**Judicial Review on Health Emergency Law : The Challenge to Judicial Independence of Indonesian Constitutional Court**

**Radian Salman1, Rosa Ristawati2, Bernard Nicholas Singarimbun3**

1 2 Universitas Airlangga, Indonesia

3 University of Hamburg, Germany

Email: radian.salman@fh.unair.ac.id

**Abstract**

Judicial independence is crucial for the effective functioning of the Constitutional Court and its ability to deliver impartial and fair judgments. The Indonesian Constitutional Court is entrusted with the responsibility of reviewing the constitutionality of laws, including those enacted during times of emergencies. While emergency laws are often enacted with the intention of addressing urgent situations and safeguarding public welfare, they can also pose risks to fundamental rights and the rule of law if not subjected to proper scrutiny. The independence of the Court in reviewing these laws becomes paramount to ensure that constitutional principles are upheld and potential abuses of power are prevented. Government Regulations in Lieu are temporary regulations issued by the executive branch in urgent situations, effectively bypassing the legislative process. The Indonesian Constitutional Court is tasked with reviewing the constitutionality of these regulations to prevent potential encroachments on legislative authority and constitutional rights. In terms of Covid-19 pandemic, the Constitutional Court was reviewing the Government Regulation in Lieu (Peraturan Pemerintah Pengganti Undang-Undang/ PERPPU) No. 1 on 2020 based on the Court Decision 37/PUU-XVIII/2020. The result of the research shows that the presence of PERPPU actually becomes a double challenge for judges who decide, especially judges who are appointed by the President. In dealing with the Covid-19 Pandemic, The Constitutional Court has the competence to examine the emergency law and has the role in conducting Check and Balance in regard with the case of such emergency situation. Further, the Constitutional Court must hold the independence of the judiciary based on it’s impartiality in Court Proceedings.

**Keywords:**Constitutional Court; Emergency Law; Independence; Judicial Review.

1. **INTRODUCTION**

This article is addressed to analyse the tendency of judicial independence of the Constitutional Court of RI in conducting review over the Emergency Law (Peraturan Pemerintah Pengganti Undang-Undang/ PERPPU) in Indonesia. The competence of the Constitutional Court in reviewing over the Emergency Law (Peraturan Pemerintah Pengganti Undang-Undang/PERPPU) is based on the Court Decision Number 138/PUU-VII/2009. According to this decision, the court has decided to have the competence to review the Emergency Law. In Indonesia, the Emergency Law has a Constitutional Basis according to Article 12 of RI Constitution regarding the power of the President in declaring State of Emergency. Article 22 of Indonesian Constitution stipulates that in time of Emergency, the President has the right to make emergency law which the constitution states as the government regulation in lieu of laws. Such emergency law has a limited period, which according to Section 2 of the article, the emergency law must obtain the approval from the DPR during the next session. However, if it is not approved, the law has to be revoked. In Indonesia, there are several cases where the President makes emergency law. Ever since the establishment of the Constitutional Court of Indonesia, there are at least 8 Emergency Laws (PERPPU) that have been submitted to the Constitutional Court.

To this extent, the issue that has been addressed in this article is to assess the judicial independence of the constitutional court while reviewing this emergency law. Since the emergency law under the executive area, which the president has the power to make emergency law. There are specific circumstances which can make it justified to create emergency law, one of which is exigencies compel that stated by the Indonesia Constitution. At this point who can decide the exigencies compel. The answer is obviously the president, since it is the president who takes care of the state administration. So, it is logical that the president knew whenever the state entering the situation of exigencies compel. Several scholars affirm that it was presidential subjectivity to decide.[[1]](#footnote-1)

According to the court decision, there are three objectivity indicators for the exigencies compel that may have the consequence that the president is able to make the emergency law. First, there is an urgent need to find the legal solution. Second, there is a legal vacuum. And last, there is no legal procedure and the situation needs legal certainty. This article focuses on the independence of the constitutional court during the emergency situation of COVID-19 which in Indonesia is known as a health emergency situation. During the health emergency, Indonesia has two Emergency Law (PERPPU), there are PERPPU No. 1/2020 on State Finance Policy and the Stability of Financial System for the Pandemic Measures of CoronaVirus Diseases 2019 (COVID-19) and PERPPU No. 2/2020 on The Third Amendment of Law No. 1/2015 on Stipulation of PERPPU No. 1/2014 on the Governor, Regent, and City Mayor Election. Furthermore, this article is comparing Indonesia, the US and the Philippines. The main issue in this article is concerning judicial independence when reviewing the emergency law in particular the health emergency situation. It will look at how the constitutional judges decide the emergency law which is one of the legal products of the executive.[[2]](#footnote-2)

1. **RESEARCH METHOD**

The method used in this study is a normative legal research method which functions to find the truth of coherence related to the suitability of the rule of law with legal norms, conformity of legal norms with legal principles, and suitability of actions in accordance with legal norms or principles.[[3]](#footnote-3) The result of legal research shall be argumentation, theory, new concept as a solving method for current issue. In this study, the types of legal research that will be used are doctrinal research, theoretical research, and reform-oriented research.[[4]](#footnote-4) Doctrinal research is conducted to provide a systematic explanation of the rules governing certain legal categories and to analyze the relationship between legal rules.[[5]](#footnote-5) Theoretical research is carried out to promote a more complete understanding of the conceptual foundations of legal principles.[[6]](#footnote-6) Reform-oriented research is conducted to evaluate the adequacy of existing regulations by recommending changes to regulations that are deemed lacking. Research approach that will be used in this research is statute, conceptual, case, and comparative approach.

1. **RESEARCH RESULTS AND DISCUSSION**
2. **Health Emergency Law in Indonesia**

Indonesia has laws that address public health emergencies and crises, and these laws are intended to provide the necessary legal frameworks and responses. Act No. 6 of 2018 on Health Quarantine is the primary piece of legislation in Indonesia that governs health emergencies. The Indonesian government is empowered by this law to declare a health emergency and to take the necessary steps to stop and slow the spread of contagious illnesses. The President of Indonesia has the power to declare a health emergency when there is a serious threat to public health, on the suggestion of the Minister of Health. A legal foundation for enacting emergency measures is provided by the proclamation. According to the law, the government is authorized to set up facilities for quarantining and isolating people who have been found to be contaminated with contagious diseases. It also establishes guidelines and regulations for isolation and quarantine.

Further, to stop the introduction or spread of contagious diseases, the government may undertake health checks at ports of entry or impose limitations on travel. This includes obligatory quarantine for incoming tourists and screening procedures. Authorities in charge of health have the authority to monitor and report cases of infectious diseases as well as perform disease surveillance. Additionally, it requires both individuals and healthcare professionals to report cases that are suspected or proven. To stop the introduction or spread of contagious diseases, the government may undertake health checks at ports of entry or impose limitations on travel. This includes obligatory quarantine for incoming tourists and screening procedures. Authorities in charge of health have the authority to monitor and report cases of infectious diseases as well as perform disease surveillance. Additionally, it requires both individuals and healthcare professionals to report cases that are suspected or proven.

The Indonesian 1945 Constitution provides primary legal sources regarding the state of emergency on Article 12. This Article has the objective to declare the country under a state of emergency if there is a threat to the state, such as a harm to the safety of the people and the territorial integrity.[[7]](#footnote-7) It also provides for the declaration of a state of emergency if there is a threat to the state, such as a harm to the people's safety or the country's territorial integrity This article gives the President the power to declare a state of emergency in his capacity as the head of state. The 1945 Indonesian Constitution that served as the constitutional basis for this article has not yet undergone any alterations or changes.[[8]](#footnote-8)

The president has the power and the right to proclaim a perilous situation, just like in times of war or peace. This leads to a situation when an emergency situation arises, unlawful actions are permitted to be done by the President due to a compelling need. However, it shall be noted the actions or decisions must be on the basis of reasonable necessity.[[9]](#footnote-9)

Indonesia previously prevailed Act No. 74 of 1957 about the Establishment of a State of Emergency, which is no longer applicable based on the Government Regulation In Lieu of Law No. 23 of 1959 regarding the Revocation of Law No. 74 of 1957 and Dangerous Conditions. According to Article 1 paragraph (1) of the Regulation, there are three criteria to be considered as a state of danger, such as: natural disasters; war or rebellion acts; and certain events which could endanger the sovereignty and territory of Indonesia. The emergency declaration may only be issued by the President, as mentioned in Article 2 paragraph (2) of the Act is also in line with the constitutional provision on Article 12.

Article 12 and PERPPU No. 23 of 1959 also do not address who can oversee the legality of the platform used during a state of emergency. No institution or party can oversee the medium employed during a time of emergency. The institution with the competence to oversee such things must be in a branch of power other than the Executive.[[10]](#footnote-10) Moreover, in a democratic country, when the President wants to proclaim a state of emergency because of a risk that threatens the country, it is necessary to gain the permission of the people. This is critical since the state of emergency will drastically restrict the freedom of the people. As a result, the legislative body should be the best institution to limit the proclamation of a state of emergency and undertake emergency management.

Article 22 of 1945 Indonesian Constitution is the constitutional basis regarding the power of the president to issue the Government Regulation in Lieu of Laws, or known as PERPPU (Peraturan Pemerintah Pengganti Undang-Undang). PERPPU is a form of statutory regulations issued by the president because of the exigencies compel. However, it must obtain the approval of Dewan Perwakilan Rakyat (the House of Representatives). It is not always synonymous with the circumstances lying under the Article 12 of the Indonesian 1945 Constitution.

This idea is emphasized with the Constitutional Court Decision Number 003/PUU-III/2005, which defines the phrase of Kegentingan Yang Memaksa (Exigency Compel) under the Article 22 paragraph (1) of the Indonesian 1945 Constitution, as not always being related to a threat. When the Government in Lieu of laws is accepted by the House of Representatives and becomes a law, it shows that the phrase also serves as the foundation for the president's subjective judgment of what will eventually become an objective situation. Therefore, according to Jimly Asshiddiqie, there are two types of Government Regulation in Lieu of Laws, namely PERPPU which is proclaimed because of an emergency situation but in a normal condition and it is constituted when the state had already declared the situation to be an emergency.

Moreover, there are three main fundamental elements in the state administration practice to the application of Article 22, such as: danger-related things, necessity, and time period.[[11]](#footnote-11) These three elements are logical requirements for categorizing a situation as exigency compel, so as the government can take legal actions to anticipate the emergency condition. This is in line with the idea of Bagir Manan, who said that the president may only issue a PERPPU if it meets certain requirements, it is issued in cases of compelling urgency; it does not regulate things that are regulated in the Constitution; it does not stipulate the existence and duties of the authority of state institutions; and there may not be a PERPPU that can suspend and abolish the authority of state institutions.[[12]](#footnote-12) Therefore, the use of legal instruments in the form PERPPU is largely determined by the conditions and needs that require urgent regulations where the legal rules do not yet exist or the law is no longer able to accommodate the interests of administering the government.

The House of Representatives must continue to exercise its monitoring role as a state based on law with the passage of the PERPPU. With the enactment of it, the House of Representatives must continue to carry out its oversight function as a state based on law. Arrangements regarding Laws and PERPPU can be seen in Article 5, Article 20, and Article 22 of Indonesian 1945 Constitution.[[13]](#footnote-13) The House of Representatives as the legislative power holder has the authority to form Acts together with the President. It is different from PERPPU, which the President made unilaterally and without need for consultation with the House of Representatives. The Government Regulation in Lieu of Laws is only valid for a limited period of time, though, as the President must submit it to the House of Representatives before it gets the approval to become a law.

Because PERPPU and Law have an equal position based on Act No.12 of 2011 regarding the Formation of Legislation, the DPR must actively oversee both the enactment and implementation of PERPPU. PERPPU must not be excessive. Then, even though PERPPU has the same position as the Act, the Constitutional Court does not have the authority to examine it.[[14]](#footnote-14) In Article 22 paragraph (3) of the Indonesian 1945 Constitution, it is stated that if the PERPPU does not get approval from the House of Representatives, then it must be repealed. It means that even though it is not approved by the DPR, constitutionally the Government Regulation in Lieu of Laws must be revoked by the President and it still remains in effect until it is revoked by him. Further, in Article 52 of Law Number 12 of 2011, it is stated that if the DPR does not approve the PERPPU, then it must be revoked and the President or DPR submitting a Bill on the revocation of the PERPPU. If the PERPPU contradicts the previously existing law, then the PERPPU will apply, because the PERPPU and the law have the equal status based on statutory regulations of Indonesia, and the PERPPU was issued more recently. In this case, the principle of lex posteriori derogat legi priori applied.

Based on the articles mentioned above, it can be seen that there are two categories of extraordinary circumstances from the state of emergency. First is a state of danger and another one, should exigencies compel. However, the use of Article 12 and 22 of the Indonesian 1945 Constitution is slightly different. Article 12 focuses more on the authority of the President as the head of state to protect the state from interference from outside the state, while the use of Article 22 is used more for regulatory purposes, specifically in relation to the power of the President to stipulate PERPPU. As a result, it places a greater emphasis on the state's internal issues in the form of urgent legal needs. Standing on this idea, when the provisions of the Indonesian 1945 Constitution are examined, there are three crucial elements that cumulatively form the idea of a state of emergency. These elements are dangerous threats, a reasonable necessity, and a limited amount of time.

In response to the global pandemic of Coronavirus Disease (Covid-19), the Indonesian government declared a state of emergency in the form of a legislation or government regulation in place of a law, two options might be carried out in accordance with the 1945 Indonesian Constitution. Presidential Decree No. 11 of 2020, however, is not one of them. In other words, rather than a state of emergency, the government has declared Covid-19 as a public health emergency. Emergency measures are implemented even though a state of emergency has not been declared officially by the government. Therefore, if an unusual act is performed even though there is no legal basis for it, it is seen as a violation of the law. Then, the government has also announced a preventive strategy to stop the spread of the virus, called Pembatasan Sosial Berskala Besar, or PSBB, which stands for Large-Scale Social Restrictions through the issuance of the Government Regulation No. 21 of 2020 on Large-Scale Social Restrictions. Health quarantine officials may impose home quarantines, regional quarantines, hospital quarantines, or significant social restrictions in the event of a public health emergency, as what stipulated under Article 49 of Law No. 6 of 2018 on Health Quarantine.

Instead of enforcing regional quarantine, the government opts to impose extensive social restrictions in cities and regions. Large-scale social limitations have a lower rank than regional quarantine since regional quarantine is listed in Law No. 6 of 2018 on Health Quarantine before large-scale social restrictions. In order to keep people from accessing or leaving a particular area for certain emergency purposes, a regional quarantine is applied. A nation that suffers an emergency, such as a war or an outbreak of dangerous diseases, establishes a regional quarantine strategy. According to Article 154 of Law No. 36 of 2009 on Health, the government is required to inform the general public about the locations where disease transmission occurs. As a result, the government is required to rapidly disclose the types and distribution of potentially contagious diseases as well as the regions that serve as the sources of transmission. Then, Government Regulation in Lieu of Law No. 1 of 2020 on State Financial Policy and Stability of Financial Systems for the Management of CoronaVirus Disease 2019 (Covid-19) and/or Encounter the Threat to National Economy and/or Stability of Financial Systems was enacted as the financial and monetary instruments. Following unease regarding the Government Regulation in Lieu of Law No. 1 of 2020, a judicial review request was made to the Constitutional Court. Article 27 of PERPPU No. 1 of 2020 confirms a number of provisions, which is why the judicial review action has been taken. First, it is about state loss provisions. Second, neither a criminal nor a civil case may be brought against the Financial System Stability Committee. Third, the State Administrative Court cannot consider actions or conclusions based on the Government Regulation in Lieu of Law No. 1 of 2020. In the end, the Constitutional Court issued Decision No. 37/PUUXVIII/2020 on September 28, 2020, which fulfilled the request for judicial review of Law No. 2 of 2020.

The Constitutional Court (MK) in Decision Number 37/PUU-XVIII/2020 in its legal considerations, decided that the law on Covid-19 was only valid as long as the status of the Covid-19 pandemic had not been declared over by the President and no later than the end of the second year since it is being promulgated. In the legal considerations, the Court also considered that conceptually, the state of emergency and the law in time of crisis must be a unified whole that cannot be separated as an effort to emphasize to the public regarding an emergency. Thus, providing fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. According to Article 29 of the Appendix of the Constitutional Court Decision, Act No. 2 of 2020 must be declared contrary to the 1945 Constitution and has no binding legal force as long as it is not interpreted as a Government Regulation in Lieu of Law which reads that the status of the Covid-19 pandemic has ended in Indonesia and this status must be declared no later than the end of the second year during the pandemic.

**1.1. Judicial Independence of the Constitutional Court on Reviewing Emergency Law**

The Constitutional Court of Indonesia is an independent judicial institution established under the 1945 Constitution of Indonesia. The main responsibility is for interpreting the constitution, adjudicating constitutional disputes, and safeguarding the constitutional rights and principles of the Indonesian people. The main role of the Constitutional Court is to review the constitutionality of laws and regulations in Indonesia. It ensures that these laws and regulations do not contradict the provisions and principles enshrined in the constitution. The Court has the authority to review laws both before they are enacted and after they have been enacted.

The Constitutional Court also has the ability to resolve disputes between the several departments of government as well as problems involving the legitimacy of state institutions. By ensuring that their actions are in accordance with the constitution, it serves as a check on the legislative and executive bodies. The Constitutional Court also has the power to decide election results and resolve disagreements involving the dissolution of political parties. It is essential for preserving democratic procedures and ensuring that they are carried out in accordance with the constitution. The rulings of the Constitutional Court are conclusive and legally binding. Setting precedents for upcoming cases and influencing how constitutional principles are interpreted, they have a profound impact on Indonesia's legal and political landscape. Overall, the Indonesian Constitutional Court upholds the rule of law, safeguards the rights and liberties of the people of Indonesia and keeps the institutions in check.

The independence of the Constitutional Court (Mahkamah Konstitusi) is very important in carrying out its duties as an independent judicial institution. The independence of the Constitutional Court refers to the ability of the Court to act freely and unaffected by pressure or intervention from any party, including the government, legislature, or political interests. In Indonesia, judicial independence is guaranteed by Article 24 Section (1) of the Indonesian Constitution. Furthermore, the Law on the Judicial Power emphasizes that the judicial branches.

The role of the Constitutional Court in Indonesia during an emergency situation remains crucial in upholding constitutional principles and protecting the rights of the Indonesian people. While the specific circumstances of an emergency may require adaptations in the functioning of institutions, including the Constitutional Court, its fundamental role and responsibilities remain intact. Here are some key aspects of the Constitutional Court's role during emergencies. First is Reviewing Emergency Measures. The Constitutional Court has the authority to review emergency measures and determine their compatibility with the constitution. It ensures that the measures implemented during an emergency do not violate the fundamental rights and principles enshrined in the constitution. Second, Safeguarding Constitutional Rights. The Court plays a crucial role in safeguarding the constitutional rights of individuals, even during emergencies. It can hear cases related to violations of constitutional rights and ensure that any restrictions imposed during the emergency are necessary, proportional, and in line with constitutional provisions.

Subsequently, Balancing Power and Checks. The Constitutional Court acts as a check on the executive branch, particularly during emergencies when the government's powers may expand. It ensures that emergency powers are exercised within the boundaries of the constitution and prevents any abuse or overreach of authority. Next, Constitutional Interpretation. The Court continues to interpret the constitution and provide guidance on constitutional matters, even during emergencies. It ensures that the principles and values enshrined in the constitution remain upheld and protected, providing stability and legal certainty in times of crisis.

Fifth, the Constitutional Court upholds the rule of law, even during emergencies. It ensures that emergency measures and actions taken by the government are lawful and adhere to constitutional principles. This helps maintain the legitimacy of government actions and prevents arbitrary or unlawful actions that may occur during emergencies. Last one, the independence and impartiality of the Constitutional Court are crucial during emergencies. The Court should be free from any external influence or pressure, including from the government or political interests, to ensure that its decisions are based solely on legal and constitutional considerations. While the specific implementation of the role of Constitutional Court may be influenced by the circumstances of an emergency, its overarching function as a guardian of the constitution and protector of constitutional rights remains essential. The Court's decisions and actions contribute to upholding the rule of law and ensuring that emergency measures are carried out in a manner consistent with the constitution and the principles of democracy.

**1.2. The Constitutional Court on Reviewing Health Emergency Law in Comparative Perspective**

The main responsibility of the Constitutional Court when examining emergency laws during a pandemic is to judge the constitutionality measures. Depending on the constitutional structure and legal system of the country, the Constitutional Court may apply different special considerations and principles. The Constitutional Court assesses how closely the emergency laws adhere to the clauses and principles of the constitution. It evaluates whether the laws uphold the fundamental freedoms and rights enshrined in the constitution and whether any restrictions on those rights are justified in light of the pandemic.

The Constitutional Court evaluates whether the emergency laws are reasonable in relation to the goals they pursue. It determines whether the restrictions are essential, logical, and do not unreasonably violate fundamental rights. The impact on individual rights, the effectiveness of the measures, and the severity of the pandemic are among the things the court may take into account. The Constitutional Court examines whether the emergency laws uphold the balance between the three branches of government and the division of powers. It makes sure that the executive branch does not hold an excessive amount of emergency power and that the right checks and balances are in place to prevent power abuse.

The duration of emergency laws and the existence of mechanisms for routine assessment and renewal are both examined by the Constitutional Court. It evaluates whether there are enough protections to stop the protracted or arbitrary use of emergency powers. The Constitutional Court examines whether the emergency laws are impartial and do not discriminate against any individuals or organizations. It evaluates whether any disparate treatment is founded on fair and impartial standards rather than arbitrary or discriminatory criteria.The Constitutional Court considers the duration of emergency laws as well as the presence of mechanisms for frequent evaluation and renewal. It assesses whether there are sufficient safeguards to prevent the prolonged or capricious use of emergency powers. The Constitutional Court looks into whether or not the emergency laws are fair and do not target any particular people or groups. It determines whether any disparate treatment is justified by impartial and fair standards as opposed to arbitrary or discriminatory norms.

The Constitutional Court looks at whether the legislative and legal processes used to implement the emergency laws were appropriate. It makes sure that the laws were passed in line with the requirements of the constitution, including legislative deliberation and public engagement. Even in the midst of a pandemic, the review of the Constitutional Court seeks to preserve the constitution and safeguard the rights and liberties of the peoples. The Constitutional Court assists in ensuring that the government's reaction to the epidemic respects the rule of law and maintains within the parameters of the constitution by carefully examining the emergency laws.

There is no separate Constitutional Court in the United States. The Supreme Court, which has the authority to conduct judicial reviews and serves as the highest court of the nation, is the final arbiter in constitutional disputes.[[15]](#footnote-15) Even though it is not referred to as a "Constitutional Court," the Supreme Court performs similar duties in interpreting and applying the U.S. Constitution. The U.S. main duty of the Supreme Court is to interpret the Constitution and make sure that laws and government acts adhere to its requirements. It has the authority to examine whether laws, executive orders, and other acts of the government at the federal and state levels are constitutional. By making rulings, the Court creates legally binding precedents that influence how the Constitution is interpreted and direct subsequent legal disputes.

The highest judicial body in the U.S. is the Supreme Court, which serves as the final arbiter on constitutional matters and has the power of judicial review. While it is not specifically called a "Constitutional Court," the Supreme Court fulfils similar functions in interpreting and applying the U.S. Constitution. The primary role of the U.S. Supreme Court is to interpret the Constitution and ensure that laws and government actions comply with its provisions. It has the power to review the constitutionality of federal and state laws, executive orders, and other government actions. Through its decisions, the Court establishes binding legal precedents that shape the interpretation of the Constitution and guide future legal cases.

In particular, the Supreme Court serves as a check on the other three bodies through its judicial review authority. By ensuring that the government does not violate constitutional protections, it safeguards individual liberties and rights. The decisions of the court frequently have a substantial impact on the protection of civil rights, civil liberties, and the division of power between the federal government and the states. The President names nine justices to the Court for life with the advice of the senates and consent. The justices deliberate, formulate written opinions, and render judgments on the constitutionality of legislation and presidential orders.

The U.S. Supreme Court, as the highest judicial body in the country, plays a crucial role in interpreting the Constitution and upholding constitutional principles, including during times of emergency. Here are some key aspects to consider. First is Judicial Review. The U.S. Supreme Court has the power of judicial review, which allows it to review the constitutionality of laws, executive actions, and government measures. This power remains in effect during emergencies, enabling the Court to assess whether emergency actions are consistent with constitutional provisions. Next, Safeguarding Constitutional Rights. The Supreme Court has the responsibility to protect individual rights, even during emergencies. It can hear cases related to violations of constitutional rights and ensure that emergency measures do not unreasonably infringe upon fundamental liberties guaranteed by the Constitution.

Further, Balancing National Security and Civil Liberties. During emergencies, there may be a tension between protecting national security and preserving civil liberties. The Supreme Court plays a role in striking a balance between these interests, ensuring that emergency measures are necessary, narrowly tailored, and do not unduly encroach upon individual rights. Next, Constitutional Interpretation. The Court continues to interpret the U.S. Constitution during emergencies. Its decisions provide guidance on constitutional matters, shape the legal landscape, and establish precedents that can influence future emergency-related cases and government actions. Then Checks and Balances. The Supreme Court acts as a check on the other branches of government, including the executive branch, during emergencies. It ensures that emergency powers are exercised within the limits of the Constitution and prevents potential abuses or overreach of authority. Lastly, Independence and Impartiality. The independence and impartiality of the Supreme Court are essential during emergencies. Justices are expected to render decisions based on legal analysis and constitutional principles, without being unduly influenced by political considerations or external pressures.

During the COVID-19 pandemic, the Supreme Court of the United States has been crucial, notably in resolving legal challenges and constitutional concerns that have come up as a result of the crisis. The first is balancing constitutional rights with public health. The pandemic has highlighted a conflict between upholding individual rights and defending public health. Cases involving restrictions on particular activities, such as prohibitions on religious gatherings, commercial activity, or freedom of movement, have been brought before the Supreme Court. The Court has considered whether these actions violate constitutional rights and whether public health considerations support them. Reviewing the Executive Authority will come next.

The Supreme Court of the United States has played a significant role during the COVID-19 pandemic, particularly in addressing legal issues and constitutional questions that have arisen as a result of the crisis. First is Balancing Public Health and Constitutional Rights. The pandemic has presented a tension between protecting public health and preserving individual rights. The Supreme Court has been called upon to consider cases that involve the restriction of certain activities, such as limitations on religious gatherings, business operations, or freedom of movement. The Court has examined whether these measures infringe upon constitutional rights and whether they are justified by public health concerns. Next, Reviewing the Executive Authority.

Judicial review of state and federal executive responses to the pandemic has taken place, and the Supreme Court has been involved in determining the boundaries of executive power. The Court, for instance, has looked into challenges to executive orders or emergency restrictions issued by government authorities, determining whether they go beyond their constitutional authority or violate personal freedoms. Judicial review of state and federal executive responses to the pandemic has taken place, and the Supreme Court has been involved in determining the boundaries of executive power. The Court, for instance, has looked into challenges to executive orders or emergency restrictions issued by government authorities, determining whether they go beyond their constitutional authority or violate personal freedoms.

Election procedures have been disrupted by the pandemic, giving rise to legal disputes over voting rights and election protocols. The Supreme Court has heard arguments in challenges involving early voting, mail-in ballots, absentee voting, and other concerns that could influence how elections are conducted during the pandemic. The right to vote, due process, and equal protection are frequently at issue in these situations. Moreover, the pandemic has hampered court procedures, resulting in delays and difficulties in receiving justice. The Supreme Court has addressed matters pertaining to court procedures, including limitations on in-person proceedings, extensions of deadlines for legal actions, and remote hearings. It has attempted to strike a balance between the necessity to guarantee the administration of justice and issues of public health and constitutional rights.

The pandemic has prompted debate on how the federal government and the states should be divided among themselves. Cases involving disagreements between federal and state authorities over things like quarantine measures, commercial laws, and the enforcement of public health restrictions have been taken into consideration by the Supreme Court. It is crucial to remember that the particular decisions made by the Supreme Court during the COVID-19 epidemic may have varied based on the circumstances and justifications put forth in each case. In making rulings during the pandemic, the Court sought to manage the difficulties of public health, individual rights, and governmental authority. The task of the court is to interpret the law and the Constitution.

In their separate legal systems, the Constitutional Courts of Indonesia and the United States have different organizational structures and functions. The Supreme Court of the United States is the highest appellate court with the authority of judicial review, in contrast to the Constitutional Court of Indonesia, which is a specialized court focused on constitutional issues. The COVID-19 pandemic-related legislation, rules, and government activities may all be subject to examination by Indonesia's Constitutional Court for constitutionality. It ensures that the government's actions follow constitutional guidelines. The Supreme Court of the United States has the authority to conduct judicial review, which enables it to judge whether or whether laws and executive actions relating to the pandemic are constitutional.

The Indonesian Constitutional Court has contributed to the evaluation of the pandemic-related emergency measures. It has evaluated the constitutionality of many rules and laws, including those pertaining to limits on public health, financial aid, and election procedures. The Supreme Court of the United States has heard cases involving COVID-19-related restrictions on religious meetings and voting rights issues. The job of defending individual rights during the pandemic has been given to both courts. The Indonesian Constitutional Court has heard instances involving constitutional rights infringement and has made sure that emergency measures do not unreasonably violate fundamental rights. Similarly, the Supreme Court of the United States has examined cases involving the balance between public health measures and individual rights, such as religious freedom and equal protection.

The Constitutional Court in Indonesia plays a significant role in safeguarding democratic processes and ensuring that elections are conducted in accordance with the constitution. It has adjudicated disputes related to election results and party dissolution during the pandemic. In the United States, the Supreme Court has addressed legal issues pertaining to the conduct of elections during the pandemic, including absentee voting and mail-in ballots. Even if their duties are similar, it is vital to remember that Indonesia and the United States have different legal systems, constitutions, and court procedures. Their various legal systems, constitutional clauses, and the particular issues that were presented before them all had an impact on how the Constitutional Court in Indonesia and the Supreme Court of the United States responded to the COVID-19 outbreak.

The constitutional court for the Philippines is known as the Supreme Court. As the highest court in the nation, the Supreme Court of the Philippines is tasked with interpreting the constitution, determining the legality of government laws and other actions, and defending constitutional rights. To determine whether laws, executive orders, and other government actions are constitutional, the Supreme Court has the power to perform judicial review. It ensures that these laws and actions are in accordance with the 1987 Philippine Constitution. By interpreting Philippine Constitutional provisions, the Supreme Court of the Philippines explains the meaning and application of constitutional rights and values.

In the Philippines, the Supreme Court protects constitutional rights. It hears instances regarding constitutional rights violations and makes sure that government acts don't excessively violate these rights. The Court is essential to protecting the constitution's enshrined fundamental rights, such as equal protection, due process, and civil liberties. In the Philippines, the Supreme Court is the ultimate adjudicator of legal issues. It considers cases involving a range of concerns, such as administrative, criminal, and civil ones. It settles disagreements between the executive and legislative branches of government as well as those between the federal and municipal levels of government.

The Supreme Court has administrative duties in addition to its judicial duties. It regulates lower courts, establishes guidelines for the legal industry, and keeps an eye on the nation's system of legal education. Justices and judges for lesser courts may be appointed by the Supreme Court. It also examines President-made appointments to make sure they adhere to the requirements and criteria set forth in the Constitution. The Supreme Court of the Philippines is crucial to sustaining the rule of law, defending constitutional rights, and preserving the separation of powers among the three parts of government. Its judgements have a considerable impact on the legal system and the defence of individual rights.

When there is a crisis or a national emergency, the President of the Philippines may use emergency powers. The Philippine Constitution and other pertinent laws confer these emergency powers. When a threat to public safety or national security is imminent, such as during a natural catastrophe, armed conflict, pandemic, or other dangerous circumstance, the President may declare a state of emergency. The government can respond to the issue successfully when a state of emergency is declared. The Constitution itself or laws passed by Congress provide the President authority to act in an emergency. Depending on the nature and extent of the emergency, various powers may be conferred. For instance, Congress can enact legislation giving the President extra power during an emergency.

In the Philippines, a range of responses are possible in an emergency. Curfews may be implemented, the use of military forces to enforce the law, the regulation of essential goods and services, the control of the transportation and communication infrastructure, and the allocation of funds and resources to deal with the emergency are all possibilities. Emergency powers have a limit even if they grant the government flexibility and power. The exercise of emergency powers must conform to applicable legal and constitutional standards and be reasonable and necessary. The Constitution guarantees certain rights, such as the right to life, liberty, and due process, which cannot be changed or ignored under any circumstances.

The Philippine Constitution requires that Congress, as a co-equal branch of government, exercises oversight over the President's exercise of emergency powers. Congress can review and determine the validity and continuation of the declaration of a state of emergency. Additionally, Congress may set limitations and conditions on the exercise of emergency powers through legislation. The Philippine Supreme Court has the power of judicial review and can examine the constitutionality of emergency measures or actions taken by the government during a state of emergency. The Court ensures that the exercise of emergency powers remains within constitutional boundaries and that individual rights are protected. It is important to note that the specific provisions and extent of emergency powers may differ based on the circumstances and the legal framework in place at the time of the emergency. The exercise of emergency powers is intended to address and mitigate crises effectively while upholding the rule of law and respecting constitutional rights.

The Court makes sure that the use of emergency powers respects individual rights and stays within constitutional bounds. It is significant to remember that the particular clauses and scope of emergency powers may vary depending on the situation and the applicable legislative framework at the time of the emergency. In order to effectively confront and ameliorate emergencies while protecting the rule of law and respecting constitutional rights, emergency powers must be used.

The Supreme Court of the Philippines preserves its power and responsibility to uphold constitutional principles in times of crisis, such as a public health emergency or natural disaster. While the precise reaction may change based on the situation. To make sure that laws, rules, and government acts, including emergency measures, are in compliance with the provisions of the Philippine Constitution, the Supreme Court uses its authority of judicial review. It can assess whether the government's emergency response plans were constitutionally sound. In times of crisis, the Supreme Court is essential to finding a balance between preserving fundamental rights and promoting the general welfare. It assesses whether emergency measures are essential and proportional to meet the emergency situation and whether they unreasonably violate any individual rights guaranteed by the constitution. Even in times of crisis, the Supreme Court makes sure that the law is followed. It examines cases to see if the right of the people to a fair trial, due process, and access to justice are upheld, and it can take action if these rights are infringed.

The Supreme Court offers a platform for people and organizations to seek just compensation for alleged constitutional infractions in times of crisis. It hears cases arguing against the constitutionality of emergency measures or requesting compensation for the violation of constitutional rights. The Supreme Court acts as a check on the other parts of the government, even in times of crisis. In order to guarantee that emergency measures do not go beyond what the Constitution permits and that the balance of powers is preserved, it can examine and restrict the use of presidential power.

Even while the Supreme Court's exact decisions and actions may change based on the situation and the issues that are brought to it in an emergency, its basic function in maintaining the constitution and defending individual rights remains crucial. In these trying times, the court's ruling helps to uphold the rule of law and the constitutional system. Even in times of emergency, judicial independence is of the utmost significance in the Philippines. While certain actions may be required in urgent situations to solve the crisis, maintaining the norms of judicial independence is crucial to ensuring the impartial and fair administration of justice.

Even in times of emergency, the court is essential to safeguarding fundamental freedoms. Judges must continue to protect individual rights and make sure that these rights are not unduly violated by emergency measures. The court, including the Supreme Court, has the power to examine whether the government's emergency actions are constitutional. It makes sure that these actions are appropriate, necessary, and consistent with constitutional guidelines while upholding fundamental rights. Judges and justices must maintain their independence from outside forces, such as the executive and legislative departments, in order to maintain their judicial independence. They should be immune from political pressure or influence and make decisions based on the law, the evidence, and constitutional principles.

The values of justice and due process must be respected in all circumstances, even emergencies. The right to a fair and impartial hearing should be guaranteed to anyone facing legal action or limits put in place due to the emergency by judges and justices. The judiciary should be open to the public and responsible while maintaining its independence. In times of crisis, the judiciary benefits from open and honest communication regarding its actions, judgments, and procedures.

The judiciary should make every effort to continue performing its fundamental duties under emergency situations. This can entail implementing novel strategies like remote hearings or changing court procedures while making sure that due process rights are upheld. Collaboration between the executive branch, judiciary, and other stakeholders is crucial during emergencies. Any cooperation, however, must not jeopardize the judiciary's independence or impair its capacity to render unbiased judgments. Maintaining judicial independence is crucial for assuring the preservation of individual rights, defending the rule of law, and retaining public confidence in the justice system, even while emergencies may add new difficulties and demands. The judiciary should strive to strike a balance between the need for expediency in emergency response and the principles of fairness, impartiality, and constitutional adherence.

For the sake of sustaining the rule of law, safeguarding constitutional rights, and preserving public confidence in the judicial system, it is essential to ensure judicial independence in handling the pandemic. This is the comparison of judicial independence during the pandemic in the Constitutional Court of Indonesia, the US, and the Philippines. The Indonesian Constitutional Court is specifically tasked with examining the constitutionality of laws and rules, particularly those pertaining to the pandemic. In interpreting the constitution and defending constitutional rights throughout the pandemic, the Constitutional Court works to maintain its independence, impartiality, and integrity. The Court has the authority to examine emergency measures to make sure they adhere to the constitution, uphold individual rights, and avoid going beyond what is necessary.

In interpreting the U.S. Constitution and upholding the validity of legislation and government acts during the pandemic, the Supreme Court of the United States is essential. In its judgements, the Supreme Court places a strong emphasis on judicial independence and impartiality, protecting individual rights and acting as a check on the other branches of government. The Court examines cases involving violations of constitutional rights during the pandemic to make sure that governmental actions do not excessively impinge on personal freedoms. As the highest court of appeals, the Supreme Court of the Philippines engages in judicial review to ensure that legislation and government measures taken during the pandemic are legitimate. In its rulings, the Supreme Court upholds judicial independence, impartiality, and integrity while defending constitutional rights and acting as a check on other government bodies. In order to ensure fair and just proceedings, the Court examines cases involving violations of due process and assaults on individual rights during the pandemic.

In order to combat the pandemic in all three nations, judicial independence is still essential. The corresponding Constitutional Courts work to interpret the constitution, examine emergency measures, protect individual rights, and preserve the separation of powers. They seek to make choices free from outside pressure or political influence and based on the law, the evidence, and constitutional principles. For any nation to maintain the rule of law and safeguard constitutional rights in the face of the pandemic, judicial independence must be upheld. The independence of the court may affect the quality of legal product or policy that has been produced by the executive and legislative branch. However, in case of emergency law, we cannot assess the quality of the law since it has been produced under special circumstances.[[16]](#footnote-16) Hence, we believe that by reviewing the emergency law, the independence of court is being tested. This is because even during emergency, the judges are responsible to ensure and maintain the rule of law.[[17]](#footnote-17) But there is some flexibility that can be exercised by the court during the emergency since the “emergency” is an extraordinary event.[[18]](#footnote-18) By using this indicator, we later can see the independence of Mahkamah Konstitusi judge during reviewing the PERPPU that was produced when a health emergency was declared by the President.

In case of independence, several scholars separated it into two parts, institution (court) independence and individual (judges) independence.[[19]](#footnote-19) In order to achieve the court's independence, first we need to ensure that every judge working under such a court is independent. To measure whether a judge is independent, we can measure it using an objective and subjective perspective. Objective is whether the decision is inline and compliance within the legal basis and guideline, and subjective is whether the judge has been “trusted” by the society.[[20]](#footnote-20) In the case of reviewing “the COVID PERPPU'', Mahkamah Konstitusi has one case. The case of reviewing the PERPPU 1/2020. All of the results of the reviewing can be found at Court Decision No. 37/PUU-XVIII/2020. In this court decision, there are three dissenting opinions, one of which was from Justice Daniel Yusmic, appointed constitutional judges by the recommendation from the President. In his dissenting opinion, Justice Daniel stated that since the PERPPU was created under a health emergency situation, there is no legal basis that can underline the necessity to review such PERPPU. Such a statement should be assumed that is produced within the independence frame. Several scholars stated that independence of judges can be affected also from external factors outside the legal frame, such as social and psychological factors. Social aspect plays a huge role in judges' decision making. Social pressure can be one thing that influences the judges, even to the psychologist level.

This phenomenon later can be described as a legal culture. In this particular case, we can stated that the judges who are issued a dissenting opinion may or may not also been pressured by the society, But, nonetheless the dissenting opinion is produce as an independence decision by judge. This conclusion is gain also using the indicator that we mention before. Although objectively, Justice Daniel Yusmic has been appointed by president, that does not make his dissenting opinion a non-independence since he aligned his opinion based on Indonesian Constitution and Positive Law. Subjectively, Justice Daniel Yusmic also did not lose the Indonesian society trust after the final court decision was made.

1. **CONCLUSION**

In emergency situations, the government may take extraordinary measures or impose greater restrictions on the rights of individuals and institutions, including the Constitutional Court. This could include the suspension of some aspects of the independence of judges or a temporary reduction in the powers and authority of the Constitutional Court. However, it is important to note that maintaining the independence of the Constitutional Court during a state of emergency is an important principle in maintaining the rule of law. This independence ensures that the institution can act without political pressure or external influences that could affect its legal decisions.

In many countries, constitutions also contain provisions that protect the independence of the Constitutional Court even in emergencies. This provision aims to ensure that the institution can carry out its oversight function objectively and fairly, regardless of political pressure or government interests. The Constitutional Court of the Republic of Indonesia has the competence to review the emergency law. One of the bases is to conduct the check and balance since the emergency law is a product of the executive branch. In time of pandemic covid-19, the President of the Republic of Indonesia issued two emergency laws on the basis of an urgent situation. The Emergency Law No. 1/2020 was subject to review before the Court. It was reviewed in the situation of a health emergency. The Court decided partially unconstitutional. In the decision, there were three judges who delivered their dissenting opinion. In conclusion, maintaining the independence of justice on the Indonesian

Constitutional Court in reviewing Government Regulations in Lieu during the pandemic is crucial for upholding constitutional rights while addressing the exigencies of public health emergencies. By ensuring judicial autonomy, promoting transparency, and fostering stakeholder engagement, the Court can strike a delicate balance between crisis response and constitutional safeguards, contributing to a resilient and rights-respecting democratic system in Indonesia.

**REFERENCE**

Adhihernawan, Muhammad Yoppy, and Hernadi Affandi. ‘Limitation of The President’s Power to Declare a State of Emergency: A Comparison of France, India, and Indonesia’. *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022).

Ashidiqqie, Jimly. *Hukum Tata Negara Darurat*. Jakarta: Rajawali Pers, 2008.

———. *Perihal Undang-Undang*. Jakarta: Konstitusi Press, 2020.

Clark, Tom S. *The Limits of Judicial Independence*. Cambridge: Cambridge University Press, 2010.

Cross, Frank B. ‘Thoughts on Goldilocks and Judicial Independence’. *Ohio State Law Journal* 64, no. 1 (2003).

Dijk, Frans Van, and Geoffrey Vos. ‘A Method for Assessment of the Independence and Accountability of the Judiciary’. *International Journal for Court Administration* 9, no. 3 (19 December 2018): 1. https://doi.org/10.18352/ijca.276.

Hutchinson, Terry. *Researching and Writing in Law*. Fourth Edi. New South Wales: Thomson Reuters, 2018.

Imbawani, Djoko. ‘Pengujian Peraturan Pemerintah Pengganti Undang-Undang Oleh Mahkamah Konstitusi’. *Jurnal Media Hukum* 21, no. 1 (2014).

Mahkamah Konstitusi Republik Indonesia. *Naskah Komprehensif Perubahan Undang Undang Dasar Negara Republik Indonesia 1945*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010.

Manan, Bagir, and Susi Dwi Harijanti. ‘Government Regulations in Lieu of Laws in the Perspective of Constitutional Teachings and Principles of the Rule of Law’. *Padjadjaran Jurnal Ilmu Hukum* 4, no. 2 (2017).

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2021.

Nazriyah, Riri. ‘Kewenangan Mahkamah Konstitusi Dalam Menguji Peraturan Pemerintah Pengganti Undang-Undang’. *Jurnal Hukum* 17, no. 3 (2010).

ODIHR. *Fair Trial Rights and Public Health Emergencies*. Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2021.

Ramraj, Victor V. *Emergencies and the Limits of Legality*. Cambridge: Cambridge University Press, 2008.

Reddish, Martin H. *Judicial Independence and The American Constitution*. Stanford: Stanford Law Book, 2017.

Rohim, Nur. ‘Kontroversi Pembentukan Perppu No. 1 Tahun 2013 Tentang Mahkamah Konstitusi Dalam Ranah Kegentingan Yang Memaksa’. *Jurnal Cita Hukum* 1, no. 1 (2013).

Tyler, L. Amanda. ‘Judicial Review in Times of Emergency: From the Founding Through The Covid-19 Pandemic’. *Virginal Law Review* 109, no. 3 (2023).

1. Jimly Ashidiqqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Pers, 2008), 48. [↑](#footnote-ref-1)
2. ODIHR, *Fair Trial Rights and Public Health Emergencies* (Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2021), 6. [↑](#footnote-ref-2)
3. Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021), 47. [↑](#footnote-ref-3)
4. Terry Hutchinson, *Researching and Writing in Law*, Fourth Edi (New South Wales: Thomson Reuters, 2018), 7. [↑](#footnote-ref-4)
5. Hutchinson, 8. [↑](#footnote-ref-5)
6. Hutchinson, 8. [↑](#footnote-ref-6)
7. Bagir Manan and Susi Dwi Harijanti, ‘Government Regulations in Lieu of Laws in the Perspective of Constitutional Teachings and Principles of the Rule of Law’, *Padjadjaran Jurnal Ilmu Hukum* 4, no. 2 (2017): 223. [↑](#footnote-ref-7)
8. Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Perubahan Undang Undang Dasar Negara Republik Indonesia 1945* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010), 363. [↑](#footnote-ref-8)
9. Ashidiqqie, *Hukum Tata Negara Darurat*. [↑](#footnote-ref-9)
10. Muhammad Yoppy Adhihernawan and Hernadi Affandi, ‘Limitation of The President’s Power to Declare a State of Emergency: A Comparison of France, India, and Indonesia’, *Jurnal Penelitian Hukum De Jure* 22, no. 2 (2022): 146. [↑](#footnote-ref-10)
11. Djoko Imbawani, ‘Pengujian Peraturan Pemerintah Pengganti Undang-Undang Oleh Mahkamah Konstitusi’, *Jurnal Media Hukum* 21, no. 1 (2014): 85. [↑](#footnote-ref-11)
12. Nur Rohim, ‘Kontroversi Pembentukan Perppu No. 1 Tahun 2013 Tentang Mahkamah Konstitusi Dalam Ranah Kegentingan Yang Memaksa’, *Jurnal Cita Hukum* 1, no. 1 (2013): 123. [↑](#footnote-ref-12)
13. Riri Nazriyah, ‘Kewenangan Mahkamah Konstitusi Dalam Menguji Peraturan Pemerintah Pengganti Undang-Undang’, *Jurnal Hukum* 17, no. 3 (2010): 387. [↑](#footnote-ref-13)
14. Jimly Ashidiqqie, *Perihal Undang-Undang* (Jakarta: Konstitusi Press, 2020), 9. [↑](#footnote-ref-14)
15. L. Amanda Tyler, ‘Judicial Review in Times of Emergency: From the Founding Through The Covid-19 Pandemic’, *Virginal Law Review* 109, no. 3 (2023): 496. [↑](#footnote-ref-15)
16. Tom S. Clark, *The Limits of Judicial Independence* (Cambridge: Cambridge University Press, 2010), 256. [↑](#footnote-ref-16)
17. Victor V. Ramraj, *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), 8. [↑](#footnote-ref-17)
18. Martin H. Reddish, *Judicial Independence and The American Constitution* (Stanford: Stanford Law Book, 2017), 172. [↑](#footnote-ref-18)
19. Frank B. Cross, ‘Thoughts on Goldilocks and Judicial Independence’, *Ohio State Law Journal* 64, no. 1 (2003): 196. [↑](#footnote-ref-19)
20. Frans Van Dijk and Geoffrey Vos, ‘A Method for Assessment of the Independence and Accountability of the Judiciary’, *International Journal for Court Administration* 9, no. 3 (19 December 2018): 19, https://doi.org/10.18352/ijca.276. [↑](#footnote-ref-20)