

Does Indonesian COVID-19 emergency law secure rule of law and human rights?¹

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I. COVID-19 in Indonesia: An Introduction

The Indonesian government shows a self denial. The government has always denied the corona issue since January 2020. That is why this is considered lost 2.5 months to respond quickly how to prevent corona from expanding.

The denial position is because Indonesia in its clinical trials does not yet have the capacity to detect corona (referred to as ‘false negative’ result). At that time a lot of disinformation spread in the community even though that period was the best time to prevent the corona virus from entering Indonesia. “Since January we have been expecting [suspected corona cases in Indonesia] and are also upset, how come the [case] reports continue to be negative. Denial position of the government was also unusually high,” Pandu Riono from University of Indonesia told to Hellena Souisa of ABC News.

This academic concern is reasonable and relevant, after the epidemiologist from Eijkman Oxford Clinical Research Unit, Iqbal Elyazar, said that so far Indonesia does not yet have a valid epidemic curve. The government did not immediately close tourism destinations, but instead opened wide access for tourists with numerous incentive policies.

Scientists feel they have been not involved by the government when making decisions, so that if there is a statement that Indonesia is safe from the corona virus, it also has no scientific evidence. Yet according to Professor Jeremy Rossman, President and founder of Research-Aid Networks, the problem of the corona virus pandemic becomes more complex when there is not enough scientific data and facts.²

In early March, Achmad Yurianto, director-general for disease control at Indonesia's Ministry of Health, told to Science Magazine, he does not care what scientists say about the pandemic because

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² Ilmuwan Indonesia Merasa Tidak Dilibatkan Dalam Menangani Virus Corona (ABC Australia), Tempo.Co, 18 May 2020, <https://www.tempo.co/abc/5597/ilmuwan-indonesia-merasa-tidak-dilibatkan-dalam-menangani-virus-corona> (accessed 25 May 2020).

“they are not important if their information only creates panic.” Minister of Health Terawan Agus Putranto suggested in February 2020 that prayer helped keep COVID-19 out of the country.³

In the anti-science power structure, science is only a political accessory. This showed many intellectuals did ‘the acrobatic’ politics in bureaucratic environment, especially in defending the Government even though it denied science.⁴

President Joko Widodo acknowledged that the government kept a number of information related to the handling of the corona virus (Covid-19). He said, not all information can indeed be conveyed to the public so as not to cause panic. “I say that the handling of the Covid-19 pandemic continues to be our concern. Indeed, there is something that we convey and some that we do not convey. Because we do not want to cause unrest and panic in the community,” Jokowi said at Soekarno-Hatta Airport, Jakarta.⁵

It is clear that in the Indonesian legal system, concealing information relating to Covid 19 handling policies is actually contrary to the Indonesian Constitution⁶ and Law Number 14 of 2008 concerning Public Information Openness.⁷

Indeed, the Government through Presidential Decree (*Keppres*) 7/2020, concerning the Task Force for the Acceleration Handling of Corona Virus Disease 2019 (Covid-19), March 13, 2020. The Task Force was formed on the basis of the massive spread of Covid-19 in the world which tends to increase from time to time, causing fatalities and material losses greater, and has implications for social, economic, and community welfare. In addition, the World Health Organization (WHO) has declared Covid-19 as a Pandemic on 11 March 2020. With the Presidential Decree, it is hoped that the government can anticipate its impact, including handling with quick, appropriate, focused, integrated, and synergic steps between ministries / agencies and local governments.

The Presidential Decree was revised again, with the consideration of adding ministries or institutions to the Task Force for the Acceleration Handling of Corona Virus Disease 2019. In the new structure, there were 32 implementers, from previously limited to 12 institutions.⁸

The two presidential decrees were not a statement of emergency, but rather the formation of a committee for handling Covid-19. The problem is, since then there have been social distancing policies which restricts human rights, while the emergency status has not been announced yet by the

³ Dyna Rochmyaningsih Apr. 18, 2020, ‘Open the doors for us.’ Indonesian scientists say government snubs offers to help fight coronavirus, <https://www.sciencemag.org/news/2020/04/open-doors-us-indonesian-scientists-say-government-snubs-offers-help-fight-coronavirus> (accessed 25 May 2020).

⁴ Ahmad Arif, Kompas, 13 May 2020, Ilmuwan dan Kekuasaan (Scientist and Power), <https://kompas.id/baca/humaniora/ilmu-pengetahuan-teknologi/2020/05/13/ilmuwan-dan-kekuasaan/> (accessed 25 May 2020).

⁵ Kompas, 13 March 2020, “Jokowi Akui Pemerintah Rahasiakan Sejumlah Informasi soal Corona”, <https://nasional.kompas.com/read/2020/03/13/16163481/jokowi-akui-pemerintah-rahasiakan-sejumlah-informasi-soal-corona> (accessed 25 May 2020).

⁶ Article 28F: *Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.*

⁷ The Law has been enacted on 30 April 2008.

⁸ Presidential Decree 12/2020 on the change of Task Force for the Acceleration Handling of Corona Virus Disease 2109 (Covid-19), 20 March 2020

government. This clearly contradicts to the principle of derogation which should have been stated earlier before carrying out social distancing policies.

In addition to being mistaken constitutionally in the application of emergency law, it is even worse that government political communication has been precisely a blunder. The Institute for Research, Education, Economic and Social Information (LP3ES) released their research on President Joko Widodo's political communication during the Covid-19 pandemic. As a result, within less than 100 days since the corona outbreak became an issue and threat in Indonesia, during the period of January 1 to April 5, 2020, LP3ES found 37 blunders or errors in communication, especially government statements related to the corona virus or Covid-19.⁹

Amid the ever expanding Covid-19 distribution curve and the growing number of victims, the government announced 'New Normal' policy. As of 4th May 2020, Indonesia had 28,818 confirmed Covid-19 cases, including 1721 deaths. Of course, the 'New Normal' policy contrasts with full hospital conditions, while the Covid-19 Task Force Team has recorded 55 medical personnel who died during the Covid-19 pandemic. The 55 medical staff consisted of doctors and nurses.¹⁰ On the other hand, a number of cities in Indonesia are still not ready with 'New Normal' policy. Moreover, the Corona PCR Test ratio in Indonesia is the third lowest in Southeast Asia.

Based on Worldometers data, Wednesday (6 May 2020), the total PCR test in Indonesia reached 128,383. From these data, Indonesia ranks 6th out of 11 countries in Southeast Asia. While Vietnam, became the country with the most total PCR tests. The number is even twice that of Indonesia, which is 261,004. If related to the calculation per 1 million population, Indonesia is only able to test 469 people out of 1 million population. While Vietnam is able to do more. They were able to test 2,681 people from 1 million population. On paper, the more number of tests conducted, actually the more accurate the positive data produced.

Such a background actually gives a picture of the problem of handling Covid-19 in Indonesia, the problem of which is not yet fully overcome. That is why, it is necessary to see in terms of law and human rights, how the actual status of emergency law is used in order to make effective handling of Covid-19 in Indonesia.

II. COVID-19 Emergency Law

*"The President states a state of emergency.
The terms and conditions of the danger situation are set out in the Law."
Article 12 of the Constitution of 1945*

In general, a State of Emergency (*keadaan darurat*) can be interpreted as a statement by the authorities to delay a normal function of a number of powers held by the executive, legislative and judiciary, including also changing the normal life of citizens and government institutions, in the context of emergency response.

⁹ "LP3ES Catat Ada 37 Pernyataan Blunder Pemerintah soal Covid-19", Kompas, 6 April 2020, <https://nasional.kompas.com/read/2020/04/06/17522121/lp3es-catat-ada-37-pernyataan-blunder-pemerintah-soal-covid-19>. (accessed 25 May 2020).

¹⁰ "Gugus Tugas COVID-19: 55 Tenaga Medis Meninggal Saat Pandemi Corona", Tirto, 6 May 2020, <https://tirto.id/flvF> (accessed 25 May 2020).

On the other side, such emergency situation is also known as a state of danger. In France for instance, uses the term *'état de siège'* to refer to a state of danger and the term 'emergency powers' or *'pouvoirs exceptionnels'* to refer to emergency powers in a state of danger.¹¹

The Philippines uses the terms 'national emergency' and 'state of war' to refer to a state of danger. Brazil uses the term 'state of siege' to refer to a state of danger.¹² Whereas, the United States uses the term 'national emergency' for a state of emergency as defined in The National Emergency Act 1976.¹³ Indonesia uses two terms: the term *'keadaan darurat'* to refer to a state of emergency, and the term *'keadaan bahaya'* to refer to a state of danger. A state of emergency is based on the 1945 Constitution and Law 23/1959, while a state of danger refers to the Law 24/2007.

The authority could state a state of emergency, but this cannot be relinquished from its obligation to provide human rights protection to its citizens. This is a consequence of the submission of the sovereignty of the people to the rulers as well as the obedience to all kinds of legal devices created by the rulers, as part of fundamental principles of the rule of law. As stated in Article 1 paragraph (2) of the Constitution of 1945 which states, "Sovereignty is in the hands of the people and implemented in accordance with the Fundamental Law". In addition to affirming the principle of sovereignty of the people, the Constitution of 1945 also emphasised a number of national goals to be achieved, one of which was to protect Indonesian nationality and blood, including protection of a constitutional set of citizens' rights, as enshrined in the 1945 Constitution.

In order to uphold the principles of sovereignty and to achieve national goals as defined by the Constitution of 1945, a President is elected through a general election process, in which the President has the role of exercising the authority of government, as stated in Article 4 paragraph (1) of the 1945 Constitution, President of the Republic of Indonesia holds the power of Government under the Constitution.

As a emphasised of the exercise of sovereignty principle, in the event of a threat to national security and territorial integrity / sovereignty, the President has authority to prescribe a state of emergency or emergency situation, as stated in Article 12 of the Constitution of 1945, "the President states a state of emergency. The terms and conditions of the danger situation are set out in the Law."

The President's determination of a state of emergency is intended to determine further measures that would be able to overcome the situation, including restricting the human rights of citizens and other acts of exemption, in the framework of national salvation, such as exemptions from legislative powers, as stated in Article 22 paragraph 1 of the Constitution of 1945 "In a emergency compel, the President shall have the authority to establish government regulations in lieu of laws."

According to Hosen, the paradox begins with the vagueness of emergency powers stipulated in the Constitution and its failure to set out the criteria or the time-frame within which the powers may be exercised. This failure, in turn, facilitates the justification and use these powers. The only limitation

¹¹ Filip G Bozinovic, 2017, *Finding the Limits of France's State of Emergency*. Claremont-UC Undergraduate Research Conference on the European Union: Vol. 2017 (4), p. 13-31.

¹² Vide: Title V Section II Brazil Constitution, *Constitution of the Federative Republic of Brazil: Constitutional text of October 5, 1988, with the alterations introduced by Constitutional amendments no. 1/1992 through 64/2010 and by Revision Constitutional Amendments no. 1/1994 through 6/1994*, p. 104.

¹³ Nan D. Hunter, 2018. *The Law of Emergencies: Public Health and Disaster Management*. Cambridge/Oxford: Butterworth-Heinemann.

is Parliament's ability to approve or disapprove the Perpu. Second paradox, the unstable nature of political alignments, the weakness of party structures, economic crisis, along with international pressures, all contribute to a pragmatic and politically oriented rule of law. Third, Indonesia's experience of the inability of Parliament and the courts (specialised administrative tribunals) to limit emergency powers is dissonant to the Gross-Dyzenhaus debate. And, the fourth the risks of using emergency powers and the premises of liberal constitutionalism.¹⁴ These points are relevant to see how the current development reflects the practice in exercising emergency powers during pandemic Covid-19, as well as updating the legal development which are newly introduced by the Indonesia's government.

In Indonesia's legal system, emergency situations are subject to different concepts, norms, and prerequisites. Initially, the provisions of Law 6/1946, which were part of the *staat van oorlog en beleg* (SOB, Dutch)¹⁵, were rules made by the Dutch in Indonesia before independence. Then the law was repealed by Law 74/1957 which eventually changed to Law 23/1959 which is still in effect today. After the reforms were enacted the Law 24/2007 and the Law 7/2012 which also provides norm related to danger conditions.

Nationally, a danger situation is regulated through 4 (four) laws.

(i)

The Law 23/1959 on Determination of the State of Danger. Second, Law 24/2007 on Disaster Management; Third, Law 7/2012 on the Handling of Social Conflicts; Fourth, Law 6/2018 on Health Quarantine.

Article 1 Law 23/1959 defines the following 'state of danger' conditions:

*"The President / Supreme Commander of the Armed Forces declares the whole or part of the territory of the Republic of Indonesia to be in jeopardy with the level of civilian emergency or military emergency or war situation, if, by rebellion, riot or natural disaster; so far as it is concerned that it cannot be solved by the usual equipments; 2. arising from war or danger of war or concerned about the rape of the territory of the Republic of Indonesia in other ways; 3. State life is in jeopardy or under special circumstances it appears or it is feared that there are symptoms that could endanger the life of the State".*¹⁶

Law 23/1959 defines 'state of danger' as a condition that occurs in the event of a rebellion, riot, natural disaster, war, or war danger that endangers the life of the nation. In its elucidation of such article, mentions the five conditions categorised as President's policy of dealing with three levels of

¹⁴ Nadirsyah Hosen, 2010. Emergency powers and the rule of law in Indonesia. In V. V. Ramraj & A. K. Thiruvengadam (Eds.), *Emergency Powers in Asia: Exploring the Limits of Legality*. Cambridge, UK: Cambridge University Press. pp. 291-292.

¹⁵ *Staat van Oorlog en Beleg (SOB)* is a Dutch law which was applied in Indonesia when it was still controlled by the Dutch and was named the Dutch East Indies. SOB is fully referred to "*Regeling op de Staat van Oorlog en van Beleg Stbl.* 39-582.

¹⁶ In its elucidation of Article 1 of the Law 23/1959 states that: The statement of danger, made by the President in his responsibility and in this case the President is responsible for the People's Consultative Assembly. Evaluation of the events mentioned in paragraph 1 as a reason for the danger to be declared, submitted solely to the President; then the judge cannot test a statement of danger whether it is lawful or not. Vide: Elucidation of the 1945 Constitution before the amendment.

danger; civilian emergency, military emergency and state of war. The five conditions are: rebellion (armed conflict), riots, civil war, natural disasters and war.

(ii)

Then, Law 24/2007 on Disaster Management, which also has different ‘content’ conditions, defines ‘danger’ as:

“Disasters are events or series of threatening events which threaten and suffer living and lives of people caused either by nature and/or by non-nature, or by human factors resulting in human casualties, environmental damage, property loss, and psychological affects”¹⁷

Law 24/2007 further divides disasters into three types: natural disasters, non-natural disasters, and social disasters. In the law, there are two types of disasters called natural disasters that are included in the types of disasters and social conflicts that fall into the social disaster section. In relation to social disasters, the law defines it as “a disaster caused by events or series of events caused by humans involved in social conflicts among groups or civil society groups, and terror”.¹⁸

Law 24/2007 formulates also a matter of declaration or statement relating to disasters, as described, a disaster in the partly territory or the whole territory of Indonesia, so then the applicable status include: national disaster emergency status, provincial disaster emergency and district / city disaster emergency.

(iii)

Regarding Social Conflict law, the Law 7/2012 also regulates part of a state of emergency that defines social conflict as follows:

“Social conflict is a feud and/or physical clash with violence between two or more community groups that takes place at a particular time and has a significant impact on social insecurity and disintegration that impairs national stability and impedes national development”¹⁹

The Law 7/2012 also regulates the status used in the event of social conflicts. In the event of social conflict occurring then the status used is the state status of the national conflict, the state status of the provincial conflict and the state status of the district/city conflict.

(iv)

Law No. 6/2018 on Health Quarantine. The application of emergency in the law refers to the term of *Kedaruratan Kesehatan Masyarakat*, or Public Health Emergency (PHE). PHE means a community phenomenon characterized by the spread of infectious diseases and/or incidents caused by nuclear radiation, biological contamination, chemical contamination, bioterrorism, and food that pose a health hazard and potentially spread across region or cross-country” (article 1 number 2).

¹⁷ Article 1 paragraph 1 Law 24/2007 on Disaster Management

¹⁸ Article 1 paragraph 4 Law 24/2007 on Disaster Management

¹⁹ Article 1 paragraph 1 Law 7/2012 on Social Conflict. In its elucidation also explained the physical clashes, including using weapons or not using weapons.

The PHE is formulated at Chapter IV, article 10-14 of the Law. As stated at article 11,
“In maintaining health quarantine in PHE, the Central Government quickly and accurately based on the importance of threats, effectiveness, support of resources, and operational techniques taking into account state sovereignty, security, economic, social, and cultural.”

In conclusion, actually those four laws generally govern the same type of danger but with different concepts. The Law 23/1959 mentions five conditions that are part of the status of civilian emergency, military emergency and state of war. Whereas Law 24/2007 uses national disaster emergency status, provincial disaster emergency status and municipal disaster emergency status. Law 7/2012 uses the state status of the national conflict, the state status of the provincial conflict and the state status of the district/city conflict. While Law 6/2018 uses the term PHE or Public Health Emergency.

The following table provides an easy comparison of the four laws in relation to the emergency status.

Comparison of Emergency Status and/or Dangerous Conditions

Law	Law 23/1959 on Determination of the State of Danger	Law 24/2007 on Disaster Management	Law 7/2012 on Social Conflict	Law 6/2018 on Health Quarantine
Type of conditions	a. Rebellion (armed conflict) b. Riots c. Civil war d. Natural disasters and e. War.	a. Natural disaster: earthquakes, tsunamis, volcanoes, floods, droughts, hurricanes, and landslides b. Non-Natural Disasters: technological failures, modernization failures, epidemics, and epidemics; c. Social Disasters: Social Conflicts and Terror	Social conflicts	Public health emergency situation
Scale	National and local	National and local	National and local	National and local
Authority	President	President, Governor, District/City Mayor	President, Governor, District/City Mayor	President, Governor, District/City Mayor
Implementor	Army, Police, Prosecutor, Governor, District/City Mayor	BNPB/National Disaster Management Authority, involves Search and Rescue Agency, Army, Police, Ministry of Health, Ministry of Social PU,	Army, Police	Central Government (Ministry of Health), Governor, District/City Mayor
Declaring mechanism	Subjectivity of President	Consulting to BNPB/ National Disaster Management Authority	Legislative consultancy	Subjectivity of President (Ministry of Health)

Status	<ul style="list-style-type: none"> • Civilian emergency • Military emergency and • State of war. 	<ul style="list-style-type: none"> • National disaster emergency status, • Provincial disaster emergency and • District/city disaster emergency. 	<ul style="list-style-type: none"> • The state status of the national conflict • The state status of the provincial conflict, and • The state status of the district/city conflict. 	Public health emergency <ul style="list-style-type: none"> • House quarantine • Territorial quarantine • Hospital quarantine • Large scale social restriction (PSBB)
Duration	6 months, extendable	No specific duration	90 days, extendable for 30 days	No specific duration

The most relevant from those four laws, especially related to the legal handling of Covid-19 are the second and fourth, Law 24/2007 on Disaster Management and Law 6/2018 on Health Quarantine. This is because Article 1 of Law 3 of 24/2007 shows that non-natural disasters, include epidemics. While Law 6/2018 deals with the health and condition of the pandemic.

The question is, does the Indonesian government choose and affirm its status of emergency, and establish the principles of human rights pursued in the determination of its emergency status?

Public Health Emergency to Non-Natural Disaster Emergency

For the first time to respond Covid-19, the Government of Indonesia issued Presidential Decree No. 11 of 2020 concerning Determination of Public Health Emergency (PHE). The decision was actually late, but deserves to be appreciated because it is more appropriate for the policy efforts of the restrictions carried out, as stipulated in the Law on Health Quarantine. By law, the legal product must be an administrative decree (*KTUN/Keputusan Tata Usaha Negara*, or *beschikking* in Dutch), not a regulation or legislation.

The problem is, besides the Central Government has not planned to make a Government Regulation (GR) on the Procedures for the Determination and Revocation of PHE, as mandated by article 10 paragraph (4) of Law 6/2020. In addition, the GR issued was limited to Large Scale Social Restriction (LSSR) status. The government does not want to declare ‘quarantine the territory’ status. In fact, the scope of the LSSR only regulates school and workplace holidays, restrictions on religious activities, and activities at the place or facility (Article 59 paragraph (3) of Law 6/2018).

The most distinguishing between the LSSR and the ‘quarantine the territory’ status is the matter of the government’s responsibility to provide basic needs for citizens. As a result, government policies since late March 2020 have focused more on charity-based programs rather than on progressive strategic realisation to fulfil basic needs.

Whereas the Regulation in Lieu of Law 1/2020²⁰, is intended to save health and the national economy, with a focus on health budget spending, social safety nets and economic recovery of the business world and affected communities. The problem is that the affirmation of the protection of

²⁰ Law 2/2020 on Stipulation of Regulation of Lieu of Law 1/2020 on State Financial Policy and Financial Stability for Handling Covid-19 Pandemic and/or in the context of Dealing with Threats that Harm National Economy and/or Financial System Stability. Vide: “Di Sidang MK, Sri Mulyani Sebut Perppu 1/2020 Telah Menjadi UU 2/2020”, <https://nasional.kompas.com/read/2020/05/20/11415661/di-sidang-mk-sri-mulyani-sebut-perppu-1-2020-telah-menjadi-uu-2-2020>. (accessed 28 May 2020).

citizens' rights is not merely a matter of basic needs during an emergency, but also it is a guarantee of survival after Covid-19. What about the fate of workers who have been forced to take leave off dependents, be laid off, or outsourced workers who are vulnerable to socio-economic rights protection? While the provision of article 27 paragraph (2) of the Regulation in Lieu of Law 1/2020 affirms the exclusion of legal liability for related officials.

What does this unclear legal policy about Covid-19 in terms of impact on human rights protection efforts?

First, the presidential political narrative also through his spokesman concerning the 'civil emergency', is wrong and contrary to the obligation to fulfil the basic needs of the community. This is different if President Jokowi firmly issued a 'state of disaster' status (Article 8 of Law No. 24/2007) and the determination of 'public health emergencies' with 'territorial quarantine' status (Article 55 paragraph 1 of Law No. 6/2018), where the state is bound by legal obligations to guarantee the availability of resources power for providing the basic necessities of life for citizens.

Second, the late and negligent anticipation of handling Covid-19, especially to the point of causing thousands of people to be exposed and hundreds of citizens and medical personnel dead, not just maladministration, but forms of human rights violations, both civil and political rights as well as economic, social and cultural rights .

After 2 weeks, on April 13 2020, the Government issued Presidential Decree No. 12 of 2020 concerning Determination of Non-Natural Disasters Distribution of Covid-19 as a National Disaster.

This is a determination to emphasise the need to centralise policies, as the Presidential Decree emphasised, "Governors, regents and mayors as Chair of the Task Force for the Acceleration of Handling COVID-19 in the regions, in setting policies in their respective regions, they must pay attention to the guidance policies of the Central Government. From a legal standpoint, this shifts government policies that were initially based on the Law on Health Quarantine to change based on the Law on Disaster Management.

The problem is, on the ground it actually creates overlapping policies because the coordination between the levels of government, both the Central Government and the Regional Government, and the Provincial Government and the City / Regency Government, are not synchronous. Coordination that creates tension, as happened between the Central Government and DKI Jakarta²¹, or the Provincial Government of East Java and the City Government of Surabaya²², are examples of ongoing conflicts of authority. As a result, the handling of victims exposed to Covid-19 continues to grow, while referral hospital services can no longer accommodate Covid-19 patients.

The overlap and un-synchronous have been exacerbated by the reality of the politicisation of policies ahead of regional elections in a number of regions in Indonesia. Not surprisingly, such a

²¹ Blak-blakan Anies soal Data Covid-19 yang Tertutup | Sanksi Pelanggar PSBB Jakarta, Kompas, 14 May 2020, <https://megapolitan.kompas.com/read/2020/05/14/09085181/populer-jabodetabek-blak-blakan-anies-soal-data-covid-19-yang-tertutup?page=1>. (accessed 28 May 2020).

²² Kisruh Risma vs Pemprov, PDIP Minta Khofifah Tidak Egois, CNN Indonesia, 30 May 2020, <https://www.cnnindonesia.com/nasional/20200530120327-32-508204/kisruh-risma-vs-pemprov-pdip-minta-khofifah-tidak-egois> (accessed 2 June 2020).

conflict lead to not only public distrust of the government, but also to policies that were far from human rights law standards.

III. The Use of Emergency Powers: A Human Rights Perspective

Indonesia already has a number of strong human rights legal frameworks, both in the constitution, ratification of a number of international human rights law provisions, including the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic Social and Cultural Rights (ICESCR). However, Government's policies especially in handling Covid-19, in the midst of using emergency status, it does not reflect compliance with these human rights legal standards.

President Joko Widodo said the social restriction policy to prevent the spread of the Covid-19 corona virus needed to be done on a larger scale, also accompanied by a 'civil emergency' policy. "I ask for a large-scale social restrictions policy, physical distancing, be carried out more decisively, more disciplined and more effective. So I have said before, that it needs to be accompanied by a civil emergency policy," President Jokowi said when chairing a limited meeting with the Task Force for the Acceleration of Handling Acceleration Covid-19, via video conference from Bogor Palace, (30 March 2020).²³

Civil society from a number of organisations and coalitions launched criticisms about 'civil emergencies', because they were considered to be potentially abused by the power holder for repression, other than not related to the problem of the Covid-19 pandemic. The establishment of a 'civil emergency' has the potential to increasingly jeopardise the security and health of citizens, because it enters into the area of restriction of civil liberties of expression. In practice, sociologically and historically, this status develops a repressive nature and nourishes the character of state authoritarianism.

Why is civil emergency not relevant? In addition to being substantively inappropriate for the handling of co-19, the authority granted to the 'civil emergency authority', the President was assisted by the "First Minister, Minister of Security/Defense, Minister of Internal Affairs and Regional Autonomy; The Minister of Foreign Affairs, Chief of of the Army, Chief of the Navy, Chief of the Air Force; and Head of State Police". Because it did not take care of the plague, or disease, it was clear that the involvement of health officials was actually not involved in the policy makers.

While from the perspective of human rights, the status of 'civil emergency' emphasises the repressive character. For example, it is possible to limit freedom of expression, association and assembly (Article 13 and 14 paragraph 1), confiscation of goods deemed to disturb security (Article 15 paragraph 1), press banning (article 17 paragraph 1), and police and body inspection (article 20).

Indeed, after receiving strong criticism from the public, the Government no longer mentions the term 'civil emergency'. Unfortunately, there is no correction, or at least an explanation, why in a short time the Government policy can be different? What exactly are the legal consequences of a number of these laws, both in terms of state administration and human rights? However, National

²³ "Saat Jokowi Rencanakan Darurat Sipil Hadapi Pandemi Covid-19", Kompas, 31 Maret 2020, <https://nasional.kompas.com/read/2020/03/31/08201661/saat-jokowi-renanakan-darurat-sipil-hadapi-pandemi-covid-19>. (accessed 2 June 2020)

Police Chief, Gen. Idham Azis, also emphasised it in a hearing session with the House of Representatives Commission III (31 March 2020), stating that the police supported the government's plan to implement a 'civil emergency' in handling the Covid-19 outbreak.

Meanwhile, the situation in the state of civil emergency has increasingly strengthened its practice in the field after Gen. Idham Azis issued the Decree of the Chief of Police Number: Mak/2/III/2020 concerning Compliance with Government Policy in Handling the Distribution of Covid-19.²⁴ In addition, Gen. Idham Azis issued a telegram letter ST/1100/IV/HUK.7.1./2020, signed by Criminal Department of Police, Gen. Commissaries Listyo Sigit Prabowo on behalf of the National Police Chief, on Saturday, April 4, 2020. The telegram letter regulates on police obligations in dealing with the Corona virus pandemic.

The letter is like operational rules for police at ground. It has potential to cause abuse of power, since in the point 5, formulates about carrying out cyber patrols to monitor the development of the situation, as well as opinions in the cyber space is aimed spreading hoaxes related to Covid-19. It also relates to government policy in anticipating the spread of COVID-19 outbreaks, insults to authorities or president and government officials. An insulting article is referred to in Article 207 of the Criminal Code, the humiliation could be punishable by a maximum imprisonment of 1 year and 6 months.

Another form of violation that is also regulated in the telegram letter is the resilience of internet data access during an emergency; the spread of Covid-19 related hoaxes and government policies in anticipation of the spread of the Covid-19 outbreak as referred to in Article 14 or Article 15 of Law 1/1946 on Criminal Law Regulations. The problem is, criticism of the government should be protected legally, an usual practice in democratic society and there is no need for prosecuting it. Criticism is part of freedom of expression, opinion, and academic freedom.

However, during the Covid-19 pandemic, there had been a lot of pressure on civil liberties, both threats to freedom of opinion, discussion, press freedom for journalists covering the news, and even pressure on a number of scientists who had different opinions on the results of their research or studies.

Many cases occur during the Covid-19 pandemic. Hence, this article will chose 10 cases as examples to show how the pressure on freedom in Indonesia.

1. Ilyani Case

The FB post called hoax by Police's Criminal Department. This was posted on February 10, 2020. Ilyani wrote "There was a Chinese migrant worker who died in Meikarta, what illness? Australia calls Indonesia not yet having a detection reagent and WHO is worried that Indonesia has not been able to detect ...". Her posting is linked to the news link, "WHO Worried Corona Virus Has Not Been Detected in Indonesia", CNN Indonesia, 10 February 2020.

²⁴ "Langkah Hukum di Tengah Penanganan Wabah Covid-19, Ini Pelanggaran yang Dibidik Polri", Kompas 6 April 2020, <https://nasional.kompas.com/read/2020/04/06/10272001/langkah-hukum-di-tengah-penanganan-wabah-covid-19-ini-pelanggaran-yang?page=3>.

Then, on March 20, 2020 at 22:00, came 5 police investigators brought an arrest warrant, against Ilyani Sudardjat. The cellphone was detained and she was interrogated for 5 hours until she made a written and filmed apology. Ilyani was released and was asked to report every Monday.

2. Ravio Patra's Case

Ravio Patra is an independent public policy researcher, member of the Westminster Foundation for Democracy, who often shares his personal views on Twitter and his post grabs netizens' attention. Ravio was secretly arrested by Metro Jaya Regional Police on Wednesday (22 April 2020) at 21:00 in Menteng, Central Jakarta, and was released on Friday (24 April 2020) at 08.30. The reason for this arrest was a broadcast message containing an invitation to riot and loot on 30 April, which was sent via Ravio's whatsapp number by someone else.

Other objections to this arrest are the inconsistency of the investigator. Investigator said Ravio was not arrested, but he was secured. They also accessed Ravio's work contract and personal financial records that were irrelevant to the case, even changing Ravio's email password. The most fatal factor, the article imposed on the victim was inconsistent, from the beginning of Article 28 paragraph 1 of the ITE Law on false news being Article 28 paragraph 2 of the ITE Law on hate speech based on racism/religion.²⁵

The Coalition Against Criminalisation and Manipulating Cases (KATROK) considers that the process of arrest and search of Ravio Patra is not according to formal-procedure. A member of the Coalition, and the Director of the Jakarta Legal Aid Institute, Arif Maulana, said that the police were unable to provide and show a warrant for arrest and search.²⁶ After 33 hours of interrogation, the Ravio Patra was free with a witness status. The Jakarta Metropolitan Police is now being urged by the NGO coalition to seriously track down who is the Ravio's mobile hacker.

3. Three Student Activists' Case

Three student activists in Malang, East Java, have been arrested for alleged vandalism with the intention of inciting the public.

Head of Public Information Section (Kabagpenum) Police Public Relations Division, Asep Adi Saputra through live broadcasts on the Tribrata Youtube account of the Police Public Relations TV (22 April 2020), stated, "The vandalism case by three students in Malang who were alleged to have carried out acts of vandalism of property belonging to someone else or scribbled on walls with provocative words at six crime scene".²⁷ Malang city police chief Comr. Leonardus Simarmata said they had confiscated several items of evidence, including two pieces of cardboard emblazoned with

²⁵ Ciduk Ravio Patra, Polisi Ganti Tersudut Dugaan Intimidasi dan Alasan Absurd Penjemputan, Vice, 24 April 2020, https://www.vice.com/id_id/article/jgeway/peneliti-ravio-patra-bebas-setelah-diintimidasi-polisi-dan-ditangkap-polda-metro-tanpa-dasar-hukum-jelas

²⁶ Kronologi Ravio Patra Dicidadik Versi Polisi: Sempat Melawan, Tempo, 25 April 2020, <https://metro.tempo.co/read/1335600/kronologi-ravio-patra-dicidadik-versi-polisi-semat-melawan/full&view=ok>

²⁷ "Dituding Lakukan Vandalisme, Tiga Mahasiswa di Malang Ditangkap", Kompas, 22 April 2020, <https://nasional.kompas.com/read/2020/04/22/21292551/dituding-lakukan-vandalisme-tiga-mahasiswa-di-malang-ditangkap>.

the words “Tegalrejo Melawan” (Tegalrejo Resists), motorbikes, three helmets, black spray paint and three cellphones from the suspects.²⁸

Three students are said to want to provoke society against capitalists or groups of capital owners who are considered detrimental. The suspects were charged under Article 14 and Article 15 of Law 1/1946 on Criminal Law Regulations as well as Article 160 of the Criminal Code with the threat of a sentence of 10 years in prison. They also have been charged under Article 160 of the Criminal Code on public incitement, which carries a sentence of up to 10 years’ imprisonment.

The students are activists who often took part in *Kamisan* protests, a weekly silent protest held every Thursday to demand state action in response human rights abuses, including in assisting Tegalrejo farmers in Malang to defend their land rights against corporation.

4. Detik Journalist’s Case

An online media journalist *Detik.com*, received death threats from an unknown person. The threat was conveyed by unknown person via WhatsApp message on 27 May 2020. Actually, the threat is related to the coverage of President Joko Widodo’s visit to Summarecon Mall Bekasi, West Java, on Tuesday (26 May 2020). *Detik.com* coverage related to these activities received an intimidation until their identities were spread on social media or doxing after writing the news.²⁹ Doxing is an attempt to search for and disseminate someone’s personal information on the internet for the purpose of attacking and weakening someone or persecution online.

Doxing is one of the threats to press freedom. The methods employed to acquire this information include searching publicly available databases and social media websites, hacking, and social engineering. Related to this death threat, *Detik.com* has reported the case to the National Police Headquarters. *Viva News* reported that *Detik.com* had requested security from the Police of the journalist.

Doxing happens several times in Indonesia, especially against journalists. The main factor is (that) the journalist profession is not yet respected by state actors. Although internally the journalists feel honoured with their profession, because they are obedient to the principles of journalism professionalism, the country still underestimates these things.

5. Farid Gaban’s Case

Chairman of Cyber Indonesia, Muannas Alaidid, reported senior journalist Farid Gaban for allegedly spreading lies and deception, as well as insults to the authorities through social media. The report to the Jakarta Police was registered with Number: LP/3.001/V/YAN2.5/2020/SPKT PMJ dated May 27, 2020. Muannas said, “I do not question him (Farid) writing cooperatives, SMEs

²⁸ Three East Java students arrested for ‘inciting fight against capitalism’, The Jakarta Post, 23 April 2020, <https://www.thejakartapost.com/news/2020/04/23/three-students-in-east-java-arrested-for-painting-anticapitalist-graffiti.html>

²⁹ Wartawan Detik.com Jadi Korban Intimidasi dan Diancam Dibunuh, *detik.Com*, 27 May 2020, https://www.suara.com/wawancara/2019/11/13/102802/gilang-parahita-kekerasan-terhadap-jurnalis-apa-negara-tidak-demokratis?utm_campaign=popupnews

(small and medium enterprises) and solutions. Not that, he widened. But he tweeted about launching” (28 May 2020).³⁰

Even Farid Gaban admitted that he was sued by Muannas and threatened to bring the criminal case to the police if he did not revoke criticism of Teten. Muannas reported Farid to the Police with cyber-defamation article, article 28 paragraph (2) of the ITE Law or Article 207 of the Criminal Code and/or Articles 14 and 15 of Law Number 1 of 1946.

Farid’s criticism addresses the Minister of Cooperatives and SMEs policies during the epidemic, not targeting Teten’s person. According to him, criticism must be understood as the aspirations of the people although not considered perfect.

6. UGM Impeachment Discussion’ Case

President of the Constitutional Law Society (CLS), Aditya Halimawan, decided to cancel the discussion. Originally, the discussion program which was held online was conducted on Friday (29 May 2020) at 14.00 WIB. But the cancellation had to be done after his team received a threat if the scheduled discussion continued.³¹ Initially this discussion was titled ‘The Issue of President's Dismissal in the Middle of the Pandemic Viewed from the Constitutional Law System’. Then it was changed to, ‘Straightening the Issue of the Impeachment of the President Viewed from the Constitutional Law System’.³²

UGM Law Faculty Dean, Sigit Riyanto, in a written statement said the cancellation was due to speakers, moderators and liaison discussions agenda, as well as the chairman of CLS received terror and death threats from the night before. “Starting from sending online motorcycle taxi reservations to the residence, text of death threats, telephone calls, to the presence of several unknown people who came to their residence,” said Sigit Riyanto to [CNNIndonesia.com](https://www.cnnindonesia.com) (30 May 2020).

7. Budi Setyarso’s Case

Budi Setyarso’s Instagram account, Editor in Chief of *Koran Tempo*, was allegedly hacked. The hacking happened when he was guiding the Tempo discussion titled ‘Why was the Discussion and Writing Terrorized?’ on Sunday, May 31, 2020.

“Before the event ended, I saw an email notification pop up about activities on my Instagram account. Because the event was still running, I didn't open it immediately,” Budi said via text message on Sunday, May 31, 2020.³³ After the event was over, Budi then opened the email. He

³⁰ “Kasus Farid Gaban: Pemberangusan Kritik Warga Negara”, Tirta, 30 May 2020, <https://tirta.id/kasus-farid-gaban-pemberangusan-kritik-warga-negara-fDED>

³¹ “Angkat Tema Pemberhentian Presiden, Panitia Diskusi CLS UGM Diancam hingga Acara Dibatalkan”, Kompas, 30 May 2020, <https://regional.kompas.com/read/2020/05/30/12251181/angkat-tema-pemberhentian-presiden-panitia-diskusi-cls-ugm-diancam-hingga>.

³² “CLS UGM: Diskusi soal Pemberhentian Presiden Bersifat Akademis, Tak Terkait Politik”, Kompas, 29 May 2020, <https://nasional.kompas.com/read/2020/05/29/22541051/cls-ugm-diskusi-soal-pemberhentian-presiden-bersifat-akademis-tak-terkait>.

³³ Akun Instagram Pemred Koran Tempo Diredas saat Memandu Diskusi, Tempo, 31 May 2020, <https://nasional.tempo.co/read/1348177/akun-instagram-pemred-koran-tempo-diretas-saat-memandu-diskusi/full&view=ok>

found a message containing a report that there was unusual activity on his account, which was carried out using Chrome Mac OS X from Singapore.

Budi said, there were three sequential emails with a contiguous time. "First notifying a password change, which I did not do. The next two e-mails alerted me to unusual activity on my account," he said.

8. *Hacking the Cellphone's Case*

A number of human rights activists and academics are experiencing hacking of their whatsapp accounts. This continued to happen to Al Araf, Director of Impartial Human Rights Monitor (May 23, 2020) and Usman Hamid, Director of Amnesty International Indonesia (June 5, 2020).

This also happened to law academics working on constitutional and human rights issues, including Herlambang P. Wiratraman, Airlangga University (14 May 2020) and Riawan Tjandra, Atma Jaya University Yogyakarta (3 June 2020). The motive for hacking is unclear, and related to unclear issue, but the perpetrators use the network in a telephone or whatsapp for fraud.

This is not new, because many activists and academics have been hacked previously in an effort to fight against the revision of the Corruption Eradication Commission Law and the effort to reject the Omnibus Law.

9. *Zoom Bombing Case*

The discussion on human rights and the problem of Papua fenced with #PapuaLivesMatter, which was held by Amnesty International Indonesia, Friday (5 June 2020) afternoon, was terrorised. During the discussion, the event was infiltrated by zoom-bombing. While the speaker was terrorised by a telephone from a stranger.³⁴

Disorders began to emerge when speakers from the Papua Human Rights Study and Advocacy Institute (Eslham Papua) Yuliana S Yabansabra spoke, about 30 minutes after the discussion began. Speakers such as Usman Hamid, Yuliana, and Tigor Hutapea (Pusaka Foundation) received telephone calls from unknown, state-coded numbers in America (+1). They continued to be called until the discussion was interrupted.

Their Zoom application was also infiltrated by several anonymous accounts which interrupted the discussion with noise. Amnesty International Indonesia will report its latest study for the United Nations (UN) under the title "Civil and Political Rights" Violations in Papua and West Papua".

Zoom bombing disturbance and terror is not the first time, because many previous webinar discussions have been also victims of zoom bombing, both held on campus, Administrative Court hearings in Papua and West Papua internet shutdown cases (3 June 2020) and even research institutes that explain the curve problem Covid 19 epidemic in Indonesia

10. *Restriction Against Researchers*

³⁴ Diskusi HAM Papua Lives Matter Diteror Zoombombing dan Telepon Nomor Asing, [suara.Com](https://www.suara.com), 5 June 2020, <https://www.suara.com/news/2020/06/05/144407/diskusi-ham-papua-lives-matter-diteror-zoombombing-dan-telepon-nomor-asing>

A number of study or research institutions have been pressured not to make reports that cause panic among the people. One of the Jakarta-based Research Institutions, the Eijkman Institute for Molecular Biology, has asked researchers and staff not to use the institution's name in statements in the mass media. A number of researchers, received a reprimand related to this, so that they no longer use agency affiliation.³⁵

As is known, this research institute through its researchers exposes a lot of epidemiological studies related to the spread of Covid-19, and this is a critical note on government policies that seem to contradict the research bases or studies of researchers.

10 Case Studies Threats to Civil Liberties in the Pandemic Period

N.	Cases	Date	Forms of Intimidation / Attacks	Actors	The Process of Law Enforcement
1	Ilyani Case	20 March 2020	Accused violating EIT Law for disseminating hoax, after criticism at her FB	Police	Cellphone was confiscated, she should report to the police office every Monday.
2	Ravio Patra Case	22 April 2020	Accused violating EIT Law for disseminating 'provocative statement', after criticism to the government through numerous articles.	Unknown hacker, Police	After 33 hours of interrogation, Ravio was free with a witness status. The Jakarta Metropolitan Police is now being urged by the NGO coalition to seriously track down who is the Ravio cellphone hacker.
3	Three Student Activists' Case	20 April 2020	MAA, SRA, and AFF are said to want to provoke society against capitalists or groups of capital owners, and arrested for alleged vandalism with the intention of inciting the public	Police	Suspected status
4	Detik Journalist's Case	27 May 2020	Doxing, related to his report on Jokowi's activity	Unknown	Reporting doxing to Police, and Police investigation
5	Farid Gaban's Case	27 May 2020	Reported for Cyber-defamation, punishable for 6 years imprisonment or 1 billion rupiahs.	Chairman of Cyber Indonesia, Muannas Alaidid	Police investigation
6	UGM Impeachment Discussion' Case	29 May 2020	Academic discussion was cancelled, due to the speaker, moderator and liaison, as well as the chairman of CLS received terror and death threats	Unknown hacker, terror	Police investigation

³⁵ Anonymous, interview dengan peneliti, 29 May 2020.

N.	Cases	Date	Forms of Intimidation / Attacks	Actors	The Process of Law Enforcement
7	Budi Setyarso's Case	31 May 2020	Budi Setyarso's Instagram account was hacked.	Unknown hacker	Reported to Facebook
8	Hacking the Cellphone's Case	14 and 23 May 2020, and 3 and 5 June 2020	Hacking the whatsapp or phone terror	Unknown hacker	No formal report
9	Zoom Bombing Case	3 June 2020 and 5 June 2020	Zoom Bombing at webinar discussion and court session	Unknown actors	No formal report
10	Restriction Against Researchers	April, May 2020	Obligation no longer uses agency affiliation	Unreported	No formal report

With cases of threats to freedom of expression, opinion, academic freedom and freedom of the press, these reflect two things. First, there is a silting in the quality of democracy in Indonesia and the rule of law. Moreover, in an emergency situation in the midst of the Covid-19 pandemic, it shows the high number of cases of threats or intimidation against the space of civil liberties.

Secondly, even though Indonesia did not declare a state of civil emergency in its decision, the situation of terror and threats such as showing the situation was the same as during the Soeharto military authoritarian regime.

IV. Mechanism to Control the State of Emergency

This section will discuss what types of mechanisms can or should be in place to control abuse of power or other negative impacts on citizens during a state of emergency?

In the Indonesian legal system, in addition to the emergency declaration that must be issued by the government to determine its status, the President also has the authority to form Government Regulations in Lieu of Laws, or *Perppu*. *Perppu* is a legal product that is equivalent to the Law. In the Indonesian legal system, Law are formed jointly between the President and the House of Representatives. This is stipulated at Article 20 paragraph (1) The DPR shall hold the authority to establish laws; paragraph (2) Each bill shall be discussed by the DPR and the President to reach joint approval.

In Law 12/2011 regarding the Formation of Legislation, Article 52 (3) states, the DPR only gives approval or does not give approval to Government Regulations in Lieu of Laws. This provision principally is a check and balance mechanism in the Indonesia's constitutional system.

Recently, the House of Representatives approved the Government Regulation in Lieu of Law 1/2020 on State Financial Policies and Financial System Stability for Handling Covid-19 and/or in

the Context of Facing Threats that Endanger the National Economy and/or Financial System Stability into Laws.³⁶

However, although there is a check and balance mechanism from parliament, it does not mean that the control function is carried out properly in an emergency situation.³⁷ Because the Government Regulation in Lieu of Law 1/2020 substantively has many problems, especially related to the potential for corruption or abuse of power in the use of budgets and policies.³⁸

Beside the parliament, the court has also authority to control abusive emergency powers.

The interesting thing in the development of Indonesian law is the decision of the Administrative Court related to acts against the law by the authorities (*onrechmatige overheidsdaad*), on the ruling on June 3, 2020. The decision of the Jakarta Administrative Court hearing regarding internet shutdown in Papua and West Papua had a major impact on the regulation of the internet in Indonesia to respect digital rights.

In 2019 the Indonesian government through the Ministry of Communication and Information carried out a number of internet shutdown actions in Papua and West Papua, citing an emergency situation related to the riots and the abundance of hoax information. The government took action in the form of throttling or slowing down access/bandwidth in several areas of West Papua Province and Papua Province on August 19, 2019. In addition, government actions took the form of blocking data services and/or terminating internet access completely in Papua Province (29 cities / districts) and West Papua Province (13 cities / regencies), dated August 21 to at least September 4, 2019, and extended to September 9, 2019.

The lawsuit was filed in Jakarta Administrative Court (PTUN), with Defendant I (Menkominfo) and Defendant II (President). The Jakarta Administrative Court judges decided that the internet shutdown was an unlawful act by a government agency and/or official.

There are a number of legal considerations (*ratio decidendi*) that form the basis of an emergency, that the limitation of rights by the government must state in advance the state of emergency, in accordance with the provisions.

Government Regulation in Lieu of Law 23/1959 or Law 23/Prp/1959 on Determination of the State of Danger, so that the object of dispute is carried out by the Ministry of Communication and Information, in situations which have not been declared as a state of danger, according to the judges, it has resulted in other human rights of other parties non-perpetrators of internet abuse become neglected and even reduced (p. 270-271).

³⁶ “DPR Sahkan Perppu Stabilitas Ekonomi untuk Penanganan Covid-19 Jadi UU”, Kompas, 12 Mei 2020, <https://nasional.kompas.com/read/2020/05/12/16362121/dpr-sahkan-perppu-stabilitas-ekonomi-untuk-penanganan-covid-19-jadi-uu>. (accessed 2 June 2020).

³⁷ Perppu Corona Jadi UU, Fungsi Kontrol DPR ke Presiden Dipertanyakan, detik.com, 15 Mei 2020, <https://news.detik.com/berita/d-5015693/perppu-corona-jadi-uu-fungsi-kontrol-dpr-ke-presiden-dipertanyakan> (accessed 3 June 2020).

³⁸ This is related to Article 27 of Perppu Number 1 of 2020, substantially stating economic costs for saving the economy from the crisis and does not constitute state losses, the implementation of Government Regulations in lieu of this Act, cannot be prosecuted both civil and criminal, and is not an object of lawsuit that can be submitted to the state administration court.

In addition, the Panel of Judges's opinion said that

“... the act of the President which does not carry out his authority and obligations (omission) is a form of not carrying out an act in the framework of administering a government. That is in the category of government actions that conflicts with the authority and legal obligations of the President before approving the act of the Minister of Communication and Information, so judges found the absence for fulfilling procedures and substance in government actions carried out by the Minister of Communication and Information, then the Acts of the Government of the President, the procedure and substance also contradicts the laws and regulations” (p. 275-276).

This is a decision that can be a landmark decision, because it adopts so many human rights considerations and limits the arbitrariness of power in situations of danger or emergency.

With this new development, Hosen's argument related to the inability of Parliament and the courts (specialised administrative tribunals) to limit emergency powers is dissonant to the Gross-Dyzenhaus debate, needs to be updated. Both parliament and administrative justice have contributed to pushing the control mechanism for not being able to act arbitrarily in emergency situations. Especially today, the Constitutional Court also received a number of citizen lawsuits related to the enactment of the Government Regulation in Lieu of Law 1/2020

In addition to the control mechanism in the main state institutions, the presence of a number of state auxiliary bodies, such as the Ombudsman and the National Human Rights Commission, are important in overseeing government policies not to abuse power during the emergency period, especially during the current Covid 19 pandemic. This has a more space for citizen participation in using the rights and legal mechanisms provided.

V. New Normal, Normalising Abusive Power? Concluding Remarks

The Indonesian government has now declared the condition 'New Normal' in response to Covid-19 pandemic. The context that has been explained at the beginning of the discussion of this article, until now actually the situation has not changed much. The problem is the data. Patient data, dissemination, referral hospital's capabilities, and also the readiness of medical personnel in dealing with the 'New Normal' policy.

Apart from differences of opinion about all that, in terms of the law how emergency power needs to be reflected back in its effectiveness. The implementation policy of handling Covid which is dominated by the military,³⁹ on the one hand provides convenience in the way of handling command. But on the other hand, there is no effective control over the policy, budget and evaluation process. So that in the field there is still overlap or the absence of the state in protecting and fulfilling the rights of citizens.

In summary based on the description above, Indonesian COVID-19 emergency law actually works by violating many guarantees of legal protection and under the rule of law standard. With this

³⁹ Evan A. Laksmana and Rage Taufika, 2020, How 'militarized' is Indonesia's COVID-19 management?, The Jakarta Post, 27 May 2020, <https://www.thejakartapost.com/academia/2020/05/27/how-militarized-is-indonesias-covid-19-management.html>. (accessed 2 June 2020).

reality, it is very apparent how the issue of human rights has not yet become an effective strategy or approach in this non-natural disaster emergency situation. Not surprisingly, the ‘New Normal’ policy has created issues that are not only worrying from a medical perspective, but also from a broader human rights perspective.

[#2nd draft, 7 June 2020]