
**DYNAMICS OF APPLICATION OF SALUS POPULI SUPREMA LEX ESTO
IN LAW ENFORCEMENT IN INDONESIA**

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ABSTRACT: This paper analyzes the position and legality of the use of principles outside the legal text (unwritten) as the basis for law enforcement in Indonesia. As is known, the sources of law include laws, customs, jurisprudence, and doctrine. So whether the presence of legal provisions outside of legal sources can be used as the basis for law enforcement. This analysis highlights the public assumption that the use of the principle of "Salus Populi Suprema Lex Esto" can be used as a guideline or basis for law enforcement in Indonesia, including when judges use this principle as a basis for decisions. Meanwhile, another opinion states that the principle of "Salus Populi suprema Lex Esto" cannot be used as a reason for law enforcement. Article 12 of the 1945 Constitution states that the president says there is a state of emergency established by law. So that in this case it is not about the principle or source of law which is legal and has legal certainty, but the extent of an emergency so that all provisions in the normal state legal system can be violated.

Keywords: Legal Principles, Legal Basis, Law Enforcement.

INTRODUCTION

The principle of *salus populi suprema lex esto* is now increasingly being discussed. As it is known, the principle which has a meaning in Indonesian terms is "the safety of the people is the highest law". The principle is just an adage or legal term conceptualized by Cicero, an ancient Roman statesman during his lifetime.¹ Recently, the principle of *populi suprema lex esto* has often been uttered by public figures, academics, and practitioners.²

For example, when the Covid-19 pandemic hit Indonesia in early 2020. After several months, there was a prohibition on moving people (returning to their hometowns). In the prohibition, one of the principles used to prohibit the activity (homecoming) is the principle of "*salus populi suprema lex esto*". Besides, the government through the Ministry of Transportation issued a

¹ Wikipedia, Cicero, <https://id.wikipedia.org/wiki/Cicero>, (Accessed on 29 April 2021)

² Gelora News, Responding to Mahfud, Jimly: *Salus Populi Suprema Lex Esto* Cannot Be Used, online: <https://newsmeter.id/news/605583adaf8f895b4139185f>, (Accessed on 10 May).

Minister of Transportation Regulation Number 25 of 2020 which regulates transportation control during the (homecoming) period.³

In the end, the prohibition reaps pros and cons, because according to the provisions of the constitution in Article 27 Paragraph (1) of the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, every Indonesian citizen has the right to freely move, move, and reside within the territory of the Republic of Indonesia. Thus, there should be no prohibition against moving people to one place or returning to their hometown.⁴ Then the question is, can the principle of "salus populi suprema lex esto" be the basis for the prohibition of movement of people? Of course, an objective analysis is needed to provide the right answer.

As it is known that now in Indonesia, the adage or the legal term *salus populi suprema lex esto* is often used as a foothold or reference in anything that is considered to fulfill an emergency element or something that threatens the safety of the people. As mentioned above, the prohibition of people returning to their hometowns is intended to safeguard the health, security, and safety of the people from the spread of the coronavirus which has hit all regions in Indonesia.

However, behind familiar and often the principle is uttered by public figures there are still many who do not understand and in what situations the principle of "salus populi suprema lex esto" can be used as a basis for law enforcement. Then there are still many who do not understand the legitimacy or legality of the legality of this principle in the legal system and constitutional provisions in Indonesia. Because as it is known, the principle of "salus populi suprema lex esto" is an adage that we do not find explicitly in the provisions of the legislation in Indonesia.

Mahfud MD in his book "Building Political Laws Upholding the Constitution" states that there are two streams in the system where the concept of law is born, namely in the European tradition through civil law that makes written law an emphasis on legal certainty, a country that adheres to civil law, the state law is called *rechtsstaat*.⁵ Meanwhile, countries that use the common law concept make jurisprudence an emphasis on upholding justice, while state law is called the rule of law.

The implementation of the rule of law in Indonesia is not explicitly stated in the 1945 Constitution of the Unitary State of the Republic of Indonesia, does the Indonesian nation use the concept of civil law or common law? However, in its implementation, Indonesia tends to be seen using the civil law legal system by making positive law a principle in law enforcement.

By looking at the fact that Indonesia tends to use the concept of written law which has binding legal force and clear legality. So indirectly the principle of "salus populi suprema lex esto" does not have binding legal force to apply in Indonesia. Because its nature is limited to adage or theoretical terms outside of the written legal provisions used by Indonesia. Then the question arises again, whether the principle of "salus populi suprema lex esto" is appropriate to be used as a basis for law enforcement in Indonesia?

³ Peraturan Menteri Perhubungan, Peraturan Menteri Perhubungan Republik Indonesia Nomor PM 25 Tahun 2020 Tentang Pengendalian Transportasi Selama Masa Mudik Idul Fitri Tahun 1441 Hijriah Dalam Rangka Mencegah Penyebaran Corona Virus Disease 2019 (COVID-19)

⁴ UU No. 39 Tahun 1999, "Pasal 27 Ayat (1) Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia

⁵ Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Rajawali Pers, 2017), p. 17

Answer some of the questions mentioned above, which will be presented later in this paper. Thus, later this research or writing can provide answers to questions related to the position of the principle of "salus populi suprema lex esto" in the legal system in Indonesia, and also related to the use of this principle as a reference or guideline for law enforcement in Indonesia. Also, theoretically, this paper can be used as an interesting reference source for readers because this paper is informative.

METHOD

This paper uses research or doctrinal approach, by analyzing legal materials as primary data sources supported by secondary sources, namely from literature, such as books, articles, journals and other legal documents related to the principle of salus populi suprema lex esto. The analysis technique in this paper aims to find out and find answers to questions that arise about the use of the salus populi suprema lex esto principle as the basis for law enforcement in Indonesia.

DISCUSSION

Salus Populi Suprema Lex Esto

In Latin terms, "salus populi suprema lex esto" has a very broad meaning, such as "health, welfare, kindness, safety, and security" through this definition, the intention to be achieved from the existence of the principle of salus populi suprema lex esto is, health, safety, security, the good of the people has a higher position than the law or becomes the highest law.

We cannot find the term salus populi suprema lex esto explicitly in the legal system used by the Indonesian people. However, we can find this term in the provisions of the Constitution of the Unitary State of the Republic of Indonesia by interpreting the sound in it. As said by Andang Binawan in his book "Sanctity of Law in Public Spaces" that the adage or the term "salus populi suprema lex esto" which was conceptualized by Cicero, a Roman statesman, is generally interpreted as "People's Safety is the Highest Law".

In the 1945 Constitution, the adage or the term people's safety or security is the highest law. We can indirectly find it in the preamble of the 1945 Constitution in paragraph 4, which reads "... forming an Indonesian State Government that protects the entire nation. Indonesia and all of Indonesia's blood for the general welfare, to educate the nation's life ...". If we interpret the sound or the provisions of the 4th paragraph of the Constitution of the Unitary State of the Republic of Indonesia, the prosperity and safety of the people is the main goal in running the government system in Indonesia.

It should be noted that the principle of salus populi suprema lex esto is an adage or in terms known in Indonesia is "a saying or a term". Thus, it can be concluded that the position of the salus populi suprema lex esto depends on the legal system used in a particular country.⁸ For example, the Indonesian nation uses the civil law system (written law), so it can be said that a

⁶ Seth Benardete, Cicero's De Legibus, *The American Journal of Philology*, Vol. 108, No. 2, Summer, 1987), p. 295

⁷ Mahesa Gunadi, "Menanti Aktualisasi Adagium Cicero", online: [sinmawa.unud.ac.id <https:// sinmawa.unud.ac.id/ormawa/pers-akademika/posts/menanti-aktualisasi-adagium-cicero>](https://sinmawa.unud.ac.id/ormawa/pers-akademika/posts/menanti-aktualisasi-adagium-cicero) (Accessed on 12 May 2021)

⁸ Zelig Ilham Hamka, *Negara Hukum Indonesia: Menyoal Salus Populi Suprema Lex Esto*, [bdklik.com< https://bdklik.com/negara-hukum-indonesia-menyoal-salus-populi-suprema-lex-esto-keselamatan-rak-yatmerupakan-hukum-tertinggi>](https://bdklik.com/negara-hukum-indonesia-menyoal-salus-populi-suprema-lex-esto-keselamatan-rak-yatmerupakan-hukum-tertinggi). (Accessed on 12 May 2021).

basic position or a term that is outside of the provisions of the unwritten legal regulations is not a strong position. Although in fact, the provisions of the state constitution recognize unwritten law such as customary law that lives in the community or customary law.⁹

However, it should be noted that even though Indonesia implements a civil law system, the fact is that it does not shut down from using other legal systems, such as the use of jurisprudence in civil law provisions which recognize a legal provision other than those contained in the form of written regulations in legislation.¹⁰

There are recognition and application of other legal concepts such as outside the application of civil law to create a legal rule that can be felt with real benefits in law enforcement in Indonesia. In addition to combining the application of the civil law system and jurisprudence in Indonesia, the use of adage is often used as consideration for judges when deciding a case, even though the constitutional provisions of the adage are not listed in the form of written law.

It should be noted that the mandate of the Law to respect and recognize legal principles outside of state law is one of the fundamental reasons for using terms outside the legal text, such as the principle of "salus populi suprema lex esto". The principle of law states that customs and so on can be used as a legal basis because it is a source of law.¹¹ But the question is, is the principle of "salus populi suprema lex esto" included as a source of law in Indonesia? So to find out more about the answers to these questions, it will be discussed in the next discussion in this paper.

Salus Populi Suprema Lex Esto Position In The Constitution In Indonesia

Marcus Tullius Cicero put forward a principle of "salus populi suprema lex esto" which means that the safety of the people is the highest law, so it must be prioritized under any circumstances. Therefore, the application of these principles must be socialized to the public to understand that policies are issued not only to be known but to be followed and obeyed.¹²

Legal principles form the basis for the formation of a law or regulation. According to Bernard, the legal principle which is the foundation of positive law is the abstraction of a more general rule, which in the application is broader than the provisions of positive legal norms. The principle of law is born from the content of human reason and conscience which causes humans to distinguish good and bad, just, unfair, and humane-inhuman.¹³

The principle of law has the highest hierarchy in the legal hierarchy. Its position can legitimize laws or regulations that have been passed and implemented. According to AE Lacey, "Principles may resemble scientific laws in being descriptions of the ideal world, set up to govern actions as a scientific law are to govern expectations. That this shows that legal principles are broad in scope in the sense that they can become the scientific basis for various legal rules/rules to regulate human behavior that has the expected legal consequences."¹⁴

⁹ Abintoro Prakoso, *Pengantar Ilmu Hukum* (Surabaya: Laksbang Pressindo, 2017), 99–101

¹⁰ UU No. 48 Tahun 2009, "Pasal 5 Ayat (1) Undang-Undang Nomor 48 Tahun 2009 Tentang Kekuasaan Kehakimam.

¹¹ Theresia Ngutra, *Hukum Dan Sumber-Sumber Hukum*, (Jurnal Supremasi: Vol. 11, No. 2, 2016), p. 193–211.

¹² Sakka Patti, *Kehadiran Negara Dan Partisipasi Masyarakat Dalam Menghadapi Covid 19* (Yogyakarta: Dipublish, 2020), p. 164.

¹³ Dewa Gede Atmadja, *Asas-Asas Hukum Dalam Sistem Hukum*, (Jurnal Kertha Wicaksana 12, no. 2, 2018), p. 148–51.

¹⁴ Mahadi, *Falsafah Hukum Suatu Pengantar* (Bandung: Alumni, 2003), p. 120

In the hierarchy theory of statutory regulations, namely the hierarchy of legal norms, that no system in the world positively regulates the order of legislation. Even if there is a regulation, it is limited to the principle that states, for example, "Regional regulations must not contradict higher-level laws and regulations, or in the case of a constitutional law there is the expression" the supreme law of the land ". In the view of Pancasila, the source of Indonesian legal principles, it can be said that the legal principles of a hierarchical legal system are higher than legal norms or rules.¹⁵

In every regulation that has been established by the government, there will be a light regulation or something burdensome, there is even something that needs to be discussed in the future so that it is better so that it is following the conditions of community life. Regulations must also develop by the situation and conditions, if in a state of emergency, the government must also pay close attention to this situation, both in terms of welfare and prosperity. There are several regulations in the laws of the Republic of Indonesia that may be taken in circumstances that are not possible or emergency, namely the 1945 Constitution Article 12 and Article 22, but both are different in following up a state emergency.

Article 12 is classified as a regulation in a state of war, so it must obtain an emergency permit from the ruler or president so that the foundation of the building or constitution remains solid without being violated and Article 22 is focused on a state of emergency law or a state of law that exists in an undemocratic country against the people. so that it will lead to regulations that are far from the wishes of the people or it could be that these regulations will be burdensome for the community in the future and require legal certainty so that only the government elite and their supporters will be able to take pleasure or benefit from such a regulation.¹⁶

The principle of *salus populi suprema lex esto* in the constitution can be used by considering that the president must determine a state of danger or emergency by using the law rather than violating the constitution because the basis and entry point for the enactment of emergency constitutional law are based on Article 12 of the Basic Law. 1945, which reads "the president declares a state of danger, its conditions and consequently a state of danger shall be stipulated by law".¹⁷ If Article 12 of the 1945 Constitution is deemed irrelevant, then the president can also issue a Perppu, so that this law does not need to be violated.¹⁸

This principle must be properly understood carefully based on the application of article 12, because according to Prof. Jimly Asshiddiqie, if a statutory regulation does not provide an emergency as permitted by Article 12 of the 1945 Constitution, the government has no right to violate a constitution as an excuse. Handling of emergencies. So the government does not need to hesitate anymore to determine an emergency status if it wants to violate the constitutional rights to be enforced, that is, including by issuing government regulations instead of laws.

¹⁵ Ibid, p. 150

¹⁶ Nano Tresna Arfana, Perpu Dalam Desain Hukum Tata Negara Darurat, mkri.ac.id <<https://www.mkri.id/index.php?page=web.Berita&id=16513&menu=2>>. (Accessed on 14 May 2021)

¹⁷ Pasal 12 Undang-Undang Dasar Negara Kesatuan Republik Indonesia 1945

¹⁸ Kritik Prof Jimly Asshiddiqie terhadap Prof Mahfud MD dalam pernyataan bahwa Konstitusi dapat dilanggar dalam keadaan darurat, (Accessed on 14 May 2021).

The above explanation also answers the question of "is it permissible to violate the constitution by using the argument of *salus populi suprema lex esto* or the principle of people's safety is the highest law", then the answer is depending on the emergency and the existence of legislation that supports or states that an event has been critical or emergency. So it is necessary to understand that in this case it is not about the strength of the *salus populi suprema lex esto* principle, but the extent to which a state is declared an emergency or not.

If we quote Jimly Asshiddiqie's statement above regarding the public assumption that the situation during the coronavirus pandemic (covid-19) was entered as a health emergency so that the principle of *salus populi suprema lex esto* could be used as a basis for violating the constitution, according to him this principle could not be used. be used as an excuse to violate the provisions of normal constitutional law.¹⁹ Because several regulations or regulations issued by the government as guidelines in dealing with the corona virus pandemic, none of the statutory regulations state the conditions for an emergency as stated in Article 12 of the 1945 Constitution.²⁰

Meanwhile, in the course of the development of the life of the state and in implementing the laws and regulations governing the rule of law based on a democratic system, the existence of human rights is one of the characteristics of a rule of law. Following the aforementioned statutory order, as regulated in Article 7 Paragraph (1) of Law Number 12 the Year 2011 concerning the Formation of Legislation, Human Rights are regulated in the 1945 Constitution as the first source of law. Each of these legal regulations has legal force or power that applies by its hierarchy or level of authority so that the applicable legal regulations are always based on the applicable legal regulations and may not conflict with legal regulations of a higher degree.²¹

The issue of Human Rights (HAM) is often a topic, as a consequence of the rule of law (*rechtstaat*), guaranteeing Human Rights (HAM) must be realized through respect and upheld and guaranteed protection of human rights by the state. In the administration of state administration in the country of Indonesia Human Rights (HAM) are manifested in legal legitimacy, the form of this legitimacy is found in the body of the 1945 Constitution.

The formulation of the second amendment to the 1945 Constitution states that the provisions regarding human rights have received a constitutional guarantee in the 1945 Constitution, namely Law Number 39 of 1999 concerning Human Rights. Human rights in the 1945 Constitution can include the responsibility of the state and human obligations, namely the state is responsible for the protection, promotion, enforcement, and fulfillment of human rights. In the provisions of human rights law, there is an affirmation to the state, that the state as the bearer of the responsibility, which must fulfill its obligations in the implementation of Human Rights (HAM) both nationally and internationally, the state has no rights but the state only bears the obligation and responsibility to fulfill it. the rights of its citizens.²²

¹⁹ Feri Agus Setyawan, Jimly: *Salus Populi Suprema Lex Esto Belum Bisa Digunakan*, [cnnindonesia.com <https://www.cnnindonesia.com/nasional/20210319061501-20-619425/jimly-salus_populi-suprema-lex-esto-belum-bisa-digunakan>](https://www.cnnindonesia.com/nasional/20210319061501-20-619425/jimly-salus_populi-suprema-lex-esto-belum-bisa-digunakan) (Accessed on 14 May 2021)

²⁰ Pasal 12 Undang-Undang Dasar Negara Kesatuan Republik Indonesia 1945.

²¹ Kaelan, *Pendidikan Kewarganegaraan* (Yogyakarta: Pardigma, 2010), p. 95.

²² Admin, *Kewajiban Tanggung Jawab Negara Dalam Pemenuhan Hak Asasi Manusia*, [bphn.co.id < https://lsc.bphn.go.id/artikel?id=365>](https://lsc.bphn.go.id/artikel?id=365), (Accessed on 14 May 2021).

So like fulfilling Human Rights (HAM), the state does not act directly in executing a problem. The state must consider and is obliged to take legislative, administrative, legal, and other measures to fully realize Human Rights (HAM). As a party holding a responsibility, the state is required to carry out and fulfill all the obligations imposed, if these obligations fail to be carried out, the state will be said to have committed a violation.

Salus Populi Suprema Lex Esto, The Relationship With The Principle Of Legality Of Legal Expression

If the question arises "whether *salus populi suprema lex esto*" has the same meaning and position as the principles and sources of law, then to answer this question, perhaps we will first describe what is meant by the principle of law and the source of the law.

Quoting Sri Warjiyati's opinion in his book *Understanding the Basics of Law*, he said that the principle of law is a basic rule or legal principle that is still abstract.²³ Likewise, what is conveyed by Ishaq in his book *Basics of Legal Studies* also says that the principle of law is not a concrete legal norm, but the principle of law is a background for the birth of concrete rules.²⁴ The point is that the legal principle is a basis of thought which is still abstract which then gives birth to various concrete legal regulations.

Besides, legal principles can also be interpreted as something very basic in the law which becomes a guideline. Legislation must not conflict with legal principles. Thus in the implementation or implementation of law in everyday life and all decisions of judges must always refer to legal principles and must not conflict. On the other hand, the principle of law is always related to the source of law, because the principle and source of law are one unit. Then what is meant by the source of the law, what is the relation with the principle of "*salus populi suprema lex esto*", so the answer will be presented below.

Please note that sources of law are different from all sources of law. For example, in Germany, the source of all sources of law is German law, while in Indonesia it is Pancasila. However, if we talk about the source of the law, there can be more than one provision of the law that is used as a source of law. For example, in Indonesia government regulations originate from the law, as well as laws originate from the 1945 Constitution and so on.

There are two kinds of sources of law, namely material sources of law and sources of formal law. The sources of material law include historical, sociological, and philosophical sources. Meanwhile, formal legal sources include laws and regulations, customary law and customary law, treaties, and jurisdiction. Where if we link this source of law with legal principles, the material source of law in historical, sociological, and philosophical forms has the same meaning as the principle of law because its nature is still abstract or has not become a concrete legal rule. Meanwhile, formal sources of law are related to legal principles because formal sources of law in the form of statutory regulations cannot be outside the provisions of legal principles.

²³ Sri Warjiyati, *Memahami Dasar Ilmu Hukum* (Jakarta: Kencana, 2018), p. 32.

²⁴ Ishaq, *Dasar-Dasar Ilmu Hukum* (Jakarta: Sinar Grifika, 2018), p. 92

Based on the description above, then we can further analyze the questions regarding the position of the principle of "salus populi suprema lex esto", whether it can be said to be a principle of law or a source of law. Referring to the theory of principles and sources of law above, it can be ascertained that "salus populi suprema lex esto" is not included as a legal principle or a source of law, in which there are exceptions. Whereas "salus populi suprema lex esto" is not included as a principle or source of law if the normal state legal system is still running well in a country, in this case in Indonesia. However, "salus populi suprema lex esto" can be a principle or source of law when the state of the legal system of a country is abnormal or there is a crisis.

Thus the question arises again that what kind of emergency can make the "salus populi suprema lex esto" feasible and has the legality of legal certainty to use? So in this case the answer is: as long as an event or event that occurs is so massive and threatens the situation or conduciveness which is then accompanied by the issuance of emergency law, then any legal principle or source outside of the provisions of the legal text can be used as a reference or guideline for law enforcement. in a country, namely in Indonesia. As Satjipto Rahardjo in his book *Enforcement of Law Progressive* said that "there are many things that are not contained in a written text, such as the atmosphere and needs that exist at a time,"²⁵

The point is, in law enforcement, law enforcers are not only the mouthpieces of the law, but that law enforcers should also be able to see the substance outside the provisions of the legal text. For example, customary law, customs, and the like, which are included as sources or unwritten legal principles but still exist during community life, can become law enforcement arguments because not all incidents or events can be resolved in the law. In this case, Geny once said that "laws are never perfect. A law is never able to perfectly present the integrity of the reality that exists in the stretch of social life".²⁶

Or if it is associated with the use of the principle of "salus populi suprema lex esto", then whether when there is an encouragement to use this principle is used as a basis for law enforcement or used as a government guideline against the provisions of the constitution of the 1945 Constitution, it is necessary to pay attention to whether the conditions may be used as a principle. That is, with the existence of an emergency delivered by the president and followed by the issuance of law regarding an emergency that threatens the safety of the people, then the principles outside the legal text can be used as a source of law enforcement.

Besides, the existence of "salus populi suprema lex esto" is related to the legality principle of legal certainty in its application as the basis for law enforcement in Indonesia. Where the legality principle is to provide legal certainty to the community, the existence of existing rules will provide legal certainty and view that legal certainty is a justice. Assessing legal certainty and justice, Roeslan Saleh said that justice and legal certainty are two objectives that are often inconsistent with each other and are difficult to avoid in legal practice, a regulation that meets more demands for legal certainty, the greater the possibility of aspects urgent justice.²⁷

²⁵ Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Kompas Media Nusantara, 2010), p. 11

²⁶ Geny, *Hukum Perlu Tafsiran Kontekstual*, Dalam Bernard L. Tanya, *Teori Hukum Strategi Tertib Manusia Lintas Ruang Dan Waktu* (Yogyakarta: Genta Publishing, 2019), p. 179.

²⁷ Roeslan Saleh, *Kata Hatiku Tentangmu* (Jakarta: Diandra Press, 2008), p. 121–22

Article 281 Paragraph (1) of the second amendment to the 1945 Constitution states that "the right to be prosecuted based on retroactive law is a human right that cannot be reduced under any circumstances". Previously, the notion of legality was never discussed within the scope of the law in Indonesia. . He is included in the hope that it can be a panacea for legal uncertainty in law enforcement. The emergence of the idea of legality in Indonesia, when compared to the birth of the theory of legal certainty put forward by Gustav Radburch, is very different. The theory of legal certainty in Indonesia emerged based on the interests of certain groups.²⁸

The principle of legal certainty also includes the heart of the principles brought by a rule of law, this principle is adhered to with the condition that government decisions already have formal and material requirements. The material requirements are the authority to act, while the formal requirements are about the form rather than the decision itself. This principle leads to heed the decisions or decisions of government officials or in carrying out state policies it must be based on a clear legal basis and do not conflict with applicable law.²⁹

In the legality principle which provides an application of legal certainty in it, none other than as a distinction between normal and abnormal situations and conditions, this is related to the application of these principles naturally and naturally.³⁰ In normal situations and conditions where the *ceteris paribus* law (all variables in the same condition) applies, the legality principle applies, and the government's power under the legality principle is the power of the union. If in an abnormal condition where the *ceteris paribus* law does not apply, then by law the legality principle does not apply, and the government power in that situation is a free or discretionary power.

Every country always has a situation and conditions that are not stagnant because the country is always developing and will continue to move forward dynamically, sometimes a country that was initially peaceful becomes a country that is sad because of internal and external problems and vice versa. These conditions and situations will also affect human rights issues so that the government will take action to meet the conditions of its people.

If the state is in an emergency or abnormal condition, in the perspective of emergency constitutional law, a legality principle will never apply, because in that situation the government has free power and has discretionary rights, the ruler as the leader will give a decision in the field of legislation implementing legal regulations. . Although there are legal regulations that apply as basic guidelines for achieving relevant legal objectives. However, in these conditions and situations, the government and the authorities act more quickly to find a solution facing the state.

However, in its application, the president and government need consideration from the community as a form of a democratic rule of law, because the highest sovereignty is in the hands of the people, although in this case, the *salus populi suprema lex esto* principle also overshadows a constitutional provision. However, as a country that has the basis of the 1945 Constitution, it is unethical if, in the end, it will go beyond such a provision.

²⁸ Fadly Adrianto, *Kepastian Hukum Dalam Politik Hukum Di Indonesia*, (Administrative Law & Governance Journal, Vol. 3, no. 1 2020), p. 171.

²⁹ Koentjoro Poerbopranoto, *Perkembangan Hukum Administrasi Indonesia* (Bandung: Bina Cipta, 1981), p. 30.

³⁰ Jimly Asshidiqie, *Hukum Tata Negara Darurat* (Jakarta: Rajawali Press, 2017), p. 17.

As evidence that such a distinction makes sense is International Covenant on Civil and Political Right:³¹

"In the time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the state parties to the present covenant may take measures derogating from their obligations under the present covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin".

The situation and conditions of a society are not constant, and changes in the situation and conditions of society are not always able to be anticipated by the principle of legality, by the enactment of laws and regulations, so that the discretionary power of the government which will anticipate such situations and conditions is undoubtedly in character.

Based on the description above, as "salus populi suprema lex esto" it is concluded that it is not included as a principle or source of law. So about the principle of legality and legal certainty when the "salus populi suprema lex esto" is used as the basis for law enforcement in Indonesia, the answer is clear. Whereas "salus populi suprema lex esto" can be used as a basis for law enforcement, even though it is not included as a principle or source of law if the state is in an emergency besides the government or the president issuing laws and regulations regarding the existence of conditions that threaten the safety of the people.

CONCLUSION

Salus populi suprema lex esto is an adage if in Indonesia it is interpreted as a term, proverb or principle. Its nature, which is only a theory or term, makes salus populi suprema lex esto often debated in the administration of law in Indonesia, especially when it is used as the basis for judges' decisions in law enforcement. Salus populi suprem lex esto means that "the safety of the people is the highest law". Its position in the legal system in Indonesia is neither a principle nor a source of law. Salus populi suprema lex esto can be used as a basis for law enforcement, especially to fight against the provisions of the constitution when there is an emergency or compelling crisis. However, it must be remembered that if a single statutory regulation does not provide a state of emergency as permitted by Article 12 of the 1945 Constitution, then the government has no right to violate a constitution as a pretext for handling an emergency. So the government does not need to hesitate anymore to determine the emergency status if it wants to violate the constitutional rights to be enforced, including by issuing a Government Regulation instead of a Law (Perppu)

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