

Analysis of the Legitimacy of the State of Emergency in Forming Perppu Number 2 of 2022 Concerning Job Creation

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ABSTRACT

This study aims to analyze the establishment of Perppu number 2 of 2022 concerning Job Creation. Is the establishment of a work copyright law by the president of the Republic of Indonesia as the head of government something objective. Therefore, in this paper, a maximum of two problem formulations are conceptualized, namely 1) Benchmarks of Compelling Crucial Issues as a runway in forming Government Regulations in Lieu of Laws, and 2) Analysis of Legal Implications of Perppu Number 2 of 2022 concerning Job Creation. Starting from these problems, this paper uses normative legal research with various literature such as books, journals, and statutory regulations (Statute Approach) and also uses a historical approach (Historical Approach) and a comparative approach (Comparative Approach) as a knife. analysis that the making of Perppu number 2 of 2022 concerning Job Creation is a policy that is very inconsistent with the needs that exist in society in Indonesia. From this conception two major findings can be found 1) Knowing the benchmarks in forming a Government Regulation in lieu of Law in accordance with the Constitutional Court Decision number 138/PUU/-VII/2009 is in line with supported theories and dogmas so as to realize findings based on a coherent and systematic concept, and 2) Knowing whether the formation of Perppu number 2 of 2022 concerning Job Creation is an effective regulation, so that effectiveness brings a black shadow in the formation of Perppu number 2 of 2022 so that the legal implications that the author analyzes are the formation Perppu number 2 of 2022 concerning work copyright is a Constitutional Disobedience regulation and is not in accordance with the Constitutional Court Decision Number 138/PUU-VII/2009 Regarding Emergency Conditions.

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Introduction

Legislation is a source of law found in countries that use the Continental European legal system or commonly referred to as the civil law system. The State of Indonesia itself

is one of the countries that adhere to the civil law system, in which statutory regulations are the main source used in the life of the nation and state. Definitely laws and regulations are written rules which contain legal norms that are regulatory, binding and enforceable in general that are made by state institutions or authorities using mechanisms that have been included in laws and regulations (Matalatta, 2009).

In this way the formation of laws and regulations emphasizes *chiri* as a rule of law (*rechtstaat*) not as a mere state of power (*machtstaat*) which is contained in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) as the foundation of the state, especially in article 3 paragraph 1 that " The State of Indonesia is a state of law" The reason why it is called statutory regulations is that these rules have a hierarchy or sequence which theoretically is permitted by Hans Kelsen then followed by Hans Nawiasky. Both agree that legal norms must be tiered and these norms are divided into four parts. that is :

1. Group I : Norma Fundamental (state fundamental norm)
2. Group II : State Basic Rules (*Staatsgrundgesetz*)
3. Group III : Formal Law (*Formelle Gesetz*)
4. Group IV : Autonomous Regulation (*Verordnung En Autonome Satzung*) (Aslansyah and Umar, n.d.).

Regarding the hierarchical regulations above, since long ago in Indonesia it has never been regulated in the 1945 Constitution of the Republic of Indonesia, but it is regulated at the level of statutory regulations, namely Law number 12 of 2011 in lieu of Law number 15 of 2019 and the last in lieu of Law -law number 13 of 2022 (Voegelin, 1945)

The conceptual review above reflects that the essence of the rule of law itself must be able to organize the welfare of society in general in the environmental order while still being guided by law as a tool to achieve the essence of the goals of the country itself (Djanggih & Ahmad, 2017). So that in line with the writing that discusses the exigencies of coercion made by the president with the approval of the DPR (House of Representatives), it is actually in the third group, namely the Formal Law, namely Perppu Cipta Kerja Number 2 of 2022 which in its formation must be for reasons of urgency. or an emergency. Therefore, if we look at history in 1999 - 2002, in this case, there have been four changes to the 1945 Constitution of the Republic of Indonesia, which in the reform era, the type of government in Indonesia has changed greatly, in which the president has a very strong position conceptually. (the strong executive type of government) this is recorded in various articles of the 1945 Constitution of the Republic of Indonesia in terms of maintaining the stability of the country from threats of danger. Referring to article 22 of the 1945 Constitution of the Republic of Indonesia as follows

1. In the event of a compelling crisis, the President has the right to issue a Government Regulation in Lieu of Law.
2. Government Regulations must be approved by the House of Representatives in the following sessions.
3. If approval is not obtained, the Government Regulation must be revoked (Bima, 2019)

If we refer to the opinions of Hans Kelsen and Hans Nawiasky above, there are several significant differences, namely the law that is regulated (*Regelling*) and the law that is statutory (*Beschikking*) and judging is called a decision or verdict (*punishment*). Regulations (*Regelling*) are written legal norms whose enforceability binds citizens in general, for example laws made by the DPR in normal circumstances and Government

Regulations in lieu of laws made by the president in an emergency, while decisions (Beschikking) are official decrees. the competent government contains concrete legal norms and applies only to certain individuals, for example, such as a ministerial decision regarding the granting of a mining business permit to PT Adora Indonesia (AI), and a decision or verdict is a court decision containing provisions for parties in the form of imposing sanctions or exemption from sanctions. or certain legal consequences, for example, the Constitutional Court decision Number 91/PUU-XVIII/2020 which states that Law number 11 of 2020 concerning copyright works is conditionally unconstitutional (Muhtadi, 2014).

Therefore, the origins of the president issuing Perppu number 2 of 2022 concerning Job Creation with the rationalization of the existence of a global and national situation that must require strategic steps by adjusting the MK verdict number 91/PUU-XVIII/2020 which stated conditional unconstitutional so that by issuing it The Perppu is in accordance with the law which is also a revision of the Job Creation Law. Another reason for the issuance of the Perppu according to Mahfud MD in his speech on 30 December 2022 is that it consists of the following (Amalia, 2020).

1. The gravity of the conflict in geopolitical developments
2. War between Russia and Ukraine
3. There is a threat of inflation
4. There is stagflation against the Indonesian state
5. And the need for certainty for investors

From the description of the making of the Perppu above, as we know that the Perppu is a government regulation that replaces the position of the law, but the content material is the same as the material for the configuration law. The configuration was formed by the President himself in an emergency situation in a country. In 2022 there are things that must be known immediately from a policy configuration that utilizes the concept of 'compelling urgency' which in the end confirmed in the Constitutional Court Decision as The Guardian Of the Constitution (guard of the Constitution) number 91/PUU-XVIII/2020 which examines the formal and decided that Law number 11 of 2020 concerning Job Creation was declared Conditionally Unconstitutional so that in essence Perppu number 2 of 2022 annulled the Constitutional Court Decision Number 91/PUU-XVIII/2020 so that it had a huge impact on the inconsistency of policies made by the President, which means the President has carried out violations in the form of harassment of a decision as well as the institution of the Constitutional Court which *mutatis mutandis* (basically) the president does not respect the Constitutional Court (MK) and has practiced the Contempt of the Constitutional Court. This is where the inconsistency of the policies made, namely the issuance of Perppu number 2 of 2022 concerning Job Creation, wasn't the Constitutional Court gave direct authority by the 1945 Constitution of the Republic of Indonesia to review the constitutionality of a law. When declared unconstitutional, legislators must obey and also implement the Constitutional Court's decision no 91/PUU-XVIII/2020 instead of issuing the Perppu itself (Zuraida, 2018).

Research methods

In this study, the normative legal research method was used by using various literature such as books, journals, and statutory regulations (*Statute Approach*) and also use a historical approach (*Historical Approach*) and comparative approach (*Comparative Approach*) as an analytical tool that the making of Perppu number 2 of 2022 concerning Job Creation is a policy that is very inconsistent with the needs of society in Indonesia. It

was further stated by Peter Mahmud Marzuki that normative research is research that suggests what may or may not be done. Conceptually, the research must be balanced, *which should not be* (Hidayat, 2021). Based on this, this normative research has characteristics that make this research a coherent and systematic concept

1. *Comprehensive*, The legal norms contained therein must be bound and related to one another.
2. *All Inclusive*, Legal norms are used as a component of the system so that they can accommodate legal problems that occur in the environmental order so that there is no shortage of legal products.
3. *Systematic*, The legal norms in it must be linked to each other besides that the legal norms must also be neatly arranged so that when applied they must be in accordance with the enforceability of the hierarchy of the legal norms themselves.

Results and Discussion

1). Benchmark of Compelling Crucial Matters as a runway in forming Government Regulations in Lieu of Laws

In the context of the Indonesian state administration, in fact, a Perppu was formed by the president due to an emergency situation in order to save the people because in fact, this is in line with the legal ideology *The Health of the People Sub like Supreme Law* which means that people's safety or people's welfare is the highest law for a country. Normatively it is based on Articles 12 and 22 of the 1945 Constitution of the Republic of Indonesia. In this way the principle of "forced urgency" in the constitution can be divided into three main points, *First* there is a very serious threat *Second* an urgent need so that a Perppu is required to be formed, *Third* the limited time in an area (Nuh, 2011).

Of the three main reasons above according to the constitution, more details can be seen in the consideration of the Constitutional Court Decision number 138/PUU/-VII/2009 which can provide a conclusion of understanding in terms of "compelling urgency". The explanation also provides conditions regarding the state of danger, namely:

1. The existence of an event, namely the urgent need to resolve legal issues quickly based on the law
2. The required legal products do not yet exist, resulting in a legal vacuum (*jurisprudence*) or there is a law but it is not sufficient
3. legal vacuum (*jurisprudence*) cannot be overcome by making laws in the usual way because it will take quite a long time, while the urgent situation requires certainty to be resolved.

Therefore, the existence of the enactment of a Perppu in an emergency situation in a country that adheres to a presidential system, as is the case in Indonesia, must contain two conditions for enforcement, namely material requirements and formal requirements. This was conveyed by Jimly Asshidiqie in his book Introduction to Constitutional Law volume II that the conditions material in the enactment of the Perppu is that there must be a new state institution related to the situation. While the formal requirements are talking about a structural (institutional) must be equipped with complete authority in acting according to laws and regulations (Asshiddiqie, 2006). In this way, Ni'Matul

Huda, an expert on constitutional law, further elaborated that in the context of a country that adheres to a presidential system, the formal requirement for the formation of a Perppu by the President is that the following conditions must be met (Huda, 2010).

1. A statement that applies in an urgent or emergency situation must be stated in a presidential decree as the head of government, while material regulations that are needed, namely in an emergency situation, can be stated in the form of a Perppu as stipulated in the 1945 Constitution of the Republic of Indonesia.
2. Officials who are legally regulated in the constitution have the authority to determine and regulate a state of emergency, only the President, not other officials.
3. The Presidential Regulations and Government Regulations in Lieu of Legislation referred to above were ratified and signed by the President and promulgated in the state gazette as appropriate.

From these conditions we can review and try to coherence whether Perppu number 2 of 2022 concerning work creation is a responsive or even repressive regulation because doing so can have a big impact on society. So far, in the opinion of the author himself, the enactment of the Perppu is due to an emergency reason, which is a theoretical defect that occurs in government policy regulations. namely "*Self esplamatoir*. According to Janedri Gafar as quoted by Hafiez Sofyani in his journal entitled "Implementation of the principles of good governance" explains that the characteristics of *self espalamtoir* is the ability of one norm to explain to the public that it is right in itself, As for *self espalamtoir* characterized by coherence, namely a method or instrument used to measure the truth of an entity or a norm, therefore there are three elements that need to be considered, namely consistency, comprehensiveness, and linkages between the components of one norm and another so that when these elements are construct in a formative way it will give rise to a constructive idea (Sofyani et al., 2020).

Therefore the formation of Perppu number 2 of 2022 concerning Job Creation using the excuse of the state of emergency that occurred in the country of Indonesia in fact did not consider the elements in it and was very much contrary to the Constitutional Court Decision number 91/PUU-XVIII/2020 This can be seen from the explanation in general which emphasizes that the use of this Perppu to absorb the widest possible workforce in Indonesia is based on the consideration that the emergence of the crisis of the Russian and Ukrainian wars and other conflicts which have caused both material and immaterial losses and created insecurity for the community, so that urgently issue a Perppu in order to immediately create a conducive atmosphere for the maintenance of order and security without abandoning the principles of a rule of law state (Hsb, 2019).

2.) Analysis of Legal Implications of Perppu Number 2 of 2022 concerning job creation

After the formation of Perppu number 2 of 2022 concerning Job Creation, in its considerations point b explains "that with job creation it is hoped that it will be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and demands for economic globalization as well as challenges and global

economic crises that can cause disruption of the national economy. With that in mind, there are other reasons for the importance of establishing Perppu number 2 of 2022 concerning Job Creation according to Nining Elitos as General Chair of the Indonesian Trade Union Alliance, namely:

1. The labor market is flexible. According to the Perppu Cipta Kerja, it is stated that one of the reasons for the need for job creation is that 135.61 million people work, and another 81.33 million people or around 59.97 percent work in informal activities.
2. Low Wages Politics, The basic explanation is that the wage policy scheme that was formulated, as stated in article 88 C of the Job Creation Perppu and article 25 paragraph (2) PP No. 36 in 2021.
3. Expanding the outsourcing system. When we review Law no. 11 of 2020 concerning Manpower, outsourcing work is limited to work outside the main activity or that is not related to the production process, while Perppu No. 2 of 2022 no longer explains the provisions regarding the limits of what work can be outsourced.

Of the three reasons mentioned above, according to the author's response to the formation of the Perppu, there is a problem with the issue of its formation because we should pay attention to the mandate of the Constitutional Court Decision number 91/PUU-XVIII/2020 which explains that the improvement of the procedure for forming (formality) Law number 11 of 2020 regarding Job Creation, so that material improvements are only possible through the issuance of a Perppu which in no way reinforces the formal constitutionality of the a quo law (Young, 2016). The legal implication that occurred was the judge's consideration until the Constitutional Court's decision stated explicitly "If the conditional unconstitutional status of the Job Creation Law will only be invalidated if improvements are made to the formation of the formalities of a law until the specified time limit so that in the author's opinion the issuance of Perppu number 2 of 2022 the implication is that constitutionally it does not invalidate the conditional unconstitutionality of the Job Creation Law. In addition, the Mandate of the Constitutional Court's decision number 91/PUU-XVIII/2020 to the legislators (*lawmakers*) to improve the formation of the Job Creation Law, the author feels that it is not a complicated homework, so it is critical to issue the Perppu itself. So from that the configuration made by the government in initiating the Perppu is an inconsistent step which the authors describe below:

a. Establishment of Perppu Number 2 of 2022 concerning Job Creation as a regulation on Constitutional Disobedience (Constitutional Swelling)

The Constitutional Court is a state institution that existed after the amendment to the 1945 Constitution. In the constitutional conception of the Constitutional Court it is interpreted: *First*, As Guardian of the Constitution (*The Guardian of the Constitution*) *second*, As Sole Interpreter (*The final Interpreter of the Constitution*) *Third*, As Guardian of Democracy (*The Guardian Of The Democracy*) *Fourth*, Protector of Constitutional rights (The Protector of the Citizen's Constitutional Rights) and those *Fifth*, As a Protector of Human Rights (*The Protector of the Human Right's*) (Safa'at, n.d.). Therefore, the relationship between the institutions of the Constitutional Court is talking about how the

mechanism for improvement through alternative roads is that this Perppu is not the corrective procedure mandated in the Constitutional Court Decision number 91/PUU-XVIII/2020 so it is promulgated from the Plenary of the DPR as *Law Lawmakers* though the procedure is not in line with the ruling of the Constitutional Court itself, what's worse, the regulation is very contrary to the principle contained in the decision of the Constitutional Court, namely the principle *Meaningful participation* (Safa'at, 2010).

Therefore the issuance of a Perppu can lead to the problem of regulatory oversight or legal obesity, a phenomenon that can almost be said to be common in those formed through a series of processes, which is called legal politics. This is because if the number of our Legislation is exploding, but between one and another is harmonious and does not overlap, then it will not necessarily give rise to various problematic complications (Huda, 2010). Therefore, legal obesity will become a problem when there are so many regulations, they are not followed by harmonious conditions and overlap one another. If this is the case, then a fast and appropriate solution is needed to overcome this problem, before legal obesity develops into a crisis in the legal field, namely a condition caused by legal substance, legal structure, and legal culture, overlap, inconsistency and gives rise to uncertainty.

b. Not In Accordance With The Constitutional Court Decision Number 138/PUU-VII/2009 Concerning Conditions for an Emergency

Conception in consideration of the Constitutional Court Decision number 138/PUU/-VII/2009 which can provide a conclusion of understanding in terms of "compelling urgency". The explanation also provides conditions regarding the state of danger, namely:

- a. The existence of an event, namely the urgent need to resolve legal issues quickly based on the law
- b. The required legal products do not yet exist, resulting in a legal vacuum (*jurisprudence*) or there is a law but it is not sufficient
- c. legal vacuum (*jurisprudence*) cannot be overcome by making laws in the usual way because it will take quite a long time, while the urgent situation requires certainty to be resolved.

Referring to the formation of the Perppu above, the swelling occurred due to a series of constructions from the Constitutional Court's considerations which at that time the Constitutional Court directed *Law makers* to improve the procedures for forming Law number 11 of 2020 instead of issuing a Perppu. If we dig deeper into the conditions for forming a Perppu which the author has explained above in the Constitutional Court Decision no 138/PUU-VII/2009 in the second point the requirements for issuing a Perppu by the president, one of which is that the required law does not yet exist (*right vacuum*) while in this problem, Law number 11 of 2020 clearly exists so that the conditional requirements for forming a Perppu are clearly not met and are referred to as constitutional enlargements (Hsb, 2019).

Conclusion

From the explanation above, it can be concluded that a Perppu is a government regulation that replaces the position of a law but the substance of the law is the same as the material for the configuration law which was formed by the President himself in an emergency situation in a country. things that must be known immediately from a policy configuration that utilizes the concept of 'compelling urgency' which in the end is confirmed in the Constitutional Court Decision as The Guardian Of the Constitution (guard of the constitution) number 91/PUU-XVIII/2020 which examines the formal and decides on Laws law number 11 of 2020 concerning Job Creation was declared Conditionally Unconstitutional so that in essence Perppu number 2 of 2022 annulled the Constitutional Court Decision Number 91/PUU-XVIII/2020 so that it had a huge impact on the inconsistency of policies made by the President which means the President has committed a violation in the form of harassment against a decision and institution of the Constitutional Court which mutatis mutandis (basically) the president does not respect the Constitutional Court (MK) and has carried out the practice of Contempt of the Constitutional Court and Constitutional Disobedience (Constitutional Swelling).

So that the various problems above, in fact the purpose of the state which is contained in the preamble of the 1945 Constitution, namely the legalization of its people, means that the people must receive a share in fairness regardless of anything and even talking about regulation, there are two concepts that need to be considered, namely responsive regulation, namely regulations that contain the principles of justice, expediency and also certainty for the community or the public interest, while repressive regulations mean that policies only benefit a handful of people, namely the officials themselves. Then is the issuance of Perppu number 2 of 2022 concerning Job Creation a responsive or repressive regulation? Referring to the stages of the author's argument above, Perppu is a repressive regulation as the author has explained above.

For this reason, in order to realize the legal principle of "Lex Samper Debet Remedium" meaning that actually policies can provide medicine or solutions so that Perppu number 2 of 2022 concerning work copyright, the authors put forward the following solutions/recommendations:

1. The existence of a grand design to ensure the interconnectivity of the entire system for the formation of a statutory regulation
2. Judicial review was carried out by the Constitutional Court which introduced an 'Internal Control' mechanism carried out by parties issuing legal products, both legal products in the form of regelling or beschikking. Meanwhile, the targets for executive review as referred to in the above regulation are in the form of revocation or cancellation of legal products. which is the object of this is done to maintain legal products made by the government to remain synchronous, and consistent, and provide legal certainty to the community.
3. The existence of a flexibility transaction in forming a legal product in order to enable flexible public services and provide benefits to the community is carried out by the government itself.

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