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DISCOURSE ON HUMAN RIGHTS LAW IN THE PARADIGM OF EMERGENCY LAW IN INDONESIA

Naufal Yudawan
Universitas Indonesia, Depok, Indonesia
Corresponding Email: naufalyudawan@gmail.com

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Abstract

A state of danger or emergency with the legal regime imposed can have an impact on human rights even though in such emergencies, the laws and norms imposed are also emergency. This paper aims to comprehensively examine the concept of emergency in a country and as a limitation in this writing are norms and laws that apply in Indonesia with comparisons in various cloth countries. The method used in this writing is a doctrinal legal research method that examines legal norms and theories related to emergency law. The results showed that the state of emergency law imposed in Indonesia was based on the 1945 Constitution, especially Article 12 and Article 22 and also based on Law Number 23 of 1959 concerning Dangerous Conditions. However, research findings show that there is a vague interpretation of the relationship between the implementation of the state of emergency and the protection of human rights that are well regulated in the constitution which results in human rights violations during the enactment of the state of emergency in Indonesia. Therefore, the legal norms governing the state of emergency stipulated in the constitution and the state of danger law must be resynchronized by the state with the revision of the state of danger law in order to advance the protection and enforcement of human rights in Indonesia.

Keywords: ***Human Rights; Emergency Law; Legal Theory.***

INTRODUCTION

The discourse of constitutional law related to abnormal state conditions is usually called a state of emergency, the limitations of which are quite a lot put forward by various constitutional law experts. According to Jimly Asshiddiqie, a state of emergency is a state of danger that suddenly threatens public order, which requires the state to act in unusual ways according to the usual rules of law in force under normal circumstances (Asshiddiqie, 2007, pp. 7-8). In an emergency/abnormal situation there must be a power holder who is empowered by law to make the highest decision by temporarily ignoring some of the basic principles adopted by the state concerned.

Carl Schmitt, as a German jurist, advocated the idea that "laws in force under normal circumstances can be set aside or delayed in enactment, replaced by a State of Emergency imposed by the President" (Asshiddiqie, 2007, pp. 228-229). If a state is threatened by Danger, its attention should be focused on its own arrangements that require the choice of whether to commit unlawful acts or change the relevant legal norms in the usual way, so that state functions can continue to work effectively in unusual circumstances.

State of Emergency can occur due to various factors, such as causes arising from outside or from within the country. The threat can be a military/armed threat or it can be unarmed like bombs and other emergencies, but it can cause casualties, property among citizens which absolutely must be protected by the state. In Indonesia, every time the legal status of the State of Emergency is imposed, there are usually human rights violations such as Military Operation Areas (DOM) in Aceh, East Timor, and others (Gultom, 2010, p. 5). The Government of Indonesia resolves various cases of human rights violations in

emergencies through various approaches such as establishing various legal instruments both preventively, politically, and repressively through human rights courts based on Law No. 26 of 2000 concerning Human Rights Courts. In Indonesia, there are many legal norms governing emergencies. In Indonesia, the relevant human rights arrangements in the State of Emergency are regulated in the 1945 Constitution and the regulations are further elaborated in law, such as Law Number 23 Prp 23 of 1959 concerning Dangerous Situations, Law Number 27 of 1959 concerning Mobilization and Demobilization and others. Although human rights arrangements have been regulated in a state of emergency, in practice quite a number of cases of human rights violations occur in Indonesia.

In its history, from the New Order to the reform, Indonesia has not been separated from various events and events of an extraordinary nature / State of Emergency, both in the fields of politics, security and defense, economy, social and even factors of bloody riots, bomb terrors, and horizontal conflicts in various regions or natural disasters. Therefore, this paper comprehensively examines the concept of emergency law in the discourse of human rights law that occurs in Indonesia, both based on various principles of state of emergency and legal arrangements in force in Indonesia and its comparison with several other countries. This paper focuses on emergency legal norms elaborated with the highest legal provisions, namely the constitution which has implications for comprehensive findings of human rights discourse in emergencies in Indonesia.

RESEARCH METHODS

The writing of this article uses doctrinal or normative legal research methods that focus on the study of legal norms (Soekanto, 2011, p. 13). In this case, it is Law Prp 23 of 1959 concerning State of Danger along with theories related to state of emergency which has a close relationship with human rights law. The nature of this research is Prescriptive which provides an assessment of something that should be done (Marzuki, 2014, pp. 69-70). Namely analyzing the comparison of legal norms related to human rights law in a state of emergency and the implementation of various experiences that occurred in Indonesia. The writing of this article uses a Statutory Approach and a Conceptual Approach.

The primary legal material in writing this article is Article 12 and Article 22 of the 1945 Constitution and Prp Law 23 of 1959 concerning Dangerous Circumstances, while the secondary legal material in this study is in the form of literature such as books and legal journals that are relevant to this writing and are also used to answer and analyze the subject matter in this article. Along with various supporting data obtained through various newspapers or electronic news and trusted sites.

RESULT AND DISCUSSION

Emergencies are related to the terminological emergency doctrine. In Black's Law Dictionary, it states: first “A legal principal exempting a person from the ordinary standard of reasonable care if that person acted instinctively to meet a sudden and urgent need for aid”. Second, “A legal principle by which consent to medical treatment in a dire situation is inferred when neither the patient nor a responsible party can consent, but a reasonable person would do so”. And the third, “The principle that a police officer may conduct a search without a warrant if the officer has probable cause and reasonably believes that immediate action is needed to protect life or property” (Garner, 2004, p. 562).

The law applied to the State of Emergency is the law of an emergency nature which according to Anglo American tradition is called martial law, while France and continental countries are referred to as etat de siege, in the Netherlands referred to as staatsnoodrecht. The state of exception according to Kim Lane Schepple, “the situation in which a state is confronted by a mortal threat and response by doing things that would never be justifiable in normal times, given the working principles of that state”. According to Kim Lane the exclusion of a country using its justification only when used in an urgent situation, if a country faces a serious threat, the state should commit violence by using legal policies or principles to save the country (Schepple, 2003). In constitutional law, there is a distinction between the legal regime in normal circumstances and the legal regime in exceptional circumstances. In constitutional

law, the concept of constitutional dualism is known according to Jhon Ferejhon and Pasquale Pasquino as quoted by Jimly Asshiddiqie, “The nation that there should be provisions for two legal systems, one that operates in normal circumstances to protect rights and liberties, and another that is suited to dealing with emergency circumstances”, Simply put, there should be a system that regulates normal conditions and a system that regulates emergencies, the system must be owned by a nation (Asshiddiqie, 2007, p. 60).

Theoretical Basis

Theories and doctrines related to emergencies are further discussed in this subchapter starting from the Doctrine of Necessity, the Doctrine of Self-Preservation & Self-Defence, the Doctrine of Proportionality, and the Doctrine of Immediacy. These doctrines form the theoretical foundation of emergencies. First, the doctrine of necessity means that there is recognition to every sovereign state that it has the right to take a measure necessary for the integrity of the state to be protected and defended. Such measures can only be taken by a sovereign ruler as Schmitt’s postulate is, "sovereignty, i.e., where the Sovereign takes decisions based on exceptions. Every norm that applies in society requires a normal system, at all times a framework of life that can be applied factually / actually and subject to regulations. Because there is a legal order that makes it mean that a normal situation will actually persist." (Schmitt, 2005, pp. 11-13).

Schmitt’s postulation is commented by Shane and Barry that, "Schmitt views that in reality the establishment of a dictatorship is always time-bound based on the need for a constitution that will restore the government to a normal state position, but will then make the power of the Ruler even greater as the sole decision-maker capable of saving political conditions from degradation” (Vaughan, 2004). Whereas according to Rousseau "in such cases there is no doubt about matters of a general nature and it is clearly evident that the attention of the people is directed towards the state, so that it does not collapse/perish” (Rossiter, 1963, p. 12).

In such Emergencies, the law enacted should use a special procedure based on the State of Emergency law, which means that it is legally necessary to overcome the State of Emergency to be valid in order to prevent the threat of Danger posed and overcome and restore the State of the State to normal conditions. In accordance with Clinton Rossiter's opinion that, a Dictator needs to be appointed to overcome the emergency because Dictators cannot possibly appoint another Dictator. According to Niccolo Machiavelli, the modern state no longer prioritizes the excessive use of laws against emergencies, but needs to pay attention to "how to find a solution for each emergency and establish rules and regulations that can be implemented to resolve the emergency” (Machiavelli, 2013). Laws governing emergencies should provide legal protection to uphold human rights, as A.W. Bradley and K.D. Ewing emphasize, that "In the event of a serious emergency, normal constitutional principles must provide protection for deviations necessary to overcome the situation” (Anthony Wilfred Bradley, 2007).

According to the doctrine of Self-Defence, the state by itself has the power or reserves needed at a certain time for the common good of all its people. Thus, in international law it is referred to as the doctrine of Self-Preservation. If a State faces a threat that jeopardizes its existence or sovereignty as an independent state or endangers the safety of its citizens, it may act in any and any way, regardless of the legality of the means pursued according to the measure of international law. The link is that the international community must be realistic to understand the complexity of the problems facing the country in order to act to make quick and effective decisions. However, limits must be determined that do not open up the occurrence of abuse to the detriment of the interests of wider humanity.

Alex Martens in the language of international law, quoted by Todung Mulya Lubis, talks about the doctrine of Self-Défense can be used for self-defence and when necessary, carry out pre-emptive attacks. In accordance with Article 51 of the Charter of the United Nations (UN), that "every State is allowed to launch self-defence in the event of armed attack” (Lubis, 2005, p. 251). However, the country must immediately report to the UN Security Council (DK) to take all concrete actions to restore world security

and peace. Therefore, the State can act above normal, and it also has reserve power for it (self-preservation), but because of the need to defend oneself (self-defence) from the threat that is a danger to himself and all citizens to whom he must protect. Simply put, with the principle of self-defence, the doctrine of necessity can be generally accepted to deal with any threat of danger in order to protect and defend the integrity of state sovereignty.

The third doctrine of proportionality, the principle of proportionality in international law is considered "the crux of the self-defence doctrine" or the core of the doctrine of self-defence outlined above. According to Jimly Asshiddiqie, this principle is considered to provide a standard of reasonableness into the doctrine of self-defence, so that the criteria for determining necessity become clearer. Every emergency action taken by a country should be based on the existence of a "proportional necessity of self-defence", which is the need for the state to defend itself from the threat of danger faced (Asshiddiqie, 2007, p. 93).

While the fourth is the Doctrine of Immediacy, this principle is based on the understanding that there should be no distance between the time of arrival of an armed attack and the application of the principle of self-defence or defence (Asshiddiqie, 2007, p. 94). Such a situation is certainly irrelevant time to discuss what policies can or cannot be allowed by the President as head of state and government. Broadly speaking, the law is regulated separately as an explanation of the main provisions in the constitution. In Indonesia, these signs are in the provisions of Articles 12 and 22 of the 1945 Constitution, including the principle of state protection contained in the preamble to the 1945 Constitution, as well as various other laws and regulations such as Law No. 23 Prp of 1959 (23, 1959), Law No. 27 of 1997 concerning Mobilization and Demobilization, and Law No. 24 of 2007 concerning Disaster Management.

According to Chief Justice Charles Evans Hughes in Home Building and Loan Association v. Blaisdell, 1934, that "Emergencies do not create Danger. The State of Emergency does not increase the guarantee of power or transfer or dissolve the limits set on guaranteed and administered power. The Constitution was adopted out of a murky State of Emergency" (Rossiter, 1963, p. 213). In Indonesia itself, there was a violation of constitution committed by former President Suharto when he took power from Sukarno through a decree eleven March 1966 (Super Semar). The event should not have happened if Supersemar was not abused by the holder of the mandate.

State of Emergency Laws in Some Countries

The practice that developed in various Anglo-American countries was the practice called Martial Law which was not at all regulated in the constitution in writing. In the United States, there is also no legal provision such as a law that explicitly gives the President the right to declare a State of Emergency (Davies, 2000). Where it is different from Civil Law countries such as France and Indonesia, the imposition of a State of Emergency and the authority of the head of state are explicitly regulated in the constitution of the country concerned. in 1848 the first court case was Luther v. Borden, according to Chief Justice Taney: "a state could impose martial law to combat an insurrection, and the decision as to whether to do so if left to the state itself". According to the Supreme Court on this matter: "states possessed the power to declare martial law without being subject to judicial review" (Asshiddiqie, 2007, p. 117).

When President Henry Truman determined the constitutionality of the State of Emergency, Justice Jackson identified three categories of the President's authority to enact martial law in the State of Emergency: (Feldman, 2005): a) Because it is based on congressional power, simply the government acts explicitly or implicitly on the basis of delegation of power from congress; b) Not explicitly supported by congress, but congress itself does not prohibit the act of enactment of the State of Affairs, meaning that the president acts without explicit congressional support; or c) That the President self-imposes the State of Emergency even if Congress opposes it or the president acts in a direct position against the explicit or implicit will of the congress. The thing that hinders the application of martial law in the United States, according to Mary Maxwell is the existence of a law called the Posse Comitatus Act 1878 (Maxwell,

2011). The law explicitly prohibits soldiers from engaging in law enforcement affairs at home, but it is desirable, it could also be amended or repealed by congress. Prior to the existence of this law, there was a Supreme Court decision known as Ex Parte Milligan (1864). The Supreme Court declared that Lincoln's imposition pf martial law (by way of suspension of habeas corpus) was unconstitutional (Dueholm, 2008). In France, emergencies are distinguished between actual states of siege (etat de siege reel) and constructive states of siege (etat de siege fictive). Actual (real) State of Emergency relates to the situation where a territory of the state has actually been occupied or controlled by enemies of the state or in fact military operations are underway. Such a situation makes all legal norms that apply normally unusable. Military action must be taken immediately in this regard, taking into account whether it will be assessed or tested by the judiciary or the legislature.

Whereas in fictitious etat de siege, normal life is not wholly or completely disturbed, despite the threat of Danger that may disturb it. Emergencies are constructive, that is, they exist because of legal construction, not exist in real terms. In this fictitious constructive state of siege, the function of civil institutions is indeed disrupted, but it can still function as long as it is for the purposes of fulfilling obligations in maintaining legal order and guaranteeing the constitutional system (Hage, 2016). After the outbreak of the revolution in 1789, the situation was clearly regulated, with an Act passed on July 10, 1791. This law requires the enactment of a State of Emergency and the procedures for implementing a State of Emergency attributed to a military Ruler (Rossiter, 1963, p. 80). Eight years later, in 1797, the concept expanded, encompassing all measures to deal with the threat of invasion from another country or armed rebellion from one's own domestic forces. The definition of rebellion is also expanded in meaning to include the understanding of all types of internal security disturbances (Asshiddiqie, 2007, p. 132).

In France, there have been five impositions of Emergencies, namely in 1955, 1958, 1961, 1988 and 2005. As in 1961, Charles de Gaulle applied the provisions of article 16 to the circumstances referred to in article 36, namely to deal with all types of emergencies such as war and open rebellion. Article 16 was applied in the face of the armed uprising in Algeria in 1961. At the time, de Gaulle interpreted Article 16 in a broad sense that allowed him to establish special military courts, restrict civil rights, and exercise strict censorship of the press. De Gaulle was strongly criticised for his actions, especially after months of imposition, the State of Emergency never ended, especially after his critics were harshly suppressed (Gaffney, 2010).

Finally, the Authority to enact martial law and determine the State of Emergency in British history is understood as the prerogative of the King or Queen as head of state. In the English common law tradition, in an emergency, the King or Queen may intervene in the affairs of privately owned lands to maintain and maintain peace and address the cause of the emergency. A state of emergency was declared to allow the head of state to use power to restore the public order by overriding the ordinary law. In its development since the 20th century, the use of this right has been continuously restricted by law. By scholars, the question is that the authority to enforce martial law exists not because of its inherent and absolute prerogative, but because of a real need based on a doctrine or principle of necessity that is recognized as the justification for emergency action (Feldman, 2005).

The Emergency Powers Act 1920 provides for "emergencies in peacetime". The law authorizes the King or Queen at the discretion of the Prime Minister to impose a State of Emergency related to natural disasters, such as those related to the supply and distribution of food, water, oil, lighting or means of transport and so on (John, 1989, p. 362). Meanwhile, the Emergency Powers (Defence) Act 1939-1940 empowers the prime minister to maintain public order and control the economy and mobility of people in situations of war. The authority in question also includes the authority to carry out detention without trial.

In accordance with the provisions of the Emergency Power Act 1920, the queen in council is empowered to make regulations, provided that: (i) the regulations in question do not impose conscription or compulsory industrial work; (ii) not alter criminal procedure; (iii) does not allow for any right to punish persons without due trial; (iv) does not negate the right to strike to the extent that it is lawfully

guaranteed. Related to Civil Emergencies or outside the War there are actually other regulations such as the Energy Act 1976 and the Drought Act 1976. Regarding the regulation on the authority to establish special regulations in emergencies, the latest enhancements were made under the Civil Contingencies Act 2004. The creation or establishment of emergency regulations when the state is in a State of Emergency under the Civil Contingencies Act 2004 can be carried out in the event that there is: a) A serious threat to human welfare; b) Serious threats to the environment; c) In the event of War; or d) The occurrence of a terrorism offense (Secretariat, 2004).

Emergency Law in Indonesia

The constitutional basis for the imposition of the State of Emergency has been regulated with all its consequences in the 1945 Constitution, especially in Article 12 and Article 22 paragraphs (1), (2) and (3). Based on the provisions of article 12 of the 1945 Constitution, the first action of the President as head of state and government is to declare a "State of Danger", followed by Actions or arrangements in a State of Danger (Article 12). Meanwhile, according to Article 22 of the 1945 Constitution, it contains three paragraphs, namely: a) In the event of a compelling emergency, the President has the right to enact a Government Regulation in Lieu of Law (Perpu); b) The Perpu must obtain the approval of the DPR in the next session; and c) If no approval is obtained, the Perpu must be revoked.

The provisions of article 22 are the basis for making regulations in lieu of law (Perpu) or extraordinary rules, not for carrying out Emergency Measures or extraordinary measures called Perpu (Manan, 2010, p. 6). Although the two articles are interconnected, the compelling conditions of interest (Article 22) are broader than the State of Danger/Emergency (Article 12). Given this distinction, it is natural that the establishment of a government regulation in lieu of law based on the provisions of article 22 paragraph (1) should not be preceded by a declaration of a State of Emergency. According to article 12, the implementation of the State of Emergency/Danger requires a formal proclamation or declaration by the President to the public. This provision requires two norms, namely: (i) a declaration in force of a State of Danger established and declared by the President; and (ii) matters relating to the regulation of these terms and their consequences shall be regulated in the form of law.

In practice, there is a growing understanding that in the words "established by law" in article 12 that have been described there are two meanings (Asshiddiqie, 2007): a) That "the regulation of the State of Danger be established by law". This first definition is related to its regulation (regeling) and contains abstract legal norms and laws in accordance with the properties of laws and regulations. b) That the "statement of the enactment of the State of Danger is contained in the form of a law". This second definition is related to its determination (beschikking) and contains legal norms that are concrete and individual.

In addition to being based on the constitution that has been outlined, Law Number 23 Prp of 1959 concerning Dangerous Situations is also an emergency norm in force in Indonesia. Perpu is only necessary, if the Emergency Authority deems it necessary to further regulate a matter in the exercise of the power of the State of Emergency, which in nature changes a provision of the law governing the State of Emergency. Article 5 paragraph (2) of the 1945 Constitution reads: "The President establishes government regulations..." According to the provisions of the article, the authority of the President to establish government regulations in lieu of laws. For Bagir Manan, the legal issue here is not in the form of government regulations, but in content, namely as a substitute for laws, because based on these articles, government regulations are determined to implement laws not to replace laws (Manan, 2010, p. 7).

The authority to declare and determine the State of Emergency lies in the hands of the President, not in the hands of the head of local government as referred to in article 50 paragraph (2) of Law No. 24 of 2007 concerning Disaster Management. The parties in the structure of the Civil Emergency Authority according to Law No. 23 Prp Year 1959 are: a) Elements of the Head of Local Government; b) Elements of the Local Military Commander; c) The Chief of Local Police; and d) the local Chief Prosecutor, but in its implementation in the field may be added other necessary technical elements. In concrete practice, the

need for regulation in the form of implementing regulations depends largely on concrete needs case by case. The absolute necessity is the act of declaration or declaration or proclamation of the State of Danger or Emergency itself. The pouring of the implementation of the State of Emergency is not absolutely necessary in the form of regeling. at the local level, local regulations may be issued by the Regional Civil/Military/War Emergency Authority. According to article 9 paragraph (1) of Law No. 23 Prp of 1959, "the regulations of the Civil Emergency Authority shall take effect from the moment of its promulgation, unless another time is specified for it. promulgation as wide as determined by the Emergency Authority" (23, 1959). Therefore, a declaration or declaration can be made by Presidential regulation as referred to in Law No. 10 of 2004, with a government regulation in lieu of law or can also be officially declared only by beschikking, namely a Presidential decree, which means, the pouring of the implementation of the State of Emergency is not absolutely necessary in the form of regeling (regulation).

Emergency Law: Types and Levels

Emergency de Jure is an emergency permitted by general principles, the simple thing is that such a situation is enacted when (Asshiddiqie, 2007, p. 68):

a. State of Danger due to the threat of War coming from abroad;
b. State of Danger as national armies are fighting overseas;
c. State of Danger due to warfare taking place within the country or some kind of armed rebellion by separatist groups in the country;
d. State of Danger due to social unrest that creates social tensions that cause constitutional government functions to be unable to function properly;
e. State of Danger due to the occurrence of natural disasters or devastating accidents that cause tension, panic and cause the wheels of constitutional government not to function properly.
f. Danger due to impaired legal and administrative order or causing the state administration mechanism to be unable to be carried out properly by an applicable law.
g. State of Danger due to the financial condition of the state as in the Indian Constitution is called a financial emergency and the state administrative conditions are not supportive or where the availability of state finances does not allow the proper carrying out of government tasks by state institutions, while the need to act is already very precarious and urgent.
h. Other circumstances in which the legitimate functions of the constitutional power cannot function properly, except in violation of certain laws, while the necessity to amend such laws has not been fulfilled within the time available.

Article 51 of the Charter of the United Nations (UN) says, "every State may exercise self-defence in the event of an armed attack; (states may use force in self-defence against an armed attack)". If the state has committed such self-defence, it must immediately report it to the UN Security Council, so that the UNSC will coordinate all measures to be able to take all concrete actions to restore world security and peace. While the de facto Emergency on the enforceability of emergencies is unacceptable in principle because its practice makes it difficult for the world's monitoring system to justify it under international law.in their report on the results of their pioneering work on emergencies, Joan Hartman and Fitzpatrick describe several typologies of emergencies associated with the practice of emergency regimens in various countries around the world (Fitzpatrick, 2018).

According to him, de facto emergencies usually appear in one of two things (Iyer, 1999, p. 47): a) When an exception is made by the government without a formal State of Emergency declaration. b) When an exception is resumed after the declaration of a State of Emergency has been officially terminated. There are at least three types of conditions referred to as types of classic de facto emergencies (Iyer, 1999, p. 48):

a. When the government has chosen to rely on the usual laws (where there are no exceptions), to deal with the crisis that engulfs the country.

b. When an Ad Hoc legal regime or a State of Lawlessness occurs everywhere.
c. If a country's government permits the effects of a State of Emergency declaration and continues to enforce harsh security laws, it becomes permissible by law.

Meanwhile, on a lower scale there are so-called ambiguous pr potential de facto emergencies, which are related to real conditions on the ground that are not in accordance with what they declared, or there is no official declaration, but in fact the government commits actions that violate human rights using the law of the State of Emergency or about special security that is permanently usually imposed. According to Hartman and Fitzpatrick, "wherever there is a sharp shift in the attitude of a country's government, human rights monitoring must appear to treat the change in situation as a functional emergency" (Iyer, 1999, p. 49).

In Indonesia, the level of emergency is specifically regulated in Prp Law Number 23 of 1959 concerning Dangerous Conditions, namely, Civil, Military and War Emergencies. Civil Emergency is an Emergency whose level is the lowest of other Emergencies which in the sense that the threat level of Danger is low. Provisions regarding Civil Emergencies are regulated in Chapter II, namely from articles 8-21 of Prp Law No. 23 of 1959 concerning State of Danger. Civil emergencies can occur due to natural causes such as disasters and others, can also occur due to horizontal conflicts between communities and between communities and government officials, and can even occur due to government administration problems that are internal to the government. If the nature of the Danger Situation is very broad, article 22 paragraph (1) of the 1945 Constitution is used, as stated by Jimly Asshiddiqie (Asshiddiqie, 2007, p. 310), It is essential to correctly identify: (i) what are the dangerous threats that require the state to proportionately defend itself; (ii) where the territorial limitation applies; and (iii) how long the time limitation is.

During the Civil State of Emergency, all provisions provided for in Chapter II shall apply to the territory or part of the territory of the country declared or declared to be in a state of civil emergency (23, 1959, article 8 Paragraph 1). If the State of Civil Emergency is abolished by not being upgraded to the status of a declaration of Martial Law or War, at the time the abolition occurs, the regulations and Measures that have been established and carried out by the executor of the civil Emergency power during the period of the Civil Emergency "cease to apply", except in the cases referred to in article 8 paragraph (3) of this Law otherwise provided (23, 1959, article 8 Paragraph 3). In an Act or regulation is maintained, the Institution, body and so on formed because of the Act or regulation still have the position and duties as before. If a Civil Emergency is changed or upgraded to a State of Martial Law and/or War, the Acts or regulations of the Martial Law Authority remain in effect as Martial Law and/or War Authorities Measures or regulations. The provisions in article 1 paragraph (2) of the Criminal Code (KUHP) shall not be applied in the event that the regulations of the Civil Emergency Authority cease to apply according to article 8, are amended or repealed (23, 1959, article 9 Paragraph 1-2).

The Civil Emergency Authority shall have the right to provide that in order to hold public meetings, public meetings and processions shall seek prior permission, shall also have the right to restrict or prohibit entry or use of the building, residence or grounds for a certain amount of time. These provisions do not apply to worship, recitation, religious ceremonies, and customary activities and government meetings (23, 1959, article 18 Paragraph 1-3). Furthermore, the provisions regarding military emergencies are regulated in Chapter III Articles 22-34 of Prp Law Number 23 of 1959 concerning Dangerous Conditions. According to article 22, that during the State of Martial Law, the provisions of Chapter III apply to all or part of Indonesia declared under martial law. Military Emergency is an Emergency whose threat level is relatively higher than Civil Emergency.

According to the provisions of Article 7 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Army (TNI), the main task of the TNI is to uphold state sovereignty, maintain the territorial integrity of the unitary state of the Republic of Indonesia based on Pancasila and the 1945 Constitution, and protect the entire nation and all Indonesian bloodshed from threats and disturbances to the integrity of the nation and state. The main task is carried out with military operations for War or

military operations other than War. Military operations are not only carried out in martial law, but can also be in martial law, civil and normal circumstances. Usually, to overcome armed insurgency movements and armed separatist movements. If the State of Martial Law is abolished or not followed by the declaration of a State of War, then at the time of such abolition, the regulations or measures of the Martial Law Authority cease to apply, except those mentioned in article 22 paragraph (3). During the enactment of martial law, the Martial Law Authority has the right or authority to do things as stipulated in article 24 paragraphs (1) and (2) and articles 25 to 33 of Law Prp Number 23 of 1959 concerning State of Danger. In article 34 paragraphs (1) and (2) of Prp Law Number 23 of 1959 it is also stipulated that regulations from local governments, regional officials and other regional agencies may not be issued or promulgated, if they do not obtain prior approval from the Regional Martial Law Authority concerned.

The last is the provision of Martial Law which is regulated in the provisions of Chapter IV starting from article 35 to article 45 of Prp Law Number 23 of 1959 concerning State of Danger. Article 35 paragraph (1) to paragraph (5) stipulates that during a State of War, the provisions of Chapter IV shall apply to all or part of Indonesia declared in a State of War. If the State of Martial Law is abolished, at the time of its abolition the rules / actions of the War Ruler cease to apply, except those mentioned in article 35 paragraph (3), that is, if deemed necessary, the regional head, regional Civil Emergency Authority or the Regional Martial Law Authority concerned may maintain for his area all or part of the regulations / actions of the regional War Authority, provided that such maintained rules/measures may continue for a maximum of six months after the abolition of the State of War.

Based on the 3 levels of Emergencies described above, in practice, the Emergency Authority is actually difficult to actualize the regulations governing the State of Emergency, even though it has been explicitly regulated in the State of Emergency Law, even though human rights violations often occur when the State of Emergency is enacted.

Discourse on Human Rights Law in the Paradigm of Emergency Law

The formation of the state and the exercise of power of a state must not reduce the meaning of freedom Human Rights are important pillars in a state, Human Rights are ignored or violated deliberately and the suffering caused cannot be resolved fairly, then the state concerned cannot be called a state of law in the true sense (Asshiddiqie, 2007, p. 160). The existence of Pancasila is as a view of life for the Indonesian nation, human happiness will be achieved if the relationship is harmonious, harmonious, and balanced between individuals and their environment, between the worldly and God as creator. The relationship is not neutral, but is imbued with the values of the five precepts of Pancasila as a whole and whole (Notonagoro, 1983, pp. 59-60).

Historically, when the 1945 Constitution (UUD 1945) was replaced with the Constitution of the United States of Indonesia (RIS) in 1949 the Temporary Constitution (UUDS) of 1950 which had been in force for about 10 years (1949-1959), both contained more and more complete provisions of human rights articles when compared to the 1945 Constitution. In the constitution of the United States of Indonesia 1949, the regulation of human rights lies independently in part V entitled "fundamental human rights and freedoms". In that section there are 27 articles (articles 7-33) whose human rights articles contain almost the same content as the 1950 Provisional Constitution. However, its section consists of 28 articles (articles 7-34) in the 1950 Provisional Constitution. After post-reform amendments, the 1945 Constitution contained 10 articles reflecting human rights, ranging from article 28A to article 28J (Utama, 2007, pp. 132-135).

In various countries, the State of Emergency is always regulated separately, both regarding its subject matter in the constitution and in the provisions of the law. Legal systems in different countries prescribe specific measures to address emergencies, and in constitutional arrangements there are always elements that restrict, reduce or even freeze certain human rights. However, it must be temporary,

intended for the purpose of overcoming the State of Crisis and with a view to restoring normalcy as it should be in order to maintain fundamental human rights (Asshiddiqie, 2007, p. 97).

The state of emergency in Indonesia has been imposed several times such as the Military Operation Area in Aceh de jure and even de facto which occurred in Tanjung Priok and not a few resulted in victims of human rights violations (Universitas Islam Indonesia (Yogyakarta). Pusat Studi Hak Asasi Manusia (PUSHAM), 2008). In the context of international law. The enactment of provisions governing the State of Emergency has long received serious attention. The protection of human rights remains a common concern in various international legal instruments developed in the event of an emergency. The Geneva Conventions of 1949 protect only a limited number of civil rights that are not party to the War, i.e., to be treated humanely without discrimination (The Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II) 8 June 1977) (Pilloud, 1987). Therefore, in the application of a principle of Emergency in a country, it is necessary to base or principles that underlie the declaration of the legal status of the State of Emergency.

Human Rights Regulation in the Indonesian Constitution is explicitly regulated in Chapter X Article 28I paragraph (1) which relates to rights that cannot be reduced under any circumstances and Human Rights Protection is also regulated in Law No. 39 of 1999 concerning Human Rights, especially in Article 4. However, in Law Prp No. 23 of 1959 concerning Dangerous Conditions, it does not expressly regulate the protection and respect of human rights during the state of emergency. However, it cannot be denied that human rights arrangements that cannot be reduced in accordance with article 4 of the Human Rights law with article 28I paragraph (1) above have provided strong legitimacy regarding the protection of human rights when emergency laws are imposed. Therefore, an important feature of a democratic state is the importance of realizing respect and protection of human rights. The existence of constitutional protection of human rights with legal guarantees for demands for enforcement through fair processes (Manan B. a., 2016).

CONCLUSION

Protection of human rights in a state of emergency/danger is regulated in the 1945 Constitution, especially article 28I paragraph (1) along with Law No. 39 of 1999 concerning Human Rights, especially in article 4 related to rights that cannot be reduced under any circumstances. These two articles become legal legitimacy if the emergency authority violates human rights during a state of emergency, because it is not explicitly regulated in Law Prp No. 23 of 1959 concerning Dangerous Conditions related to respect and protection of human rights during a state of emergency/danger. In order for human rights regulation to be more effective and effective, it is necessary to improve emergency laws and regulations, such as the improvement of Law Number 23 of 1959 concerning Dangerous Conditions because for the protection, respect and enforcement of human rights are prioritized and considered. And so that emergency authorities are not arbitrary when emergencies/dangers are imposed and prevent human rights violations and synchronize the state of danger law with human rights provisions stipulated in human rights law because in practice emergency authorities can freeze human rights or citizens. Along with strict procedural supervision of emergency authorities.

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