

Optimization Of The State's Role In Facing The 2019 Coronavirus Disease Pandemic From The Perspective Of Emergency Constitutional Law

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ARTICLE INFO	ABSTRACT
<i>Article history:</i> Received Jul 15, 2022 Revised Jul 30, 2022 Accepted Aug 18 , 2022	Since the end of 2019, WHO has determined that Covid-19 is a pandemic that attacks the world. This pandemic resulted in a health emergency, which had a bad impact on various sectors, including the financial sector, so the economic situation became unstable. The purpose of this research is to see how the role of the state in overcoming the problems of the Covid-19 pandemic from the perspective of
<i>Keywords:</i> Emergency Constitutional Law, Covid-19, Role of the State, Regulation.	emergency constitutional law. This research will be carried out using statutory, conceptual, and comparative approaches. The data used in this study came from the results of a literature study. The results of this research will be in the face of the covid-19 pandemic, the application of emergency constitutional law is a responsive and progressive step. This function is to provide guarantees and achieve the ideals of the rule of law, which is to provide protection and welfare for the community as the highest law in a country.
	Sejak akhir tahun 2019, WHO telah menetapkan bahwa Covid-19 merupakan pandemi yang menyerang dunia. Pandemi ini mengakibatkan keadaan darurat

pandemi yang menyerang dunia. Pandemi ini mengakibatkan keadaan darurat kesehatan yang berdampak buruk pada berbagai sektor, termasuk sektor keuangan, sehingga situasi ekonomi menjadi tidak stabil. Tujuan penelitian ini adalah untuk melihat bagaimana peran negara dalam mengatasi permasalahan pandemi Covid-19 dari perspektif hukum tata negara darurat. Penelitian ini akan dilakukan dengan menggunakan pendekatan perundang-undangan, konseptual, dan komparatif. Data yang digunakan dalam penelitian ini berasal dari hasil studi kepustakaan. Hasil penelitian ini nantinya dalam menghadapi pandemi covid-19, penerapan hukum tata negara darurat merupakan langkah responsif dan progresif. Fungsi ini untuk memberikan jaminan dan mencapai cita-cita negara hukum, yaitu memberikan perlindungan dan kesejahteraan bagi masyarakat sebagai hukum tertinggi di suatu negara.

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I. INTRODUCTION

The emergence of a new kind of Corona Virus Disease (Covid - 19) has shook the world and disrupted global public health. The WHO World Health Organization received a report on a case of pneumonia of unclear etiology (unknown cause) identified in Wuhan City, Hubei Province, China, on December 31, 2019. As of early 2020, the Chinese National Authority has reported a total of 44 patients to WHO (Di Gennaro et al., 2020). However, during the Unknown etiology of pneumonia,

the exact cause of the disease is unknown. The identification process was extensive until January 7, 2020, when China determined that the disease was an outbreak of a new coronavirus strain. Coronavirus disease (Covid-19) is an infection caused by a recently discovered coronavirus. The majority of those infected with the Covid-19 virus will suffer from mild to moderate respiratory illness and recover without additional treatment (Hamid et al., 2020). Those with underlying medical conditions such as diabetes, chronic resporatory disease, and cancer are more prone to get the disease rapidly. The elderly are more susceptible to the disease. Transmission The Covid-19 virus is transmitted through saliva or nasal secretions when an infected individual coughs or sneezes (Siegel & Mallow, 2021).

The development of the spread of this virus continues and occurs not only in China but has spread extensively throughout the world, including one of them Indonesia. The 2019 Corona Virus Disease epidemic, also known as COVID-19, was declared a global public health emergency by the World Health Organization (WHO) on January 30, 2020, and a pandemic by the WHO on March 11, 2020. (Supriatna, 2020). So that various protection efforts are carried out in each country with different policy implementations. For example, Italy implements a policy of blocking activities and public access, known as Lockdown (Kumala, 2020).

In contrast to the case in Indonesia, the Indonesian government does not implement or decide on the Lockdown policy as a preventive and repressive effort against Covid-19. Instead, it establishes social restrictions or what is known as social distancing. In addition, the government also ordered all workers in Indonesia to carry out their work from home. This, of course, raises various speculations in the community. There are advantages and disadvantages to the current government's policy (Joko & Sriwidodo, 2021). Based on the postulate, a comprehensive study is needed on efforts to handle the pandemic through optimizing the state's role, especially in the study of emergency constitutional law. This problem also raises questions that become the focus of research: How is the coronavirus pandemic progressing? What is the role of the state in dealing with the coronavirus pandemic?

The definition of "State Constitutional Law" itself comes from the words "law", "administration", and "state", in which it discusses the affairs of state arrangement. Rules related to the word "order" are also commonly translated as "order". State Administration means the system of structuring the state, which contains provisions regarding the structure of the state and the substance of state norms (Sellers & Scharff, 2020). The views regarding the meaning of constitutional law include: Van Vollenhoven: Constitutional Law regulates all superior legal communities and subordinate legal communities according to their levels and from each of them determines the area of the people's environment, and finally determine the bodies and their respective functions that are in power within the legal community and determine the composition and authority of these bodies (Hidayanti et al., 2021); Scholten: Constitutional law is the law that governs the organization rather than the State (Gupta et al., 2021); Van der Pot: Constitutional law is the rules that determine the necessary bodies and their respective powers, their relations with others, and their relations with individuals (Taylor, 2021); Longemann: Constitutional Law is the law that governs the organizations of the State (Mandjo & Sarson, 2021).

One of the scientific requirements of any knowledge is the existence of an object to be studied. Constitutional law, one of the fields of study in the Legal Sciences environment, briefly has an object of study, namely the state with a set of regulations governing the organization (Baka et al., 2019). The object of constitutional law study is a state with the same study as state science, namely state and power, but between the two sciences, there are differences in principle (Carrillo, 2020). State Science studies the state which is still in an abstract state, which is not bound by time and place, meaning that the state is still placed at the level of ideas, concepts, and theoretical ideas. Meanwhile, the object of constitutional law study is the state in a concrete sense. The concrete understanding here is to examine the Positive Constitutional Law, which is currently in force in Indonesia (Rooduijn, 2019). Covid-19 in Indonesia, concern about Covid-19 is not only happening in the world but Indonesia. Indonesia reported two confirmed cases of Covid-19 on March 2, 2020. Indonesia has recorded 790 confirmed cases of Covid-19 throughout 24 provinces as of March 25, 2020. The reality of the spread of Covid-19 can indeed be increasingly widespread until it spreads throughout the world, no wonder if Covid-19 is declared a global pandemic (Nasrullah et al., 2021). The paradigm that the growth of Covid-19 can develop widely is because transmission can occur through human contact with other humans, such as droplets when coughing & sneezing or through objects contaminated with the virus. So that the acceleration of the spread of Covid-19 has now reached all regions in Indonesia (Lacombe et al., 2021).

The phenomenon of the significant development of Covid-19 is increasingly causing unrest in the community. Therefore, coordination and decentralization are needed to build public confidence in the government's preparedness and response to the current situation. The government's preparedness is also shown by various strategies that are carried out to detect early and suppress the spread of the virus (Grinin et al., 2022). The government has published strategies, including establishing a procedure for Social Distancing, which is 1-2 meters away when in a crowd. Even now, the policy has changed to Large-Scale Social Restrictions (PSBB), which are considered more effective in anticipating the increasingly aggressive spread of Covid-19 (Noorhidayah, 2021). The government also limits other activities such as work that requires to be done from home or what is known as Work From Home. It is not surprising that this health emergency will have significant implications considering that the policy limits almost all activities in all sectors of life (Craig & Churchill, 2021).

Today's health emergencies also have significant implications for the foundation of life, namely in the economic sector. The Ministry of Finance has stated that it will allocate APBN funds for testing (testing) for victims, increasing hospital capacity, and the availability of medicines and medical equipment. These actions aim to ensure protection and public health (Saputro, 2020). In addition, the regulations set by the government by implementing work from home certainly have significant implications for workers, so to respond to this, the Ministry of Manpower decides policies through the Circular of the Minister of Manpower of the Republic of Indonesia No.M/3/Hk.04/III/2020 concerning Worker Protection and Business Continuity in the Prevention and Control of Covid-19 (Flambonita et al., 2021). It contains that if workers who doctors declare as ODP (People Under Monitoring) or Covid-19 suspects do not work for a maximum of 14 days, they still receive full wages. Workers who are sick due to Covid-19 are paid according to the law, then those who dismiss workers due to local government policies, the amount and method of payment of wages are according to the agreement. The Ministry of Manpower has recently issued a Covid-19 pre-employment card (Simatupang et al., 2021). Work competency development program aimed at job seekers laid off workers or workers who need increased competition with training costs reaching 3.6 million/individual. Then the Ministry of Social Affairs also provided social assistance in the form of necessities which were ordered directly to the President to be distributed to the people in the Greater Jakarta area with a total of 1.8 million necessities for 1.8 million families. The aim is for the Indonesian people to survive in the current conditions, considering that basic needs are primary (Muhyiddin & Nugroho, 2021).

However, it is ironic, on the sidelines of the efforts made by the government, the public is thrilled with various Hoax issues that continue to circulate in the community. It was recorded that on April 2, 2020, 415 hoax issues related to the coronavirus had circulated in Indonesia. This issue has undoubtedly made the handling of Covid-19 more complicated. Apart from that, public anxiety is increasing. The government is currently trying to build public trust (Tourish, 2020).

II. RESEARCH METHOD

This study employs normative legal research. Legal normative writing is library study using secondary sources. This research employs a legislative methodology, a conceptual methodology,

and a comparative methodology. A literature review is the data source used as a foundation for this investigation.

III. RESULT AND DISCUSSION

1. The Role of the State in Handling Corona Virus Disease 2019

Given that the Covid-19 outbreak is a pandemic that poses a threat to the health of the global community, effective and prompt action is required to prevent its spread. In this case, the WHO recommends handling and overcoming the coronavirus disease.

According to the World Health Organization, administering and safeguarding global public health through quarantine, which includes individual quarantine measures, is one of the state's responsibilities. Article 1 of the International Health Regulation 2005 defines quarantine as follows: "... the restriction of activities and separation from others of suspect persons who are not ill or of suspect baggage, containers, conveyances or goods in such a manner as to prevent the possible spread of infection or contamination".

As a global practice, quarantine needs to be implemented with respect for people's fundamental freedoms in mind. This follows from Article 3 of the World Health Organization's Regulations, which state "the implementation of these Regulations shall be with full respect for the dignity, human rights and fundamental freedoms of persons". The state's health policy regulations are necessary for the agreements to take effect. The state has an obligation to ensure the safety of its citizens, and this obligation must be manifested in the form of public policy. Because the state exists primarily to ensure protection and stability.

Public policy is "anything a government chooses to do or not to do." A public policy can take the shape of Laws, Government Regulations, Provincial Government Regulations, City/Regency Government Regulations, and Mayor/Regent Decrees with regard to regulating regulation as a public policy. Nevertheless, for a policy's implementation to be optimized, it must be backed by a number of factors. At least four factors can significantly impact the policy's continued existence. George Edward III identifies four factors: communication, sources, attitudes, conduct, and bureaucratic structure. These components are essential to the successful execution of a policy, hence they must be optimally and sustainably implemented (Sakti & Afiyah, 2020).

By examining the occurrence of this epidemic and gazing in the mirror in a number of countries, several nations adopt regulations to protect their citizens. In the same way as the Chinese government, namely in Wuhan City, which was the first to contract this virus, imposed a lockdown policy in Wuhan, so too was a lockdown created in Jia City to break the chain of its propagation. The Italian government was responsible for the precise treatment, in which the country instituted a comprehensive lockdown policy.

In addition to going through lockdown measures, several countries are using other methods considered more optimal and efficient in breaking the chain of spreading the Covid-19 virus, such as those implemented by Singapore and Vietnam. The state of Singapore carried out a spread detection map by interviewing patients who were quarantined in hospitals in detail about the complete map of their activities so that they knew the movements and people who could be indicated as infected could be cured immediately. Meanwhile, in Vietnam, the government responded quickly and made a policy to lock residents for 20 days like a lockdown by following the basic principles of handling patients. This method has proven effective that as of April 17, 2020, out of the 267 infected people, no one has died from this virus. In Indonesia, the President, as head of government and head of state, encourages social separation and encourages citizens to work, study, and worship at home or work remotely. At the theoretical level, under any circumstances, it is clear and straightforward that the state must play an active role in protecting the entire nation following the information in the Preamble to the 1945 Constitution of the Republic of Indonesia.

In the context of the current epidemic, the state must safeguard and enforce Article 28H, paragraph 1, of the 1945 Constitution of the Republic of Indonesia, which states: "Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment and to have the right to

health services". Based on the constitution's mandate, Indonesia as a legal and sovereign state, should protect the people by issuing a law-level policy. The state later realized this by presenting Law Number 6 of 2018 concerning Health Quarantine.

Article 10 of Law No. 6 of 2018 on Health Quarantine explains that in this instance, the central government can determine the status of a public health emergency, which is then manifested in the form of Presidential Decree of the Republic of Indonesia No. 11 of 2020 on the Determination of Public Health Emergency Corona Virus Disease 2019 (Covid-19) as a form of state responsiveness in response to this pandemic situation. In terms of handling, it is stated in the provisions of the health quarantine law that there are several actions to handle health emergencies, it is explained in article 15 paragraph (2) that, "To take action to mitigate risk factors in the region in a Public Health Emergency, Home Quarantine, Regional Quarantine, Hospital Quarantine, or Large-Scale Social restrictions by Health Quarantine officials are carried out."

Seeing the urgency, the government devised a large-scale social restriction policy to address the arrangement specified in Government Regulation 21 of 2020 about Large-Scale Social Restrictions in the Context of Accelerating the Management of Corona Virus Disease 2019. (Covid-19). The Government Regulation specifies a number of actions that must be implemented at a minimum, including school and workplace closures, limitations on religious activities, and restrictions on activities in public or shared spaces. Presidential Decree Number 9 of 2020 Concerning Amendments to Presidential Decree Number 7 of 2020 Concerning the Task Force for the Acceleration of Handling Corona Virus Disease 2019 was also issued to expedite action (COVID-19). This is intended to optimize both the central and regional management of this epidemic. Technically, the Task Force is entrusted with building national resilience in the health sector. The Task Force is comprised of ministries, non-ministerial agencies, TNI, Polri, and Regional Heads.

Given that it turns out that Covid-19 does not only have an impact on health but also has an impact on national economic growth, it is an effort to maintain financial sector stability and save health and recovery for affected communities. Therefore, the state adopts a policy in the form of a Government Regulation instead of Law of the Republic of Indonesia Number 1 of 2020 Concerning State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease (Covid-19) Pandemic in Confronting Threats That Endanger the National Economy and Financial System Stability. The Perppu incorporates policies to ensure national economic stability and the recovery of affected localities by increasing expenditures to eliminate health concerns, protect the public, and sustain commercial operations. Several ministries then followed up on the notification of the handling arrangement. The Ministry of Health has issued Regulation of the Minister of Health of the Republic of Indonesia Number 9 of 2020 concerning Guidelines for Large-Scale Social Restrictions in the Context of Accelerating Handling of Corona Virus Disease 2019 (Covid-19), which regulates explicitly the technical rules for implementing large-scale social restriction policies. Jakarta is the first city to implement PSBB regulations through Governor Regulation Number 33 of 2020 regarding the implementation of "Large-Scale Social Restrictions in Handling Corona Virus Disease 2019 (COVID-19) in the Special Capital Region of Jakarta". The policy came into effect from April 10, 2020, to April 23, 2010. This emphasizes that the Large-Scale Social Restriction policy will be implemented for two weeks, this policy includes restrictions on public facilities such as restrictions on public transportation with a capacity of only 50 percent and operating hours only from 06.00 to 18.00 WIB.

Nonetheless, sectoral financial support is necessary to restore economic stability in light of the serious impact the 2019 Corona Virus Disease pandemic has had on the economy and the increased number of people who are sick. In addition to the Government Securities policy referred to in Law Number 24 of 2002 regarding Government Securities, the Ministry of Finance issued Government Regulation in lieu of Law of the Republic of Indonesia Number 1 of 2020 concerning State Financial Policy and Financial System Stability for Handling the Corona Virus Disease 2019 (Covid-19) Pandemic and in Facing Threats that Endanger the National Economy and Financial System Stability. The Ministry of Finance issued the RI1030, RI1050, and RI0470 series of Government Securities in order to meet the state budget's financing requirements and combat the pandemic outbreak. The entire nominal amount of the Government Bonds is USD4.3 billion, comprised of USD1.65

billion for a tenor of 10.5 years, USD1.65 billion for a tenor of 30.5 years, and USD1 billion for a tenor of 50 years.

In the face of volatile global economic conditions, especially during the COVID-19 outbreak, this strategy demonstrates the government's effort to continue implementing a credible, sustainable, and disciplined fiscal policy. In contrast, it is responsive and effective since this fiscal strategy generates enough revenue to fund three crucial programs in the fight against COVID-19: those that focus on health, those that aid businesses such as MSMEs, and those that provide social safety nets.

In addition to macro policies, the government also issued a policy in the form of the allocation of electricity procurement subsidies. Where the government makes a policy in the form of waiving electricity costs for 450 VA electricity customers and providing discounts or discounts of 50 percent for subsidized 900 VA electricity users. However, in practice, this policy has resulted in conflicts because it does not distribute aid to the affected people, which causes injustice. In this outbreak, all the people are victims affected by the outbreak, on that basis, the government should also try to help evenly in the use of electricity optimally. Because the highest law is a law that can provide justice and prosperity.

2. Handling Corona Virus Disease 2019 in Emergency Constitutional Law Discourse

Indonesia is mostly a legal state. Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia contains this announcement in a plain and explicit manner. In the conception of a legal state, the law must place the law as a unified system that includes aspects of the behavior of legal subjects, rules of law, and institutional elements. Comprehensively these three aspects cover law making, law application, and law enforcement processes.

In the context of the current epidemic, the state has effectively fulfilled its responsibility as the state of law by establishing numerous measures. In fact, however, the policy is viewed as a cause of conflict and not as an emergency reaction. As is the situation with the excessively bureaucratic Government Regulation regulating the Covid-19 PSBB. In theory, the state must respond to the current pandemic crisis by passing emergency response legislation.

Genuinely intense, the State of Indonesia must be able to carry out its role in protecting the people and in the context of creating people's welfare. Following the adage by Marcus Tullius Cicero, "Salus populi suprema lex esto". The adage outlines the position of people's welfare as the highest law in a country, mainly when studied in the current context.

If studied from the perspective of emergency constitutional law or staatsnoodrecht, the Indonesian state in a state of coercion and urgency can take the position of emergency law as an effective and efficient solution. As a rule, emergency constitutional law has an object of study: the state in an emergency or "State of Emergency". An emergency, defined as an extraordinary situation, requires an extraordinary law. Likewise, in a state of danger that can threaten public order, the state can act in an unusual way, which is outside the normal legal situation.

When normal law cannot be a solution for handling abnormal circumstances, it is indispensable to have an unusual law. Jimly Asshidiqie also shares that if there is no possible way to solve emergency problems with existing legal instruments, with an emergency determination in a country, the applicable law is emergency law or "martial law." In particular, the concept of "martial law" has four aspects, namely: "...the authority of the president to declare martial law, judicial review of decisions made under martial law, the use of military tribunals in territory under martial law, the limitations on individual liberties once martial law has been declared..."

Iwa Kusuma Sumantri, in his work "Law and Justice", emphasized that emergency law can be established and enforced in an emergency with the issuance of emergency law. Technically there are five conditions in making an emergency law, which includes security that endangers and threatens the realization of the state, an urgent situation, to overcome the conditions and difficulties that arise from the dangerous situation, there is no opportunity to discuss with parliament, and the law only applies as long as there is danger. Looking at the current situation, the implementation of emergency laws by issuing emergency laws is carried out by including substances regarding the comprehensive handling of the Covid-19 pandemic. Refly Harun explained that implementing several policies in one unit is better, including hospital quarantine, regional quarantine, and PSBB. Then in the regulation, it is emphasized that each local government has the flexibility to determine handling policies which can then be evaluated by the central government, continued, reduced, or stopped. Then addressing the current problems, especially in the economic aspect and information related to the current pandemic, needs to be done firmly. As with the handling of the economy during the pandemic to post-pandemic, it is necessary to supervise this case, and it is necessary to form a sub-task for handling Covid-19 in the economic field to oversee regional and central economic growth in synergy and optimally in its implementation. Then regarding the problem of information, the state has to play a transparent and responsive role in conveying information related to the pandemic because of the emergence of hoaxes and disinformation between the central and regional levels.

Legal optimization through emergency constitutional law needs to be made, especially considering this pandemic can impact the world economic recession. To address this situation, the law must be present in this case, covering aspects of handling the eradication of the spread of the COVID-19 pandemic, aspects of handling health, aspects of disseminating information, and economic aspects. Policies must be executed in a sustainable manner and with the support of all stakeholders, including the community. If all components of law formulation, implementation, and enforcement can function properly during a pandemic, then the law can function as it should. So that Indonesia as a legal state can run optimally, protecting and providing public welfare.

IV. CONCLUSION

In a critical situation and stipulating a state of emergency, the actual application of emergency constitutional law is a progressive and responsive step for the state in dealing with the COVID-19 pandemic. This is based on guaranteeing and achieving the ideals of the rule of law, namely guaranteeing protection and presenting the welfare of the community as the highest law in the presence of the state. In addition to the application of emergency constitutional law, legal aspects must be enforced, in this case, the aspect of law formation. Applying law and law enforcement in a pandemic situation can run optimally, and all elements, including the community, take part in helping to cut the chain of the spread of the COVID-19 pandemic by looking at aspects of health, economy, and welfare.

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