

CHAPTER I

INTRODUCTION

1.1. Background

In the beginning of 2020, a newly deadly disease was spreading across the globe, namely Covid-19. The spread of Covid-19 has affected practically all nations in the world since it was initially declared a Public Health Emergency of International Concern by the WHO. Different nations have implemented a variety of measures to stop the spread of this disease, including limiting public meetings, banning crowds altogether, halting schools, and temporarily suspending office operations. From a legal standpoint, many states struggle to decide which legal tools will be applied in defining the various regulations that will be implemented for addressing Covid-19. It is highlighted that a number of nations have not already had legal frameworks in place that expressly govern public health emergencies.¹

High levels of inequality drive Covid-19 proliferation, which in turn causes disparities to widen in a vicious cycle.² The situation demonstrates how certain individuals and groups are being disproportionately affected by the virus, both in terms of loss of life and livelihood. This is due to the long-standing inequalities and the unequal underlying factors that determine health. The upkeep of global peace

¹ Rizki Bagus Prasetyo, "Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat dan Perlindungan HAM", *Jurnal Ilmiah Kebijakan Hukum*, Vol. 15, No. 2, July 2021, p. 327.

²Covid and Human Rights: We Are All in This Together, https://www.un.org/victimsofterrorism/sites/www.un.org.victimsofterrorism/files/un_human_rights_and_covid_april_2020.pdf, accessed on 29 June 2022.

and security is being threatened by the pandemic.³ Potential social discontent and violent outbursts could result, which would seriously hamper efforts to combat the disease. Compared to previous viruses that have appeared before, Covid-19 has the largest influence on human security. According to Covid-19, the impending threat in the future will primarily be invisible.⁴

Expect a global environmental disaster and falling living standards for the majority of people as a result of global threat. Covid-19 threaten human security as well as human life, wellbeing, or dignity. While the pandemic is worldwide, the response to it is local.⁵ As a global threat, there were many countries that did not have the relevant legal and constitutional instruments to deal with the Covid-19 crisis. In addition, several countries have struggled to use their constitutional emergency provisions to establish a state of emergency in response to the pandemic.

Covid-19 was originally discovered in Indonesia in the beginning of March while it was initially discovered in Wuhan in December. The Indonesian government has roughly three months to set up facilities for combating and treating the Covid-19 Pandemic between the first case in Wuhan and Indonesia. As a result, it becomes one of the government duties. The government is responsible for measures to prevent, control, and eradicate infectious diseases and their effects.⁶

³COVID-19 threatening global peace and security, UN chief warns, UN News: Global Perspective Human Stories, <https://news.un.org/en/story/2020/04/1061502>, accessed on 29 June 2022.

⁴Siti Nurhassanah, Marthen Napang, and Syaiful Rohman, "Covid-19 As A Non-Traditional Threat to Human Security", *Journal of Global and Strategic Studies*, Vol. 3, No.1, January 2020, p. 66.

⁵Hastoro Dwinantoaji and Sumarni DW: "Human security, social stigma, and global health: the COVID-19 pandemic in Indonesia", *Journal of the Medical Science*, Vol. 52, No. 3, July 2020, p. 158.

⁶Article 152 of Law No. 36 of 2009 on Health.

By reducing the number of people who experience illness, disability, and/or death as well as the social and economic effects of infectious illnesses, it seeks to safeguard populations against catching infections. Numerous nations must take extraordinary steps to safeguard the health and well-being of the people in light of the COVID-19 pandemic situation. These actions must be based on the rule of law, even in a situation of public emergency. In order to quickly return the situation to normal, such powers should be limited in duration and only used temporarily.⁷

Emergency power is defined in a number of different ways. A government, in this case a President may use emergency powers, which are special prerogatives, in the case of extraordinary circumstances such as war, military attacks, or other serious threats to the State, that put lives in danger.⁸ It is generally accepted that these abilities should only be utilized in situations this extraordinary, and even then, only to the extent that is necessary.

The term of state emergency shall mean a condition of absolute danger. The Indonesian government has a duty to safeguard its citizens from the Covid-19 Pandemic. It is strictly regulated under the Preamble of the Indonesian 1945 Constitution. The application of emergency constitutional legislation is permitted when there a state is experiencing emergency situation.⁹

⁷Sonya Whisler Refisyanti, "Constitutional Obligations of Indonesian Government during Covid-19 Pandemic: A Critical Appraisal", *Indonesian Comparative Law Review*, Vol. 3, Issue 2, 2021, p. 136.

⁸Herlambang P. Wiratraman, "Does Indonesian COVID-19 Emergency Law Secure Rule of Law and Human Rights?", *Journal of Southeast Asian Human Rights*, Vol.4, Issue 1, June 2020, p.310.

⁹Pemohon: UU Penanganan Covid-19 Salahi Pembentukan Peraturan UU <https://www.mkri.id/index.php?page=web.Berita&id=16737>, accessed on 30 June 2022.

As stated in Article 12 of the Indonesian 1945 Constitution, the President may declare an emergency situation if there is a threat to the national security. In a state of forcing urgency, a legal form of Government Regulation in Lieu of Laws is needed to take certain actions to overcome what is considered a crisis. This is regulated under the Article 22 of the Indonesian 1945 Constitution. It states that in an emergency compel, the President shall have the authority to establish PERPPU (*Peraturan Pemerintah Pengganti Undang-Undang*). The declaration of President of a state of emergency is intended to determine additional measures that would be able to remedy the situation, including restricting the human rights of the people. Every declaration of an emergency allows the government to disregard basic principles such as legal deviation and suspension of human rights.¹⁰

In dealing with the chaotic situation arise from the pandemic, Indonesia has used the state emergency power in the form of Government Regulation in lieu of Laws No. 1 of 2020 to overcome the impact of the Covid-19 pandemic on the financial system and Government Regulation in lieu of Laws No. 21 of 2020 regarding *Pembatasan Sosial Berskala Besar* (Large-Scale Social Restrictions) in governing the restrictions for the citizen. As an initial response, the Indonesian government also issued Presidential Decree No. 11 of 2020 on Determination of Public Health Emergency (PHE). The decision was delayed due to their denial stance, but it deserves to be praised because it is more appropriate for the policy efforts of the restrictions implemented, as specified in the Law on Health

¹⁰Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, Rajawali Pers, Jakarta, 2008, p. 58.

Quarantine.¹¹ The constitutional emergency option, represented by the phrase of state of danger in Article 12 of the 1945 Constitution, grants the emergency authorities broad powers that allow them to deviate from democratic procedures and human rights, with the exception of non-derogable rights.

In addition, when a state of emergency is declared, there is also little political and legal oversight. The device was designed so that the emergency power was effective and quick to decide, allowing them to quickly get out of an emergency.¹² However, it appears that the state of emergency in this constitution is not supported by the derivative legislation, making it only appropriate for use in a security emergency. As the top legal basis of emergency law in Indonesia, the Article 12 and 22 of the Indonesian 1945 Constitution do not give adequate constitutional mechanism in dealing with the pandemic.

Those constitutional umbrellas do not describe specifically regarding the scope of the emergency situation itself, precisely about public health issue. Consequently, it brings about confusion on how the Indonesian 1945 Constitution regulate emergency situation when the global threat like Covid-19 hit the state and give huge impact to the citizen. The Government only put focus the Law on Health Quarantine and several related acts as the main legal basis to handle this global threat.

The United States was also struggling to handle the impact of the Covid-19 pandemic. The response of the United States to the Covid-19 pandemic has been

¹¹Wiratraman, *Loc.Cit*, p. 315.

¹²Ainuddin, "Covid-19 Pandemic Reviewed in Constitutional Law Perspective", *Jurnal IUS Kajian Hukum dan Keadilan*, Vol. 9, Issue 3, December 2021, P. 548.

defined by the division of power between state and federal government. With little guidance from the national government, much of the policy and technology reaction has been driven by individual state decisions, and even within states at the state level.¹³ However, the federal government lacks the authority to control people and property in order to protect the public health, safety, or welfare. Hospitals that are experiencing staffing or supply shortages may be forced to adopt crisis-level care.¹⁴

Narrower federal health powers have traditionally focused on preventing the spread of infectious diseases into the United States or across states.¹⁵ In the text of the United States Constitution, neither the term of emergency nor any cognate of comparable generality appears. Nonetheless, there is no doubt that the Framers considered how to handle emergencies.¹⁶ Under the US Constitution, the emergency power is regulated under the Article 1 Section 8 which regulates the Congress extensive powers relating to war and other military action. There is no specific description about the situation which categorized as emergency. Further, the Executive Power in the President, also specifically makes her Commander in Chief of the army and navy, as well as of the militia when called into actual federal service and charges her, among other things, with taking care that the laws be faithfully executed.¹⁷

¹³ Savannah Bergquist, Thomas Otten, and Nick Sarich, "Covid-19 Pandemic in the United States" *Health Policy and Technology*, Volume 9, 2020, p.623.

¹⁴ Hanfling D, Altevogt BM, and Gostin LO, "A Framework for Catastrophic Disaster Response", *JAMA*, Volume 308, No. 7, 2020, p. 675.

¹⁵ Lawrence O. Gostin and James G. Hodge Jr, "US Emergency Legal Responses to Novel Coronavirus Balancing Public Health and Civil Liberties", *JAMA*, Volume 323, No. 12, March 2020, p. 1131.

¹⁶ William B. Fisch, "Emergency in the Constitutional Law of the United States", *The American Journal of International Law*, Volume 38, Supp 389, 1990, p. 389.

¹⁷ Article 2 of The US Constitution

Referring to the Section 361 of the Public Health Service Act, it only gives the Secretary of Health and Human Services the authority to take measures to prevent communicable diseases from entering the United States and spreading between states. Therefore, it supports the idea where The United States does not regulate the emergency power and state of emergency precisely under its Constitution. The United States Constitution and federal legislation authorize the President to use federal troops to control domestic violence, suppress insurgencies, and enforce federal law under certain limited and clearly defined circumstances. These laws, however, do not authorize the Executive to suspend or interfere with the normal operations of the other branches of the Federal Government, nor do they allow for violations of fundamental rights.¹⁸

In the Philippines, the emergency power is granted to the President, including the national health emergency power. These are the first national health emergency powers granted to the President by Congress since the ratification of the 1987 Constitution. In response to the Covid-19 pandemic, emergency measures were implemented under the authority of several statutes. The first was the Mandatory Reporting of Notifiable Diseases and Health Events of Public Health Concern Act, which gives the president the authority to declare a public health emergency and mobilize governmental and nongovernmental agencies to respond to the threat.

¹⁸Constitutional Powers and Issues During a Quarantine Situation, Scott Bomboy, <https://constitutioncenter.org/blog/constitutional-powers-and-issues-during-a-quarantine-situation>, accessed on 30 June 2022.

This law served as the legal foundation for the issuance of the Presidential Proclamation No. 922, which is declaring a state of public health emergency throughout the country and ordering a lockdown of the National Capital Region in order to halt the spread of the coronavirus.¹⁹ Under the Philippines 1987 Constitution, the provisions regarding the national emergency power clauses are lying under the Article VI, Section 23 (2) and Article XII, Section 17.

Those legal bases regulate that the congress may, by law, authorize the President, for a limited period and subject to such restrictions, to exercise powers necessary and proper to carry out a declared national policy in times of war or other national emergency and at that time, the State may, during the emergency and under reasonable terms prescribed by it, temporarily take over or direct the operation of any privately owned public utility or business affected with public interest. When achieved by legislative enactment particularly to enable the Executive Branch to more effectively address a specific threat confronting the Philippines and its people through a stated national policy, the President's temporary emergency powers are constitutional.²⁰

Based on those two Articles above, are recognized as the emergency clause of the Philippines, there is no a firm statement under the constitution which describes about the condition of Covid-19 as an emergency threat which counter the state

¹⁹ Michael Henry Yusingco, "The Philippines' Dalliance with Authoritarianism in Times of National Emergency", <https://verfassungsblog.de/the-philippines-dalliance-with-authoritarianism-in-times-of-national-emergency/>, accessed on 1 July 2022.

²⁰ Maria Ela L. Atienza, "Emergency Powers and COVID-19: The Philippines as a case study", Melbourne Forum as Constitution Building, https://law.unimelb.edu.au/data/assets/pdf_file/0011/3474344/MF20-Web1-Philippines-Ela-FINAL.pdf, accessed on 1 July 2022.

stability. Both only regulates the emergency power which is granted to the President. However, there is no provision about other indicators when the congress can grant such power to the President and in what perspective the President declare the situation as emergency including in facing this pandemic. Furthermore, the Constitution and all of its provisions were not rendered invalid by the proclamation of a national health emergency, which is also included in the Bayanihan 1 Act. Nothing in the Act, including the Bill of Rights and other constitutional protections, shall be interpreted as impairing, limiting, or changing the provisions of the Constitution, according to Section 7 of the Act.

Japan, which is known as a state who managed to handle the outbreak, is also facing a dilemma in response its emergency power belongs to whom. The declaration of emergency was not declared in Japan. In addition, it repeatedly amended existing statutes to address the situation rather than passing a new law. Moreover, the Japanese Constitution does not give the government emergency powers. The legislative body discussed modifying the Constitution to incorporate an emergency power to address the pandemic problem promptly and effectively as Covid-19 infections increased. Opposition parties and the media, however, criticized this proposal, arguing against the Constitution's amendment on the grounds that such measures could give the Government unrestricted power and that the abuse of that power could result in irreparable harm to the interests of the people in the future.²¹

²¹ Kimitoshi Yabuki, "Emergency Powers and COVID-19: Japan as a case study", https://law.unimelb.edu.au/_data/assets/pdf_file/0006/3476643/MF20-Web1-Japan-Kimitoshi-FINAL.pdf, accessed on 2 July 2022.

Later, the government decided against taking such action. Instead, the government made the aforementioned changes to the Infectious Diseases Control Act in order to bolster pandemic preparedness procedures and incorporate Covid-19 as one of the recognized infectious diseases. In order to enable the government to build and improved the pandemic preparedness measures, the Infectious Diseases Control Act was changed by the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response. The government has identified Covid-19 as a pandemic that is rapidly and widely disseminating, having a significant impact on people's lives and the economy, or if there is a likelihood of the aforementioned level.

Crossing the continent, Brazil had previously recorded over 200,000 deaths and 8 million people got infected because of COVID-19.²² The response of the federal government throughout 2020, which should have taken on a coordination role given the federalised National Health Service, were unclear and inefficient. Act 13.979 of 2020 serves as the legislative foundation for reacting to the COVID-19 pandemic. The statute was revised numerous times throughout 2020, though President Bolsonaro vetoed some of the amendments.²³ The act was subject to judicial scrutiny at the Federal Supreme Court in parts. In general, the measure recognizes the federal dimension of the 1988 Constitution's health-protection provisions.

Given the Covid-19 pandemic and federal administrative overreach, the leadership of Bolsonaro will almost certainly delay the reduction in the number of

²² Peluso Neder Meyer, Emilio; Bustamante, Thomas: *COVID-19 in Brazil: A Sick Constitutional Democracy*, *VerfBlog*, 2021/2/22, <https://verfassungsblog.de/covid-19-in-brazil-a-sick-constitutional-democracy/>, accessed on 2 July 2022.

²³ Ibid.

deaths and cases.²⁴ Despite the fact that no emergency powers have been employed thus far, the slow boiling of Brazilian constitutional democracy will necessitate that the National Congress, the Federal Supreme Court, and federal prosecutors adopt a far more attentive approach to restrain the federal government.

According to the problem explained above, it shows that there is no specific and clear constitutional basis in dealing with this pandemic yet. The emergency clause provided in the Indonesian 1945 Constitution has not been adaptive to the threat of the pandemic. Therefore, it is important to know the role of the emergency clause in dealing with the Covid-19 pandemic situation by reviewing some indicators. The provision of emergency power needs to be clarified whether it has been inline to the constitutionalism and rule of law. Further, this research will look at other states, the United States, the Philippines, Japan, and Brazil which have the same problem regarding the obscurity of the role of its constitution in dealing with this national health emergency.

1.2. Legal Issues

1. What is the applicability of the emergency clause in the Indonesian 1945 Constitution for the Covid-19 pandemic situation?
2. In Comparative Constitutions Perspective, what are the constitutional mechanisms of the United States, the Philippines, Japan, and Brazil in respond to their emergency constitutional law to deal with Covid-19 pandemic?

²⁴ *Ibid.*

1.3. Research Objectives

The purposes of this research will be to find the solution among the current problem by answering the legal issue by:

1. To examine the applicability of the emergency clause in the Indonesian 1945 Constitution for the Covid-19 pandemic.
2. To construct the constitutional mechanism for the United States, the Philippines, Japan, and Brazil in respond to their emergency constitutional law to deal with Covid-19 pandemic.

1.4. Research Contributions

1. Theoretical Contribution

The results of this study are expected to be one of the contributions to the developments in the field of constitutional law, especially emergency law in the level of national and international law. This research is also hoped to give new knowledge to the academicians and constitutional lawyer across the globe in the frame of giving knowledge about the applicability of the emergency clause in the Indonesian Constitution for the Covid-19 pandemic situation in comparative perspective. In addition, the results of this study can produce benefits for further legal research to add references.

2. Practical Contribution

Through this research, it can add insight to the public regarding state of emergency in the constitutional perspective and to know the legal consequences of it. In addition, it is hoped that it can provide input to law enforcement practice in constitutional law, such as judge, lawyer, legislator, and others professions in dealing with issues related to emergency clause and power under the 1945

Constitution. Since this thesis is also using comparative approach, some new lessons will be gained as considerations to do constitutional amendment in the future.

1.5. Research Originality

This legal research is the original work of the author and is not a plagiarism. However, as a comparison, the author describes some research thesis which have related research theme. The first research was conducted by Deyza Lucian Valentino in the bachelor thesis entitled “*Keadaan Darurat Sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020*”. In his thesis, there are two research questions. First, it is about the emergency situation according to both in Article 12 and Article 22 of the Constitution of the Republic of Indonesia Year 1945. The other one is finding the position of Government Regulation in Lieu of Law No. 1 of 2020 in the concept of state of emergency.

The result of his thesis, it shows that the concept of a state of emergency in Article 12 can override the provisions regulated in the constitution.²⁵ Meanwhile, Article 22 cannot absolutely override the norms regulated in the Constitution. This also affects the position of the PERPU regarding the financial matter on Covid-19 as an ordinary PERPU with must comply with the Constitution.

²⁵ Deyza Lucian Valentino, *Keadaan Darurat Sebagai Dasar Pembentukan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2020*, Diploma Thesis, Universitas Andalas, p. 30.

It is found that there are differences between the paper written by Valentino and this bachelor thesis research. In this research, the author looks deep on the scope of state of emergency which is not only about Article 12 & 22 of the Indonesian 1945 Constitution. This will lead to find the existence of both articles whether both have given significant role to the government decision in respond to the pandemic. Further, the author also uses comparative perspective in finding the emergency clause of the constitution of other countries. This will construct a new constitutional mechanism in time of emergency that can be implemented in Indonesia. The similarity that can be abstracted is both are discussing about PERPPU No. 1 of 2020 in time of emergency. Valentinos put focus on the position. On the other hand, the author is more discussing about the power in issuing the PERPPU.

The Second research was conducted by Agus Adhari in his article entitled *“Ambiguitas Pengaturan Keadaan Bahaya Dalam Sistem Ketatanegaraan Indonesia”*. On his paper, the researcher addressed a legal issue on the different concept on PERPPU No. 23 of 1959, Law No. 24 of 2007 and Law No. 7 of 2012 which regulates about state of emergency. On the paper, Adhari showed the problems then arise at the level of practice occurred where there are provisions that overlap between existing regulations, so that it has an impact on the application of other statutes such as Law No. 31 of 1999 and Law No. 23 of 2014.

Adhari found that according to PERPPU No. 23 of 1959, the term of state of emergency refers to five different situations, namely rebellion, riot, civil war,

disaster and war. Additionally, Act No. 24 of 2007 and Act No. 7 of 2012 which govern riot, disaster, and civil war separately and grant the local government special ability to declare states of emergency.²⁶ Those acts establish distinct concepts of how long a state of emergency is applicable in addition to special authority. As a result, these various ideas have an impact on a number of laws, including Act No. 31 of 1999, which prescribes the death penalty for those who commit corruption during a state of emergency, and Act No. 23 of 2014, which says that local governments are not allowed to declare states of emergency.²⁷

Different to the research that has been done by Agus Adhari, the author wants to find the ambiguity of the power of President in issuing PERPPU. This is because Article 22 does not give a limitation period which might lead to the abuse of power. The author is also comparing other state Constitution to find whether the other countries are issuing similar law as a declaration state of emergency in time of Covid-19 Pandemic. The author also will use look further to Article 12 regarding the scope of situation of danger, which become the basis in issuing PERRPU. Similar with Adharis, the author also discusses other legal instrument to find the result of the thesis.

The bachelor thesis titled “*Staatsnoodrecht Pada Masa Pandemi Dalam Perspektif Negara Hukum*” conducted by Nyoman Adi Arya is the third research reference to this bachelor thesis. The thesis explains about the

²⁶ Agus Adhari, “Ambiguitas Pengaturan Keadaan Bahaya Dalam Sistem Ketatangearaan Indonesia”, *Dialogia Iuridica*, Volume 11 Nomor 1, November 2019, p.43.

²⁷ *Ibid*, p. 45.

existence of *Staatsnoodrecht* during the time of pandemic in the perspective of rule of law principle.

The stipulation of a state of emergency tends to lead to deviations from the rules of the rule of law, where power rests on the government as executive power, which is in accordance with the adage of power tends to corrupt, absolute power tends to absolute corrupt.²⁸ Further, the thesis finds out that the regulations pertaining to the Indonesian Constitution that was in force has a significant impact on emergency situations. The Law No. 23 PRP of 1959 regulating the State of Danger is governed by Article 12 of the Indonesian 1945 Constitution. This article has ramifications for the period of time, the scope of the executive branch power, and the manner in which legislative and judicial authorities exercise supervision over actions that go outside the bounds of self-defense in an emergency. In order to effectively combat the COVID-19 pandemic, it is crucial to implement early measures, an economic policy package through PERPPU No. 1 of 2020, and community-based control.

In line with the thesis of the author, Arya was explaining about the emergency clause in responding to the covid-19 pandemic. Then, he also discussed aspects that must be met by the government in dealing with COVID through PERPU No. 1 of 2020. In contrary, thesis will investigate the scope and existence of emergency clause in time of pandemic in the frame of embodying the global value emergency by using the conceptual and statute approach.

²⁸ Nyoman Adi Arya, “*Staatsnoodrecht Pada Masa Pandemi Dalam Perspektif Negara Hukum*”, Thesis, Universitas Gadjah Mada, 2021, p.vii.

Moreover, the author also uses comparative approach to get the lesson learned for the Indonesian Constitution regarding state of emergency.

1.6. Research Method

1.6.1. Research Type

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.²⁹ 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.³⁰ Doctrinal research is conducted to provide a systematic explanation of the rules governing certain legal categories and to analyze the relationship between legal rules.³¹ Theoretical research is carried out to promote a more complete understanding of the conceptual foundations of legal principles.³² Reform-oriented research is conducted to evaluate the adequacy of existing regulations by recommending changes to regulations that are deemed lacking.³³

1.6.2. Research Approach

Research approach that will be used in this research is statute, conceptual, case, and comparative approach. Statute Approach is an approach which is to

²⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2021. p. 47.

³⁰ Terry Hutchinson, *Researching and Writing in Law*, Fourth Edi Thomson Reuters, New South Wales, 2018. p. 7.

³¹ *Ibid.*

³² *Ibid*, p.8.

³³ *Ibid.*

analyse the Constitution, laws, and regulations in correlation of this research. It is used to produce idea which then will produce knowledge in law and will be the basis for future researcher in building argument to solve the current issue.³⁴ The statute approach is used to review the applicability of emergency clause under the Indonesian 1945 Constitution. Conceptual Approach begins with ideas and doctrines developed in jurisprudence. The ideas and doctrines regarding the emergency clause will serve to be reference for the researcher to establish argument for resolving the issue.³⁵ This approach is used to analyze legal and doctrinal concepts that support research related to the applicability of emergency clause under the Indonesian Constitution.

Comparing law of a certain country with law of one or more countries concerning similar subject matter is known as Comparative approach. Using this approach, it may be found similarities and differences of laws of the various countries. In this research, the author will compare the constitution of the Republic of Indonesia, The United States, The Philippines, Japan, and Brazil. The author chooses these countries due to the following reasons. First, the four comparator countries have a written constitution like Indonesia. Second, their Constitutions do not have clear scope on the emergency clauses, especially in dealing with health emergency. The last one is in practice, the use of emergency powers, there is no scope covering space and time limits for using these powers. The results of the comparison can be used as recommendations for drafting or amending legislation.³⁶

³⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Op.Cit, p. 178.

³⁵ *Ibid.* p. 173.

³⁶ *Ibid.*

1.6.3. Legal Sources

In general, research data sources are divided into primary data sources obtained directly from the community and secondary data obtained through library materials. Thus, normative legal research uses secondary data sources because they are sourced from laws and regulations and library materials.³⁷ The legal sources will be divided into two types which are primary legal material and secondary legal material. Primary legal materials are legal materials that have an authoritative nature because these legal materials have authority.³⁸

The primary legal material that will be used in this research is

- i. *Undang Undang Dasar Negara Republik Indonesia 1945* (The Constitution of 1945 of the Republic of Indonesia);
- ii. The United States 1789 Constitution;
- iii. The Philippines 1987 Constitution;
- iv. The Brazil 1988 Constitution with Amendments through 2017;
- v. The Japan 1947 Constitution;
- vi. Law No. 2 of 2020 regarding the Stipulation of Government Regulation in Lieu of Laws Number 1 of 2020;
- vii. Law No. 6 of 2018 regarding Health Quarantine;
- viii. Law No. 36 of 2009 regarding Health;
- ix. Law No. 24 of 2007 regarding Disaster Management;
- x. Law No. 4 of 1984 regarding Outbreaks of Infectious Diseases;

³⁷ Soerjono Soekano, *Penelitian Hukum Normatif*, Rajawali Pers, Jakarta, 2019. p. 12.

³⁸ Peter Mahmud Marzuki, *Loc.Cit.* p. 178.

- xi. Government Regulation in Lieu of Laws No. 21 of 2020 regarding *Pembatasan Sosial Berskala Besar* (Large-Scale Social Restrictions);
- xii. Government Regulation in Lieu of Laws No.1 of 2020 regarding State Financial Policy and Financial System Stability to Handle Corona Virus Disease (COVID-19) Pandemic;
- xiii. Government Regulation in Lieu of Laws No. 23 of 1959 regarding Revocation of Act No. 160 of 1957 and Determination of Danger Situation;
- xiv. Presidential Decree Number 11 of 2020 on Stipulation of Public Health Emergencies and Government Regulation on Large-Scale Social Limits to Accelerate the Management of Covid-19;
- xv. Presidential Decree No. 12 of 2020 regarding Determination of Non-Natural Disaster of Covid-19 as a National Disaster;
- xvi. International Covenant on Civil and Political Rights (ICCPR);
- xvii. European Convention on Human Rights (ECHR);
- xviii. International Covenant on Economic, Social and Cultural Rights.

Secondary legal materials are legal materials that are not classified as official documents and are obtained through references.³⁹ They are literatures, journal, newspaper, scientific articles, and internet.

1.6.4. Legal Sources Compiling Procedure

The procedure for collecting legal materials in this study uses the library research method on written legal materials. The written legal materials consist of:

³⁹ *Ibid.*

laws and regulations, international agreements, books, and journals. The systematics of this research consists of four main chapters where each chapter consists of several sub-chapters that answer the problems in the formulation of the problem. The systematic arrangement of the research is structured in order to achieve the objectives and benefits as intended.

1.6.5. The Legal Sources Analysis

First and foremost, the library method is used to collect the legal materials that will be used in the writing of this thesis. All legal materials will be studied and analysed first in order to determine the relationship between legal materials and legal issues studied in the writing of this thesis.⁴⁰ The legal materials include the applicable statutory regulations in Indonesia, as well as books, journals, and articles on the Internet. The legal materials that have been gathered are then reviewed by comparing what is regulated in the legislation to real-life cases. The legal interpretation method is used if there is no legal vacuum and/or conflicting norms.

1.6.6. Writing System

CHAPTER I: INTRODUCTION

This chapter consists of a description of the background, legal issues, research objectives, research contributions, research originality, and research methods. In detail, the research method consists of the type of research, research approach, sources of legal materials, procedures for collecting legal materials, and systematic accountability.

⁴⁰ Soerjono Soekano, *Loc Cit*, p.21

CHAPTER II: THE APPLICABILITY OF EMERGENCY CLAUSE IN TIME OF COVID-19 PANDEMIC IN INDONESIA

This chapter contains the discussion regarding the applicability of the emergency clause in the Indonesian Constitution in handling the Covid-19 pandemic situation which then will be divided into several sub-chapter to be precise with every explanation. It further discusses about the concept of state of emergency in Indonesia, emergency clause in the Constitution, emergency power of Indonesia, and the application of emergency clause towards Covid-19 Pandemic

CHAPTER III: CONSTITUTIONAL MECHANISM OF EMERGENCY CLAUSE IN COMPARATIVE PERSEPCTIVE

This chapter describes the comparison of concepts and practices to the scope and applicability of emergency clause in the constitution of the United States, the Philippines, Japan, and Brazil. This is done using a comparative approach. After comparing the Constitutions and several Acts of those countries by finding the provision in regard with emergency, the author will summarize the differences and similarities between them and compare it with Indonesia. In the last part, the author summed up the lessons that can be taken by Indonesia in clarify its Constitution on emergency clause.

CHAPTER IV: CLOSURE

This chapter consists of conclusions that answer the two legal issues. Then, this chapter will also contain suggestions that can be addressed to stakeholders related to this research.