

# State of Emergency Through the Back Door

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2020-04-21T17:19:03

One of the problems for Indonesia's government when dealing with the coronavirus crisis was [its non-transparent approach towards the public](#). Not least because of that, many people in Indonesia do not trust the government when it comes to handling the pandemic. The government's attempt to declare the civilian emergency status which would have enabled it to control the flow of information has failed due to public opposition. A move by its police chief, however, is now trying to introduce emergency powers through the back door and in blatant disregard of a Constitutional Court ruling.

## Silencing critics

Many people in Indonesia suspect that the data regarding the number of infected cases published by the Joko Widodo (Jokowi) administration are not in line with reality. [Ridwan Kamil](#), Governor of West Java province, the region with the largest population in Indonesia, recently stated that he believes the actual number of cases to be far greater than the official data. Apart from that, data from Jakarta's government (Indonesia's capital and the focal point for the country's coronavirus spread) also show that in March alone the funeral rate in Jakarta had increased by [40 percent](#) from the previous month, a sign that many coronavirus cases are not recorded.

Consequently, there is an increased [distrust](#) toward the ability of Jokowi's government to handle the spread of COVID-19. The government, however, instead of being upfront about the real number of infections and increasing the number of rapid tests, tried to silence critics through its Police Chief, Idham Azis. Azis issued a [telegram letter \(Surat Telegram\) number ST/1100/IV/HUK.7.1/2020](#) (Fake News Letter) on April 8. This letter is an internal regulation that provides guidelines for the Police on how to handle cyber-crime during the COVID-19 pandemic. The Police asserted that it empowers them to take action against people spreading false information regarding the coronavirus, and gives them authority to prosecute acts defaming the president's or government officials' ability to handle the coronavirus.

The action of Indonesia's Police Chief to establish the Fake News Letter has the potential to restrict the freedom of speech. Even before this letter was issued, the police arrested [51 people](#), having accused them of spreading false information about coronavirus.

## The illegitimate letter

There is no doubt that the spread of misinformation about coronavirus poses a serious challenge to many countries across the world. The United Nations, too, recognizes that the spread of false information [is putting lives at risk](#). This problem is particularly relevant in the Indonesian context, where even some government officials [make statements in contradiction of facts](#). For example, the Indonesian Health Minister, Doctor Terawan, known as a supporter of the Pseudoscience approach in medical therapy, publicly stated that coronavirus can be resisted with [prayer](#).

These statements, coupled with the Jokowi government's non-transparent attitude, have led to [uncertain information](#) circulating in society about coronavirus. Ironically, it is this chaotic handling of coronavirus by Jokowi's government which could make correct news spread by citizens as well as [criticism of the government](#) be labelled as fake news – because it contradicts the factually incorrect information issued by the government.

Apart from the threat toward freedom of speech, this letter also lacks a legal basis. The police claims the Indonesian Penal Code and the Law No 11 Year 2008 on the Information and Electronic Transaction (ITE Law) to be the legal basis for issuing the letter. The provisions of the Penal Code, however, that penalize the acts of defaming the president (Article 134, Article 136 bis, and Article 137) were struck down by the Constitutional Court in 2007 ([013-022/PUU-IV/2006](#)).

In its decision, the Constitutional Court considers that the Articles prohibiting people from defaming the President are contrary to Article 28 of the [Indonesian 1945 Constitution](#), which guarantees the right to free speech. The Court also mentioned that this prohibition has the potential to restrict the right to receive and deliver information which is laid down in Article 28F of the 1945 Constitution. The Court further argued that these articles are vulnerable to abuse as the government could interpret mere criticism of the President as defamation; and since Indonesia has transitioned to democracy in 1998, such laws have no place in the country's legal order. This means that this letter has blatantly [opposed the decision of the Constitutional Court](#) by reviving Penal Code Articles that have long been invalidated.

The ITE Law cannot serve as a legal basis for the letter, either, because, according to Article 28 (1) ITE Law, criminal proceedings can only be performed for spreading false news that relate to transactional matters. Another provision in the ITE Law that the Police institution believes to serve as a legal basis for the Fake News Letter, namely Article 28 (2), cannot be used in this context, either, since this article was more related to the hate speech act against minority groups.

## Like the father that must not be criticized

In my previous [post](#), I have explained that President Jokowi intends to use the civilian emergency status to deal with the coronavirus spread, which is included in the state of emergency category in Article 12 of the 1945 Constitution. Fortunately,

his efforts to that effect were widely rejected by the public which fears the implementation of this status will [endanger Indonesian democracy](#), given that its implementation would give excessive power to the executive since the goal of this status is to overcome a war or conflict situation rather than a health crisis caused by a pandemic.

That is why President Jokowi did not establish a civilian emergency, rather on 31 March, he declared a health emergency status that was based on Indonesian Law No. 6 of 2011 on Health Quarantine (Health Quarantine law), and which is not included in the state of emergency category in Article 12 of the 1945 Constitution. The health emergency is more appropriate to be included in the category of [small emergency](#), i.e. an emergency that, does not relate to political matters. After all, the aim of this status is to overcome the emergency situation resulting from the spread of diseases.

The health emergency status gives Jokowi's government the ability to restrict people's rights during this pandemic but these powers are limited to restricting free movement as well as social activities carried out in public spaces. It does not allow the government to limit the freedom of speech and the flow of information in the public sphere. Or, in other words, during the health emergency, people can still scrutinize and criticize the actions of the government in handling the pandemic.

During the civilian emergency status, on the other hand, the President as commander in chief of the army can limit the flow of information and freedom of speech of the people, and his actions during this status cannot be supervised by either the parliament or the courts. As a consequence, government actions escape public scrutiny under the civilian state of emergency pursuant to Article 12 of the 1945 Constitution.

The reason why the civilian state of emergency gives unchecked power to the President was because this provision dates back to the original version of the 1945 Constitution that has been promulgated on 18 August 1945. The original version of the 1945 Constitution was built by Soepomo – its main drafter – through the authoritarian concept of ['integralism'](#) which views the government and the people as a unity (*manunggaling kawulo gusti*). This understanding makes it acceptable for the government to freely maneuver without constitutional bounds in regards to maintaining public order. And since the state of emergency provision has not been changed when the 1945 Constitution was amended four times between 1999 and 2002 to democratizes the political system, its integralist character still persists in that provision.

In light of this, it seems like Jokowi's government has attempted to obtain those unlimited powers that [typically come with](#) a civilian state of emergency through the back door: The Fake News Letter has the potential to limit the freedom of speech by preventing people to criticize the government and openly violated the Constitutional Court's decision under the pretext of fighting the coronavirus spread.

This letter coupled with the government's stance which publicly stated that they are still ready to change the health emergency status to civilian emergency once

the situation becomes abnormal also reveals that Soepomo's integralist concept strongly influences the Jokowi's government's visions to handle the coronavirus. This is hardly surprising as this concept regards the government as a father who knows what is best for his children (the people) without being subject to criticism.

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