

Normative Evaluation of Presidential Powers in Emergency Situations: Constitutional Limits and Legal Guarantees in Indonesia

¹Wahyul Furqon, ²Djuhrijjani

^{1,2} Universitas Muhammadiyah Tangerang

wahyulfurqon68@gmail.com

ABSTRACT

This study examines the exercise of presidential powers in emergency situations within the framework of Indonesia's 1945 Constitution, focusing on constitutional limits and legal guarantees. Using a qualitative approach with a normative juridical methodology, the research analyzes constitutional provisions, statutory regulations, and judicial practices to evaluate the effectiveness of Indonesia's legal framework in balancing crisis management with the preservation of democratic principles. The findings reveal ambiguities in emergency criteria, gaps in accountability mechanisms, and concerns over proportionality in restricting fundamental rights. Comparative insights and recommendations are provided to enhance legal clarity, strengthen oversight, and safeguard constitutional democracy during emergencies.

Keywords:

Presidential Powers, Emergency Situations, Constitutional Limits, Legal Guarantees, Indonesia

INTRODUCTION

The exercise of presidential powers during emergency situations presents complex challenges for constitutional democracies. In Indonesia, while the Constitution—particularly Articles 12 and 22—provides the president with legal authority to declare and manage emergencies, these provisions have been criticized for their ambiguity and the lack of strict limitations. The president may issue government regulations in lieu of laws (PERPPU), bypassing the legislature to enable swift responses in crises. Although this mechanism is vital for urgent situations, it also opens the door to potential misuse of power, raising concerns about authoritarian overreach and the erosion of democratic accountability (Jayus & Ulum, 2020; Marwiyah, 2015a). The post-Suharto constitutional reforms aimed to limit executive dominance, yet emergency provisions remained largely untouched, preserving loopholes that may be exploited in the absence of robust checks and balances.

This tension between emergency authority and the rule of law became especially evident during the COVID-19 pandemic. The Indonesian government faced significant pressure to act decisively—such as implementing lockdowns and issuing public health directives—while still adhering to constitutional norms. Scholars note that the lack of clear legal safeguards in the emergency framework poses risks to democratic governance and citizen protection (Hosen, 2010). The pandemic underscored the urgent need for a more precise and accountable legal framework that balances the need for swift executive action with the preservation of constitutional limits and the rule of law (Fachriza & Pan, 2023).

The historical trajectory of Indonesia illustrates how emergency powers have played a central role in preserving national stability amid various crises, including political upheavals, natural disasters, and public health emergencies. From the imposition of martial law to the emergency responses during the COVID-19 pandemic, swift executive action has often been deemed necessary to address immediate threats. However, such use of presidential authority has consistently raised alarms regarding potential violations of constitutional rights, arbitrary governance, and the

erosion of checks and balances. In Indonesia's context—where vulnerabilities to disasters and socio-political volatility are high—the ability of the executive to act decisively is crucial. Nonetheless, this necessity must be weighed against the enduring risks posed by unchecked power and the concentration of authority in the executive branch, especially in a democratic setting.

The legal framework underpinning Indonesia's emergency governance, particularly Article 12 of the 1945 Constitution, has faced criticism for being outdated and lacking alignment with modern constitutional principles. This has resulted in problematic instances of emergency declarations and governance lapses, including during the COVID-19 pandemic, when governmental delays and coordination failures impeded an effective response (Agustino, 2020; Ayuni et al., 2022a). Moreover, concerns persist regarding the limited role of oversight institutions. Contrary to fears of unrestrained executive dominance, global experiences during the pandemic show that robust checks from courts, legislatures, and subnational governments can foster more legitimate responses (Ginsburg & Versteeg, 2021). For Indonesia, maintaining a balance between crisis response and human rights protection remains paramount. Regulatory reforms are essential to ensure that emergency powers adhere to principles of necessity and proportionality while respecting non-derogable rights, thereby reinforcing democratic governance in times of crisis (Hosen, 2010; Saputra et al., 2024).

Despite the existence of constitutional and legal provisions regulating emergency powers, ambiguities and gaps in Indonesia's framework continue to pose serious challenges for ensuring accountability and preventing abuse. The lack of clear guidelines regarding the scope and duration of such powers, combined with limited judicial and legislative oversight, increases the risk of executive overreach—particularly troubling in democratic systems where the separation of powers and protection of fundamental rights are essential. These tensions were starkly illustrated during the COVID-19 pandemic, when measures like large-scale social restrictions (PSBB) raised questions about the proportionality and legality of executive actions. As emergency powers are often entangled with constitutional politics, their unclear boundaries can provoke fundamental disputes, leading to unchecked authority as seen in Indonesia and other global contexts (Fombad & Abdulrauf, 2020; V. V Ramraj, 2023). In Indonesia, legislative oversight was notably weakened during emergencies, such as under Government Regulation in Lieu of Law Number 23 of 1959, allowing the executive to operate with minimal checks (Putri & Ausath, 2024). In contrast, countries like the United States maintain mechanisms for legislative control even in crises, offering potential models for enhancing accountability in Indonesia (Putri & Ausath, 2024). The persistent dilemma of balancing national security with human rights in emergency governance underscores the urgent need for legal reforms that ensure restrictions remain necessary, proportionate, and respectful of non-derogable rights (Saputra et al., 2024). The COVID-19 crisis revealed the fragility of existing frameworks and further emphasized the importance of regulatory updates to strengthen Indonesia's preparedness for future emergencies (Fombad & Abdulrauf, 2020; Saputra et al., 2024).

This study addresses the pressing need to evaluate the legal framework governing presidential powers in emergency situations by conducting a normative juridical analysis focused on constitutional limits and legal guarantees. Through

qualitative methods that examine legal provisions, statutory frameworks, and judicial precedents, the research seeks to strike a balance between effective crisis governance and the preservation of democratic principles. It aims to enhance legal clarity and public trust in Indonesia's constitutional order during emergencies by answering three critical questions: (1) What are the constitutional provisions and legal mechanisms that regulate presidential powers during emergencies in Indonesia? (2) How do these frameworks ensure accountability and prevent abuse of power? and (3) What are the gaps or ambiguities in the current legal system that need to be addressed to strengthen democratic governance in emergency contexts.

1. Theoretical Framework on Emergency Powers

The concept of emergency powers, particularly Carl Schmitt's notion of the "state of exception," plays a pivotal role in legal and political theory by highlighting the sovereign's authority to suspend legal norms in response to existential threats, thereby revealing the true locus of political power (MagShamhráin, 2023). Schmitt's framework, which challenges liberal rationalism and its depoliticized view of order (Goupy, 2018), has resurfaced in analyses of government responses during the COVID-19 pandemic, where emergency actions often clashed with constitutional norms (MagShamhráin, 2023). However, this theory has faced significant critique, notably from Giorgio Agamben, who contends that the state of exception has evolved from a temporary measure into a permanent mode of governance, threatening to transform democracies into totalitarian systems (Agamben, 2008; Giordanengo, 2016). Agamben warns of the underestimated dangers posed by normalized exceptions, which risk eroding democratic structures. In contrast, John Locke's doctrine of "prerogative power" offers a more balanced view, allowing executive discretion in extraordinary situations but insisting on public trust and mechanisms of accountability to guard against abuse (V. V. Ramraj et al., 2008). Together, these theoretical perspectives provide a crucial foundation for analyzing the legitimacy, limits, and oversight of emergency powers within modern constitutional democracies.

2. International Perspectives on Emergency Powers

Countries around the world adopt diverse approaches to regulating presidential powers during emergencies, shaped by their constitutional structures and historical experiences. In established democracies like the United States and Germany, strong systems of checks and balances ensure that emergency powers are exercised within clear legal limits. In the U.S., presidential emergency actions are subject to congressional oversight and judicial review, as demonstrated in landmark cases such as *Youngstown Sheet & Tube Co. v. Sawyer*, where the judiciary curtailed executive overreach to uphold constitutional principles (Friedman, 2012). Similarly, Germany's Basic Law requires legislative approval for any suspension of rights, reinforcing a legal framework that protects civil liberties even in crises (Ginsburg & Versteeg, 2021). In contrast, countries with weaker institutional checks, such as Egypt and Turkey, have faced criticism for using prolonged states of emergency to centralize power and suppress dissent, raising concerns about authoritarian drift and rights violations (Grogan, 2020). These international contrasts emphasize the crucial role of legal mechanisms and institutional safeguards in maintaining a balance between effective crisis governance and the protection of civil rights. Moreover, during the COVID-19 pandemic, courts and legislatures across various jurisdictions have actively constrained executive power by ensuring procedural integrity, reviewing the necessity

of rights restrictions, and holding governments accountable (Ginsburg & Versteeg, 2021).

3. Legal Framework for Emergency Powers in Indonesia

Indonesia's constitutional framework grants the president considerable authority during emergencies, including the power to declare a state of emergency, issue government regulations in lieu of law (Perppu), and manage fiscal resources; however, this authority is undermined by several limitations such as ambiguous criteria for declaring emergencies, weak and inconsistently applied oversight mechanisms, and historical precedents of executive overreach. The criteria for emergency declaration remain ill-defined, fostering legal uncertainty and enabling potential misuse, as demonstrated in the issuance of Government Regulation in Lieu of Law No. 1 of 2020, which invoked an emergency rationale within a standard legal framework (Ansori, 2022). Oversight by the legislature and judiciary is not consistently enforced, raising serious concerns about accountability and the risk of unchecked executive power, with studies highlighting the limited role of parliamentary and judicial institutions in upholding checks and balances during crises (Ayuni et al., 2022b; Siwu et al., 2020). These institutional weaknesses echo the patterns of abuse observed during Indonesia's New Order regime, where vague constitutional provisions—specifically Articles 12 and 22 of the 1945 Constitution—enabled the centralization of power and suppression of dissent (Siwu et al., 2020), thereby reinforcing the urgent need for clearer legal definitions and robust safeguards to uphold democratic governance in times of emergency.

Existing literature provides valuable insights into the theoretical and legal dimensions of emergency powers, but there are gaps that this study seeks to address. Specifically, there is limited research on the interplay between constitutional limits and legal guarantees in Indonesia's emergency governance framework. Furthermore, while comparative studies offer lessons from other countries, there is a lack of localized analysis that considers Indonesia's unique political, legal, and cultural context.

METHOD

The research adopts a qualitative approach grounded in normative juridical methodology, which is particularly apt for analyzing the legal dimensions of presidential powers in emergency situations. This methodology facilitates a focused examination of the interaction between constitutional provisions, statutory regulations, and judicial interpretations. The primary objective of the study is to identify legal gaps, ambiguities, and strengths within Indonesia's current framework, ultimately offering constructive recommendations for its refinement. Data collection relies on two key sources: primary legal materials, which include constitutional articles (notably Articles 12, 22, and 23 of the 1945 Constitution), statutory laws such as Law No. 24 of 2007 on Disaster Management and Law No. 6 of 2018 on Health Quarantine, as well as decisions from the Constitutional Court; and secondary legal materials, which encompass scholarly commentaries, academic journals, textbooks, government documents, and relevant reports from international organizations to provide broader contextual understanding.

The analysis is structured into four stages to ensure comprehensive legal evaluation. First, legal interpretation is conducted using systematic, historical, and

teleological approaches to reveal the intended meaning and scope of key legal provisions. Second, a comparative analysis is undertaken to measure Indonesia's emergency power framework against international standards and practices, allowing for the identification of best practices and areas needing improvement. Third, the study engages in a critical evaluation of the legal system's strengths, weaknesses, and ambiguities, assessing their implications for constitutional governance during emergencies. Finally, a synthesis of findings is performed to integrate the analysis into a cohesive understanding of how constitutional limits and legal safeguards operate in practice, with particular attention to their effectiveness in upholding accountability and the rule of law in times of crisis.

RESULTS AND DISCUSSION

1. Constitutional Provisions Regulating Presidential Emergency Powers

The 1945 Constitution of Indonesia establishes the legal foundation for presidential powers during emergencies through Articles 12, 22, and 23. Article 12 grants the president authority to declare a state of emergency, provided that such declarations comply with statutory requirements to ensure they are based on necessity, serious threats, and limited duration (Komendangi, 2024; Sahputra, 2020). Article 22 empowers the president to issue Government Regulations in Lieu of Law (Perppu) during emergencies without prior legislative approval, enabling swift responses to urgent crises (Marwiyah, 2015b). However, this authority has sparked debate due to its potential for executive overreach and the lack of clear parameters surrounding its use (Siwu et al., 2020). Meanwhile, Article 23 authorizes the reallocation of state finances for emergency responses, as long as such reallocations adhere to budgeting laws and oversight mechanisms (Marwiyah, 2015b; Siwu et al., 2020). Together, these constitutional provisions create a foundational framework for emergency governance but are highly dependent on implementing legislation to ensure clarity, accountability, and protection of civil liberties.

Despite the legal framework provided by the Constitution, the exercise of these presidential powers in practice remains complex and often controversial. The declaration of a state of emergency under Article 12 is meant to address grave threats to national security or territorial integrity, but its activation must be clearly justified and procedurally sound. Similarly, the issuance of Perppu under Article 22 allows for executive agility but demands legislative review to uphold democratic accountability. Article 23, while enabling rapid financial response, also necessitates stringent monitoring to prevent fiscal misuse during crises. These dynamics highlight the ongoing tension between the need for effective emergency measures and the imperative to maintain constitutional checks and balances. As such, deeper scrutiny of these provisions and their implementation is essential to safeguard against the misuse of emergency powers while ensuring the state remains responsive to crises.

2. Accountability Mechanisms

Indonesia's legal framework for presidential emergency powers incorporates several accountability mechanisms, including judicial oversight by the Constitutional Court (Mahkamah Konstitusi), legislative oversight by the House of Representatives (DPR), and the principles of public participation and transparency. The Constitutional Court plays a vital role in reviewing the constitutionality of emergency measures, such as the Perppu, as demonstrated in its review of Perppu No. 1 of 2020 during the

COVID-19 pandemic, where it emphasized the importance of proportionality and adherence to constitutional norms (Nursamsi, 2014). However, the effectiveness of judicial oversight is constrained by the absence of explicit constitutional provisions that clearly define the Court's scope in emergency reviews. Similarly, the DPR is tasked with approving or rejecting Perppu, which serves as a legislative check to ensure executive actions are consistent with democratic values. Yet, the vague definition of "compelling urgency" in the issuance of Perppu creates room for interpretation, leading to potential inconsistencies and risks of executive overreach (Ningtyas & Rohmah, 2021).

In addition to formal judicial and legislative oversight, public participation and transparency are crucial components for ensuring legitimacy and trust during states of emergency. Access to information and meaningful public engagement help in holding the government accountable and reinforcing democratic governance. However, these elements are not consistently enforced in practice, often resulting in significant accountability gaps (Jayus & Ulum, 2020). While the legal mechanisms exist in theory, their implementation is hindered by constitutional ambiguities, insufficient procedural safeguards, and institutional limitations. As such, the current framework, although structurally sound, requires substantial reform and clearer operational standards to effectively balance executive responsiveness with democratic accountability in times of national crisis.

3. Gaps and Challenges in the Legal Framework

The findings reveal several weaknesses in Indonesia's current legal and constitutional framework for emergency powers. First, there is significant ambiguity in defining the criteria for declaring a state of emergency, allowing for broad discretionary interpretation that risks inconsistency and potential misuse of authority. Second, while the Constitutional Court holds the mandate to review emergency measures, concerns about political interference cast doubt on its independence and effectiveness as an impartial check on executive power. Third, legislative oversight tends to be procedural rather than substantive, often lacking rigorous debate or scrutiny, thereby weakening the intended checks and balances. Lastly, issues of proportionality and human rights protection persist, as some emergency measures—such as those implemented during the COVID-19 pandemic—have restricted fundamental freedoms without sufficient legal justification, raising concerns about the proper balance between public safety and individual liberties.

Discussion

The normative analysis underscores a persistent tension between the imperative for effective crisis management and the preservation of constitutional democracy in Indonesia. While the 1945 Constitution provides a foundational legal structure, its implementation reveals considerable gaps, particularly in legal clarity, institutional oversight, and the safeguarding of fundamental rights. Three key areas for reform emerge from this study. First, enhancing legal clarity is vital, as Indonesia's experiences—such as the DOM Aceh period and the COVID-19 pandemic—highlight the need for precise criteria and procedural guidelines in declaring a state of emergency (Saputra et al., 2024). Second, strengthening oversight mechanisms involves empowering both judicial and legislative institutions to exercise substantive and independent review of presidential actions, mitigating the risk of executive overreach (Saputra et al., 2024). Comparative models, such as the U.S. National

Emergencies Act, which mandates congressional review every six months, and Germany's fixed legislative oversight for emergency declarations, illustrate best practices that could inform Indonesia's reforms (Ginsburg & Versteeg, 2021; Thronson, 2012).

Third, achieving an effective balance between rights and governance requires that emergency measures be grounded in the principles of necessity, proportionality, and non-discrimination, ensuring that the protection of civil liberties remains central even during crises (Saputra et al., 2024). Comparative insights show that unchecked executive powers during emergencies can threaten democratic accountability, as seen in the U.S., where calls for reform have emerged to limit the indefinite extension of emergency authority (Bradley, 2013; Thronson, 2012). For Indonesia, integrating such principles into its emergency governance framework would not only enhance legal certainty but also foster greater public trust and institutional resilience. Ultimately, these reforms are essential to ensure that the exercise of presidential emergency powers remains both effective in addressing crises and firmly rooted in constitutional principles.

CONCLUSION

The study highlights the dual imperatives of enabling effective crisis management and safeguarding constitutional democracy in Indonesia. Although the 1945 Constitution provides a foundational framework for regulating presidential powers during emergencies, its practical implementation reveals notable deficiencies. Among the most pressing issues are the ambiguity in defining what constitutes an emergency, the fragility of oversight mechanisms—both judicial and legislative—and the lack of safeguards to ensure that restrictions on fundamental rights remain proportionate and justified. These weaknesses create a legal environment susceptible to executive overreach and undermine public trust in democratic institutions, particularly during times of national crisis.

To address these challenges, the research emphasizes the urgency of legal reform aimed at enhancing the clarity, accountability, and legitimacy of emergency governance. This includes establishing more precise criteria for emergency declarations, reinforcing the independence and capacity of oversight bodies, and embedding principles such as necessity, proportionality, and non-discrimination into legal procedures. Drawing on comparative practices from countries like the United States and Germany, the study advocates for the adoption of stricter timelines for emergency declarations, mandatory legislative approval processes, and greater public participation to ensure transparency. By institutionalizing these reforms, Indonesia can construct a more resilient legal framework—one that allows swift and effective responses to crises while maintaining fidelity to democratic values and the rule of law.

Reference

- Agamben, G. (2008). *State of exception*. University of Chicago press.
- Agustino, L. (2020). Analisis kebijakan penanganan wabah COVID-19: Pengalaman Indonesia. *Jurnal Borneo Administrator*, 16(2), 253–270.
- Ansori, L. (2022). Regulations in Liew of Statutes in States of Emergency In Indonesia. *Prophetic Law Review*, 4(1), 22–47.

- Ayuni, Q., Arinanto, S., Arsil, F., & Indrati, M. F. (2022a). Concept and Implementation on the State of Emergency in Indonesia: Outlook to Strengthen Checks and Balances during Crisis. *Revista de Investigações Constitucionais*, 9(1), 11–36.
- Ayuni, Q., Arinanto, S., Arsil, F., & Indrati, M. F. (2022b). Concept and Implementation on the State of Emergency in Indonesia: Outlook to Strengthen Checks and Balances during Crisis. *Revista de Investigações Constitucionais*, 9(1), 11–36.
- Bradley, C. A. (2013). Emergency Power and Two-Tiered Legality. *Duke LJ Online*, 63, 1.
- Fachriza, A. I., & Pan, M. L. (2023). The Protection for Citizen During Outbreaks: The Emergency Status During Covid-19 in the Perspective of Indonesian Constitutional Law. *The Indonesian Journal of International Clinical Legal Education*, 5(1), 1–38.
- Fombad, C. M., & Abdulrauf, L. A. (2020). Comparative overview of the constitutional framework for controlling the exercise of emergency powers in Africa. *African Human Rights Law Journal*, 20(2), 376–411.
- Friedman, J. L. (2012). Emergency powers of the executive: the president's authority when all hell breaks loose. *JL & Health*, 25, 265.
- Ginsburg, T., & Versteeg, M. (2021). The bound executive: Emergency powers during the pandemic. *International Journal of Constitutional Law*.
<https://api.semanticscholar.org/CorpusID:225410513>
- Giordanengo, D. (2016). The state of exception. *E-International Relations*, 21, 1–6.
- Goupy, M. (2018). The state of exception theory of Carl Schmitt and the ambivalent criticism of liberalism. *Zeitschrift Für Politikwissenschaft. Journal of Political Science*, 28(4), 1–14.
- Grogan, J. (2020). States of Emergency. *European Journal of Law Reform*.
<https://api.semanticscholar.org/CorpusID:219686673>
- Hosen, N. (2010). *Emergency powers and the rule of law in Indonesia*.
- Jayus, J., & Ulum, M. B. (2020). Presidential Power's Limitation to Emergency Provisions in Indonesia. *Jurnal Cita Hukum*, 8(2), 343–362.
- Komendangi, R. A. N. (2024). The Existence of Presidential Authority in Determining a State of Emergency. *QISTINA: Jurnal Multidisiplin Indonesia*, 3(2), 1736–1747.
- MagShamhráin, R. (2023). The State of Exception between Schmitt and Agamben: On topographies of exceptionalism and the constitutionality of COVID quarantine measures (with examples from the Irish context). *Society*, 60(1), 93–105.
- Marwiyah, S. (2015a). Constitutional Authority of the President of Establishing the Government Regulation in Lieu of Legislation (PERPPU) State of Emergency. *JL Pol'y & Globalization*, 34, 105.
- Marwiyah, S. (2015b). Constitutional Authority of the President of Establishing the Government Regulation in Lieu of Legislation (PERPPU) State of Emergency. *JL Pol'y & Globalization*, 34, 105.
- Ningtyas, M. A., & Rohmah, E. I. (2021). Menimbang kepentingan memaksa sebagai syarat penerbitan peraturan pemerintah pengganti undang-undang (Perppu). *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum*, 2(6), 647–670.
- Nursamsi, D. (2014). Kerangka Cita Hukum (Recht Idee) Bangsa Sebagai Dasar Kewenangan Mahkamah Konstitusi Menguji Peraturan Pemerintah Pengganti

- Undang Undang (Perppu). *Jurnal Cita Hukum*, 2.
<https://api.semanticscholar.org/CorpusID:145460100>
- Putri, R. N., & Ausath, M. A. (2024). The Oversight Role Of Legislative Institutions In Emergency Situations (Comparison Of Indonesia With The United States). *Constitutionale*, 5(1), 67–84.
- Ramraj, V. V. (2023). The constitutional politics of emergency powers. In *Research Handbook on the Politics of Constitutional Law* (pp. 163–175). Edward Elgar Publishing.
- Ramraj, V. V., Tanguay-Renaud, F., & Guidice, M. (2008). *Emergency Powers and Constitutional Theory*. <https://api.semanticscholar.org/CorpusID:152429282>
- Sahputra, M. (2020). Negara Dalam Keadaan Darurat Menurut UUD 1945. *Jurnal Transformasi Administrasi*, 10(1), 80–98.
- Saputra, M. R., Triadi, I., & Syahuri, T. (2024). Hukum tata negara darurat dalam perspektif HAM: Dilema antara keamanan negara dan hak asasi manusia. *Birokrasi: Jurnal Ilmu Hukum Dan Tata Negara*, 2(4), 182–194.
- Siwu, S. C., Sudarsono, Isrok, & Safa'at, M. A. (2020). State of Emergency in Indonesia. *Journal of Law, Policy and Globalization*, 93, 181–186.
<https://api.semanticscholar.org/CorpusID:213926497>
- Thronson, P. A. (2012). Toward Comprehensive Reform of America's Emergency Law Regime. *U. Mich. JL Reform*, 46, 737.