriching the understanding of the intricate relationship between law and justice in the context of societal dynamics and evolving norms.

urgent circumstances, to overcome the circumstances and difficulties arising from the state of danger, there is no opportunity to discuss with parliament, and the law is only valid as long as there is danger. Looking at the current situation and situation, in fact, the application of emergency law with the issuance of emergency laws is carried out by including substance regarding the comprehensive handling of the Covid-19 pandemic.

Despite the fluctuating terms and the variety of regulations used, the thing to note is the substance of the regulations and instructions. All the substance of the policy is basically restrictions on community activities or restrictions on the rights of citizens, although it is understood that the policy aims to deal with the spread of Covid-19. When linked to the 1945 NRI Constitution, some of these policies limit the rights that have been regulated by the 1945 NRI Constitution, for example Article 28D paragraph (2) Everyone has the right to work and receive fair and decent remuneration and treatment in employment relations; Article 28E paragraph (1) everyone has the right to worship according to their religion, Article 31 everyone has the right to education, Article 28 the freedom to assemble, and so on. Although, the policy is not essentially negating that right, but restricting it.<sup>31</sup>

Furthermore, it is emphasized that the law must function as a juridical instrumentarium, serving as a means and tool while adhering to the principles of respecting human rights. However, during emergencies, it becomes possible to restrict the rights and freedoms of citizens. Such restrictions on human rights can be justified to maintain the integrity of the state and protect its citizens. General Comment No. 29 on Article 4 of the International Covenant on Civil and Political Rights (ICCPR) by the UN Committee on Human Rights specifies two fundamental

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<sup>31</sup> Rizki Ramadani, Yuli Adha Hamzah, and Arianty Anggraeni Mangerengi. "Indonesia's Legal Policy During COVID-19 Pandemic: Between the Right to Education and Public Health." *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 125-156.

conditions that must be met to justify restricting human rights: the situation must constitute a public emergency threatening the life of the nation, and the State party must officially declare a state of emergency. Legal allowances for restrictions on human rights during emergencies are limited to rights falling into the derogable right group, i.e., rights that can be restricted in their fulfillment. No justification exists for limiting human rights falling into the non-derogable right group, rights that cannot be restricted under any circumstances. Violations of human rights are inevitable if rights in the non-derogable category, such as the right to life, the right to be free from torture and inhuman or degrading treatment, the right to be free from slavery or servitude, and the right to be free from the retroactive application of criminal law, are curtailed in any manner, as stipulated by the ICCPR, the European Convention on Human Rights, and the American Convention on Human Rights.<sup>32</sup>

In the Executive Summary of the DPR Performance Report, it is stated that the activities carried out by the DPR RI in the 2020-2021 Session Year in order to carry out the supervisory function are focused on handling Covid-19. Since last session year, the Leader of the House of Representatives of the Republic of Indonesia has formed a Supervisory Team of the House of Representatives of the Republic of Indonesia on the Implementation of Disaster Management to ensure that the implementation of handling the Covid-19 pandemic has run effectively and on target. The working meeting / RDP / RDPU of each commission with various partners is directed at efforts to encourage the acceleration of handling Covid-19, build synergy between institutions, and provide support to the efforts made by

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<sup>32</sup> Herman Herman, et al. "Community Legal Education about Criminal Policies in the Context of Post-Covid 19 Pandemic Economic Recovery in Mokoau Village, Kendari City." *Jurnal Pengabdian Hukum Indonesia (Indonesian Journal of Legal Community Engagement) JPHI* 6, no. 1 (2023): 49-68.



partners in efforts to overcome Covid-19. Several commissions established oversight committees. The working visit focused on handling the Covid-19 pandemic. This shows the focus of activities in the context of implementing the supervisory function in adjusting to the current Covid-19 pandemic situation.<sup>33</sup>

In the concept of Emergency Constitutional Law, the government is considered entitled to any action as long as the situation and event is an emergency. The government is actually obliged to implement a policy as a solutive measure in overcoming a problem. This is supported by the assumption that a bad situation has its own system of legal norms and legal ethics. Such a state is referred to as "*Appaddharmakale*", which is a state of crisis or season of suffering. In interpreting the implementation of government policies in handling the Covid-19 outbreak, the following are the principles of an emergency, including: 1) The Principle of Necessity and Self-Preservation, 2) the Principle of Self-defense; and 3) The Principles of Proportionality and Immediacy. The implementation of policies by the government should be viewed as the will of the state to be free from a dangerous situation or civil emergency (Welfare Emergencies). The Covid-19 outbreak is a natural disaster which is a natural disaster in the form of an outbreak. This situation is enough to give legitimacy to the government in the implementation of its policies. Policy making by the government towards handling the Covid-19 outbreak must also of course contain elements contained in emergency constitutional law including, the existence of state dangers that should be faced with extraordinary efforts; Ordinary efforts, common and prevalent institutions are inadequate to be used to respond to and overcome existing hazards; The extraordinary authority granted by law to the government of the state to expedite the danger of such emergency, return to normal

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<sup>33</sup> DPR RI, "Summary Report Performance of the House of Representatives of the Republic of Year Meeting 2020-2021", DPR RI, 2021, p. 45.

life; that extraordinary authority and that emergency constitutional law is for the time being only, until the state of emergency is seen as no longer a danger.

Refly Harun explained that it is better to implement several policies in one unit including hospital quarantine, regional quarantine and PSBB simultaneously. Then in its arrangement, it is emphasized that it gives each local government flexibility in determining handling policies which can then be evaluated by the central government to continue, reduce or stop. Then responding to the current problems, especially in economic aspects and information related to the current pandemic, needs to be done decisively. As well as the handling of the economy during the pandemic to post-pandemic, it needs to be monitored, in this case it is necessary to form a sub-task force for handling Covid-19 in the economic sector to oversee regional and central economic growth in synergy and optimally in its implementation.<sup>34</sup> Then regarding information problems, the state must actually play a transparent and responsive role in conveying information related to the pandemic due to the emergence of hoaxes and disinformation between the central and regional levels.<sup>35</sup> Legal optimization through emergency constitutional law needs to be made, especially considering that this pandemic can have an impact on the world economic recession.

To respond to this situation, the law must be present in this case including aspects of dealing with the eradication of the spread of the Covid-19 pandemic, aspects of handling health, aspects of information dissemination, and economic aspects. Policies must be carried out in a sustainable manner and supported by all

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<sup>34</sup> Namira Ivanka, "Large-scale Social Restrictions: What's Next?." *The Indonesian Journal of International Clinical Legal Education* 2, no. 2 (2020): 201-214.

<sup>35</sup> Nur Rohim Yunus, and Annissa Rezki. "Government Preparation for Hoax Cases During the Covid-19 Pandemic to Preserve the Nation's Unity and Cohesion." *Jurnal Scientia Indonesia* 8, no. 1 (2022): 115-130.

elements including the community itself. If the aspects of law formation, law application and law enforcement in a pandemic situation can run optimally, then 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.<sup>36</sup>

There are four distinct categories or models for the legal frameworks employed by states in addressing the Covid-19 pandemic: constitutional provisions, existing laws, creation of new laws, and executive actions lacking a specific legal basis. The Indonesian government falls under the category of utilizing existing laws, specifically the Health Quarantine Law, the Disaster Management Law, and the Infectious Disease Outbreak Law. It's essential to note that using existing laws as an emergency measure differs from the application of emergency constitutional law due to unmet elements, such as the absence of provisions stating when the emergency declaration will conclude and how to cease the implementation of various laws and regulations. An evaluation of the utilization of existing laws in comparison to the formation of new laws for handling the Covid-19 pandemic reveals both advantages and disadvantages.

The advantages of using existing laws, among others, do not require long discussions or political processes to obtain the approval of the House of Representatives and the Government is more flexible in carrying out handling actions through the making of laws and regulations under the law. However, the use of existing laws also has disadvantages and this is an advantage of forming new laws. The advantages of the new law, among others, can be a source of emergency constitutional law by including the constitutional basis of Article 12 of the 1945 NRI Constitution;

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<sup>36</sup> Wadhah Ghassan Abdulqader, and MNB Asyhar Assalmani. "Constitutional Law During the Covid-19 Pandemic in a Juridical Perspective: Challenges and Strategies." *Lex Publica* 8, no. 1 (2021): 51-61.

all matters related to the handling of the Covid-19 pandemic can be specially arranged; and arrangements regarding the restriction of the rights of citizens and criminal provisions based on acts that specifically violate this law, and can be established a period of enactment of this law, so that it can be declared invalid for a certain period of time and if it is extended it must obtain joint approval with the House. The determination of the state of danger by law as mandated by the 1945 NRI Constitution does not have to be interpreted as forming a single law that explains the categories of danger circumstances and their handling. To deal with a state of danger or emergency, a special law may be established that regulates it for each type of event, such as the establishment of The Coronavirus Act in the United Kingdom. Through the formation of the law, it is reflected how the emergency constitutional law is applied. The arrangements in this one law will be better compared to the current conditions whose arrangements are in various types of legislation, even Instructions and Circulars, which are still sectoral in nature, even instructions and circulars are not included in the category of laws and regulations.

## V. Conclusion

In summary, the discussion underscores that the right to health is an inherent human right universally acknowledged and protected by nations. The international community has recognized health as a fundamental human right since the establishment of the World Health Organization (WHO) Constitution in 1946, further affirmed in general comments emphasizing its indispensability for the exercise of other human rights. Emergency Constitutions or Emergency Acts serve as critical frameworks designed to address imminent hazards swiftly, deviating from ordinary legislation to restore stability. The COVID-19 outbreak has necessitated the

invocation of emergency policies, aligning with constitutional law principles, to effectively respond to unpredictable challenges. This application of emergency constitutional law reflects a progressive and responsive approach, grounded in the ideals of a lawful state that prioritizes community welfare and protection. Beyond constitutional considerations, legal aspects such as formation, application, and enforcement must be rigorously upheld during the pandemic to ensure optimal functioning, with active community involvement in curbing the spread of COVID-19 through considerations of health, economy, and overall welfare.

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