



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

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Abstract

Emergency laws are often enacted by the President to address urgent situations and safeguard public welfare. Still, it risks fundamental rights and the rule of law without proper scrutiny. This research is addressed to analyse the tendency of judicial independence of the Constitutional Court in conducting a review over a Government Regulation in Lieu of Law (Perppu), especially based on Court Decision Number 138/PUU-VII/2009. This article is important because it addresses the critical issue of judicial independence in the context of emergency laws, which can have significant implications for fundamental rights and the rule of law. This research is a doctrinal research with focus on analyzing constitutional and statutory provisions, legal principles, case law and also comparative approach. Subsequently, data collection techniques were employed utilizing a document study, then analyze qualitatively. The findings of this research is that the enactment of emergency law turns into a double challenge for judges to decide the case, particularly when the judges are appointed by the President. Moreover, judicial review on emergency law shows the more tension between executive power and judicial oversight compared to judicial review of legislation. This helps deepen the understanding of how courts balance constitutional principles during emergencies and provides valuable insights for other jurisdictions facing similar challenges.

Keywords:

Constitutional Court;
Emergency Law;
Independence; Judicial
Review.

A. INTRODUCTION

During the Coronavirus Disease (COVID-19) pandemic, there has been a noticeable trend of increasing power within the executive branch. Traditionally, crises or emergencies are seen as opportunities for the executive to extend its power and influence beyond the usual limits of the legislative and

judicial branches. Over the years during a pandemic, many countries have witnessed executive-leading pandemic responses, with legislatures stepping back by granting considerable authority to executive figures. This authority has allowed them to implement drastic and stringent measures to curb the virus's spread, including imposing

travel restrictions, closing borders of the country, closing schools and public places, and enforcing strict lockdowns and curfews. Similarly, courts worldwide have shown more restraint and provided greater deference than usual in their evaluations of these COVID-19 measures. During the COVID-19 pandemic, the President of Republic of Indonesia imposed Presidential Decree No. 11 Year 2020, declaring a health emergency, imposing large-scale social restrictions and urging local and regional leaders to follow current regulations and not issue their own regulations. The President also ordered the National Police to enforce the restrictions legally, but he did not explain what measures security personnel could take.

In Indonesia, the emergency law has a constitutional basis according to Article 12 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 House of the Representatives 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 Government Regulation in Lieu of Law (Perppu) that have been judicially reviewed by the Constitutional Court.

To this extent, the issue that has been addressed is to assess the judicial independence of the constitutional court while reviewing this emergency law. Certain conditions may warrant the establishment of emergency laws, one of which is the exigencies compel as outlined in the Indonesian Constitution. In this context, the President has the clear authority to determine exigencies. Thus, it is reasonable to assert that the President would be aware when the state is facing such exigent circumstances. Several scholars support the view that the decision rests on the President's subjective judgment.¹

According to the court decision, there are three 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 health

¹ Jimly Ashidiqqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Pers, 2008), p. 48.

emergency situation of COVID-19. During the emergency, Indonesia has two emergency law, there are Perppu No. 1/2020 on State Finance Policy and the Stability of Financial System for the Pandemic Measures of Corona Virus 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. The main issue in this article is concerning judicial independence when reviewing the emergency law in particular the health emergency situation, with additional analysis in comparative perspective with the US and the Philippines. It will look at how the constitutional judges decide the emergency law which is one of the legal products of the executive.²

Given that the COVID-19 pandemic poses a global threat and presents a borderless challenge, several earlier studies have examined how the Courts respond to emergency legislation. Since the Indonesian Constitutional Court was established in August 2003, the COVID-19 pandemic in 2020 provided a unique challenge for the Court as it navigated the judicial review of emergency laws. This situation has led

to an increased interest in studying how judges respond to executive powers during times of crisis. Previous research conducted by Turkut in 2022, titled "Emergency Powers, Constitutional (Self-) Restraint and Judicial Politics: The Turkish Constitutional Court During the COVID-19 Pandemic," explains that, in the case of Turkey, the role of the Turkish judiciary including the TCC has remained unchanged in that they re-emerged as a tool of the state.³ Another study conducted by Hickman and Tomlinson in 2023, titled "Judicial Review during the COVID-19 Pandemic," studied on how the executive branch exercise the power in time of crisis shows that the pandemic imposed dual, competing pressures on the judicial review system. On one side, there was a demand for special deference to government actions, whereas, on the other, there was a call for increased judicial scrutiny. Predominantly, the case law during this period reflects the former, demonstrating a tendency towards deference.⁴ In the context of Indonesia, Rosa *et al.* in 2023, titled "Doctrine of Executive Immunity in Times of COVID-19: Experience from Indonesia", identifies that measures taken have covered various aspects

² ODIHR, *Fair Trial Rights and Public Health Emergencies* (Warsaw: OSCE Office for Democratic Institutions and Human Rights (ODIHR), 2021), p. 6.

³ Emre Turkut, "Emergency Powers, Constitutional (Self-)Restraint and Judicial Politics: the Turkish Constitutional Court During the COVID-19 Pandemic," *Jus Cogens* 4, No. 3 (4 Oktober 2022): 263-284, <https://doi.org/10.1007/s42439-022-00064-7>, p. 281.

⁴ Tom Hickman K C and Joe Tomlinson, "Judicial Review during the Covid-19 Pandemic," *Edinburgh Law Review* 27, No. 3 (2023), p. 283.

ranging from social, economic, monetary and fiscal policy, tax, and any kinds of social restrictions in the health policies including vaccines.⁵ The position of this study is that since the establishment of the institution of judicial review over legislation, the Constitutional Court has new experience to review emergency laws within the context of similar global situation, specifically in response to the COVID-19 pandemic. The emergency laws previously reviewed by the Court were not related to public safety in a general sense, such as review over emergency law concerning anti-corruption (decision No. 138/PUU-VII/2009). Thus, this context presents a dilemma for the Court in issuing decisions due to its implications for the safety of life of individual.

Although earlier studies have explored judicial behaviour during crises or emergencies, this research stands out due to its concentrated focus on the judicial review of emergency laws in Indonesia. In times of emergency, there is a tendency for executive authority to expand, yet it is crucial that human rights must remain protected. As the experience of emergency laws during the COVID-19 pandemic represents a worldwide concern, this research includes a comparative analysis aimed at

providing a comprehensive theoretical examination of judicial independence during a health crisis. The objective of this study is to explore the Constitutional Court's tendency to uphold judicial independence when reviewing emergency legislation in Indonesia moving forward.

B. RESEARCH METHODS

This study is classified as normative research. It utilizes data, including primary sources of legal materials and secondary data. The methods employed are statute approach, conceptual approach, case approach, and comparative approach⁶. The data used in this study were obtained through the literature study, encompassing various studies and regulations relevant to the research issues. The collected data will be analyzed using qualitative analysis methods.

C. RESULTS AND DISCUSSIONS

1. 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

⁵ Rosa Ristawati, Radian Salman, and John Roberto Sampe, "Doctrine of Executive Immunity in Times of COVID-19: Experience from Indonesia," in *International Handbook of Disaster Research* (Singapore: Springer Nature Singapore, 2023), https://doi.org/10.1007/978-981-19-8388-7_123, p.1821.

⁶ Peter Mahmud Mz, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), p. 24-27.

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. 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 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 prevent contagious diseases, the government can impose travel limits, conduct health checks, and enforce quarantines at

entry points. Health authorities monitor diseases and require reporting of suspected or confirmed cases.

Article 12 of the Indonesian 1945 Constitution empowers the President to declare a state of emergency if threats endanger the people's safety or the country's territorial integrity. The 1945 Indonesian Constitution that served as the constitutional basis for this article has not yet undergone any alterations or changes.⁷ 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.⁸ 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

⁷ Mahkamah Konstitusi Republik Indonesia, *Naskah Komprehensif Perubahan Undang Undang Dasar Negara Republik Indonesia 1945* (Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2010), p. 363.

⁸ Jimly Ashidiqqie, *loc. cit.*

Indonesia. Article 12 of the Constitution 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.⁹ Moreover, in a democratic country, the President must seek public approval to proclaim a state of emergency due to risks threatening the nation, as it significantly restricts freedoms. Therefore, the legislative body should oversee and manage emergency declarations.

Article 22 of the 1945 Indonesian Constitution grants the President the power to issue Government Regulations in Lieu of Laws (Perppu) during exigent circumstances, but these must be approved by the House of Representatives. This process differs from the conditions outlined in Article 12.. 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. Once the House of Representatives approves a Government Regulation in Lieu of Laws (Perppu), it reflects the President’s subjective judgment on an objective situation. Article 22 involves three fundamental elements in state administration: danger, necessity, and time period. These criteria are essential for classifying a situation as exigent, allowing the government to take legal action in response to emergencies. 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.¹⁰ Therefore, the use of Perppu is driven by urgent conditions that require regulations when existing laws are inadequate or do not serve the government’s interests.

Following the enactment of the Perppu, the House of Representatives (DPR) must uphold its oversight role in law-based governance, as outlined in Articles 5, 20, and 22 of the Indonesian 1945 Constitution. While the President can

⁹ 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): 145-162, <http://dx.doi.org/10.30641/dejure.2022.V22>, p. 146.

¹⁰ Nur Rohim, “Kontroversi Pembentukan Perppu Nomor 1 Tahun 2013 Tentang Mahkamah Konstitusi Dalam Ranah Kegentingan Yang Memaksa,” *Jurnal Cita Hukum* 2, No. 1 (1 Juni 2014): 117-132, <https://doi.org/10.15408/jch.v1i1.1454>, p. 123.

issue Perppu unilaterally, these measures are temporarily valid and require the House's approval to become law. Since both Perppu and laws hold equal status under Act No. 12 of 2011, it is essential for the DPR to oversee their creation and enforcement, ensuring that Perppu remains appropriate and not overly broad. However, the Constitutional Court does not have the authority to review Perppu.¹¹ Article 22 paragraph (3) of the 1945 Indonesian Constitution states that if a Perppu is not approved by the House of Representatives, it must be revoked by the President, although it remains in effect until then. Article 52 of Law Number 12 of 2011 reiterates that unapproved Perppu must be revoked, and clarifies that if it conflicts with existing law, the Perppu takes precedence due to the principle of *lex posteriori derogat legi priori*. There are two categories of extraordinary circumstances related to a state of emergency: danger and exigency compel. Article 12 emphasizes the President's authority in external threats, while Article 22 focuses on internal regulatory needs and the issuance of Perppu. Cumulatively, the three essential elements of a state of emergency are dangerous threats, reasonable necessity, and a limited time frame. In response to the COVID-19 pandemic, the Indonesian government declared a public health emergency rather than a formal state of

emergency, as seen in Presidential Decree No. 11 of 2020. Emergency measures were enacted without an official declaration, which could be viewed as legally questionable. The government also introduced "Pembatasan Sosial Berskala Besar" (PSBB) through Government Regulation No. 21 of 2020 to curb virus spread. Under Article 49 of Law No. 6 of 2018 on Health Quarantine, health officials can impose various quarantines and restrictions during a public health emergency.

Instead of implementing regional quarantine, the Indonesian government opted for extensive social restrictions, which rank lower than regional quarantine under Law No. 6 of 2018. Regional quarantine restricts access to specific areas during emergencies, while social limitations address public health concerns. Article 154 of Law No. 36 of 2009 mandates that the government inform the public about disease transmission locations. Government Regulation in Lieu of Law No. 1 of 2020 was enacted to manage COVID-19's economic impact. Concerns over this regulation led to a judicial review request to the Constitutional Court, which ruled on September 28, 2020, in Decision No. 37/PUU-XVIII/2020. The Court stated that the COVID-19 law is valid only until the pandemic is officially declared over by the President, emphasizing that laws

¹¹ Jimly Ashididqie, *Perihal Undang-Undang* (Jakarta: Konstitusi Press, 2020), p. 9.

during emergencies must provide legal certainty as guaranteed by Article 28D of the 1945 Constitution. The Court also declared Act No. 2 of 2020 contrary to the Constitution, limiting its effectiveness until it is interpreted in light of the pandemic's status.

2. Judicial Review on Emergency Law in Indonesia and Comparative Overview

a. Judicial Independence of the Constitutional Court

Judicial independence is crucial for upholding the rule of law and ensuring justice, regardless of circumstances. The Constitutional Court of Indonesia, established under the 1945 Constitution, plays a key role in interpreting the constitution, adjudicating disputes, and protecting the constitutional rights of citizens. It reviews the constitutionality of laws both prior to and after enactment, ensuring compliance with constitutional principles. Additionally, the Constitutional Court resolves disputes between government branches and issues regarding the legitimacy of state institutions, serving as a check on legislative and executive actions. The Court also decides electoral outcomes and handles political party dissolution disputes, thus preserving democratic

processes. Its rulings are final, legally binding, and set precedents that shape Indonesia's legal and political landscape, ultimately safeguarding the rights and freedoms of the Indonesian people. The independence of the Constitutional Court 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. However, decisions made by constitutional courts are frequently politically sensitive and address significant issues. On one hand, issuing robust rulings that reinforce vital constitutional principles can greatly benefit citizens and enhance support for democracy. Conversely, the court's assertive role in judicial review can increasingly intrude upon the domain of the law-makers.¹²

The Constitutional Court of Indonesia plays a vital role in maintaining constitutional principles and protecting citizens' rights during

¹² Radian Salman, Sukardi Sukardi, and Mohammad Syaiful Aris, "Judicial Activism or Self-Restraint: Some Insight Into The Indonesian Constitutional Court," *Yuridika* 33, No. 1 (8 Februari 2018): 145-170, <https://doi.org/10.20473/ydk.v33i1.7279>, p. 145.

emergency situations. Despite potential adjustments required in institutional operations amidst emergencies, the core responsibilities of the Court remain unchanged. Here are essential aspects of its role in such contexts: Firstly, the Court has the power to review emergency measures to ensure they align with the constitution, guarding against violations of fundamental rights. Secondly, it is tasked with protecting individual constitutional rights, even amid crises. This includes addressing cases of rights violations and ensuring that any restrictions are necessary, proportional, and constitutionally justified. Additionally, the Constitutional Court acts as a check on the executive branch, particularly when government authority may be heightened during emergencies. It ensures that emergency powers are used within constitutional limits, preventing potential abuse or overreach. The Court also continues its role in constitutional interpretation, offering guidance on constitutional issues to uphold the core principles and values of the constitution. This provides legal certainty and stability in times of crisis. Moreover, it reinforces the rule of law, making sure that government actions and emergency measures remain lawful and aligned with constitutional mandates. This helps maintain the

legitimacy of governmental operations and averts arbitrary conduct during emergencies. Finally, the independence and impartiality of the Constitutional Court are critical during crisis situations. The Court must operate free from external pressures, including governmental or political influences, to ensure that its rulings are based solely on legal principles and constitutional fidelity. Although the specifics of its operations may be influenced by emergency circumstances, the Court's essential role as the guardian of the constitution and protector of constitutional rights is of paramount importance¹³. Its decisions and actions are key to upholding the rule of law and ensuring that any emergency measures adhere to democratic principles and constitutional guidelines

b. Indonesian Constitutional Court Oversight in Times of Health Crises with Comparative Assessment

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

¹³ Rosa Ristawati and Radian Salman, "The Role of The Indonesian Constitutional Court in Preventing Social Conflict in A Diverse Society," *Constitutional Review* 9, No. 2 (31 Desember 2023): 332-357, <https://doi.org/10.31078/consrev925>, p. 338.

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 Constitutional Court review clauses of emergency laws to ensure that emergency powers are not used arbitrarily or for extended periods. It checks for fairness and non-discrimination in these laws, determining whether any differential treatment is based on just and impartial criteria rather than arbitrary standards. The Court also scrutinizes the legislative processes surrounding

the implementation of emergency laws, ensuring compliance with constitutional requirements, including public engagement and legislative deliberation. Even during a pandemic, the Court's reviews aim to uphold the constitution and protect citizens' rights, ensuring the government's responses remain lawful and within constitutional boundaries. 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.¹⁴ 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 U.S. Supreme Court is the highest judicial body and serves as the final arbiter on constitutional matters, exercising judicial review. While not called a

¹⁴ L. Amanda Tyler, "Judicial Review in Times of Emergency: From the Founding Through The Covid-19 Pandemic," *Virginal Law Review* 109, No. 3 (2023): 489-594, https://virginialawreview.org/wp-content/uploads/2023/05/Tyler_Book-1.pdf, p. 496.

“Constitutional Court,” it performs similar functions by interpreting the U.S. Constitution and ensuring compliance with its provisions. The Court reviews the constitutionality of federal and state laws, executive orders, and other government actions, establishing binding legal precedents that shape future cases. It acts as a check on the other branches of government, protecting individual liberties and civil rights. The President nominates nine justices for life, with Senate advice and consent. The justices deliberate, issue written opinions, and rule on the constitutionality of legislation and presidential actions. 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.

During emergencies, the Supreme Court plays a critical role in balancing national security and civil liberties, ensuring that emergency measures are necessary, narrowly tailored, and do not overly infringe on individual rights. The Court continues to interpret the U.S. Constitution, shaping the legal landscape and establishing precedents for future emergency-related cases. Additionally, it acts as a check on the other branches of government, including the executive, to prevent abuses of authority.

The independence and impartiality of the Supreme Court are essential, requiring justices to base their rulings on legal analysis and constitutional principles without succumbing to political pressures. During the COVID-19 pandemic, the Court has confronted legal challenges related to public health and individual rights, addressing issues such as restrictions on religious gatherings and freedom of movement, while also reviewing the executive branch’s authority in implementing these measures. The Supreme Court has assessed challenges to executive orders and emergency restrictions to determine whether they exceed constitutional boundaries or violate personal freedoms. The pandemic has also disrupted electoral processes, resulting in legal disputes regarding voting rights and protocols—such as early voting and mail-in ballots—that often raise issues of due process and equal protection. Moreover, the pandemic has affected court operations, leading to delays in

justice. The Supreme Court has navigated matters regarding in-person proceedings, legal deadlines, and remote hearings, aiming to maintain a balance between administering justice and safeguarding public health and constitutional rights. The crisis has heightened discussions about the division of power between the federal government and the states, with the Court considering cases involving disputes over quarantine measures, commercial laws, and enforcement of public health regulations. It is important to acknowledge that the Supreme Court's decisions throughout the COVID-19 pandemic have varied based on the unique circumstances and justifications presented in each case. In making these rulings, the Court sought to balance the needs of public health, individual rights, and government authority while fulfilling its role as interpreter of the law and the Constitution.

The Constitutional Courts of Indonesia and the U.S. Supreme Court function within different legal frameworks and have distinct roles. The U.S. Supreme Court is the highest appellate court and also has the power of judicial review, while Indonesia's Constitutional Court focuses on constitutional matters. The Indonesian Court assesses the constitutionality of legislation and government actions related to the COVID-19 pandemic, ensuring compliance with constitutional standards. Conversely, the U.S. Supreme Court reviews the constitutionality of laws and executive actions during the

pandemic. Both courts have been crucial in evaluating emergency measures, with the Indonesian Court reviewing public health regulations and electoral processes, while the U.S. Supreme Court addressed cases related to restrictions on religious gatherings and voting rights. Each court safeguards individual rights, with Indonesia's Court ensuring that emergency measures do not unfairly infringe on fundamental rights, and the U.S. Court balancing public health initiatives with individual freedoms. Moreover, both courts play significant roles in protecting democratic processes, resolving election-related disputes, and addressing legal matters concerning voting procedures amidst the pandemic. Despite their similar responsibilities, the differences in legal systems, constitutions, and court processes in Indonesia and the U.S. have influenced their respective responses to the challenges posed by COVID-19.

The Supreme Court of the Philippines serves as the highest court, responsible for interpreting the constitution, assessing the legality of government laws and actions, and protecting constitutional rights. It has the power of judicial review to ensure compliance with the 1987 Philippine Constitution by evaluating laws and executive orders. The Court explains and safeguards fundamental rights, such as equal protection, due process, and civil liberties, and it hears cases involving violations of these rights. As the ultimate adjudicator of legal issues, the Supreme Court addresses

administrative, criminal, and civil cases, resolving disputes between the executive and legislative branches as well as between federal and local governments. Additionally, it has administrative responsibilities, regulating lower courts, overseeing legal education, and reviewing presidential appointments to ensure they meet constitutional standards. During crises or national emergencies, the President can exercise emergency powers under the Philippine Constitution. A state of emergency may be declared in response to threats like natural disasters or pandemics, enabling the government to act effectively. However, the use of emergency powers must adhere to legal and constitutional standards, and fundamental rights, such as life and liberty, cannot be compromised.

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.

Even during emergencies, the values of justice and due process must be upheld. Individuals facing legal action or restrictions due to an emergency are entitled to a fair and impartial hearing, with judges ensuring transparency and accountability while maintaining independence. The judiciary should continue its essential functions during crises, potentially using innovative methods like remote hearings, all

while safeguarding due process rights. Collaboration among the executive branch, judiciary, and other stakeholders is vital, but this cooperation must not compromise judicial independence or the ability to deliver impartial judgments. Preserving judicial independence is crucial for protecting individual rights, upholding the rule of law, and maintaining public trust in the justice system. The judiciary must balance the urgency of emergency responses with the principles of fairness, impartiality, and constitutional adherence.

Ensuring judicial independence is crucial for upholding the rule of law, protecting constitutional rights, and maintaining public confidence in the judicial system during the pandemic. The Indonesian Constitutional Court is dedicated to examining the constitutionality of pandemic-related laws and regulations, striving to maintain its independence, impartiality, and integrity while ensuring that emergency measures comply with constitutional standards and uphold individual rights. The U.S. Supreme Court plays a vital role in interpreting the Constitution and validating laws during the pandemic, emphasizing judicial independence and protecting individual rights as it checks other branches of government. The Court reviews cases involving

potential violations of constitutional rights to prevent government actions from undermining personal freedoms. Similarly, the Supreme Court of the Philippines conducts judicial review to ensure the legality of pandemic-related laws and measures. It also emphasizes judicial independence and scrutinizes cases related to due process violations and attacks on individual rights, ensuring fair and just proceedings.

Judicial independence is essential for effectively managing the pandemic in all three countries. Their Constitutional Courts are responsible for interpreting the constitution, reviewing emergency measures, protecting individual rights, and upholding the separation of powers, making decisions based on law and evidence without external influence. Maintaining judicial independence is vital for upholding the rule of law and constitutional rights during the pandemic. Although court independence can impact the quality of laws from the executive and legislative branches, assessing the quality of emergency laws is difficult due to their unique contexts.¹⁵ 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.¹⁶ But there is some

¹⁵ Tom S. Clark, *The Limits of Judicial Independence* (Cambridge: Cambridge University Press, 2010), p. 256.

¹⁶ Victor V. Ramraj, *Emergencies and the Limits of Legality* (Cambridge: Cambridge University Press, 2008), p. 8.

flexibility that can be exercised by the court during the emergency since the “emergency” is an extraordinary event.¹⁷ By using this indicator, we later can see the independence of the judge of the Constitutional Court during reviewing the Perppu that was produced when a health emergency was declared by the President.

Scholars often distinguish judicial independence into two components: institutional (court) independence and individual (judge) independence¹⁸. Achieving court independence requires ensuring that each judge is independent. This independence can be assessed from both objective and subjective perspectives. Objectively, it involves adherence to legal standards, while subjectively, it relates to public trust in judges. In the context of reviewing the COVID emergency law, the Constitutional Court addressed one case—Perppu 1/2020—documented in Court Decision No. 37/PUU-XVIII/2020. In this ruling, three judges, including Justice Daniel Yusmic, expressed dissenting opinions. Justice Yusmic argued that since the Perppu was enacted due to a health emergency, there was no legal basis for its review, highlighting issues of judicial independence. Scholars note that judges’ independence can also be influenced by external factors, such as

social and psychological pressures, with social dynamics playing a significant role in decision-making. This phenomenon can be described as a legal culture. Specifically, judges who issue dissenting opinions may face societal pressures, yet these opinions are ultimately expressions of judicial independence. This conclusion is supported by previously mentioned indicators. Although Justice Daniel Yusmic was appointed by the President, his dissenting opinion remains independent since it aligns with the Indonesian Constitution and positive law. Additionally, Justice Yusmic retained the trust of Indonesian society even after the final court decision was rendered.

D. CONCLUSIONS

During emergencies, governments may impose restrictions on the rights of individuals and institutions, including those of the Constitutional Court, which can undermine judicial independence and reduce its authority. However, preserving the Court’s independence is critical for upholding the rule of law and allowing it to function without political interference. Many constitutions protect this independence even in times of emergency to ensure unbiased oversight.

¹⁷ Martin H. Reddish, *Judicial Independence and The American Constitution* (Stanford: Stanford Law Book, 2017), p. 172.

¹⁸ Frank B. Cross, “Thoughts on Goldilocks and Judicial Independence,” *Ohio State Law Journal* 64, No. 1 (2003), p. 19.

In the case of judicial review of emergency law over COVID-19, the Indonesian Constitutional Court found that certain provisions of Perppu No. 1/2020 to be partially unconstitutional. Consequently, it is vital to uphold the independence of the Indonesian Constitutional Court in scrutinizing emergency regulations, as this is essential for safeguarding constitutional rights during public health crises. This approach promotes judicial autonomy, enhances transparency, and encourages stakeholder participation, thus striking a balance between the necessity of crisis management and the protection of constitutional rights.

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