

CHAPTER ONE INTRODUCTION

A. Background

Unexplained respiratory disease cases have emerged from Wuhan, Hubei province, China, in late December 2019. The disease has been connected to Huanan Seafood Wholesale Market in Wuhan.¹ A novel coronavirus causes the inductive agent of this mysterious respiratory disease.² This disease has been labeled as Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2). Therefore, the World Health Organization named the relevant infected disease as Coronavirus Disease 2019 (COVID-19). There are 27 people from 41 people (around 66%) of the Huanan Seafood Wholesale Market staff who have been infected and reported because of this outbreak. After the Wuhan Municipal Health Commission announced this outbreak, the government closed the market on January 1, 2020. The Chinese Center for Disease Control and Prevention (China CDC) sent a rapid response to Wuhan and notified the World Health Organization (WHO).³ On January 30, 2020, the WHO has announced COVID-19 as a Public Health Emergency of International concern that creates a high risk for countries with vulnerable health systems. The Emergency Committee said

¹Yi-Chi Wu, Ching-Sung Chen and Yu-Jiun Chan, 2020, “The outbreak of COVID-19: an overview”, *Journal of the Chinese Medical Association*, Vol. 83, No. 3, p. 13.

² Feng He, Yu Deng, and Weina Li, 2020, “Coronavirus disease 2019: What we know?”, *Journal of Medical Virology*, Vol. 97, No. 7, p. 1.

³ Yanping Zhang, 2020, “The epidemiological characteristics of an outbreak of 2019 Novel Coronavirus Diseases (COVID-19)-China, 2020”, *China CDC Weekly*, Vol. 2, No. 8, p. 113.

that coronavirus transmission could be interrupted through isolation, early detection, implementing a robust device to trace contacts, and quick recovery.⁴

The outbreak has been spreading in China and other countries all over the world. Based on the data from worldometers, there are 113,950,840 people infected by the Coronavirus Disease 2019 (COVID-19).⁵ Most of the sufferers of COVID-19 inflammation have developed moderate symptoms consisting of dry cough, sore throat, and fever.⁶ Specifically, patients who need in-depth care guides are those who are older and have some comorbidities.⁷ When COVID-19 has spread worldwide, various countries around the world declared states of emergency to slow down or stop its spread. Most countries around the world and territories have declared a state of emergency in response to the virus, such as movement and quarantine limitations.

Nevertheless, as the United Nations (UN) reminded on March 16, 2020: "States are not to abuse emergency measures to suppress human rights." The utilization of emergency powers must be declared publicly. Useful public health purposes must influence restrictions taken to respond to the pandemic.⁸ For example, in Indonesia, from March 5 to April 21, 2020, 93 incidents of

⁴ Catrin Sohrabi, *et al*, 2020, "World Health Organization declares global emergency: a review of the 2019 Novel Coronavirus (COVID-19)", *International Journal of Surgery*, Vol. 76, No.1, p. 3.

⁵ Wordometers, *COVID-19 Coronavirus Pandemic*, last update September 7, 2020, retrieved from: <https://www.worldometers.info/coronavirus/>, accessed on February 28, 2021 at 01:15 P.M.

⁶ Nanshan Chen, *et al*, 2020, "Epidemiological and clinical characteristics of 99 cases of 2019 Novel Coronavirus Pneumonia in Wuhan, China: a descriptive study", *The Lancet*, Vol. 395, No. 10223, p. 511.

⁷ Adam Bernheim, *et al*, 2020, "Chest CT findings in Coronavirus Disease-19 (COVID-19): relationship to duration of infection", *Radiology*, Vol. 295, No. 3, p. 7.

⁸ Ali Yildiz, 2020, *Human Rights in a State of Emergency*, retrieved from: <https://blog-iacl-aidc.org/2020-posts/2020/3/26/human-rights-in-a-state-of-emergency>, accessed on April 26, 2020 at 11.00 A.M

prosecution were related to threats to civil liberties during the large-scale social restrictions period.

Therefore, there are two significant international conventions, such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), which clarify that states must obey in times of such emergencies. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (the Siracusa principles) defines the limitation of rights that a state may have during an emergency. In every country, the government has the authority to issue emergency declarations to use its power to protect the community's health. However, there is a risk that a government will take benefit from emergencies to introduce unwarranted limitations on civil liberties and human rights.⁹ In some cases, the emergency declarations serve as a legal trigger for powers that give government officials can reallocate and access funds, suspend the regulations that inhibit the response, seize private property, and change the license regulations of the healthcare professional.¹⁰

In Indonesia, there are 1.334.634 people infected by the novel coronavirus (COVID-19).¹¹ Moreover, on March 31, 2020, President Joko Widodo "Jokowi"

⁹ Alan Greene, 2020, *State of emergency: how different countries are invoking extra powers to stop the coronavirus*, retrieved from: <https://theconversation.com/state-of-emergency-how-different-countries-are-invoking-extra-powers-to-stop-the-coronavirus-134495>, accessed on April 27, 2020 at 12:05 P.M.

¹⁰ Gregory Sunshine, Nancy Barrera, Aubrey Joy Corcoran, and Matthew Penn, 2019, "Emergency declarations for public health issues: expanding our definition of emergency", *The Journal of Law, Medicine & Ethics*, Vol. 47, No. 2, p. 95.

¹¹Worldometers, 2020, *COVID-19 Coronavirus Pandemic Update*, retrieved from: <https://www.worldometers.info/coronavirus/>, accessed on February 28, 2021 at 03:00 P.M.

declared a public health emergency, one month after the first two cases in Indonesia were confirmed on March 2, 2020. The President has issued Government Regulation Number 21 of 2020 on Large-Scale Social Restrictions to limit the people and goods' movement within a control zone and close the borders. Legal-scale social restrictions include closing the workplaces and schools, activity restrictions in public, and religious activity restrictions. There are three stages regulated in the Health Quarantine Law: regional quarantine, home quarantine, and hospital quarantine.¹² On March 31, 2020, the government issued Government Regulations in Lieu of Laws Number 1 of 2020 on State Financial Policy and Financial System Stability for Handling the 2019 Corona Virus Disease Pandemic or in the Context of Facing Threats that Endanger the National Economy and/or Financial System Stability.¹³ Therefore, on May 16, 2020, this Government Regulations in Lieu of Laws Number 1 of 2020 has enacted as the Law by issuing Law Number 2 of 2020 on the Establishment of Government Regulation in Lieu of Law Number 1 of 2020 Concerning State Financial Policies and Financial System Stability for Handling the Coronavirus Pandemic 2019 (COVID-19) and/or to Deal with Threats that Harm the National Economy and/or Financial System Stability. However, this law has violated some articles in the 1945 Constitution. For example, Article 27 paragraph (1),

¹² Budi Sutrisno, 2020, *Indonesia's Strategy to Combat COVID-19: What We Know So Far*, retrieved from: <https://www.thejakartapost.com/news/2020/04/03/indonesias-strategy-to-combat-COVID-19-what-we-know-so-far.html> , accessed on April 28, 2020 at 4:15 P.M.

¹³ DPR RI, 2020, *DPR Resmi Terima Perppu Keuangan Negara untuk Penanganan COVID-19*, retrieved from: <http://dpr.go.id/berita/detail/id/28264/t/DPR+Resmi+Terima+Perppu+Keuangan+Negara+untuk+Penanganan+COVID-19> , accessed on April 29, 2020 at 4:02 P.M.

paragraph (2), and paragraph (3) of Law Number 2 of 2020 violates its constitutional right to obtain information on the use of state finances in handling COVID-19 and closes legal surveillance efforts for state courts.

Moreover, many people have criticized Law Number 2 of 2020. The law gives immunity rights to the government. Not a single country gives the government the right to immunity in cases of emergencies. Due to the government's policy, many people lost their job and made the wrong decisions.

B. Research Problems

Based on the background above, the research formulated two questions, namely:

1. What are the powers and limits of the state in a state of emergency?
2. Did Indonesia properly adopt the concept of powers and limits of the state in the COVID-19 Pandemic?

C. Objectives of Research

The objectives of this research are:

1. To understand the concept of powers and limits of the state in a state of emergency.
2. To analyze whether Indonesia adopts the concept of powers and limits of state properly in a state of emergency.
3. To propose some suggestions for a better policy of government in state emergencies in the future.

D. Benefits of Research

There are some benefits of this research, namely:

1. Theoretical Aspect

The research gives a contribution to the development of science, particularly in the concept of the powers and limits of the state in a state of emergency.

2. Practical Aspect

The research will provide a better understanding of the state's powers and limits in a state of emergency, especially related to emergencies for a better government, policymakers, lecturers, students, and the party who engaged.