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# REGULATIONS REGARDING DANGER CONDITIONS APPLIED IN INDONESIA

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**Abstract**

*The state of danger is always associated with danger to the state. If the safety of the state is threatened, the threat is considered a danger to the state. This research is normative in nature, using a statute approach, namely by examining the constitution and laws and regulations relating to legal issues, as well as a conceptual approach. This study concludes that there are four legal rules that serve as the umbrella for the implementation of an emergency for the territory of Indonesia, namely Regulation SOB 1939, Law Number 6 of 1946, Law Number 74 of 1957 and Perpu Number 23 of 1959. The Regulation of SOB 1939 distinguishes the level of danger into two i.e. in SvO and SvB states. Law Number 6 of 1946 does not regulate the level of danger. This is different from the next two hazard regulations. Law Number 74 of 1957 distinguishes a state of danger into two, namely a state of emergency and a state of war, while Perpu No. 23 of 1959 distinguishes the level of a state of danger into three, namely the level of civil emergency, military emergency and a state of war.*
*Keywords:*

## A. INTRODUCTION

The status of the state in a state of war or martial law is not something new in the life of the state. This situation had been applied since the Greek and Roman governments. This policy is used to overcome the possibility of an invasion or conspiracy that is considered to be harmful to the state (Sheeran, 2013). In general, a state of emergency is imposed when the community/country experiences a very crucial threat. Civil servants who usually handle ordinary situations are considered unable to cope with generalized situations (Dahoklory, 2020).

The most serious threat in the past was the siege or confinement of the enemy against a city or fortress. Enemies from outside can attack at any time. To

deal with these threats requires a government that has extraordinary powers, namely a government that can handle emergencies. The existence of a siege, which is a situation that is categorized as a state of emergency of war – perhaps the correct one in Dutch is called *van beleg*.

Threats in traditional societies that tend to create total war as well as total annihilation encourage the implementation of subjective state emergency law. Rulers are given the right to violate written positive legal regulations in the interests of the nation and state (Adhari, 2019). In accordance with the development of the times, the notion that was strongly influenced by the teachings of mini-law since the 19th century began to be questioned. The power of the ruler in an emergency situation began to be limited so that it became an objective state emergency law (Van der Pot, tt).

In general, threats to the existence of the state are divided into three, namely: threats from outside (in the form of invasion), threats from within (in the form of rebellion against the legitimate government) and natural disasters. These three threats are considered to be able to threaten the existence of the state if they are not addressed in an emergency (Adhari, 2019). In an emergency situation, the civil government is considered unable to cope with the existing threats. For this reason, the handling of the problem was taken over by the military after the head of state declared a state of emergency. The government's responsibility is in the hands of the military causing this situation (martial law) in a broad sense by some experts (Sils, 1968) to be considered part of military law (army law). The prevailing situation is military law. In subsequent developments military law was separated from the state of emergency. When a state of emergency is applied, the regulations and actions of the emergency authorities must be subject to the underlying statutes which are not always in harmony with military law (Seligman & Johnson, 1969).

The state of danger is always associated with danger to the state (Mehozay, 2016). If the safety of the state is threatened, the threat is considered a danger to the state. State equipment is expected to anticipate threatening dangers. State equipment requires special powers, namely the authority that only applies as long as the country is in danger (Manan & Harijanti, 2017). One of the special powers possessed by state equipment is to limit and reduce the rights and freedoms of citizens in general for the safety of the state (Erman, 1957).

As a law that has privileges (*uitzonderingsrecht*) against the Danger State Constitution, it should not be maintained for too long. According to B Nasution (1957), "if the law of privilege is maintained for too long, then the Constitution no longer exists and if this no longer exists, the law of danger will not exist anymore because he is an '*uitzonderingsrecht*' of the Constitution." So it would be more correct to say by Kranenburg (in Dullemen, tt), "that with the return to the ordinary state of state emergency law loses its foundation.":

The state of danger in relation to the constitution of a country is divided into two (Nasution B, 1957). First, the subjective state emergency law (*subjectieve staatsnoodrecht*) which is based on the subjective state theory of emergency (*subjectieve noodtoestaandstheorie*). This subjective emergency law is characterized when the constitution in a country only has one or several articles which generally sound only as a legal basis in declaring a state of danger. More precise regulations on the method and management of power are handed over to the authorities in a state of danger (Jacob, 2019). The judge does not have the authority to review government decisions. The state of danger is very dependent on the subjective view of the government (Arsil, 2018).

Second, the objective state emergency law (*objectievestaatsnoodrecht*) which is based on the theory of the state in an objective state of emergency (*objectieve noodtoestaandstheorie*). This situation requires the existence of a law that carefully regulates the methods and types of power during a state of danger (Fahrizal, 2020). Countries that adopt this kind of system provide an opportunity for judges to test the government's decision in imposing a state of danger whether it is legal or not based on objective evidence (Asshiddiqie, 2007).

In a state of danger, the state through the government requires special actions. The main task assigned to the authorities in a state of danger is to maintain the safety of the state from various dangers that threaten (Nuh, 2011). One of the consequences of the actions of the authorities in a state of danger is to impose restrictions and reduce freedom and human rights (Gultom, 2010). A person's human rights can be revoked by the necessity of the state in a state of war (Howard, 2000). The repressive approach becomes dominant during a state of danger. For this reason, it can be dangerous if the control of the authorities is weak (Huda, 2010). It is in this connection that in its development – especially in the AngloSaxon countries – a state of objective danger is imposed. The judge can immediately

declare the danger situation valid or not based on objective evidence. In addition, the distribution of power (power sharing) in the life of a democratic nation and state can be maintained.

In reality, the influence of the centers of power and the level of intelligence of the elite and society affect how the government interprets, formulates, legislates and practices the state of danger (Bulmer, 2018). More and more people have a critical awareness and many communities support civil society regulations regarding conditions of danger are relatively limitative and respect human rights (Juhaefah, 2011). On the other hand, the public's lack of critical awareness about human rights and democracy, regulations in danger, can have an excessive, exploitative and hegemonic influence (Arsil & Ayuni, 2020). This is one of the reasons why developed countries – pioneered by the AngloSaxon countries – have developed an objective Hazard Law.

Subjective emergencies are generally embraced by Continental European countries, one of which is the Kingdom of the Netherlands. When the Dutch tried to control areas in the archipelago, a state of danger was applied to areas that were considered vulnerable. Civilian governments often experience difficulties in carrying out their governmental duties, thus requiring the involvement of the military in the field of government. In some areas a state of emergency was imposed, so that the appointed rulers were military officials (Hariyono, 2008).

## B. METHODS

This research is normative, using a statutory approach, namely by examining the constitution and laws and regulations relating to legal issues, as well as a conceptual approach, namely by moving from doctrines, legal principles as well as the judge's decisions needed to explain the problem to be studied.

## C. RESULTS AND DISCUSSION

### SOB Rules 1939

Since the recognition of sovereignty from the Netherlands (KMB at the end of 1949) there have been two laws of danger that are still in effect in Indonesia, namely Law Number 6 of 1946 and Regulation of SOB 1939. Law Number 6 of 1946 which was in effect during the national revolution was never revoked so that is still legally valid. At the same time, the government also recognized and made the basis for the 1939 SOB Regulation inherited from the Dutch Colonial

Government in determining an area to be stated in SvO or SvB. The Indonesian government in imposing a state of danger always bases on the Regulation of the SOB 1939 not on Law Number 6 of 1946 concerning the State of Danger.

The tendency of the Indonesian government to implement the 1939 SOB Regulation was influenced by various factors. First, Law Number 6 of 1946 issued by the Government of the Republic of Indonesia tends to be interpreted as only applicable to Java and Sumatra, as the de facto power of the Government of Indonesia during the revolution. Second, the relative absence of legal experts who pay attention to the existence of the danger law before it is applied nationally and is massive. Third, the 1939 SOB Regulation is considered more comprehensive than Law Number 6 of 1946, so it has advantages in effectiveness and efficiency of implementation in the field. This is closely related to several articles that give power to the government with a very large portion of power. Fourth, the absence of implementing institutions for Law Number 6 of 1946, especially the DPN and DPD no longer exists so that the continuation of the implementation cannot be carried out anymore.

In using the 1939 SOB Regulation, the government based on Article 192 of the RIS Constitution (Article 142 of the UUDS) concerning transitional regulations. Thus the SOB Regulations inherited from the Dutch Colonial Government were used as the basis for the implementation of the SvO or SvB conditions during the RIS Parliamentary Democracy.

Indeed, the Indonesian government did not just use the SOB Regulation of 1939. The Government of Indonesia has made several changes to suit the situation of the Government of Indonesia, but only on technical issues. The main problem in the 1939 SOB Regulation is not mentioned much. Some of these technical changes include several things, including: a) defense in a state of war and martial law; b) regarding taking and ownership excluding matters of state defense tactics (LNRIS, 1950), the exercise of military power carried out by the Minister of defense or officials appointed by him in accordance with PP No. 7 concerning the Appointment of Military Power (LNRIS, 1950). The PP was then followed up by the Decree of the Minister of Defense Number 357 of 1950 concerning the Appointment of Military Rulers.

**Law Number 6 Year 1946**

The experience of state administrators regarding emergency regulations during the Dutch colonial period and the Japanese military occupation encouraged them to make more democratic regulations. Departing from the substance of the regulations produced by the colonialists (the Dutch Colonial Government and the Japanese Occupation Army), during the revolution a very democratic emergency law was successfully made (Djohari, 2011).

The Government of the Republic of Indonesia on June 6, 1946 promulgated Law Number 6 of 1946 concerning Dangerous Conditions (ANRI, 1946). Constitutionally, the application of a state of danger is possible in accordance with Article 12 of the 1945 Constitution which states "The President declares a state of danger. The conditions and consequences of the state of danger are determined by law." The president's authority is related to the president's position as head of state (Asshiddiqie, 2007).

According to Law Number 6 of 1946 Articles 3 and 4 as long as there is a state of danger, power is in the hands of the National Defense Council (DPN). The existence of the DPN is intended to limit and at the same time ease the power of the president. The DPN secretariat is in the city of Yogyakarta. The composition of the DPN consists of the Prime Minister, the Minister of Defense, the Minister of Home Affairs, the Minister of Finance, the Minister of Prosperity and the Minister of Transportation, the Commander in Chief and 3 representatives of People's Organizations in accordance with Article 3 of Law Number 6 of 1946. Regarding the representatives of People's Organizations, there are 3 people. appointed by the president after receiving input from people's organizations. This fact reflected the strong influence of civil servants and people's organizations at that time in the formulation of the Law on Hazardous Situations. Even when the state is in danger, power does not necessarily shift to military power.

The provisions in Law Number 6 of 1946 are quite interesting. As long as there is danger, civil power in the central government is still strong. Danger status is also not created in different levels. This fact reflects the process of preparing a state of danger which is still colored by various political forces at that time seeing the state of danger as a simple problem and must be subject to democratic life, one of which is the existence of civil supremacy. It is not a coincidence that representatives of people's organizations are included in it. At that time the power

of people's organizations was quite lively and had great influence, while ABRI had not yet become a solid force.

Three days after Law No. 6/1946 was enacted, a revision was made based on Perpu No. 5/1946. Some notable additions include the inclusion of the President as one of the representatives in the DPN. On October 28, 1946 the position of president was replaced with prime minister. This shows how Pull pulls the power that exists within the Central Government.

Similarly, Article 4 paragraph (3) sub b of the statement of the highest army commander in the area is replaced by "an officer as a representative of the army from that area appointed by the Commander in Chief." The replacement of the highest military commander with an officer appointed by the Great Commander is intended to create a DPD that can be directly controlled by the military leadership. This was very reasonable because at that time there were still many military commanders in the regions who were affiliated with political forces so they did not pay attention to their hierarchical relationship with military leaders at the center.

In 1948 the Government of Indonesia created stricter rules in dealing with emergencies by making regulations on military administration in areas in Java with the issuance of Government Regulation No. 33 of 1948. This regulation was linked to Law No. 30 of 1948 concerning the granting of full power (*plein pouvoir*) to the president in a state of danger. The interesting thing is that Law Number 30 of 1948 is expressly only valid for three months from September 15, 1948. So if it is consistent with the sound of the article, then from December 15, 1948, it is legally expired. However, the existence of PP No. 33 made MBKD successful in compiling an efficient defense in the face of the Second Dutch Military Aggression.

The essence of PP No. 33 of 1948 is to give the president the authority to declare regions as military areas as well as to appoint and dismiss military governors (Article 1). The task of the military governor is to maintain the safety of the state, security and public order in his area by taking actions including making regulations that are deemed necessary as long as they do not conflict with laws, government regulations or instructions from military or civilian leaders (Article 2).

The military governor oversees all government agencies, both civilian and military in his area (Article 5). At the residency level, power lies with the commander of the sub-territory concerned and he is responsible to the military governor (Article 6). After the war with the Netherlands ended with the signing of

the KMB, the Government used the 1939 SOB Regulation as a legal basis in dealing with dangerous situations before the enactment of Law No. 74 of 1957.

**Law Number 74 of 1957**

The strong influence of parliament in the discussion of the Act of Danger and the discourse of democracy made Law Number 74 of 1957 relatively democratic compared to the SOB Regulation of 1939 and also Perpu Number 23 of 1959 which replaced it. The law is able to make the UUDS which adheres to the theory of subjective state emergency limited in a limitative and nomitative manner. This can be seen from the power possessed by the authorized official. Who serves as the ruler of the state of emergency and the state of war is strictly determined. The special powers possessed by the authorities in a state of emergency or war may not be delegated to other parties – as is the case in Regulation SOB 1939 and Perpu No. 23/1959. Article 8 paragraph (6) expressly states that "the powers granted by this law given to a ruler in the context of a state of danger as referred to in Article 7, may not be delegated to another party."

The determination of the state of danger and its dismissal is not left to the Central Government, but has been regulated in Article 7. This provision is different from the Facultative SOB 1939 Regulation (Article 4) and Perpu Number 23 of 1959 which provides an exception for deviating from the central emergency authority (Article 4). 3 paragraph 3, Article 4 paragraph 4 and Article 5 paragraph 4).

In addition, the emergency authorities are expected to apply the *collegialiteit* principle so that the decisions/actions taken are not subjective from an official alone. At the central level, the management of a state of danger is carried out by the Council of Ministers, while in the area where the authority is in a state of danger, the Council of Regional Government is involved (Article 7). The decision to declare a state of danger in an area is based on the agreement of the Regional Government Council with the highest military commander in the area concerned. Only in compelling conditions, namely if the Regional Government Council (DPD) cannot hold a meeting or there is a difference of opinion between the DPD and the military commander, the military commander is the determinant in the statement of the state of danger (Article 2 paragraphs 1 and 2).

Restrictions on freedom and human rights still exist in accordance with the provisions contained in Articles 18 to 29 and Articles 31 to 44. In order to control

and minimize violations, the threat is regulated by a stipulation regarding conditions, exceptions and guarantees. - certain guarantees.

The government is given the right to choose and determine the level of the state of danger in declaring a state of danger. However, the government's authority is limited internally and externally. Internally the danger situation carried out by the President must be based on the decision of the Council of Ministers (Article 4 paragraph 3). Externally, the DPR, apart from being given the right to reject the proposed Draft Law on the Implementation of Hazardous Conditions submitted by the President (Article 5 paragraphs 1 and 2), also has the right to take the initiative to abolish a dangerous situation by means of a law.

The statement of the state of danger made by the President does not necessarily come from the President's judgment, but is based on the decision of the Council of Ministers (Article 1 paragraph 1). The Council of Ministers must immediately report the statement of danger to the DPR for approval or rejection. The President no later than 3 days after the statement of the state of danger is required to submit the Law on the Implementation of Dangerous Conditions. The implementation of the state of danger must be accounted for by the Council of Ministers to the DPR. The DPR at any time may exercise its right of initiative to seek the elimination of a state of danger by law.

According to Law No. 74 of 1957, the role of the DPR as a controller of dangerous situations is quite large. The authorities in a state of danger are required to report all their actions so that it is hoped that the authority possessed by the authorities in a state of danger is not abused.

In addition to having a control function over the implementation of a dangerous situation, the DPR can also exercise its right of initiative as stated in Article 1 paragraph (2). The DPR can take the initiative to abolish the prevailing state of danger through the making of a law. The abolition of the state of emergency according to Law Number 74 of 1957 is divided into two, namely:

1. Deleted by itself because;
   a. Exceeded the period, 6 months for an emergency and 1 year for a state of war without being extended.
   b. The draft law on the continuation of the state of danger was rejected by the DPR.
   c. The state of emergency was followed by a state of war.

2. Deleted due to a decision made by:
   a. Council of Ministers Initiative.

b. Regional initiatives whose links with the central government are completely cut off.
c. The DPR's initiative is through the making of the Law on Elimination of Dangerous Conditions.

**Government Regulation (*Perpu*) Number 23 of 1959**

According to the Government, with the re-enactment of the 1945 Constitution, Law Number 74 of 1957 is considered irrelevant. The regulation on the state of danger is based on the UUDS which adheres to a different constitutional system. To overcome this and the reasons for the compelling circumstances, Perpu No. 23/1959 was made and stipulated (LNRI/1961 No. 3 and TLN No. 2124). The content of the existing Perpu reflects the diminishing influence of political parties and parliament in making national strategic policies.

The president's considerable power based on the 1945 Constitution has an effect on the extraordinary delegation of powers to the President in Perpu No. 23/1959. The responsibility for the declaration of a state of danger rests with the president and the responsibility on the MPR. As a constitution characterized by *subjectieve staatsnoodrecht* (Nasution B, 1957) and *subjectievenoodtoestaandstheorie* judges cannot examine the statement of danger made by the president. According to Perpu No. 23/1959, the position of high-ranking warlord (Peperti) is no longer under the direct control of the Army Chief of Staff, but in the hands of President Soekarno.

Perpu No. 23/1959 distinguishes the state of danger into three levels, namely civil emergency, military emergency and a state of war (Article 1 of Perpu No. 23/1959). Determination of an area declared in a state of danger level depends on the assessment and decision of the president. Likewise, during the eradication/revocation of the state of danger, the President shall do the same.

The reasons for determining an area to be subject to a hazard situation are quite loose and have multiple interpretations. There are three types of events that can be used as reasons, namely: First, security or law and order in the entire territory or in part of the territory of the Republic of Indonesia is threatened by rebellion, riots or due to natural disasters, so it is feared that the situation cannot be overcome by equipment. as usual. Second, there is a war or danger of war or it is feared that the territorial control of the Republic of Indonesia will be controlled by any means whatsoever. The high life of the state is in a state of danger or from special circumstances it turns out that there are or is feared that there are symptoms that

can endanger the life of the state. Article 1 reflects how much discretion the government (president) has to declare the entire territory of Indonesia and or part of the territory of Indonesia in a state of danger.

Article 3 explains how the role of the President as the highest authority in a state of danger (whether in civil emergency, military emergency or war) at the central level (attachment to Government Regulation in Lieu of Law on Dangerous Conditions, issued by the Inspectorate General of Territorial and People's Resistance, 1959). In exercising his power as the Central Danger State Authority, the President is assisted by an auxiliary body whose members consist of: the first Minister, the Minister of security/defense, the Minister of Home Affairs and regional autonomy, the Minister of Foreign Affairs, KSAD, KSAL, KSAU and the Head of the State Police. In accordance with the general explanation of Perpu No. 23/1959, the President as head of government will only be responsible for the powers exercised during a dangerous situation at the People's Consultative Assembly, not the DPR.

What is unique in Perpu Number 23 of 1959 is the power given to the president to be able to deviate from the existing general rules. Some of these exceptions are contained in Article 3 paragraph (3), Article 4 paragraph (4), Article 5 paragraph (4) and Article 6 paragraph (4) which give freedom to the President as the Authority of Civil Emergency/Military Emergency/Central War to determine the arrangement of the authorities in a state of danger that is different from the existing regulations and the president deems it necessary to relate to the situation. Likewise, the hierarchy of power in a state of danger does not automatically carry out the instructions and orders of its superiors because the ruler of a state of danger at the center is given the right to make other decisions according to need.

## D. CONCLUSION

Regulations concerning emergency situations that have existed in Indonesia have actually existed for a long time. From the rules of life for modern society, the state order in an emergency was introduced by the Dutch government in the 19th century. The Dutch who tried to control and exploit Indonesia had made the rule of law a repressive tool in creating security and order (rust en orde). Due to the lack of administrative staff and the security situation, several military officers took part in dealing with issues outside of defense. There are four legal rules that serve as the

umbrella for the implementation of an emergency for the territory of Indonesia, namely SOB Regulation 1939, Law Number 6 of 1946, Law Number 74 of 1957 and Perpu Number 23 of 1959. The SOB Regulation of 1939 distinguishes the level of danger into two, namely in a state of SVO and SvB. The two levels of state of danger are announced and revoked through a governor-general's decision. Only after the regulation is still in use by the Government of Indonesia, the authority of the governor-general is replaced by the President of the Republic of Indonesia.

Law Number 6 of 1946 does not regulate the level of danger. This is different from the next two hazard regulations. Law Number 74 of 1957 distinguishes a state of danger into two, namely a state of emergency and a state of war, while Perpu No. 23 of 1959 distinguishes the level of a state of danger into three, namely the level of civil emergency, military emergency and a state of war. Of the four regulations concerning dangerous conditions in Indonesia, Law Number 6 of 1946 and Law Number 74 of 1957 are relatively democratic and still respect civil institutions compared to SOB Regulation 1939 and Perpu Number 23 of 1959. Even according to Law Number 74 of 1957, the DPR does not only have a role control over the implementation of an emergency, but also has the right to take the initiative to revoke the implementation of an emergency through a law. Since the end of 1959 until now, the legal basis for implementing a state of emergency is Perpu No. 23/1959.

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