

RESTRICTIONS ON HUMAN RIGHTS IN STATES OF EMERGENCY: A REVIEW OF CONSTITUTIONAL LAW

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ABSTRACT

A state of emergency raises constitutional concerns because the state requires extraordinary powers to address threats, while human rights must nevertheless be protected in accordance with the principles of the rule of law and constitutional democracy. This study aims to analyze the constitutional standards governing the limitation of human rights during a state of emergency and to reconstruct a human rights limitation model capable of balancing the effectiveness of state authority with the prevention of abuse of power. This study employs a normative legal research method (doctrinal research) using a statutory approach and a conceptual approach. The legal materials consist of primary, secondary, and tertiary legal sources, which are analyzed qualitatively using a prescriptive method and presented in a descriptive-analytical manner. The findings indicate that the limitation of human rights during a state of emergency has a constitutional basis in Article 12 and Article 28J of the 1945 Constitution of the Republic of Indonesia. Nevertheless, its implementation must continue to respect non-derogable rights as stipulated in Article 28I paragraph (1). The regulation of a state of emergency under Government Regulation in Lieu of Law (Perppu) No. 23 of 1959 still has several weaknesses, particularly regarding the broad parameters for determining an emergency, governmental discretion, human rights protection, and oversight mechanisms. Therefore, this study proposes a *Constitutional Emergency Limitation Model, consisting of six fundamental principles: legality, legitimate purpose, necessity, proportionality, temporality, and judicial and democratic oversight*. This model positions emergency powers as extraordinary powers that remain subject to constitutional constraints, are temporary and measurable, and are subject to effective oversight. This reconstruction is expected to strengthen human rights protection while ensuring that the state retains sufficient capacity to respond effectively to emergency situations.

Keywords : Constitutional Limitations; Human Rights; State of Emergency.

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I. INTRODUCTION

Human rights are a fundamental element of the rule of law and, at the same time, a substantive limit on the exercise of state power. The 1945 Constitution of the Republic of Indonesia establishes Indonesia as a state based on law through Article 1 paragraph (3), while Chapter XA provides constitutional guarantees for various fundamental rights. Such guarantees do not mean that all rights are absolute. Article 28J paragraph (2) recognizes the possibility of limiting rights and freedoms by law for legitimate purposes in a democratic society. On the other hand, Article 28I paragraph (1) affirms the existence of certain rights that may not be reduced under any circumstances. This structure demonstrates that the Indonesian Constitution establishes a limitation regime that simultaneously recognizes state authority and restricts the manner in which such authority may be exercised.

The complexity of the issue increases when rights are restricted under a state of emergency. In this context, Article 12 of the 1945 Constitution of the Republic of Indonesia authorizes the President to declare a state of danger, the implementation, requirements, and legal consequences of which must be further regulated by law. This means that a state of emergency is not a law-free space. Extraordinary powers remain constitutionally legitimized and must be exercised within legal limits. Constitutional risks arise when the label of a state of emergency is used to expand executive discretion without reviewable parameters, or when restrictions that were initially temporary become normalized practices of government power.

The issue of human rights restrictions during a state of emergency is complex and sensitive because it requires a balance between national security interests and the state's obligations to respect, protect, and fulfill human rights. On the one hand, the state has constitutional authority to adopt extraordinary policies to safeguard the existence of the state. On the other hand, such authority may potentially be abused as a means of legitimizing repressive measures that violate the principles of the rule of law and democracy. Therefore, restrictions on human rights during a state of emergency must be placed within a clear, measurable, and constitutionally grounded framework of constitutional law.

In the constitutional practice of various countries, states of emergency are known by different terms. France uses the term *état de siège*, while the United States and the United Kingdom use the term martial law. In Indonesia, such conditions are generally referred to as a state of danger or state of emergency. Meanwhile, in several international human rights instruments, including the European Convention on Human Rights, the American Convention on Human Rights, and the International Covenant on Civil and Political Rights, the concept of a state of emergency is formulated using the term public emergency.¹

This legal gap becomes increasingly apparent in the relationship between Articles 12, 28J, and 28I and Law No. 23 of 1959 concerning the Declaration of a State of Danger. The law remains one of the formal foundations of the state-of-danger regime, while Indonesia's constitutional structure has

¹ O. S. Matompo, "Pembatasan Terhadap Hak Asasi Manusia Dalam Prespektif Keadaan Darurat," *Jurnal Media Hukum* 21, no. 1 (2014): 16.

changed significantly following the amendments to the 1945 Constitution, particularly through the strengthening of Chapter XA on human rights and the institutionalization of the Constitutional Court. Therefore, the issue is not merely whether the state has the authority to restrict human rights, but whether the available legal framework provides sufficiently clear parameters to determine when a restriction is lawful, how far a restriction may go, who supervises it, and when the restriction must be terminated.

In Indonesian constitutional practice, restrictions on human rights in emergency situations have often generated debate. Various state policies in responding to extraordinary circumstances, such as the imposition of emergency status, restrictions on freedom of movement, restrictions on freedom of expression, and the government's extensive use of discretionary powers, have frequently been questioned from a human rights perspective. Such criticism is generally directed at the potential violation of citizens' constitutional rights resulting from weak controls over executive power during emergencies. A fundamental problem in Indonesian emergency law lies in the suboptimal constitutional limitation of presidential power. Jayus and Ulum argue that Articles 12 and 22 of the 1945 Constitution of the Republic of Indonesia still contain ambiguities in regulating emergency powers, particularly because the President occupies a highly dominant position in determining and exercising such powers. This situation may give rise to constitutional problems when the exercise of emergency powers is not constrained by clear rules, effective oversight mechanisms, and guarantees for the protection of civil and political rights.²

Limiting presidential authority to declare a state of emergency is one of the prerequisites for preventing abuse of power. Through a comparison of Indonesia, France, and India, Adhihernawan and Affandi demonstrate that the authority to declare a state of emergency has significant consequences for constitutional governance and therefore should not depend entirely on the will of the President. In the Indonesian context, the absence of sufficiently clear constitutional parameters concerning limitations on the power to declare a state of emergency indicates the need for legal reconstruction that provides objective boundaries for the exercise of such authority.

Theoretically, restrictions on human rights during emergencies have become an important issue in constitutional law and international law scholarship. International legal instruments, particularly the International Covenant on Civil and Political Rights (ICCPR), provide room for states to derogate from certain rights when an emergency threatens the life of the nation. However, the implementation of such derogations must satisfy strict requirements and be based on accountable legal principles. The principles of necessity, proportionality, legality, and non-discrimination constitute key standards for determining the validity of human rights restrictions in emergency situations. At the same time, states remain obliged to respect non-derogable rights, including the right to life and the right to be free from torture. Therefore, these principles should serve as a foundation for the formulation and implementation of emergency policies so that they remain

² Jayus and M. B. Ulum, "Presidential Power's Limitation to Emergency Provisions in Indonesia," *Jurnal Cita Hukum* 8, no. 2 (2020): 343–362, <https://doi.org/10.15408/jch.v8i2.12473>

within the framework of national constitutional law while ensuring human rights protection.

Nevertheless, in the Indonesian context, challenges remain in integrating ideal principles of human rights limitation with constitutional practice. The legal framework governing states of emergency is still considered not to provide fully adequate guarantees of human rights protection. In addition, oversight mechanisms for the exercise of emergency powers, both by legislative and judicial institutions, have often not operated optimally. This raises concerns that a state of emergency could be used as a justification for excessively expanding state power (abuse of power) at the expense of citizens' constitutional rights.

This study focuses on two main issues. First, what constitutional standards should serve as the basis for restricting human rights during a state of emergency under the Indonesian legal system. Second, how can a human rights limitation model be reconstructed so as to maintain a balance between the state's need to act effectively in responding to an emergency and the necessity of preventing abuse of power. Accordingly, this study not only examines the limits of state authority to restrict human rights, but also formulates a limitation model based on legality, necessity, proportionality, rights protection, and mechanisms for oversight and termination of emergency powers.

II. RESEARCH METHOD

This study constitutes normative legal research (doctrinal research) aimed at examining and analyzing the legal aspects of human rights restrictions during a state of emergency within the framework of constitutional law. The selection of normative legal research is based on the nature of the problem, which emphasizes analysis of legal norms, principles, and doctrines concerning state authority and constitutional limits on restricting human rights. This study applies a statutory approach and a conceptual approach.

The statutory approach is used by examining and analyzing various legal provisions governing states of emergency and restrictions on human rights. The analysis primarily focuses on the 1945 Constitution of the Republic of Indonesia, legislation governing states of danger, and other national legal instruments relevant to the issues under study.

The conceptual approach is then used to examine and understand various concepts, principles, and doctrines developed in the fields of constitutional law and human rights law. The analysis specifically addresses the principles of the rule of law, constitutional supremacy, proportionality, necessity, and the principles governing restrictions on and oversight of the exercise of state power. Through these two approaches, the study seeks to construct a legal framework concerning the limits of state authority to restrict human rights, particularly under emergency conditions, while remaining grounded in constitutional principles.

The legal materials in this study are classified into three types: primary, secondary, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 on Human Rights, Government Regulation in Lieu of Law (Perppu) No. 23 of 1959 concerning the Declaration of a State of Danger, decisions of the Constitutional Court, and other legislation relevant to the object of the study. Secondary legal materials include academic literature, books on constitutional law, articles in scientific journals, previous research findings, and scholarly views addressing human rights restrictions and states of emergency. Tertiary legal materials serve as supporting sources, including legal dictionaries, encyclopedias, and other relevant literature and references.

Legal materials were collected through library research by identifying, tracing, and examining legal sources relevant to the focus and problems of the study. The materials obtained were then analyzed qualitatively using a prescriptive approach to formulate legal arguments and recommendations appropriate to the issues examined. The analysis was directed toward formulating legal arguments concerning the limits, legitimacy, and parameters of human rights restrictions during a state of emergency based on constitutional law principles. The results of the analysis were subsequently presented descriptively and analytically to describe the normative construction of human rights restrictions during a state of emergency and to analyze their conformity with the rule of law and guarantees of citizens' constitutional rights.

III. ANALYSIS AND DISCUSSION

The Indonesian Constitution places human rights as an important component receiving constitutional recognition and protection, as affirmed in Chapter XA of the 1945 Constitution of the Republic of Indonesia (1945 Constitution). This provision reflects a paradigm shift in Indonesian constitutional governance following the constitutional amendments, from a state orientation centered on power toward a democratic state based on law that upholds the protection of citizens' rights. Nevertheless, constitutional guarantees of human rights do not make all such rights absolute and incapable of limitation. Under certain circumstances, the state has the authority to restrict the exercise of particular rights, especially when confronting situations categorized as states of emergency.

Theoretically and normatively, human rights restrictions during a state of emergency are a recognized consequence of the development of modern constitutional law. A state of emergency refers to an extraordinary condition that may threaten the continuity of the state, public safety, or public order, thereby requiring special measures beyond the mechanisms of government applicable under normal circumstances. Within this framework, human rights restrictions cannot be understood as the abolition or elimination of rights, but rather as temporary and measurable restrictions on the exercise of certain rights. Such restrictions are intended to protect broader interests and ensure that emergency measures remain within the framework of the rule of law and constitutional protection.

Government Regulation in Lieu of Law (Perppu) No. 23 of 1959 is an important regulation in Indonesia's emergency law system. However, from the perspective of the post-amendment Constitution, several issues require attention. First, there is the issue of the regulation's age. The Perppu was enacted in 1959 within a political and institutional context different from Indonesia's current constitutional system. Meanwhile, following the amendments to the 1945 Constitution, human rights have acquired a considerably stronger constitutional position.

Second, there is the issue of emergency parameters. The Perppu uses several relatively broad categories of threats, including circumstances considered capable of endangering the life of the state. Overly broad parameters may provide the government with extensive discretionary space. Third, there is the issue of the limits of authority. The greater the powers granted to the government during an emergency, the greater the need for control mechanisms. Fourth, there is the issue of human rights protection. The Perppu was not designed within the context of Chapter XA of the 1945 Constitution, which now provides a more comprehensive catalogue of constitutional rights. Fifth, there is the issue of oversight. A modern emergency-law framework requires not only executive authority but also legislative and judicial oversight to ensure that extraordinary powers are not used excessively.

From the perspective of Indonesian constitutional law, the regulation of states of emergency has a constitutional basis in Article 12 of the 1945 Constitution of the Republic of Indonesia, which authorizes the President to declare a state of danger. This provision reflects the constitutional recognition of abnormal situations requiring a special legal regime (extraordinary legal regime). The findings also demonstrate that the exercise of such authority must have clear limits and remain guided by the principles of the rule of law and human rights protection.

In constitutional practice, emergencies may arise in various forms and with different levels of urgency, requiring the President to take rapid and appropriate action. Jimly Asshiddiqie identifies several conditions that may be categorized as states of danger.³ First, a situation caused by the threat of war from another state. Second, a situation in which the armed forces of a state are engaged in warfare outside its territory. Third, a situation arising from armed conflict within the country or the threat of armed rebellion by separatist groups. Fourth, a situation caused by social unrest that creates serious tension, thereby obstructing or paralyzing the functioning of constitutional government, as occurred during the social unrest in Jakarta in May 1998.

Fifth, a state of danger may arise as a result of natural disasters or large-scale accidents that cause public panic and potentially disrupt the continuity of government administration. Such a situation may be categorized as a civil emergency or welfare emergency, depending on the characteristics and level of the threat. Sixth, a situation arising from disruption of administrative legal order or state administrative mechanisms such that government cannot operate in accordance with statutory provisions. In certain contexts, this may

³ Asshiddiqie, *Hukum Tata Negara Darurat*, 68-79.

also involve a financial crisis or financial emergency, when an urgent situation requires the government to take immediate action even though normal governmental mechanisms cannot operate optimally. Seventh, other situations in which state institutions are unable to perform their constitutional functions effectively except through measures that may depart from statutory provisions, while amendments to those provisions cannot be made within the available time. Thus, a state of emergency is not limited to threats of war or armed conflict, but may also encompass social disturbances, disasters, administrative crises, financial crises, and other conditions that materially impede the functioning of the constitutional governmental system.

Indonesia constitutionally affirms its status as a state based on law (*rechtstaat*), as provided in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia: “Indonesia is a state based on law.” The concept of the rule of law is positioned as a fundamental basis for all exercises of state power, including extraordinary situations in which the state is under emergency conditions. From the perspective of the rule of law, restrictions on human rights are not absolutely prohibited in principle; however, their implementation must be based on legal provisions, directed toward a legitimate aim, and carried out with due regard to the principles of proportionality and non-discrimination.⁴

The Constitution is one of the principal foundations determining the existence and governance of a state. It embodies the ideology, values, and paradigm underlying national life. Every norm contained in the Constitution has binding legal force for all citizens. Therefore, the Constitution functions not only as a means of national unity but also as a basis for legitimizing the exercise of state sovereignty. The effectiveness of a constitution is greatly influenced by the extent to which its provisions are capable of representing the values, aspirations, and worldview of the society subject to that constitution. In the view of Mahfud MD, a constitution is a *resultante*, or an agreement formed from the social, political, economic, and cultural conditions prevailing when the constitution is formulated. Therefore, when a constitution is no longer able to adapt to developments in society and the realities of state life, there is constitutional room for amending or replacing provisions that are no longer relevant.

One aspect requiring constitutional regulation concerns the declaration and application of a state of emergency. A state of emergency is an extraordinary condition that may naturally arise in various countries at unpredictable times. Nevertheless, the emergence of an emergency is generally influenced by various factors, including political developments, social conditions, and environmental circumstances. Political instability, social conflict, disturbances to security and public order, and natural disasters may create crises that disrupt the normal functioning of government. Under such conditions, the state may grant broader authority to the government to take extraordinary measures to restore the situation;

⁴ Miriam Budiardjo., *Dasar-Dasar Ilmu Politik* (Jakarta: Gramedia Pustaka Utama, 2008), hlm. 120–122

however, such measures must remain within legal and constitutional procedures so that the authority does not develop into arbitrary action.⁵

In addition, Article 12 of the 1945 Constitution provides a special limitation clause in situations of danger. The findings indicate that these provisions must be read systematically and harmoniously, so that restrictions on human rights during emergencies may not deviate from the fundamental principles of the Constitution, particularly the rule of law (*rechtstaat*) and constitutional democracy.⁶ In the development of the rule-of-law concept, the exercise of state power must be placed within a framework that guarantees respect for and fulfillment of the fundamental rights of every citizen, together with mechanisms to control and limit the exercise of power. In this context, a state of emergency must not become a reason for abandoning constitutionalism. Rather, the more extraordinary the circumstances, the stronger the need for legal parameters capable of controlling state authority. As emphasized by Jimly Asshiddiqie, a democratic state based on law still requires control over emergency powers so that they do not develop into authoritarian government.⁷ The reconstruction of a human rights limitation model during a state of emergency in Indonesia may therefore be directed toward a constitutional emergency limitation model. Such a model should at least contain six main elements:

Table 1. Constitutional Limitation Model in a State of Emergency

No	Model Element	Principle	Function
1	Legality	Restrictions must have a clear legal basis	Ensures that government action is not arbitrary
2	Legitimate Purpose	Restrictions must pursue a legitimate purpose	Ensures that restrictions genuinely protect the public interest/state security
3	Necessity	Restrictions must genuinely be necessary in an emergency	Prevents restrictions from being imposed without a real need
4	Proportionality	Restrictions must be proportionate to the threat faced	Prevents excessive state action
5	Temporality	Restrictions must be temporary	Ensures that emergency powers do not become permanent power
6	Judicial & Democratic Oversight	Oversight by representative and judicial institutions must be available	Ensures accountability and prevents abuse of authority

Source: Author, 2026.

⁵ J. Hamidi and M. Lutfi, "Ketentuan Konstitusional Pemberlakuan Keadaan Darurat dalam Suatu Negara," *Jurnal Konstitusi* 6, no. 1 (2009): 39–78.

⁶ Jimly Asshiddiqie., *Hukum Tata Negara Darurat*, RajaGrafindo Persada, Jakarta, 2007, hlm. 45.

⁷ Jimly Asshiddiqie., *Hukum Tata Negara dan Pilar-Pilar Demokrasi*, Jakarta: Konstitusi Press, 2005., hlm. 75

A. Legality: Restrictions Must Have a Legal Basis

The first element is legality. Legality is the principal foundation for human rights restrictions because every state action that reduces or restricts citizens' rights must have a clear legal basis. This principle follows from the concept of the rule of law (*rechtsstaat*), under which the government may not act solely on the basis of will or power, but must act on the basis of law. In the context of a state of emergency, the principle of legality is even more important because emergency situations create a tendency for governments to exercise authority rapidly. Speed of action may indeed be necessary, but it must not eliminate the need for a legal basis. Accordingly, a state of emergency cannot be used as a reason to disregard the rule-of-law principle.

Constitutionally, this principle is connected with Article 12 of the 1945 Constitution of the Republic of Indonesia, which authorizes the President to declare a state of danger. Nevertheless, the exercise of this authority is not absolute because the requirements and legal consequences arising from a state of danger must be further regulated by law. This wording demonstrates that presidential authority is not unlimited. Legality in this model contains at least four requirements. First, there must be a clear legal basis. Second, the competent authority must be expressly determined. Third, the types of measures that may be taken must be identifiable. Fourth, the procedures for exercising the authority must be accountable.

B. Legitimate Purpose

The second element is legitimate aim or legitimate purpose. This principle requires human rights restrictions to be imposed only to achieve objectives justified by the Constitution and law. A state of emergency may not be used as a reason to restrict citizens' rights without a clear purpose. Every restriction must have a direct connection with the circumstance or threat that constitutes the basis for declaring the emergency. This principle is related to Article 28J of the 1945 Constitution of the Republic of Indonesia, which permits restrictions on rights and freedoms insofar as they are intended to respect the rights and freedoms of others and to meet the demands of morality, religious values, security, and public order in a democratic society. Within this framework, it is insufficient for a restriction simply to be declared "in the public interest." The state must concretely explain what interest or threat is being protected. For example, if an emergency is declared because of a national security threat, restrictions on particular freedoms must have a rational connection to efforts to address that threat. If a restriction has no connection with the emergency, its constitutional legitimacy becomes weak. Thus, legitimate aim functions as the first filter on state authority. The state must be able to demonstrate that a human rights restriction has a legitimate purpose before proceeding to the tests of necessity and proportionality.

C. Necessity

The third element is necessity. This principle establishes that human rights restrictions may be applied only insofar as they are genuinely necessary to achieve a legitimate purpose. The principle of necessity is important because the existence of an emergency does not mean that every restrictive measure is automatically necessary. The state must demonstrate a genuine

need connecting the emergency to the restrictive measure. This principle also prevents the government from using an emergency as a basis for imposing broad and comprehensive restrictions. Every restriction must have a justification grounded in factual circumstances. In the context of this study, necessity is important because one weakness of emergency regulation is the potential use of overly broad powers without clear parameters indicating when a measure is genuinely “necessary.”

D. Proportionality

The fourth element is proportionality. This principle ensures that the state may not take measures exceeding what is necessary to achieve a legitimate purpose. Aharon Barak's theory of proportionality can serve as an important theoretical foundation. Under Barak's framework, proportionality review includes, among other elements, proper purpose, rational connection, necessity, and proportionality *stricto sensu*. In an emergency context, proportionality means that the more serious the restriction on human rights, and the greater its intensity, the stronger the constitutional justification that the state must provide. Proportionality review may be conducted through several stages: Proper purpose: Does the measure pursue a legitimate purpose? Rational connection: Does the measure have a rational connection with the objective to be achieved? Necessity: Is there another alternative that would restrict human rights to a lesser extent? Proportionality *stricto sensu*: Are the benefits obtained by the state proportionate to the human rights costs borne by society?

E. Temporality

The fifth element is temporality. This principle emphasizes that, in an emergency, restrictions on human rights must have a clearly defined duration and may not be imposed permanently. Restrictions may be applied only while the emergency continues and only to the extent that they remain genuinely necessary to address the threat underlying the declaration of the emergency. Therefore, the government must establish a clear time limit, conduct periodic evaluations, and terminate restrictions once the underlying circumstances have ended. This principle is important to prevent an emergency from being used as a justification for permanently maintaining human rights restrictions or excessively expanding governmental power.

F. Judicial & Democratic Oversight

This element emphasizes that the exercise of governmental authority in an emergency, including measures restricting human rights, must remain subject to judicial oversight and democratic control mechanisms. A state of emergency does not confer unlimited authority on the government; therefore, every restrictive policy must be legally and constitutionally accountable. Judicial review serves to ensure that government action does not conflict with the Constitution, while democratic oversight through representative institutions ensures political accountability for the exercise of emergency powers. Accordingly, this principle functions as a checks-and-balances mechanism to prevent abuse of power, ensure human rights protection, and preserve the rule of law even when the state is in an emergency situation.

The findings of the empirical-normative approach indicate that practices of restricting human rights in emergency situations in Indonesia can be traced through various policy practices across different periods, including the implementation of martial and civil emergency statuses in the past, as well as the implementation of Large-Scale Social Restrictions (PSBB) and Restrictions on Community Activities (PPKM) in response to the pandemic. In practice, the state has generally based human rights restrictions on considerations of security, public order, and public safety. Nevertheless, this study indicates that mechanisms of transparency, public participation, and oversight of restrictive policies have not yet been implemented optimally. Such conditions may result in disproportionate human rights restrictions that are inconsistent with the principles of respect for and protection of human rights in a state based on law.⁸

Human rights restrictions in emergency situations in Indonesia have occurred in various contexts, including security threats, public health emergencies, and disasters. These experiences demonstrate that granting special powers to the government to respond to emergencies can directly affect the fulfillment and exercise of citizens' constitutional rights. From the perspective of emergency constitutional law, human rights restrictions may in principle be justified when undertaken to respond to serious threats, have a clear legal basis, and are implemented proportionately. Nevertheless, emergency powers cannot be exercised absolutely because they are constrained by the rule of law, human rights protection, and constitutionalism. Matompo emphasizes that, in practice, human rights restrictions under various emergency conditions in Indonesia have even affected rights categorized as non-derogable rights. This demonstrates that emergency situations may create opportunities for violations of fundamental rights that, constitutionally, should remain guaranteed and may not be reduced under any circumstances.⁹

One important example can be found in the imposition of Martial Law in Aceh. The government applied emergency measures as an instrument for addressing armed conflict and maintaining the territorial integrity of the state. In implementation, various human rights restrictions were set out through proclamations issued by the Regional Martial Law Authority. Fadillah Agus's study indicates that some of these proclamations may be considered consistent with the international human rights framework, while other policies raised serious concerns, particularly the proclamation concerning a shoot-on-sight policy, which was considered inconsistent with the state's obligation to respect and protect the right to life. These findings demonstrate that the existence of a legal basis for an emergency does not, by itself, render all government actions constitutional. Every measure must still be assessed

⁸ Todung Mulya Lubis, *In Search of Human Rights*, Gramedia, Jakarta, 2009, hlm. 233.

⁹ Osgar S. Matompo, "Pembatasan terhadap Hak Asasi Manusia dalam Perspektif Keadaan Darurat," *Jurnal Media Hukum* 21, no. 1 (2014), <https://doi.org/10.18196/jmh.v21i1.1157>

on the basis of legality, necessity, proportionality, and the limits of protection for fundamental rights.¹⁰

Human rights restrictions can also be found in Indonesian government regulation during the COVID-19 pandemic. In that situation, the government did not establish a state-of-emergency mechanism as provided in Article 12 of the 1945 Constitution, but instead applied a public health emergency regime under Law No. 6 of 2018 on Health Quarantine and designated COVID-19 as a non-natural disaster under Law No. 24 of 2007 on Disaster Management. The use of these two legal regimes provided the basis for several policies restricting public activities, including Large-Scale Social Restrictions (PSBB) and mobility restrictions. According to Prasetyo, the choice of these legal instruments reveals a conceptual issue in the construction of emergency constitutional law in Indonesia, because public health emergencies and non-natural disasters were not directly placed within the state-of-danger framework referred to in Article 12 of the 1945 Constitution. Nevertheless, every restrictive measure during the pandemic still had to be implemented according to human rights protection principles, particularly with respect to fundamental non-derogable rights that may not be reduced under any circumstances.¹¹

The COVID-19 pandemic experience demonstrates that an emergency can serve as a basis for the state to impose human rights restrictions. Patirol, Ardhanariswari, and Wardaya explain that a public health emergency raises constitutional questions concerning the limits of state authority to restrict human rights. From a constitutional-law perspective, restrictions on rights during an emergency must remain within the framework of human rights law and constitutionalism. Thus, a state of emergency cannot be understood as a condition that releases the state from its obligation to respect and protect human rights.¹²

In the context of the COVID-19 pandemic, human rights restrictions concerned not only freedom of movement but also affected education, employment, religious activities, economic activities, and access to public spaces. This demonstrates that emergency human rights restrictions may have a very broad scope and therefore require clear parameters for determining when a restriction can be justified. Accordingly, the objective of protecting public health as a legitimate purpose is not, by itself, sufficient to justify a restriction. The government must also demonstrate that the restriction is genuinely necessary, proportionate in intensity, temporary, and subject to legal and democratic oversight. This argument is consistent with Prasetyo's study, which emphasizes that emergency situations may reduce human rights guarantees when governmental authority is not constrained by adequate parameters.

¹⁰ Fadillah Agus, "Pembatasan HAM dalam Keadaan Darurat Menurut Peraturan Perundang-Undangan Indonesia," *Jurnal Paradigma Hukum Pembangunan* 3, no. 2 (2020), <https://doi.org/10.25170/paradigma.v3i02.1932>

¹¹ R. B. Prasetyo, "Pandemi COVID-19: Perspektif Hukum Tata Negara Darurat dan Perlindungan HAM," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (2021): 327–346, <https://doi.org/10.30641/kebijakan.2021.V15.327-346>

¹² A. D. Patirol, R. Ardhanariswari, and M. K. Wardaya, "Kedaruratan Kesehatan Masyarakat dan Pembatasan HAM dalam Perspektif Hukum Ketatanegaraan Indonesia," *Veritas et Justitia* 9, no. 1 (2023): 164–187, <https://doi.org/10.25123/vej.v9i1.5962>

This issue is increasingly important to examine from the perspective of Indonesia's constitutional structure. Article 12 of the 1945 Constitution authorizes the President to declare a state of danger, while Article 22 regulates the President's authority to issue a Government Regulation in Lieu of Law (Perppu) when there is a compelling emergency. In addition, Article 28J of the 1945 Constitution affirms that the exercise of everyone's rights and freedoms may be subject to limitations based on law insofar as the limitations are intended to achieve constitutionally justified purposes. However, the 1945 Constitution does not yet specifically regulate the principles that the government must observe when restricting or derogating from constitutional rights during a disaster emergency. This condition indicates a normative space that needs clarification so that the exercise of emergency powers does not develop into excessive executive authority.

Based on these considerations, the main issue concerning human rights restrictions during emergencies in Indonesia is not merely whether the state may impose restrictions, but the parameters and mechanisms that ensure that such restrictions remain constitutional. The Aceh experience demonstrates the potential for restrictions affecting the right to life, while the COVID-19 experience illustrates the broad impact of restrictions on various rights and freedoms. Both experiences demonstrate the need to establish a human rights limitation model that does not rely solely on the existence of a legal basis but also requires a legitimate purpose, genuine necessity, proportionality, time limits, and effective oversight mechanisms.

In the Indonesian context, the issue of emergencies concerns not only the granting of extraordinary powers to the government but also how those powers are controlled through checks and balances. Ayuni, Arinanto, Arsil, and Indrati demonstrate that emergency regulation under Article 12 of the 1945 Constitution of the Republic of Indonesia still presents issues concerning the determination of emergency status and oversight mechanisms for the exercise of emergency powers. Therefore, the legal construction of emergency powers must be placed within a framework of limiting power so that a state of emergency does not become a space for uncontrolled expansion of executive authority.¹³

Human rights restrictions during an emergency have legitimacy insofar as they are based on a legitimate necessity and do not cause disproportionate harm to individuals or groups in society. Lebreton emphasizes that although states may have greater room to impose restrictions during a pandemic, such measures must still take proportionality and their impact on vulnerable groups into account. This perspective reinforces the argument that reconstructing a model of human rights restrictions during emergencies in Indonesia must incorporate proportionality as an instrument for examining the relationship between the emergency objective pursued and the resulting restriction of rights.¹⁴ Thus, law is essentially a reflection of the conditions

¹³ Ayuni, Arinanto, F. Arsil, and M. F. Indrati, "Concept and Implementation on the State of Emergency in Indonesia: Outlook to Strengthen Checks and Balances During Crisis," *Revista de Investigações Constitucionais* 9, no. 1 (2022): 11–36, <https://doi.org/10.5380/rinc.v9i1.83557>

¹⁴ A. Lebreton, "COVID-19 Pandemic and Derogation to Human Rights," *Journal of Law and the Biosciences* 7, no. 1 (2020): lsaa015, <https://doi.org/10.1093/jlb/lsaa015>

and development of society, while also playing a role in determining the direction of social change. Law cannot be viewed merely as a phenomenon emerging within society; rather, it is an integral part of social life. As expressed in the principle *ubi ius, ibi societas*, meaning “where there is law, there is society.” In this context, the Constitution is oriented not only toward formal aspects but also toward functional aspects, and therefore its existence continually develops and remains dynamic in accordance with changing societal needs.¹⁵

IV. CONCLUSION

Based on the findings of the study, human rights restrictions during a state of emergency may constitutionally be imposed, but they are not absolute. Articles 12, 22, and 28J of the 1945 Constitution provide the basis for the state to take extraordinary measures and impose restrictions on certain rights. However, such powers must still be exercised within the framework of the rule of law, democracy, and human rights protection. Indonesia's experiences with emergency situations, both in security conflicts and during the COVID-19 pandemic, demonstrate that human rights restrictions continue to face issues concerning clarity of legal foundations, proportionality, time limits, and oversight of governmental authority.

On this basis, this study reconstructs a constitutional emergency limitation model consisting of six principal elements: legality, legitimate purpose, necessity, proportionality, temporality, and judicial and democratic oversight. Legality ensures a clear legal basis; legitimate purpose ensures that restrictions pursue a lawful objective; necessity requires a genuine need; proportionality prevents excessive restrictions; temporality ensures that restrictions apply only for the duration of the emergency; while judicial and democratic oversight ensures review by courts and democratic institutions.

The model emphasizes that a state of emergency is not a free space for the government to restrict human rights, but rather a special legal regime that remains subject to the Constitution. Through application of these six principles, the state can continue to act rapidly and effectively in extraordinary circumstances while preventing abuse of authority and ensuring protection of citizens' constitutional rights. Accordingly, reconstructing the human rights limitation model is necessary to achieve a balance among national safety interests, the effectiveness of emergency response, and human rights protection within Indonesia's democratic rule-of-law state.

¹⁵ D. Septiani and A. Fikriana, "Peran Politik Hukum dalam Pembaharuan Hukum Tata Negara untuk Melaksanakan Tujuan Negara Indonesia," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 1, no. 1 (2023): 26–34.

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