

Emergency Government of The Republic of Indonesia: Status Quo in State of Emergency

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Abstract

There is a constitutional status quo regarding the urgency of establishing the Emergency Government of the Republic of Indonesia or Pemerintah Darurat Republik Indonesia (PDRI). The military aggression was carried out by the Dutch who had seized Yogyakarta's position as the State Capital and kidnapped President Soekarno, and Vice President Moh. Hatta and several ministers put the position and sustainability of the Indonesian state at stake. This paper discusses the urgency of the establishment of the PDRI and explores its constitutionality in a review of the state of emergency and the Triumvirate concept. Using the normative juridical historical research method, this paper discusses two findings: First, the formation of the Emergency Government of the Republic of Indonesia was motivated by the Dutch Military Aggression incident which occupied the State Capital of Yogyakarta and kidnapped the President, Vice President and several State Ministers resulting in a state crisis and a government vacuum. Second, the formation of PDRI using Law Number 6 of 1946 which contains Article 12 of the Constitution is included in the emergency legal regime. The appointment of Mr Sjafruddin Prawiranegara who at that time was the Minister of Prosperity received a direct mandate from President Soekarno to form the PDRI based on a telegram dated December 19, 1948. Although the mechanism for establishing an emergency government in the form of a triumvirate has not been regulated in the constitution, this is not a constitutional deviation as is known in the state of emergency doctrine.

Keywords: *Emergency, State of Emergency, Emergency Government of the Republic of Indonesia (PDRI).*

A. INTRODUCTION

Dutch Military Aggression II occurred because of the betrayal of the agreement in the Renville Agreement which was signed on January 17, 1948. The Dutch Military Aggression II launched on December 19, 1948, caused the capital city of the Republic of Indonesia, namely Yogyakarta, to fall into the hands of the Dutch. In addition, the Dutch also detained and exiled the President, Vice President and Ministers who became leaders of the Republic of Indonesia. ¹This situation certainly resulted in the government is no longer able to run effectively because there had been a government vacuum, especially in the central government.

When viewed from the point of view of constitutional law, this is a necessity. This is because the government process in a country is not always in normal conditions and functions properly and ideally. Under certain conditions, the state is in an unusual condition that requires immediate and extraordinary action. In addition, in these unusual circumstances, the state government requires a special constitutional approach that is different from normal situations through emergency regulations.²

This unusual event occurred since the beginning of independence. Indonesia has experienced various extraordinary events that have disrupted governance. This event is also called a state of danger

¹ Anthony Reid, *Revolusi Nasional Indonesia*, (Jakarta: Pustaka Sinar Harapan, 1996), p. 263.

² Fitra Arsil and Qurrata Ayuni, "Model Pengaturan Kedaruratan dan Pilihan Kedaruratan Indonesia dalam Menghadapi Pandemi Covid-19", *Jurnal Hukum & Pembangunan* Tahun ke-50 No. 2 (April-Juni, 2020), p. 424.

that comes suddenly and disrupts public order. This causes the ordinary laws and regulations that apply to be unable to cope with this dangerous situation.³

Based on historical facts, especially during the Revolution or early independence, Indonesia still has to deal with several problems. One of them, Indonesia still has to continue to struggle to achieve stability in the government body and to mature aspects of life in the context of being a nation and state. During the first four years of independence, the life of the Republic of Indonesia was dominated by wars against strong enemies. There were several wars that the leaders of the revolution considered the outcome of which would determine the life or death of the Republic.⁴

In the early days of this independence, Indonesia already had several legal products related to dealing with emergencies or dangers. There are emergency arrangements based on the 1945 Constitution, which are contained in Articles 12 and 22. There are also emergency arrangements based on regulations at the level of the law.⁵ The emergency or hazard legal instruments that are at the level of the Law that Indonesia currently have are regulated based on Law No. 6 of 1946 concerning Dangerous Conditions (Law No. 6 of 1946). The enactment of this law, among others, was applied when the Dutch began to invade for the second time. This threat from the Dutch had a very significant impact and took various forms, which later transformed into a crime of aggression known as Dutch Military Aggression II.

Therefore, Mohamad Hatta invited Mr Sjafrudin Prawiranegara went to Bukit Tinggi to prepare for the possibility of establishing an emergency government in Sumatra if the capital of the Republic in Java fell into Dutch hands.⁶ The emergency government is called the Emergency Government of the Republic of Indonesia or Pemerintah Darurat Republik Indonesia (PDRI) and is chaired by Sjafruddin Prawiranegara. The phenomenon of this form of government is commonly known as *an emergency government* which is temporary in nature in order to maintain the existence of the State.⁷ Because the fate of the leaders of the national government is not yet known, or in other terms, because the president and/or vice president are permanently absent.

As for filling government leaders in the event of such a vacancy in line with historical developments, especially in the study of constitutional law, it is known as the triumvirate or

³ Jimly Asshiddiqie, *Hukum Tata Negara Darurat*, (Jakarta: Rajawali Pers, 2007), p. 27.

⁴ George MCTurnan Kahin, *Nasionalisme dan Revolusi Indonesia*, (Depok: Komunitas Bambu, 2013), p. 211.

⁵ Regarding this matter, Fitra Arsil and Qurrata Ayuni stated that there are three kinds of emergency arrangements in Indonesia, in dealing with emergency situations. First, the Emergency HTN regime in Article 12 of the 1945 Constitution of the Republic of Indonesia, which reads "The President declares a state of danger, the conditions and consequences of a state of danger are stipulated by law." Second, is the use of Government Regulation in Lieu of Law (Perppu) in Article 22 of the 1945 Constitution of the Republic of Indonesia, which reads "In the case of a compelling emergency, the President has the right to stipulate government regulations in lieu of law". And third, is the meaning of other emergencies that are considered in accordance with what is regulated by law. See Arsil and Ayuni, *ibid*.

⁶ Deden Usmaya, Wakidi and Syaiful M, "Pemerintahan Darurat Republik Indonesia (PDRI) di Sumatera Barat Tahun 1948-1949", *Jurnal Pendidikan dan Penelitian Sejarah (PESAGI)*, diakses dari <http://jurnal.fkip.unila.ac.id/index.php/PES/article/view/3879>, on 02 November 2021.

⁷ Sutan Muhammad Rasyid, *Sekitar PDRI (Pemerintah Darurat Republik Indonesia)*, (Jakarta: Bulan Bintang, 1982), p. 11-12.

government led by three ministers who are appointed as interim high leaders of the state (ad interim).⁸ Filling government positions when the president and vice president are permanently absent is an important step to take. The power vacuum is an emergency condition that will cause more serious adverse effects if left prolonged.⁹

If a government vacuum occurs and is left unchecked, the emergency situation that arises will grow many times over. Such as the existence of a government coup, attacks by the enemy who are increasingly free, and even unconstitutional state administration problems will very easily occur. Therefore, the fundamental regulation regarding the application of the scheme to fill vacancies in government leadership positions is based on a general phenomenon that applies in several modern countries in the world, which are usually accommodated in the state constitution.

However, in the early days of Indonesia's independence, the 1945 constitution did not yet have regulations regarding filling the positions of *ad interim government leaders* with a triumvirate scheme. The related arrangements in the 1945 Constitution only accommodate the possibility that when the President is permanently absent or can no longer carry out his mandate as president, the vacancy must be replaced by the vice president,¹⁰ without stipulating other scenarios. The 1945 Constitution does not or may not have regulated the mechanism for the appointment of the triumvirate minister in its body.

By looking at the position of the constitution as a *grundnorm* which is the legal basis that should regulate the most fundamental constitutional needs such as vacancies in government positions. However, although the 1945 Constitution does not specifically regulate this issue, Law No. 6 of 1946 provides for such a mechanism. Article 3 of Law No. 6 of 1946 mentions several ministerial positions which are mandated to carry out the more specific government when the State is in a state of danger which is called the National Defense Council.¹¹

The Prime Minister, the Minister of Defence, the Minister of Home Affairs, the Minister of Finance, the Minister of Prosperity and the Minister of Transportation, the Commander in Chief, and the 3 representatives of the people's organizations mentioned in the Article are important components

⁸Constitutional arrangements regarding the concept of the triumvirate in Indonesia in the current era can be seen in Article 8 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads: If the President and Vice President die, quit, are dismissed, or are unable to carry out their obligations during their term of office simultaneously, the executor the duties of the presidency are the Minister of Foreign Affairs, the Minister of Home Affairs, and the Minister of Defense together. At the latest thirty days after that, the People's Consultative Assembly shall hold a session to elect the President and Vice President from two pairs of candidates for President and Vice President proposed by a political party or coalition of political parties whose pairs of candidates for President and Vice President received the first and second most votes in the election. before the end of his term of office. According to Jimly Asshiddiqie, the mention of the three triumvirate ministers is very important, because normatively the three of them are subjects of constitutional law that have direct power from the 1945 Constitution of the Republic of Indonesia. See Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sekjen dan Kepaniteraan Mahkamah Konstitusi, 2006), p. 179-180

⁹Nyoman Mas Aryani and Bagus Hermanto, "Rekonstruksi Pemilihan Presiden dan Wakil Presiden yang Ideal dalam Ikhwal Kekosongan Jabatan Presiden dan Wakil Presiden dalam Rangka Penegakan dan Penguatan Sistem Presidensiil Indonesia", *Jurnal Legislasi Indonesia*, Vol. 15 No.3, (November 2018), p. 171-184

¹⁰Article 8 of the Original Manuscript Constitution states that: If the President dies, quits, or is unable to carry out his obligations during his term of office, he is replaced by the Vice President until his term expires.

¹¹Article 3 of Law No. 6 of 1946

in carrying out the duties of the State when in a state of danger. If it is associated with the triumvirate concept as described above, it seems that there are some similarities, especially regarding the delegation of power to the ranks of ministers. However, in the absence of a constitutional arrangement in the body of the 1945 Constitution, of course, this raises the issue of the legitimacy of the delegated power source in dealing with such an emergency or danger.

Seeing these legal problems, this paper is very important to examine the urgency and constitutionality of the formation of the PDRI from the perspective of emergency constitutional law. By not ignoring the central role of PDRI in maintaining the existence of the Republic of Indonesia, this paper will also explore the constitutional basis for the appointment of Sjafrudin Prawiranegara as chairman of PDRI and several other ministers. The formation of this government structure is seen in the concept of holding a temporary government position (Triumvirat).

B. RESEARCH METHOD

Based on the description of the background above, this paper is structured to answer the formulation of the problem as follows:

1. What is the urgency of establishing the Emergency Government of the Republic of Indonesia from the perspective of an emergency HTN?
2. What is the constitutionality of the Establishment of the Emergency Government of the Republic of Indonesia in the Concept of Temporary Appointment (Triumvirat)?

This paper is research on constitutional law that contributes to the development of legal concepts and the improvement of legal practice. To answer this problem, normative legal research is used by using secondary data in the form of books, laws and regulations, official documents, and scientific publications.¹²In addition, this paper also uses a statutory approach and a historical approach. This approach is used to examine the constitutionality of the formation of the PDRI and in order to systematically construct the historical background of the formation of the PDRI from the point of view of the Emergency HTN. Data were also collected utilizing *library research*, which was then analyzed comprehensively based on the study focused on writing this article.

C. RESULT AND DISCUSSION

The Urgency of Establishing the Emergency Government of the Republic of Indonesia

The Dutch Military Aggression II which was launched on December 19, 1948, at 08:00 in the morning caused chaos and extraordinary threats to Indonesia. The threat was due to the simultaneous bombing in the Yogyakarta area, which was not previously suspected. Thus, the TNI responded to the

¹²Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta: Kencana, 2016), p. 181

attack by carrying out guerrilla warfare in accordance with Strategy Order No. 1 on November 9, 1948.¹³

The government leaders did not remain silent and immediately acted by holding a joint meeting between Mr TM Hasan, Mr Syafruddin and the Governor of Central Sumatra Mr M. Nasroen at around 9 am in the Guest Agung building, the former residence of Vice President Hatta. At that time, it was decided to temporarily freeze the Provinces and revive the Regional Defense Council (DPD) in each Residency.¹⁴ While the TNI was carrying out guerrilla warfare, and State officials were tactics, overseas the attack was responded to by the UN Security Council which held a session on December 22, 1948, in Paris.¹⁵

Emergencies across countries usually have the same characteristics. This situation is always associated with cases where in one situation it is necessary to restructure state functions and organs to reduce the negative impacts that may be faced. So this requires clear legal regulations in an emergency to ensure the survival of a country and its citizens. Apart from that, restructuring of state functions and organs is also needed to be able to immediately return the situation to normal again. This change can be made on a temporary basis by supporting efficiency and effectiveness in dealing with emergencies.¹⁶

However, not all conditions that pose an extraordinary threat are considered emergencies. It can be called an emergency when the situation is so large and severe that it seems impossible for the state to respond to a crisis without changing its structure for effectiveness. Based on this, it seems that it can be said that the imposition of a state of emergency in the early days of Indonesia's independence as discussed earlier was the right step. Because if viewed based on the urgency of the implementation of emergency law by using Law Number 6 of 1946, it is intended to deal with an event that can be categorized as a state of danger that threatens the stability of the State.

Regarding this, in line with what Zwitter said regarding several conditions that must be considered in enacting emergency law.¹⁷ These conditions are:

1. The condition of necessity;
2. The condition of concreteness; and
3. The condition of urgency.

Judging from the background of its formation, PDRI was formed because of the onslaught of the Dutch Military Aggression II which seized the position of the State Capital of Indonesia in Yogyakarta. The occupation was because the Dutch wanted to seize the sovereignty and independence of the Indonesian people, which began with the denial of the Linggar Jati agreement. The Dutch attack

¹³V. Sardjono, GL. Marsadji, *Pemerintah Darurat Republik Indonesia: Penyelamat Negara dan Bangsa Indonesia*, (Jakarta: Tintamas Indonesia, 1980), p. 88.

¹⁴Rasyid, *Sekitar PDRI*, p. 11.

¹⁵Sardjono, and Marsadji, *Pemerintah Darurat Republik Indonesia*, p. 89.

¹⁶Andrej Zwitter, "The Rule of Law in Times of Crisis: A legal Theory on the States of Emergency in the Liberal Democracy", *ARSP: Archives for Philosophy of Law and Social Philosophy*, Vol. 98, No. 1, (2012), p. 107.

¹⁷Zwitter, *The Rule of Law in Times of Crisis*, p. 110.

destroyed several important facilities but the telegraph office was still able to receive news about the fall of the capital city of Yogyakarta and the capture of Soekarno, Hatta and several ministers. The acceptance of the mandate from the central government (President) to Syafrudin Prawiranegara to form the PDRI, because the president of the central government cannot carry out their duties and obligations.¹⁸

The mandates in the telegram are as follows:

For: Mr. Sjafruddin Prawiranegara in Sumatra.

We, the President of the Republic of Indonesia, report that on Sunday 19 December 1948 at 06.00 am, the Dutch had begun their attack on the capital city of Yogyakarta. If the Government is unable to carry out its obligations anymore, we authorize Mr Sjafruddin Prawiranegara, Minister of Prosperity of the Republic of Indonesia to form the Emergency Government of the Republic of Indonesia.

Yogyakarta, December 19, 1948.

President,

Vice President,

(Soekarno)

(Moh. Hatta)

Furthermore, from the perspective of emergency constitutional law, the formation of the PDRI can be said to be the right step. This is because it has fulfilled the requirements set out in the legal framework of the emergency state administration. The process of its formation also shows the fulfilment of the basic principles that are the basic principles in the enforcement of emergency constitutional law.¹⁹ These principles were put forward by Jimly Asshiddiqie, which are the main things that need to be considered in dealing with emergencies. The descriptions of these principles include:

- a. The principle of proclamation, this principle is intended so that a state of emergency must be announced openly so that it is known to all. The use of this principle can be seen in the existence of a telegraph letter or presidential mandate to Sjafrudin on December 19, 1948. In addition, it can also be seen the actions of Sjafruddin Prawiranegara who officially announced the formation of the PDRI on December 22, 1948, as the legitimate government to replace the Soekarno government was captured by the Dutch.²⁰
- b. The principle of legality, this principle is intended so that there is compatibility between the actions taken with the legal framework of the State and international law. The application of this principle can be seen from the actions taken by the PDRI that are in accordance with the provisions in national regulations as well as the principles of international law. In addition, with the telegraph mandate of the President above, it is juridically the legal basis for the formation of the PDRI. So that the existence and struggle of the PDRI, which is also

¹⁸Sardjono, Marsadji, *Pemeritab Darurat Republik Indonesia* , p. 68.

¹⁹Asshiddiqie, *Hukum Tata Negara Darurat*, p. 98-103

²⁰Sardjono, Marsadji, *Pemeritab Darurat Republik Indonesia* , p. 74.

- supported by all Indonesian people, is able to put aside doubts about the legality of the PDRI.²¹
- c. The principle of communication, this principle is intended to be able to establish communication with citizens and international relations. The application of this principle was fulfilled by the communication established by Sjafruddin Prawiranegara with civilian and military leaders in West Sumatra and on the island of Java. Apart from that, communication and foreign relations have also been established, especially with Sudarsono and Mr Maramis in New Delhi as the seat of Indonesia's representative.²²
 - d. The principle of temporary, this principle means that the time of emergency must be limited in order to avoid abuse of power that threatens constitutional guarantees and the human rights of citizens. The application of this principle can be seen from the temporary existence of the PDRI, starting from the time Sjafruddin Prawiranegara announced the establishment of the PDRI on December 22, 1948, until the return of the mandate to the Soekarno government on July 13, 1949, in a cabinet meeting led by Vice President Moh. Hatta.²³
 - e. The principle of the privilege of threats, this principle is based on the belief that the threat that comes is an extraordinary threat, which can endanger physical, life, property and even the existence of the State. As for the application of this principle, it was proven that there was a real threat that was born from the situation as a result of the aggression carried out by the Dutch. The Dutch aggression attack has clearly threatened the safety of the Indonesian people and has the potential to paralyze the Indonesian government and even lead to a government vacuum.
 - f. The principle of proportionality, this principle is aimed at the need for proportional action that is really needed to overcome the situation so that it returns to normal. The application of this principle can be seen from the suitability of the actions taken by PDRI with the threat of danger that is being faced, namely actions that are solely aimed at ending the emergency and restoring the situation to its original state, as well as to defend Indonesia's sovereignty, not to take over power or to violate the law. other.²⁴
 - g. The principle of intangibility, this principle is related to human rights that cannot be reduced under any circumstances. The application of this principle can be seen that during the implementation of the emergency government, there was no fact that PDRI took actions that violated human rights, especially human rights which could not be reduced under any

²¹Rasyid, *Sekitar PDRI*, p. 21.

²²Rasyid, *Sekitar PDRI*, p. 21.

²³Sardjono, Marsadji, *Pemerintah Darurat Republik Indonesia*, p. 99.

²⁴Rasyid, *Sekitar PDRI*, p. 21.

circumstances. As for the human rights issues that occurred, this can be understood as a consequence of the emergence of an emergency.

- h. The principle of supervision, this principle focuses on all forms of actions and policies taken that must involve the parliament and are in line with the principles of the rule of law and democracy. As for the application of this principle, it can be seen that the PDRI does not use the state of emergency as an excuse to impede the parliament's authority in supervising the executive. This seems to be the impact of Law No. 6 of 1946 on Dangerous Conditions.²⁵

In the context of the implementation of a state of emergency using Law Number 6 of 1946, this is very appropriate because if we look at the threat of an emergency born from the onslaught of Dutch Military Aggression, which disrupts the running of the government and the safety of Indonesian citizens. In addition, the legal approach used by activating an emergency based on this Law can be classified as a *legislative model approach*. This is because the legal instruments used to deal with emergencies are regulations at the statutory level. In addition, the existence of a special mandate to the executive, namely for Sjafrudin Prawiranegara to hold temporary positions, is a feature of this approach.

Conceptually, this approach was first proposed by John Ferejohn and Pasquino.²⁶ They state that *the legislative model* is an action in dealing with emergencies by enacting ordinary laws that delegate special and temporary powers to the executive. This practice implies that emergency powers should be understood as extraordinary measures in the implementation of the legal system. Furthermore, once the state of emergency subsides, there must be a return to the usual legal and political processes to get a normal life back.

The Constitutionality of the Establishment of the Emergency Government of the Republic of Indonesia in the Perspective of Temporary Administration (Triumvirat)

As has been explained in the previous discussion that in the early days of independence, Indonesia had several times faced extraordinary circumstances or events. This incident has actually resulted in things that are threatening and dangerous so that ordinary regulations under normal conditions will not be effectively enforced.²⁷ Dangerous threats themselves take various forms and forms, which vary from case to case at one time to another, and also from one place to another. To

²⁵Article 2 of Law Number 6 of 1946 concerning Danger Conditions states as follows: (1) The declaration of a state of danger is ratified by law. (2) The statement is submitted to the House of Representatives (Working Body of the Central National Committee) on the day of its announcement for ratification. (3) Without prejudice to what is meant in Article 1, the regulations in this Law shall take effect from the day of the statement, without waiting for ratification. (4) Elimination of a state of danger is declared by the President and it is submitted to the House of Representatives (Working Body of the Central National Committee) on the day of its announcement, for approval.

²⁶John Ferejohn, Pasquale Pasquino, "The Law of The Exception: A Typology of Emergency Powers", *International Journal of Constitutional Law*, Volume 2, Issue 2, (April 2004), p. 217.

²⁷Jazim Hamidi and Mustafa Lutfi, "Ketentuan Konstitusional Pemberlakuan Keadaan Darurat dalam Suatu Negara (Model Perbandingan Konstitusi antara Negara Indonesia dengan Amerika Serikat dalam Perspektif Politik Hukum)", *Jurnal Konstitusi* Vol. 6, Nomor 1, (April, 2009), p. 41.

deal with the various potential disturbances and threats, it is necessary to have a legal system that can apply in an emergency.²⁸

The regulation regarding the state of danger initially referred to the Dutch legal tradition through the *Regeling op den Staat van Oorlog en van Beleg (SOB)* which took effect in 1939.²⁹ Based on this regulation, the state of danger was divided into two categories, namely States in a state of war (*staat van oorlog*) and the State in a state of emergency of war (*staat van beleg*).³⁰ The difference between the two is actually not that significant. Regarding this matter, Kabul Arifin stated that the difference was only based on the level of tension. *Staat van Beleg* is categorized as a state of absolute emergency, and *Staat van Oorlog* is categorized as a state of war whose level of urgency is below the *Staat van Beleg*.³¹

For the first time, the Government of the Republic of Indonesia established a separate law which was prepared to deal with an emergency, namely Law no. 6 of 1946 concerning the State of Danger. However, this Law does not divide the types of hazard conditions as the SOB which is the reference. This law only divides the reasons for declaring a state of danger. These reasons are because of an attack, the danger of attack, rebellion or riots, which raises the fear of the government being unable to carry out its work, and because of natural disasters.³²

There are several reasons for the imposition of a state of emergency contained in the regulation, especially related to the vacuum of the wheels of government, it is proven that this occurred during the formation of the PDRI. This was proven to have happened during the Second Dutch Military Aggression when the centre of government was still in Yogyakarta, precisely since December 19, 1948, which took the capital city of Yogyakarta. Not only that, but the Dutch also alienated the Indonesian leaders. Circumstances like this of course resulted in the government can no longer run effectively.³³ The Republican leadership had anticipated the possible chaos resulting from the attack and had made plans to deal with it. Muhammad Hatta invited the Minister of Welfare, Mr. Sjafrudin Prawiranegara went to Bukit Tinggi to prepare for the possibility of establishing an emergency government in Sumatra if the capital of the Republic in Java fell into Dutch hands.³⁴ The emergency government is called the Emergency Government of the Republic of Indonesia (PDRI) and is chaired by Sjafruddin Prawiranegara which was formed based on Article 12 of the 1945 Constitution of the Republic of Indonesia and Law no. 6 of 1946.

²⁸ Asshiddiqie, *Hukum Tata Negara Darurat... ..*, p 27.

²⁹ Hamidi and Lutfi, "Ketentuan Konstitusional Pemberlakuan Keadaan Darurat... ..", p. 61.

³⁰ See *Regeling op de Staat van Oorlog en van Beleg*, *Staatblaad* Number 582, Year 1939, Article 1 paragraph (1).

³¹ See Kabul Arifin in Agus Adhari, "Penataan Ancaman Ekonomi Sebagai Bagian Dari Keadaan Bahaya Di Indonesia", *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*, Volume 12 Nomor 1, (November, 2020), p. 36

³² Indonesia, *Law on Dangerous Conditions*, Law Number 6 of 1946, Article 1 paragraph (2).

³³ The government cannot run effectively because the fate of the government leaders in Yogyakarta is not known for certain. In addition, the cabinet ranks and national figures agreed that the unclear condition of the leader must be addressed immediately. Because a State without a government is not a State according to international conditions. Regarding this, see Rasyid, *Sekitar PDRI*, p. 12.

³⁴ Usmaya, Wakidi and Syaiful M, "Pemerintahan Darurat Republik Indonesia", p. 2.

During its administration, PDRI refers to the Danger Situation Law, which this Law regulates the competent institutions during an emergency, restrictions on human rights during an emergency, and supervision of the implementation of emergency powers. During the period of the PDRI struggle, the dangers faced by Indonesia were very real, where the Dutch troops succeeded in taking control of the nation's capital and detaining the president and his staff in Yogyakarta.³⁵ With this detention, the Indonesian government could be said to have been paralyzed for a moment, and if left unchecked, there would be a *vacuum of power* that the Dutch could use to regain control of Indonesia.³⁶

Such a situation becomes a very strong reason for the Indonesian government to take quick and immediate emergency action in order to save the country's sovereignty. In other words, the situation at that time did require the government to take action within the framework of the emergency constitutional law, regardless of the government's understanding of the implementation of the emergency constitutional law norms. However, the most important thing is that it is the right and obligation of the state to maintain its existence and also to protect its people from the threat of danger that arises in an emergency.

However, if we trace the arrangements based on the constitution of the 1945 Constitution, there is no regulation regarding the mechanism for filling such vacancies in government positions. The related regulation is only found in Article 3 of Law Number 6 of 1946³⁷ concerning Dangerous Conditions, which reads:

- (1) After the declaration of a state of danger is made for part of the entire territory of the State, the power that carries out the regulations in this Law is a State Defense Council consisting of:
 - a. Prime Minister, Minister of Defence, Minister of Home Affairs, Minister of Finance, Minister of Prosperity and Minister of Transportation.
 - b. Commander in Chief.
 - c. 3 representatives of people's organizations.
- (2) The State Defense Council is responsible for the Council of Ministers.
- (3) The members of the State Defense Council sub a and b become members because of their position, the members of sub c are appointed by the President, after hearing about the people's organizations.
- (4) The chairman of the National Defense Council is the Prime Minister, and the Deputy Chair is the Minister of Defense.

The establishment of the National Defense Council is one of the government's efforts to deal with a dangerous situation that threatens the sovereignty of the State and the people of Indonesia. State institutions in an emergency are different from their ideal functions under normal circumstances. As stated by Asshiddiqie, in situations of danger, special institutions can be formed that in normal times never existed, or add special powers to existing institutions.³⁸

³⁵Sardjono, Marsadji, *Pemerintah Darurat Republik Indonesia* , p. 68.

³⁶Moch. H. Kharismulloh Hilmatiar, "Pembentukan Pemerintahan Darurat Republik Indonesia Tahun 1948-1949 Dalam Perspektif Fiqh Siyasah dan Hukum Tata Negara", *Al-Mazahib*, Volume 3, Nomer 1, (Juni 2015), p. 162.

³⁷Indonesia, *Law on Dangerous Conditions*, Law Number 6 of 1946, Article 3

³⁸Asshiddiqie, *Hukum Tata Negara Darurat* , p. 78.

Apart from that, in the early days of independence, the formulation in the 1945 Constitution did not seem to accommodate the possibility of a *vacuum of power* as a result of the absence of the permanent President/Vice President simultaneously and the process of filling out his successor. The formulation regarding this matter is only published after the amendment to the Constitution or after the enactment of Law Number 27 of 2009 concerning the MPR, DPR, DPD and DPRD, a description of the meaning of the President being permanently absent and the process of filling vacancies in office.³⁹

The regulation regarding vacancies in the early days of independence only regulates the vacancy of the president's office which is then replaced by the vice president. Such arrangement is stated in Article 8 of the 1945 Constitution, which lexically states "If the President dies, quits, or is unable to carry out his obligations during his term of office, he is replaced by the Vice President until his term expires."⁴⁰ Meanwhile, more detailed and standard arrangements regarding the Triumvirate provisions in the form of implementing presidential duties, when the president is permanently absent because certain matters are mandated to the Minister of Home Affairs, the Minister of Foreign Affairs, and the Minister of Defense only appear in the Fourth Amendment to the 1945 Constitution of the Republic of Indonesia, namely on August 10, 2002.

Seeing the incomplete character of the arrangement in the Original Manuscript Constitution regarding the vacancy of government positions, it is something that can be justified. Although the idea of the Triumvirate concept has existed for a long time, namely in a political alliance around 60-53 BC or at the end of the Roman Republic and continued to grow after that. However, historically, especially in the context of constitutional history in Indonesia, the concept of triumvirate first emerged during the early New Order era between March-June 1966, when the Supersemar (Surat Order Eleven Maret) was politically enforced.⁴¹

So the formation of PDRI which gave a mandate to Sjafrudin Prawiranegara as chairman of PDRI who at that time served as Minister of Welfare was the right step. This is based on the constitutional basis of Article 12 of the 1945 Constitution of the Republic of Indonesia which regulates the state of danger and gives orders regarding technical arrangements regulated in law. The arrangement is accommodated in Law Number 6 of 1946 concerning Dangerous Conditions, especially in Article 3 which regulates the State Defense Council and clearly mentions the Minister of Prosperity as one of the implementers of emergency powers. If referring to the views of John Ferejohn and Pasquale Pasquino, who called it the doctrine of *Constitutional Dualism* which was later formulated as

³⁹Prayudi, "MPR, Transisi Kedaulatan Rakyat Dan Dampak Politikanya", *Jurnal Politika*, Vol 3, No 1, (2012), p. 20.

⁴⁰Indonesia, *the 1945 Constitution of the Republic of Indonesia (Original Manuscript)*, Article 8.

⁴¹Titik Triwulan Tutik, "Kedudukan Konstitusional Menteri Triumvirat sebagai Pelaksana Tugas Kepresidenan Dalam Sistem Pemerintahan Presidensil di Indonesia", *Jurnal Al-Daulah*, Vol. 10, No 2, (Oktober 2020), p. 287.

“the notion that there should be provisions for two legal systems, one that operates in normal circumstances to protect rights and liberties, and another that is suitable to dealing with emergency circumstances”.⁴²

Because basically, the constitutionality of norms is a review process to test the conformity of norms by using a touchstone, namely the related articles contained in the constitution.⁴³ Another legal doctrine put forward by George Jellinek, namely *onrecht word recht*, which is defined as an action that was originally an act that violates the law, and its condition can be changed to be based on the law. Or in other terms, something that was not originally a law can turn into a law. However, it should be emphasized that this idea is only related and applies in abnormal circumstances, *abnormal recht voor abnormal tijd*.⁴⁴

D. CONCLUSION

The formation of the PDRI is very important in continuing the sovereignty of the Indonesian state. The basis for the emergency was the Dutch Military Aggression which disrupted the stability of the state due to the occupation of the capital city of Yogyakarta and the kidnapping of the President, Vice President and Ministers resulting in a vacuum of government (vacuum power). Therefore, the government established the Emergency Government of the Republic of Indonesia, which was centred in Sumatra from December 22, 1948, until July 13, 1949. The formation of such a PDRI was in accordance with the principles of emergency constitutional law and the principles of implementing emergency constitutional law.

The application of emergency law during the PDRI period referred to Law Number 6 of 1946 concerning Dangerous Conditions, which included Article 12 of the 1945 Constitution of the Republic of Indonesia in its preamble. Thus, it is included in the emergency constitutional law regime. Although the formation of the PDRI was not accommodated in the constitution, this was not a dangerous constitutional deviation. The granting of a mandate to Sjafrudin Prawiranegara to form a PDRI according to the emergency constitutional law is in accordance with the triumvirate concept. This is due to several things, namely the existence of a real threat that results in a government vacuum, the mandate is officially given and addressed to ministers in the cabinet ranks. So that the formation of the PDRI is in accordance with the emergency constitutional law doctrine which allows the addition of government institutions, changes in the political structure or even the procurement of new laws that deviate from the constitution.

⁴²Ferejohn, Pasquino, “The Law of The Exception”, p. 234.

⁴³Mohammad Mahrus Ali, “Konstitusionalitas dan Legalitas Norma dalam Pengujian Undang-Undang Terhadap Undang-Undang Dasar 1945”, *Jurnal Konstitusi*, Volume 12, Nomor 1, (Maret 2015), p. 172-195.

⁴⁴Asshiddiqie, *Hukum Tata Negara Darurat* , p. 22.

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