



Reevaluating the Necessity of a State of Emergency: Lessons from the Covid-19 Pandemic

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Abstract

Jimly Asshiddiqie argued that Indonesia should have declared a state of emergency during COVID-19 to ensure effective governance, asserting that, without it, the government lacked legitimacy to implement restrictive policies. This paper critically examines this claim through a doctrinal and regulatory policy analysis, assessing the necessity of an emergency declaration in managing the pandemic. The research evaluates regulatory effectiveness, legal implications, constitutional rights restrictions, and governmental legitimacy. While a state of emergency could enhance policy enforcement, the government retained legitimacy to implement necessary measures without it. Moreover, invoking Article 12 of the 1945 Constitution could have worsened the situation due to its broad legal consequences. However, the absence of an emergency declaration did not necessarily lead to a more effective response, as the government's initial inaction and public unpreparedness contributed to financial difficulties. Ultimately, Indonesia managed to conclude the pandemic without declaring a state of emergency..



A. Introduction

The COVID-19 pandemic triggered one of the most severe economic depressions in modern history, and Indonesia was no exception.¹ Thousands of lives were lost², case numbers surged³, and the country's GDP growth rate nearly fell to 2%.⁴ Mass unemployment further signaled an economic recession.⁵ In response, the government implemented various measures, including health protocols and state budget adjustments, to mitigate the crisis.

Amid these challenges, prominent constitutional scholar Jimly Asshiddiqie argued in a public lecture that the President should have declared a state of emergency to address the pandemic more effectively.⁶ While he did not explicitly state that such a declaration would enhance the President's regulatory powers, he invoked the principle: *normale recht voor normale tijd, en abnormale recht voor abnormale tijd* (normal laws for normal times, and abnormal laws for abnormal times).⁷

To understand his reasoning, it is crucial to examine what he meant by an emergency declaration. Legally, the President must formally declare a state of emergency through either a Peraturan Pemerintah Pengganti Undang-Undang (Presidential Regulation in Lieu of Law, hereafter Perppu) or a Peraturan Presiden (Presidential Regulation).⁸ This declaration must cite Article 12 of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as its constitutional basis, along with Perppu 23/1959⁹, which outlines the conditions and consequences of such a declaration.¹⁰ These legal actions would establish a de jure state of emergency rather than a merely de facto one.

Without such a declaration, Asshiddiqie argued that the President lacked the authority to curtail human rights or override constitutional provisions in response to the crisis. Legally, Indonesia remained in a de jure normal state, meaning the legal framework in place was suited for ordinary circumstances. For instance, the state could not prohibit communal prayers in mosques, as freedom of religion is a fundamental right, nor could the President unilaterally amend the annual state budget. Asshiddiqie objected to the legitimacy of government measures

¹ Richard Baldwin and Eiichi Tomiura, "Thinking Ahead about the Trade Impact of COVID-19," in *Economics in the Time of COVID-19*, ed. Richard Baldwin and Beatrice Weder di Mauro (CEPR Press, 2020); Scott R. Baker et al., "COVID-Induced Economic Uncertainty," *Working Paper No. 26983, National Bureau of Economic Research*, April 2020; Warwick McKibbin and Roshen Fernando, "The Global Macroeconomic Impacts of COVID-19: Seven Scenarios," *Working Paper No 19/2020, Centre for Applied Macroeconomic Analysis, Crawford School of Public Policy*, February 2020.

² Worldometer Team, "Coronavirus Cases: Indonesia," Worldometer, July 20, 2020, <https://www.worldometers.info/coronavirus/country/indonesia/>.

³ Worldometer Team.

⁴ Badan Pusat Statistik, "[Seri 2010] Quarterly GDP at Constant 2010 Prices by Expenditures (in Billion Rupiah), 2010-2020," Badan Pusat Statistik, November 6, 2024, <https://www.bps.go.id/id/statistics-table/2/NTQzIzI=/tingkat-pengangguran-terbuka-menurut-provinsi.html>.

⁵ Badan Pusat Statistik, "Tingkat Pengangguran Terbuka Berdasarkan Provinsi, 2011-2019 [Unemployment Rate (Open) by Province, 2011 - 2019]," Badan Pusat Statistik, May 22, 2020.

⁶ Tata Negara FHUI, "Indonesia Darurat Covid 19! Perkembangan HTN Darurat di Indonesia – Prof Jimly Asshiddiqie [Indonesia is in the emergency due to COVID-19! The Development of the Constitutional Law of An Emergency State in Indonesia – Prof Jimly Asshiddiqie]," *Youtube* (Indonesia: Youtuber, April 30, 2020), <https://www.youtube.com/watch?v=ZINpVZy84CM>.

⁷ Jimly Asshiddiqie, "Hukum Tata Negara Darurat [Constitutional Law of Emergency States]," *RajaGrafindo Press*, 2007.

⁸ Asshiddiqie.

⁹ Presiden Republik Indonesia, "Peraturan Pemerintah Pengganti Undang-Undang Nomor 23 Tahun 1959 tentang Keadaan Bahaya [the Presidential Regulation in lieu of Undang-Undang regarding Dangerous States]," Pub. L. No. 23 Tahun 1959 (1959).

¹⁰ Majelis Permusyawaratan Rakyat Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia 1945 Perubahan [Amended Constitution of the Republic of Indonesia]" (1945).

that imposed such restrictions, asserting that they could only be justified under an officially declared state of emergency.¹¹

The COVID-19 pandemic posed an exceptionally complex challenge for Indonesia, affecting not only public health but also triggering severe economic repercussions.¹² In an effort to contain the virus, the government implemented physical distancing measures through various legal instruments. However, these policies had unintended economic consequences, leading to widespread business closures and financial distress.¹³ After three months, the government shifted its approach by easing restrictions—reopening markets, airports, and other public facilities—under what became known as the "new normal." Contrary to its objectives, this phase saw a significant spike in COVID-19 cases, indicating that the measures taken were insufficient to mitigate the pandemic's multidimensional impacts.

The debate over declaring a state of emergency gained attention among Indonesian legal scholars. Qurrata Ayuni et al., in *Concept and Implementation on the State of Emergency in Indonesia: Outlook to Strengthen Checks and Balances during Crisis*, highlighted concerns about the inadequacies of the legal framework under Article 12 of the UUD NRI 1945, particularly the lack of a robust checks and balances mechanism.¹⁴ Similar concerns were raised by M. Yoppy Adhihernawan and Hernadi Affandi in *Limitation of the President's Power to Declare a State of Emergency: A Comparison of France, India, and Indonesia*, and by Herlambang P. Wiratraman in *Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?*, which examined the risk of unchecked executive power infringing on human rights.¹⁵

A key gap in the existing legal framework remains unaddressed: the issue of urgency and the effectiveness of declaring a state of emergency in managing crises such as the COVID-19 pandemic. Challenging Asshiddiqie's assertion, this research assesses whether such a declaration would have enhanced Indonesia's COVID-19 response and examines its potential consequences. Employing doctrinal research alongside an analysis of regulatory policy and practice, the research first establishes criteria for an effective regulatory response by reviewing academic literature, policy papers, and reports from countries that successfully mitigated the pandemic. It then scrutinizes Indonesia's approach by comparing the "with declaration" and "without declaration" regimes, analyzing the UUD NRI 1945, statutory laws, and government regulations within the context of the COVID-19 response.

The findings indicate that declaring a state of emergency was unnecessary and could have led to adverse legal and political consequences. By examining the legal, economic, and public

¹¹ Tata Negara FHUI, "Indonesia Darurat Covid 19! Perkembangan HTN Darurat di Indonesia – Prof Jimly Asshiddiqie [Indonesia is in the emergency due to COVID-19! The Development of the Constitutional Law of An Emergency State in Indonesia – Prof Jimly Asshiddiqie]."

¹² Tata Negara FHUI, "Indonesia Darurat Covid 19! Perkembangan HTN Darurat di Indonesia – Prof Jimly Asshiddiqie [Indonesia is in the emergency due to COVID-19! The Development of the Constitutional Law of An Emergency State in Indonesia – Prof Jimly Asshiddiqie]."

¹³ CNN Indonesia, "Pecah Rekor Kasus Positif Corona saat Transisi New Normal [Record Breaking Positive Corona Cases During New Normal Transition]," CNN Indonesia, June 12, 2020, <https://www.cnnindonesia.com/nasional/20200612131843-20-512614/pecah-rekor-kasus-positif-corona-saat-transisi-new-normal>.

¹⁴ Qurrata Ayuni, et.al., "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.

¹⁵ M. Yoppy Adhihernawan and Hernadi Affandi, "Limitation of the President's Power to Declare a State of Emergency: A Comparison of France, India, and Indonesia," *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 145–162; Herlambang P. Wiratraman, "Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?" *Journal of Southeast Asian Human Rights* 4, no. 1 (June, 2020): 306–334

health implications, this research concludes that the existing without declaration regime was preferable. Rather than focusing on an outdated and problematic emergency law, Indonesia's success depended on competent policymakers and effective problem-solving policies.

B. Analysis and Discussion

1. The Standard of an Effective Regulatory Response to COVID-19

Regulatory effectiveness is a key determinant of a regulation's success. By definition, an effective regulation produces the intended outcomes.¹⁶ In the regulatory context, effectiveness is measured by the extent to which regulations influence behavior to achieve specific objectives, with observable progress toward those goals.¹⁷ Similarly, an effective regulatory framework was essential in addressing the COVID-19 pandemic.

Establishing a standard for an effective regulatory response provides an objective benchmark for assessing a state's success in managing COVID-19. The most straightforward approach is to identify the primary goal that states aimed to achieve during the pandemic. The primary objective was to "flatten the curve," meaning to contain and reduce case numbers while ensuring the healthcare system's capacity remained intact.¹⁸ Although economic stability was also a concern¹⁹, controlling the virus's spread was the immediate priority.²⁰

Three key factors determine regulatory effectiveness. According to Lawrence Friedman, a legal system comprises three interdependent elements: legal substance, legal structure, and legal culture.²¹ These components must function cohesively; if any fails²², the system's overall effectiveness is compromised²³, potentially preventing it from achieving its objectives.²⁴

Legal substance pertains to a regulation's objectives and the means of achieving them, encompassing orders and prohibitions.²⁵ In the context of flattening the curve, regulatory measures required behavioral modifications such as physical distancing, regular handwashing, and maintaining hygiene to minimize virus transmission. Large-scale diagnostic testing and contact tracing were essential for identifying and tracking cases. Countries that implemented these measures aggressively, such as several Southeast Asian nations²⁶, demonstrated that

¹⁶ "Effective," Merriam-Webster Dictionary, 2020, <https://www.merriam-webster.com>.

¹⁷ Julia Black, "Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes," *Regulation and Governance* 2, no. 2 (2008): 137–164.

¹⁸ Chris Kenyon, "Flattening-the-Curve Associated with Reduced COVID-19 Case Fatality Rates- an Ecological Analysis of 65 Countries," *Journal of Infection* 81, no. 1 (July 2020): e98–99; Roy M. Anderson et al., "How Will Country-Based Mitigation Measures Influence the Course of the COVID-19 Epidemic?," *The Lancet* 395, no. 10228 (2020): 931–34; Zuqin Zhang et al., "Wuhan and Hubei COVID-19 Mortality Analysis Reveals the Critical Role of Timely Supply of Medical Resources," *Journal of Infection* 81 (2020): 170–172.

¹⁹ Martin McKee and David Stuckler, "If the World Fails to Protect the Economy, COVID-19 Will Damage Health Not Just Now but Also in the Future," *Nature Medicine* 26 (2020): 640–642.

²⁰ Facundo Pigullem and Liyan Shi, "Optimal COVID-19 Quarantine and Testing Policies," May 8, 2020.

²¹ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, Russel Sage Foundation (Russel Sage Foundation, 1975).

²² Friedman.

²³ Friedman.

²⁴ Friedman.

²⁵ Zhang et al., "Wuhan and Hubei COVID-19 Mortality Analysis Reveals the Critical Role of Timely Supply of Medical Resources"; Friedman, *The Legal System: A Social Science Perspective*.

²⁶ Amy Searight, "Strengths and Vulnerabilities in Southeast Asia's Response to the COVID-19 Pandemic," Center for Strategic and International Studies, April 20, 2020, <https://www.csis.org/analysis/strengths-and-vulnerabilities-southeast-asias-response-covid-19-pandemic>; Victor Cha, "Asia's COVID-19 Lessons for the West: Public Goods, Privacy, and Social Tagging," *The Washington Quarterly* 43, no. 2 (June 16, 2020): 1–18.

physical distancing alone was insufficient. While some experts argued that such measures could be draconian²⁷, they were instrumental in controlling the virus's spread.

Legal structure ensures the enforcement of regulations, comprising law enforcement personnel such as police and armed forces who impose compliance through sanctions or physical enforcement.²⁸ Given the difficulty of maintaining physical distancing, the presence of law enforcers was crucial to ensuring adherence.²⁹ Beyond law enforcement, other key components of the legal structure included frontline healthcare workers, such as doctors and nurses, who directly influenced case and mortality rates.³⁰ Experts, including epidemiologists, virologists, and statisticians, also played a vital role in advising policy decisions.

Legal culture is equally critical for regulatory effectiveness. Even well-designed legal frameworks may fail if individuals consistently evade compliance for personal interests.³¹ Conversely, when the public understands and supports a regulation's necessity, achieving policy objectives becomes significantly easier. However, fostering a strong legal culture depends on various factors, particularly public trust in policymakers. Since legal culture reflects societal perceptions of legal institutions, legitimacy and credibility are essential for securing compliance.³²

2. An Effective Regulatory Response from Some Countries: How to Flatten the Curve

The primary indicator of an effective regulatory response to COVID-19 was the ability to flatten the curve, a goal pursued by all nations. The virus, as the primary adversary, possessed two key characteristics: invisibility and rapid transmission. It could neither be detected by the naked eye nor naturally slow its latent and highly contagious spread. Thus, legal substance, legal structure, and legal culture had to be strategically aligned to address these characteristics and achieve the overarching objective.

Despite rising case numbers in many countries, some nations demonstrated notable success in controlling the outbreak, such as Vietnam, New Zealand, and China, as illustrated in Figure 1. Other cases, including Australia and Kerala, exemplify regions that initially flattened the curve but later experienced a second wave. By analyzing their approaches, key steps toward an effective regulatory response can be identified.

²⁷ Searight, "Strengths and Vulnerabilities in Southeast Asia's Response to the COVID-19 Pandemic"; Cha, "Asia's COVID-19 Lessons for the West: Public Goods, Privacy, and Social Tagging."

²⁸ Friedman, *The Legal System: A Social Science Perspective*.

²⁹ John French and Bertram Raven, "The Bases of Social Power," in *Studies in Social Power*, ed. Dorwin Catwright (the Institute for Social Research, 1959), 151–157.

³⁰ Debanjan Banerjee, "How COVID-19 Is Overwhelming Our Mental Health," *nature india*, March 18, 2020, <https://www.natureasia.com/en/nindia/article/10.1038/nindia.2020.46>; Sandro Galea, Raina M. Merchant, and Nicole Lurie, "The Mental Health Consequences of COVID-19 and Physical Distancing: The Need for Prevention and Early Intervention," *JAMA Internal Medicine* 180, no. 6 (2020): 817–818.

³¹ Friedman, *The Legal System: A Social Science Perspective*.

³² Nishanova Farida Mamasharifovna, "Legal Culture and the Main Factors of Its Formation," *EPRA International Journal of Multidisciplinary Research (IJMR)*, May 2021, <https://eprajournals.com/IJMR/article/4936/download>.

Figure 1. The Case Number Growth of The Curve-Flattening Countries.

Source: Worldometer, February 2025

Vietnam maintained a zero-death toll despite recording its first COVID-19 case just two days after the U.S.³³ The government responded swiftly with border closures, mandatory quarantines, mass PCR testing³⁴, and strict social distancing enforced by the military.³⁵ A strong collective spirit further supported these efforts.³⁶ New Zealand was the first country to report zero active cases.³⁷ Under Jacinda Ardern's leadership, the government imposed strict, early social distancing measures, with high public compliance.³⁸ Ardern credited the nation's five million citizens as key to eliminating the virus.³⁹

³³ Anna Jones, "Coronavirus: How 'overreaction' Made Vietnam a Virus Success," BBC, May 15, 2020, <https://www.bbc.com/news/world-asia-52628283>; Minh Vu and Bich T. Tran, "The Secret to Vietnam's COVID-19 Response Success: A Review of Vietnam's Response to COVID-19 and Its Implications," *The Diplomat*, April 18, 2020, <https://thediplomat.com/2020/04/the-secret-to-vietnams-covid-19-response-success>.

³⁴ Jones, "Coronavirus: How 'overreaction' Made Vietnam a Virus Success"; Vu and Tran, "The Secret to Vietnam's COVID-19 Response Success: A Review of Vietnam's Response to COVID-19 and Its Implications."

³⁵ Jones, "Coronavirus: How 'overreaction' Made Vietnam a Virus Success"; Vu and Tran, "The Secret to Vietnam's COVID-19 Response Success: A Review of Vietnam's Response to COVID-19 and Its Implications."

³⁶ Jones, "Coronavirus: How 'overreaction' Made Vietnam a Virus Success"; Vu and Tran, "The Secret to Vietnam's COVID-19 Response Success: A Review of Vietnam's Response to COVID-19 and Its Implications."

³⁷ Michael G. Baker, "New Zealand's Elimination Strategy for the COVID-19 Pandemic and What Is Required to Make It Work," *New Zealand Medical Journal* 133, no. 1512 (2020): 10–14; PBS NewsHour, "Why Have Australia and New Zealand Been so Successful at Managing COVID-19?," *Youtube* (Youtube, April 28, 2020), <https://www.youtube.com/watch?v=aVFuoicxR8>.

³⁸ Channel 4 News, "New Zealand Records No New Cases of Coronavirus," *Youtube* (Youtube, May 5, 2020), <https://www.youtube.com/watch?v=ruNQXvn8Tck>.

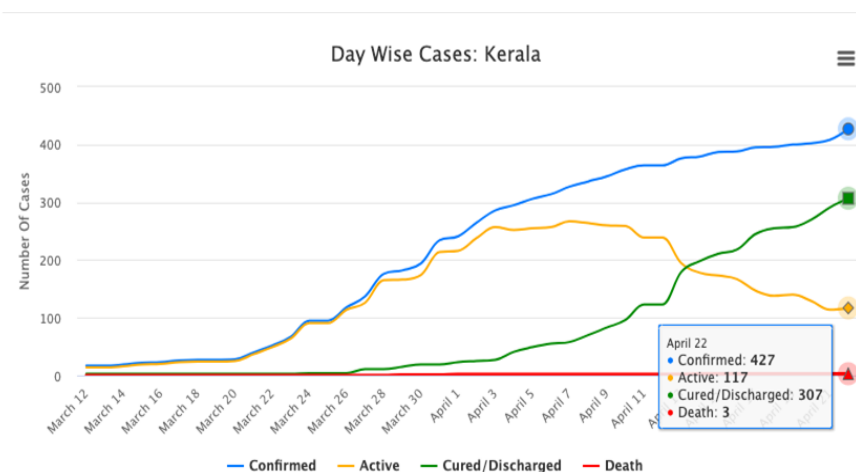
³⁹ Viet-Phuong La et al., "Policy Response, Social Media and Science Journalism for the Sustainability of the Public Health System Amid the COVID-19 Outbreak: The Vietnam Lessons," *Sustainability* 12, no. 7 (April 7, 2020).

China, as the initial epicenter, swiftly controlled the outbreak through strict lockdowns.⁴⁰, rapid disinfection, mass testing, and large-scale medical deployment.⁴¹ Contact tracing and emergency hospital construction further reinforced its aggressive response.⁴² Temporary hospitals were constructed within days, while contact tracing and extensive diagnostic testing were conducted.⁴³ Overall, the government's response was marked by an assertive and highly coordinated approach.⁴⁴

An analysis of various countries' responses reveals key commonalities that contributed to effective regulatory measures. From a governmental perspective, early and aggressive interventions aligned with WHO recommendations—testing, tracing, isolating, and providing support—were critical. From a societal perspective, public trust in government policies, collective commitment to curbing the virus, and a high level of compliance played a crucial role.

While many nations declared a "war" on the virus, the effectiveness of their follow-up actions proved more consequential than the declaration itself. Kerala, India, exemplifies this principle.⁴⁵ Despite India's rising COVID-19 cases, Kerala maintained a relatively low case count from February 2 to early May. The state's success was attributed to its proactive measures—early testing, contact tracing, isolation, and support⁴⁶—similar to those implemented by other successful as shown in Figure 2.

Figure 2. The Daily Case Number of Kerala.



Source: Statista, April 2020.

⁴⁰ Cha, "Asia's COVID-19 Lessons for the West: Public Goods, Privacy, and Social Tagging"; Jon Cohen and Kai Kupferschmidt, "Countries Test Tactics in 'War' against COVID-19," *Science* 367, no. 6468 (April 20, 2020): 1287–88.

⁴¹ PBS NewsHour, "Why Have Australia and New Zealand Been so Successful at Managing COVID-19?"; Baker and Wilson, "New Zealand Hits Zero Active Coronavirus Cases. Here Are 5 Measures to Keep It That Way."

⁴² Channel 4 News.

⁴³ South China Morning Post, "China Coronavirus: Drone Footage Reveals 'Ghost Town' Wuhan, the Sealed-off Outbreak Epicentre," *Youtube* (Youtube, January 28, 2020), <https://www.youtube.com/watch?v=VA9G1VCnOFY>.

⁴⁴ Sophie Williams, "Coronavirus: How Can China Build a Hospital so Quickly?," *BBC*, January 31, 2020, <https://www.bbc.com/news/world-asia-china-51245156>; BBC, "Coronavirus: 10 Days of Hospital Building in 60 Seconds," *BBC*, February 2, 2020, <https://www.bbc.com/news/av/world-asia-china-51348297/coronavirus10-days-of-hospital-building-in-60-seconds>.

⁴⁵ Sanjana Varghese, "Why Has Kerala Been so Successful in Tackling Coronavirus?," *NewsStatesman*, May 21, 2020, <https://www.newstatesman.com/world/asia/2020/05/kerala-coronavirus-cases-response-india-KK-Shailaja>.

⁴⁶ World Health Organization, "Responding to COVID-19 - Learnings from Kerala," World Health Organization, July 2, 2020, <https://www.who.int/india/news/feature-stories/detail/responding-to-covid-19---learnings-from-kerala>.

However, a second wave emerged, with Kerala experiencing a significant surge in cases beginning in early June. This escalation was primarily attributed to the state's failure to fully utilize the lockdown period for enhanced preparation and containment efforts. For districts with high positivity rates, the Indian Council of Medical Research (ICMR) recommended lockdowns, yet financial constraints limited the state government's willingness to implement them.⁴⁷ While other Indian states conducted 10,000 tests per day, Kerala performed only 3,000⁴⁸, indicating a low testing strategy. The government did not expand healthcare infrastructure or increase hospital capacity to accommodate the growing number of patients.⁴⁹ This lack of preparedness proved costly.⁵⁰

Dr. Maria Van Kerkhove emphasized the importance of proactive measures, stating: "It is a matter of how we use our best efforts to drive this down. There is no excuse to show that we are able to do this. Do everything that you can to be as aggressive as you can in these early cases."

From these examples, two key lessons emerge. First, early and aggressive intervention is crucial in controlling the virus. However, successfully flattening the curve does not eliminate the risk of a second wave. Given the virus's invisible nature, governments must remain vigilant. Second, public complacency can undermine progress. Until governments officially declare the elimination of the virus, adherence to health protocols remains essential.

3. The Comparison Between With And Without the Declaration

Assessing the impact of a formal declaration on public response requires a comparative analysis of scenarios with and without such a declaration. The necessity of a declaration arises only if the President is legally required to issue one before implementing necessary measures to address the pandemic. This analysis first examines the legal consequences of a declaration based on three fundamental components of the legal system. Subsequently, it evaluates existing legal instruments that empower the President to take necessary actions.

In Indonesia, the legal consequences of a state of emergency declaration are not explicitly outlined in the Undang-Undang Dasar Negara Republik Indonesia (UUD NRI) 1945.⁵¹ Article 12 grants the President the authority to declare a state of emergency but defers the regulation of its conditions and consequences to statutory law (Undang-Undang).⁵² Similarly, Article 22 allows the President to issue emergency regulations (Peraturan Pemerintah Pengganti Undang-Undang or Perppu), which take immediate effect but require parliamentary approval within one month to become law.⁵³ However, neither article explicitly defines the legal consequences of such declarations.

⁴⁷ Vibha Varshney, "The Kerala Paradox of COVID-19 Second Wave," Down To Earth, October 5, 2021, <https://www.downtoearth.org.in/health/the-kerala-paradox-of-covid-19-second-wave-79536>.

⁴⁸ Shyama Rajagopal, "Three Reasons Why Kerala's Covid Success Is Beginning to Get a Reality Check," The Print, July 18, 2020, <https://theprint.in/health/three-reasons-why-keralas-covid-success-is-beginning-to-get-a-reality-check/463036/>.

⁴⁹ Rajagopal.

⁵⁰ Stefanie Valentic, "8 Quotes from the World Health Organization's COVID-19 Media Briefing," EHS Today, April 12, 2020, <https://www.ehstoday.com/health/media-gallery/21126031/8-quotes-from-the-world-health-organizations-covid19-media-briefing/slideshow?slide=7>.

⁵¹ Majelis Permusyawaratan Rakyat Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia 1945 Perubahan [Amended Constitution of the Republic of Indonesia].

⁵² Majelis Permusyawaratan Rakyat Republik Indonesia.

⁵³ Majelis Permusyawaratan Rakyat Republik Indonesia.

The only legal instrument specifying the consequences of a state of emergency declaration is Perppu No. 23/1959, which serves as the delegated legislation for Article 12 of UUD NRI 1945.⁵⁴ Under this regulation, the President has sole authority to activate or deactivate emergency governance mechanisms. Article 2 of Perppu No. 23/1959, in conjunction with Article 12 of UUD NRI 1945, requires the President to formally declare or terminate a state of emergency.⁵⁵ However, in 2020, the President modified the structure and details of the state budget through Peraturan Presiden No. 54 of 2020 without issuing a formal declaration.⁵⁶ While these actions lacked a clear normative basis, they were deemed necessary due to the urgency of the pandemic. A close examination of Perppu No. 23/1959, alongside practical implementations, reveals several legal consequences arising from a presidential declaration of a state of emergency.

A state of emergency declaration in Indonesia carries two primary legal consequences. First, it shifts the government system from a decentralized to a centralized structure. Although Indonesia is a unitary state that applies the autonomy principle⁵⁷, governors typically exercise independent executive functions in areas such as education, health, public works, public order, and social affairs within their provinces.⁵⁸ However, once a state of emergency is declared, all executive authority is transferred to the President.⁵⁹

Second, the declaration effectively suspends the separation of powers. During a state of emergency, legislative and judicial functions are deactivated, concentrating all authority in the hands of the President. The President assumes the power to legislate and enforce laws without oversight, eliminating the system of checks and balances, as noted by Asshiddiqie.⁶⁰ Consequently, this absolute authority risks enabling arbitrary and unchecked decision-making, regardless of its necessity or legality.

This concentration of power also raises significant concerns regarding human rights violations. Since the President holds supreme authority during an emergency, he can impose extensive restrictions on human rights, provided such measures are deemed necessary to restore order.⁶¹ A historical example is the Supersemar decree of March 11, 1967, in which President Soekarno authorized General Soeharto to take any necessary actions in response to the G30S/PKI incident, where seven high-ranking military officers were assassinated by a communist faction. Under this mandate, Soeharto deployed the military to execute large-scale purges against suspected communists without judicial proceedings.

⁵⁴ Presiden Republik Indonesia, Peraturan Pemerintah Pengganti Undang-Undang Nomor 23 Tahun 1959 tentang Keadaan Bahaya [the Presidential Regulation in lieu of Undang-Undang regarding Dangerous States].

⁵⁵ Presiden Republik Indonesia.

⁵⁶ Kementerian Keuangan Republik Indonesia, "Perubahan Postur dan Rincian APBN 2020 di Masa Pandemi Covid-19 [Changes in Posture and Details of the 2020 State Budget during the Covid-19 Pandemic]," Kementerian Keuangan Republik Indonesia, April 27, 2020, <https://anggaran.kemenkeu.go.id/in/post/perubahan-postur-dan-rincian-apbn-2020-di-masa-pandemi-covid-19>.

⁵⁷ Majelis Permusyawaratan Rakyat Republik Indonesia, Undang-Undang Dasar Negara Republik Indonesia 1945 Perubahan [Amended Constitution of the Republic of Indonesia].

⁵⁸ Dewan Perwakilan Rakyat, "Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah [the Presidential Regulation in lieu of Law regarding Regional Governments]," Pub. L. No. 23 Tahun 2014 (2014).

⁵⁹ Presiden Republik Indonesia, Peraturan Pemerintah Pengganti Undang-Undang Nomor 23 Tahun 1959 tentang Keadaan Bahaya [the Presidential Regulation in lieu of Undang-Undang regarding Dangerous States].

⁶⁰ Tata Negara FHUI, "Indonesia Darurat Covid 19! Perkembangan HTN Darurat di Indonesia – Prof Jimly Asshiddiqie [Indonesia is in the emergency due to COVID-19! The Development of the Constitutional Law of An Emergency State in Indonesia – Prof Jimly Asshiddiqie]."

⁶¹ Cindy Adams, *My Friend the Dictator*, Bobbs-Merrill (Bobbs-Merrill, 1967).

Conversely, the existing legal framework maintained adherence to the autonomy principle. Through Peraturan Pemerintah 21/2020, the President granted regional leaders the authority to decide whether to implement social distancing measures.⁶² At the provincial level, governors further delegated this decision-making power to lower regional leaders, aligning with democratic principles by respecting the authority of directly elected officials.

For instance, the Governor of East Java was given autonomy to determine the policy's application but deferred the decision to Surabaya's Mayor, who ultimately rejected it, citing economic concerns. In contrast, the leader of Sidoarjo opted to implement the policy, and the Governor respected both decisions.⁶³ Coordination among all areas within a province was essential to ensure effective policy implementation.

The existing legal regime also imposed restrictions on human rights in a more controlled and limited manner. One prominent restriction was on freedom of movement.⁶⁴ Unlike Perppu 23/1959, which grants the President absolute authority to take any measures deemed necessary, the existing law does not provide such broad discretionary power. Perppu 23/1959 allows the President to subjectively determine necessary actions without clear standards or oversight, effectively removing checks and balances and creating the potential for unlimited governmental authority.

Centralizing authority in the President would grant the government legal immunity from administrative, civil, and criminal charges, thereby undermining public participation in policymaking and deteriorating the legal culture. Managing the pandemic imposed significant financial burdens on the government, slowing economic growth, reducing Gross National Income, and increasing state expenditures.⁶⁵ To mitigate these economic challenges, the government had to take financial measures that could be perceived as losses. Under normal circumstances, such actions might be subject to legal scrutiny; however, Perppu 23/1959 prevents lawsuits against the government through the Administrative Court and exempts financial losses from being classified as corruption.⁶⁶ This legal shield risks eroding public trust, leading to potential rejection of government policies.⁶⁷

Nevertheless, declaring a state of emergency could offer certain advantages in policy implementation. The urgency compels the President to act swiftly, without institutional interventions, enabling rapid and large-scale enforcement of measures.⁶⁸ Legal norms

⁶² Presiden Republik Indonesia, "Peraturan Pemerintah (PP) Nomor 21 Tahun 2020 Tentang Pembatasan Sosial Berskala Besar Dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (COVID-19) [Government Regulation Concerning Large-Scale Social Restrictions in the Framework of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19)]," Pub. L. No. 21 Tahun 2020 (2020).

⁶³ Aries Setyawan, "Risma Tegas ke Khofifah, Tolak Perpanjangan PSBB di Surabaya [Risma Firmly Rejected PSBB Extension in Surabaya]," *viva*, June 8, 2020, <https://www.viva.co.id/berita/nasional/1278607-risma-tegas-ke-khofifah-tolak-perpanjangan-psbb-di-surabaya>; Dadang Kurnia, "Ini Respons Pemprov Jatim Soal Usul PSBB Tahap 4 Surabaya [This is the Response of the East Java Provincial Government on the Proposed PSBB Phase 4 in Surabaya]," *republika*, June 18, 2020, <https://republika.co.id/berita/qc3zpu409/ini-respon-surabaya-terkait-usulan-pemprov-soal-psbb-tahap-4>.

⁶⁴ Erik Erfinanto, "Tiga Daerah di Jawa Timur Menuju Penerapan PSBB [Three Regions in East Java Towards PSBB Implementation]," *liputan6*, April 20, 2020, <https://surabaya.liputan6.com/read/4231931/tiga-daerah-di-jawa-timur-menuju-penerapan-psbb>.

⁶⁵ Badan Pusat Statistik, "[Seri 2010] Quarterly GDP at Constant 2010 Prices by Expenditures (in Billion Rupiah), 2010-2020."

⁶⁶ Presiden Republik Indonesia, "Peraturan Pemerintah Pengganti Undang-Undang (Perpu) Nomor 1 Tahun 2020 tentang Kebijakan Keuangan Negara dan Stabilitas Sistem Keuangan untuk Penanganan Pandemi Corona Virus Disease 2019 (COVID-19) dan/atau dalam Rangka Menghadapi Ancaman yang Membahayakan Perekonomian Nasional dan/atau Stabilitas Sistem Keuangan," Pub. L. No. 1 Tahun 2020 (2020).

⁶⁷ Presiden Republik Indonesia.

⁶⁸ Mirza Sahputra, "Negara dalam Keadaan Darurat Menurut Undang-Undang Dasar 1945 [The State is in a State of Emergency According to the 1945 Constitution]," *Jurnal Transformasi Administrasi* 10, no. 1 (2020): 80-98.

formulated in legislation are aligned with social norms, ensuring that legally prohibited acts, once sanctioned, hold binding authority in society.⁶⁹

Despite Asshiddiqie's assertion that the absence of a declaration does not legitimize human rights restrictions, a comparative analysis suggests that both regimes permitted such limitations in response to the pandemic. The key distinction lies in the extent of permissible rights violations, with non-derogable rights under Article 28I(1) of UUD NRI 1945 remaining protected. However, the existing legal framework exhibited greater caution in restricting human rights. A summary of this comparison is provided in Table 1 below.

Table 1. Comparison between two regimes (with and without the declaration)

Things to be Compared	Without Declaration	With Declaration
Legal Instruments Provided	<i>Perppu Number 1 Year 2020, Undang-Undang 6/2018 regarding Health Quarantine, Peraturan Pemerintah Number 21 Year 2020 regarding Social Distancing</i>	<i>Perppu 23/1959</i>
Executive Authority	Decentralised	Centralised
Range of Human Rights that Can Be Violated	Limited	Unlimited
Immunity	Exist (Explicitly)	Exist (Implicitly)

In both regimes, the government was authorized to implement necessary measures, including enforcing physical distancing, as freedom of movement is a right that may be restricted when required. The government was permitted to conduct widespread and aggressive diagnostic testing, with little public resistance since testing served individuals' own well-being. Contact tracing was also deemed essential, as it provided crucial information about the surrounding health conditions. Although such measures have been controversial globally, Article 28I of UUD NRI 1945 allows the government to impose these restrictions in the interest of public welfare.

4. The Possibility of Causing the Regulatory Response Ineffective with the Declaration

After analyzing the differences between the two regimes, the question remains: which one was better? Asshiddiqie argued that the President should have adopted the with-declaration regime, as it would have legitimized the government's authority to take necessary measures freely and effectively.⁷⁰ However, focusing solely on procedural legitimacy without considering the broader implications of such a declaration could have led to severe consequences. Invoking Article 12 of UUD NRI 1945 would have automatically triggered Perppu 23/1959, which grants the President sweeping powers with significant legal consequences.

If the President had declared a state of emergency, he would have assumed absolute authority, leaving no room for regional leaders to make autonomous decisions. While this might have ensured a uniform policy response, it also posed risks, particularly given the President's

⁶⁹ Hafrida, "Analisis Yuridis Terhadap Gratifikasi dan Suap Sebagai Tindak Pidana Korupsi Menurut Undang-Undang Nomor 31 Tahun 1999 Jo. Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi," Jurnal Online Universitas Jambi.

⁷⁰ Presiden Republik Indonesia, Peraturan Pemerintah Pengganti Undang-Undang Nomor 23 Tahun 1959 tentang Keadaan Bahaya [the Presidential Regulation in lieu of Undang-Undang regarding Dangerous States].

reluctance to impose social distancing measures due to their economic impact.⁷¹ This tendency was evident in Peraturan Pemerintah 21/2020, which required regional leaders to meet strict conditions before implementing social distancing policies.⁷² One key requirement was that case numbers had to show a significant increase before a region could even propose the policy. Furthermore, final approval rested with the Minister of Health, a direct subordinate of the President, thereby centralizing control over pandemic response.⁷³

The rejection of social distancing proposals in six regions—Fakfak (Papua), Tegal (Central Java), Sorong (West Papua), Palangkaraya (Central Kalimantan), Rote Ndao (East Nusa Tenggara), and Mimika (Papua)⁷⁴—demonstrates how centralized decision-making could limit proactive regional responses. Had the state of emergency been declared, the President's inclination to prioritize economic concerns might have led to even stricter limitations on such measures, potentially exacerbating the public health crisis. Thus, while the with-declaration regime offered procedural legitimacy, its risks—especially the concentration of unchecked power—may have outweighed its benefits.

The government's missteps in responding to the pandemic further illustrate the risks of a centralized decision-making approach. One of the earliest indications of this tendency was Peraturan Pemerintah 21/2020, which imposed strict conditions on regional leaders before they could propose social distancing measures. Among these requirements was a significant increase in case numbers, without which a region could not even apply for the policy. Moreover, final approval rested with the Minister of Health, who was directly accountable to the President. This arrangement effectively limited regional autonomy and delayed necessary interventions. In April, six regions—Fakfak (Papua), Tegal (Central Java), Sorong (West Papua), Palangkaraya (Central Kalimantan/Borneo), Rote Ndao (East Nusa Tenggara), and Mimika (Papua)—had their social distancing proposals rejected, highlighting the consequences of excessive centralization.

Compounding these structural issues, the government's initial response to the pandemic was marked by complacency. The then-Minister of Health, Terawan Agus Putranto, downplayed the severity of the outbreak⁷⁵, even suggesting in late January that people should not worry since Indonesia had no confirmed cases.⁷⁶ He went as far as dismissing a Harvard University research that warned Indonesia likely already had undetected cases due to its geographical proximity to affected countries such as Australia and other Southeast Asian nations.⁷⁷ The President himself, on February 17, attempted to boost tourism by offering a 30% discount to attract visitors, despite growing concerns about the virus's spread.⁷⁸ Furthermore,

⁷¹ Presiden Republik Indonesia, Peraturan Pemerintah (PP) Nomor 21 Tahun 2020 tentang Pembatasan Sosial Berskala Besar dalam Rangka Percepatan Penanganan Corona Virus Disease 2019 (COVID-19) [Government Regulation concerning Large-Scale Social Restrictions in the Framework of Accelerating the Handling of Corona Virus Disease 2019 (COVID-19)].

⁷² Presiden Republik Indonesia.

⁷³ Luthfia Ayu Azanella, "Apa Itu PSBB hingga Jadi Upaya Pencegahan Covid-19?" [What is large-scale social restrictions? Why Azanella, "Apa Itu PSBB hingga Jadi Upaya Pencegahan Covid-19?" [What is large-scale social restrictions? Why is it becoming a COVID-19 Preventive Measure?], *kompas*, April 13, 2020, <https://www.kompas.com/tren/read/2020/04/13/153415265/apa-itu-psbb-hingga-jadi-upaya-pencegahan-covid-19?page=all>.

⁷⁴ Muhammad Iqbal, "Daftar Daerah yang Ditolak Terawan untuk Lakukan PSBB [List of Regions That were Rejected by Terawan (Indonesia Minister of Health) to apply Large-scale social restrictions], *CNBC Indonesia*, April 16, 2020, <https://www.cnbcindonesia.com/news/20200416114929-4-152340/daftar-daerah-yang-ditolak-terawan-untuk-lakukan-psbb>.

⁷⁵ Asumsi, "Kemana Menkes Terawan [Where is the Minister of Health Terawan], *Youtube (Indonesia: Youtube)*, April 16, 2020), <https://www.youtube.com/watch?v=k6-5IQd3S64>.

⁷⁶ Jefrie Nandy Satria, "Minta Masyarakat Tak Panik soal Penyebaran Virus Corona, Menkes: Enjoy Saja [Minister of Health Recommend the People to Not Panic about the Corona Virus Spread, Just Enjoy], *detikNews*, January 27, 2020, <https://news.detik.com/berita/d-4874858/minta-masyarakat-tak-panik-soal-penyebaran-virus-corona-menkes-enjoy-saja>.

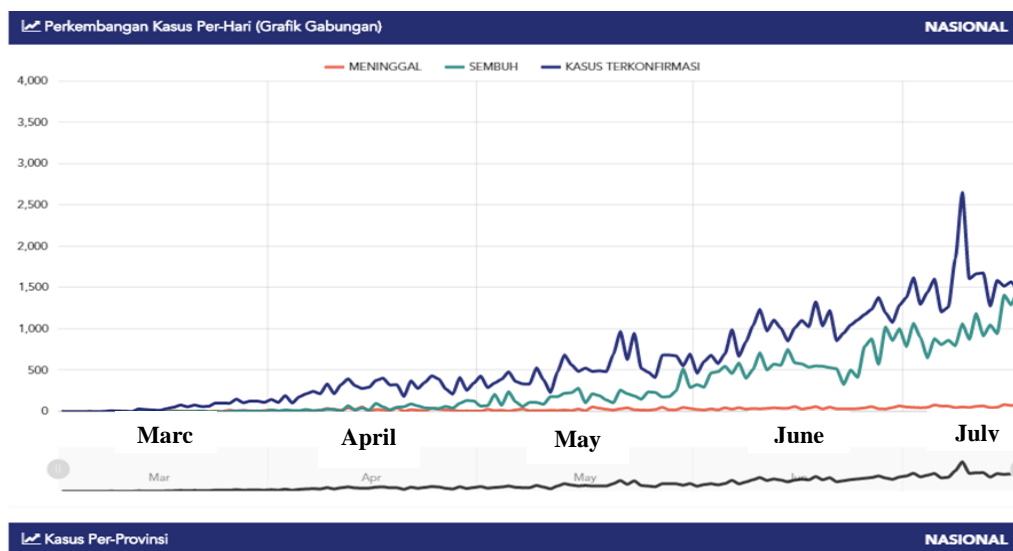
⁷⁷ Gugus Tugas Percepatan Penanganan Covid-19, "Peta Sebaran [Distribution Map], *Gugus Tugas Percepatan Penanganan Covid-19*, May 2020, <https://covid19.go.id/peta-sebaran>.

⁷⁸ Andhika Prasetya, "Genjot Pariwisata di Tengah Corona, Jokowi Beri Turis Diskon [Boost Tourism in the Middle of Corona, Jokowi Gives Tourists Discounts], *detikNews*, April 17, 2020, <https://news.detik.com/berita/d-4903193/genjot-pariwisata-di-tengah-corona-jokowi-beri-turis-disko>.

diplomatic efforts were made to persuade Saudi Arabia to reopen access for Muslim pilgrims traveling to Mecca⁷⁹, prioritizing economic and religious considerations over public health.⁸⁰

The consequences of these miscalculations became evident when, in May, the government announced a "new normal" policy, urging people to adapt to living with COVID-19.⁸¹ Instead of stabilizing, case numbers surged dramatically, reaching a record 2,657 confirmed cases per day, as shown in Figure 3. Projections from Public Health and Biostatistics researchers at Universitas Indonesia estimated that Indonesia could reach 2.5 million confirmed cases, with the worst-case scenario predicting up to 80 million cases if serious interventions were not implemented.⁸² These developments underscore that granting the President full authority did not necessarily ensure effective policymaking.⁸³ Without a proper check-and-balance system, the President could unilaterally determine what policies were "necessary," even if they proved detrimental. Thus, rather than guaranteeing efficiency, excessive centralization risked compounding governance failures.

Figure 3. COVID-19 Daily Case Number from March to July in Indonesia.



Source: Badan Pusat Statistik, 2020.

This paper does not assume that centralized authority always leads to worse outcomes. Vietnam, despite its communist system and a population of over 95 million⁸⁴, effectively controlled COVID-19 with zero deaths and only 382 cases early on.⁸⁵ Key factors included mass testing, clear public communication, and proactive quarantines.⁸⁶ In contrast, Indonesia

⁷⁹ Agung Sandy Lesmana, "Arab Saudi Setop Umrah karena Marak Corona, Indonesia Mau Negosiasi [Saudi Arabia Stops Umrah because of Corona, Indonesia Negotiates]," *suara*, February 27, 2020, <https://www.suara.com/news/2020/02/27/161957/arab-saudi-setop-umrah-karena-marak-corona-indonesia-mau-negosiasi>.

⁸⁰ Worldometer Team, "Coronavirus Cases: Indonesia".

⁸¹ Tim Kompas, "Jokowi: Kita Harus Berdamai dengan Covid-19 Hingga Waktu Kedepan [Jokowi: We Must living peacefully with Covid-19]," *Youtube* (Indonesia: Youtube, May 6, 2020), <https://www.youtube.com/watch?v=U6uSS0YDtwc>.

⁸² Iwan Ariawan and et al., "Submission to Badan Perencanaan dan Pembangunan Nasional [The Body for Planning and Development Affairs]," COVID-19 in Indonesia: Modeling Scenarios, April 8, 2020.

⁸³ Ariawan and et al.

⁸⁴ Jones, "Coronavirus: How 'overreaction' Made Vietnam a Virus Success"; Vu and Tran, "The Secret to Vietnam's COVID-19 Response Success: A Review of Vietnam's Response to COVID-19 and Its Implications"; La et al., "Policy Response, Social Media and Science Journalism for the Sustainability of the Public Health System Amid the COVID-19 Outbreak: The Vietnam Lessons."

⁸⁵ Worldometer Team, "Coronavirus Cases: Vietnam," worldometer, July 20, 2020, <https://www.worldometers.info/coronavirus/country/viet-nam/>.

⁸⁶ Jones, "Coronavirus: How 'overreaction' Made Vietnam a Virus Success"; Vu and Tran, "The Secret to Vietnam's COVID-19 Response Success: A Review of Vietnam's Response to COVID-19 and Its Implications"; La et al., "Policy Response,

reported 83,310 cases⁸⁷ and nearly 4,000 deaths due to delayed responses and underestimation of the virus.⁸⁸

Meanwhile, authoritarian regimes like Duterte's Philippines demonstrated the risks of unchecked power, leading to excessive measures and human rights violations. The effectiveness of a centralized system depends on leadership. While both Indonesia's existing regime and the with-declaration regime allowed necessary measures, the latter posed greater risks. Therefore, this paper supports maintaining the existing regime.

5. The Existing Regime: Was It More Effective?

Despite the government's intention to implement necessary measures to contain the virus within the existing regulatory framework, these efforts proved ineffective. Case numbers in Indonesia continued to rise, surpassing those in China. While China declared the end of the epidemic on February 23, 2023⁸⁹, Indonesia did similar later on June 21, 2023.⁹⁰ A key challenge for some countries, including Indonesia, was public noncompliance with health protocols, largely due to financial constraints.

Indonesia's financial resilience was limited. According to the World Bank and OECD, Indonesia's GDP per capita was approximately \$4,000.⁹¹ However, this figure does not accurately reflect individual income distribution, as it represents an average derived from total income divided by the nearly 300 million population. In reality, economic disparity persisted, with the wealthy accumulating more wealth while the poor remained vulnerable. As of September 2019, 24.8 million Indonesians lived in poverty, earning less than \$40 per month or \$500 per year, rendering them ill-prepared for financial crises. The number of financially vulnerable individuals increased further when considering those earning just above this threshold.⁹²

The global recession caused by the pandemic exacerbated unemployment, which peaked at three times its pre-pandemic level in 2020. By July 2020, unemployment had surpassed 7%. In response, the government introduced a phased "new normal" policy on June 1, 2020⁹³, despite the peak of positive cases during this period. This policy contributed to a decline in unemployment from 7.07% in July 2020 to 6.26% in January 2021. Figure 4 presents unemployment trends based on data from BPS (2019–2024).⁹⁴

Social Media and Science Journalism for the Sustainability of the Public Health System Amid the COVID-19 Outbreak: The Vietnam Lessons.”

⁸⁷ Worldometer Team, “Coronavirus Cases: Indonesia’.”

⁸⁸ Vietnam Insider, “WHO Official Said He Felt Safe in Vietnam during the Pandemic,” Vietnam Insider, May 13, 2020, <https://vietnaminsider.vn/who-official-said-he-felt-safe-during-his-stay-in-vietnam-during-the-pandemic/>.

⁸⁹ Bernard Orr, “China’s COVID-19 Epidemic Has ‘basically’ Ended, but Not Completely Over,” Reuters, February 23, 2023, <https://www.reuters.com/world/china/chinas-covid-19-epidemic-has-basically-ended-health-authorities-2023-02-23/>.

⁹⁰ Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, “Gov’t Declares End of COVID-19 Pandemic,” Cabinet Secretariat of the Republic of Indonesia, June 21, 2023, <https://setkab.go.id/en/govt-declares-end-of-covid-19-pandemic/>.

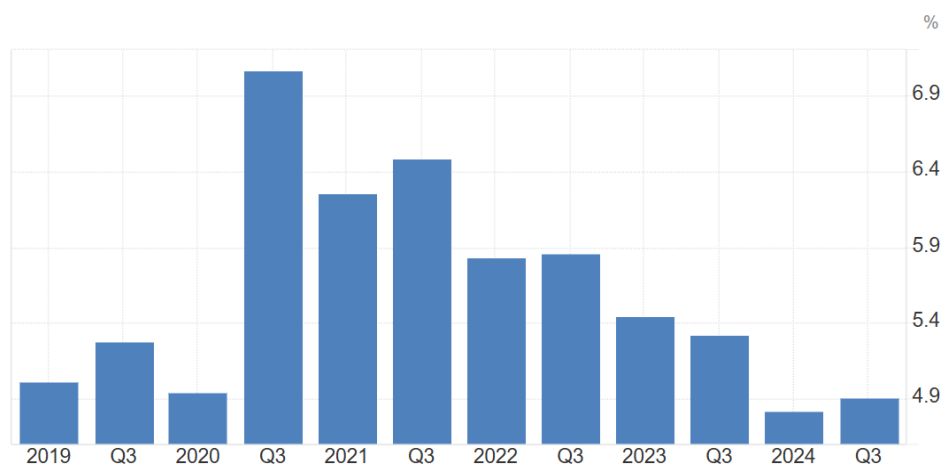
⁹¹ Aria W. Yudhistira, “Jumlah Penduduk Miskin Di Indonesia Melejit Lagi [The Number of Poor People in Indonesia Rockets],” katadata, July 17, 2020, <https://katadata.co.id/ariayudhistira/infografik/5f1129d47c029/jumlah-penduduk-miskin-di-indonesia-melejit-lagi>.

⁹² The World Bank, “GDP Per Capita (Current US Dollars) - Indonesia,” The World Bank, 2023, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=ID>.

⁹³ Muhammad Idris, “Mulai 1 Juni, Ini Skenario Tahapan New Normal untuk Pemulihan Ekonom [Starting June 1, This is the New Normal Stage Scenario for Economic Recovery],” Kompas, May 26, 2020, <https://money.kompas.com/read/2020/05/26/073708726/mulai-1-juni-ini-skenario-tahapan-new-normal-untuk-pemulihan-ekonomi?page=all>.

⁹⁴ Trading Economics, “Indonesia Unemployment Rate, 2019-2024,” 2024, <https://tradingeconomics.com/indonesia/unemployment-rate>.

Figure 4. The Unemployment Rate of Indonesia.



Source: Trading Economics, 2024.

The surge in unemployment was a key factor in the President's decision to relax physical distancing measures and introduce the "new normal" policy. Without easing restrictions, many Indonesians faced severe economic hardship. Regional leaders also adopted similar measures in response to the economic crisis, despite the continued rise in case numbers.

Unlike Germany, Indonesia was unable to implement a comprehensive recovery plan. With a population of 83.02 million in 2019, Germany was recognized for its swift and extensive economic response. The country allocated 60% of its GDP (\$3.846 trillion in 2019)⁹⁵ to recovery efforts, compared to the 10% spent by many other nations.⁹⁶ Key policies included rent exemptions and eviction bans for affected citizens, a €50 billion financial aid package for freelancers and artists, government coverage of up to 70% of salaries for small business employees, and €600 billion in loans for large businesses. These measures enabled people to stay home, thereby ensuring the effectiveness of physical distancing policies.

Compared to an emergency regime, policies and safety measures may elicit a more immediate response from the public. According to Asshiddiqie, the absence of an official emergency declaration during COVID-19 diverted the government's focus from policy formulation through Government Regulations⁹⁷, leading to fragmented efforts in addressing both the health crisis and economic downturn. Had policies been effectively designed to mitigate the virus's spread and economic decline, the public might have been better prepared for shifting economic conditions and health protocols. However, the effectiveness of such measures is not always guaranteed, as emergency declarations also come with inherent limitations.

After enduring the pandemic and its economic consequences, Indonesia officially declared its end in June 2023. The President issued Keputusan Presiden Republik Indonesia Nomor 17 Tahun 2023 on the termination of the COVID-19 pandemic status, following the cessation of community activity restrictions in December 2022, when case numbers had stabilized⁹⁸.

⁹⁵ The World Bank, "GDP (Current US Dollar) – Germany," The World Bank, 2023, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=DE>.

⁹⁶ Nas Daily, "How Germany Won Corona" (Youtube, May 31, 2020), <https://www.youtube.com/watch?v=ZQ6eL3rfFWQ>.

⁹⁷ Tata Negara FHUI, "Indonesia Darurat Covid 19! Perkembangan HTN Darurat di Indonesia – Prof Jimly Asshiddiqie [Indonesia is in the emergency due to COVID-19! The Development of the Constitutional Law of An Emergency State in Indonesia – Prof Jimly Asshiddiqie]."

⁹⁸ Public Relations of Cabinet Secretariat of the Republic of Indonesia, "Inilah Keppres Penetapan Berakhirnya Status Pandemi COVID-19 Di Indonesia [This Is the Presidential Decree on the End of the COVID-19 Pandemic Status in Indonesia]," Cabinet Secretariat of the Republic of Indonesia, June 29, 2023, <https://setkab.go.id/inilah-keppres-penetapan-berakhirnya-status-pandemi-covid-19-di-indonesia/>.

Ultimately, all policies were implemented without an emergency declaration, demonstrating that a non-emergency regime could still effectively manage the crisis.⁹⁹

C. Conclusion

Declaring a state of emergency was not a prerequisite for an effective regulatory response to COVID-19. Success depended more on competent decision-making and public compliance, as demonstrated by Vietnam, China, New Zealand, and Kerala. These cases highlight the importance of swift and aggressive measures, including early border controls, extensive testing and contact tracing, strict social distancing, clear public communication, and fostering public trust. Moreover, invoking emergency powers under Article 12 of the UUD NRI 1945 could have exacerbated the situation due to Perppu 23/1959, which grants the President unchecked authority. Until this regulation is revised or repealed, avoiding an emergency declaration remains a safer approach.

However, Indonesia's experience in 2020–2021 revealed that the absence of a formal emergency declaration did not lead to a more aggressive response. The government's initial underestimation of the pandemic resulted in a passive approach and public unpreparedness, contributing to financial hardships. This, in turn, necessitated a relaxation of restrictions despite rising cases. Nevertheless, Indonesia ultimately transitioned to a new normal and declared the pandemic's end without invoking emergency powers.

To strengthen its legal framework for future crises, Indonesia should replace Perppu 23/1959 with a modern law that clearly defines and limits executive authority during emergencies. Establishing comprehensive guidelines for inter-agency coordination and public communication would enhance responsiveness and public compliance, while stronger legislative and judicial oversight would ensure accountability and transparency in crisis management.

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⁹⁹ Rokom, "PPKM di Indonesia Resmi Dicabut [PPKM in Indonesia Officially Revoked]," *sehatnegeriku*, December 30, 2022.

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