

THE LEGAL IMPLICATIONS OF A STATE OF EMERGENCY FOR DEMOCRACY

Muhammad Rizal
Sapto Hermawan

ABSTRACT

State emergency theory today is becoming an important part of a rescue and the basis of policymaking for the nation and state. Implementatively, the theory of state emergency is pursued as a way of decision-making that has no previous legal basis. This article aims to find out three things, First, studying the point of link between the state emergency and democracy. Second, photograph and analyze examples of state emergency products in India, Pakistan, and Indonesia. And Third, formulating the implementation of the state emergency theory that is ideal, appropriate, and effective in its application so that the state emergency theory on the one hand can be the basis of decision-making in state emergencies and on the other hand, can still guarantee legal rights, humanity, even the development of democracy. This article is normative legal research, compiled with a History approach, a comparative approach, a statutory approach, and a conceptual approach. This article will narrow down on the determination that First, the Interpretation of the Theory of State Emergency becomes erroneous and has implications for democracy if the interpretation and limitations of state emergency theory are not legalistically clear in the laws and regulations, Second, Postulating on several comparisons of the application of state emergency theory in India, Pakistan, and Indonesia, it can be understood that the implementation of state emergency theory is practically currently confused and hinders the process of emergency theory. Democratize a country. and Third, ideally the implementation of the state of emergency law should ease on the principle of proportionality providing standards for the fairness of emergency legal products so that the criteria for determining The existence of the state of emergency became clearer. A written legal product is required that details the interpretation and limitations of emergencies in the country so that emergency law does not conflict with democratic principles.

Keywords: Legal Implications, State Of Emergency, Democracy.

INTRODUCTION

This article discusses the cross-section of interpretation and implementation of the state's emergency theory for democracy. This discussion is necessary because the theory of state emergency is factually in several examples at the level of implementation is very serious. On the one hand, it aims to cut the time in handling emergencies quickly and appropriately, but on the other hand violates several citizens' rights; such as civil rights, social rights, economic rights, political rights, to the contrary to the principles of democracy. This article specifically photographs the interpretation and implementation of state emergency theory in the product of state emergency law and looks at its implications for democracy. To review it, this article will use two methods to look at and measure the variety of models of interpretation and implementation of state emergency theory in the product of emergency law. Both methods used are theoretical analysis and comparison with other countries.

In practice, the state emergency theory is used under the pretext of saving the state of the country in a situation of danger. (Bjørnskov & Voigt, 2018) but the interpretation and implementation of unaccompanied emergencies will plunge the state into a state of authoritarianism, so it is very important to straighten out the understanding and implementation of the state emergency theory. Moreover, in the face of uncertain state situations and circumstances, extraordinary policies are needed with state emergency propositions to make appropriate and effective legal decisions in saving the nation and state.

Theoretically and legalistically, the authority to determine a state of emergency is derived from the power of the President. (Ni'matul Huda, 2001) The president has the right to determine the country in a state of emergency, such as civil emergency, martial law, or a state of war. (Ni'matul Huda, 2001) In practice in Indonesia, the state emergency theory is also the basis for the president in issuing presidential decrees in 1959 (Risdiarto, 2018) and Presidential Decrees in 2001 (Neysa Changnata, 2015). The state emergency theory is also interpreted to be the basis of a precarious state and forces the President to issue a Government Regulation instead of the Act (hereinafter abbreviated: PERPPU). Centralization of the interpretation of the state emergency theory focused on executive power, without a clear normative basis, will have the potential to give rise to the superiority of power, violations of citizens' rights, to authoritarianism within the state. The author takes several examples of state emergency products in Indonesia that become the lighter of authoritarianism, to violate the rights of citizens.

In this regard, it can be interpreted that the interpretation and implementation of the state emergency theory without a clear normative basis, will potentially violate the rights of citizens until the creation of authoritarianism. The example also reinforces the problem and cross-conflict of state emergency products, can be seen the potential for legal uncertainty related to the interpretation, substance to the binding power of state emergency products that factually greatly impact the suspension of citizens' rights to Democratization under the pretext of emergencies. That the problem of State Emergencies is very complex and will continue to potentially occur in several countries, especially Indonesia. The author's use of State Emergency Theory became the "heart" of the study. The state emergency theory will be a bright spot of direction and ideal posture of the country's emergency products. Therefore the function of theory is essentially so that the Practice does not deviate far from what it should be. (Zainal Arifin Mochtar, 2020).

Constitutionally, in Indonesia, there are 2 (two) articles that accommodate the state of emergency, namely the meeting in Article 22 which indicates that if the situation is more precarious and very forced and coercive, without waiting for the conditions specified in advance by and in law, and how the consequences that have not been awaited and determined in law, the President has the right to establish a Perppu while declaring a state of danger and emergency. (Ni'matul Huda, 2003) but furthermore, Suhariyanto explained that in addition to article 22, in Indonesia, the concept of a state of danger and emergency legalistically is also contained as a constitutional clause related to Emergency in Article 12 of the 1945 Constitution. (Suhariyanto, 2021) Article 12 of the 1945 Constitution states that: "The president declared the state of danger, the conditions and consequently the circumstances of the danger established by law." This clause gives the President the authority to establish the state of danger or state of emergency as head of state. (Suhariyanto, 2021)

The authors find that the provisions in the country's constitution have not been able to accommodate a clear and rigid interpretation of the state of emergency, the interpretation of the emergency also stems only in one branch of power, namely the executive, and this is contrary to the democratic values desired by the state. (Habermas, 2017) so that based on the presentation, this article will contribute to a thought that will clarify the interpretation and implementation of the ideal state emergency theory. Therefore, this article is divided into 5 sections; **First**, will discuss the background of state emergency products that have the potential to abuse power and trigger authoritarianism, the **second** will discuss the research methods used to answer the implications of state emergency law for democracy, third will photograph the variety of models of state emergency products such as in India, Pakistan, and Indonesia, and examine the legal implications of state emergencies for democracy to review the ideal concept of state emergency policy that is in harmony with the principles of democracy, and the last four/sections will present conclusions about the implementation of the right and ideal state emergency theory.

RESEARCH METHODS

This type of research in legal research includes normative legal research or doctrinal legal research (Soerjono Soekanto, 2006). Normative legal research will explain the characteristics of law in terms of conceptual structure, legal doctrine, legal theory, and the relationship between rules, principles, concepts, and values held to be interpreted implicitly (Cotterrell, 1983). The legal materials are then arranged systematically, analyzed, and drawn conclusions with the relationship of the problem studied. In this study, the authors used the statutory, the historical, the comparative, and the conceptual. (Peter Mahmud Marzuki, 2010).

RESULTS AND DISCUSSION

Variety of State Emergency Law Product Models

In many countries around the world, legal products are the cornerstone of policymaking, including the foundation of policymaking in state emergencies. So, like the Indonesian state, it is based on law (*rechtsstaat*) not pure power (*machstaat*). Therefore, the state should not operate on the basis of power alone, but should be based on the law. (Nur Asyiah, 2015) This reinforces that under any reason and situation, even in an emergency, the principle of democracy and the rule of law must be respected, which are two closely related concepts that cannot be separated. this. The concept of democracy includes the principles of sovereignty of the people (democracy) while the rule of law includes the principles of the rule of law (*nomocracy*), each of which is implemented simultaneously as two sides of the same unit. currency taste. Such a legitimate state is called *Democrische rechtsstaat* or is called a constitutional democracy (Muntoha, 2009)

Academic search authors found several various models of emergency law products in several countries that have implications for the development of democracy, namely:

First: in India, since its independence India has imposed several times a state of emergency. In the Indian Constitution, (Jimmly Asshiddiqie, 2007) In 1975-1977 the government of India under the auspices of Prime Minister Indira Gandhi declared a state of emergency for the whole country for a period of 21 months from June 25 1975 to March 21, 1977. Officially President of India Fakhruddin Ali Ahmed declared Article 352 of the Constitution due to "internal interference". The statement was officially made by President of India under Article 352 of the Constitution of India due to "internal interference". The state of emergency was in effect from June 25 1975 to March 21, 1977. The Decree also gave the Prime Minister road executive power y a road decision there suspending elections. elections and restrictions on civil liberties. During the state of emergency most of Indira Gandhi's political opponents were jailed and press freedom restricted. Several human rights violations have also been reported including a large-scale forced sterilization campaign led y Sanjay Gandhi son of the Prime Minister. The reason for the state of emergency is one of the most controversial periods in the history of Indian law. (John Dayal, 2013)

The striking nature and power of state emergency policy in India lie in the extraordinary power the state has over society with no moral will and limits behind it. The decision to impose a state of emergency was proposed by Indira Gandhi endorsed by the President of India and approved y the cabinet and parliament (July-August 1975) citing internal and external threats. impending externalities for the state of India. Some media outlets have even suggested that the state of emergency is widely regarded as the Dark Era in Indian democracy. Emergency law in India even authorized Prime Minister Gandhi to postpone parliamentary and state government elections. Gandhi and a majority of coalition parliamentary members could change the substance of state law because his Congress party has the mandate needed to achieve a two-thirds majority in Parliament. When Prime Minister Gandhi deemed the existing laws 'too slow', the Prime Minister called on the President to issue 'Ordinances' a law-making power. (John Dayal, 2013)

Second: In Pakistan, emergency law in Pakistan is closely related to constitutional change and violation of democracy. Since Pakistan's independence in 1947, many constitutional questions have been raised about the military's role in the state. The rise of

the military and the decline of political parties have made the military the main political force in the country. On October 7, 1958, President Iskander Mirza revoked the Constitution and declared martial law in Pakistan by decree. This was the first of many military regimes in Pakistani history. With this measure, the Pakistani constitution of 1956 was overturned, ministers were dismissed, central and provincial assemblies were dissolved, and all political activities were banned. (Munim, 1960)

Yasmeen Yousif Pardesi in his study entitled "Analysis of the Constitutional Crisis in Pakistan (1958-1969)" explained that Pakistan's Constitution and democracy are the consequences and victims of authoritarianism. the President's talents and his political ambitions. The once famous Muslim League when Pakistan gained independence has lost popularity. Other politicians do not have the public's trust. The whole country lost Jinnah and Liaquat Ali Khan in 1948 and 1951, respectively. Political instability has created opportunities for non-political forces to dominate. In addition, there is an unconstitutional impeachment against the Minister and Governor of East Pakistan. By mid-1958, economic conditions, especially the low exchange rate, were indicative of the collapse of the country's monetary and banking systems. But the government did not take corrective action. (Pardesi, 1969)

Third: In Indonesia, examples of state emergency law products that have implications for democracy are also found in the form of presidential decrees of July 5, 1959, which are substantively superior because they can dissolve state institutions (constituents) (Mustaín ramli, 2017) to the amendment of the constitution (from the 1950 Constitution back to the 1945 Constitution) (Neysa Changnata, 2015) The decree was issued based on state emergency law (*Staatsnoodrecht*). (Ni'matul Huda, 2001) substantially, the presidential decree of July 5, 1959, contains; (Yusa, 2016) dissolution of the constituent assembly, the re-enactment of the 1945 Constitution, and the absence of the 1950 Constitution, until the establishment of Majelis Permusyawaratan Rakyat Sementara (MPRS) and Dewan Pertimbangan Agung Sementara (DPAS).

The presidential decree is also the cause of the centrality of presidential power, the Presidential Decree in Indonesia is a legal policy issued on the sole interpretation of the President as head of state based on emergencies. Krisna Harahap, in a book entitled *The Constitution of the Republic of Indonesia Towards the 5th Amendment* (2009) mentioned that the Decree is 'an unconstitutional way'. (Harahap, 2009) Moh. Kusnardi and Harmaily Ibrahim mentioned the legal basis of the July 5 Decree is *staatsnoodrecht*. This is the same as the opinion of the Provisional People's Consultative Assembly (MPRS) of the New Order. as stated in TAP MPRS No. XX/MPRS/1966 on the DPR-GR memorandum on the Source of The Law Order of the Republic of Indonesia and the Regulatory Order of the Republic of Indonesia. (Risdiarto, 2018)

Academic search writers related to examples of emergency law products in several countries open the paradigm that the concept of emergency law will have an impact on several things, such as Human Rights (Siwu, 2000) and even Democracy. In effect, the concept and content of state emergency products depend on policies that force states to act y suspending or ignoring citizens' rights. (Suhariyanto, 2021) in this context, it can be seen that the product of state emergency will have implications for democracy in a country.

Implications of State Emergency Law Products for Democracy

Ulf Sundhaussen claims democracy as a political system that meets three criteria (1) guaranteeing the right to vote for all citizens and to be elected in free and periodically held elections. Effectively providing the populace with the ability to replace the ruling elite with another; (2) all citizens enjoy the right to freedom of speech organization information and religion, and (3) the right to equality is guaranteed before the law. Clark D. Neher views democracy from the point of view of guarantees against pluralism. Democracy is a political system in which there is a guarantee for each element of pluralism to manifest its interests along with maintaining the stability and continuity of the political system. (Sunarso, 2018).

While the concept of state emergency theoretically and factually characterized:

1. The superiority of power (Bishai, 2020)
2. Interpretation of state emergency is very subjective on presidential power (Sihombing, 1996)
3. Suspension of civil rights, political rights (Siwu, 2000), and human rights (Arsil & Ayuni, 2020)
4. Can violate the provisions of the law (Jimmly Asshiddiqie, 2007).

These characteristics are contrary to fundamental principles of democracy leading to the determination that unprotected or restricted emergency products will have an impact on the democratization of a country. According to Alamudin, true democracy is not just a set of ideas and principles about freedom, but a set of practices and procedures shaped by a long and tortuous history. Democracy is often referred to as liberal institutionalization. (Naafisah, 2013).

Ideal Concepts of State Emergency Policy in a Democracy

The democratic process becomes very important to be maintained as a form and desire of the state to provide freedom for every citizen. Although basically, Democratization is an ever-evolving process, very dynamic, and will never reach its peak, (Hermawan, 2018) but the ideal Democratization can be seen when it has come to a phase of transition and consolidation with the concept of people's freedom to the restriction of power. (Juan J. Linz & Alfred Stepan, 1996) The implementation of Democratization can be implemented by law as its driving instrument, in summary, lawless democracy as a driver and determinant of corridor boundaries in a country will cause problems and chaos. (Suhartini, 2019) By this, Indonesia is a state of law so there urgently needs to be control of power through law (*Democratization section*), Ni'matul Huda stated that democracy is the most ideal way as a defense of control over the state of law. (Ni'matul Huda, 2005) So it is necessary to take ideal steps and strategies in maintaining the stability of democratization in the future.

Robert A. Dahl defines democracy with five criteria for democracy as a political idea, which is: (1) equality of suffrage in determining binding collective decisions; (2) effective participation, i.e. equal opportunity for all citizens in the collective decision-making process; (3) disclosure of truth, that is, equal opportunity for all to reasonably evaluate governmental and political progress; (4) ultimate control over the agenda, i.e. the existence of exclusive powers over the public to determine what programs should and should be decided through the government process, including delegating such power to another person or entity on behalf of the company; and (5) includes that is, social insurance for all legal adults. (Ladiqi & Suarde Wekke, 2018) In this definition Dahl seems to attach importance to the involvement of the community in the process of policy formulation, the supervision of power, and the guarantee of equal treatment of the state of all citizens as the main elements of democracy.

Simply put, from Dahl's criteria, Larry Diamond et al define democracy by the following criteria. **First**, the people participate in the election of the leader of their government. **Second**, the leading candidates to be selected have the space to compete with others. **Third**, the government allows political freedom and civil liberties. (Ladiqi & Suarde Wekke, 2018) In line with Dahl, Clark defines democracy not only as a matter of the right to voice in government, but also to include other rights: freedom of speech, a free press, access to information and the right to consult in decision-making, and freedom from discrimination between men and women and race. (Ladiqi & Suarde Wekke, 2018). April Carter even interpreted Democracy briefly and clearly: Carter defines democracy succinctly, densely, and precisely as "*limiting power*" (Sunarso, 2018)

Based on the understanding of experts about the criteria and meaning of democracy it is possible to understand the concept of democracy associated with rights and sovereignty belonging to the people through leaders elected by the people (elected by the people. election) it also shows that democracy is synonymous with freedom from freedom of choice opinion to freedom of speech. Robert A. Dahl even explained rigidly that Democracy asserts several opportunities for the people to be participatory, politically equal, to control of policy. (Ladiqi & Suarde Wekke, 2018) In line with this, it is clear that Henry B Mayo also explained among the important and fundamental values of democracy are the routine change of power (election) to respect for civil liberties (Miriam Budiardjo, 2008). It can be interpreted that democratization at the consolidation stage wants the result of freedom and nonviolence. A more general language is the guarantee of rights as a citizen with all its protections. This is factually opposed to the implementation of the state emergency. (Criddle & Fox-Decent, 2012)

By the above, the state of emergency must also base itself on the principle of proportionality known in international law. This principle is considered the crux of the self-defense doctrine or the core of the doctrine of self-defense. Inherently the principle of proportionality is considered to provide standards of reasonableness so that the criteria for determining the necessity become clearer, the need formulated as a reason for the correction to perform actions that are emergency is proportionate, reasonable, or appropriate so that the action in question must not exceed reasonableness or overwriting which is the basis of justification for the action itself. (Jimmly Asshiddiqie, 2007)

CONCLUSIONS

There are several determinations in this article, **First**, looking at the portrait of state emergency laws in India, Pakistan, and Indonesia, opening the paradigm that the concept of emergency law will have an impact on several things, such as Human Rights (Siwu, 2000) and even Democracy. In effect, the concept and content of state emergency products depend on policies that force states to act by suspending or ignoring citizens' rights.. (Suhariyanto, 2021) in this context, it can be seen that the product of state emergency will have implications for democracy in a country.

Second, the condition of democracy as a political system has three criteria, (1) guaranteeing the right to vote for all citizens and to be elected in free and periodically held elections. (2) all citizens enjoy the right to freedom of speech, organization, information, and religion; and (3) the right to equality is guaranteed before the law. (Sunarso, 2018). While the concept of state emergency is theoretically and factually characterized: Superiority of power; The interpretation of the state emergency is very subjective on executive power; Suspension of civil rights, political rights, and human rights; and may violate the laws and regulations. So, it concludes that the country's emergency products without protection and restrictions will have implications for democracy.

Third, ideally, the implementation of a state emergency should be based on the principle of proportionality, because the principle of proportionality provides standards on reasonableness so that the criteria for determining the existence of an "*emergency*" become clearer, the need formulated as a reason for the improvement to carry out actions that are emergency is proportionate, reasonable or appropriate so that the action in question must not exceed reasonableness. So that a legal product is needed that details clearly the interpretation and limitations of state emergencies.

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Muhammad Rizal
Faculty of Law
University of Sebelas Maret, Surakarta, Indonesia
Email: emrizalfahlevi@gmail.com

Sapto Hermawan
Faculty of Law
University of Sebelas Maret, Surakarta, Indonesia
Email: saptohermawan_fh@staff.uns.ac.id