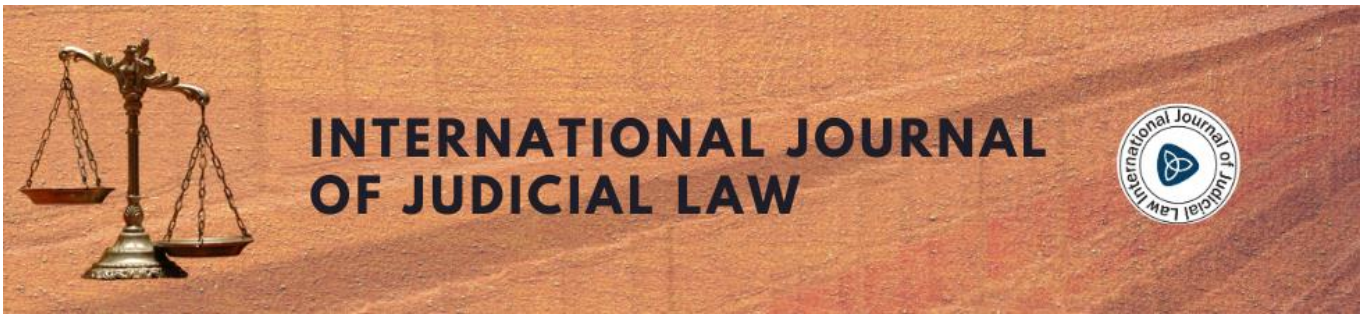




Assessing the Validity of the Term 'Compelling Crisis Situation' as a Constitutional Basis for Presidential Authority to Issue Government Regulations in Lieu of Law

Willy Naresta Hanum ¹, Ahmad Ainun Najib ^{2*}

^{1, 2} Fakultas Hukum Universitas Diponegoro Semarang, Indonesia

* Corresponding Author: Ahmad Ainun Najib

Article Info

ISSN (online): 2583-6536

Volume: 04

Issue: 03

May-June 2025

Received: 07-04-2025

Accepted: 04-05-2025

Page No: 27-31

Abstract

The President's authority in issuing several government regulations in lieu of laws (Perppu) is considered unobjective. It opens up opportunities for unhealthy political interests in government because the criteria for 'compelling interests' in forming Perppu are not objectively regulated. This article aims to determine the authority's validity, the basis for 'compelling interests', and a case study of the formation of Perppu No. 2 of 2020. This article uses a descriptive normative research method. The approaches used are the statutory approach and the case approach. The results of the analysis obtained are that the derivative authority held by the President is a legitimate authority according to the Law. However, the criteria for 'compelling interests' have not been regulated as a reference for deciding whether the President's application for the formation of Perppu is subjective or objective. Perppu No. 2 of 2022, the requirements for elements of economic and political interests, the validity of the issuance of the Perppu due to the legal vacuum in various fields/clusters and the issue of accelerating economic growth are not relevant and valid considering the results of the Constitutional Court's judicial review. The 'compelling interests' conditions used to issue the Perppu do not align with the constitutional method, especially in forming and changing laws and regulations.

DOI: <https://doi.org/10.54660/IJL.2025.4.3.27-31>

Keywords: Perppu, Urgency, Compelling, Interest, President

Introduction

Public policy is a decision made by the government or government agencies to address certain problems related to the interests and benefits of many people. The formation of a policy must go through a series of processes starting from the identification of a broad policy agenda, problem analysis, development of policy instruments, consultation, coordination, decisions, implementation, and evaluation ^[1]. Because not all problems can be resolved, the determination of public policy must meet several considerations of the scale-priority of demands that need to be managed or met quickly and urgently. The process of determining public policy cannot be separated from the process of competition and political "bargaining" ^[2].

One of the public policy products that is general in nature is the Government Regulation in Lieu of Law (Perppu). The authority to form Perppu in Indonesia lies with the President as the head of government ^[3]. This authority is mandated in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI Tahun 1945). In the event of a compelling urgency, the President has the right to stipulate government regulations in lieu of laws ^[4]. Furthermore, this authority is regulated in Law No. 12/2011 on the Formation of Legislation (Law No. 12/2011) jo. Law No. 13 of 2022. The authority possessed by the President to form Perppu is a derivative authority derived from legislative authority ^[5].

Basically, Perppu is interpreted as a Government Regulation that acts like a Law. This means that Perppu is a Government Regulation that is given the same authority as a Law. This is because the Perppu is essentially not a law, but is equal to a law.

The formation of a Perppu must meet the criteria for the formation of a Perppu based on an emergency or urgent situation, namely a condition that means 'Case of Compelling Urgency'.

The case study of the issuance of Perppu No. 2 of 2022 on Job Creation has various long issues behind it. This Perppu is a follow-up to implement the Constitutional Court Decision Number 91/PUU-XVIII/2020. Since Law No. 11 of 2020 on Job Creation (Law No. 11 of 2020) was ruled conditionally unconstitutional for 2 years by the Constitutional Court, it is necessary to improve the procedure for its formation, which allows for changes in substance. However, this improvement was then carried out by issuing Perppu No. 2 Year 2022, whose legislative process was far from community involvement. Even hours before the Perppu was enacted, the draft Perppu had not been published on any official government website so that it could be accessed by the public. Recall that the Constitutional Court declared Law No. 11/2020 as conditionally unconstitutional due to the absence of proper participation in its legislative process^[6]. However, this improvement is actually directed at the formation of the Job Creation Perppu, where some of the substance is also indicated to be changed and not better than the previous articles.

Perppu that have been issued by the President so far tend to regulate the urgency of force in the economic sector. However, it does not rule out the possibility of other criteria being taken into consideration. For example, urgency due to time constraints, the possibility of a crisis, legal vacuum, inadequate rules, and delay in the enactment of a statutory provision. These criteria are not interpreted cumulatively but rather emphasize the criteria of urgency. These criteria become one of the important benchmarks for the Government to include a problem in society to become a public policy agenda^[7]. The issuance of Perppu No. 2 of 2022 is based on economic urgency in general, and specifically because it is to implement the Constitutional Court Decision No. 91/PUU-XVIII/2020 so that it is considered necessary to make improvements through replacing Law No. 11 of 2020.

The particulars in this case can take the form of different legal reasoning. It can even be assumptive and not objective. For example, in Perppu No. 2 of 2022, the formation of the Perppu was not due to economic urgency, but because of the Constitutional Court Decision. Economic urgency can be used as a prologue. This means that urgency is not given rigid limits by legislation. Therefore, to determine what kind of conditions can be called a 'compelling urgency' ends up being the subjectivity of the President. This subjectivity cannot be assessed because it does not have valid indicators of truth. The policies issued by the government also raise various questions, whether the policies issued are really to solve critical and urgent community problems or just to fulfill the political agenda^[8].

This paper discusses the authority of the President in forming Perppu; and the validity of the subjectivity of the issuance of Perppu with the main case study of Perppu No. 2 of 2022 so that it is known whether the basis for the issuance of this Perppu is a policy to solve urgent community problems. Although Perppu No. 2 of 2022 has a legal basis for its enactment so that it remains valid in the eyes of normative law, but regarding the consideration of 'matters of compelling urgency,' the subjectivity of its validity needs to be studied more deeply.¹¹ Therefore, based on these problems, it becomes an interesting study to find out the validity of the

'compelling urgency' of the issuance of Perppu.

Research Methods

The research conducted is normative legal research based on legal materials with data collection techniques through library-based studies^[9]. The legal materials used include primary and secondary legal materials^[10]. The statue approach is used to examine laws and regulations related to the president's authority to form Perppu, including the 1945 Constitution of the Republic of Indonesia, Law No. 12/2011 jo. In addition, this article uses a case approach, which discusses the validity of 'matters of compelling urgency' in the issuance of Perppu No. 2 of 2022. The analysis technique used is qualitative and interpretation

Discussion

A. Presidential authority and the subjectivity of issuing perppu

Perppu is issued to ensure the resolution of urgent state issues that require quick and precise action. Perppu is conceptualized as a regulation that in terms of its content material should be stipulated as a law, but due to a state of urgency, it is stipulated in a government regulation^[11]. In the hierarchy of laws and regulations, laws and Perppu have the same position but differ in their making^[12]. According to Bagir Manan, the president's authority to enact Perppu is an extraordinary authority in the field of legislation while the authority to form laws, government regulations and presidential regulations is an ordinary authority. The House of Representatives (DPR) as the main legislative actor certainly has a role in overseeing the issuance of Perppu. The DPR also has the authority to ratify Perppu if the Perppu is legally drafted and meets the criteria for promulgation^[13].

The power of the president in running the government is very broad, one of which is in the form of presidential power in the formation of laws and regulations, although in the concept of trias politika the president as an executive is limited to implementing laws. However, in the distribution of power, the president can also take part in forming a law. As an executive institution, the president also has authority in the legislative field in its conception, namely the authority to form Perppu. This authority is in order to expedite government affairs that are closely related to rational efforts, which as head of government is the responsibility of the president. In other words, the reasons for the formation of Perppu will be based not only on legal aspects but also non-legal aspects such as economic, social, cultural and politics that influence the president in making Perppu^[14].

The authority is based on the conception of a compelling urgency, which in practice in the 1945 Constitution of the Republic of Indonesia still raises debates about the limits of the formation of Perppu by the president that arise among practitioners and legal scientists because the compelling urgency is still very subjective^[15]. The determination of the urgency requirement is highly dependent on the subjectivity of the president, although it then depends on the objective approval of the people's representatives in the DPR.

Perppu is at least issued by fulfilling 4 (four) criteria, namely^[16]: 1) Issued only in a state of compelling urgency; 2) Perppu is not allowed to regulate matters that are in the Constitution or MPR Tap; 3) May not regulate the existence and duties of the authority of state institutions; and 4) Only regulate the provisions of laws related to the running of the government. The emergence of a crisis or extraordinary event that gets

great attention from the public, thus forcing decision makers to pay close attention to the event or crisis, by putting it on the government's agenda^[17].

The Constitutional Court Decision No. 138/PUU-VII/2009 on the testing of Perppu No. 4/2009, in its consideration provides an objective measure of the issuance of Perppu which is compiled through 3 (three) parameters for the President in making Perppu, including^[18]: 1) Urgent circumstances or needs to resolve legal problems quickly based on the Law; 2) The occurrence of a legal vacuum regarding the required law does not yet exist or has existed but is inadequate; and 3) The vacuum cannot be overcome by making laws in the usual procedure because it takes a long time while the circumstances that force it to be resolved immediately.

As for the supervision by the DPR in the issuance of Perppu, it must pay attention to the following: First, the Perppu must be submitted in the first session of the next DPR, which means that if the Perppu is issued by the President during the first session, it must be submitted in the second session of the DPR; keeping in mind that the validity of the Perppu is temporary and if in the next session it is not approved by the president, the Perppu must be revoked. Second, the proposed Perppu must be assessed by the DPR regarding the basis of the president's authority in stipulating the Perppu to determine whether it meets the requirements of a compelling urgency as in Article 22 (1) of the 1945 Constitution of the Republic of Indonesia. Then the assessment of the Perppu stipulation whether it is in accordance with the principles of good regulatory formation.

Third, the Perppu issued by the president is at a time when the DPR is not in session or in recess, this is so that the Perppu remains under the supervision of the DPR both in its stipulation and implementation. Fourth, the Perppu must contain arrangements regarding the administration of government or administration to facilitate or resolve government problems. If the Perppu contains constitutional provisions, criminal provisions or human rights, the Perppu will be rejected by the DPR. Fifth, when a Perppu is rejected by the DPR, the Perppu is declared null and void.

Basically, a compelling urgency has been regulated in general and several legal scholars have provided the parameters of a compelling urgency as a condition for the stipulation of Perppu. Parameters set out in written regulations can be used as a strong and binding reference. However, rigid rules that limit the subjectivity of the interpretation of 'compelling urgency' have not been provided. Nevertheless, the Constitution provides a legal basis for the formation of Perppu. The government, in this case the president, is based on his authority to subjectively assess the state of the country in relation to circumstances where a law cannot be formed immediately. This is because, if given to the DPR, the discussion will take a long time and must go through a series of discussion sessions in the DPR until it can be approved later. Meanwhile, the need for material arrangements is very necessary and urgent so it is necessary to form a Perppu^[19].

B. Validity of 'compelling urgency' in the issuance and implementation of perppu number 2 year 2022

The formation of Perppu No. 2 of 2022 is based on several considerations, which are claimed to be 'matters of compelling urgency,' including the urgent need to resolve legal issues and the occurrence of a legal vacuum due to the testing of Law No. 11 of 2020, which cannot be resolved

through ordinary procedures because it takes a long time. Meanwhile, this urgent situation needs certainty to be resolved. Based on the matters mentioned above, in a compelling urgency, in accordance with the provisions of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the President is deemed authorized to enact Government Regulations in Lieu of Laws.

The legal vacuum that is considered critical by the President in this case is based on Law No. 11 of 2020-omnibus law which has a very broad and complex scope. Therefore, if this law is canceled, there will be a legal vacuum in various broad sectors. At least the scope that is affected, namely: a. improvement of the investment ecosystem and business activities; b. employment; c. ease, protection, and empowerment of cooperatives and micro, small, and medium enterprises; d. ease of doing business; e. research and innovation support; f. land acquisition; g. economic zones; h. Central Government investment and acceleration of national strategic projects; i. implementation of government administration; and j. imposition of sanctions.

However, it should be underlined that the formation of this Perppu is based on the urgency of a legal vacuum due to the inaction of a law. Initially Law No. 11 of 2020 was enacted not in a state of urgency and force. Before the emergence of the omnibus law, laws and regulations in various sectors could still run well. In addition, considering the decision of the Constitutional Court Number 91 / PUU-XVII / 2020, it requires improvements to Law No. 11 of 2020 not only in its substance^[20]. The formation of Law No. 11 of 2020 has a procedural legal defect. This means that the main problem with the omnibus law is its procedural defect, namely the absence of public participation, not its substance. Therefore, the issuance of Perppu, which is used as another way to fix this procedural defect, is certainly irrelevant and invalid.

The legal vacuum should not arise if the government seeks to improve Law No. 11/2020 in accordance with the mandate of the Constitutional Court's decision, which requires public participation and the formation of laws and regulations. This is regulated in Article 96 of Law No. 13 of 2022. The right of participation must be given by the state to the community to participate in policy-making so that the community can influence the resulting policies. The end result is that policies will be in accordance with the needs of the community^[21]. Meaningful participation is, first, the right to be heard; second, the right to be considered; and third, the right to get an explanation or answer to the opinion given (right to be explained).

Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia provides a legal basis for regulating the substance of Perppu No. 2 of 2022 which should be regulated in the Law, but due to compelling circumstances it is issued in the form of a Perppu. This is because if the improvement of the formation of Law No. 11 of 2020 is given to the DPR, the discussion will take a long time and must go through a DPR meeting which, if followed, will take a long time to be approved so that it can place the country in an emergency legal vacuum^[22]. This is because the need for material regulation is very necessary and urgent, giving the president the authority to make a Perppu.

However, in this case, it is precisely the discussion in accordance with the procedure and involving the community that is the consideration of the issue of the Constitutional Court's decision. It is the procedure of law-making that must be improved. Therefore, the Constitutional Court's decision

should not be answered using Perppu, which tends to impose its legal basis and is used to shorten the discussion time of a law that is so broad in scope. Take cover behind the President's subjectivity in determining whether the Perppu meets the criteria of 'compelling urgency'.

Regarding the subjectivity of the President, in the concept of trias politica, the President as an executive is limited to implementing the law. However, in the distribution of power, the president can also take part in forming a law, namely in the formation of government regulations in lieu of laws^[23]. This authority is in order to expedite government affairs that are closely related to rational efforts, which as head of government is actually the responsibility of the President^[24]. In relation to the checks and balances mechanism in the issuance of Perppu, the DPR still has a role in determining the sustainability of the Perppu. Law No. 12/2011 on the Establishment of Laws and Regulations states that Perppu issued by the President must be submitted to the DPR at the next session in order to remain in force. In this case, the DPR only needs to approve or reject the enactment of the Perppu. The submission of the Perppu to become a law must be done during the first session of the DPR after the Perppu is enacted. This mechanism is carried out to ensure that the President's authority is not exercised arbitrarily and still gets approval from members of the House. This means that the issuance of Perppu is a subjective authority that is fully owned by the president to determine the conditions of urgency that must be given immediate policy. The Perppu then becomes objective if the Perppu is ratified by the DPR if it meets the elements of a compelling urgency.

However, the concept of 'compelling urgency' still creates a debate about the limits of the formation of Perppu by the president that arises among practitioners and legal scholars because the compelling urgency is very subjective^[15]. The President's assessment will become objective if it is assessed and justified by the DPR based on the provisions of Article 22 paragraph (2) of the 1945 Constitution^[25]. This means that the DPR becomes the final control to assess whether the 'case of compelling urgency' is objective or subjective so that it can be enacted into law. Perppu has a validity period limit^[26]. The limits of the president's authority in making Perppu still also have limits that are adjusted to the values in the constitution. However, until now there has been no legislation that explicitly regulates the criteria of 'compelling urgency' as one of the bases for the President to enact Perppu, and the basis for the DPR to accept/reject the submission of a Bill on the enactment of Perppu.

In Perppu No. 2 of 2022, referring to the legal vacuum proposed by the President as the legal reasoning of 'matters of compelling urgency' is something that should be reconsidered. This is because it is still possible that there are other procedures that can be used instead of issuing a Perppu, namely since 2020 to fix the procedural defects in the formation of Law No. 11 of 2020. Although subjectively, the President has the right to determine a legal vacuum as urgent. However, this subjective reason is irrelevant and less valid to be objective because in fact the formation of an omnibus law is not an urgent state agenda, the previous regulations can still be implemented. More interestingly, this Perppu has been ratified by the DPR and is still being implemented even though changes have been made in several sectors.

Closing Conclusion

The authority to form Perppu rests with the President and is directly mandated by the Constitution, which must be based on the existence of a 'compelling urgency'. However, the use of the President's authority is sometimes interpreted too broadly and subjectively in understanding the terms of the case and the compelling urgency. This is because until now there is no legislation that explicitly regulates the criteria for 'compelling urgency'. Based on the case study on Perppu No. 2 of 2022, the subjective reason for the legal vacuum given by the President to issue the Perppu is not relevant to be objective. This is because the decision of the Constitutional Court Number 91/PUU-XVIII/2020 which decided Law No. 11 of 2020 was conditionally unconstitutional and required improvements not only in its substance. However, the point is to correct procedural defects, namely the absence of public participation. This means that there are procedures that can be carried out to improve the law, not choosing the shortcut of improving the law by issuing a Perppu, which can be done quickly and without a long discussion compared to forming a law. The issuance of Perppu, which is used as another way to fix this procedural defect, is irrelevant. Therefore, the reason for the legal vacuum due to material testing by the Constitutional Court is less relevant and valid to be used as a condition of compelling urgency. Considering the decision of the Constitutional Court, the consideration of the urgency of economic acceleration issues is an unfounded reason

References

1. Althaus C, Ball S, Bridgman P, Davis G, Threlfall D. *The Australian Policy Handbook: A Practical Guide to the Policymaking Process*. London: Routledge; 2022.
2. Mustari N. *Pemahaman Kebijakan Publik: Formulasi, Implementasi Dan Evaluasi Kebijakan Publik*. Yogyakarta: LeutikaPrio; 2015.
3. Zen Zanibar Z. The Indonesian Constitutional System in the Post Amendment of the 1945 Constitution. *Sriwijaya Law Review*. 2018;2(1):45-62.
4. Zamroni M. Kekuasaan Presiden Dalam Mengeluarkan Perppu (President's Authority to Issue Perppu). *Jurnal Legislasi Indonesia*. 2015;12(4):1-38.
5. Indrati MF. *Ilmu Perundang-Undangan*. Yogyakarta: Kanisius; 2007.
6. Wicaksono DA. Quo Vadis Pendirian Mahkamah Konstitusi Dalam Menguji Undang-Undang Cipta Kerja dan Implikasinya Terhadap Kegamangan Pemerintah Daerah Dalam Melaksanakan Kewenangan Mengatur. *Rechtsvinding*. 2022;11(1):77-95.
7. Taufiqurakhman. *Kebijakan Publik Pendelegasian Tanggungjawab Negara Kepada Presiden Selaku Penyelenggara Pemerintahan*. Jakarta: Fakultas Ilmu Sosial dan Ilmu Politik UMB Press; 2014.
8. Purnomo CE. Dasar Konstitusional Penetapan Peraturan Pemerintah Pengganti Undang-Undang dan Batasan Pengaturannya. *Jurnal Hukum dan Pembangunan*. 2017;30(2):245-67.
9. Chui WH, McConville M. *Research Methods for Law*. Edinburgh: Edinburgh University Press; 2017.
10. Marzuki PM. *Penelitian Hukum*. Jakarta: Prenadamedia Group; 2017.
11. Bima MR. Hal Ikhwal Kegentingan Yang Memaksa Sebagai Landasan Pembentukan Peraturan Pemerintah Pengganti Undang-Undang. *Jurnal IUS Kajian Hukum*

- dan Keadilan. 2019;7(3):456-70.
12. Febriansyah FI. Konsep Pembentukan Peraturan Perundang-undangan di Indonesia. *Perspektif*. 2016;21(3):220-29.
 13. Mihradi RM. Kewenangan Mahkamah Konstitusi Menguji Peraturan Pemerintah Pengganti Undang-Undang/Perppu. *Pakuan Law Review*. 2017;3(1):1-15.
 14. Prayitno C. Analisis Konstitusionalitas Batasan Kewenangan Presiden dalam Penetapan Peraturan Pemerintah Pengganti Undang-Undang. *Jurnal Konstitusi*. 2020;17(3):513-35.
 15. Arsil F. Menggagas Pembatasan Pembentukan dan Materi Muatan Perppu: Studi Perbandingan Pengaturan dan Penggunaan Perppu di Negara-Negara Presidensial. *Jurnal Hukum & Pembangunan*. 2018;48(1):1-21.
 16. Hartono. Kewenangan Presiden Dalam Menetapkan Peraturan Pemerintah Pengganti Undang-Undang Menurut Undang-Undang Nomor 12 Tahun 2011. *Jurnal Hukum Samudra Keadilan*. 2016;4(2):85-101.
 17. Anderson JE. *Public Policy-Making*. New York: Holt, Rinehart and Winston; 1997.
 18. Prasetianingsih R. Menakar Kekuasaan Presiden dalam Pembentukan Peraturan Perundang-undangan Menurut Undang-Undang Dasar 1945. *Padjadjaran Jurnal Ilmu Hukum*. 2017;4(2):263-80.
 19. Hsb AM. Kegentingan yang Memaksa dalam Pembentukan Peraturan Pemerintah Pengganti Undang-Undang. *Jurnal Hukum Samudra Keadilan*. 2019;14(1):123-40.
 20. Azhar M. Omnibus Law Sebagai Solusi Hiperregulasi Menuju Sinkronisasi Peraturan Perundang-Undang Di Indonesia. *Administrative Law and Governance Journal*. 2019;2(1):70-8.
 21. Arnstein S. A Ladder of Citizen Participation. *Journal of the American Institute of Planners*. 1969;35(4):216-24.
 22. Muhidin. The Development of Judicial Review of Legislation by the Indonesian Constitutional Court. *Baltic Journal of Law & Politics*. 2022;15(1):75-85.
 23. Isnaeni B. Trias Politica dan Implikasinya dalam Struktur Kelembagaan Negara dalam UUD 1945 Pasca Amandemen. *Jurnal Magister Ilmu Hukum*. 2021;6(1):78-92.
 24. Kuswanto K. Consistency of the Presidential System in Indonesia. *Sriwijaya Law Review*. 2018;2(2):170-82.
 25. Asshiddiqie J. *Hukum Tata Negara Darurat*. Jakarta: PT Rajagrafindo Persada; 2007.
 26. Redi A. *Hukum Pembentukan Peraturan Perundang-Undang*. Jakarta: Sinar Grafika; 2018.