

IMPLEMENTATION OF STATE OF EMERGENCY WITHIN THE CONSTITUTIONAL LAW SYSTEM IN INDONESIA

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Abstract

This research aims at analyzing the state governance practice which frequently and extraordinarily takes place when governing the state administration, in which the common legal system is unable to accommodate the people's interests. Self-governance is highly necessary that the state function may effectively run independently as the state organ by ensuring respect and compliance of right guaranteed by the state 1945 constitution of the Republic of Indonesia (UUD NRI 1945) as the highest legal document in governing the state. The legal equipment should be able to anticipate various possibilities of emergency conditions to ensure the sustainability of state life.

Keywords: *Emergency Condition; State; Legal System*

1. Introduction

The identity of the state of Indonesia is stated in Article 1 paragraph (3) the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that the law constitutes the supreme source (supremacy) in regulating and determining the mechanism of legal relation between the state and society, or between members or community groups among each other in realizing their goals.¹ The idea or the concept of law country commonly aimed to avoid state or government's arbitrary acts.² The legal supervision of states of emergency is of primary importance, as grave human rights violations often occur in this context and states may use the power of derogation as a pretext or to a large extent than is justified.³ The law has regulated all possible potential arbitrariness inherent in emergency power, which should only be used if there is a real danger, need, and is only temporary, and does not lead to unlimited government / state power.⁴ As such, the state shall bear the responsibility in resolving the state of emergency that threatens the safety of its citizens. From the phenomena that occur, this research aims to analyse the state of

¹ Nuh, M.S. (2011). Hakekat Keadaan Darurat Negara (State Of Emergency) sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang, *Jurnal Ius Quia Iustum*, 18(2), 229-246.

² Djanggih, H., & Ahmad, K. (2017). The Effectiveness of Indonesian National Police Function on Banggai Regency Police Investigation (Investigation Case Study Year 2008-2016). *Jurnal Dinamika Hukum*, 17(2), 152-157.

³ Sheeran, P.S. (2013), Reconceptualizing States of Emergency under International Human Rights Law: Theory, Legal Doctrine, and Politics, *Michigan Journal of International Law*, 34(3), 518.

⁴ Crouch, M., (2017), The Expansion of Emergency Powers: Social Conflict and the Military in Indonesia, *Asian Studies Review*, Routledge, 41(3), 461.

emergency in accordance with the Indonesian constitutional law system. To anticipate such situation, the law and regulation of the Republic of Indonesia are regulated as follows:

1. The 1945 Constitution of the Republic of Indonesia is regulated in Article 12 namely: "The President declares a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency shall be regulated by law. "
2. Law of the Republic of Indonesia Number. 23 Prp of 1959 regarding the condition of state of emergency, as amended by Law Number 52 Prp of 1960 regarding Amendment to Article 43 Paragraph (5) of Law Number 23 Prp of 1959.
3. Law of the Republic of Indonesia Number 27 of 1997 regarding Mobilization and Demobilization.
4. Law of the Republic of Indonesia Number 34 of 2004 regarding the Indonesian National Army.
5. Law of the Republic of Indonesia Number 24 of 2007 regarding Disaster Management.
6. Law of the Republic of Indonesia Number 7 of 2012 regarding Handling of Social Conflict.

Article 12 of the 1945 Constitution of the Republic of Indonesia regulates the state of emergency, and the right of the state to act in such state or in emergency with the goal to create security and peace, as outlined in Law No. 23 of 1959 regarding Emergency Situation. This is the application of a notion that the law acts as a security order, the law acts as a fundamental need for individual security, in the midst of wild people who like to prey each other, the law acts as an important tool to create a safe and peaceful society.

An emergency may occur due to various factors, i.e. any events from outside (external) or inside a country (internal).⁵ Enforcement of a state of emergency by the state will create a consequence that will change the government functions, warn its citizens to change their activities or order state agencies to use emergency mitigation plans. Among the negative impacts in relation to the imposition of emergency are susceptible to violations of Human Rights and abuse of power by the emergency authority, however if the safety of a nation and a state is at risk, such action must be taken. *Adagium* or the argument that sets as the basis for the imposition of state of emergency is the safety of the people is the highest law (*solus populi suprema lex*). To save the people and the state, this must be executed even if it violates the standard procedure or

⁵ Matompo, O.S. (2014). Pembatasan Terhadap Hak Asasi Manusia Dalam Prespektif Keadaan Darurat, *Jurnal Media Hukum*, 21(1), 57-72

the constitution. Presumably, the basis for the imposition of the state of emergency is in line with the opening of opportunities for abuse of power by powerful authority, however by far this is a far better option than people living in an unstable/safe situation..

Indonesia has imposed the state of emergency situation in several regions, one actual example of such imposition was a state of emergency in Aceh. In order to deal with the separatism of the Free Aceh Movement (GAM), the government had imposed Military Operations Zone (DOM) in Aceh Province during the New Order administration. During the reformation era, President B.J. Habibie ordered to lift the Military Operations Zone (DOM) and downgraded it into a state of civil emergency. When President Megawati administration deemed that that situation in the Province had not improved, the military state of emergency was put back in place, through the Presidential Decree No. 28 of 2003 stating "the entire territory of the Province of Nanggroe Aceh Darussalam is declared in a state of emergency as in 'Military Operations Area'".⁶ The decree was effective for 6 (six) months and extended for another 6 (six) months with the Presidential Decree No. 97 of 2003 dated May 18, 2003.⁷ Subsequently, during the President Susilo Bambang Yudhoyono administration, the status of civil emergency in the entire territory of Province of Nanggroe Aceh Darussalam was completely lifted as of 00.00 hour on May 19, 2005 with the Presidential Regulation No. 38 of 2005.⁸

2. Method

Answering the problems formulated in this research, the type of research used is normative legal research (doctrinal research) using the statutory approach and conceptual approach.

3. Result and Discussion

The State Responsibility in the case of State of Emergency

Under the Emergency Constitutional Law, in order to overcome the state of emergency situation, the government shall establish the Law on State of Emergency (UUKB). The first UUKB established was Law No. 6 of 1946 which adopted the content from the "*Staat van Oorlog en Beleg*" (S.O.B.) and adjusted based on the need of the Republic of Indonesia at the

⁶ Presidential Decree No. 28 of 2003 on Statement of Emergency with Level of Martial Law in Prov. Nanggroe Aceh Darussalam, LN-RI Of 2003, Number 54 stipulated on May 18, 2003

⁷ Presidential Decree No. 97 of 2003 dated May 18, 2003, regarding the extension of the state of military emergency in Aceh

⁸ Presidential Decree No. 38 of 2005 Regarding Abolition of the State of Emergency with the Level of Civil Emergency in the Province of Nanggroe Aceh Darussalam, LN-RI of 2005 Number. 42

time. In terms of its enactment, based on Law Number 6 of 1946, the government has applied the law twice namely:

- a. On June 7, 1946 President Soekarno issued a statement of the state of emergency for East Java and Madura.
- b. On June 28, 1946, President Soekarno stated that starting June 28, 1946, all Indonesian territory was declared in the state of emergency.

The statement on state of emergency must be declared "...to take the necessary action in the fastest and most effective way to save the nation and return to normal as soon as possible".⁹

The statement of state of emergency was subsequently established with the Law No. 16 of 1946 regarding Statement of State of Emergency throughout Indonesia, which stated that the legality of the application of the state of emergency to:

1. The Special Region of Surakarta on June 6, 1946
2. Java and Madura on June 7, 1946; and
3. All Indonesian territory on June 28, 1946.¹⁰

The law-making authority belongs to the legislative body. However, due to the urgent need for legal regulation of legislation techniques and processes, the President has been given the authority arising from the Constitution to issue a Decree-Law on the basis of the law of jurisdiction of the legislature, to issue martial law or an extraordinary state Decree-Law.¹¹

In 1957, Law No. 74 of 1957 was issued in Lieu of Law Number 6 of 1946. After the Presidential Decree dated July 5, 1959, the Law on State of Emergency Number 74 of 1957 was reviewed to suit the needs of the period, the Government Regulation in Lieu of Law (PERPPU) Number 23 of 1959 by revoking the Law Number 74 of 1957.

The Law on State of Emergency also regulates the state of emergency due to natural disasters.¹² The tsunami natural disaster has pushed for the establishment of law on disaster management, namely Law Number 24 of 2007.

Under the confrontation period with Malaysia, Jakarta suffered the 30 S/PKI Movement on September 30, 1965 from a mutiny of the Indonesian Communist Party (PKI) against the government of the Republic of Indonesia. To overcome and restore the state security, on October

⁹ Turkut, E., (2019), *Accommodating Security Imperatives v. Protecting Fundamental Rights, The Challenge of States of Emergency in the Context of Countering Terrorism in Turkey*, Security and Human Rights, 28, pg. 78.

¹⁰ Jimly Asshiddiqie, 2007, *Hukum Tata Negara Darurat*, Rajagrafindo Persada, pg. 28

¹¹ Demirtas, H., (2017), *Judicial Way to Decree-Law: Extraordinary State of Emergency*, International Journal of Economic Perspective, 11(3), pg. 447-450.

¹² Article 1 Paragraph (1) Letter a Law No. 23 Prp of 1959 on State of Emergency

10 1965 President Soekarno ordered Major General Suharto to take care the security situation by forming an arrangement called the Operational Command for the Restoration of Security and Order (KOPKAMTIB). Such conditions in terms of constitutional law should be regulated by the Law on Hazards and Hazards. The Kopkamtib Institution existed and came into effect until near the end of Soeharto's tenure in May 1998, wherein the institution in 1989 was renamed to The Agency for Coordination of Assistance for the Consolidation of National Security (BAKORSTANAS), and BJ Habibie administration ended the Agency.

The UUKB was not enacted during Soeharto era, because the then government was of the opinion that the implementation of UUKB might influence the course of development, due to the concern that foreign investors might cease their businesses in Indonesia and result in a decline of international trust especially in the provision of financial aid to Indonesia.

On July 10, 1963, when the Indonesian Government announced "Crush Malaysia" and prepared 20 million volunteers to attack Malaysia, in parts of Indonesian territory namely West Papua wherein the Free Papua Organization (OPM) was established by the former Dutch colonial militia. The two very precarious events that were equally critical regarding the state of war did not result in statements of state of emergency and the application of UUKB. The situation continued until May 1966 wherein both the Indonesian Government through Foreign Minister Adam Malik and Malaysian Foreign Minister met in Bangkok and stated that the confrontation with Malaysia was over. Subsequently on 11 August 1966 Indonesia normalized its diplomatic relations with Malaysia.¹³

In 1990, Aceh Governor Ibrahim Hasan reported to the President of the Republic of Indonesia regarding the increasingly precarious security disturbances in NAD Province, as such the Governor requested an addition of TNI personnel. The government decided to multiply its military power in Aceh from 6,000 to 12,000 personnel [9]. Next, the Government declared NAD Province as the Military Operations Zone. The legal basis for the military operation was Government Regulation Number 16 of 1960 regarding Request and Implementation of Military Assistance. In accordance with the provisions of the regulation, the Regional Head acted as a governmental organ with the highest authority in matters of order and public security in the area, and held the right to utilize the State Police in the region.¹⁴ However, in order to prevent security disturbances or to restore order and public security due to the natural disaster, to protect properties and tools that were critical to the state or the community, and because the National

¹³ Ekspos Magazine, 2005, *60 Tahun Indonesia Antara Kejayaan dan Kebangkrutan*, Ed. August, pg. 32

¹⁴ Tempo Magazine., "Mengapa Aceh Berontak", Special Ed. August 2003, pg. 81

Police deemed not strong enough or could not act at the time and in place needed, the Regional Head could request a Military assistance.¹⁵

On August 7, 1998, the Indonesian government through the Minister of Defense and Security/Commander of the Armed Forces announced the revocation of DOM status and immediately withdrew the TNI operational unit from Aceh region. The withdrawal of TNI army which denoted a drop in security forces in Aceh has made the situation even more dangerous as the GAM separatists felt the situation has become less restricted to execute their actions.

When the security situation in Aceh Province was under a precarious condition, it turned out that the Indonesian Government did not impose the state of emergency law i.e. not imposing the martial law, and considered that it was sufficient to use the provision of Government Regulation No. 16 of 1960 on Military Assistance. The security situation in Aceh after the revocation of Military Operations Zone (DOM) status on August 7, 1998 did not deter GAM from stopping its action, even when the provocations began to spread and the war was declared. In launching its resistance and activities, GAM always used women and children as their buffer or shields. The situation in Aceh worsened after an attack that killed a pregnant Dr. Fauziah who and Mostopha who served in the Peudada Health Center in North Aceh Regency, and other victims especially in the attack on security forces.¹⁶ In addition to a number of casualties, there were a number of school buildings, houses and vehicles damaged and burned.

The conflict incidents in Aceh, the GAM armed separatist movements tended to increase. Separatist groups even developed their bases abroad to gain sympathy and support from other countries. Actions in the form of crimes and violence committed increased alarmingly, causing anxiety and fear in the community, even causing a large number of refugees. The threat of armed separatist groups is actually an internal issue of Indonesia, thus it should be resolved in the way of the nation deemed appropriate and with respect to human rights as universal values that must be upheld.

Law No. 34 of 2004 regarding the Indonesian Armed Forces assigns the TNI (Indonesian National Army) to overcome the threat of armed separatists, even though the government later on sought to pursue a peaceful settlement and dialogue. The government sought to improve development and people's welfare by providing a special autonomy for Nanggroe Aceh Darussalam (NAD) Province. The military operations were carried out if diplomatic efforts were no longer adhered by both parties.

¹⁵ Government Regulation Number 16 of 1960 on Request and Implementation of Military Assistance

¹⁶ Defense and Security Dept, in Antony Reid, *Berbagai Peristiwa dan Penanganannya 1998 - 1999*. Jakarta, pg. 69

Efforts of promoting the national defense and security policy, and handling the threat incidents were taken to adhere human right value and sustainable development. As such, an agreement to end hostilities with GAM was signed on December 9, 2002 in Geneva and accepted as a framework of reference towards further steps of resolution. A mechanism of settlement that has been mutually agreed upon must be adhered to by all parties. The Indonesian government respected the agreement and continued to the next stage with the goal to bring around GAM returning and building the future of Acehese community within the framework of NKRI. The Indonesian government hoped that the mutual willingness to achieve peace in Aceh would be supported by all parties, including from the Henry Dunant Center (HDC) and other representatives of the countries who were members of the Joint Security Committee (JSC) and that those can be implemented well. These efforts were finally successful through the Helsinki agreement which served as a pact to end the conflict in Aceh and carried out a post-conflict handling strategy. The Aceh's experience illustrates that military measures are certainly repressive in the form of military operations taken in accordance with the state defense and security policies. Military operations were carried out just as violent conflict escalated sharply, and the welfare approach was suspended, and prepared more to secure the civilian population. This requires a technical operational capability of the military which is supported by unusually high conflict budget reconciliation funds in Aceh.

To break the violence in the Nanggroe Aceh Darussalam region, the government took persuasive efforts towards peace as follows:

a. Joint Memorandum of Understanding.

The Indonesian Government was represented by the Indonesian Ambassador to Switzerland Dr. Hassan Wirayuda and the GAM by Dr. Zaini Abdullah. They signed the Joint Understanding on Humanitarian Pause for Aceh. The goal of the humanitarian pause is to provide humanitarian assistance to the people of Aceh, prepare security tools and reduce violence, and promote values to build confidence towards a peaceful situation.

Only two days after the joint memorandum of understanding was signed, a police post in Aceh received a grenade attack by GAM. Violence reoccurred in Aceh, even then with kidnapping of local government officials. The GAM faction based in Switzerland insisted that the peace agreement with the Indonesian Government was not the end of their struggle and did not undermine the demands of an independent Aceh.

b. Moratorium on Violence (a month of cease of fire).

On January 6 - 9, 2001, Indonesian government continued the meetings with GAM in Switzerland and successfully agreed to establish a moratorium on violence (a month of cease of fire) starting on January 15, 2001. During this period, both parties will work substantively to revise security arrangements for humanitarian pause with the aim of being more effective. In addition, both parties also succeeded in developing the agenda for further talks to discuss and agree on new security arrangement as a process of continuing political dialogue.

During the imposition of moratorium on violence, GAM committed various violations that harmed the Republic of Indonesia, such as attacking TNI/POLRI posts, burning government building, and even put forward a request for foreign aid and Aceh development funds. This moratorium on violence was deemed ineffective and could not produce peaceful settlement in NAD Province.

c. The Cessation of Hostilities Agreement.

The next stage towards peace took place on December 9, 2002. With the help of intermediary of Henry Dunant Center (HDC) in Geneva Switzerland, the Cessation of Hostilities Agreement (COHA) was held. This resulted in an agreement that both parties agreed to end the violence in Aceh. GAM handed over their weapons, while Indonesian forces were relocated, forming the Joint Security Commission (KKB), and agreed not to increase military power during the period of trust restoration, and considered that the hostility between the two parties is over. For the umpteenth time, GAM violated this agreement as evidenced by GAM shooting at TNI/POLRI members and killed while sending logistics. Likewise, the Joint Security Commission which was expected to mediate in resolving acts of violence could not carry out its duties properly, so that the signed agreement was not executed.

On April 25, 2003, Indonesian government sent a delegation to Switzerland to have negotiation with GAM in accordance with the schedule agreed by the two parties. However, on the agreed schedule, GAM did not come to the negotiation. Next, on 17 - 18 May 2003, Indonesian Government took the last negotiation path which turned out to be the culmination of diplomatic failure in seeking a peaceful solution, wherein GAM responded by rejecting the options offered by the Indonesian Government to GAM in Tokyo Japan. In this negotiation, Indonesian Government offered GAM a special autonomy within a framework of the Republic of Indonesia, and GAM had to commit to hand over their weapons and dissolve the Army of Nanggroe Aceh (TNA), and participate in the political process of cessation of hostilities

agreement (COHA). With regards to the offer, GAM continued to demand independence, separating itself from the NKRI.¹⁷ Several solutions offered by the Republic of Indonesia were rejected by GAM or reached a deadlocked.

The situation in Aceh that could disrupt the integrity of the Unitary Republic of Indonesia cannot be left dragging on, so it must end as soon as possible with the help of a more integrated effort so that the lives of the people and the administration could be restored. Within the government sector, there were 25 sub-districts in NAD Province before the imposition of martial law does not work. The sub-district heads and staff were known not to occupy their respective assignment posts, so that the whole sub-district government functions could not function. This was due to fear of threats, intimidation and provocation by the GAM separatists.

After the Tokyo negotiations on May 17 and 18 2003 failed, on the night of May 18, 2003 Indonesian Government declared the Aceh Province under the state of emergency with the level of martial law. Status determination of martial law was stated in Presidential Decree No. 28 of 2003,¹⁸ which included among others:

- a. The entire territory of Province of Nanggroe Aceh Darussalam was under the state of emergency with the level of martial law.
- b. The highest authority of the State of Emergency with the level of Martial Law was carried out by the President as the Central Military Emergency Authority.
- c. The authority of Military Emergency in NAD Province was carried out by the Commander of Iskandar Muda Military Region as the Regional Military Emergency Authority.
- d. The Province of Nanggroe Aceh Darussalam applied martial law provision as referred to in Law Number 23 Prp of 1959 regarding State of Emergency Condition as amended twice, most recently by Law Number 52 Prp 1960.

To resolve the issues in Aceh comprehensively and to carry out activities or operations during the Military Army situation, the government implemented an Integrated Operation, with the goal to strengthen the whole governance of NAD Province, which includes:¹⁹

¹⁷ Patriot Magazine, *Memahami Penetapan Keadaan Bahaya dalam Status Darurat Militer di Proivinsi NAD*, July Ed. 2003, Jakarta, Puspen TNI, Pg. 5

¹⁸ Presidential Decree Number 28 of 2003 regarding Statement of State of Emergency with the status of Martial Law in the Province of Nanggroe Aceh Darussalam

¹⁹ Patriot Magazine, *Op.Cit.*

1. Humanitarian operation, aimed at providing security and health, education, food, worship and employment in a concrete way, and the person in charge was the Minister of Social Affairs.
2. Law Enforcement Operations, aimed at intensifying law enforcement in NAD Province. The main element was the police and the person in charge was the Chief of National Police. This operation was carried out due to the large number of crimes against the community, such as kidnapping, extortion and coercion to become members of GAM, even those suspected by TNI spies were killed.
3. The Administration Recovery Operation aimed to revive the public administration, so that the people of NAD Province could immediately carry out their activities as usual. The person in charge of the operation is the Minister of Home Affairs.
4. The Security Recovery Operation aimed to restore security and to lessen GAM's armed forces. The person in charge of this operation is the TNI Commander.

The situation of Martial Law in NAD Province lasted for two periods i.e. twelve months which ended on 17 May 2004, and from 18 May 2004 the Military Emergency situation in the Province was lifted to Civil Emergency based on Presidential Decree Number 43 of 2004 dated May 8 2004 which came into force from 00.00 WIB on May 19, 2004.

During the imposition of civil emergency status, i.e. from May 17, 2004 to May 19, 2005, a devastating disaster occurred in NAD Province due to a tsunami wave caused by a massive earthquake in the Indian Ocean with a strength of 9.0 on the Richter scale. The tsunami crisis was the most devastating natural disaster in Indonesian history and perhaps one of the most devastating natural disasters in the history of modern world. In this incident, it was estimated that at least 131,000 people died, 37,000 people were missing and 550,000 Acehnese had to be relocated. Even though the response efforts were carried out for a long period of time, the status of civil law which was originally used to deal with security disturbances in the Province was actually lifted on May 19, 2005. During this tsunami situation, the province did not fully apply the state of emergency measures, but took emergency measures as merely *de facto*.

In addition to the separatist groups, the Department of Defense's white paper suggested that Indonesia also faced threats and harassment from radical groups. Radicalism in Indonesia generally comes from ideological and political issues. As a result of excessive fanaticism in maintaining the groups' ideologies and the absence of political maturity, the provocateurs and their followers have carried out radical actions that could threaten national stability. There was

already a self-evaluation for defense policy makers that the use of authoritarian power in the past has, among other things, been able to weaken the radical groups, in such that they were not able to spread and develop. Whereas the reformation era inclined to provide excessive freedom, hence the radical movement re-emerged for own interests and wants that were opposing to the national interests. Therefore an early detection system was needed which was more in line with the impact of post-1998 Reformation.

The early warning system considered that mass demonstrations turned into an anarchist movement, destruction of several public facilities, provocations which then led to prolonged communal conflicts, bombings in various places including Kuta Beach Bali, on October 12 2002, and the student anarchist demonstration against fuel price increase in 2008. If the threat increases, it becomes a threat to national security caused by radical actions, hence the government needs to take more effective measures.

The tragedy in Moluccas, the region was burned in the blaze of long disputes, due to horizontal conflicts raging since January 19, 1999, and claimed the lives of thousands of children. President Abdurrahman Wahid finally imposed a civil emergency in Maluku and North Maluku Province, on June 27, 2000. The enactment of civil emergency was stated in Presidential Decree No. 88 of 2000, with the legal basis of Law No. 23 Prp. 1959 regarding Dangerous Situation. Even though the government has completed the Law of Crisis Resolution (PKB Law), and has been approved by the House of Representatives (DPR) during B. J. Habibie's administration, the Law cannot be applied.²⁰

The danger situation, according to many experts, should have been applied in Maluku. Even members of the National Human Rights Commission (Komnas HAM), Koesparmono Irsan, said that implementation of civil emergency status was considered rather late given the number of victims. Support from various groups emerged, from the chairman of the People's Consultative Assembly (MPR), the National Human Rights Commission, to the Commission for Missing Persons and Victims of Violence (Kontras). According to the Chairman of the Board of Management of Kontras, Munir, the condition in Ambon was extremely chaotic, so much that it was no longer possible to use the usual approach. Therefore the application of civil emergency needed to be implemented immediately to avoid the loss of lives and greater material losses. Amin Rais strongly agreed that civil emergency status should be applied in Ambon, if necessary

²⁰ Lukas Luwarso, 2001, *Negara Dalam Bahaya, Kontroversi Seputar RUU Penanggulangan Keadaan Bahaya*, First Edition, Lembaga Studi dan Advokasi Masyarakat (ELSAM), Jakarta, Pg. 1-2.

even the martial law, because even one life is extremely valuable and cannot be valued in billions of rupiah.

There is no criticism or rejection directed at the government regarding the implementation of the UUKB. This is rather strange, because the proposal to impose a state of civil emergency was put forward by the Minister of Justice (Habibie government), Muladi, using the same legal basis, but much was criticized and later rejected. Even stranger, considering that in the previous one and a half years, public debates and protests concerning the Draft Law on the Prevention of Hazard (PKB Bill) were so hard, energy-consuming, and even claimed the lives of demonstrators who opposed it.²¹

The day before the implementation of the civil emergency in Maluku, the Minister of Law and Law, Yusril Ihsa Mahendra, had signaled the need for a legal basis regarding the state of emergency. He saw the development of riots everywhere, therefore the Indonesian National Army (TNI) needed to immediately be provided with a legal basis to move to secure the situation. Therefore, the government welcomed the DPR's proposal to immediately enact and simultaneously revise the PKB Bill. From the beginning, the drafting of the PKB Bill was full of controversy. Although in the discussion there were many rejections from the wider community, President B. J. Habibie administration and the House of Representatives continued to approve the ratification of PKB Bill on September 23, 1999. This 'disregarding' action triggered a wave of student protest that continued in the event of bloody clashes with the officials. Several students and people were shot dead. The incident forced the President to suspend the enactment of the PKB Bill.²²

3. Conclusion

Under a normal circumstance, a legal norm system is enforced based on the constitution and other authorized legal products. Under an unusual circumstance, the legal system cannot function properly. An emergency arrangement therefore carries an important significance as a legal basis for the government to take action in overcoming such unusual circumstance. In an unusual state (of emergency) the legal institution created for normal circumstance may not work.

²¹ *Ibid*,

²² *Ibid*.

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