
Analysis of the Existence of State Law in Implementing a State of Emergency in the Covid-19 Situation in Timor-Leste

Lucia de Canossa Silva Hau¹ and Ketut Adi Wirawan²

Faculty of Law, Perdanaian University, Tmor Leste (UNPAZ) & Faculty of Law, Warmadewa University

luciahau6417@gmail.com

Published: 13/08/2023

How to cite:

Hau, L. de C. S., & Wirawan, K. A. (2023). Analysis of the Existence of State Law in Implementing a State of Emergency in the Covid-19 Situation in Timor-Leste. *Sociological Jurisprudence Journal*, Vol.6(2). Doi: <https://doi.org/10.22225/scj.6.2.2023.117-122>

Abstract

Concerning “The Existence of the state of Law in implementing of a State of Emergency in the Covid-19 Situation” is a constitutional reflection. Regarding state issues in the juridical aspect, the researcher sees that there have been multiple lexical interpretations in the use of the words *Estado Emergencia* and *Estado de Esesaun*. In the author’s opinion, this theoretical issue is that the concept of *Staatnoodrecht* (Netherlands) is divided into two parts, namely *Subjective Staatnoodrecht* and *Objective Staatnoodrecht*. Two key problems are formulated in this research. Firstly, it examines whether the prevailing Covid-19 situation, affecting the entire territory of Timor-Leste, satisfies the prerequisites for the declaration of a state of emergency. Secondly, the study investigates the legal underpinning of a state of emergency’s existence. The normative juridical methodology, encompassing statutory, conceptual, and historical approaches, is employed in this study. By utilizing these approaches, the research aims to uncover fundamental theoretical concepts that uphold the presence of the rule of law while implementing states of emergency amidst the Covid-19 crisis.

Keywords: State of Law and State of Emergency

I. INTRODUCTION

The emergence of the new, fatal disease Covid-19 towards the end of 2019 shook the entire world. Now that Covid-19 has spread widely and has impacted practically every country in the world since it was initially declared a Health Emergency of International Concern (PHEIC) by the WHO, (2005). In order to combat the spread of this disease, several nations have instituted a variety of regulations that have restricted people’s movement, including restricting crowded areas, forbidding meetings, closing schools, and temporarily halting workplace activity. Prasetio, (2021). When the government declares a state of emergency, it is saying that it will suspend some of the executive, legislative, and judicial branches’ regular operations and may even alter normal citizen and governmental institution behavior. However, this situation is considered controversial in its implementation because it violates human rights principles, such as Princip of liberty (Freedom) and Equality before the Law. Concerns about misuse of emergencies are certainly not without basis. Because, basically giving more power to the government in emergency conditions is conservatively aimed at returning to normal conditions Pasquino, (2004).

A República Democrática de Timor-Leste é um Estado de Direito Democrático, Soberano, Independente e Unitário, Baseado Na Vontade Popular e no Respeito Pela Dignidade da Pessoa Humana is what the Democratic Republic of Timor-Leste (RDTL)’s Article 1 paragraph (1) states clearly. It is similar to the practice of administering law in RDTL, namely the concept of a rule of law state in an emergency in

Timor-Leste against Covid-19 because legal issues and constitutional law are usually discussed with an assumption such as *Estado de Sítio*,” or in English known as “State of Emergency” while in Dutch it is called “*noodstoestand*.”

However, it is unrealistic to anticipate that the system of legal rules created for situations like these will be able to effectively accomplish legal goals that provide justice, certainty, and utility. Because of the importance of this matter, regulation is needed in the form of a special law. It means that the basic matters regarding the operation of the functions of state power in abnormal circumstances can be jointly determined by the National Parliament and the President as head of state using his authority which has been used in article 85 letter (g) that “*Declarar o Estado de Sítio ou o Estado de Emergência, mediante autorização do Parlamento Nacional, ouvidos o Conselho de Estado, o Governo e o Conselho Superior de Defesa e Segurança.*”

The purpose of being a state is that the functioning of the state organs that have been formed can continue to be realized while still guaranteeing respect for and fulfillment of the basic rights guaranteed in the Constitution of RDTL as the highest legal document. The exercise of legitimate state power must not be stopped simply because of a change in revolutionary circumstances, as noted in the preamble of the constitution of RDTL in paragraph X which states that “*Plenamente Consientes das Necessidades de se erigir em Cultura Democrática e Institucional Própria de um Estado de Direito onde o Respeito pela Constituição, pelas Leis e pelas Instituições Democraticamente Eleitas an hour a sua base Inquestionável.*” Furthermore, Article 6 letter (b) also stipulates that “*Garantir e Promover os Direitos e Liberdades Fundamentais dos Cidadãos e o Respeito pelos Princípios de Estado de Direito Democrático.*”

If such an unusual emergency does occur, there may be two possible responses by state and government organs to address it. First, the organs of the state and government experience “*syndrome disfuncie*” or do not function as they should. Second, the state authorities turn into tyrannical “*dictator by accident*” who takes advantage of this unusual emergency for their own interests or to strengthen their power. Based on the above background, there are two formulations, namely:

1. What is the decree of the President of the Republic on a State of emergency according to the RDTL Constitution?
2. How is the existence of the state of the law in an emergency situation?

Thus, it is necessary to have an accurate understanding of the state of emergency itself and the deliberately created and prepared legal norms to deal with such emergencies at any time. The norms of constitutional law in an emergency or abnormal situation are what we call emergency constitutional law, as discussed by Jimly Asshiddiqie, (2012) in the book *Emergency Constitutional Law*.

This research has two benefits, namely, theoretically and practically. Theoretically, this research provides benefits for the development of the idea of the rule of law in the RDTL Constitution. Practically, this research becomes the basis of constitutional legitimacy in a country with a constitution. In this case, the normative juridical method is the approach to studying constitutional law that can answer research problems. There are three approaches, including the statue approach, conceptual approach, and historical approach. This method shows a scientific approach to issues other than statutory and conceptual. Thus, it is assumed that the juridical method can answer all these problems completely and contextually.

II. METHOD

The research article titled “*Analysis of the Existence of State Law in Implementing a State of Emergency in the Covid-19 Situation in Timor-Leste*” aims to investigate the legal framework and implications of enacting a state of emergency in response to the Covid-19 pandemic in Timor-Leste. This study employs a comprehensive methodology that combines legal analysis, doctrinal research, and contextual examination to provide a thorough understanding of the topic. Basically legal research is looking for solutions to legal issues that arise in order to get prescriptions for what should be done on the issues discussed by Marzuki, (2010).

The research design of this study is based on a normative juridical research approach, which involves the systematic analysis of legal principles, statutes, regulations, and constitutional provisions related to the

declaration and implementation of a state of emergency. This methodology incorporates three main research methods: statutory analysis, doctrinal research, and contextual analysis.

The primary sources of data for this research comprise legal documents, statutes, constitution, emergency laws, executive decrees, legal commentaries, scholarly articles, and relevant secondary sources that provide insights into the legal framework and historical context of states of emergency in Timor-Leste. These sources form the basis for in-depth analysis and interpretation.

The collected data is analyzed through a qualitative approach, involving a systematic review, categorization, and synthesis of relevant legal provisions, scholarly insights, and contextual information. The analysis aims to identify patterns, contradictions, and implications within the legal framework, as well as to assess the compatibility of the legal measures with democratic norms and human rights.

III. RESULTS AND DISCUSSION

3.1 *Decree of the President of the Republic on a State of Emergency in accordance with the RDTL Constitution*

The establishment of the RDTL presidential decree in this state of emergency, as stated in the RDTL constitution, includes several mechanisms and procedures regulated in Article 25 paragraph (1), which explains that "...A Suspensão de Exercício dos Direitos, Liberdades e Garantias Fundamentais so Pode ter lugar Declarado o Estado de Sítio ou o Estado de Emergência nos termos previstos na Constituição."

According to Manan, (2014), an emergency is a crisis that forces concrete action; an emergency is even referred to as diametrically different from a state of danger. In this regard, in the opinion of the author, in the RDTL constitutional rules which are studied the origin of the phrase semantically and the traces of its appearance in the RDTL constitution are actually a state of exception. In other words, it is not a state of emergency as mandated in Article 25. If this is examined in terms of constitutional values, it can be clarified by the researcher who is related to the power of issuing RDTL presidential decrees. Semantic value is a constitution that applies only to the interests of the ruler; in the mobilization of power, the ruler uses the constitution as a tool to exercise political power.

Regarding the content of the provisions of this article, it can be reviewed normatively by the researcher related to the stipulation of the RDTL Presidential Decree in a state of emergency, No.29/2020, on March 27, 2020, which stipulates the Deklarasaun Estadu Emergência and then followed by Presidential Decree, No.32 /2020 and then renewed Presidential Decree No.35/2020 dated May 27, 2020.

In implementing the first emergency state, it can be said that the presidential decree is only responsive to the handling of the Covid-19 pandemic situation, which is considered to have set aside constitutional rules as stated in Article 25 paragraph (1), mentioned above and has been mandated by the constitution of RDTL. If studied theoretically, there are two conditions in the concept of an emergency state: subjective staatoodrechts and objective staatoodrechts. Subjective staatoodrechts is a right used by the executive to act in an emergency when it is an extreme situation, such as the coronavirus outbreak (Covid-19), which can cause the country to be in a state of emergency. Meanwhile, objective staatoodrechts is the law that applies during a pandemic (Covid-19), and this law only applies to countries in an emergency.

Scheppele, (2003) defines the circumstance as when a state faces a fatal threat and reacts by taking actions that, given the foundational beliefs of that state, would never be acceptable in ordinary times. Furthermore, according to Kim Lane Scheppele, the reasons employed by the state of exception only hold water in the most dire circumstances, such as when the challenge is so great that the state is forced to go against its core values in order to survive. With the reason that the country is not in a state of war or danger but is facing an epidemic or disease that is faced by all countries. As stated by the author in research, the law is like music; anyone who understands the lyrics will also understand the meaning of the music, similar to the law case.

With the argument following the research above, the researcher interprets the adage "Ignorate legis est lata culpa," which means not knowing the law is a big mistake. It is connected to the Subjective Staatsoodrecht, which has been explained above. However, if viewed from the Objective Staatsoodrecht means that the law that applies during a state of emergency. Before declaring a state of emergency, the president must consult with the national parliament and the government. It has been included in the RDTL

constitution in article 85 letter (g) that declares a state of war or a state of emergency, with the national parliament’s approval, after consulting the State Council, the government, and the high council for defense and security.

3.2 The Existence of the State of Law in an Emergency Situation

The state of the law is likened to a machine while the constitution is like oil which drives state principles as mandated by the constitution of RDTL, as one of the goals of the state as stated in article 6 letter (b) in Tetun language “Garante no promove sidadaun sira nia direitu no liberdade fundamentál, no respeito ba Estado nis prinsípiu kona-ba direitu demokrátiku.” The article’s content raises an interesting question about the development of the concept of human rights and whether this development is only applied to certain nations.

Related to the issue, the researcher uses sociological issues to investigate how human groups are faced with the prevailing social structure and will, jointly or not, try to carry out activities to protect or increase their own benefits. Groups of people carry out certain obligations, such as procedures that are carried out in society in the form of written regulations, without ignoring the certain rules in the country.

While at the same time, along with the regimes of countries that combine nationalism and statehood, it actually degrades human dignity. Discussing human rights cannot be separated from the issue of democratization. In every country that adheres to democracy as a political system, recognizing and upholding human rights is an absolute requirement. As stated in the formulation of article 1 paragraph (1) of the RDTL Constitution, in Tetum, “República Democrática Timor-Leste katak Estado ida ne’ebé demokrátiku, soberanu, ukun-an no ida mesak, harii hosi povu nia hakarak no iha respeito ba dignidade ema moris ida-idak nian.” However, the concept of human rights certainly has a different character according to the character of the state and nationality. It is strong and influenced by the ideology that underlies the concept of statehood and government implemented. So, the source of human rights law is only found in positive law and international conventions as regulated in articles 8-9 of the Constitution of RDTL. So, the state wants to create welfare (Welfare State) in accordance with the objectives formulated in article 6 of the RDTL Constitution. In contrast to the United States’ mindset, every effort to protect human rights is a sacred duty.

Conversely, when referring to the human rights system in Timor-Leste. Human rights are like “The King of Lips,” or just an ant breathing its last breath over sugar. Because of the reality and phenomena that often occur in political mindsets, human rights are discredited. In fact, in the rule of law, individual rights are to be protected and need to be protected; precisely in constitutional practice, the national parliament has made it happen, and the government has protected it, not limiting individual rights then holding free power without rules and ignoring legal procedures. It is like “what can you do if politics has an affair with the law” (Prof. Sahetapy, in the ILC program).

In reality, in the state of emergency in Timor-Leste, there are several restrictions as stated in the RDTL constitution in article 44 concerning freedom of movement; (1) Everyone has the right to move freely and to reside anywhere within the territory of the state. Unfortunately, in the process of implementing the emergency law, this matter was not protected by the state and even contradicted the contents of that article. Further explanation is described in Table 1 below.

Table 1. Explanation about state of exception and state of emergency

	State of Exception	State of Emergency
CONSTITUTION OF RDTL	<ul style="list-style-type: none"> ▪ Original Intent (<i>Material Law</i>) ▪ Staat Van Beleg (<i>Dangerous threat</i>) ▪ <i>Staatsnoodrech</i> 	<ul style="list-style-type: none"> ▪ <i>Extraordinary respond</i> ▪ <i>Staatsnoodrecht subjective</i> ▪ <i>Staatsnoodrecht Objective</i>

<p>EMERGENCY</p>	<ul style="list-style-type: none"> ▪ Only in cases of actual invasion or attack by a foreign power may a state of war or emergency be declared. ▪ Substantial disruption of democratic life or the prospect of serious disruption, as determined by the constitution. ▪ The right to life, bodily safety, citizenship, or the absence of prior criminal legislation are unaffected by the declaration of a state of war under any circumstances. ▪ Emergency state. A declaration of a state of war or emergency must be based on good reason by specifying which rights, freedoms, and guarantees will be guaranteed. ▪ Suspension cannot last more than thirty days (30) without declaring a renewal with proper reasons and only when necessary for the same time.
<p>EMERGENCY UNDER THE LAW</p>	<p><i>Autorizasaun Deklarasaun Estado Emergencia Decreto Lei No. 29/2020 dan Lei No. 32/2020.</i></p> <p>Renovasaun I:</p> <ul style="list-style-type: none"> a) Dec. Lei No. 35/2020 b) Dec. Lei No. 55/2020 c) Dec. Lei No. 62/2020 d) Dec. Lei No. 66/2020 e) Dec. Lei No. 70/2020 f) Dec. Lei No. 73/2020 <p>Renovasaun II:</p> <ul style="list-style-type: none"> g) Dec. Lei. No. 6/2021 h) Dec. Lei. No. 15/2021 i) Dec. Lei. No. 17/2021 j) Dec. Lei. No. 24/2021 k) Dec. Lei. No. 35/2021 l) Dec. Lei. No. 39/2021 m) Dec. Lei. No. 56/2021 <ul style="list-style-type: none"> ▪ Health quarantine ▪ Natural Disaster Management ▪ Handling Social Conflict ▪ Prevention and handling of financial system crises ▪ Government emergency in handling the Covid-19 pandemic

IV. CONCLUSION

Even though it does not directly state the element of emergency or a state of danger, as mandated in the constitution of RDTL in Article 25 and the presidential decree of RDTL, it is far from being implemented. However, the government must carry out what is mandated in the constitution of RDTL. It should be realized that, in practice, it has yet to be achieved following the principles of a state of law. The existence of a state of the law in the study of an emergency state is necessary for a constitutional system as mandated in the RDTL constitution. However, the constitution is the guardian of the state of law and the guarantor of the fundamental rights of citizens, as stated in the constitution of RDTL in article 1 paragraph (1).

REFERENCES

Jimly Asshiddiqie. (2012). *Hukum Acara Pengujian Undang-Undang*. Sinar Grafika.

Manan, B. (2014). *Hukum Positif Indonesia*. FH UII Press.

Marzuki, P. M. (2010). *Penelitian Hukum*. Kencana Prenada Media Group.

Organization, W. H. (2005). “*Statement on the Second Meeting of the International Health Regulations Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-NCoV)*..” [https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))

- Pasquino, J. F. and P. (2004). The Law of the Exception: A Typology of Emergency Powers. *International Journal of Constitutional Law*.
- Prasetio, R. B. (2021). Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat dan Perlindungan HAM. *Jurnal Ilmiah Kebijakan Hukum*, 15(2), 327. <https://doi.org/10.30641/kebijakan.2021.v15.327-346>
- Scheppele, K. L. (2003). Law in a Time of Emergency: States of Exception and the Temptations of 9/11”, *HeinOnline-6 U. Pa. Journal of Constitutional*, 6(5).