

"STATE OF EMERGENCY" PROCLAMATION AUTHORITY IN INDONESIA DISASTER CASE

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ABSTRACT- Living in the ring of fire nominates Indonesia to experience natural disasters at any time. Law 24 the Year 2007 concerning Disaster Management regulates the state of emergency's declaration authority during a disaster. The President carried out the declaration for the National scale disaster, by the Governor for Province scale disaster, and the Regent/Mayor for District/City scale disaster. Some experts claim that the distribution of proclamation powers is not accurate. The authority to declare a state of emergency status on any scale must be carried out by the President based on two reasons; First, Indonesia is a unitary state and not a federal state. Second, the state of disaster declaration has the consequence of legalizing a special aberrant of law in dealing with disasters. The President should only carry out this condition of changing the legal regime as head of state. This paper examines the theory of sovereignty in the context of the unitary government and the idea of 'the state of exception' in applying emergencies in Indonesia's natural disasters. As a result, it is necessary to measure prescriptions for the President to declare status on all scales in Indonesia to guarantee the rule of law even in a state of emergency conditions.

Keyword: State of Emergency, President, Indonesia

I. INTRODUCTION

There are always questions about who should set disaster emergency status in Indonesia. It happens because there is a division of authority, as stated in Article 51 of Law Number 24 of 2007 concerning Disaster Management (*Undang-Undang Penanggulangan Bencana*). Disaster Management Law gives the President power to determine national disasters' status and provide authority to local governments (governors and regents/mayors) to determine disaster emergency status within the province and district/city.

This polemic can be found almost in the determination of disaster emergency status. For example, why did the Lombok 2018 earthquake and the Palu-Donggala soil liquefaction 2018 not be stated as a national disaster? The next polemic is about extending the emergency period, often developed by the local government. The expansion of the emergency period should not easily be opened because it allows abuse of power in Indonesia's governance.

The formulation of granting authority to determine emergency status in Article 51 of the Disaster Management Law is different from the concept stated in the Indonesian Constitution. Article 12 of the 1945 Constitution states that the President can only declare a state of emergency. Carl Smith's doctrine of the state of emergency or 'state of exception' can only be done by what he refers to as 'the sovereign' [1]. For Indonesia, which adheres to a presidential system, the sovereign is meant by Carl Smith to be the President as head of state [2].

Consider that arrangements that give the local government authority to determine the local disaster emergency status are inappropriate. It is based on two reasons, namely. First, Indonesia is a unitary state where the highest sovereignty holder is the President, who can declare a 'state of emergency' within Indonesia's unitary state. Second, the enactment of a state of emergency allows the implementation of a special law from the positive law that applies regularly. The local government should not carry out the transfer of law from normal law to emergency law but the President. A local government does not have the authority to switch emergency laws without the President's approval or at least involvement.

The lack of clarity of the responsibility holders in a disaster state results in inefficiencies in handling disasters that commonly take casualties. Balanced handling to take proportional necessity is one of the basic principles in the state of emergency determination [3]. As mandated by the Constitution's preamble, human rights of citizen protection can be carried out constitutionally and optimally [4].

This paper will be divided into four parts to discuss the authority to determine the state of disaster in Indonesia. The first section discuss the background of the importance of studying emergency disaster status in Indonesia. The second part explains the methods used in this paper. The third part discusses the regulation of the state of disaster in Indonesia, while the fourth part explores the two streams of state of disaster and its pros and cons. The last section consists of the conclusions that confirms the need for presidential involvement in determining Indonesia's disaster emergency status.

II. RESEARCH METHODS

As a legal study, this paper uses the juridical normative method. This method is used to examine the norms and laws and regulations related to the state of emergency in Indonesia. Then these laws and regulations are reviewed and then juxtaposed with their enforcement practices in Indonesia. More specifically, a statute approach is used to understand the meaning in the clause of the state of emergency in the Indonesian constitution. The review of legislation was also carried out specifically on two laws, namely the Government Regulation in Lieu of Law No. 23 of 1959 concerning State of emergency and Law No. 24 of 2007 concerning Disaster Management.

The Doctrinal Approach further uses to explore the opinions of scholars and practitioners associated with the topics mentioned. Besides that, a historical approach is additionally used that is an approach to examining the background studied and therefore the development of arrangements relating to the problems at hand. The historical approach is beneficial for understanding the philosophy of the state of emergency over time and conjointly understanding the event of the philosophy that underlies the emergency law in Indonesia. Therefore, a complete understanding and analysis will be obtained regarding the study of the "State of Emergency" Proclamation Authority in Indonesia Disaster Case.

III. RESEARCH RESULT

1. State of Emergency Settings in Indonesia

The constitutionality of setting the state of emergency in Indonesia comes from Article 12 of the 1945 Constitution, which states, "The President declares a state of danger (KeadaanBahaya). The conditions and consequences of the danger determined by law". According to scholars in Indonesia, such as JimlyAsshiddiqie, BinsarGultom, and Kabul Arifin, the meaning of this danger is a form of emergency or 'state of emergency'[5]. In Indonesian literature, the concept of "state of emergency" is referred to as *Hukum Tata Negara Darurat* or Emergency Constitutional Law [6]. This norm gives the President the authority to declare a "State of Emergency"[7].

Arrangements regarding the state of emergency prevailing in Indonesia then spread in some legislative products. This paper will discuss two regulations that show the difference between a state of danger that refers to the constitution and those that do not refer to the constitution. The first is the Government Regulation in Lieu of Law No. 23 of 1959 concerning State of Emergency. The second is Law No. 24 of 2007 concerning Disaster Management. These two regulations regarding the 'state of emergency' will be further discussed in the following subsections.

2. Government Regulation in lieu of Law Number 23 of 1959 concerning the State of Emergency.

State of emergency law is a law that was born during the Soekarno administration. This law was born in the era of Sukarno's Guided Democracy (*DemokrasiTerpimpin*). In this era, centers of power and direction of state policy were directly under Soekarno's leadership, marked by the Presidential Decree of Guided Democracy Era on July 5, 1959. The decree stipulated the re-enactment of the 1945 Constitution and revocation of the 1950 Constitution [8].

Many rebellions occurred during this Guided Democracy period. The State of Emergency Law 1959 gives the President great authority to determine part of Indonesia's territory under The State of Emergency conditions. There are three reasons for the President to assess this state of emergency. The first is the existence of threats to the security or legal order in all or parts of Indonesia. The danger in question is rebellion, riots, natural disasters, which are feared not to be overcome by standard equipment. Secondly, a 'state of emergency' can also be declared when war arises or the threat of war is feared to threaten the Indonesian state's sovereignty. Third, other unusual conditions that can endanger the life of the country.

This law provides three types of emergencies: a civil emergency crisis, a military emergency, and a war state [9]. The State of Emergency Law 1959 also suspends supervision carried out by the judge regarding the determination of the dangerous situation carried out by the President. In other words, when The President has decided to declare a 'state of emergency,' the President's decision cannot be tested in any administrative court or state court. Determination of the state of emergency by the President also cannot be monitored by the House of Representatives (*Dewan Perwakilan Rakyat/ DPR*) through his rights. At that time, the President was the mandate of the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat /MPR*) and was directly responsible to the MPR.

3. Law No. 24 of 2007 concerning Disaster Management

Law 24 of 2007 concerning Disaster Management was born as a lesson learned after the tsunami disaster in Aceh in 2004. This law's existence is intended as a guide in various stages of disaster to be handled more optimally and effectively. The meaning of a 'disaster' in this law is an event or series of events that threaten and disrupt the lives and livelihoods of the people caused by natural factors and/ or non-natural factors and human factors resulting in human casualties, environmental damage, property losses, and psychological impact [10].

There are three types of disasters regulated in the Disaster Management Law: natural disasters, non-natural disasters, and social disasters. First, natural disasters include earthquakes due to nature, volcanic eruptions, hurricanes, landslides, drought forest/land fires due to natural factors, plant pests, epidemics, outbreaks, extraordinary events, space/object event Celestial body. Second, non-natural disasters include forest/land fires caused by humans, transportation accidents, construction/technology failures, industrial impacts, nuclear explosions, environmental pollution, and space activities. Third, social disasters include social unrest and social conflicts in the community that often occur. These three disasters are the reasons for the emergency status of the disaster. What is meant by the status of a disaster emergency is a condition determined by the government for a certain period based on the Agency's recommendation given the task of overcoming the disaster. The agency is the National Disaster Management Agency (*Badan Nasional Penanggulangan Bencana/BNPB*) [11].

The Disaster Management Law gives authority to determine the status of disaster emergencies for the President and Regional Heads. Determination of the status of the disaster carried out by the government by the scale of the disaster that occurred. When disaster management is needed on a national scale, the President determines the determination. Determination of disaster emergency status can also be determined by the Governor for disasters on a provincial level. Simultaneously, the status of an emergency district/city scale can be done by regent.

In a disaster emergency, the government can carry out a series of activities to move people to locations that are considered safe. The government can also access funding sourced from ready-to-use funds without going through budget use procedures that are generally carried out under standard conditions. The use of the state budget without going through standard budget procedures is confirmed in Presidential Regulation No. 70 of 2012 concerning Procurement of Government Goods / Services. Disaster is an excuse to conduct the direct appointment process to provide goods and other construction/services.

4. Two Streams 'State of Disaster'

It found two views regarding disaster emergency status when associated with the concept of 'state of emergency' in Indonesia. The first view states that the determination of disaster emergency status is not included in the threat of 'state of emergency' in general. While the other view is the opinion that states that the state of disaster is part of the state of emergency covered by Article 12 of the 1945 Constitution.

The difference between the two perspectives gave birth to different concepts in establishing disaster in Indonesia. For supporters of the stream who state that the state of disasters not included in the 'state of emergency,' then the determination of disaster emergency status becomes relevant to be carried out by the regional head and not the presidents.

The second view clearly refers to the Article 12 of the 1945 Constitution which gives authority only to the president to declare a state of danger, which includes a state of disaster. Therefore, the emergency setting, which is not carried out by the President, is actually against the Constitution and violates the law.

The first view of the differences in the concept of the state of disaster with state of emergency is a concept that was born from the influence of the decision of the Constitutional Court Number 8 / PUU / XII / 2014 concerning Judicial Review of Law Number 7 of 2012 Handling Social Conflict. This decision explicitly separates between the determinations of the emergency status of social conflict as a matter not

included in the scope of Article 12 of the 1945 Constitution and as referred to in the 1959 State of Emergency Law.

However, many disagree with the arrangement as the Constitutional Court stipulated in its decision. As Melissa Crouch views, giving local government authority contradicts the Indonesian Constitution's concepts [12]. The President's affirmation to determine the disaster's status was also conveyed by Jimly Asshiddiqi to provide legal certainty for Indonesian citizens.

The President, as Gross's view to protect the public in times of emergency, the Executive Branch conferred with more administrative powers than in times of peace"[13]. The implementation of the President's authority to declare a state of danger is absolute as an elaboration of the functions of the power of government. There is no other authority that has the control like the President to mobilize all state apparatus as expressed by William B Fisch, who stated, "The President has a strong authority to deal with emergencies as well as normal times, but the executive is the preeminent holder of such authority" [14].

In his capacity as the supreme leader of government power when in an emergency, the President has the means to take over all state functions to save the country, including limiting some citizens' rights and mobilizing oppressive state tools, based on certain objective conditions [15]. The President should have the authority to declare a state of emergency at all levels. At least the President can be given the power to be consulted in determining local emergencies. So that the role of the President as the leader of sovereignty in the unitary state in Indonesia is not overlooked.

Determining the state of disaster status by the local government will lead to the possibility of abuse of power. The author found that local leaders could easily extend the disaster emergency period so that it was easy to access emergency funds. So that it is not following the concept of actual emergency that exists in real conditions.

IV. CONCLUSION

The Indonesian Constitution provides the authority to declare a state of emergency to the President. The concept of a state of disaster can be included as part of a state of emergency due to the character of law changes that can be specifically used during a disaster. This legal change must be declared in advance by the President or at least with the President's approval and/or involvement.

Another reason why the President should be involved in determining a state of disaster is that the Indonesian state is a unitary state. The origin of local government power is the remaining power granted by the Central government, and local governments can be given the authority to carry out disaster management locally. However, in terms of the declaration, the President must be involved.

The division of authority given in the Disaster Management Law regarding the local government's declaration of local disaster status without involving the President is inappropriate. This is due to the potential for abuse of power without supervision from other parties in determining a state of disaster within Indonesia's unitary territory. Therefore, it is necessary to involve the President in every stipulation of a state of disaster to provide legal certainty and constitutional protection for Indonesian citizens.

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