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Fast-Track Legislation in A State of Emergency: A Comparative Study of Indonesia and The United Kingdom

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Abstract. Every country has the potential to face emergency threats, such as natural disasters, riots, and even disease outbreaks. This will be why declaring and implementing a state of emergency needed to deal with future threats. An emergency forces the state to carry out its functions in an unusual way, including in forming laws that cannot be carried out properly. Special handling is needed in forming laws in emergency conditions. So far, laws regarding emergency conditions have been developed in Indonesia through Government Regulation in Lieu of Law. Meanwhile, the United Kingdom applies the Fast Track Legislation (FTL) method to handle its emergency conditions. Both have similarities and differences, each of which produces advantages and disadvantages. Various things that underlie the similarities and differences include history, legal systems, and government systems. The two mechanisms for forming laws have different qualities, based on the extent to which the principles of the rule of law and checks and balances are implemented.

Keywords: Emergency, Procedure, Law and Regulation.

Abstrak. *Setiap negara berpotensi menghadapi ancaman darurat, seperti bencana alam, kerusuhan, bahkan wabah penyakit. Inilah sebabnya mengapa menyatakan dan menerapkan keadaan darurat diperlukan untuk menghadapi ancaman di masa depan. Keadaan darurat memaksa negara untuk menjalankan fungsinya dengan cara yang tidak biasa, termasuk dalam membentuk undang-undang yang tidak dapat dilakukan dengan baik. Penanganan khusus diperlukan dalam membentuk undang-undang dalam kondisi darurat. Sejauh ini, undang-undang mengenai kondisi darurat telah dikembangkan di Indonesia melalui Peraturan Pemerintah Pengganti Undang-Undang. Sementara itu, Inggris menerapkan metode Fast Track Legislation (FTL) untuk menangani kondisi daruratnya. Keduanya memiliki persamaan dan perbedaan, yang masing-masing menghasilkan kelebihan dan kekurangan. Berbagai hal yang mendasari persamaan dan perbedaan tersebut antara lain sejarah, sistem hukum, dan sistem pemerintahan. Kedua mekanisme pembentukan hukum memiliki kualitas yang berbeda, berdasarkan sejauh mana prinsip-prinsip supremasi hukum dan check and balances diterapkan.*

Keywords: *Keadaan Darurat, Prosedur, Hukum dan Peraturan.*

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INTRODUCTION

In constitutional practice, the condition of a country is divided into two, namely a country in a normal condition (ordinary condition) and a country in an abnormal condition (extraordinary condition) or emergency condition.[1] In general, a state of danger can be understood as a condition that threatens the stability of a country including economic, social, security, and defense stability. This is often related to war and armed conflict. However, in addition to war, a state of danger can also be related to disasters, both natural and non-natural disasters such as disease outbreaks, which are currently being faced by almost all countries in the world. A financial crisis or economic crisis that occurs in a country can also be related to a state of danger.

Asshiddiqie defines a state of emergency as a sudden situation that threatens public order, which requires the state to act unusually according to the rules that apply under normal circumstances. A state of emergency requires a series of extraordinary and special state institutions and authorities, to be able to eliminate the threatening danger in the shortest possible time and return it to normal life according to general and ordinary laws and regulations.[2] This is a dangerous condition that can threaten a country at any time.

The state of danger gives birth to one characteristic in the form of a "threat" to citizens and the state. The threatening nature is a nature that cannot be predicted to occur so it can be called a sudden attack.[3] This then forces the country concerned to take action by determining a state of emergency (extraordinary measures) or establishing rules (extraordinary rules) to restore the state of emergency.[4] A country that has declared a state of emergency has implications for the course of the state process or state practice.

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[1] Jimly Asshiddiqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Pers, 2007).

[2] Jazim Hamidi and Mustafa Lutfi, "Ketentuan Konstitusional Pemberlakuan Keadaan Darurat Dalam Suatu Negara (Model Perbandingan Konstitusi Antara Negara Indonesia Dengan Amerika Serikat Dalam Perspektif Politik Hukum)," *Jurnal Konstitusi* 6, no. 1 (2009): 39–78.

[3] Agus Adhari, "AMBIGUITAS PENGATURAN KEADAAN BAHAYA DALAM SISTEM KETATANEGARAAN INDONESIA," *Dialogia Iuridica: Jurnal Hukum Bisnis Dan Investasi* 11, no. 1 (November 19, 2019): 43–61, https://doi.org/10.28932/di.v11i1.1960.

[4] Bagir Manan and Susi Dwi Harijanti, "Artikel Kehormatan: Peraturan Pemerintah Pengganti Undang-Undang Dalam Perspektif Ajaran Konstitusi Dan Prinsip Negara Hukum," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 2 (October 23, 2017): 222–43, https://doi.org/10.22304/pjih.v4n2.a1.

This occurs because of a situation that is different from usual when the country is in a normal state. One of them is in the process of forming laws that will change. There is an immediate legal need that may not be formed properly but with a different process or method. Each country has different methods and processes for forming laws in emergency conditions.

Indonesia normatively does not yet have a mechanism for the formation of laws and regulations when the country is in a state of emergency. Regarding the current compelling conditions, the formation of laws in a state of danger is carried out by the full executive authority of the President through the Government Regulation in Lieu of Law. The authority to form regulations equivalent to laws is carried out without prior legislative involvement in this case, namely the House of Representatives.5 This authority is based on Article 22 of the 1945 Constitution of the Republic of Indonesia which gives the President the power to deal with "exigencies compel".[6] The 1945 Constitution does not provide a clear formulation regarding the meaning of "exigencies compel".[7] On the other hand, the Constitutional Court has issued a decision regarding this matter, but its formulation is still "open-ended" or "overboard" so that it opens up wide opportunities that can be interpreted subjectively by the President and does not contain a measure of certainty. This opens up great power for the president that could be misused.

Other countries also have ways to create laws in emergencies. One of them is the United Kingdom which has a way and process to create laws in emergencies through fast-track legislation (FTL).[8] The UK has FTL, as a mechanism for creating laws through expedited procedures or outside the normal procedures for creating laws.[9]

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[5] Legislative institutions were involved after the enactment of the Government Regulation in Lieu of Law, not before its formation.

[6] In Bahasa Indonesia written as *Kegentingan yang Memaksa*.

[7] Manan and Harijanti, "Artikel Kehormatan: Peraturan Pemerintah Pengganti Undang-Undang Dalam Perspektif Ajaran Konstitusi Dan Prinsip Negara Hukum,"

[8] House of Lords, "Fast-Track Legislation: Constitutional Implications and Safeguards," www.parliament.uk, 2009, https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/11608.htm?__cf_chl_f_tk=4W8JtCXjpRqWBrBPCmPSn..53_LcH7tLyKkpvWRpnT0-1737309557-1.0.1.1-l83N5G3Djt1BRVchFEa.K6D_GAsQ9JFuGiOXszvyITQ.

[9] King Jeff and Byrom Natalie, "United Kingdom: Legal Response to Covid-19," in *The Oxford Compendium of National Legal Responses to Covid-19*, by King Jeff and Byrom Natalie (Oxford University Press, 2020), https://doi.org/10.1093/law-occ19/e17.013.17.

FTL can also be used to follow up on court decisions, and international agreements, resolve crises, terrorism, etc.[10] The procedure for using FTL still has checks and balances in accordance with the two-chamber system (bicameral) adopted by the British Parliament. Seeing that Indonesia and the United Kingdom have different ways of forming laws in emergencies, it is interesting to examine how the two countries fight threats without sacrificing democratic decision-making. Therefore, it is necessary to see a comparison between Indonesia and the United Kingdom. This is to find out the methods and processes that are more relevant or effective in state practice in dealing with the threat of an emergency.

METHODOLOGY

The research method applied, namely normative juridical (doctrinal legal research). Normative juridical research aims to examine and study the law as norms, rules, principles, doctrines, legal theories, and other literature sources, so as to provide answers to the legal problems studied. This method serves to provide clear juridical arguments in the face of legal vacuum, legal obscurity, and norm conflicts. This method was chosen because it is able to help determine the relationship and legal status in a legal event, provide an assessment (justification) of the event whether it is in accordance with the law, and direct it to the right solution.[11] In an effort to obtain information related to the problems studied and solve the problems that are the subject matter of the writing carried out, the approaches used namely the statutory approach (statute approach) and conceptual approach (conceptual approach). The data source in this research is obtained through secondary data, which consists of primary legal materials, namely laws and regulations, and secondary legal materials, namely books, journals, papers, research, and others.

[10] King Jeff and Byrom Natalie.
[11] Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Perss, 2020).

RESULT AND DISCUSSION

The Nature of the State in a State of Emergency

Definition and explanation of the state of danger in Indonesia can be found in the science of emergency constitutional law. Hamidi and Lutfi explained emergency or emergency constitutional law[12] using the concept proposed by Sihombing[13] namely: a series of extraordinary state institutions and authorities, to eliminate the emergency or threatening danger in the shortest possible time, into ordinary life according to general and ordinary laws and regulations. Thus, the elements that must be present in emergency constitutional law are:

1. There is a state of danger that must be faced with extraordinary efforts.
2. Ordinary efforts and common and customary institutions are inadequate to be used to respond to and overcome the existing danger.
3. Extraordinary authority granted by law to the state government to immediately end the emergency danger, and return to a normal state or life.
4. The extraordinary authority of the emergency constitutional law is only temporary until the emergency is deemed no longer dangerous.

Sihombing also explained that emergency constitutional law can be distinguished or classified according to its characteristics, forms, and sources, including: first, objective emergency constitutional law (*objectieve staatsnoodrecht*), second, subjective emergency constitutional law (*subjectieve staatsnoodrecht*), third, written emergency constitutional law (*geschreven staatsnoodrecht*), fourth, unwritten emergency constitutional law (*ongeschreven staatsnoodrecht*). From the formal aspect of its contents, namely from the level of emergency danger in the emergency constitutional law, it can be stated: emergency constitutional law, civil emergency level, military emergency, and state of war.[14]

Basically, the nature of the state of the country is referred to by various terms, including: state of danger; state of emergency; *etat de siege*; extraordinary circumstances; unusual circumstances; or state of exception. These terms can be

[12] Indonesian references called state of emergency as *Hukum Tata Negara Darurat* that translated as emergency constitutional law.

[13] Jazim Hamidi and Mustafa Lutfi, "Ketentuan Konstitusional Pemberlakuan Keadaan Darurat Dalam Suatu Negara (Model Perbandingan Konstitusi Antara Negara Indonesia Dengan Amerika Serikat Dalam Perspektif Politik Hukum),".

[14] Jazim Hamidi and Mustafa Lutfi.

distinguished into different categories. Therefore, various indicators of a state of danger can be used as a reference for the implementation of a state or emergency condition.[15] Dangerous conditions can occur in several possible forms and variations, starting from the highest level of danger to the lowest (less) dangerous level. The causes are some that are direct and some that are indirect. Based on that, the understanding of a state of danger in a broad sense is identical to a state of emergency, although not every emergency always contains danger. Material requirements for the declaration or implementation of a state of danger or emergency can occur in a state of danger in a direct or indirect sense, in a narrow sense or a broad sense. Asshiddiqie interprets that there are several things if the conditions related to the following conditions are detailed, including:[16]

1. Emergency situation due to the threat of war coming from abroad (external aggression or foreign invasion).
2. Emergency situation because the national army is at war abroad, such as is currently happening to the United States army which is fighting outside America.
3. Emergency situation due to war occurring domestically or the threat of armed rebellion by separatist groups domestically, such as occurred during the DOM (Military Operations Area) or which may currently occur in Papua.
4. Emergency situation due to social unrest which causes social tension which causes the functions of constitutional government to not function properly. For example, the social unrest in Jakarta caused President Suharto to resign in May 1998.
5. Emergency situation due to a natural disaster or a terrible accident that causes panic, and tension, and causes the constitutional government machine to not function properly. For example, the tsunami disaster in Aceh and other disasters cause panic so that the functions of government cannot function normally. Such conditions are included in the definition of a civil emergency which can be called a welfare emergency which has also recently occurred in Palu and Lombok.
6. Emergency situation due to disrupted administrative legal order or causing the state administration mechanism to not be able to be run properly according to applicable laws and regulations. This condition, for example, is included in an internal state of emergency (*innerer notstand*).
7. Emergency situation due to the state's financial condition as referred to in the Indian Constitution as a financial emergency and the state administration condition which does not allow the implementation of government duties by

[15] Jimly Asshiddiqie, *Hukum Tata Negara Darurat*.
[16] Jimly Asshiddiqie.

state organizing institutions as they should, while the need to act is very urgent and urgent to be done.

8. Other conditions that make the functions of legitimate constitutional power unable to run properly, except by violating certain laws, while the requirement to change the law in question cannot be fulfilled within the available time.

In normal and abnormal circumstances, the applicable legal norm system must be different and can also be distinguished from one another. In a state of danger or emergency, the legal norms that are usually applied in normal circumstances cannot be applied in abnormal circumstances (state emergency, *etat de siege*, or state of exception). The implementation of this is based on the emergency conditions that occur. Thus, it will give rise to two potentials, first: organs and governments cannot function properly. Second, the power possessed becomes absolute and even leads to tyranny and has the potential to exploit emergency conditions for personal gain. Based on this, various positive legal instruments are needed that from the start anticipate various possibilities of such unusual circumstances.

The implementation of norms that are specific and also need to be regulated separately is a necessity. This is regulated so as not to provide an opportunity for abuse that is contrary to the principle of the rule of law. On the other hand, in general, it can be understood that there are two views on the state of danger. In the theoretical order, there is a view that supports the rule of law approach, namely that the state of danger must be subject to the constitution or law, and a view that criticizes the regulation of the state of danger in law (state of emergency/exception cannot be reduced to legal norms) which is then understood that the state of danger is part of extrajudicial or as something higher than the legal position.[17] These views form the basis for studying how a country faces threats that may arise at any time.

Understanding and interpreting an emergency requires knowing how big the threat is from the emergency. That way, the implementation of the emergency can be justified to further violate existing regulations to meet constitutional needs in this case, namely the formation of laws that can be carried out unusually. In addition, the

[17] S. Humphreys, "Legalizing Lawlessness: On Giorgio Agamben's State of Exception," *European Journal of International Law* 17, no. 3 (June 1, 2006): 677–87, https://doi.org/10.1093/ejil/chl020.

procedure for forming laws in an emergency must meet the basic principles of the rule of law and also the basic principles of democracy. The next study will discuss how the model of law formation between Indonesia and the UK. Both countries have different models of processes and methods for forming laws in an emergency. This will be a good comparative study to find the right model for forming laws in a country facing an emergency or danger.

Model for Establishing Laws in the State of Emergency: A Comparative Approach toward Indonesia and the United Kingdom

Indonesia through the Government Regulation in Lieu of Law in Indonesia

In Indonesia, Government Regulation in Lieu of Law is a regulation that replaces a law in a critical and urgent condition experienced by the country. The method and process of its formation is carried out through full executive power in this case the President. The constitutional basis for Government Regulation in Lieu of Law is in Article 22 of the 1945 Constitution of the Republic of Indonesia which states: "In the event of a compelling emergency, the President has the right to stipulate government regulations in lieu of a law."

If examined in this formulation, it is quite clear that Government Regulation in Lieu of Law is a government regulation in nature, however functioning at a law (*undang-undang*) level. Therefore, Government Regulation in Lieu of Law is one of the legal instruments that can be stipulated by the President without requiring the approval of the House of Representatives. The involvement of the House of Representatives in the context of Government Regulation in Lieu of Law is only seen in Article 22 paragraph (2) and paragraph (3) of the 1945 Constitution which states that "Government regulations must obtain the approval of the House of Representatives in the following session" and "If approval is not obtained, the government regulation must be revoked."

In contrast to laws, the validity period of a Government Regulation in Lieu is very short, namely until the House of Representatives session closest to the date of the

enactment of the Government Regulation in Lieu of Law.[18] After that, a firm stance is needed from the House of Representatives with approval of the Government Regulation in Lieu of Law. Thus, it can be understood that Government Regulation in Lieu of Law is one type of legislation in the legal norm system in Indonesia. Government Regulation in Lieu of Law is conceptualized as a regulation that in terms of its content should be stipulated in the form of a law, but due to urgent circumstances, it is forced to be stipulated in the form of a government regulation.[19] Currently, Government Regulation in Lieu of Law is often the only way for the President to issue policies that are considered urgent and need to be issued. Not infrequently Government Regulation in Lieu of Law also causes controversy when issued by the President.

In the practical order, Government Regulation in Lieu of Law has often been controversial until now. This is related to the measure of "urgent necessity" as a political and sociological basis for the formation of Government Regulation in Lieu of Law.[20] In fact, there is often a saying in society that Government Regulations in Lieu of Law are generally formed not because of compelling urgency, but because of compelling interests.[21] Exigencies compel can be described as an abnormal condition that requires extraordinary efforts to immediately end the condition. Asshiddiqie explained that the Government Regulation in Lieu of Law does not have the same meaning as the "emergency situation" referred to in Article 12 of the 1945 Constitution, although both are more concrete descriptions of emergency conditions in a particular state system.[22]

Determining the conditions and consequences of an "emergency situation" in Article 12 of the 1945 Constitution clearly requires the involvement of the House of

[18] Reza Fikri Febriansyah, "Eksistensi Dan Prospek Pengaturan Perppu Dalam Sistem NormaHukum Negara Republik Indonesia," *Jurnal Legislasi Indonesia* 6, no. 4 (2009): 667–82, https://doi.org/10.54629/jli.v6i4.3.

[19] Jimly Asshiddiqie, *Hukum Tata Negara Darurat.*

[20] Pascal Wilmar Yehezkiel Toloh, "KAJIAN KEWENANGAN MAHKAMAH KONSTITUSI DALAM PENGUJIAN PERATURAN PEMERINTAH PENGGANTI UNDANG-UNDANG BERDASARKAN PUTUSAN MK NO. 138/PUU-VII/2009," *Lex Administratum* 8, no. 3 (August 2, 2020): 16–26.

[21] Nur Rohim, "Kontroversi Pembentukan Perppu Nomor 1 Tahun 2013 Tentang Mahkamah Konstitusi Dalam Ranah Kegentingan Yang Memaksa," *JURNAL CITA HUKUM* 2, no. 1 (June 1, 2014), https://doi.org/10.15408/jch.v1i1.1454.

[22] Jimly Asshiddiqie, *Hukum Tata Negara Darurat.*

Representatives to be stipulated by law, while "exigencies compel" in Article 22 of the 1945 Constitution is very dependent on the subjectivity of the President, although it will also depend on the objective agreement of the 'people's representatives' in the House of Representatives as stated by Cora Hoexter who terms this as "objective wording".[23] Thus, the dynamics of history in Indonesia show that the background of the President's determination of Government Regulation in Lieu of Law is generally different. This is because the measure of "exigencies compel" is always multi-interpretable and the President's great subjectivity in interpreting the phrase "exigencies compel" as the basis for determining Government Regulation in Lieu of Law.

Based on the above, the Constitutional Court decision was born which provides guidance for the use of the phrase compelling urgency. Based on the Court's Consideration (ratio decidendi) of the Constitutional Court Decision No. 138/PUU-VII/2009, there are three conditions as parameters for the existence of "exigencies compel" the President to stipulate a Government Regulation in Lieu of Law, namely first, the existence of a situation, namely an urgent need to resolve legal problems quickly based on the law. Second, the required law does not yet exist so there is a legal vacuum, or there is a law but it is inadequate. Third, the legal vacuum cannot be overcome by making laws through normal procedures because it will take a long time while urgent situations require certainty to be resolved.[24]

In another decision, it was also mentioned, namely the Constitutional Court Decision Number 003/PUU-III/2005 dated July 7, 2005, the Constitutional Court thinks that the matter of exigencies compel should not be equated with the existence of a state of danger with the level of civil emergency, military, or war. At that time it was stated that the matter of "exigencies compel" was the subjective right of the President to determine it which would then become objective if approved by the House of Representatives to be stipulated as a law. Although there are guidelines in the

[23] Jimly Asshiddiqie.

[24] Fitra Arsil, "Menggagas Pembatasan Pembentukan Dan Materi Muatan Perppu: Studi Perbandingan Pengaturan Dan Penggunaan Perppu Di Negara-Negara Presidensial," *Jurnal Hukum & Pembangunan* 48, no. 1 (2018), https://doi.org/10.21143/jhp.vol.48.no.1.1593.

Constitutional Court decision, these norms if debated in parliament have great potential for differences of opinion.[25]

Currently, even though there has been a Constitutional Court ruling that provides clarity regarding the phrase "urgent necessity", Government Regulation in Lieu of Law is still something that often causes controversy. One government regulation in lieu of law that was considered controversial was Government Regulation in Lieu of Law No. 2 of 2017 on Community Organizations which has now become a law.[26] Previously, the Government Regulation in Lieu of Law was considered to have violated human rights as regulated in the constitution. The reason was based on the fact that it violated the principle of the rule of law because it eliminated the court process in the mechanism for disbanding mass organizations. In the context of the dynamics of the nation and state in Indonesia, the Government Regulation in Lieu of Law on Mass Organizations is considered a form of restriction imposed by the government to maintain socio-political stability and protect the state ideology from threats from other ideologies that threaten it.

The enactment of the Government Regulation in Lieu of Law caused polemics in the community. The community that rejected the Government Regulation in Lieu of Law considered that the presence of the Government Regulation in Lieu of Law was a form of government dictatorship that expanded the scope of meaning that was contrary to Pancasila.[27] The government believes that the existing regulations are inadequate and take too much time in the dissolution process so Community Organizations that violate them will be very difficult to dissolve. This is then the subjective view of the government regarding the urgent conditions that force as a condition for issuing the Government Regulation in Lieu of Law on Community Organizations.[28] Thus, the

[25] Fitra Arsil.

[26] Rakhmat Nur Hakim, "Perppu Ormas Disahkan, Pemerintah Kini Bisa Bubarkan Ormas," Kompas.com, October 24, 2017, https://nasional.kompas.com/read/2017/10/24/16342471/perppu-ormas-disahkan-pemerintah-kini-bisa-bubarkan-ormas.

[27] Eidi Krina Jason Sembiring, "PSHTN FHUI: Perppu Ormas Kemunduran Proses Panjang Reformasi," Sindonews.com, July 17, 2017, https://nasional.sindonews.com/berita/1221375/13/pshtn-fhui-perppu-ormas-kemunduran-proses-panjang-reformasi.

[28] Imam Sukadi, "ASAS CONTRARIUS ACTUS SEBAGAI KONTROL PEMERINTAH TERHADAP KEBEBASAN BERSERIKAT DAN BERKUMPUL DI INDONESIA," *Mimbar Keadilan* 12, no. 2 (July 10, 2019): 181, https://doi.org/10.30996/mk.v12i2.2457.

government through the regulation has the authority to dissolve a community organization that threatens the integrity of the state and is contrary to Pancasila. The dissolution of a community organization is the final stage of sanctions that will be imposed on violators. Previously, the government through the relevant minister would provide a written warning until the termination of activities. If the sanction of termination of activities is ignored, the government will then impose sanctions in the form of revocation of the registered certificate or revocation of legal entity status, in other means, dissolution.[29]

Another controversial one is Government Regulation in Lieu of Law No. 1 of 2020 on State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic which was issued at the end of March. The Government Regulation in Lieu of Law Covid has been quite controversial, as evidenced by the fact that there are at least three requests for judicial review that have been registered with the Constitutional Court. The material being tested is the provision in Article 27 of the Government Regulation in Lieu of Law which grants immunity to the government from being sued in court and is considered to be contrary to the constitution. Article 27 paragraph (1) states:

> The costs incurred by the government and/or KSSK member institutions in the context of implementing state revenue policies including policies in the field of taxation, state spending policies, including policies in the field of regional finance, financing policies, financial system stability policies, and national economic recovery programs are part of the economic costs to save the economy from the crisis and do not constitute state losses.

Thus, it can be said that the government is considered to have preceded the Audit Board of Indonesia (BPK) and the courts as parties who can determine indicators of state losses.

Article (2) states that officials related to the implementation of the Government Regulation in Lieu of Law cannot be sued either civilly or criminally if in carrying out their duties they are based on good faith and following the provisions of laws and

[29] Imam Sukadi.

regulations. Article (2) can also be considered to precede the court in a capacity to assess good faith. Meanwhile, article (3) which is no less controversial states that the Government Regulation in Lieu of Law on Covid is not an object of the lawsuit that can be submitted to the state administrative court. This indirectly means that the state has eliminated the right of the people to sue the state. The Government Regulation in Lieu of Law on Covid which has reaped polemics and various problems has now become a law.[30]

The above problems are evidence that the practice of power during a state of emergency is different from the practice of power in normal circumstances. Louis Fisher as quoted by Edelson argues that power in a state of emergency is an action aimed at overcoming sudden threats that threaten the country, namely "emergency Presidential power as simply the power to take actions necessary to resist sudden attacks against the mainland ...". Furthermore, Fisher also concluded, "that the President possesses limited implied emergency power to act unilaterally to defend the nation; however, the President must seek retroactive approval from Congress, which may either vindicate or censure the President's actions".[31]

Then the context of the Government Regulation in Lieu of Law in Indonesia is in line with Anna Khakee's explanation in the writing that defines power in a state of danger as the president's prerogative power to act specifically to overcome a state of danger, namely:[32]

> Emergency powers are those special prerogatives that a government or a President can resort to in extraordinary situations such as war, insurgency, terrorist attacks, or other severe threats to the state, environmental calamities, serious industrial accidents, pandemics, or similar situations that threaten a great number of lives.

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[30] Edika Ipelona, "Kontroversi Imunitas Di Perppu Pandemi Virus Corona," Kompas.tv, April 21, 2020, https://www.kompas.tv/nasional/77196/kontroversi-imunitas-di-perppu-pandemi-virus-corona.

[31] Chris Edelson, ed., *Emergency Presidential Power: From the Drafting of the Constitution to the War on Terror* (Madison: The University of Wisconsin Press, 2013).

[32] Anna Khakee, *Securing Democracy? A Comparative Analysis of Emergency Powers in Europe*, Policy Paper / Geneva Centre for the Democratic Control of Armed Forces 30 (Geneva: DCAF, 2009).

Based on these two opinions, it can be understood that the power in a state of danger is the authority of the President or executive in a country who acts specifically to overcome a threatening state of danger. There is debate about the extent to which the power in a state of danger can be implemented and what form of supervision it takes. This is understood that the power in a state of danger has legal limitations that must be regulated in special regulations, while if the limitations are not regulated, there must be a supervisory mechanism carried out by parliament or judicial supervision as part of special supervision in a state of danger. There are two concepts of supervision of power in a state of danger, the first is through retroactive congress approval, namely as interpreted by Louis Fisher, namely when the President can first exercise power in a state of danger and after it is possible, he can ask for congressional (parliamentary) approval to provide legitimacy for the special power.

This oversight mechanism can make it easier for the President to act quickly to overcome a dangerous situation when parliament is not in session or in recess. This concept is also almost similar to the concept of The Super Majoritarian Escalator initiated by Bruce Ackerman, namely when the President is given the power to act unilaterally for a certain period known as short-run responses, and or as long as the legislature has not made a decision and considerations. However, when the legislature has made a decision, about 1 week or two weeks maximum the power in a dangerous situation must be ended unless the power gets majority approval.[33]

Both mechanisms have been implemented in Indonesia, namely when the President can stipulate a Government Regulation in Lieu of Law in a compelling emergency, which is then made into a bill and submitted to the House of Representatives to be accepted or rejected. In countries with a presidential system, this type of power is known as the President's legislative power, which is the President's power exercised in the legislative institution. In addition to the Presidential Decree or Emergency Decree, powers that can be grouped into this type include the President's power to veto the legislative process in parliament, the power to submit initiatives in draft laws

[33] Anna Khakee.

in certain fields, the power to determine the priority of discussing draft laws, holding referendums or plebiscites, and special powers in the formation of the state budget.[34]

The President's authority to issue the emergency decree must be reviewed democratically as soon as possible by submitting the Government Regulation in Lieu of Law or emergency law to the people's representative body for approval or disapproval. However, it is necessary to be aware of the various legal implications that arise from government regulations as a substitute for laws. Not merely implications for the principles of democracy, the rule of law, and constitutionalism, but concrete implications for affected citizens, especially if there is an excessive burden that must be borne by citizens because the issuance of the Government Regulation in Lieu of Law will have legal consequences.[35]

Article 22 of the 1945 Constitution, which gives the President the authority to stipulate a Government Regulation in Lieu of Law that is determined subjectively by the President, is categorized as extraordinary power. As a provision that Clinton Rossiter argued has a constitutional dictatorship character, a Government Regulation in Lieu of Law if not strictly regulated has the potential to cause arbitrariness. This happens because, among other things, this provision is often regulated flexibly which provides broad discretion. Thus, in the theoretical study of Bagir Manan and Susi Dwi Harijanti, it is explained that there needs to be limitations in accordance with the teachings of the constitution and the principles of the rule of law on the President's full authority in forming a Government Regulation in Lieu of Law.[36]

Fast Track Legislation by the UK

The United Kingdom (UK) also has a way and process of forming laws or statutes in times of danger or emergency. However, before the presentation of this matter, it is necessary to provide initial notes before discussing the role of the British parliament

[34] Fitra Arsil, "Menggagas Pembatasan Pembentukan Dan Materi Muatan Perppu: Studi Perbandingan Pengaturan Dan Penggunaan Perppu Di Negara-Negara Presidensial."

[35] Manan and Harijanti, "Artikel Kehormatan: Peraturan Pemerintah Pengganti Undang-Undang Dalam Perspektif Ajaran Konstitusi Dan Prinsip Negara Hukum."

[36] Fitra Arsil, "Menggagas Pembatasan Pembentukan Dan Materi Muatan Perppu: Studi Perbandingan Pengaturan Dan Penggunaan Perppu Di Negara-Negara Presidensial."

in the process of forming laws.[37] First, the United Kingdom does not have a written constitution and prefers conventions or constitutional customs. Second, the United Kingdom operates a parliamentary system. Third, the British parliament has two chambers, namely the House of Lords and the House of Commons. Thus, it is important to understand the constitutional practices in the United Kingdom which may be different from Indonesia.

FTL as one of the mechanisms for the formation of emergency laws in the United Kingdom. If translated into Indonesian, FTL is a fast-track legislation or can be understood as the formation of regulations in a fast way. In the report published by the British Constitutional Committee on the Fast Track Legislation Inquiry, FTL is defined as:[38]

> bills … which the Government of the day represents to Parliament must be enacted swiftly … and then uses its power of legislative initiative and control of Parliamentary time to secure their passage.

Bills are processed in a short time by parliament. Simply put, FTL is a term given to a bill that is expedited through each required legislative stage to make it a law in a much shorter time than usual.[39] In practice, the FTL process is a way to deal with emergency situations which in their implementation are expected to be handled immediately through legislation.

Unlike the process in Indonesia which goes through the Government Regulation in Lieu of Law, FTL in its implementation still goes through all the normal procedures for forming laws, only related to unusual times. The report of the British Constitutional Committee also provides constitutional principles which are the basis for consideration for examining laws born through FTL. There are five constitutional principles, including:[40]

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[37] Mei Susanto, "Perbandingan Hukum Dan Perkembangan Sistem Hukum: Konvergensi Atau Divergensi'," in *PROSIDING KONFERENSI NASIONAL ASOSIASI DOSEN PENGAJAR HUKUM PERBANDINGAN INDONESIA (ADPHI)* (Surabaya: Fakultas Hukum Universitas Airlangga, 2017), 1–550.

[38] House of Lords, "Fast-Track Legislation: Constitutional Implications and Safeguards,"

[39] House of Lords.

[40] House of Lords.

1. The need to ensure that effective parliamentary scrutiny is maintained in all situations, namely in all conditions the need to ensure that effective parliamentary oversight must always be maintained.
2. The need to maintain "good law", needs to maintain good law, namely by ensuring that the procedures and techniques for the formation of all laws must maintain and improve their quality.
3. The importance of providing interested bodies and affected organizations with the opportunity to influence the legislative process, namely involving institutions or institutions related to the legislative process.
4. The need to ensure that legislation is proportionate, namely the need to ensure that the laws made are proportional and can be justified and provide an appropriate response to existing problems, without ignoring basic rights and constitutional principles.
5. The need to maintain transparency, namely the need to maintain transparency in the policy-making process in government and parliamentary legislative processes.

This principle is the basis for the FTL examination. Furthermore, the FTL Bill has been in existence since 1974 in the UK, the Constitution Committee Report shows that the FTL Bill has addressed serious issues such as:[41]

1. Terrorist attacks (The Criminal Justice (Terrorism and Conspiracy, Bill 1998))
2. Response to economic collapse (The Banking, Special Provisions, Bill 1998)
3. The Northern Ireland peace process and devolution settlement (The Northern Ireland Bill 2009)
4. Criminal justice reform (The Dangerous Dogs Bill 1991)
5. Closing legal loopholes (The Human Reproductive Cloning Bill 2001)

These five problems are addressed through the FTL law. In addition to these five things, there are still dozens of laws produced through FTL. Several reviewers and researchers agree that there needs to be an FTL procedure, as long as its use can be justified. In this case, to find justice, the judge believes that:[42]

> It is important that both the law and the law-making process are sufficiently flexible to address situations that require urgent action. The very nature of most emergencies is that they arise unforeseen, yet it is inevitable that crises will arise and it would be irresponsible for Parliament not to make some allowance for

[41] House of Lords.
[42] House of Lords.

> the need to make laws quickly and effectively should circumstances demand it.

The above argument can be understood as the importance of a sufficiently flexible law-making process to deal with situations that require immediate action. The above opinion also explains that the nature of emergencies is that they can arise unexpectedly, but inevitable crises will arise and will occur, Parliament is irresponsible not to make some concessions to the need to legislate quickly and effectively if the situation demands it. The FTL procedure is the same as the formation of laws as usual, only the time taken is accelerated. When submitting a bill that will go through the FTL process, the applicant must fully explain why FTL is needed. This is so that FTL is not used by the government to deal with legal problems that have been known for a long time.

Regulations through the FTL must be made available to Parliament's legislative oversight committee as soon as possible, even if the law is still in draft form.[43] The FTL should also not be used to overturn court decisions retroactively. Where the Government seeks to legislate in direct response to a court decision, there should be a proportional balance between the time spent in Government considering the response, and the time given to Parliament to scrutinize the response. The Minister responsible for the fast-track legislation should be required to make an oral statement to the House of Lords explaining the urgency of using the FTL. The Minister responsible for the FTL legislation should be required to issue a written note responding to and addressing the following points:[44]

1. Why is fast-tracking necessary?
2. What is the justification for fast-tracking each element of the bill?
3. What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximized?
4. To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

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[43] "Potential Improvements to the Fast-Track Scrutiny Process," Parliament.uk, 2009, https://publications.parliament.uk/pa/ld200809/ldselect/ldconst/116/11608.htm.

[44] House of Lords.

5. Does the bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why do the Government judge that their inclusion is not appropriate?
6. Are mechanisms for effective post-legislative scrutiny and review in place? If not, why do the Government judge that their inclusion is not appropriate?
7. Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?
8. Have relevant parliamentary committees been given the opportunity to scrutinise the legislation?

The government must explain and justify each element of the bill it proposes to expedite. When a bill is expedited, there must be a presumption in favor of the inclusion of a Sunset Clause, a disposition that provides for the termination of a law or regulation within a specified period. Through its use, an act or provision automatically ceases to have effect after a specified period of time. For example, the Freezing of Terrorist Assets Act 2010 provides that its provisions apply for a period beginning when the law comes into force and ending on December 31, 2010. When a bill is expedited, it must be subject to post-legislative review within a maximum of two years of its enactment.

It has been explained above that legislation made through FTL cannot be used retroactively to overturn court decisions, namely when there is no urgent operational requirement to change the law retroactively. Bills that relate to matters of constitutional significance should not be put through FTL proceedings in the House of Commons and the House of Lords. Parliament should be given adequate time to consider a bill that raises questions of constitutional principle. The bill may be initiated in the Commons or the Lords, but in FTL it is usually initiated by the Government. It can be assumed that the bill is initiated in the Commons and then goes to the Lords. The process begins by completing the same stages. There are five stages of legislation in each House: **First Reading, Second Reading, Committee Stage, Report Stage,**

Third Reading. In addition, further stages can be held in the Commons, namely the Legislative Grand Committee and the Reconsideration Stage.[45]

1. First Reading (formal presentation of the bill)
2. Second Reading (debate on general principles of the bill)
3. Committee Stage (detailed line-by-line examination of the bill, consideration of amendments, oral evidence heard and written evidence published (if necessary))
4. Report Stage (Further opportunity to consider amendments made in Committee and to amend the bill)
5. Third Reading (Final consideration of the bill)

The above are the normal stages of legislation in the UK which also apply to the FTL process. While there is no set time frame for regular legislation in Parliament, it usually takes weeks or months as it is debated and passed through various stages in the House of Commons and then through the same stages in the House of Lords. By comparison, FTL legislation will usually be debated and voted on in both houses of parliament in a matter of days.

There is no set time frame for going through the FTL process, but the table below shows common intervals that occur during the stages of formation.[46]

Stages	House of Commons	House of Lords
Publication/first reading to second reading	Two weeks	Two clear weekends between stages
Second reading to committee stage	One week / 10 calendar days	14 calendar days
Committee stage to report stage	One week	14 calendar days
Report stage to third reading	Immediately follows report stage	Three sitting days

It begins with the Government making a statement in both chambers of parliament outlining why it intends to pass the legislation process of FTL. Passing a bill quickly through the House of Commons is relatively straightforward as the Government

[45] Cabinet Office, "Guide to Making Legislation" (Cabinet Office, July 5, 2013), https://assets.publishing.service.gov.uk/media/62fe365fe90e0703e1bb4844/2022-08_Guide_to_Making_Legislation_-_master_version__4_.pdf.

[46] Joe Marshall, "Fast-Tracked Legislation / Emergency Legislation," instituteforgovernment.org.uk, April 8, 2019, https://www.instituteforgovernment.org.uk/article/explainer/fast-tracked-legislation-emergency-legislation.

controls the parliamentary timetable and can allocate less time than usual to each stage of a bill. The provisions for making emergency legislation in the House of Lords can be a little more complicated.

The nature of appointments to the House of Lords means that the Government does not have a majority. This chamber is also self-governing and has different rules for scheduling than the Commons. For example, in the House of Commons, the report and third reading stages of a bill are almost always completed on the same day. In the House of Lords, however, the report and third reading amendments are mostly taken on different days. This is in keeping with the long-standing rule that no more than one stage of a bill can be completed in a single working day in the Lords.

Another way the Government might try to mitigate this is by introducing two versions of the same bill at the same time. The bill would go through the Commons stages perhaps in one day and then go back to the House of Lords for the committee stage and another version of the bill. However, in times of national crisis, such as the Coronavirus pandemic, the Lords tend to make allowances so that legislation can get through the House of Lords more easily.

On 25 of March 2020,[47] The UK passed the Coronavirus Act 2020 as part of its efforts to manage the Coronavirus outbreak. The Act provides for temporary measures designed to amend existing legislative provisions or introduce new legal powers to mitigate its impact. In its report on the Coronavirus Bill, the Constitution Committee noted that the Bill met the criteria for FTL, which it had previously stated was acceptable "only in exceptional circumstances and with the consent of the usual channels". In its analysis of the Coronavirus Bill, the Constitution Committee also commented on the inclusion of Sunset Clauses.

The FTL process has been used frequently in relation to Northern Ireland. This is due to the need to legislate quickly to address security concerns and respond to fast-moving political events affecting devolution. Between 1995 and 2009, 15 Northern

[47] Sean Molloy, "Covid-19, Emergency Legislation and Sunset Clauses," Blog, U.K. Const. L., April 8, 2020, https://ukconstitutionallaw.org/2020/04/08/sean-molloy-covid-19-emergency-legislation-and-sunset-clauses/.

Ireland-related bills, including the Criminal Justice Act, were passed in response to the Omagh bombing, which completed their parliamentary passage in two days after parliament was recalled. More recently, in Northern Ireland in 2018, the Executive Formation and Exercise of Functions Act was passed in two days, with only one day in each parliament. The Constitution Committee report identified that the FTL process could give rise to problems such as:[48]

1. Constrained parliamentary scrutiny,
2. The degree to which legislation is fast-tracked,
3. Does fast-tracking of legislation lead to bad legislation?
4. Pressure on the procedural process,
5. Pressure on campaigners and interested organisations,
6. The "something must be done" syndrome,
7. Exaggerating the case for fast-tracking,
8. Including non-urgent matters in a fast-tracked bill,
9. "Act in haste and repent at leisure",
10. Executive dominance of the fast-track process,
11. Differences between the Commons and the Lords.

The above identification shows that when governments decide to fast-track legislation, they are expected to do so for legitimate and urgent reasons. A number of constitutional issues have been raised. The time available for debate is limited by the increasing speed at which legislation moves through each stage of the Bill. As a result, it gives significant control to the executive who is responsible for drafting vital legislation and can then avoid scrutiny. The Constitution Committee report found that a relaxation of scrutiny in urgent circumstances was appropriate. This could still be accommodated by the existence of checks and balances. Another problem with legislation passing through FTL is that it increases the likelihood of legal errors, which could be used for other purposes. In essence, FTL plays a vital role in the dynamics of law-making in the UK by maintaining existing procedures in times of emergency, which is a fairly democratic matter within the framework of the rule of law.

[48] House of Lords.

Comparative Legal Approach on the Formation of Laws in Emergency Conditions

In the explanation of the points above, namely points 1 and 2 have been described about the nature of the state in a state of emergency and its implementation in Indonesia and UK. Currently, both models will be discussed in the state system. The constitutional provisions model of each country is adjusted to the applicable government system. In various countries have different ways. This also applies to the procedure for forming laws in an emergency. No exception for Indonesia and UK which in this discussion will be used as a comparative model, especially regarding the formation of regulations. The constitutional provisions for the formation of laws in an emergency between Indonesia and UK will be studied below about the differences and similarities based on the previous description. Furthermore, the advantages and disadvantages of the methods of the two countries in forming laws in an emergency will be described, and finally it will be studied with the principle of the rule of law and the principle of checks and balances in forming laws.

There are several similarities between Indonesia and the United Kingdom in forming laws in an emergency. First, FTL and Government Regulation in Lieu of Law have similarities, namely the existence of a special procedure carried out by means of legal breakthroughs to form laws. Second, the submission or proposal of FTL and Government Regulation in Lieu of Law is carried out by the government. Third, regarding testing, both can be tested. However, the current problem is the basis for testing Government Regulation in Lieu of Law which is still being debated. However, in practice, there is a test of Government Regulation in Lieu of Law through the Constitutional Court. These three similarities occur because Indonesia and the UK have concepts and methods to overcome conditions in an emergency.

The understanding of emergencies that can occur and threaten a country makes Indonesia and the UK have this in common. Unexpected circumstances such as disease outbreaks also make both of them more serious in dealing with emergency

conditions that threaten their respective countries.[49] In addition, the similarities occur because first, Indonesia and the UK have constitutional provisions that regulate the implementation of a state of emergency, although currently Indonesia still has several weaknesses related to the implementation of a state of emergency, but both have a constitutional basis. Second, Indonesia and the UK have similarities related to the form of the state, namely a unitary state. Although in the conceptual order of both there are differences, both agree on the form of a unitary state. These similarities are the basis for forming laws in a short time. A unitary state requires immediate handling to overcome existing problems. The similarities are also followed by differences between the two countries.

There are differences between Indonesia and the United Kingdom in forming laws during an emergency. The differences are: First, the procedural mechanism, namely, through the FTL which still carries out procedures such as the formation of laws carried out by parliament, while in the Government Regulation in Lieu of Law mechanism there is an extraordinary procedure owned by the president who can take over other functions of power, namely the legislature. Second, the difference in time, FTL, although there is no written time reference, still has the habit of implementation which is determined through the Constitutional Committee based on the case that occurs, while in Indonesia, a Government Regulation in Lieu of Law can be formed at any time with the subjective measure of the president on the basis of compelling urgency. Third, related to deliberation, FTL is implemented by continuing to use deliberation in parliament while deliberation in the Government Regulation in Lieu of Law cannot be found. This is because its formation is the authority of the executive. Fourth, namely the difference in limitations, FTL through the limitations issued by the constitutional committee regarding when FTL can be carried out and related to what problems FTL can be justified, while until now the Government Regulation in Lieu of Law still does not have limitations such as studies that have been conducted by

[49] Fitra Arsil and Qurrata Ayuni, "MODEL PENGATURAN KEDARURATAN DAN PILIHAN KEDARURATAN INDONESIA DALAM MENGHADAPI PANDEMI COVID-19," *Jurnal Hukum & Pembangunan* 50, no. 2 (2020): 423–46.

constitutional experts in Indonesia.[50] Even in practice, the Government Regulation in Lieu of Law regulates and interferes in the affairs of other branches of power.

The differences above can occur due to the historical differences of the two countries. In addition, there are also several differences, namely, first, the government system, Indonesia with a presidential system and the UK with a parliamentary system.[51] Although, there are still some debates related to the government system in Indonesia, currently there are still many opinions that state that the Indonesian government system is presidential. This can be understood that in the British government, ministers in the cabinet are responsible to parliament while ministers in the cabinet in the Indonesian government are responsible to the president as the highest leader in the executive institution. Second, the legal system adopted, namely, Indonesia is civil law and the UK uses common law. Although it turns out that the system in Indonesia is still being debated at this time, various opinions also state that the legal system in Indonesia is civil law. Third, the form of the constitution, the UK does not have a single and written constitution, while Indonesia has a single and written constitution, namely the 1945 Constitution. Fourth, the basis of the emergency legislative mechanism owned by the two countries is different, which is also influenced by the experience of the two countries in dealing with emergency situations.

The methods and procedures carried out by Indonesia and the United Kingdom also have advantages and disadvantages. Indonesia through Government Regulation in Lieu of Law has the disadvantage of having quite large authority and still having multiple interpretations because it can be interpreted subjectively. This creates absolute power so that it has the potential to be misused. This is also inseparable from the absence of any regulatory limits that can be justified by Government Regulation in Lieu of Law. Not infrequently it can even cause legal chaos due to overlapping authority as explained above. Meanwhile, the advantage is that a problem that does

[50] Rizki Bagus Prasetio, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat Dan Perlindungan HAM," *Jurnal Ilmiah Kebijakan Hukum* 15, no. 2 (July 26, 2021): 327, https://doi.org/10.30641/kebijakan.2021.V15.327-346.

[51] William Feldman, "Theories of Emergency Powers: A Comparative Analysis of American Martial Law and the French State of Siege," *Cornell International Law Journal* 38, no. 7 (2005), https://scholarship.law.cornell.edu/cilj/vol38/iss3/17.

occur can be handled quickly because of full handling by the president without debate in its formation.

The existence of the needs required by the state is an advantage, but if not, the Government Regulation in Lieu of Law will be a problem. The United Kingdom through FTL has a disadvantage, namely that it still takes time to process, even though it is called a fast way, the process that is gone through is indeed quite time-consuming. That way, in practice it may be too late to handle. On the other hand, this disadvantage actually has an advantage, namely the existence of good deliberation quality and supervision that is still carried out even in an emergency. In addition, when the handling that is needed must be done quickly, the lawmakers understand the problem. As a result, it can be done quickly, such as the Covid regulations that were born with the appropriate procedures.

The formation of laws is a part or subsystem of the legal system. Therefore, discussing the formation of laws in an emergency cannot be separated from discussing the principles of the rule of law and the principle of checks and balances. Both countries recognize the existence of the principles of the rule of law and the principle of checks and balances, so it is interesting to know to what extent these principles are implemented. Previously, it was generally understood that a rule of law is a country that is run based on law or the supremacy of law, or equality before the law is found.[52]

The criteria of a state of law can be understood through Dicey's understanding which has been summarized in the writings of Bagir Manan and Susi Dwi Harijanti, namely first, absence of arbitrary power on the part of government, namely the absence of arbitrary government. Second, equality before the law is interpreted as the existence of equality before the law. Third, namely the general principle of the British Constitution, especially regarding individual liberties is judge made (judge-made) which comes from the judge's decision.[53] One of the principles that cannot be ignored in a state based on law is the method of determining the content and procedures for

[52] Manan and Harijanti, "Artikel Kehormatan: Peraturan Pemerintah Pengganti Undang-Undang Dalam Perspektif Ajaran Konstitusi Dan Prinsip Negara Hukum."

[53] Manan and Harijanti.

making laws and the procedures for implementing laws.[54] In forming the law must be in accordance with the existing provisions based on the procedure. However, the formation of the law must not be done arbitrarily without any existing limitations so there needs to be limitations related to authority that could possibly cause arbitrariness.

In line with this, Friedrich Julius Stahl stated that the separation of powers is one of the requirements or characteristics of a state of law. Ivor Jennings in his book "The Law and The Constitution", stated that the separation of powers can be seen from a material and formal perspective. The separation of powers in the material sense means that the division of powers is firmly maintained in state duties which characteristically show the existence of a separation of powers, namely in three parts, namely legislative, executive, and judiciary. However, if the division of powers is not firmly maintained, then it is called a separation of powers in the formal sense. The separation of powers in the material sense is often referred to as the term "separation of power", while the division of powers in the material sense is often referred to as the "division of power".[55]

The existence of laws is one form of formulation of legal norms in national life. Paul Scholten views the law as legislation, so people must give it a high place.[56] Then, in Bagir Manan's view, the existence of laws (legislation) has a quite important and strategic role.[57] Considering the importance and strategic nature of laws in national life, every country will try to form ideal laws through a process of formation starting from the process of proposal, discussion, approval, to determination and ratification which is carried out with the principle of checks and balances between institutions in accordance with the position and authority they have.

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[54] Manan and Harijanti.

[55] Sunarto Sunarto, "PRINSIP CHECKS AND BALANCES DALAM SISTEM KETATANEGARAAN INDONESIA," *MASALAH-MASALAH HUKUM* 45, no. 2 (April 19, 2016): 157, https://doi.org/10.14710/mmh.45.2.2016.157-163.

[56] Rosyid Al Atok, "CHECKS AND BALANCES DALAM PEMBENTUKAN UNDANG-UNDANG DENGAN SISTEM BIKAMERAL DI 5 (LIMA) NEGARA KESATUAN," *Jurnal Legislasi Indonesia* 13, no. 3 (May 4, 2018): 261–72, https://doi.org/10.54629/jli.v13i3.158.

[57] Rosyid Al Atok.

The application of the principle of checks and balances in the formation of laws is carried out through cooperation between institutions in the legislative and executive institutions which refers to the theory of the division of powers. The basic principle of the theory of the division of powers is the existence of cooperation between state organs in carrying out state functions. For example, to carry out legislative functions are carried out jointly by the executive and representative bodies.[58]

Understanding the principles above, both countries have implemented these principles. However, the quality of implementation is different, if we understand the Government Regulation in Lieu of Law process that has been described above, it can be said that supervision occurs after the enactment of the Government Regulation in Lieu of Law which may have caused legal consequences in society. However, if we look at the FTL process, there is still supervision before the policy or law is enforced. So, there are different qualities in the two countries, even though the goal is to overcome emergencies that threaten the country. If we use the comparative legal function as conveyed by Peter De Cruz[59] namely "comparative law as an aid to legislation and law reform", it is important to know the comparison of legislation between countries to find better processes and mechanisms. In a state of emergency, the formation of laws becomes an important thing to consider how the needs of the community can be met in urgent circumstances. From the two countries, namely Indonesia and the UK, it has been described above that each has its own advantages and disadvantages. However, to the principle of the rule of law and the principle of checks and balances, it can be understood that Great Britain has more value in carrying out its legislative function which still maintains the quality of deliberation and supervision in every policy issued even in an emergency.

As with other constitutional provisions, the imposition of a state of emergency in a country is something common that can happen anytime and anywhere. Thus, this tendency cannot be predicted even though many factors influence the origin of this happening. Such as unstable political stability and climate, natural factors, or disasters

[58] Rosyid Al Atok.

[59] Peter De Cruz, *Comparative Law in a Changing World*, 3rd ed (New York, NY: Routledge-Cavendish, 2007).

that cause a state condition to be unable to run normally. So that the state cannot carry out its functions but the state can still choose what steps to take. This is what Indonesia has done with its Government Regulation in Lieu of Law and the UK with the FTL mechanism. These methods and mechanisms are the benchmarks for how in a democratic government, the applicable legal policy is to create laws that bring positive law closer to the reality of society, while in a non-democratic government or one dominated by a group of people or political elites, legal politics distances positive law from social reality and social needs. This is because the formation of laws is inseparable from legal politics.

In the case of an emergency, for example, in each country the possibility of an emergency also has different criteria depending on the stability and legal policy in force in the country, including between Indonesia and the UK. Something that is considered dangerous may be different or even not dangerous at all. The President as the holder of executive power who implements laws with the legislative body in an emergency is the one who determines a policy procedure for implementing a state of emergency in a country and has a fairly important role in stabilizing the volatile social and political conditions in a country. So, there is relevance and significance in the formation of policies and the implementation of a state of emergency with legal politics that have quite a large influence. Whether it is recognized or not, the current state of emergency in Indonesia is greatly influenced by political factors including the hegemony of political elites, parties, capital holders and also laws whose implementation is still not good.[60] So whatever the process and procedure for forming laws, if it is carried out with the basic principles of a state based on law followed by constitutionalism, it will produce policies or laws that are beneficial to society and meet the needs of national life.

[60] Jazim Hamidi and Mustafa Lutfi.

CONCLUSION

The description and discussion above have provided an understanding of how countries form laws in emergency conditions, including Indonesia and the United Kingdom. Indonesia through Government Regulation in Lieu of Law has had a significant impact in dealing with emergency conditions. In the United Kingdom through FTL it has also been explained how the entire series of procedures for forming laws are maintained even in an emergency. This provides an understanding of the importance of procedures in forming laws. The two countries have differences and similarities in carrying out one of the legislative functions, namely the formation of laws.

Indonesia and the United Kingdom also have their advantages and disadvantages. This is the basis for both of them to continue to improve in forming laws in emergency conditions. Historical background, politics, legal systems, and others are the reasons for the differences between the two countries. The FTL mechanism has several advantages that can later be adopted in the constitutional system in Indonesia. Even so, both have their own qualities that have been explained previously. Thus, a comparison of the two is an attempt by the state to get a good concept. That way, it can be formulated according to the experience and capabilities of the two countries. In the end, good procedures can provide good quality laws, it can even be said that procedures are the "heart" of the law". This is based on the importance of good procedures in forming laws.

COMPETING INTEREST

The author states that the writing does not contain a conflict of interest with any party.

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