

**CONSTITUTIONAL CONTROL OF EMERGENCY POWERS IN
INDONESIA'S PRESIDENTIAL SYSTEM**

**KONTROL KONSTITUSIONAL ATAS WEWENANG DARURAT
DALAM SISTEM PRESIDEN INDONESIA**

Ahmad Ainun Najib^{1*}

*Faculty of Law, Universitas Diponegoro

* najib1925@live.undip.ac.id

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ABSTRACT

The constitutional regulation of emergency powers presents a significant challenge for contemporary constitutional democracies, particularly within presidential systems where executive authority often expands during crises. In Indonesia, this issue is encapsulated in Article 12 of the 1945 Constitution, which grants the President the authority to declare a state of emergency without clearly delineating substantive thresholds, temporal limits, or institutional mechanisms of control. The ongoing reliance on Law No. 23 Prp of 1959 further entrenches a security-oriented framework that increasingly diverges from Indonesia's post-amendment constitutional commitment to the rule of law and human rights protection. This article explores constitutional controls over emergency powers in Indonesia through a doctrinal and comparative constitutional analysis. It assesses the normative coherence and institutional adequacy of Indonesia's emergency powers framework by situating it in a comparative perspective with South Korea and Brazil, two presidential systems that have developed more structured constitutional mechanisms for regulating emergencies. The comparison emphasizes differentiated emergency regimes, legislative involvement, temporal limitations, and judicial oversight as key tools for constraining executive discretion during crises. The article concludes that Indonesia's emergency powers framework remains normatively under-specified and institutionally fragile, resulting in fragmented emergency governance and weak constitutional accountability. Drawing on comparative insights, the article

identifies reform implications aimed at strengthening constitutional controls, particularly through clearer emergency standards, enhanced legislative and judicial oversight, and the reconceptualization of emergency powers as a constitutionally regulated exception rather than an open-ended executive prerogative.

Keywords : State of Emergency, Emergency Powers, Constitutional Control, Presidential System, Rule of Law.

ABSTRAK

Regulasi konstitusional terhadap kewenangan darurat tetap menjadi tantangan utama bagi demokrasi konstitusional kontemporer, khususnya dalam sistem presidensial di mana kewenangan eksekutif cenderung meluas selama masa krisis. Di Indonesia, tantangan ini tercermin dalam Pasal 12 Undang-Undang Dasar 1945, yang memberikan kewenangan kepada Presiden untuk menyatakan keadaan darurat tanpa secara jelas menentukan batasan substantif, batasan waktu, atau mekanisme institusional untuk pengawasan. Ketergantungan yang berkelanjutan pada Perppu No. 23 Tahun 1959 semakin memperkuat kerangka kerja yang berorientasi pada keamanan, yang semakin tidak selaras dengan komitmen konstitusional Indonesia pasca-amandemen terhadap prinsip negara hukum dan perlindungan hak asasi manusia. Artikel ini mengkaji kontrol konstitusional terhadap kewenangan darurat di Indonesia melalui analisis konstitusional doktrinal dan komparatif. Artikel ini menilai koherensi normatif dan kecukupan institusional dari kerangka kewenangan darurat Indonesia dengan menempatkannya dalam perspektif komparatif dengan Korea Selatan dan Brasil sebagai dua sistem presidensial yang telah mengembangkan mekanisme konstitusional yang lebih terstruktur untuk mengatur keadaan darurat. Perbandingan difokuskan pada rezim darurat yang berbeda, keterlibatan legislatif, batasan waktu, dan pengawasan yudisial sebagai alat utama untuk membatasi diskresi eksekutif selama krisis. Artikel ini menemukan bahwa kerangka kewenangan darurat Indonesia masih normatif kurang terinci dan secara institusional rapuh, mengakibatkan tata kelola darurat yang terfragmentasi dan akuntabilitas konstitusional yang lemah. Dengan mengambil wawasan komparatif, artikel ini mengidentifikasi implikasi reformasi yang bertujuan memperkuat kontrol konstitusional, khususnya melalui standarisasi keadaan darurat yang lebih jelas, peningkatan pengawasan legislatif dan yudisial, serta rekonseptualisasi kewenangan darurat sebagai pengecualian yang diatur secara konstitusional, bukan sebagai hak prerogatif eksekutif yang tidak terbatas.

Kata Kunci : Keadaan Darurat, Kewenangan Darurat, Pengawasan Konstitusional, Sistem Presidensial, Supremasi Hukum.

I. INTRODUCTION

In recent years, constitutional democracies have encountered increasingly intricate crises, including armed conflict, political instability, pandemics, and climate-related disasters.¹ These developments have intensified scholarly debates regarding the constitutional design of emergency powers, which must enable swift state action while preventing executive overreach.² Comparative constitutional scholarship has demonstrated that inadequately regulated emergency regimes may erode checks and balances and weaken democratic institutions. Experiences in several jurisdictions illustrate how emergency powers can be transformed from temporary safeguards into instruments of political consolidation.

Within the broader discourse, the regulation of emergency powers in presidential systems poses distinct challenges.³ Given that executive authority is institutionally concentrated in the presidency, emergency provisions may substantially augment discretionary power if not accompanied by explicit substantive thresholds, temporal constraints, and robust legislative and judicial oversight.⁴ Contemporary scholarship underscores the necessity of "constitutionalizing" emergency powers rather than treating them as extra-legal exceptions. As articulated by scholars such as Bruce Ackerman and David Dyzenhaus, extraordinary powers must remain anchored within constitutional legality to avert the normalization of exceptional governance.⁵

Indonesia provides a particularly important case study in this regard. Article 12 of the 1945 Constitution grants the President the power to proclaim a "state of danger," but it lacks detailed criteria, procedural protections, time constraints, and mechanisms for institutional oversight.⁶ The continued

¹ Michael Lawrence et al., "Global Polycrisis.: The Causal Mechanisms of Crisis Entanglement," *Global Sustainability* 7 (2024): e6, <https://doi.org/10.1017/sus.2024.1>.

² Zoltán Szenté, "How to Assess Rule-of-Law Violations in a State of Emergency? Towards a General Analytical Framework," *Hague Journal on the Rule of Law* 17, no. 1 (2025): 117–38, <https://doi.org/10.1007/s40803-024-00244-1>.

³ David Dyzenhaus, "States of Emergency," in *A Companion to Contemporary Political Philosophy*, 1st ed., ed. Robert E. Goodin et al. (Wiley, 2017), <https://doi.org/10.1002/9781405177245.ch50>.

⁴ Francesco Bromo et al., "Governments and Parliaments in a State of Emergency: What Can We Learn from the COVID-19 Pandemic?" *The Journal of Legislative Studies*. 31, no. 4 (2025): 918–46, <https://doi.org/10.1080/13572334.2024.2313310>.

⁵ Gábor Mészáros, "How Misuse of Emergency Powers Dismantled the Rule of Law in Hungary.," *Israel Law Review* 57, no. 2 (2024): 288–307, <https://doi.org/10.1017/S0021223724000025>.

⁶ BNPB, *Indeks Risiko Bencana Indonesia (IRBI)* (Badan Nasional Penanggulangan Bencana, 2024), <https://inarisk.bnpb.go.id/irbi>.