



## Emergency Legislative Flexibility: The Formation of Regional Regulations in Indonesia During Extraordinary Conditions

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### ABSTRACT

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This study aims to analyze the process of forming regional regulations (perda) in extraordinary circumstances under Law Number 13 of 2022 concerning the Formation of Legislation (UU P3), and to evaluate the validity of regional regulations enacted outside the Regional Regulation Formation Program (Propemperda). The specific objective is to examine the legal process underlying the formulation of regional regulations during emergency conditions, with attention to how procedural flexibility is accommodated within Indonesia's constitutional framework. In a unitary state that embraces the principle of decentralization, regional regulations serve as an essential legal instrument for addressing local needs, particularly during crises such as the Covid-19 pandemic. The research applies a normative juridical approach combined with case study analysis, focusing on the West Sumatra Regional Regulation Number 6 of 2020 concerning New Habit Adaptation as a concrete example. Findings indicate that regional regulations formed outside the Propemperda remain legally valid when justified by urgent emergency conditions, as provided in Article 38 paragraph (2) of the P3 Law, provided they receive joint approval from the Regional People's Representative Council (DPRD) and the regional head, and do not contradict higher-level laws and regulations. This reflects the application of the principle *salus populi suprema lex esto* (safety of the people is the highest law), where legal exceptions are permissible during extraordinary situations if the principles of legality, accountability, and public interest are preserved. Overall, this study contributes to the discourse on emergency law by demonstrating how legislative flexibility strengthens governance resilience while remaining within constitutional legality.

***Keywords: Propemperda; Regional Regulations; State of Emergency***

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## Background

Background In accordance with Law Number 13 of 2022 about the Formation of Legislation (UU P3), this study intends to examine the procedure for creating regional regulations (perda) in exceptional situations and evaluate the legality of regional regulations created outside of the Regional Regulation Formation Program (Propemperda). Regional laws are a crucial legislative tool for responding to local needs in unitary state systems that follow the decentralization concept, especially during emergencies like the Covid-19 pandemic. With a focus on West Sumatra Regional Regulation Number 6 of 2020 concerning New Habit Adaptation as a specific example, normative legal and case studies are the research methodology employed.

However, the reality on the ground shows that in extraordinary conditions such as the Covid-19 pandemic, this legislative process often experiences serious obstacles, especially in terms of the speed and accuracy of regulatory ratification. Emergency situations demand a rapid legal response so that public protection can be carried out immediately. In this context, the formation of regional regulations outside the Propemperda is an alternative that is considered legitimate and relevant, in accordance with the provisions of Article 38 paragraph (2) of the P3 Law which allows exceptions to formal procedures to support handling urgent situations.

Previous research, such as that conducted by Mannan *et al.*, (2024), emphasizes that under normal conditions, legislative procedures must be carried out procedurally to ensure legality, legitimacy, and accountability. However, some studies also acknowledge that in extraordinary situations, the law must be able to adapt without losing the fundamental essence of the legislative process. Research by (Kusumaputra & Retnowati, 2020) shows that in practice, the formation of regulations in emergency situations often involves discretion from the relevant officials, which must still be supported by considerations of urgency and legal fairness.

Within the framework of legal theory, the concept of the rule of law (Rechtsstaat) traditionally emphasizes the importance of formal procedures and legal certainty. However, in the context of urgent conditions, the emergency law theory developed by Carl Schmitt offers the view that law needs to be adaptive and flexible in order to save society and maintain state stability (Scheuerman, 2014). Schmitt argued that the executive power must have certain powers to take quick steps in crisis situations, as long as it continues to pay attention to the principles of human rights and the rule of law.

In addition, the theory of decentralization and regional autonomy as explained by (Binder *et al.*, 1966), emphasizes that regions have substantive legislative authority, including in emergency situations, on condition that they undergo careful consideration and maintain accountability. In the context of an emergency, granting discretion to regions can strengthen their ability to provide regulations effectively and responsively to the needs of local communities (Widayati, 2020).

The relevance of the case study in West Sumatra regarding Regional Regulation Number 6 of 2020 in this case is very important. The regulation was formed without going through the Propemperda and without a complete academic paper, but still meets the basic substantive and procedural requirements, and is based on the urgency of the Covid-19 pandemic situation. Previous research such as (Ekowati, 2022a) stated

that in an emergency, the courage to innovate legislation can meet urgent needs, as long as it is carried out on a legal and responsible basis. With this background, this study aims to examine the legal and practical process of forming a regulation in extraordinary circumstances according to the P3 Law and whether regulations formed outside the Propemperda remain valid in extraordinary situations.

This approach is very important to emphasize that in certain conditions, legal flexibility is needed to maintain the continuity of government functions and protect community rights, while ensuring that each process still has a legal basis and principles of accountability.

## Literature Review

The formation of regional regulations (perda) during emergencies has been widely debated in Indonesian legal scholarship. Mannan *et al.*, (2024) argue that under normal conditions, legislative procedures must follow strict protocols to maintain legality and accountability. However, Kusumaputra and Retnowati (2020) highlight that extraordinary conditions often necessitate discretionary measures by officials, provided they are grounded in urgency and fairness. This tension aligns with Schmitt's emergency law theory, which emphasizes that legal systems must remain adaptive to safeguard stability during crises (Scheuerman, 2014).

From the perspective of decentralization, Binder *et al.*, (1966) assert that regions hold substantive authority, including emergency lawmaking, as long as accountability is preserved. Widayati (2020) further stresses that participatory and fair legislation enhances responsiveness to community needs. Empirical cases support this: Ekowati (2022a; 2022b) underscores that innovative emergency regulation is valid if legally and responsibly enacted, while Roza and S (2019; 2021) show that public participation and positivist traditions influence local law-making.

The principle *salus populi suprema lex esto* reinforces this flexibility, prioritizing public safety over rigid formalism (Effendi & Alfauzi, 2021; Nugroho, 2024; Lumbuun, 2005). Thus, as Bayu Aryanto (2025) and Parlindungan (2018; 2025) note, fast-track legislation outside Propemperda is legitimate when urgency, consensus, and higher-law consistency are ensured, as exemplified by West Sumatra's Regional Regulation No. 6 of 2020.

## Methods

This study employs a normative juridical approach, focusing on legal norms contained in legislation and legal doctrines (Aristeus, 2018). This method is considered the most suitable for analyzing emergency situations because it examines positive legal provisions, particularly Law No. 13 of 2022, as the legal basis for regional regulations in extraordinary circumstances. Emergencies require strong legal certainty, and a normative juridical approach ensures that government actions remain within constitutional boundaries. It also allows comparative analysis between legal norms and legislative practices during emergencies, as in the case of West Sumatra Regional Regulation No. 6 of 2020. The data used in this study consist of primary legal materials (laws and regional regulations), secondary materials (books, journals, and scholarly articles on emergency law and the rule of law), and tertiary materials (legal dictionaries and encyclopedias) (Rizkia, 2023). Data analysis is conducted descriptively and analytically, with a comparative-normative perspective to evaluate whether legislative practices during emergencies align with constitutional principles.

However, this research has certain limitations. As a normative legal study, it relies primarily on document analysis, such as statutory texts, academic drafts, and legislative records, without incorporating empirical interviews with key stakeholders like legislators, government officials, or affected communities. This

reliance on textual sources means the study emphasizes legal-normative and doctrinal aspects rather than sociological realities, offering valuable insights into constitutional and regulatory consistency but providing a less comprehensive view of the practical challenges faced during emergency governance.

## Results & Discussion

### A Field the Process of Forming Regional Regulations in Extraordinary Situations According to the P3 Law

Based on Law Number 13 of 2022 concerning the Formation of Legislation (Law P3), the process of forming Regional Regulations (Perda) in general must go through complete stages in the Regional Regulation Formation Program (Propemperda), including formulation, discussion, and ratification involving the Regional People's Representative Council (DPRD) and regional heads. This formal procedure aims to ensure that the process is transparent, participatory, and accountable (Parlindungan Miasiratni, 2025).

However, the P3 Law provides room for the formation of regional regulations outside the Propemperda in emergency conditions or extraordinary circumstances, as stipulated in Article 38 paragraph (2). This provision states that regional regulations (perda) can be formed without going through the Propemperda stages if they meet three main conditions: (a) the existence of extraordinary conditions that require a quick response, (b) the urgency and political agreement between the regional parliament (DPRD) and the regional head, and (c) the substance of the perda does not conflict with higher legal norms (Bunga, 2020). In practice, this process is carried out quickly to respond to urgent needs, such as in the context of the Covid-19 pandemic. A concrete example is the West Sumatra Provincial Regulation Number 6 of 2020 concerning New Habit Adaptation. This regulation did not go through the Propemperda stage and was not accompanied by a complete academic manuscript, but it remains legally valid because it meets the urgency requirement, received approval from the Regional People's Representative Council (DPRD), and complies with the provisions of Article 38 paragraph (2). Additionally, the validity of this regional regulation is based on the principles of legal responsiveness and deterrence against procedural formalism, which assert that in extraordinary situations, the legislative process can be adjusted to swiftly protect public safety and interests (Putra *et al.*, 2025).

This explains that the formation system of regional regulations (Perda) in Indonesia, although adhering to the principle of formalism, also has inherent flexibility to accommodate the urgent needs of the community in crisis or emergency situations. Furthermore, also shows the principle of balance between formal legality and substantive responsiveness in the regional legislative process (S, 2021); (Mannan, *et al.*, 2024). The validity of regional regulations (Perda) formed outside the Propemperda in emergency conditions is not only based on the fulfillment of the normative requirements of Article 38 paragraph (2) of the P3 Law but is also supported by a broader understanding of the legal purpose of protecting public interests.

The West Sumatra Provincial Regulation Number 6 of 2020 is not just an example, but a strong empirical foundation because it illustrates how the law can be a pragmatic and adaptive tool in facing unexpected challenges while maintaining the applicable legal framework. Regional Regulations Formed Outside the Propemperda Remain Valid in Extraordinary Situations. In the context of the Republic of Indonesia, the formation of regional regulations (perda) outside the Propemperda in extraordinary conditions is explicitly regulated through the provisions of Article 38 paragraph (2) of the P3 Law, which provides procedural flexibility in facing urgent conditions such as natural disasters, pandemics, or other extraordinary situations. This provision serves as a legal foundation that strengthens the argument that regional regulations formed outside the Propemperda can still be considered valid if they meet certain requirements, including urgent necessity and mutual agreement between the Regional Parliament (DPRD) and the regional head (Parlindungan, 2018).

Previous research by (Ekowati, 2022b) in their study of emergency legislation in Indonesia stated that “the formation of regional regulations outside the Propemperda is a legitimate and necessary legal response in dealing with extraordinary situations, provided that the procedure is supported by strong justification and does not conflict with higher regulations.” They emphasize that in the context of emergencies, the principles of substantive legality and the interests of the people must be the main priority, and the law must be responsive and adaptive.

Furthermore, research by (Ansori, 2022; Nugroho, 2024) affirms that “the use of the legislative mechanism outside the Propemperda by regional governments does not automatically constitute a legal violation, as long as the urgent reasons and the ratification procedure fulfill the provisions stipulated by law, since this aligns with the spirit of regional autonomy and the principle of *salus populi suprema lex esto*” (Lumbuun, 2005). A concrete example is the West Sumatra Regional Regulation Number 6 of 2020, which was formed in response to the Covid-19 pandemic. Although its process did not fully follow the Propemperda stages, the regulation was still declared legally valid due to the urgency of the situation and approval from the DPRD and the regional head (Roza & S, 2021). This case study aligns with the views of scholars who argue that under extraordinary conditions, the validity of regional regulations does not solely rely on formal aspects but also on material aspects and elements of the principle of substantive legality.

In this context, research by (Bayu Aryanto, 2025) affirms that “the formation of regional regulations outside the Propemperda, as long as it meets the urgency requirements, political agreement, and does not contradict higher laws, still holds strong legal standing and is in accordance with the principles of the rule of law.”

Therefore, in extraordinary situations, regional regulations formed outside the Propemperda remain legally valid if they meet the elements of urgency, mutual agreement, and compatibility with higher legislation (Roza & S, 2019). This affirms that the allowance for legislation outside the Propemperda is not a violation, but rather a constitutional adjustment necessary to maintain the continuity of governance and the protection of citizens’ rights in critical conditions.

## Conclusion

Based on juridical analysis and case studies, this study concludes that the process of forming regional regulations (perda) during extraordinary situations, such as the Covid-19 pandemic, possesses a legitimate and constitutional legal basis as long as it complies with the provisions of the P3 Law, particularly Article 38 paragraph (2), which allows regulations to be established outside the Propemperda in urgent conditions. Both legal analysis and practice demonstrate that such regulations remain valid if they meet three core requirements: (i) the presence of urgent and extraordinary circumstances, (ii) political agreement between the DPRD and the regional head, and (iii) consistency with higher laws and regulations.

The principle of *salus populi suprema lex esto* reinforces the idea that public safety constitutes the highest law; hence, in times of crisis, swift and responsive legislation is indispensable, provided that fundamental principles of legality and accountability are upheld (Effendi & Alfauzi, 2021). The case of West Sumatra Regional Regulation Number 6 of 2020 exemplifies this, showing that despite bypassing some formal Propemperda procedures, the regulation retained legal validity because of its urgency, legislative approval, and substantive alignment with societal needs. These findings affirm that procedural flexibility in legislative processes during emergencies does not undermine the rule of law; instead, it constitutes a constitutional adjustment that is justified to safeguard public interests. This study contributes to the legal discourse by deepening the understanding of how emergency law operates within Indonesia’s



constitutional framework, particularly in balancing procedural legality with substantive justice. From a practical perspective, the findings provide guidance for policymakers and regional governments in formulating responsive yet accountable regulations during crises, emphasizing that flexibility must always be accompanied by transparency and legal certainty to maintain public trust. At the same time, the research offers significant academic value by enriching constitutional and legislative scholarship through empirical evidence of regulation-making outside the Propemperda during extraordinary conditions. Ultimately, it highlights the adaptability of Indonesia's rule of law and opens opportunities for further comparative studies on emergency legislation in different jurisdictions.

## Declarations

**Ethics Approval and Consent to Participate:** Consent for this study was obtained from all participants before data collection. Participants participated voluntarily and the confidentiality of their responses was strictly maintained.

**Conflicts of Interest:** No conflict of interest is involved in this study. The study has not been previously submitted for publication elsewhere.

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