

The Role Of Constitutional Law In The Era Of The Covid-19 Pandemic In Indonesia

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Abstract

The outbreak of the Covid-19 virus, which is spreading very quickly in various parts of the world, has a bad impact on several different sectors that can harm the country if the country does not take quick and right decisions. This encourages governments of countries in the world to create new regulations so that they are able to ensure the safety of their citizens and also sectors affected by the Covid-19 pandemic can recover. Policy issuance is certainly closely related to constitutional law and laws. Constitutional law is a regulation of the required state institutions and their authorities, internal relations between state institutions, and the relationship between state institutions and citizens. The purpose of this study was to determine the role of constitutional law in handling cases of Covid-19 that hit Indonesia and its implementation. The method used in this study is the literature review method or literature review which searches the literature for research purposes. The results of this study indicate that the role of constitutional law in handling Covid-19 cases in Indonesia can be seen through the making of simple laws and regulations rather than having to change the legal status of the national constitution . . The application of constitutional law in handling Covid-19 cases in Indonesia can be observed from existing policies, namely through the issuance of simple laws such as PP, Presidential Decree, and others.

Keywords: Constitutional law, constitution, laws, Covid-19 pandemic, Indonesia

Introduction

Indonesia has been hit by the Covid-19 pandemic for about 2 years. The virus which was first detected in a city in China, namely Wuhan, has been quite a hassle for the Indonesian government. Starting from economic problems, handling the spread of coronavirus such as PSBB (Large-Scale Social Restrictions), the mutation of the Covid-19 virus, and other problems that have colored the journey of the Covid-19 pandemic in Indonesia. With the pandemic, it is certain that the laws in Indonesia have changed a lot according to the current situation. Legal adjustments are not new to Indonesia. In fact, at the beginning of the new presidential term, regulations are always changed. However, this change or can also be said as

a legal reform is not a simple thing (Aedi, Lazuardi, & Putri, 2020). This legal reform is called legal reform. Legal reform covers broad points including substance, structure, and legal culture, and includes laws and regulations (Arif, 2007). In legal reform, it does not necessarily absorb laws originating from foreign countries which are considered modern, nor does it put too much emphasis on original domestic law, but both must be in harmony in establishing laws (Rasyidi & Sidharta, 1994).

The determination of the above legal reforms is carried out by legal entities that operate according to their respective functions, these legal entities are determined by the rules that regulate all of this which is called constitutional law. Constitutional law is a law that regulates several things such as: (1) the noble values of the community groups of a country, (2) the institutional arrangements of state organizations, (3) the mechanism for relations between state institutions, and (4) the mechanism for the relationship between state institutions with citizens (Asshiddiqie, Pokok-pokok Hukum Tata Negara Indonesia Pasca Reformasi, 2007). In his book, Jimly Asshiddiqie mentions several opinions of experts related to constitutional law. Among them, according to Paul Scholten, constitutional law is a regulation regarding state organizations. According to Van der Pot, constitutional law is a collection of regulations that determine the institutions needed by the state and their respective authorities, the relationship between institutions, and also the relationship between state institutions and individual citizens of a state (Asshiddiqie, Pokok-pokok Hukum Tata Negara Indonesia Pasca Reformasi, 2007). From the explanations of the experts above, it can be said that constitutional law is a field of legal science that discusses the structure of the state, such as the mechanism of the state structure, the mechanism of relations between state structures, and the mechanism of state administration. relationship between the structure of the state and citizens. (Sitabuana, 2020). Indonesian constitutional law originally originated from customary law, namely during the Dutch colonial era. Then, the Japanese state entered Indonesia to colonize, then the constitutional law of the Dutch East Indies changed to Japanese constitutional law. Until finally when Indonesia became independent on August 17, 1945, Indonesia was able to apply its own constitutional law. Indonesian constitutional law has 2 objects to be studied, which are known as primary law and secondary law/organic law . What is meant by primary law is the 1945 Constitution in Indonesia. Meanwhile, what is meant by secondary law is a law formed in accordance with the state constitution, namely the 1945 Constitution to explain the meaning and application of the constitution (Sitabuana, 2020). According to Sudardi, constitutional law has two functions in the formation of law. Namely as the legal basis for the formation of the organizational structure and working relations of institutions within the Unitary State of the Republic of Indonesia, and as the legal basis for the formation of the national legal system of the Indonesian state . (Sudardi). The sources of Indonesian constitutional law are described in the following table:

No.	Source of law	Description
1	Material law	According to (Manan, 2006), Indonesia's material law sources are:

		<p>a. Sources of law that form the basis of the state</p> <p>b. Political power that has a big influence on the formulation of constitutional law rules.</p> <p>According to Sudardi, the source of Indonesia's material law comes from Pancasila, so that everything related to the laws and regulations in Indonesia must be related and based on Pancasila and must not conflict with Pancasila. According to A. Hamid, Pancasila is a legal ideal: it functions as a guide in the formation of law and in determining the content of the law. Pancasila is also the highest norm as stated in the preamble of the 1945 Constitution (Moerdiono, 1996).</p>
2	Formal Law	<p>The sources of formal law in Indonesia are:</p> <ol style="list-style-type: none"> 1. 1945 Constitution 2. Tap MPR RI 3. UU (Law)/Perppu (Government Regulation in Lieu of Law) 4. PP (Government Regulation) 5. Presidential Regulation (Perpres) 6. Provincial Regulations (Regional Regulations) 7. District/city regulations
3	Constitutional Conventions/Customs	<p>Conventions are habits of constitutional life which in the end become a reference and applicable legal provisions as is the case in the presidential speech made by the Head of State on August 16 every year during the plenary meeting of the DPR and as an introduction to the discussion of the State Budget (State Revenue and Expenditure Budget).(Manan, 2006)</p>
4	Treaty/Agreement	<p>Basically, it is a treaty that is agreed upon by two countries and also falls under international law. A treaty can be</p>

		categorized as a source of formal law if it regulates constitutional law in each country.
5	Doctrine	In this case, doctrine is the opinion of legal experts that can influence judges in making decisions.
6	Jurisprudence	Decisions or decisions in court that occur and are repeated in similar cases (Sitabuana, 2020).

At the end of 2019, the Covid-19 virus appeared in Wuhan, China, with a very gruesome description that shocked the entire world. This virus first emerged allegedly from a woman who worked at a market in the city of Wuhan, China (Utomo, 2021). Since then, the virus has spread throughout China and then also outside China, until finally the World Health Organization or better known as the World Health Organization (WHO) has made this Covid-19 case a public health emergency of international concern (PHEIC). . (Geneva, 2020). The spread of this virus is increasingly widespread until it finally reaches the country of Indonesia. The Covid-19 problem is a crisis that is felt by almost people all over the world, which affects almost all economic, social, legal, and even sports activities.

The Covid-19 virus itself was initially recorded to be present in the country of Indonesia, namely on March 2, 2020 which was the trigger for various new regulations that were made so that both the government and the public could be protected from the threat of this virus originating from China (Sabilla, 2022). In less than a month, on March 25, 2020, there have been 790 cases of Indonesian people who have been confirmed positive for Covid-19 spread across 24 provinces in Indonesia (RI D. J., 2020). The spread of the Covid-19 virus which is increasingly widespread and rapidly spreading to all corners of the world has led to the decision of Covid-19 as a global pandemic. Below is a graph of the development of the spread of the Covid-19 virus in Indonesia.



Ministry of Health of the Republic of Indonesia, "The Situation of the Development of Covid-19 in Indonesia April 15, 2020", <https://covid19.kemkes.go.id/>,

Indonesia needs at least one month after the first case of Covid-19 was announced, namely in the form of Presidential Decree (Keppres) Number 11 of 2020 concerning the Determination of the Corona Virus Disease Public Health Emergency. Indonesia also applies its constitutional authority in accordance with Article 22 of the 1945 Constitution to issue Perppu (Government Regulation in Lieu of Law) Number 1 of 2020 concerning State Financial Policy and Financial System Stability. Then, approximately one month later from the issuance of the Perppu, Presidential Decree No. 12 of 2020 was issued regarding the Determination of Non-Natural Disasters for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster (Prasetio, 2021).

The various determinations of the state of emergency above are influenced by the various types of emergencies that exist in Indonesia's positive law. This study aims to determine the role of constitutional law in dealing with the problems of the Covid-19 virus pandemic that hit Indonesia and examples of its application in social and state life through the following two problem formulations: (1) how is the policy for handling the Covid-19 outbreak in Indonesia when viewed from the perspective of constitutional law, and (2) how to apply constitutional law in dealing with the Covid-19 outbreak in Indonesia.

Research methods

Legal research is essentially looking for solutions to legal problems that arise in society and obtaining a complete understanding and explanation of the problems that arise and what needs to be done to resolve them (Marzuki, 2010). This research is descriptive qualitative. Qualitative and descriptive research is a way of investigating and understanding the implications of a social or humanitarian problem for many individuals or groups. (Cresswell, 2010). This research uses the method of literature review. Research that uses the literature review method is research conducted by finding sources of information about theories related to the problems found . (R.A. Nugroho, 2017). Study Literature is a research method that is carried out by looking for reliable bibliographic references and data from previous research articles on the topic being discussed, in accordance with the current research . (Noviardila, 2021; Bawono, 2017) . In this research , the writer uses the types of data collected through library research and analyzes the data obtained by using descriptive analysis method . Descriptive analysis is a method of data analysis that can be done by presenting explanations related to the facts found from the previous strong and credible literature and analyzing these data . (Puspasari, 2021; Halwiah, 2021) .

Results and Discussion

In an Indonesian constitution, a state of emergency can be identified through the terms “a state of danger” and “a compelling urgency”, both of which are enshrined in Article 12 of the 1945 Constitution and Article 22 of the 1945 Constitution. The stipulation of a state of emergency is also contained in the law at the level of the law. For example, in Law Number 23 of 1959 concerning Dangerous Conditions which uses the terms military emergency, war emergency, civil emergency, there is also Law Number 24 of 2007 concerning disaster emergencies, another is in Law Number 7 of 2012 concerning conditions of social conflict and handling,

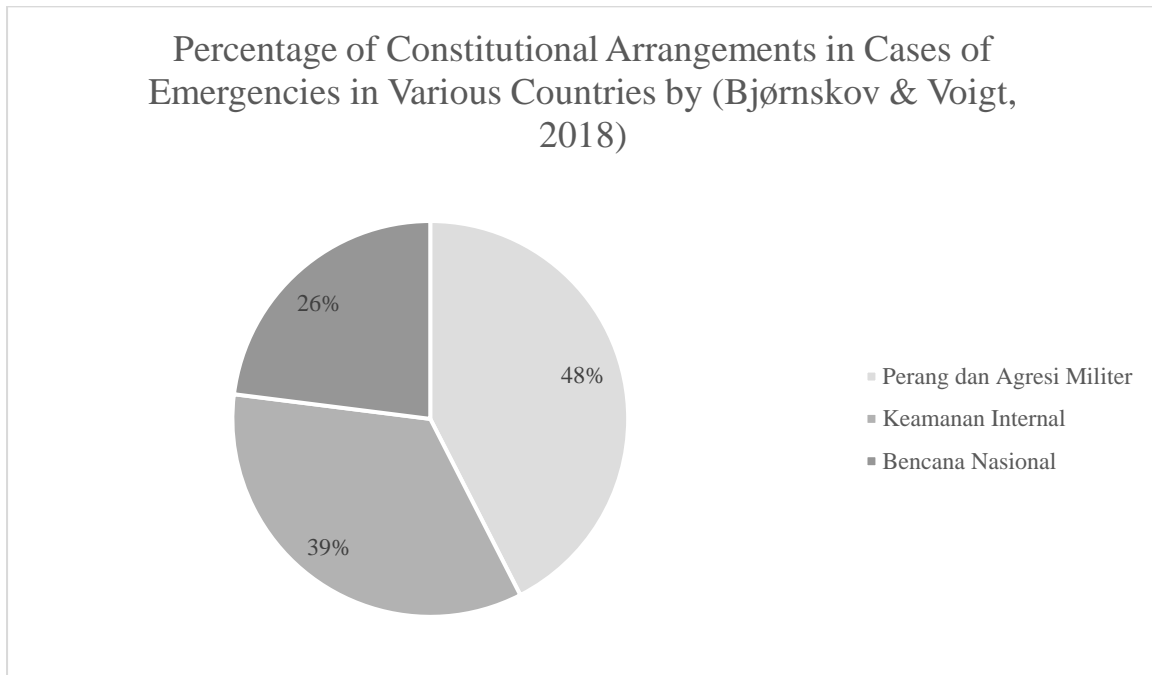
Law Number 9 of 2016 concerning financial crises and their prevention and handling, and Law Number 6 of 2018 concerning health emergencies and health quarantine

If viewed from the point of view of emergency constitutional law, if a country declares a state of emergency, then it has consequences, namely it is permissible for the government to apply some forms of deviation listed in the country, such as some legal deviations and human rights (Asshiddiqie, *Hukum Tata Negara Darurat*, 2007). Thus, it can be said that the Covid-19 outbreak is included in a state of emergency in which the government has the authority to ignore the legal principles that apply in Indonesia. What the government has to pay attention to is to maintain a stable condition so that the initial plan to deal with the crisis does not turn into an act of justification of power which will also result in the emergence of unrest in the community and the occurrence of abuse of power (Ginsburg & Versteeg, 2020). M. Yamin explained that what is meant by a state of emergency or a state of danger is as stated in Article 12 of the 1945 Constitution, namely in foreign terms a situation known as martial law or *staat van beleg* (Arsil, 2018). If viewed from the perspective of the original intent described by M. Yamin, Article 12 is an article that gives authority for legal deviations in emergency conditions carried out in accordance with constitutional law, this authority is only given to the head of state or the president (Asshiddiqie, *Hukum Tata Negara Darurat*, 2007).

According to data from the International Institute for Democracy and Election Assistance (IDEA), almost 61% of countries in the world that handle Covid-19 are in direct contact with human rights and democracy (Ardiyanto, 2020). Those concerns are also included in Indonesia. Reflecting on the previous emergency situations in Indonesia, many ambiguous cases were found. Some of the data below will explore and evaluate the role of constitutional law in accelerating the handling of the Covid-19 pandemic and its application in Indonesia.

Basically, legislators do not lack the knowledge to predict exactly what will happen in the future and whether the laws that are being drafted will be able to overcome the problems that will arise in the future. To prepare for this, a country usually prepares legal instruments that are able to handle emergency situations that will come in the future so that there is no panic among the government and society. Such legal preparations can be written either in constitutional law or in an equivalent ordinary law. According to (Ginsburg & Versteeg, 2020), there are three possible conditions to be applied by countries in the world in solving the problem of the Covid-19 pandemic, namely: (1) declaring a state of emergency that is written in constitutional law, (2) the use of new existing emergency laws relating to public health or national disaster, then finally (3) the ratification of the new law.

In the first condition, the explanation is as follows according to (Bjørnskov & Voigt, 2018).



However, this option is considered weak which will later be able to provide great power but is not accompanied by optimal supervision. This option is often used for abuse of power to pursue personal political interests (Ginsburg & Versteeg, 2020). This situation has similarities to what happened in Indonesia, namely Article 12 of the 1945 Constitution, where this article gives absolute authority to the state executive institution, namely the President to determine and also withdraw the state of danger in the country.

In contrast to the second condition, this condition begins with the idea that some human rights are not absolute. Human rights can be limited provided that they are carried out proportionally and do not violate the law, meaning that they are legally ratified (Ginsburg & Versteeg, 2020). Some countries do not specifically regulate health-related problems or crises and therefore do not need to declare a state of emergency under constitutional law. Extraordinary powers can be granted to the government through ordinary laws which are equivalent to the 1945 Constitution. Many modern countries do not stipulate a state of emergency in their constitution as an excerpt from (Pasquino, 2021).

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First, it may be that of emergency powers. It is plausible that elected officials are cautious in triggering the use of exceptional powers and, indeed, that caution is probably to be applauded. Perhaps, in view of the historical abuses of such powers... Second, it is possible because of the advance of state-controlled technology for dealing with disorder, that most emergencies can be successfully managed by the operation of the ordinary legal-constitutional system.”

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Ferejohn and Pasquino, “The Law of the Exception: A Typology of Emergency Powers”

The essence of the quote above is that by using the emergency provisions in the constitution it is possible to have emergency powers. It is a reasonable gesture that elected officials would be wary of instigating the use of extraordinary force and that attitude is commendable. Then, with the technological advances that are present today, it is possible for the government to deal with disorder by managing and operating the usual constitutional law, namely laws.

The third condition is closely related to the handling of Covid-19 cases in Indonesia. So, it is understandable that the Indonesian government prefers to apply ordinary laws as a form of handling the Covid-19 pandemic, including: Law Number 6 of 2018 and Law Number 4 of 2007 which have been quoted in the previous explanation. Indonesia also stipulates a public health emergency status through ordinary laws, namely Presidential Decree No. 11 of 2020 and also stipulates non-natural disaster emergency status through Presidential Decree No. 12 of 2020 (Prasetyo, 2021).

The government also implements several strategies which require full coordination and submission from the central government to local governments in order to build public trust in the government (Directorate General of Disease Prevention and Control of the Republic of Indonesia, 2020). These strategies include the application of the provisions of the Social Restriction procedure (social distancing) to always be 1-2 meters apart when in a crowd. Then, Indonesia raised the level of Social Restrictions to a higher level, namely PSBB (Large-Scale Social Restrictions) which aims to increase the effectiveness of handling the Covid-19 virus. In the work and office sector, the government also applies the rules of working from home, or the foreign term is work from home which is often shortened to WFH. So, we can see that the Covid-19 virus pandemic is spreading very quickly throughout Indonesia, which in the end will greatly affect almost all activities in the world (Martua Hasibuan & Ashari, 2020). Based on the directives of the WHO, one of the steps to prevent and protect the health of the Indonesian

people, both patients and doctors, is the existence of individual quarantine activities (Organization, 2005). This activity can be interpreted as limiting social activities by isolating people who are infected with the Covid-19 disease so that the virus does not spread more widely by placing victims in a hospital or special building whose contents are people who are infected with the Covid-19 virus.

As a form of implementation of legal arrangements related to the Covid-19 pandemic, it is important for a country to be able to establish health policy regulations and it is also hoped that the involvement of all elements of society in Indonesia is guaranteed to ensure protection and certainty by the state (Martua Hasibuan & Ashari, 2020). Regulation or public policy has the meaning of everything that is ordered or not ordered by the government (Dye, 1972). Public policies can be implemented through ordinary laws such as in the form of Laws, Government Regulations, Provincial Government Regulations, and Regency / City Government Regulations (Nugroho, 2003). In the context of implementing this public policy, there are several aspects that must be considered in order to create an optimal policy. Aspects that influence the successful implementation of a policy include the creation of good communication, sources, attitudes, behavior, as well as a clear and concised bureaucratic structure (George Edward III, 1980). Therefore, it is important for the government to always socialised the policy that their created to the public.

Besides that, the government can also utilise the state ideology of Pancasila, as a mechanism to ensure the effectiveness of policy to combat Covid-19. Because this ideology contained some values such as unity and diversity, that can be used to build public understanding about the importance of prioritizing public interests above individual interests during this pandemic.

Conclusion

Broadly speaking, it can be seen from the explanation above related to the role of constitutional law in handling the Covid-19 pandemic in Indonesia, as well as the implementation of constitutional law as an effort to handle the Covid-19 pandemic. Several policies made by the Indonesian government reflect careful consideration of Indonesia's constitutional law and its impact on the wider community. The Indonesian government is also aware of some of the debatable possibilities such as changing the legal status of the constitution which allows the state executive agency or the president to take some legal omissions as an emergency measure. Thus, the Indonesian government only implements the establishment of new policies, namely through ordinary laws where the government does not need to change the constitutional legal status of the Indonesian state. Several policies related to accelerating the handling of Covid-19 cases in Indonesia also follow world health institutions such as WHO so that Covid-19 cases in Indonesia do not have a too bad impact when compared to Covid-19 cases in other countries. Although some policies in Indonesia are slightly different from policies other countries, such as the emergence of social restrictions with varied terms and adapting to the spread of the Covid-19 virus.

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