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EMERGENCY CONSTITUTIONAL LAW BASED ON LAW NUMBER 23 PRP OF 1959 ON THE STATE OF DANGER

Hotmaida Simanjuntak
HKBP Nomensen University, Indonesia, hotmaida.simanjuntak@uhn.ac.id
A.Ismail.S
Diponegoro University, Indonesia, aispedu@gmail.com
Syahdi Firman
Kampar Regency Election Supervisory Board, Indonesia, syahdifirman@gmail.com

Abstract

Emergency Constitutional Law is Constitutional Law that applies in a state of emergency or Constitutional Law that applies when the State is in a state of emergency. Emergency Constitutional Law is part of ordinary Constitutional Law but contains special norms. Specific norms in the Emergency Constitutional Law are limited in their application only in abnormal circumstances. The research method used for this research is the normative juridical method using library research methods with deductive data analysis. Implementation of Emergency Constitutional Law Based on Law Number 23 Prp of 1959 concerning Dangerous Conditions, namely that regional governments have not yet been maximally involved, the existence and position of regional governments is very important and is an important pillar that supports the continuity of the implementation of the power of the government of the Unitary State of the Republic of Indonesia, apparently in The emergency authority it has not yet parallel to its very important existence and position. Regional governments do not yet have maximum and meaningful authority to actively issue strategic and basic regulations, take decisions or take the initiative to make important and basic policies to overcome emergencies at the regional level.
Keywords: Emergency Constitutional Law, Dangerous Conditions

A. Introduction

Every country generally has a constitution. The need for a constitution is inevitable.[1] The constitution is *the resultant* of the political, economic, social and cultural circumstances when it was created.[2]A state

[1]Jimly Asshiddiqie, *Indonesian Constitution and Constitutionalism*, Jakarta, Sinar Grafika, 2014, p. 16

[2]Moh. Mahfud. MD, *Constitutional Law Debate After Constitutional Amendment*, Jakarta, Rajawali Pers, 2011, p. 20

that in the exercise of its governmental power based on the constitution is a state that adheres to constitutionalism. Etymologically, the words "constitution", "constitutional", and "constitutionalism" mean the same meaning, but their usage or application is different. The term constitution has been known since Ancient Greece, but it is still interpreted materially, because it has not been put in a written text.[3] In relation to power, power based on the constitution is the same as the position of citizens whereas government *depotism* is not.[4] The constitution is all the provisions and rules regarding constitutional rules (Basic Law, etc.), or the Constitution of a country. Unlike constitutionalism, which is an understanding of the limitation of power and the guarantee of people's rights through the constitution. Various changes always occur, these changes occur slowly so that they seem to be separated from monitoring and observation or occur very quickly so that it is difficult to have a fixed institution.[5] Likewise, society always changes following the direction of the times, increasing legal regulations. The development of law brought about a change in society. Changes that occur to the rule of law are difficult to predict, so violations and crimes will continue to change, increase and follow the times and patterns of life.

A state of law that recognizes the sovereignty of the rights of every human being as reflected in the 1945 Constitution article 1 paragraph 3 reads that Indonesia is a state of law. The law is made to be a container that regulates the rights and obligations of everyone who is the subject of law. This is

[3] Abu Daud Busroh, *State Science*, Jakarta, Bumi Aksara, 2014, p. 88

[4] M. Solly Lubis, *State Science*, Bandung, Mandar Maju, 2014, p. 21

[5] Leden Marpaung, *Principles-Theory-Practice of Criminal Law*, Sinar Grafika, Jakarta, 2017, p.1.

done as a way to ensure the fulfillment of rights and everyone fulfills their obligations. The law also functions as a guardian of human beings like the law protects society from authoritarian and absolute government.[6]

Among the *founding fathers,* it seems that concerns are mounting that the 1945 Constitution, which has only been ratified for about three months from August 18, 1945 to October 16, 1945, provides a great opportunity for the arbitrariness of the ruler, especially the possibility of it being carried out by the President. [7]

It can be understood from Article IV of the Transitional Rules of the 1945 Constitution (pre-amendment) which states that, "*Before the MPR, DPR and DPA are established according to this Constitution, all their powers are exercised by the President with the assistance of the National Committee*." The climax of fears of arbitrariness by the rulers, especially the President, was the issuance of Vice Presidential Declaration No. X on October 16, 1945. According to the proclamation, the Central National Committee (KNP) before the formation of the People's Consultative Assembly (MPR) and the DPR was assigned legislative duties and determined the GBHN, and approved the day-to-day work of the Central National Committee due to the gravity of the situation carried out by a workers' body elected among them and responsible to the Central National Committee.[8] With the issuance of the edict, there was a change in the content of the norms of the 1945 Constitution in practice without being preceded by formal textual

[6] Bahder Johan, *State of Law and Human Rights*, Mandar Maju, Bandung, 2017, p.258.

[7] Shaleh, A & Wisnaeni, F., Religion and State Relations According to Pancasila and the 1945 Constitution, *Indonesian Journal of Legal Development*, Vol. 02. No.01.

[8] Dasril Radjab, *Indonesian Constitutional Law*, Jakarta, Rineka Cipta, 2005, p. 191

changes to the 1945 Constitution. The unconstitutionality that is often carried out in practice by the government results in changes to the 1945 Constitution which are fundamentally weak in legitimacy and even invalid because the changes were not taken through the procedures stipulated in the 1945 Constitution.

Constitutional Law that applies in exceptional or abnormal circumstances is an Emergency Constitutional Law that specifically needs to be studied separately. From a practical point of view, the study of emergency constitutional law is important because it is closely related to serious violations of human rights that can occur with the enactment of a state of emergency. A thorough study of this is expected to help the country avoid unlawful violations of human rights. Even if the state of emergency is imposed, its enactment can be controlled in accordance with the purpose of holding rules regarding the emergency itself.

In addition, among countries that have just implemented a democratic system, it is very possible that the administration of the state in a state of emergency is stagnant or unguided or undirected, for example in the environment of new democracies, the exercise of power is usually faced with two extreme choices, namely between the demand for freedom without direction and control among citizens who are very hungry for freedom after years of fear, or the rational need to consolidate state power albeit with little or even the potential to somewhat curb and restrict freedom.

Therefore, inevitably, the study of emergency constitutional law as a counterbalance to the study of ordinary constitutional law is very important in the framework of the development of constitutional studies and practices in

Indonesia. Moreover, Indonesia can be classified as a new democracy or even as the *largest new democracy in the world*. As a democracy with a large population, Indonesia is also the third largest democracy after India and the United States.

Emergency Constitutional Law must be distinguished from the term emergency law or emergency law which covers a broader sense, which covers all areas of law that apply when the state is in a state of emergency, because the law that applies in a country, not only pertains to constitutional law, but also covers other areas of law, for example, the field of civil law, The field of business law, the field of criminal law, the field of state administrative law, and so on.[9]

In the words of the Emergency Constitutional Law mentioned above, there are several aspects whose meaning content is reflected in many terms used in different languages in each country. In Indonesia the term Emergency Constitutional Law is used, for example by, Herman Sihombing in his book entitled *Indonesian Emergency Constitutional Law.*

In terms of systematics, Herman Sihombing distinguishes emergency constitutional law in terms of its pattern, form and source, which is into:

1. Objective Emergency Constitutional Law *(Objectieve Staatsnoodrecht);*
2. Subjective Emergency Constitutional Law *(Subjectieve Staatsnoodrecht);*
3. Written Emergency Constitutional Law *(Geschreven Staatsnoodrecht);*and

[9] Jimly Asshiddiqie, *Emergency Constitutional Law*, Jakarta, RajaGrafindo Persada, 2007, pp.14-15

4. Unwritten Emergency Constitutional Law *(Ongescheven Staatsnoodrecht)*[10].

As for examples of some cases that the author put forward, such as the tsunami in Aceh and the hot mud overflow of PT. Lapindo Brantas is not intended to be the object of the author's research in this study, but to see the practice of deviant government actions due to not treating it as an emergency. In this study on emergency cases, this study is more emphasized or directed to examine and analyze juridical normative constraints faced by local governments in overcoming emergencies. Because, considering the position as a regional head and the involvement of regional heads taking a role in overcoming emergencies is something that the author thinks is important to examine. Regarding this matter, the author will explain in other parts of this study.

With regard to the case in Aceh and the hot mud overflow of PT. Lapindo Brantas, Jimly Asshiddiqie said for the case of the tsunami that occurred in Aceh on December 26, 2004 as well as for the case of hot mud overflow PT. Lapindo Brantas in Porong, Sidoarjo, East Java, which began to occur since 2007, should have been easier to overcome if it was handled using Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions, but it turned out that the conditions that occurred both in Aceh and Porong by the government at that time were not treated as emergencies. That is a little explanation about Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions, besides

[10] Herman Sihombing, *Emergency Constitutional Law in Indonesia*, Jakarta, Djambatan, 1996, p. 25

that there is also Law Number 24 of 2007 concerning Disaster Management. This law has been implemented in practice as an example when the disaster occurred when the crash of Air Asia flight QZ8501 on December 28, 2015.

B. Problem Statement

How is the implementation of Emergency Constitutional Law based on Law Number 23 Prp of 1959 concerning Dangerous Situations?

C. Research Objectives

A study conducted because of a problem will cause a desire to know more and what benefits will be obtained from a study both for yourself and for others. As for this research, the objectives to be achieved by the author are:

1. To determine the application of emergency constitutional law based on Law Number 23 Prp of 1959 concerning Dangerous Conditions as amended by Law Number 52 of 1960 concerning Dangerous Conditions.
2. To find out the obstacles to the application of emergency constitutional law based on Law Number 23 Prp of 1959 concerning Dangerous Conditions as amended by Law Number 52 of 1960 concerning Dangerous Conditions.

D. Research Methods

Judging from its type, this research can be classified into normative legal research *(legal research),* which is research conducted based on secondary data, while viewed from its nature, this research is classified into descriptive research which means describing or describing in detail about the subject matter studied.[11]

[11]Soerjono Soekanto and Sri Mamudji, *Normative Legal Research A Short Action,* Raja Grafindo, Jakarta, 2007, p. 12

Soerjono Soekanto said descriptive analysis or descriptive research is intended to provide as thorough data as possible about humans, conditions or other symptoms to reinforce hypotheses in order to help in strengthening old theories, or in the framework of compiling new theories.[12]

E. Research Results and Discussion

If examined the application of emergency constitutional law based on Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions as previously explained, it must begin with a declaration or official declaration of the state of emergency by the President, so that the legitimacy of the declaration of the state of emergency can be legally accounted for and the actions taken to overcome and eliminate the situation The emergency or state of danger is recognized as valid.

Regarding the declaration of a state of emergency, Article 2 paragraph (2) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions it is affirmed that, "the announcement of the declaration or elimination of the state of danger is carried out by the President". [13]

On the one hand, giving authority to the President as the only state institution/official who has the right to issue a statement or eliminate a state of danger is acceptable, it is as a consequence of the adoption of a presidential system that determines the President as the head of state and at the same time as the head of government. The next consequence is that it

[12] Soerjono Soekanto, *Introduction to Legal Research*, UI-Press, Jakarta, 1986, p.10.

[13]See Article 2 paragraph (2) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning State of Danger

is the President who holds supreme command over the control, control and restoration of emergencies. Although in the implementation stage in practice in the field, the President According to Article 3 paragraph (2) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions assisted by the First Minister, Minister of Security/Defense, Minister of Home Affairs and Regional Autonomy, Minister of Foreign Affairs, Chief of Army Staff, Chief of Naval Staff, Chief of Staff of the Air Force, Chief of the State Police.

As for the reasons intended to declare a state of civil emergency, martial law or martial law, the three levels as mentioned above can be traced from the sound of Article 1 paragraph (1) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions stated that, the President / Supreme Commander of the Armed Forces declares all or part of the territory of the Republic of Indonesia in a state of danger with the degree of civil emergency or martial law or state of war, if:[14]

1. Security or public order throughout the territory or in part of the territory of the Republic of Indonesia is threatened by rebellions, riots, or due to natural disasters, so it is feared that it cannot be overcome by ordinary equipment;
2. War arises or danger of war or fear of rape of the territory of the Republic of Indonesia in any way;
3. The life of the State is in danger or from special circumstances it turns out that there are or it is feared that there

[14] See Article 1 paragraph (1) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning State of Danger

are symptoms that may endanger the life of the State.

Meanwhile, Article 2 paragraph (1) states that, "a decree declaring or abolishing a state of danger shall enter into force on the day it is announced, unless otherwise stipulated in the decree".[15]Thus, in the provisions mentioned above, it can be understood that the law provides discretion to the President. That is, if the President still considers that a certain matter must be resolved according to the law in force in an emergency, then the President in determining the elimination of the danger situation is given freedom.

the decision referred to in the provision if interpreted textually or literally, then it is none other than a Presidential Decree. Furthermore, in paragraph (2) it is also affirmed that, "the announcement of a statement or removal of a state of danger shall be made by the President".

Although it is a verbal notification, the announcement of the state of danger is an absolute requirement. Likewise, the elimination of the state of danger is an absolute condition that requires the issuance of a presidential decree as the source and basis of legitimacy for the elimination of the state of danger and other measures related to overcoming the emergency.

In Article 3 paragraph (1) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions affirms that, "the supreme authority in a state of danger is

[15]See Article 2 paragraph (1) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning State of Danger

carried out by the President/Supreme Commander of the Armed Forces as the ruler of the Central Civil Emergency/Central Martial Law Authority/Central War Authority".

Such a provision is only natural because it has become a logical consequence in the presidential system that the President is as the head of state as well as the capacity as the head of government, therefore the responsibility of state administration and government culminates in the President.

In paragraph (3) it is stipulated, "The President/Commander-in-Chief of the Armed Forces may appoint any Minister/Officer other than those mentioned in paragraph (2) of this article, if he deems it necessary".[16]

Thus, the above provision can be understood that the authority of the President is not absolute but relative and depends on the conditions at hand, meaning that this is merely conditional. Meanwhile, at the regional level, Article 4 paragraph (1) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning Dangerous Conditions confirms that, In areas of civil emergency control are carried out by Regional Heads as low as Level II Regions as the ruler of Regional Civil Emergency whose jurisdiction is determined by the President / Supreme Commander of the Armed Forces".[17]

The above provision implicitly contains an order or requirement that Law Number 23 Prp of 1959 as amended by

[16]See Article 3 paragraph (3) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning State of Danger

[17]See Article 4 paragraph (1) of Law Number 23 Prp of 1959 as amended by Law Number 52 of 1960 concerning State of Danger

Law Number 52 of 1960 concerning Dangerous Conditions requires that in the regions, the control of civil emergencies is carried out by the Regional Head as low as Level II as the ruler of the Regional Emergency whose jurisdiction is determined by the President / Supreme Commander of the Armed Forces.

F. Conclusion

The application of Emergency Constitutional Law in official practice has never been applied at all, even though many legal events that occur actually require fast, precise and responsive handling from the government. Many serious human rights violations occur so that they can no longer be forced to be dealt with solely by relying on ordinary laws and regulations in force under ordinary circumstances but should be addressed by imposing a *de jure* state of emergency.Thus the situation will be more easily controlled and overcome and restored to normal.

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