

EMERGENCY LAW IN THE INDONESIAN LEGAL SYSTEM

Debby Ekowati

Kantor Notaris/PPAT Debby Ekowati
Jalan Yos Sudarso, No. 1, Jepara, Jawa Tengah, Indonesia, 59462
debby.ekowati@ymail.com

Abstract

This study seeks to determine and examine the position of Emergency Law within the context of Legal Studies and the presence of Emergency Law within the Indonesian Legal System. This study employs a normative legal methodology. The normative legal research approach investigates the law internally, with legal norms as the study object. Government Regulation in Lieu of Law is required if a country is confronted with an urgent and compelling situation that necessitates swift action. For this reason, while issuing Government Regulations in Lieu of Laws, the President implements them by the Constitution, legislative oversight, and, of course, the oversight of the people as sovereigns. The outcomes demonstrated.

Keywords: *Emergency Law; Indonesian Legal System; Constitutional Law; Government Regulation in Lieu of Law.*

Abstrak

Penelitian ini bertujuan untuk mengetahui dan menganalisis kedudukan Hukum Darurat dalam konteks Ilmu Hukum serta untuk mengetahui dan menganalisis keberadaan Hukum Darurat dalam Sistem Hukum Indonesia. Penelitian ini menggunakan pendekatan yuridis normatif. Metode penelitian hukum normatif mengkaji hukum dari perspektif internal, dengan objek penelitian norma hukum. Hasil menunjukkan bahwa. Peraturan Pemerintah Pengganti Undang-Undang diperlukan jika suatu negara dihadapkan pada kondisi yang mendesak dan memaksa, sehingga diperlukan tindakan cepat untuk mengatasi kondisi tersebut. Untuk itu, dalam menerbitkan Peraturan Pemerintah Pengganti Undang-Undang, Presiden melaksanakannya sesuai amanat Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, di bawah pengawasan legislatif, dan tentunya di bawah pengawasan rakyat sebagai pemegang kedaulatan.

Kata Kunci: *Hukum Darurat; Sistem Hukum Indonesia; Hukum Tata Negara, Peraturan Pemerintah Pengganti Undang-Undang.*

A. Introduction

In the perspective of emergency constitutional law, every declaration of an emergency has the consequence of allowing the government to ignore the application of several basic principles such as legal deviations and suspension of Human Rights¹. This has also been approved by international legal instruments such as the International Covenant on Civil and Political Rights

¹ Jimly Asshiddiqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Pers, 2007).

(ICCPR) by providing an alternative for the state to derogation from human rights in a public emergency, which is of course not unlimited and is accompanied by certain conditions. can justify extraordinary government actions during an emergency². A country is not always in a stable and normal state, both in political, economic and legal conditions, so that at a particular time a country must experience instability or an emergency in one case, so in this case, an effort is needed through the existence of a particular law that can overcome these problems. Run by the head of state of the country concerned.

When governing the state administration, the common legal system cannot accommodate the people's interests. Bima conducted several studies related to the topic in this research in 2019³. The research entitled "Implementation of State of Emergency Within the Constitutional Law System in Indonesia" analyses the state governance practice that frequently and extraordinarily takes place.

Research conducted by Wiratraman in 2020⁴. The research entitled "Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?" aims to analyze how the government handles the COVID-19 health emergency from the perspective of human rights law standards and the rule of law. This article argues that the Indonesian COVID-19 emergency law violates many guarantees of legal protection under the rule of law standard. The human rights issue has yet to become an effective strategy or approach in this non-natural disaster emergency.

Research conducted by Adhiernawan and Affandi in 2022⁵. The research entitled "Limitation of the President's Power to Declare a State of Emergency: A Comparison of France, India, and Indonesia" aims to determine the dangers of not limiting the President's powers in declaring a state of emergency in the Indonesian constitution by using the arrangements and practices of emergency law in France and India. The approach used in this study is a comparative

² Rizki Bagus Prasetio, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat dan Perlindungan HAM," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (July 26, 2021): 327, <https://doi.org/10.30641/kebijakan.2021.V15.327-346>.

³ Muhammad Rinaldy Bima, "Implementation of State of Emergency Within the Constitutional Law System in Indonesia," *Diponegoro Law Review* 4, no. 1 (April 30, 2019): 122–35, <https://doi.org/10.14710/dilrev.4.1.2019.122-135>.

⁴ 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 (June 30, 2020): 306–34, <https://doi.org/10.19184/jseahr.v4i1.18244>.

⁵ Muhammad Yoppy Adhiernawan and Hernadi Affandi, "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 (June 30, 2022): 145–62, <https://doi.org/10.30641/dejure.2022.V22.145-162>.

level that compares the contents of the constitution's text and compares the implementation and history of the constitution.

Based on this brief description, this research aims to find out and analyze the position of Emergency Law in the context of Legal Studies and to find out and analyze the existence of Emergency Law in the Indonesian Legal System.

B. Research Method

This study uses a normative juridical approach. The normative legal research method examines the law from an internal perspective, with the research object being legal norms^{6,7}. Normative legal research is a legal study that applies norms or library materials as a basis for arguing⁸. On the other hand, normative legal research provides juridical arguments when there is a void, ambiguity, and non-conflict of norms. Furthermore, normative legal research plays a role in maintaining critical aspects of legal scholarship as *sui generis*. Character *sui generis* is what makes the difference between law and other sciences⁹. The legal materials used consist of primary legal materials and secondary legal materials. The primary legal material, in this case, is the 1945 Constitution of the Republic of Indonesia, while the secondary legal materials used consist of books and journals related to the topic of this research.

C. Result and Discussion

1. The Position of Emergency Law in the Context of Legal Studies

The history of thought related to law and politics shows two main streams of thought. The first current is represented by the thoughts of John Locke and Carl Schmitt. Locke argues that the executive in an emergency should use his prerogative to act by discretion, in the public interest, without legal support and sometimes even contrary to law. In the 20th century, Carl Schmitt radicalized Locke's ideas with his argument that the sovereign is the one who establishes the state

⁶ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media, 2016).

⁷ Edhei Sulisty, "Notary as a Reporting Party in the Eradication of the Crime of Money Laundering," *Jurnal Hukum Progresif* 9, no. 2 (October 30, 2021): 87–98, <https://doi.org/10.14710/jhp.9.2.87-98>.

⁸ Mohamad Syarhan, "Socio-Cultural and Legal Changes in Indonesia," *Jurnal Hukum Progresif* 9, no. 2 (October 30, 2021): 135–45, <https://doi.org/10.14710/jhp.9.2.135-145>.

⁹ Rachmad Baro, *Penelitian Hukum Doktrinal: Penelitian Hukum* (Makassar: Indonesia Prime, 2017).

of emergency. Schmitt stated that an extraordinary situation is not limited by law in sovereignty¹⁰. The ruler himself decides when a situation is called to apply exceptions to the law. The second thought supports the need for emergency legislation. This thinking is based on Machiavelli's argument that a country will never be perfect unless the country has provided laws for everything, including emergencies. Therefore, Machiavelli recommends the existence of legal provisions governing the implementation of public authority in an emergency. Many modern constitutions provide for states of emergency in the manner recommended by Machiavelli. Constitutional emergency provisions regularly define a state of emergency, determine who has the authority to declare a state of emergency under what conditions, and list its effects. The declaration of a state of emergency implies more concentration of power on the part of the executive¹¹. As a logical implication because it is only the executive, from among the three branches, who has what is needed to respond to emergency needs, for example, a bureaucratic, hierarchical structure with a clear division of functions and responsibilities, access to expertise, and qualities that allow for quick action and firm to protect citizens¹².

In the context of state life, the law must play a role so that everything runs in an orderly and orderly manner because the law determines the rights and obligations. The law must realize a sense of justice and usefulness for the benefit of the community and legal certainty. On the other hand, the rule of law must maintain legal order based on law and the welfare state¹³. It is a necessity that the journey of national life does not always run usually. Sometimes the country collides with a threatening situation. Like a person (*natuurlijk persoon*) when faced with a dangerous situation (*noodtoestand*), the state will use its right to defend itself (*noodzakelijk verdediging*), namely by enforcing the Emergency Constitutional Law (*staatsnoodrecht*). Therefore, in the practice of state administration, according to Jimly Asshiddiqie, there are two state conditions, namely: the state is

¹⁰ Jan Petrov, "The COVID-19 Emergency in the Age of Executive Aggrandizement: What Role for Legislative and Judicial Checks?," *The Theory and Practice of Legislation* 8, no. 1–2 (May 3, 2020): 71–92, <https://doi.org/10.1080/20508840.2020.1788232>.

¹¹ Yoram Dinstein and Fania Domb, *Israel Yearbook on Human Rights* (Leiden, The Netherlands: Brill | Nijhoff, 2004), <https://doi.org/10.1163/9789047413134>.

¹² Aidul Fitriadi Azhari, "Negara Hukum Indonesia: Dekolonisasi Dan Rekonstruksi Tradisi," *Jurnal Hukum Ius Quia Iustum* 19, no. 4 (2012): 489–505, <https://doi.org/10.20885/iustum.vol19.iss4.art1>.

¹³ Muhammad Jeffry Rananda, "Politik Hukum Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 1 Tahun 2014 Tentang Pemilihan Gubernur, Bupati, Dan Walikota," *FIAT JUSTITIA: Jurnal Ilmu Hukum* 9, no. 4 (April 19, 2016): 534–42, <https://doi.org/10.25041/fiatjustisia.v9no4.611>.

in average condition (ordinary condition) and the state is in an abnormal state or a state of emergency. Staatsnoodrecht examines the state in a state of emergency¹⁴.

The term emergency is in line with al-dlarurat (Arabic), which comes from "dlarar", an unavoidable condition¹⁵. In the Big Indonesian Dictionary, the word "emergency" is a problematic situation that cannot be suspected of its presence, requiring immediate response, forced circumstances, and temporary circumstances. If an example is taken in an emergency, the government must take quick and appropriate steps in dealing with an emergency. Various terms of emergency can be found in the constitutions of various countries, such as in France (etat de siege), in Germany (state of tension, state of defence), and in Spain (state of alarm). The provisions of emergency constitutional law in civil law are explicitly stated in the fundamental law. On the other hand, in America and England or other countries that adhere to the common law. This practice is known as "martial law". Meanwhile, international human rights instruments such as in the European Convention on Human Rights 1950, the Inter-American Convention on Human Rights (IACHR) 1969, International Covenant on Civil and Political Rights (ICCPR) 1966, the term emergency is known as a public emergency. The so-called Emergency Laws are meant to apply in abnormal conditions. Therefore, the norms of emergency law regulation, law enforcement instruments and their formation are different from ordinary law or may even be contradictory. Beni Prasad even said that the government could do anything in an emergency. There are at least 2 (two) intuitive reasons for declaring a state of emergency, namely that the government has identified an "extraordinary and immediate danger to the life of the nation", which can be caused by natural disasters, but also by manufactured, hazards such as terrorist attacks. Pure interpretation of why the government declared a state of emergency because it is also urgent. Sometimes also implementing a state of emergency to weaken the warring parties.

The law applies in abnormal circumstances, namely enforced by the state in extraordinary circumstances. It is called extraordinary; if the glasses are applied under normal conditions, the methods taken can be against the law or even arbitrarily¹⁶. However, because the circumstances are extraordinary, the law used is extraordinary. Of course, it must be admitted that this perspective also contains weaknesses. Maxim Necessity Knows No Law, the keyword to justify emergency

¹⁴ Asshiddiqie, *Hukum Tata Negara Darurat*.

¹⁵ Abdul Natsir, "Abortus Atas Indikasi Medis Menurut Konsep Al-Dlarurat Dalam Islam," *Sumbula: Jurnal Studi Keagamaan, Sosial Dan Budaya* 2, no. 2 (2017): 561–87.

¹⁶ Shylashri Shankar, "The State of Emergency in India: Böckenförde's Model in a Sub-National Context," *German Law Journal* 19, no. 2 (2018): 197–218, <https://doi.org/10.1017/S2071832200022665>.

actions in an emergency, has been criticized by many lawmakers because it tends to be extra-legal by ignoring the rule of law principles¹⁷. Therefore, from a legal perspective, an emergency can only be justified by changing the paradigm of emergency constitutional law based on the principle of Necessity of Proportional Self Defense¹⁸. Actions taken in an emergency must still be regulated in the Constitution and the general law. Thus, emergency constitutional law actions remain based on law, not sheer power¹⁹. Thus, in the context of law enforcement times of emergency, the measures that apply in times of peace cannot be used. The size must be the size of the size in an emergency that has its size.

That is why, in the field of Constitutional Law and State Administrative Law, it is understood that the Constitution will regulate the operation of the state under normal circumstances and regulate how the state operates in an emergency. In the event of an emergency, the applicable positive law cannot stand alone as a basis for policy-making by the government. However, it also requires other special legal instruments formed in response to the emergency. An emergency has a comprehensive meaning, depending on the type of emergency that occurs, the cause of the emergency, and the impact of the emergency. In an emergency, there are legal steps that can be taken by a head of government or an institution appointed by law to take a legal policy (*beleid*) outside the usual legal route. In these unusual or abnormal circumstances, norms that are also special require separate arrangements regarding the conditions, procedures for enactment and procedures for ending them, and things that the government can or cannot do in certain circumstances. The emergency to not allow abuse of authority contrary to the fundamental law.

2. The Existence of Emergency Law in the Indonesian Legal System

Pancasila is the basis of the state and the 1945 Constitution of the Republic of Indonesia as the constitutional foundation of the state. The Constitution as a formal document contains^{20,21}: The results of the nation's political struggles in the past; The views of the national figures who want to

¹⁷ Vicki C Jackson, "Suing the Federal Government: Sovereignty, Immunity, and Judicial Independence," *The Georgetown Law Journal* 35 (2003): 521–609.

¹⁸ Agus Adhari, "Ambiguitas Pengaturan Keadaan Bahaya Dalam Sistem Ketatanegaraan Indonesia," *Dialogia Iuridica: Jurnal Hukum* 11, no. 1 (November 2019): 43–61, <https://doi.org/10.28932/di.v11i1.1960>.

¹⁹ Asshiddiqie, *Hukum Tata Negara Darurat*.

²⁰ Sri Soemantri Martosoewignyo, *Hukum Tata Negara Indonesia: Pemikiran Dan Pandangan* (Bandung: PT Remaja Rosdakarya, 2014).

²¹ Marojahan JS Panjaitan, "Legal Politics to Build a State of Happiness: An Idea in a State Based on the 1945 Constitution," *International Journal of Criminology and Sociology* 10 (February 3, 2021): 486–96, <https://doi.org/10.6000/1929-4409.2021.10.57>.

be realized, either for the present or for the future; A desire (will), by which the development of the nation's constitutional life is to be led; and The highest levels of the nation's constitutional development.

The Unitary State of the Republic of Indonesia is legal as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The consequence as a state of the law is that the Indonesian state must be based on the law (*rechtsstaat*) and not based on power (*machtstaat*). The state is organized based on the principle of the rule of law, not of man. According to Julius Stahl, the concept of the rule of law, which he calls the term *rechtstaat*, includes four essential elements as follows: Protection of human rights; Power-sharing; Government based on law; and State administrative court²².

As a state of law, the law must be understood as a unified system consisting of institutional elements (institutional), rules (instrumental), and the behaviour of legal subjects (subjective and cultural). The three elements of the legal system include: Law-making activities; Law enforcement activities or law administration; and Judicial activities for violations of the law (law adjudicating) or called law enforcement in a narrow sense (law enforcement)²³. The meaning or value of the rule of law principle is that law is the highest source (supremacy) in regulating and determining the mechanism of legal relations between the state and society or between members or groups of people with one another in realizing its goals²⁴.

The government (*bestuur*) as the executor of state political policies has the authority as given by applicable laws and regulations or based on the principle of legality to control the government, lead or regulate its citizens, give instructions, mobilize potential, give direction, coordinate activities, supervise, encourage, and protect its people²⁵. In the practice of administering the state or government, things often happen that are not normal in managing state life, where the legal system that is usually used is unable to accommodate the interests of the state or society so that it requires separate arrangements to move the functions of the state so that they can run effectively to ensure respect. To the state and the fulfilment of the fundamental rights of citizens. Thus, the

²² Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan* (Jakarta: Sinar Grafika, 2021).

²³ Jimly Asshiddiqie, *Konstitusi Dan Ketatanegaraan Indonesia Kontemporer* (Jakarta: The Biography Institute, 2007).

²⁴ Muhammad Syarif Nuh Syarif Nuh, "Hakekat Keadaan Darurat Negara (State Of Emergency) Sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Hukum Ius Quia Iustum* 18, no. 2 (2011): 229–46.

²⁵ A Muin Fahmal, *Peran Asas-Asas Umum Pemerintahan Yang Layak Dalam Mewujudkan Pemerintahan Yang Bersih* (Yogyakarta: UII Press, 2008).

use of ordinary legal instruments from the beginning must anticipate various possible conditions that are abnormal so that the state can guarantee the survival of the nation and state²⁶. US Judge Richard Posner once said, "A constitution that will not bend will break"²⁷. Posner explained that there is flexibility needed to be regulated in the face of abnormal conditions in the Constitution. The state does not always run under normal conditions, where all state apparatus function correctly according to the ideal state administrative design. There are certain situations where the state is faced with unusual conditions that require an extraordinary constitutional approach through emergency regulation.

In an emergency, constitutional law practice is known as Emergency Constitutional Law. Jimly Asshiddiqie explained the term Emergency Constitutional Law as a state of danger that suddenly threatens public order, which requires the state to act in unusual ways according to the rule of law that generally applies under normal circumstances. The Emergency Constitutional Law concept is based on the concept introduced by Carl Smith through the State of Exception (Ausnahmezustand). Carl Smith stated that a leader might become a dictator when his country is under threat, which creates an urgent need to save the sovereignty of a country. However, such behaviour must be limited by specific corridors, as Herman Sihombing that the emergency is only temporary until the emergency is deemed no longer dangerous²⁸.

In the context of the Constitution, an emergency can be identified through 2 (two) terms used, namely "a state of danger" (Article 12 of the 1945 Constitution of the Republic of Indonesia) and "a compelling emergency" (Article 22 of the Constitution of the Republic of Indonesia). Indonesia in 1945). In addition to regulations at the statutory level, emergency clauses can be found in the following laws: Law of the Republic of Indonesia Number 23 of 1959 concerning Dangerous Conditions with the terms (civil emergency, military emergency and war emergency); Law of the Republic of Indonesia Number 24 of 2007 concerning Disaster Management (disaster emergencies); Law of the Republic of Indonesia Number 7 of 2012 concerning Handling of Social Conflicts (states of social conflict); Law of the Republic of Indonesia Number 9 of 2016 concerning Prevention and Handling of Financial System Crisis (financial system crisis); and Law

²⁶ Andryan et al., "An Analysis of the Indonesian Government Policy on the Lockdown from the Perspective of Human Rights" (1st International Conference on Law and Human Rights 2020 (ICLHR 2020), Jakarta, Indonesia, 2021), <https://doi.org/10.2991/assehr.k.210506.055>.

²⁷ Richard A. Posner, *Not a Suicide Pact: The Constitution in a Time of National Emergency*, Inalienable Rights (Oxford University Press, 2006).

²⁸ Herman Sihombing, *Hukum Tata Negara Darurat Di Indonesia* (Jakarta: Djambatan, 1996).

of the Republic of Indonesia Number 6 of 2018 concerning Health Quarantine (health emergencies). The President, in this case, has the authority to determine a state of emergency or state as head of state. This gives the President the power to make legal deviations in a constitutional emergency²⁹.

As a constitutional state that adheres to a presidential system of government, the 1945 Constitution of the Republic of Indonesia grants the President several extra powers as head of state and head of government to handle extraordinary circumstances that have the potential to disrupt national stability. This authority has been constitutionally regulated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia that 'in the case of a compelling emergency, the President has the right to stipulate a Government Regulation in Lieu of Law. By the Constitutional Court's Decision Number 138/PUU-VII/2009, there are three conditions related to the urgency that compels the issuance of a Government Regulation in Lieu of Law, namely: There is an urgent need to resolve legal issues quickly based on the law; The required law does not yet exist, resulting in a legal vacuum or inadequacy of the existing law; and The condition of the existing legal vacuum cannot be overcome by making laws in the usual procedure which takes quite a long time, while the urgent situation requires certainty to be resolved.

In countries that implement a presidential system, this type of power is classified into the presidential power in the legislature (President's legislative power), namely the presidential power exercised in the legislature. In addition to the presidential decree or emergency decree, powers that can be grouped into this type include the power of the President to veto the legislative process in parliament, the power to propose initiatives in draft laws in specific fields, the power to determine priorities for discussing draft laws, holding referendum or plebiscite, and special powers in the formation of the state budget. The President as the ruler of the executive realm in the state administration in Indonesia, is given the personal prerogative to make Government Regulations in Lieu of Laws. The President interprets the state of urgency related to the government condition he is currently facing. Because it is very subjective in nature, Government Regulation in Lieu of Law does not rule out the possibility of deviations in terms of intent and purpose. It is possible that the interests of the President as the ruler of the executive realm can be implicitly contained in a

²⁹ Sandhy Handika, Muhammad Ibnu Fajar Rahim, and Rudi Pradiseta Sudirdja, "Virtual Court Policy For Criminal Justice on Corona Virus Disease Pandemic," *Substantive Justice International Journal of Law* 3, no. 1 (May 5, 2020): 74–93, <https://doi.org/10.33096/sjijl.v3i1.67>.

Government Regulation in Lieu of Law. Therefore, jurists who oppose the idea of emergency law often oppose the provision of emergency law in the Constitution.

AALF van Dulleman in his book *Staatsnoodrecht en Democratie* in 1947, stated that there are at least four legal requirements for a valid emergency constitutional law, namely: It must be evident that the highest interests of the state are at stake; the existence of the state depends on carrying out such emergency measures; This action is indispensable and cannot be replaced by other actions; The action is temporary (applies once or in a short time to normalize again; and When the action is taken, the parliament cannot convene.

When talking about urgency or emergency, there is an atmosphere or situation that requires quick and immediate handling. This could be a natural disaster caused by nature (natural disaster) or a disaster caused by humans (manufactured disaster). Natural disasters include tsunamis, floods, earthquakes, volcanic eruptions, wars, riots, and chaos.

If based on past constitutional concepts, Government Regulations in Lieu of Laws are made by the President when the country is in an emergency position. For example, Article 139 of the Constitution of the Republic of the United States of Indonesia states that: The government is entitled to its power and responsibility to determine the emergency law to regulate matters of administration of the federal government which due to urgent circumstances, need to be regulated immediately, and Emergency laws have federal statutory powers and powers. This provision does not diminish what is stipulated in the following article. With a slightly different editorial, Article 96 of the Provisional Constitution of 1950 stipulates that³⁰: The government has the right, with its power and responsibility, to stipulate an emergency law to regulate matters relating to the administration of government due to urgent circumstances. Need to be arranged immediately. The emergency law has the power and degree of law; This provision does not diminish what is stipulated in the following article. Whereas Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia prior to the amendment provides an explanation that the article concerns emergency regulations, where these rules are held so that the government can guarantee the safety of the state in an emergency, which forces the government to act quick and precise. Nevertheless, the government will not be separated from the supervision of the House of Representatives.

³⁰ Irfan Nur Rachman, "Penguatan Fungsi Pengawasan Legislatif terhadap Eksekutif Pasca Putusan Mahkamah Konstitusi," *Jurnal Konstitusi* 8, no. 2 (2010): 69–90.

If you pay attention to the hierarchy of laws and regulations, then Government Regulations in Lieu of Laws (Government Regulations in Lieu of Laws) are in line with the Law (having the same position as the Law)³¹. Therefore, a Government Regulation in Lieu of Law may also carry out the orders of the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (4) of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Inviting Laws states that the Government Regulation in Lieu of Law is "Legislation Regulations set by the president in matters of urgency compel". The state situation that allows the formation of a Government Regulation in Lieu of Law is abnormal (emergency), wherein an emergency legal norm that are also exceptional apply which need different regulations regarding the conditions, procedures for enactment, and other matters. Things that may and may not be done in an emergency need to be regulated not to give an opportunity or opportunity for abuse of authority to arise contrary to the 1945 Constitution of the Republic of Indonesia³². According to Bagir Manan³³, the content of a Government Regulation in Lieu of Law should be on matters relating to governance. Whereas the criteria for the issuance of a Government Regulation in Lieu of Law by the President are: "is issued in the case of a compelling urgency, does not regulate matters regulated in the 1945 Constitution of the Republic of Indonesia, does not regulate the existence and duties of the authority of state institutions" and also there may not be a Government Regulation in Lieu of Law which can delay and abolish the authority of state institutions, it may only regulate the provisions of laws relating to the administration of government".

The functions of a Law or Government Regulation in Lieu of Law is, among others: To make further arrangements regarding the provisions of the 1945 Constitution of the Republic of Indonesia. It is known that the 1945 Constitution of the Republic of Indonesia contains basic rules or general state rules. Therefore, to implement it, further rules are needed in the form of norms in the law. So that, both explicitly and implicitly, the 1945 Constitution of the Republic of Indonesia orders a further regulation of norms in the 1945 Constitution of the Republic of Indonesia into law; Carry out the order of law to be regulated by law. If you pay attention to the practice of legislation, the norm in law often mandates that a further regulation be made in the law; As an instrument of

³¹ Ibnu Sina Chandranegara and Eka NAM Sihombing, "Emergency Law-Making in Indonesia: Between Political and Constitutional Process," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 4 (2021): 1–7.

³² Maruarar Siahaan, "Uji Konstitusionalitas Peraturan Perundang-Undangan Negara Kita: Masalah dan Tantangan," *Wacana Hukum dan Konstitusi* 7, no. 4 (2010): 9–47.

³³ Bagir Manan and Indonesia Direktorat Jenderal Pendidikan Tinggi, *Teori Dan Politik Konstitusi* (Jakarta: Direktorat Jenderal Pendidikan Tinggi, Departemen Pendidikan Nasional, 2000).

ratification of international treaties. The Government of Indonesia has agreed that international agreements cannot simply be enforced. Must go through the ratification mechanism first so that the international treaty is then effective; Following up on the decision of the Constitutional Court. One of the powers of the Constitutional Court is to examine laws against the 1945 Constitution of the Republic of Indonesia or what is known as a judicial review³⁴. This authority is constitutional because it is granted directly by Article 24C of the 1945 Constitution of the Republic of Indonesia. When the Constitutional Court issues a decision on judicial review of the 1945 Constitution of the Republic of Indonesia, the decision must be followed up; and Fulfillment of legal needs in society. Law is a means to an end. He was born from a womb called society. Therefore, the law must always follow the development of society so that it can become an effective means. The community's needs are continuously developing in line with the development of the community itself. So, the law must responsively accommodate the legal needs of the society in which it will work.

Therefore, the main thing in testing the validity of government administration regulations and decisions in an emergency is the existence of a processual or equilibrium between the interests of the state and the public interest, which must be protected. The processual principle provides an overview of the objective facts of the public interest that must be protected by the government so that it becomes a motivation in making decisions or regulations. The balance between the interests of the state and the public interest will maintain the government's confidence in protecting the public interest, which must be a priority so that the government will not hesitate, be quick and precise in taking any necessary government-related actions³⁵.

D. Conclusion and Recommendation

The laws and regulations in Indonesia have provided space for policy-making both in standard times and even in the face of emergency conditions so that the government can save the life of the state and the people. In this case, the President as head of state has absolute power in determining the fate of the country he leads when facing a big problem. Government Regulation

³⁴ Agsel Awanisa, Yusdianto Yusdianto, and Siti Khoiriah, "The Position of Constitutional Complaint in the Constitutional Court of the Republic of Indonesia," *Pancasila and Law Review* 2, no. 1 (April 29, 2021): 61–78, <https://doi.org/10.25041/plr.v2i1.2308>.

³⁵ Beni Kurnia Illahi and Haykal Haykal, "Prinsip Dan Dinamika Hukum Keuangan Negara Darurat Dalam Penanggulangan Pandemi Covid-19," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 10, no. 1 (2021): 1–22.

in Lieu of Law is needed if a country is faced with an urgent and compelling condition, so quick action is needed to overcome these conditions. For this reason, in issuing Government Regulations in Lieu of Laws, the President carries them out according to the constitutional mandate, under legislative supervision, and, of course, under the people's supervision as the holders of sovereignty.

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