

LAW MAKING DURING THE STATE OF EMERGENCY FROM THE PERSPECTIVE OF INDONESIAN CONSTITUTION

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ABSTRACT

Legislation during the state of emergency in Indonesia is mainly handled by the President. While the legislature does still hold power to oversee the implementation of a state of emergency, its law-making power wanes along with the rise of the President's role during a state of emergency. All of those are due to the distinct governmental system of Indonesia. This article discusses how the Indonesian Constitution of 1945 regulates state of emergency, what the role of the President (i.e. executive) and the House of Representatives (i.e. legislature) in state of emergency, and how the two branches of government will play its role during a state of emergency. This article finds that the Indonesian Constitution of 1945 was not clear in regulating war or state of emergency when the country is in danger. Generally, any bill to become law shall have President's approval besides from the legislature. However, when the state of emergency, the President is dominant in legislating the emergency. The dominance was reaffirmed by no-need- approval legislation of Peraturan Pemerintah Pengganti Undang-Undang known as PERPPU (The Government Regulation in Lieu of Law) which its issuance is to the President. Lastly, the oversight power should be more effective and implemented through the approval process for war and the ratification for PERPPU.

Keywords: State Of Emergency, Indonesian Constitution, Legislation.

INTRODUCTION

Since its independence in 1945, Indonesia has never legally declared itself at war. However, in Indonesian historical record, Indonesia did involved in war with other country. The war was a war against Dutch colonial rule in 1949 who want to remain in power to rule independent country of Indonesia. The war was referred to as the First and Second Dutch Military Aggression to Indonesia. At that time, Indonesia was in war to defend its sovereignty and independence against foreign force. The war was invoked without formally complying to the constitutional rule. Constitution of Indonesia requires that declaring war, lies on the President, shall obtain approval from the House of Representative (i.e. legislature). Such approval has never historically been obtained prior the war against Dutch colonial rule. Therefore, in fact Indonesia has involved in a war, but never in legal sense.

On the other hand, Indonesia has declared itself in the state of emergency. Within Indonesian law on state of emergency there are known two basic concepts on that matter which are *staatsnoodrecht* and *noodstaatrecht*. Some Indonesian constitutional law scholars argue the difference between the two concepts. The former is an old-fashioned concept giving the country justification and right to defend itself whenever its existence is in danger or emergency. *Staatsnoodrecht* may be translated to the emergency right of a country. The

country defends themselves by intentionally derogating and superseding laws and regulations and even against its constitution. The sole objective is defending the country's existence. Therefore, anything can be used and justified as long as the conduct is to defend the existence of the country.¹

Current development shows that *staatsnoodrecht* is being replaced by *noodstaatsrecht* which may be deemed as constitutional law in the state of emergency. Hence, what in danger is not the country, but the law itself. Under the concept of *noodstaatsrecht*, the emergency should not derogate or against principles to be applied during a state of emergency. Two of many principles are the principle of oversight by elected representatives and the principle of legality.² Although threat during an emergency is imminent and needs to be managed in the matters of second, the executive is absolutely required to have authorization from the people through their elected representative. The authorization serves as popular support for legitimate legality of state of emergency.

This article discusses how the Indonesian Constitution of 1945 regulates war and state of emergency, what the role of the President (i.e. executive) and the House of Representatives (i.e. legislature) in state of emergency, and how the two branch of government will play its role during state of emergency (Kusnardi et al., 1994).

HOW DOES INDONESIA'S CONSTITUTIONAL LAW ON STATE OF EMERGENCY LOOK LIKE?

Unclear Constitutional Provision on State of Emergency

Indonesia historically have had many laws which implements the constitutional provision on emergency conditions.³ The most apparent provision on war in Indonesian Constitution is a requirement to obtain the House of Representatives's approval prior the President declares war. The rest provision is unclear due to the constitution only contain the word of "state of emergency." The conditions or other related matter to that were not contained in the constitution.

There are two main provisions that regulate such matters which are under "state of emergency" provision, provided on Article 12,⁴ and "exigence compel" provision, provided on Article 22.^{5,6} Most Indonesian scholars agree that an emergency condition is a higher degree in terms of its severability and danger than an exigence compel.⁷ Therefore, Article 12 is the most relevant provision to regulate war or armed conflict.⁸

Besides, Article 22 is merely meant to be used in legal or administrative stagnancies rather than war or armed conflict. In discussing legislation during emergency in Indonesia, it could not be denied that the center of the discussion would be around Government Regulation in Lieu of Law (i.e. *Peraturan Pemerintah Pengganti Undang-Undang*, abbreviated in Indonesian language as PERPPU). PERPPU is law and may be duly and legally bound as the law or act of parliament immediately upon the issuance by the President. Pursuant to the President's prerogative consideration, she/he may issue PERPPU whenever the situation of compelling conditions seems to have happened and she/he is already satisfied with arising facts.⁹

Historically, by its name, the PERPPU derived from Dutch terminology of *noodverordening* or *noodwet* (i.e. emergency law).¹⁰ That terminology is the law-making authority of the Governor-General of the Dutch East Indies Government during colonial rule in Indonesia. At that time, the Governor-General is entitled to make law during normal and emergency situations. When the emergency other than war or armed conflict arises, the Governor-General may issue regulations which are referred to as *noodverordening* or

noodwet.¹¹ Looking at its guidance shows us why the PERPPU is more meant to solve non-war and unarmed conflict. The guidance on employing PERPPU was made by Indonesia's Constitutional Court, a single authorized body to interpret the constitution, which has granted interpretation on what exigencies compel means in the 2009-decision.¹² The guidance of issuing PERPPU, however, has been made and unanimously agreed by numerous court decisions as stare decisis and established precedent of Indonesia constitutional law. PERPPU may only be made if the President satisfies that;

- a. here is a problem requiring to be solved merely by law (not other type of law and regulation);
- b. there is legal vacuum to solves the problem or regardless the law relating the problem has already be made, it is not enough to cure the problem; and
- c. The problem needs to be addressed as immediately as possible which the procedure of regular law making would certainly not entertain the said needs.

PERPPU is meant to be temporarily in force until it obtains approval from the House of Representative. Once the PERPPU has been issued, it shall be in force for a period of time until the House at a meeting to give approval or rejection to the PERPPU. The temporary character will end upon the rejection or approval from the House. If the PERPPU was rejected, it will immediately cease to effect. In contrast, when the Perppu is approved by the House, it becomes the law (act of parliament or act of congress) and has effect continuously until its amendment or repeal.¹³ The approval seems likely to be similar to the ratification process in which the existing law is being ratified to extend its legal force.

From the view of its conditions set out in the Constitutional Court decision and the immediate effect upon its issuance, the PERPPU is by now the only legal instrument of Indonesia law to regulate in the event of state of emergency.¹⁴ Dates back to prior 1959, during Constitution of 1950 to be exact, beside the PERPPU be also known a Emergency Law (*i.e.* Undang- Undang Darurat), a law issued by the President whenever an emergency arises.¹⁵ Because its enactment must always relate to the exigencies compel, statistically, starting in 1998, only 37 PERPPU have been made ever since, while more than 200 laws have been enacted.¹⁶ It shows us how rare the PERPPU was made in regards to the special situation or exigencies compel.

TYPE OF STATE OF EMERGENCY: AN OUTDATED PROVISION

As Article 12 only shows us who has the power to declare a state of emergency, there is an outdated Law 2317 further regulating the type of state of emergency and how it works. Article 12 is further regulated by Government Regulation in Lieu of Law Number 23 of 1959 (Law 23) 18, a law from which we could know what a state of emergency means. Under Law 23, state of emergency is divided into three types, namely, War Emergency, Militarily Emergency, and Civil Emergency.

To easily understand this part, we provide a table demonstrating the type of state of emergencies (Table 1).

Table 1 TYPE OF STATE OF EMERGENCIES			
Types (ranked from the lowest)	Administrator	Determined by	Obligation
Civil emergency	Head of local government	The President	Adhere and follow any command, policy, or
Military emergency	Local army, or navy and air	The President	lead

	force		made or issued
War emergency	Commander of armed forces	The President	By the President

There are conditions to be met whenever the President wants to declare such an emergency. The President may determine civil or military emergency in entirety or in part of Indonesia. First, whenever the security or order in entirety or in part of Indonesia was threatened by uprising, riot, or natural disaster resulting in a fear that the situation is not able to be solved by ordinary measures or procedures. Secondly, there is a war or a threat of war or any threat that endangers territorial unity by any means. Lastly, the life of the country is in danger or there is a special situation indicating a threat to the life of the country. All four conditions are very general which may lead to the subjective decision from the President. None of any laws guides or further regulates those conditions resulting in clear distinction among them (Nuh, 2011).

The governance and administration of emergency shall be carried out under the President's lead. Constitutionally and by law, the President holds the primary power¹⁹ which any lead, policy, and command from him/her must be followed and may not be challenged in any court.²⁰ The power and authority in governing or administering the emergency is direct, centralized, and hierarchical. The administrator of emergency, which will be explained after this paragraph, is required to adhere and follow any command, lead, or policy set by the President of a hierarchically higher administration.²¹

Even though the President is the one who is responsible for the emergency administration, it is mandatory to have a board which is tasked to assist the President in administering the emergency. The membership composition of the board seems to be too militarized due to most of its members coming from police and military. Members of the board consist of the Senior Minister, Minister of Defense, Minister of Home Affairs, Minister of Foreign Affairs, Chief of Naval, Army, and Air Force, and Chief of Police. The membership may be added by the President subject to the necessity from time to time. The task of the board is not regulated further but provision merely states that the board shall 'help and assist' the President to administer governance of emergency.²²

For civil emergencies, the head of local government takes the most role in controlling and governing the emergency. Despite having the regular or normal power, whenever civil emergency takes place, the head of local government may be conferred special and additional power by the President subject to the condition which may arise. Similar to the central composition, in administering civil emergencies, the head of local government may be assisted by a board consisting chief of local military, of local police, and supervisor or chief of local attorney.²³

Furthermore, military emergencies would mainly be handled by the military, especially the army. Distinctively governed, the army, or in some cases naval and air force may step in, is the primary force in governing the military emergency. In this situation (Ferejohn & Pasquino, 2004), the military may also be assisted by a board consisting of the head of local government, chief of local police, and chief of local attorney.²⁴

Lastly, whenever in the most threatening situation which is a war, the situation shall be led by the highest rank of the army, or in some cases naval or air force may step in. The army may also be assisted by a board consisting of the head of local government, chief of local police, and chief of local attorney. It is worth knowing that there is an approval requirement from the House of Representative whenever the President decides to declare war. Such a requirement is regulated under Article 11 paragraph (2) of 1945 Constitution. The article thereof also says nothing other than the formality of obtaining approval prior to declaring a

war. Notwithstanding, formality of obtaining approval is politically vital to legitimize and show popular support from the people.²⁵

Power to Legislate During State Of Emergency

The power to legislate can be divided into two main characters. Law 23 regulates any provision which is apparently already provided by Law 23 itself. That can be referred to as apparent provision. While the remaining power is gray in terms of absence of clarity due to the provision may be made subject to the necessity from time to time. The latter can be referred to as the remaining provision. The apparent provision has strictly provided what can or cannot do within an emergency. To illustrate the apparent provision, Law 23 gives power to the administrator to limit public mobility, confiscate private properties, doing tapping or surveillance, prohibit publishing and press, and prohibit telecommunication and public assembly.²⁶

The remaining provision proves that the power to legislate does mainly lie on the President and/or administrator. The remaining provision gives wide and ambiguous guidance on what that can and cannot be regulated. The only requirement of making a remain provision is that the provision shall meet and fulfill the public order and public security, a requirement that again makes a question mark. Conversely, the remain provision reaffirms that the Indonesian legislature has little power to regulate during a state of emergency because, indirectly through Law 23, the legislature has already delegated its power to legislate to the administrator and the President. The President or the administrator enjoys huge power to make legislation resulting from the absence of specific guidelines or measures to be implemented.

Long-surviving practice of Indonesian law shows that emergency measures or regulation is set to be a standing law model and legislative model.²⁷ Standing law model means there is an existing law which has been enacted before the emergency occurs. Therefore, the said law is already in force but would not be implemented until the emergency happens. Whenever the emergency arises, consequently the President will make a decree employing and making the said law into operation. Hence the law is in force but not in operation.²⁸ The standing law model is considerably similar to the legislative model which argues that the model is the legislature that makes ordinary legislation that delegates power or special power to the executive. The rest of the power of the legislature after delegating such power is to monitor and oversee the policy of the executive in implementing the legislation of the emergency (Isra, 2019).²⁹

HOW DO LEGISLATURE PLAY ITS ROLE DURING STATE OF EMERGENCY? HOW IMPORTANT IS IT?

Distinct System of Government and Legislation

Because the legislature has already delegated its power to legislate during the state of emergency, the remaining legislature's power to be carried out is oversight. Before going further, the authors would like to put some context on the Indonesian constitutional system in terms of the structure of its legislature, the presidency, and power relations between both.

Indonesia's legislature system does not follow strict separation of power or parliamentary system (Attamimi, 1990), but rather it makes its own system³⁰ in which law-making power is carried out jointly by the House of Representatives and the President.³¹ Legislature has three main powers which are law-making, oversight, and budgeting power.

Bicameral-Indonesia's legislature consists of the House of Representative, representing popular citizens, and Regional Representative Council, representing every province. Due to its formality, the Regional Representative Council is not entitled to give approval to legislation, rather, any legislation is merely required to acquire joint approval from the House of Representatives and the President. Hence, the President is detrimental and prerequisite to passing any legislation, so equally does the House of Representatives.

Legislation means law and regulation. Law means primary legislation and a written law made and approved jointly by the House of Representatives and the President (*i.e.*, '*undang-undang*' in Indonesian language). That definition precludes regulation (*i.e.*, secondary legislation) made by the President. This definition is fundamental because Indonesia's President has the power to issue several types of regulation implementing or further regulating legislation. Statistically and theoretically, regulation outnumbered the legislation and tends to proliferate in recent years.

Lastly, the executive power lying in the President has a wide meaning in terms of what kind of power might come from that. It is considerably unanimously agreed by Indonesian scholars that executive power under Indonesia's constitution means not only a power to administer or govern, but also a power to regulate (*i.e.*, in Dutch, *regeling*). From that meaning, in Indonesia we can find two types of regulation made by the President, which are Government Regulation (*Peraturan Pemerintah*) and Presidential Regulation (*Peraturan Presiden*). Two of them are basically legal instruments for further prescribing or regulating the law. Moreover, for the Presidential Regulation, it is also common for the President to issue it if any legal problems or legal needs may arise.

Further, on distinction of legislation, the law in Indonesia theoretically is not designed and meant to cover and contain all content of law. Rather, it is intended to merely contain principal or general provisions which shall further prescribe or ascertain in regulation (*i.e.*, secondary legislation). Such a proposition is called content of material (*i.e.*, in Dutch, *het onderwerp*). To make law completely work as it should, it depends on the President to regulate or determine.³²

The House is still be Able to Oversee and Monitor the President

Although the House of Representatives (*i.e.* *the Indonesian legislature*) has already delegated its power to legislate during the emergency, the House does still hold power to oversee the President in terms of implementation of law. The power to legislate during the emergency is specified by and given under Law. It means the implementation of Law 23 falls in competence of the House to oversee it. The oversight power is carried out by holding consultative-routine parliamentary meetings between the President, being represented by ministers, relevant stakeholder, or high officers of any governmental body or board related to the issues in question, and commission, *ad hoc*, or special committee of the House. From the meeting, the House or representative will make recommendations or advice on the implementation of the issue. The meeting is deemed to be a public accountability from the executive in carrying out its power during the emergency. Regardless, the emergency does not preclude oversight from elected representatives, conversely, it is a principle of state of emergency and recognition of the presidential system's check and balance.³³

In spite of not explicitly and formally provided, the historical data support and reaffirm that the House may oversee the executive during an emergency. Based on the Elucidation of Indonesian Constitution of 1945, the enactment and issuance of the PERPPU shall be overseen by the House.³⁴ Beside having prerogative power in legislating and governing emergency (Andriyani, 2017), the President cannot repudiate or ignore the oversight from the

House³⁵ and should carefully listen to and consider the recommendation or any result from such oversight.³⁶ Hence, the legitimate power of the Indonesian legislature during emergency under current laws and regulation is oversight power toward the executive governance and administration.

INDONESIA'S EXPERIENCE ON STATE OF EMERGENCY

Separatism and Bombing Aceh Separatism

Separatism in Aceh is quintessential for this paper due to the management of it invoking emergency law or Law. Aceh is a historically unique and distinct province in Indonesia especially by its natural wealth of gas, oil, and other minerals and its deep Islamic culture in its society. Joint and integrating into the Republic of Indonesia make some Acehnese figures disappointed with the unfairness of natural wealth distribution between central government and Aceh government, the implementation of Islamic sharia, and proliferation of Javanese population migrated in Aceh where ethnic of Aceh is used to be the majority.³⁷

Many measures and peacekeeping efforts have been done, but the conflict survived, and the Indonesian government was determined to implement a tighter policy. In the beginning of the new millenia, the House of Representatives passed a law giving special autonomy status to the Aceh local government. The special autonomy means Aceh would receive the majority proportion of oil and gas revenue for a period of time.³⁸ Furthermore, in Aceh it also applies sharia law and its sharia court which only takes in force in Aceh and is governed by the Province of Aceh itself without interference from the central government.³⁹ Such law and court would not be found in the rest of Indonesia. That fact shows us that the legislature took immediate preventive measures in keeping peace and order during emergency.

Military Emergency and subsequently Civil Emergency were implemented in Aceh from 2003 to 2005. President Megawati took a pivotal decision to implement Military Emergency status in Aceh for six months starting in May 19th 2003 which later was extended two times until November 19th 2004. This marked the full military power in making peace and order in Aceh and in order to keep Aceh integration into the republic. The peace was reached after the signing of Memorandum of Understanding in 2005. The House of Representatives made immediate response in following up the MoU by adopting most of provision into the law. The law adopting the MoU is a law giving special autonomy to the Province of Aceh. Therefore, the House of Representatives shows us that they have played its role when the state of emergency happens.

Bali Bombing: A Recovery Measure

Two bombs were detonated in Bali on October 12th 2002 when Indonesia did not have a special law on terrorism. This is one of the horrific events involving the character of emergency. The explosions killed 202 lives of various nationalities in regard to a famous tourism site, Bali.⁴¹ The horrific bomb attracted international eyes and concerns due to the number of the fatalities. Unfortunately, Indonesia at that time did not have special law on terrorism to indict and make the suspect criminally liable for the bombing.

In response to the need of having law on terrorism, the President took over the role by promulgating PERPPU (or Government Regulation in Lieu of Law) Number 1 of 2002 on Crime of Terrorism in October 19th 2002. At the same time, the President also issued PERPPU Number 2 of 2002 which makes retroactive effect of PERPPU Number 1 to be

applied in the Bali bombing. Hence, within five months after the Bali bombing, the legislature was not keen to legislate the law, instead, the President did.

The law on terrorism shows that legal instrument of PERPPU is the easiest and fastest measure to be taken during emergency while the law-making process by legislature seems always to be taking longer times. The longer times means delay on managing crisis resulting miss the moment and may cost lives or even more lives.

Two events of Aceh's Military Emergency and Bali bombing affirm the main role of the President in legislating during emergency and the slightly silent role from the legislature of Indonesia. It should be noted that even though the legislation is primarily made by the President in the event of emergency, there is no rule prohibiting the legislature to make any law which may be necessary and needed to govern the emergency. But the former seems unlikely to happen because the President itself has already received huge and wide delegation of power to legislate the emergency and take any necessary policy to lead and govern the emergency.

Law Related to Domestic Unrest

Other than Law 23, there is a law closely related to emergency situations which is the Law on Management of Social Conflict.⁴⁰ It was enacted in 2012. The law is meant to be a regulation for preventing, managing, and making reparation of a social conflict in Indonesia.⁴¹ The definition of conflict is not necessarily a war or armed conflict. However, in terms of its severability, social conflict is intentionally differentiated from the Civil Emergency.⁴²

Social conflict status is not intended to replace the existing Civil Emergency, rather it compliments the latter. The status of social conflict may be made by the President or their head of administrative division in their respective area. If the prevention measure does not seem to work, status of social conflict may be invoked and implemented. Consequently, many measures would take place which have similarity when the emergency under Law 23 applies. The measures are limitation of entrance or even closure of the conflict area at all, home restriction, entrance or exit restriction from the conflict area, and/ or evacuation from conflict area.⁴³ This level of conflict does not replace the existing Civil Emergency status, rather it complements and becomes a prior situation right before Civil Emergency is declared. In managing the social conflict, the President is more dominant than the House of Representatives. It is similar to the Emergency measure under Law 23 that the House will only have the power to monitor or oversee and become a consultative body to the executive. Prior to declaring social conflict, the President is required to consult with the leadership of the House of Representatives, not the whole House of Representatives. The same is also required whenever the President seems to have to extend the period of the status of social conflict.⁴⁴ Furthermore, the President is also required to make a report to the House regarding the status of social conflict. The report seems to be a basis of accountability from the President to the House. Lastly, the House could carry out its duty to monitor the implementation of Law on Management of Social Conflict. Therefore, it once again reaffirms the standing law model and a huge delegation to the President on governing the conflict, alike condition to emergency in this specific sense.

CONCLUSION

In Indonesia's state of emergency, most of legislation are made or issued by the President instead of the legislature (i.e. House of Representatives). The President is dominant

in legislating emergency because Indonesia's distinct government system where any bill to become law shall have President's approval beside from the legislature. The concept of content material in legislation reaffirms that there are residual materials that must be regulated on legislation other than a law. Lastly, legal instrument of PERPPU is an once-for-all legislation whenever an exigence compel arises. An exigence compel is not as severe as a war or armed conflict.

END NOTES

¹Jimmy Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: Raja Grafindo Persada, 2007) p. 18-19.

²*Ibid.* p. 98 and 101.

³In Indonesia, law means a written law made and approved jointly by the House of Representatives and the President which is equal to an act of parliament or act of congress.

⁴Article 12 cites, "The President declares a state of emergency. The conditions for such a declaration and the subsequent measures regarding a state of emergency is regulated by law."

⁵The Article 12 and 22 are stipulated in Indonesian Constitution of 1945 which applies to date.

⁶Article 22 cites, "(1)In the event that exigencies compel, the President has the right to enact government regulations in lieu of laws. (2)The government regulations shall acquire the approval of the House of Representatives during its next session. (3) If there is no such approval, the government regulations must be repealed.

⁷Scholars agree that Article 12 is different to Article 22. The latter may be used during compelling situations other than war, armed conflict, or civil unrest. In contrast, the former should be used within war or civil unrest. This differentiation dates back to the power of Governor-General of Dutch East Indies before independence of Indonesia. See Bagir Manan and Susi Dwi Harijanti, "Peraturan Pemerintah Pengganti Undang-Undang dalam Perspektif Ajaran Konstitusi dan Prinsip Negara Hukum," *Padjadjaran Jurnal Ilmu Hukum*, Vol. 4, Number 2, (2017), p. 232-233.

⁸Nonetheless, Article 11 para (1) also requires the President to obtain approval from the House of Representative in proclaiming war.

⁹Wirjono Prodjodikoro, *Asas Hukum Tata Negara Indonesia*, (Jakarta: Dian Rakyat, 1974), p. 23.

¹⁰Elucidation of Indonesian Constitution of 1945, Article 12.

¹¹The Dutch-Colonial Government of the East Indies has significant influence on Indonesian constitutional law, of which PERPPU is one of them. See also Ph. Kleintjes, *Staatsinstelling van de Nederlandse indie*, (Amsterdam: J.H. de Bussy, 1927-1929), p. 301.

¹²In 2009, made upon constitutional claim, the Constitutional Court of Indonesia interprets what exigencies compel which are considered as established law. This guidance has been recited many times in many of its decisions. See Constitutional Court of the Republic of Indonesia, Decision Number 138/PUU-VII/2009, p. 19-20.

¹³The approval from the House shall be obtained as soon as possible at the time being. This was meant to be a check and balance system under division of power in the presidential government. See Janpatar Simamora, "Multitafsir Pengertian Ihwal Kegotongan yang Memaksa Dalam Penerbitan PERPPU," *Jurnal Mimbar Hukum* Vol. 22, No. 1, (2010), p. 67.

¹⁴*Undang-Undang Darurat* or emergency law existed during Indonesian Constitution of 1950 right after Indonesia dissolved the federated Indonesia and changed to a unitary state of Indonesia.

¹⁵This is counted from the website of the Cabinet Secretary and House of Representative of the Republic of Indonesia.

¹⁶Law 23 hereinafter referred to Government Regulation in Lieu of Law Number 23 of 1959 on State of Emergency.

¹⁷Law 23 itself is made under a clause of exigences compelling in the Indonesian Constitution of 1945. Law 23 was made during the political turmoil periode of late 1950s after first-ever elected representatives of the independent country of Indonesia failed to draft and enact a new constitution. Consequently, Indonesia revived and re-enacted its original Constitution of 1945 which changed the constitutional structure of Indonesia from parliamentary democracy to presidential democracy. The said reenactment condition is considered by the then President of Indonesia, Soekarno, as compelling interest to enact Government in Lieu of Law as emergency legislation. See Consideration of Law 23.

¹⁸In the view of militaristic governance of emergency, this is not in opposition to the fact that the President is the commander-in-chief and holding the power to declare emergency other than war without any approval. See Article 10 and Article 11 paragraph (2) of Indonesian Constitution of 1945.

¹⁹The decree of determining emergency is an administrative decree. Under Indonesian law, any administrative decree, decree from governmental officials, including the President, is subject to the laws and regulations which the affected party may file a petition in administrative court seeking a decision to the said decree of being null and void because either against rule of law or in contravention with laws or regulations. *See* Law Number 6 of 1985 on Administrative Court, Article 49.

²⁰Article 7 of Law 23.

²¹Article 3 of Law 23.

²²Article 4 of Law 23.

²³Article 5 of Law 23.

²⁴John Ferejohn and Pasquale Pasquino, "The law of exception: A typology of emergency powers," *International Journal of Constitutional Law*, Volume 2, Issue 2 (April 2004), P. 221.

²⁵Article 11, 13, 14, 16, 17, and 18 of Law 23.

²⁶S. Prajudi Atmosudirjo, *Hukum Administrasi Negara, Cet. Ke-10*, (Jakarta: Ghalia Indonesia, 1994), hlm. 95.

²⁷*Ibid.*

²⁸The division of authority of three branches of government mirrored the customary law system (*hukum adat*) in village administration which has been implemented for centuries. The idea is the head of the village will be the head of administration and head of legislature (*rapat desa*). *See* Soetardjo Kartohadikoesoemo, *Desa*, Cet. 1, (Jakarta: PN Balai Pustaka, 1984), hlm. 208 dan 225-226.

²⁹Saldi Isra, *Sistem Pemerintahan Indonesia Pergulatan Sistem Ketatanegaraan Menuju Sistem Pemerintahan Presidensial*, Ed. Ke-1, Cet. Ke-1, (Depok: Rajawali Pers, 2019), hlm. 257-258.

³⁰A. Hamid S. Attamimi, "Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara : Suatu Studi Analisis Mengenai Keputusan Presiden yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I – Pelita IV," (Dissertation of University Indonesia, Jakarta, 1990), p. 194.

³¹M. Syarif Nuh, "Hakekat Keadaan Darurat Negara (State Of Emergency) sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Hukum* Number 2, Vol. 18 (April 2011), p. 243-245.

³²Elucidation of Indonesian Constitution of 1945, Elucidation of Article 22. The elucidation, desping before amendment is not considered as an official document, still have a significant role in interpreting or understanding the intent of founding persons of Indonesia when they made the Constitution.

³³Moh. Kusnardi dan Bintan R. Saragih, *Susunan Pembagian Kekuasaan Menurut Sistem Undang-Undang Dasar 1945* (Jakarta: PT Gramedia, 1978), hlm. 75.

³⁴Joeniarto, *Demokrasi dan Sistem Pemerintahan Negara*, Cet. Ke-3, (Jakarta: PT Rineka Cipta, 1990), hlm. 114.

³⁵Santi Andriyani, "Gerakan Aceh Merdeka (GAM), Tranformasi Politik dari Gerakan Bersenjata Menjadi Partai Politik Lokal," *Jurnal ISIP* (January 2017), p. 14.

³⁶Article 4 of Law Number 18 of 2001 on Special Autonomy for Aceh Province.

³⁷Article 25 and 26.

³⁸National Museum of Australia, "Bali bombing," <https://www.nma.gov.au/defining-moments/resources/bali-bombings#:~:text=The%20explosions%20killed%20202%20people,to%20an%20act%20of%20terror,> accessed in May 21, 2023.

³⁹Law Number 7 of 2012 on Management of Social Conflict, hereinafter referred to as Law 7

⁴⁰Article 4 of Law Number 7 of 2012 on Management of Social Conflict.

⁴¹The level of severability of social conflict is below the Civil Emergency. Hence, social conflict is not as dangerous as the Civil Emergency. Between social conflict and Civil Emergency is considerably related because before entering the later, the former would probably be determined in a view of the degree of its severability.

⁴²Article 28 of Law 7.

⁴³*Ibid.* Article 20 and 29 of Law 7.

⁴⁴*Ibid.* Article 21 of Law 7.

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