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## MANUSCRIPT TO REVIEW

### Discrepancy Of the Law on Disaster Emergency In Indonesia: In Search Of An Integrated Law

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#### Abstract

The Determination of Disaster Emergency Status is a critical factor in handling Covid-19 in Indonesia. It legally provides adequate access to the Government to reduce legal bureaucracy and facilitate access to expedite the handling of Covid-19 in times of emergency. However it has faced difficulties in its application as it has no explicit reference to existed emergency related disaster laws. This article investigates such discrepancy in terms of the meaning of emergency within the legal framework in Indonesia. It utilizes doctrinal method to explore six various related laws to disaster emergency and analyze their discrepancy which has adversely impact to Covid-19 handling management. The term disaster emergencies under six related laws to disaster has different legal ideas, posing difficulties in their execution, particularly the lack of standard rules, centralistic, and lack of enforcement power in the field. **Contribution:** This paper significantly displays the normative issues of disaster emergency determination and its status in different six disaster related laws, and provide an alternative to mainstream and amend the Infectious Disease Outbreak Law as an integrated law for ensuring legal certainty, benefit, and fairness for the people in handling potential pandemic in Indonesia in years to come.

**Keywords:** Covid-19, Management, Disaster Emergency, Law, Indonesia.

**Comment [A1]:** Write an abstract of this article based on :  
1. The research objectives (academic gaps) in the article.  
2. Methods used in the research  
3. The findings  
elaborate the above 3 points in no more than 250 words

**Comment [A2]:** The academic contribution of this article has not been clearly stated. For example, the legal model offered in this article is used as a reference for the future.

## Introduction

**Comment [A3]:** What to describe in the introduction are undesirable conditions (emergency, riots) or others that occur during a pandemic, so it is necessary to formulate rules / laws related to the theme written about

Since Covid-19 emerged in China and was declared a pandemic by the World Health Organization (WHO 2020) on March 11, 2020, 228 countries have been affected, with 5,821,004 deaths and 412,351,279 infections, while Indonesia has been infected in 33 provinces and territories. 4,966,046 persons were infected and 145,622 died in 365 districts/cities (Covid19.go.id 2021). The Government of Indonesia's primary response to Covid-19 has been to convert the natural disaster into a legal event with a process for evaluating the status of a disaster emergency (the disaster management Act, ss. 1-18).

Indonesia already has Law No. 4 of 1984 on Infectious Disease Outbreaks (WPM LAW), which should serve as the primary legal framework for dealing with the Covid-19 outbreak. However, this Law is insufficient. Since 2012, the Law has been academically drafted for alterations or revisions for various reasons. One is out of step with current developments, particularly in technology and rapid transit.

The Government determined the Covid-19 disaster's emergency status using Law No. 6 of 2018 on Health Quarantine (UUKK), an article regulating Public Health Emergencies, and Law No. 24 of 2007 on Disaster Management contains the legal notion of Disaster Emergency Status.

The international disaster management approach separates disaster management into three stages: 1) pre-disaster, 2) emergency response, and 3) post-disaster. These stages do not indicate a dichotomy between them, but rather that they are interrelated. What is critical is that this level requires delegation to the Government to take swift action in a disaster emergency. This stage is a normal cycle in the international disaster management system. While there are numerous implementation variants around the international globe, what is critical is that disaster and its management are a connected series, not a series of isolated incidents.

The stages will employ uncommon or conventional legislation compared to disaster management during the pre-and post-disaster phases. In an emergency system, each declaration of an emergency allows the Government to disregard several fundamental principles, including

56 restrictions on the Constitution's articles of independence and freedom, suspension of human  
57 rights, and violations of the Law governing the procurement of goods and services for crisis  
58 management of an emergency nature. This article explores the concept and regulation of  
59 Indonesia's Disaster Emergency Law and its implementation throughout the Covid 19 period.

60

## 61 **Method**

62

63 The approach used is doctrinal, which is assessed discrepancy of law concerning emergency  
64 disaster laws through legal principles, standards, statutory rules, court decisions, agreements, and  
65 doctrines (teachings). Additionally, historical aspect of emergency status imposition in Indonesia  
66 also refers to track the full understanding of the concept.

67

## 68 **Results and discussion**

69

### 70 **Defining of Disaster Emergency**

71

72 The Law on Disaster Emergencies originated from and was incorporated into *staatsnoodrechs* or  
73 countries in a state of emergency or danger, but through its development, most notably following  
74 the enactment of the UUPB's Law Number 24 of 2007 concerning Disasters, the stipulation of  
75 disaster emergencies has developed its legal conception and Law in a medical emergency  
76 (Sihombing 1996a).

77

78 Since 1945, the Indonesian legal system has used three distinct phrases to refer to emergencies: a  
79 state of danger, a compelling exigency, and a state of emergency. Asshidqie (2007:97) argued  
80 that the premise or principle of declaring a state of emergency is a constitutional prerogative  
81 granted to the State to limit human rights to expedite recovery and impose temporary limits to  
82 overcome catastrophic problems and restore normal conditions. Because the constitution vests  
83 this enormous authority in the legislature, the Law also establishes limitations or conditions on  
84 when that authority may be employed, such as a time limit or the stipulation of circumstances  
85 during a situation of danger or emergency. The regulation's objective is to balance unbridled

**Comment [A4]:** Elaborate more detail.

**Comment [A5]:** 1. The description of Disaster Emergency should be paired directly with the emergency in the health sector which is the focus of the study.  
2. . What has the Indonesian government done related to the focus of your study?  
3. Your opinions about what has been done  
4. . What do you propose?  
The above points must be CLEAR in the RESULT and DISCUSSION description.

86 authority and quantifiable constraints, following the principle of balance legislation (*evenwichts*  
87 theory) (Asshidqie 2007a).

88

89 According to the Theory of the Law of Equilibrium, danger conditions are abnormal conditions;  
90 therefore, legal remedies must also be abnormal and extraordinary; in normal circumstances, the  
91 authorities' actions are illegal or against the law; however, when abnormal conditions return to  
92 normal, the rulers' actions become valid and justifiable (Sihombing 1996:2). The appropriate  
93 criteria for defining the emergency must be detailed not only in the Constitution but also in  
94 special regulations. The Indonesian Constitutional Council has established what may be uttered  
95 during a state of emergency (Simamora 2010:58-70).

96

97 An emergency is a period of chaos that must be regulated normally to avoid multiple legal  
98 interpretations in dealing with the situation; consequently, it is necessary to regulate the  
99 mechanisms and procedures that allow the State to function according to the wishes of the State  
100 as compiled during regular times and the Constitution. Because an emergency has the potential  
101 to give rise to unconstitutional political interpretations, multiple interpretations to define a  
102 situation that is easily classified as an emergency, and the potential to give birth to a dictatorship.  
103 Sembiring has attempted to formulate several requirements, including the following: First, the  
104 existence of the State's highest interest, namely the State's highest interest, for the State's  
105 existence, which is jeopardized in an emergency (*het hoogste staatsbelang - het bestaan zelf van*  
106 *de staat - stond on het spel en was afhankelijk van het al of niet maken der getroffen regeling*)  
107 Second, it is critical to enact emergency measures to balance out aberrant conditions (*deze*  
108 *regeling noodzakelijk was*). Third, the Emergency Law's validity is transitory (*provosoir*), or it  
109 must be swiftly restored to normal conditions, but the temporary term is not specified. Fourth,  
110 Parliament cannot convene in the event of an emergency but must participate at the appropriate  
111 time (Sihombing 1996b).

112

113 Asshiddiqie (2006) uses the term *staatsnoodrecht* to refer to a country's legal system during a  
114 state of emergency. He argues that many *statemakers* and legal systems consider the State to be  
115 in a normal state, and thus many laws are drafted in normal circumstances, even if the State may  
116 be in an abnormal state. Or an emergency is also quite possible; this abnormality or emergency

117 might be triggered by political situations both within and outside the country, social conditions  
118 such as conflict and civil war, or natural calamities. Since 1945, the Indonesian legal system has  
119 used three distinct phrases to refer to emergencies: a state of danger, a compelling exigency, and  
120 a state of emergency.

121  
122 According to Article 22 of the 1945 Constitution, "in the event of a compelling emergency, the  
123 President has the authority to prescribe government regulations in lieu of law and must gain  
124 agreement from the House of Representatives in the subsequent trial." The Republic of United  
125 States of Indonesia's (RIS) Constitution also governs emergencies and hazards; however, the RIS  
126 Constitution defines them as "a state of war (article 127), an urgent emergency (article 96), and a  
127 condition of danger (article 129) (DPRRI 1950:1-47)."

128 **Table 1.** Comparison of Hazards, Emergencies and Disaster Emergency Status

No	Danger situation	Emergency state	Disaster emergency
1	Compelling urgency (Force majeure)	Non-disaster and disaster	Disaster
2	The authority regulates in the 1945 Constitution	The authority regulates in the 1945 Constitution and government regulations	The authority regulates in Law No 24 of 2007
	President's Authority	President's Authority	Authority of the President, Regional head based on the government level.
4	Political based	Political and security, and disaster	Disaster
5	Centralization	Centralization	Centralization and Autonomy

129



130 The three systems of the decision have various legal processes in "a condition of danger" and  
131 "emergency", which will be fully under the power of the President as head of State per the spirit  
132 of centralization and unification. Meanwhile, "state of emergency and disaster level" or "status of  
133 disaster emergency" becomes a tiered authority following the spirit of decentralization and  
134 autonomy.

135

### 136 **Situations of Danger and Emergencies.**

137

138 Article 12 of the 1945 Constitution states that "The President declares a state of danger. The  
139 circumstances and effects of a state danger are regulated by legislation." The Law that has been  
140 utilized to define a state of danger thus far is the Law Number 74 of 1957 on the repeal of  
141 "*Regeling Po De Staat Van Oorlog En Beleg*" and the enactment of "State of Danger".

142

143 Article 1 paragraph (1) states that The President, on the recommendation of the Council  
144 of Ministers, may declare the entire territory or a portion of the territory of Indonesia in a state of  
145 danger with a state of emergency or a state of war if security or Law and order in the entire  
146 territory or a portion of the territory of Indonesia are threatened by rebellions, riots, or natural  
147 disasters that are feared to be insurmountable by tools.

148

149 Ihsanuddin (2022:1-9) stipulates that the Government does not use the term "state of danger"  
150 concerning Covid-19, even though the Government has contemplated using this legal tool for  
151 short-term Covid-19 prevention. There is a reason why experts believe that using the term "civil  
152 emergency" to prevent Covid-19 is inappropriate for two reasons: first, it conjures up images of  
153 authoritarian regimes, and second, it avoids state legal responsibilities because the problem of  
154 restricting people's movements can be addressed through Act No. 3 of 2018 with regards to  
155 quarantine (Dzulfikar & Susanti 2022: 19-22).

156

### 157 **A Compelling Exigency**

158

159 The Constitution makes no express provision for disasters, much fewer epidemics. The  
160 Indonesian Constitution only provides for a "compelling exigency" process, which according to

**Comment [A6]:** This subchapter should be integrated with the concept of emergency in the health sector. Focus on the topic you are writing about.

161 article 22 of Indonesian constitution 1945 the President may issue a Government Regulation in  
162 Lieu of Law (PERPPU) and must receive approval from the DPR. However, if there be no such  
163 approval, these government regulations shall be revoked. 1945 Constitution does not specify  
164 what constitutes a coercive urgency that endangers the State.

165  
166 The Republic of Indonesia Constitutional Court's Decision number 138/PUU-VII/2009  
167 establishes three elements for compelling urgency, namely:

- 168  
169 1) the existence of urgent circumstances impairing or endangering national interests.  
170 2) There is a legal void or insufficient legal protection.  
171 3) The DPR's implementation of the law-making process through the legislative mechanism.

172  
173 This has been demonstrated by the Government's response to the Covid-19 outbreak, namely the  
174 issuing of Government Regulation in Lieu of Law of the Republic of Indonesia Number 1 of  
175 2020 concerning State Financial Policy and Financial System Stability for Handling the Covid-  
176 19 Pandemic and/or In Facing Threats That Endanger the Economy, which focuses on three  
177 areas: 1) handling Covid-19, 2) the state financial system and economy, and 3) state financial  
178 stability (Effendi 2020: 67-79).

### 179 180 **The Development of Disaster Emergency Law in Indonesia**

181  
182 Indonesia's Disaster Emergency Law was enacted following the passage of Law No. 24 of 2007  
183 on Disaster Management (UUPB). The UUPB was founded and heavily affected by the  
184 December 26, 2004 earthquake and tsunami in Aceh. Prior to the UUPB, disaster management in  
185 Indonesia lacked a strong legal foundation; disaster management was considered a minor  
186 component of the health, environment, and other systems (Dadek et al. 2020:13).

187  
188 At the time of independence, various laws managing crises or risks existed, which influenced the  
189 Law on disaster emergency development. Numerous regulations include the Law No. 6 of 1946  
190 on Dangerous Conditions, Law of the Republic of Indonesia No. 74 of 1957 (74/1957) on the

191 repeal of the "*Regling Po De Staat Van Oorlog En Beleg*" and the Determination of Dangerous  
192 Conditions, and Government regulation No. 23 of 1959.

193

#### 194 **Disaster and Health Emergency Designation**

195

196 Dadek et al (2021:23-42) argued that since independence, the Government has issued several  
197 decrees regarding the status of a disaster emergency. The issuance of the disaster emergency is  
198 intended as a legal basis that the Government takes over the disaster management, not as a legal  
199 basis to be regulated in stages and to provide legal breadth and authority to facilitate the handling  
200 of the emergency. Since the issuance of the UUPB, the concept of disaster emergency law has  
201 become clear and has legal certainty, but until now, it is still constrained by the mechanism and  
202 its benchmarks. After independence, the Government of Indonesia issued several legal  
203 regulations regarding the determination of a national disaster emergency status, including:  
204 Presidential Decree No. 254/1966 concerning the Annual Disaster Eruption of Mount Awu in  
205 Sangir Talaud Regency/North Sulawesi, Presidential Decree in response to the Aceh Earthquake  
206 and Tsunami which; Presidential Decree No. 371 of 1961 declaring the eruption of Mount  
207 Merapi; Presidential Decree No. 1992 on the Determination of Natural Disasters in Flores; and  
208 Presidential Decree No. 12 of 2020 concerning the Determination of Non-Natural Disasters for  
209 the Spread of Corona Virus Disease 2019 as a National Disaster.

210

#### 211 **Diverse Concept of Disaster Emergency in Indonesia**

212

213 The concept of Law (*genuine legal concepts*) is defined as "a constructive and systematic  
214 concept used to understand a Rule of Law (e.g., the concepts of rights, obligations, legal  
215 relations, legal institutions, engagements, marriages, inheritance and buying, and selling)  
216 (Wignjosoebroto 1974:89-98).

217

#### 218 **Outbreak Area**

219

220 Although the WPM LAW utilizes the phrase "plague area," there is no legal definition of what  
221 constitutes an "outbreak area." The legal definition of an outbreak area is contained in the

222 Republic of Indonesia's Government Regulation No. 40 of 1991 on the Control of Infectious  
223 Disease Outbreaks, which defines an outbreak area as "a region deemed to be infected with an  
224 epidemic." Additionally, this Government regulation identifies the legal definition of an  
225 Extraordinary Event (KLB), which is "the emergence or increase in the incidence of illness/death  
226 that is epidemiologically significant in a particular area during a specified time period, and is a  
227 situation that can result in an outbreak" (Indonesian Government 1991, s.1).

228

229 Although very few criminal acts are committed, the WPM Law provides that "Anyone who  
230 intentionally obstructs the implementation of epidemic control will face a maximum sentence of  
231 one year in prison and/or a maximum fine of Rp. 1,000,000 (one million rupiah)." Then,  
232 "Anyone who, by negligence, obstructs the implementation of epidemic control is subject to a  
233 maximum sentence of six (six) months in prison and/or a maximum fine of Rp. 500,000 (five  
234 hundred thousand rupiahs)." The primary issue is that there is no specific legal definition of  
235 willful obstruction; WPM LAW has already defined what constitutes a crime and a violation  
236 based on the perpetrator's intent, whether intentional or just indulgent.

237

### 238 **Emergencies, Outbreaks, Eruptions, or Extraordinary Events (KLB) Based on Laws of** 239 **Health**

240

241 Law of the Republic of Indonesia Number 36 Year 2009 concerning Health use three legal  
242 terms: Emergency, Outbreak, Eruption, or Extraordinary Events. Numerous chapters explain the  
243 concept of a state of emergency is deficient in terms of the rule requiring health facilities to  
244 prioritize emergency patients (threatening) life or disability, the prohibition of refusing patients,  
245 as well as the obligation of the Government to provide drugs and source power, and the facilities'  
246 time of emergency until post-emergency. Neither do health care professionals have the right to  
247 sue for negligence during a state of emergency.

248

249 Additionally, the UUK controls efforts to prevent and respond to outbreaks, particularly their  
250 health or medical consequences. The Government has the authority under Article 36, paragraph 1  
251 to "declare a region to be in a state of the epidemic, eruption, or unusual occurrence (KLB)." The  
252 UUK only regulates what the Government, public sector, and private sector must do in an

253 emergency and post-disaster situation; it does not regulate who declares an emergency, how the  
254 mechanism is implemented, or what facilities can be obtained to expedite the situation, except  
255 for the procurement of medications on the basis of legal concepts.

256

### 257 **Public Health Emergency**

258

259 The Republic of Indonesia's Public Health Emergency Law, No. 6 of 2018 on Health Quarantine  
260 defines a Public Health Emergency as "an extraordinary event marked by the spread of infectious  
261 diseases and/or events caused by nuclear radiation, biological pollution, chemical contamination,  
262 bioterrorism, or food that poses a health hazard and has the potential to spread across regions or  
263 countries. " This draft is used as the basis for executing quarantine and sealing the country's  
264 borders, and it is the Central Government's authority. This requires that the sort of disease that  
265 will cause a public health emergency be determined and that this determination takes into  
266 account the social and economic consequences. Indeed, Public Health Emergencies have a high  
267 association with regional quarantine and Large-Scale Social Restrictions (PSBB) and regulated  
268 criminal sanctions.

269

### 270 **Legal Concepts in Emergencies According to UUPB.**

271

272 The Law of the Republic of Indonesia No. 24 of 2007 on Disaster Management (UUPB), is  
273 currently being discussed for revision for a variety of reasons. The administration has drafted an  
274 academic paper but has not yet placed it in the National Prolega (DPRRI 2019a). The UUPB has  
275 clearly defined the stages of a disaster, including pre-disaster, disaster emergency, and post-  
276 disaster, as well as the necessary activities. Although the UUPB regulates the legal system for  
277 assessing disaster emergencies, the UUPB remains vulnerable to physical disasters.

278

279 Numerous The UUPB's notion of disaster emergency law is as follows:

280

- 281 a. Disaster emergency response can be defined as an immediate or direct response to a  
282 disaster that has occurred and is characterized by physical handling actions.

283 b. Disaster Emergency Assistance is defined as "an endeavor to address fundamental  
284 requirements during times of disaster.

285 c. A disaster emergency is "a state determined by the government for a specified amount of  
286 time-based on the advice of the agency charged with disaster response.

287

288 The definition of disaster emergency status remains geared around disaster management  
289 institutions, in this case, BNPB/BPBD. The activities include the following: (a) rapid and precise  
290 assessment of the location, the extent of damage, and available resources; (b) determination of  
291 the emergency status of a disaster; (c) rescue and evacuation of disaster-affected communities;  
292 (d) provision of basic necessities; (e) protection of vulnerable groups; and (f) immediate  
293 recovery of vital infrastructure and facilities (DPRRI 2019b).

294

295 What are the legal advantages of declaring a disaster emergency? According to UUPB,  
296 BNPB/BPBD has easy access to the following capabilities: (1) mobilization of human resources;  
297 (2) equipment deployment; (3) logistics deployment; (4) immigration, excise, and quarantine; (5)  
298 licensing; (6) procurement of goods/services; (7) management and accountability of money  
299 and/or goods; (8) rescue; and (9) command to command the sector/institution.

300

301 While the UUPB's concept of Disaster Emergency is adequate, it does not provide legal certainty  
302 for dealing with epidemic disasters, particularly Covid-19, because it is still too focused on  
303 physical disasters, particularly emergency response activities, and thus cannot be used to  
304 implement law enforcement processes or health protocols, particularly quarantine activities.

305

306 **Emergency Concept in PERPPU No. 1 of 2020.**

307

308 Government Regulation In Lieu Of Law of The Republic of Indonesia No. 1 Of 2020  
309 Concerning State Financial Policy and Financial System Stability to Control Corona Virus  
310 Disease 2019 (Covid-19) Pandemic And/or In Response to Dangerous Threats to The National  
311 Economy And/or The Stability of The Financial System was issued with reasons that already met  
312 the criteria of "compelling exigency." That is:

- 313 1) The spread of Corona Virus Disease 2019 (COVID-19) has become a pandemic and has  
314 entered Indonesia and has had a very large impact; that the implications of the Corona  
315 Virus Disease 2019 pandemic are a slowdown in national economic growth,  
316 2) It has led to a decline in the economy, state revenues, and increased spending, especially  
317 in handling health and the national economy.  
318 3) Deteriorating state financial system;

319

320 This diversity cannot be separated from the legal politics of the Indonesian Government, which  
321 has not been systematical, integrated, and based on the ability to formulate laws intellectually.  
322 Syahriza Alkohir Anggoro quoted Natsir as saying that *rechtpolitiek* is "a political action of the  
323 Government through law based on the principles of the Rule of Law and the principle of  
324 democracy" (Anggoro 2019:77-86).

325

### 326 **The UUPD's Concept of Disaster Emergency Law**

327

328 The following matters are addressed in Law No. 23 of 2014 on disaster and disaster emergencies:

329

- 330 1) Emergency funds are those that may be included in the APBN but are only distributed  
331 following a calamity. Emergency funding can also be included in the APBD, and  
332 disasters are a common basis for APBD adjustments.  
333 2) The UUPD defines "emergency situation" in its explication of Article 316, which  
334 establishes the conditions for an "emergency situation" that fits at least the following  
335 criteria:  
336 a) It is not a routine activity of the Regional Government and cannot be forecasted in  
337 advance;  
338 b) is not expected to occur regularly;  
339 c) is beyond the Regional Government's control and influence; and  
340 d) has a major impact on the budget for emergency recovery.

341

### 342 **Disaster Emergency and Legal certainty**

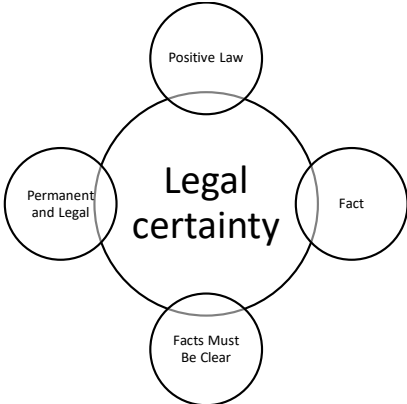
343

344 Certainty is an inherent characteristic of Law, particularly positive and written legal norms.  
345 Without the value of certainty, Law loses its meaning because it can no longer be used to govern  
346 everyone's behavior (Wantu 2007:19). Certainty is referred to as one of Law's objectives. Legal  
347 certainty is described as the clarity of standards to the point where they can be utilized as a guide  
348 for those who are regulated (Leawoods 2000:489–515).

349  
350 Gustav Radbruch (2000:489-515) a well-regarded intellectual person in the field of legal  
351 certainty, stated that legal certainty must satisfy four critical and fundamental requirements  
352 connected to the definition of legal certainty:

- 353
- 354 1) The Law is positive, meaning it is written.
  - 355 2) Laws are factual in the sense that they are founded on reality.
  - 356 3) Facts must be succinctly stated, avoiding ambiguity in interpretation, and simple to apply  
357 and implement.
  - 358 4) Positive Law is impervious to change, implying that it must be fixed in the mechanism of  
359 formation and the authorized institution with the authority to modify.





360  
361

**Figure 1.** The Four Elements of Legal Certainty by Gustav Radbruch

362 Legal certainty is greatly impacted by positivism's flow, in which the validity of legislation is  
363 determined by objective legal principles that are fully divorced from morality. A law is deemed  
364 invalid if it fails to satisfy these standards of pure Law.

365 **Table 2.** Legal Technical Explanation Characteristics of Legal Certainty

No	Characteristics of Legal Certainty	Meaning
1	Positive Law	Law that has been enacted by a duly authorized legislature.
2	Fact	An event that actually happened, or a statement presented as objective truth.
3	Facts Must Be Clear	Avoid misinterpretation; easy to implement
4	Permanent and Legal	Everlasting, especially without significant change and established by or founded upon law; lawful

366

367 Lon Fuller (1971:76) established eight criteria that Law must meet; if they are not met, the Law  
368 ceases to be Law; in other words, there must be legal certainty. The following are the eight  
369 principles:

370

- 371 1) A legal system composed of regulations that are not reliant on erroneous judgments in  
372 certain instances;
- 373 2) The regulation is made public;
- 374 3) Not retroactive, as this would jeopardize the system's integrity;
- 375 4) Formulated in a way that the general public understands;
- 376 5) There should be no regulations that contradict one another;
- 377 6) Must not demand more than is feasible;
- 378 7) Should not be regularly altered;
- 379 8) Regulations must be consistent with their day-to-day implementation.

380

381 There must be consistency between rules and their execution. Legal certainty ensures that the  
382 Law is correctly applied and requires legal arrangements in legislation to be formed by  
383 competent and authorized legal parties to ensure that they have a legal basis and are genuinely  
384 obeyed and operate (Zainal 2012:45).

385

386 Legal certainty is defined in Utrecht in two ways: (1) the existence of general legal rules that  
387 inform individuals about what actions may or may not be taken, and (2) legal security for  
388 individuals against government arbitrariness because the existence of general rules informs  
389 individuals about what the State may charge or do to them (Syahrani 1999:23). Raharjo  
390 (2006:134) stated that while legal certainty has developed into a form of philosophy in legal life,  
391 other processes, notably psychological and political processes, are required for legal certainty to  
392 exist. Socio-historically, the issue of legal certainty arose along with the capitalist economy's  
393 production structure. Legal certainty is essentially Law that is derived from and reflects society's  
394 culture through fostering cooperation between the State and the public in orienting and  
395 comprehending the legal system (Naufal et al 2014:104).

396

397 The principle of *ignorantia iuris neminem excusat* translates as "an individual's ignorance of the  
398 law does not excuse." This principle mandates that everyone is presumed to be aware of the Law  
399 upon its publication in the official gazette or state news

400

401 What occurred at this precise moment is now addressing the Covid-19 outbreak. The law  
402 enforcement process has been ineffective in restricting the spread of Covid-19 because the  
403 present Law is insufficient to provide legal clarity for the legal mechanism. Even though the  
404 regulation of positive Laws for epidemic control in Indonesia began during the Dutch colonial  
405 period, the regulation of epidemics remains relatively easy, even when compared to the colonial  
406 period's regulation (Rasjidi 19990:47).

407

408 Two types of legal construction arrangements continue to be a difficulty or legal concern in  
409 Indonesia's disaster management system (Hairi 2020:2-3):

410

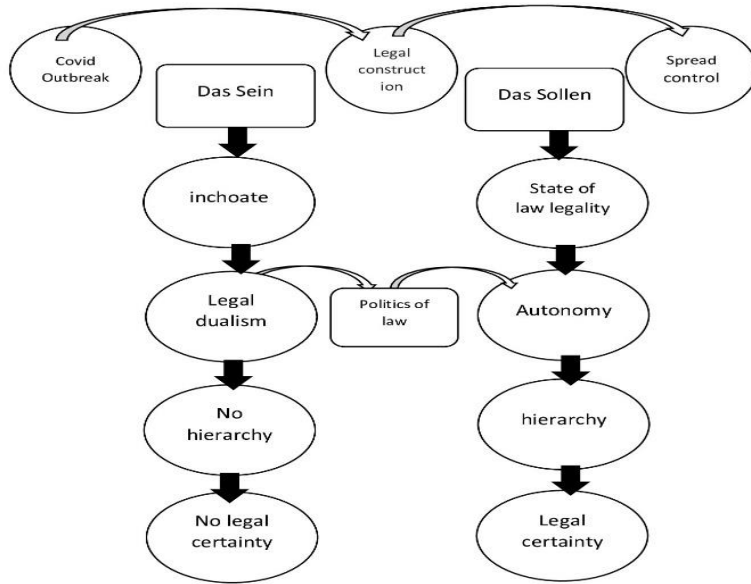
411 1) Lack of a strong constitutional foundation in the face of a highly lethal and rapidly  
412 spreading epidemic such as Covid-19, for example, what if there is a disaster emergency  
413 for years until 2024, and presidential and regional elections cannot be held due to  
414 insufficient funding, and legislative elections must be postponed, who will hold power in  
415 the head of State if their term of office expires during the absence of elections? The  
416 Legislative Election and Presidential Election are scheduled for February 21, 2024, and  
417 the Regional Head Election or Pilkada is concurrently scheduled for November 27, 2024  
418 (Syaiful 2021). Is it possible to tackle the problem using the PERPPU mechanism and the  
419 pressing urgency as a proxy for the level of danger? If PERPPU is used, what about the  
420 President's power limits? Because the supreme legal principle is "*Salus populi suprema  
421 lex esto*," which prioritizes the public's protection. In general, infectious disease  
422 eradication in Indonesia is accomplished by the following activities: early detection,  
423 patient identification, treatment, eradication of the illness's source, immunity efforts  
424 (immunization), and public education (Hasibuan 2020:28).

425 2) Statutory regulations originate as a result of the duality of legal groups and are relatively  
426 basic, whereas the resulting challenges range from state policy issues to criminal law  
427 enforcement. In general, infectious disease eradication in Indonesia is accomplished by

428 the following activities: early detection, patient identification, treatment, eradication of  
429 the illness's source, immunity efforts (immunization), and public education.

430

431 Attempts at transformation The UUPB is currently grappling with institutional challenges;  
432 funding, institutional and community participation, and measures to firmly enforce health norms  
433 have not been discussed (Ministry of Social Affairs RI 2020).



434

435 **Figure 2.** Indonesia's Legal Framework for Plague Disaster Management

436 Djasmani (2011a: 366-368) argued in his book that according to some experts, the role of Law as  
437 a tool for social engineering cannot operate in Indonesia since, from the Government's  
438 perspective, legislation remains essentially a regulation or set of regulations enacted by a  
439 legislative body. Legislation is enacted to assist the Government in carrying out its development  
440 mission. The formation of the Rule of Law from this vantage point is not based on the values of a  
441 plural society. The Rule of Law is created only from a deductive perspective (deductive logic  
442 based on the civil law legal system's legacy). Law as a tool for social engineering will be  
443 successful if the Rule of Law is developed with consideration for the customary Law that  
444 develops in society. The Government must create space for the growth of customary Law,  
445 integrate it into the national legal system, and make it the ideals upon which national Law is  
446 based). Pound's position contrasts with the School of History, which maintains that Law grows  
447 and develops in lockstep with a habit-driven society (Djasmani 2011b: 366-368).

448

449 Rosco Pound emphasizes the importance of the Government carrying out two distinct features of  
450 government activity which are: Administrative Aspects and Legal Aspects. This component  
451 assesses a government's capacity to pick a broad hierarchy of individuals to do specific service  
452 jobs within the job and take the necessary actions to guarantee that the work is performed and to  
453 make corrections or modifications when circumstances change on a daily basis. This activity was  
454 critical in primitive society and accounted for the majority of government action. Under  
455 contemporary society's complicated and advanced conditions, this activity is insufficient unless  
456 stringent legal controls temper it.

457

458 Aspects of Legislation Formation It must ensure legal certainty throughout the process of law  
459 enforcement. Indonesia already has an integrated legal framework for disaster management,  
460 including organizations that serve as the primary implementers, but not for coping with disease  
461 outbreaks, particularly in the aftermath of the Covid-19 epidemic. After thirteen years of  
462 operation (2007-2020), UUPB discovered numerous issues, including ambiguous and  
463 overlapping legal definitions, authority to declare disasters, disaster level, lack of formal Law,  
464 looting, and various other issues.

465



466 The UUPB is the primary legal framework governing Indonesia's disaster management system;  
467 additionally, all laws in the Republic of Indonesia, if any, that regulate disaster issues are disaster  
468 laws, including those governing diseases and the environment. Life and even fisheries Laws are  
469 included in the disaster law system since they regulate in a state of force majeure.

470

471 In Indonesia, a law always requires implementing regulations, such as the UUPB, which requires  
472 six PPs and two Presidential Regulations, but the Presidential Decree on the mechanism for  
473 determining disaster emergencies has not yet been issued, despite the fact that decrees,  
474 particularly for regional heads, continue to be issued.

475 **Table 3.** Government Regulations Already and Not Issued Based on UUPB

NO	ARTICLE AND SECTION	TYPE OF REGULATION	KET
A.	Law of the republic number 24 of 2007 concerning disaster management (UUPB)		
1.	Article 30 paragraph 3: Further provisions concerning the implementation of disaster management activities by international institutions and foreign non-governmental organizations shall be governed by a Government Regulation.	Government Regulation of the republic of Indonesia Number 23 of 2008 concerning the Participation of International Institutions and Foreign Non-Governmental Organizations in Disaster Management	Already published
2.	Article 50 paragraph 2: Further provisions concerning easy access as referred to in paragraph (1) shall be governed by a Government Regulation	Government regulation	Not yet published
3.	Article 69 paragraph 4 The Procedures and amount of aid as referred to in paragraph (1) and paragraph (2) shall be regulated further by a Government Regulation.	Government regulation	Not yet published
4.	Article 50 paragraph (2), Article 58 paragraph (2), and Article 59 paragraph (2): need to stipulate a Government	Government Regulation of the Republic of Indonesia No. 21 of 2008 on implementation	Already published

NO	ARTICLE AND SECTION	TYPE OF REGULATION	OF KET
	Regulation concerning the Implementation of Disaster Management.	of disaster control.	
5.	Article 63: Further provisions concerning disaster management funds handling mechanism as referred to in Article 60 to Article 62 shall be governed by a Government Regulation.	Government Regulation of the Republic of Indonesia No. 22/2008 concerning disaster aid financing and management.	Already published
6.	Article 7 paragraph 3: Further provisions concerning decision on disaster status and level as referred to in paragraph (2) shall be stipulated by a Presidential Regulation	Presidential Decree	Not yet published
7.	Article 17 Further provisions concerning the establishment, functions, tasks, organizational structure, and working arrangement of National Disaster Management Agency. shall be stipulated by a Presidential Regulation.	Regulation of president of republic of Indonesia no 8 of 2008 concerning national disaster management agency which was later amended by Regulation of president of Republic of Indonesia Number 1 of 2019 concerning National Disaster Management Agency	Already published

477 The general provisions of Law No. 6 of 2018 on quarantine state the following:

478

479 "A public health emergency is a rare occurrence in which infectious illnesses and/or events are  
480 transmitted as a result of nuclear radiation, biological pollution, chemical contamination,  
481 bioterrorism, or food that constitutes a health threat and has the potential to spread across regions  
482 or countries."

483

484 In article 10, The Central Government establishes and terminates the " Public Health Emergency.  
485 " What is the difference between declaring a disaster and declaring an emergency? In point 10 of  
486 the UUPB's general provisions, it is stated that:

487

488 "A disaster emergency response is a series of activities carried out immediately following a  
489 disaster to address the disaster's adverse effects, which may include the rescue and evacuation of  
490 victims and property, the provision of basic needs, the protection and management of refugees,  
491 and the rescue and restoration of infrastructure and facilities".

492

493 While emergencies differ in terms of the procedures that must be followed, the definition of what  
494 constitutes an emergency, and the breadth of action authorized by the responsible authority, each  
495 permit a flexible range of powers and measures necessary to contain a pandemic. Grogan (2020)  
496 lists four fundamental components of a constitutional provision authorizing the creation of a state  
497 of emergency: (1) the criteria for its declaration; (2) transfer of authority; (3) limitations on their  
498 usage; and (4) measures for legislative or judicial oversight. For instance, the Constitution may  
499 compel Parliament to approve legislation authorizing the declaration of a state of emergency  
500 either prior to or within a specified time period following the declaration (Molloy 2020:10).

501

502 The executive branch of power may declare a state of emergency in one of two ways. First, a  
503 state of emergency is triggered by revolt or conflict. Second is the State of emergency triggered  
504 by a public health threat. In such circumstances, David Davis observed, "the government has all  
505 the powers provided to it by the Constitution that are essential to maintain its existence." 2 This  
506 demonstrates that the bearer of government power, in the Indonesian context, the President—  
507 generally has the authority to exclude normal/ordinary laws through the enactment of emergency

508 legislation. If it takes the form specified, then the President may take a range of actions,  
509 including declaring a state of emergency in the first context (Chandranegara 2021:45-70).

510

### 511 **Incorporation of Disaster Emergency Law in the Management of Covid-19**

512

513 On January 28, 2020, the Head of the National Disaster Management Agency (BNPB) issued the  
514 Decree of the Head of BNPB RI Number 09 of 2020 concerning the Determination of the Status  
515 of Certain Disaster Emergency Situations in Indonesia Due to Corona Virus Disease (BNPB  
516 2018:19). On February 29, 2020, the BNPB issued another Decree of the Head of the BNPB RI  
517 Number 13 Year 2020 regarding the Extension of the Status of Certain Emergency Disasters Due  
518 to Corona Virus Disease Outbreaks in Indonesia (BNPB 2020:1-2). This Decree of the Head of  
519 BNPB is based on Presidential Regulation Number 17 of 2018 concerning Disaster Management  
520 in Certain Circumstances, which states in consideration of letter b that:

521

522 “That in certain circumstances where the status of a Disaster emergency has not been determined  
523 or has ended and/or has not been extended, but action is required or is still required to reduce  
524 disaster risk and its wider impact, it is necessary to assign assignments and authorities to BNPB  
525 to can carry out disaster management operations”.

526

527 Article 1 defines Certain Circumstances as "a situation in which the status of a Disaster  
528 Emergency has not been created or has ended and/or has not been prolonged, but action is  
529 required or continues to be required to mitigate the Disaster Risk and its broader consequences."

530

531 The head of the BNPB's choice is to "violate the law," this is because the Head of BNPB's  
532 decision is not a determination of national status because, according to the UUPB, the State  
533 alone has the authority to declare a state of emergency, in this case, the President, local  
534 governments, and the governors and regents/mayors. Second, while the Presidential Regulation  
535 does not regulate the determination of "certain status," it does regulate the "handling of certain  
536 circumstances" in which "emergency status" has not been determined or has been determined but  
537 has expired. Thus, the Presidential Regulation does not control the BNPB's jurisdiction to decide  
538 the State of a particular emergency but rather authorizes the BNPB to continue or initiate its

539 activity prior to determining whether or not the disaster emergency has been identified and  
540 established or ended.

541

542 Laws relating to disasters are laws in the sense that their contents are incorporated into  
543 heteronomous Law, including the UUPB. The Government enacted Law No. 24 of 2007 on  
544 Disaster Preparedness and Management (UUPB) as a manifestation of Indonesia's vulnerability  
545 as a disaster supermarket. The UUPB has also altered the paradigm of thinking about a disaster,  
546 which was initially viewed as an accident caused by an individual's misfortune, then evolved into  
547 the responsibility and role of the Government alone, and has now evolved into the responsibility  
548 of a variety of parties, including the private sector and the community. This paradigm shift is  
549 motivated, in part, by an appreciation for the critical nature of multi-stakeholder disaster  
550 management.

551

552 With regards to disaster laws and policies, the UUPB mandates the issuance of six additional or  
553 implementing regulations, namely six Government Regulations (PP) and two Presidential  
554 Regulations (Perpres). According to Article 84 of the UUPB, the implementing regulations shall  
555 be issued no later than six months after the UUPB is promulgated.

556

557 Among a number of implementing regulations, the determination of disaster emergency status  
558 has not been issued. The Presidential Regulation establishing disaster emergency status is critical  
559 because it establishes the legal certainty necessary for the legal structure for disaster  
560 management. The designation of a disaster emergency has ramifications for the expenditure of  
561 public funds, the use of public facilities, and deviations from regular rules, particularly in  
562 procurement. The disaster emergency designation has numerous legal implications, including a  
563 concept in which a decree can supersede the applicable Law.

564

565 On March 31, 2020, the President also declared Indonesia a Public Health Emergency in  
566 accordance with Presidential Decree No. 11 of 2020 Determination of a COVID-19 Public  
567 Health Emergency, which identifies COVID-19 as a disease capable of causing a Public Health  
568 Emergency and requires implementation in Indonesia. Additionally, On April 14, 2020, the  
569 President of the Republic of Indonesia declared the Covid-19 outbreak a national disaster

570 through Presidential Decree No. 12 of 2020, which includes the decision to designate Covid-19  
571 as a national disaster after considering the WHO's decision to classify it as a pandemic and  
572 providing guidelines for regional heads to pay attention to national policies (BNPB 2016:15).

573  
574 Both of these Presidential Decrees have their own legal basis, namely Presidential Decree No. 11  
575 of 2020 concerning Public Health Emergency, which is based on Article 10 of the UUKK and  
576 serves as the basis for implementing regional quarantine with the President determining which is  
577 based on the centralization principle. Meanwhile, Disaster Emergency is defined to ensure that  
578 the Regional Head and President are not constrained, for example, in the procurement of goods  
579 under regular legislation and special legislative actions to ensure the seamless handling of  
580 disaster emergencies. The UUPB, which appoints regional and State heads based on the principle  
581 of regional autonomy, directs this Disaster Emergency.

582

### 583 **Towards a Legally Certainty Outbreak Emergency Law**

584

585 The distinctions of regulations must be reconciled as the starting point for developing a legal  
586 framework of disaster management in general and specifically for dealing with epidemics of the  
587 magnitude of Covid 19. Comparing different positive legal systems can contribute to the  
588 formation of a fundamental notion describing a new legal concept (Asshiddiqie 2006:11).

589 **Table 4.** Differences in the Concept of Disaster Emergency Law in the Six Disaster-Related  
 590 Laws

No	REGULATION	CENTRALIZED GROUPS			DECENTRALIZED GROUPS		
		Law No.4 of 1984 About Outbreak of Transmitted Disease	Law No. 36 of 2009 concerning health	Law No. 6 of 2018 Concerning Health Quarantine	Law No. 24 of 2007 Concerning Disaster Management	Law No. 32 of 2004 Concerning Regional Administration	Government Regulation No. 1 of 2020
5	Term of Emergency	1 Plague area	1 Outbreak, eruption or extraordinary events	1 Public health emergency	1 Emergency response	1 Certain circumstances, emergencies, extraordinary circumstances	1 Emergency
6	Emergency Management	1 Health	1 Emergency nutritional adequacy	1 Determination of disease	1 Assess and determine the emergency	1 Drafting regulations outside the regional legislation program	1 Refocusing
		2 Compensation	2 Directing health facilities for handling emergency response	2 Quarantine, isolation, administering vaccines, referrals, disinfection and decontamination of people according to indications	2 Rescue, evacuation, fulfillment of basic needs, protection of vulnerable groups, recovery	2 State budget can provide emergency funds to help regions	2 State income including tax policy
		3 Medical award	3 Disaster emergency response	3 Large-scale social restrictions	3 Deployment of human resources	3 Home provision and rehabilitation	3 Expenditure including regional finance
		4 Reporting	4 Provide medicine	4 Disinfection, decontamination, disinfection and/or derealization of transportation means and goods	4 Deployment of equipment, logistics deployment	4 Basic needs and trauma recovery	4 Financing
		5 Criminal	5 Medical immunity	5 Health, security, and control of environmental media	5 Immigration, excise, and quarantine, rescue and command to command sectors/agencies	5 Community empowerment	5 Handling anticipation of the national economy
			6 Medical Emergency	6 Medical services, food, and others during quarantine	6 Licensing: procurement of goods/services, management and accountability of money and/or goods	6 Archive rescue, agriculture	6 Financial institutions

591



592 The Indonesian Government must enhance the Law on Infectious Disease Outbreaks to ensure  
593 that it meets all legal requirements, particularly in the event of a pandemic outbreak of the  
594 magnitude of Covid-19, which has a profound effect on the nation, State, and society. The  
595 emergency law contained in the WPM Law should be developed in accordance with the legal  
596 certainty standards. Several drafts of the Law in dispute include the following:

597

#### 598 **Outbreak Emergency Response**

599

600 This Outbreak Emergency Response is a terminology that crystalizes many terminologies such as  
601 outbreak area, extraordinary event, public health emergency, etc. The legal idea proposed is  
602 Epidemic Emergency Status, a development of Disaster Emergency Status, which continues to  
603 apply, particularly in the case of non-epidemic calamities. Outbreak Emergency Response is a  
604 series of activities conducted immediately following the prevention and occurrence of outbreaks  
605 to address the outbreak's adverse effects. These activities include assessment and research,  
606 outbreak prevention and management, medical treatment and quarantine, as well as economic  
607 and social impacts. Furthermore, Epidemic emergency aid is a coordinated effort to address  
608 medical requirements, economic resilience, and social vulnerability in the event of an outbreak.

609

#### 610 **Outbreak Emergency Status**

611

612 Defining an Epidemic when the status of an Outbreak Emergency is declared is critical to  
613 establishing a line of demarcation. In accordance with international law principles, numerous  
614 ease of access and laws will be implemented to expedite the process of epidemic containment.  
615 The Government determines this status for a specified period of time based on the research  
616 conducted by the Agency charged with public health.

617

#### 618 **Plague Management Implementation.**

619

620 The implementation of epidemic control includes:

621

- 622 a. rapid and precise epidemiological assessment of the major basic disease types to pinpoint  
623 the outbreak's geographic location;
- 624 b. determination of the outbreak's emergency status;
- 625 c. prevention;
- 626 d. medical treatment of those affected by the epidemic;
- 627 e. Compliance with Health Protocols;
- 628 f. Restrictions;
- 629 g. Quarantine, Territory Quarantine, and Lockdown;
- 630 h. Satisfaction of fundamental regional quarantine and lockdown requirements;
- 631 i. Immunization;
- 632 j. Economic management;
- 633 k. Social impact management;
- 634 l. Handling of the body, and
- 635 m. Other countermeasures

636

#### 637 **Appointment Executor**

638

639 The Government determines the epidemic's emergency level in accordance with the magnitude  
640 of the outbreak calamity. The President is responsible for declaring an emergency in the event of  
641 a pandemic outbreak; the governor is responsible for declaring an emergency at the provincial  
642 level, and the regent/mayor is responsible for declaring an emergency at the district/city level.

643

#### 644 **Legal Ease during Outbreak Emergency Status**

645

646 In the event of an epidemic emergency, the President and Regional Heads have easy access to  
647 mobilizing human resources; deploying medical equipment; deploying logistics for the purposes  
648 of quarantine, regional quarantine, and locking; immigration control and licensing; procuring  
649 goods/services for medical, economic, and social needs; and managing and accounting for  
650 money and/or goods. Whoever intentionally obstructs the implementation of epidemic control  
651 must be identified, including violations of quarantine, regional quarantine, and locking, as well

652 as the criminal sanctions system, which includes easy confinement and fines, but is based on  
653 legal certainty, benefit, and justice.

654

#### 655 **Conclusion**

656

657 The Disaster Emergency Law in Indonesia has been initiated since Dutch colonial time to state  
658 the country is in emergency. Disaster is one of the factors that contribute to the establishment of  
659 a state of emergency as self-contained, particularly since the UUPB 2007 was established. The  
660 concept of disaster emergency law in the Indonesian legal system is extremely diverse and  
661 widespread, adversely impacting the enforcement of Covid-19 emergency regulation. Emergency  
662 law has been used in the non-uniform principles, a violation of the principle of autonomy, a lack  
663 of legal certainty regarding the enforcement of health protocols, and a legal breakthrough in the  
664 disaster emergency concept system during the Covid-19 response.

665

666 This paper found that the WPM Law should be utilized in dealing with the Covid-19 outbreak,  
667 particularly in the context of handling emergencies. Currently this law is rarely employed in  
668 associating with legal regime of Covid-19 prevention.

669

670 It is advisable to revising the Law on Infectious Disease Outbreaks to increase legal clarity,  
671 benefit, and justice and provide a punishment under the principles of the Rule of Law. the  
672 concept of epidemic emergency response must be self-contained and comprehensive in terms of  
673 objectives, legal certainty regarding actions and access, and the authority of heads of State and  
674 regions to declare epidemic emergencies in consistent with other emergency arrangements.  
675 Special quarantine preparations for epidemic emergencies must be properly controlled under the  
676 new WPM Law, involving the police and, in some cases, the military forces.

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